

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BANK OF MONTREAL

Applicant

- and -

**NFC ACQUISITION GP INC., NFC ACQUISITION CORP. NFC ACQUISITION L.P.,
NEW FOOD CLASSICS AND NFC LAND HOLDINGS CORP.**

Respondents

**MOTION RECORD
(Returnable July 10, 2012)**

June 29, 2012

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Lawyer for TVR Construction

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**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BANK OF MONTREAL

Applicant

- and -

**NFC ACQUISITION GP INC., NFC ACQUISITION CORP. NFC ACQUISITION L.P.,
NEW FOOD CLASSICS AND NFC LAND HOLDINGS CORP.**

Respondents

**MOTION RECORD
(Returnable July 10, 2012)**

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Court File No. CV-12-9616-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
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BANK OF MONTREAL

Applicant

- and -

**NFC ACQUISITION GP INC., NFC ACQUISITION CORP.,
NFC ACQUISITION L.P., NEW FOOD CLASSICS and
NFC LAND HOLDINGS CORP.**

Respondents

**NOTICE OF MOTION
(Returnable July 10, 2012)**

FTI CONSULTING CANADA INC., in its capacity as court-appointed receiver (the “**Receiver**”) of all of the assets, undertakings and properties of NFC Acquisition GP Inc., NFC Acquisition L.P., NFC Acquisition Corp., New Food Classics and NFC Land Holdings Corp., will make a motion to a judge presiding over the Commercial List on Tuesday, the 10th day of July 2012, at 10:00 a.m. or as soon after that time as the motion can be heard, at the Courthouse, 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR:

1. An order substantially in the form attached hereto as **Schedule “A”**:

- (a) approving the Receiver's activities as set out and described in the third report of the Receiver, dated July 3, 2012 (the "**Third Report**");
- (b) approving the sale of the Lands, as defined in the purchase agreement between the Receiver and TVR Construction (the "**Purchaser**") dated March 16, 2012, as amended by written amending agreements dated March 29, 2012, May 17, 2012 and May 25, 2012, and as more particularly described in the Third Report and vesting the Lands in the Purchaser's nominee, Recon Metals Ltd. upon closing;
- (c) sealing the confidential appendices to the Third Report pending further order of the Court; and
- (d) such further and other relief as counsel may advise and to this Honourable Court may seem just.

THE GROUNDS FOR THE MOTION ARE:

- 2. The grounds set out in the Third Report and the appendices thereto (including the confidential appendices thereto, filed separately with the Court).
- 3. Section 100 of the *Court of Justice Act*, R.S.O. 1990, c. C.43, as amended.
- 4. Rules 1.04, 1.05, 37 and 39 of the Rules of Civil Procedure.
- 5. Such further and other grounds as counsel may advise and the Court may permit.

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

1. The Third Report and the appendices thereto (including the confidential appendices thereto, filed separately with the Court).
2. Such further and other material as counsel may advise and the Court may permit.

June 29, 2012

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NEW FOOD CLASSICS AND NFC ACQUISITION L.P. (THE "NFC ENTITIES")**

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Lawyer for TVR Construction

SCHEDULE "A"

TAB A

defined in the Sale Agreement (the “**Lands**”), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Third Report and on hearing the submissions of counsel for the Receiver, Bank of Montreal [and TVR, no one appearing for any other person on the service list], although properly served as appears from the affidavit of service of Caitlin Fell sworn , 2012, and filed:

1. THIS COURT ORDERS that the Third Report and the Receiver’s activities as set out therein are hereby approved.
2. THIS COURT ORDERS that the time for service of the notice of motion and the motion record herein be and is hereby abridged and the service thereof validated, so that the motion is properly returnable today.
3. THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved. The Receiver is hereby authorized and directed to take such steps and execute such documents as may be necessary or desirable for the completion of the Transaction. The Receiver and the Purchaser are hereby authorized to enter into non-material amendments to the Sale Agreement by mutual agreement in writing without further order of the Court.
4. THIS COURT ORDERS AND DECLARES that upon the delivery of a Receiver’s certificate to the Purchaser substantially in the form attached as **Schedule “A”** hereto (the “**Receiver’s Certificate**”), all of the Debtors’ right, title and interest in and to the Lands shall vest absolutely in the Buyer, free and clear of and from any and all encumbrances, security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed

trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any Court ordered encumbrances or charges established in Court File No. CV12-9554-00CL or in this proceeding; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act*, R.S.A. 2000, c. P-7 (the "**PPSA**") or any other personal property registry system; and (iii) those Claims listed on Schedule "B" hereto, provided that the Claims shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule "C" hereto (the "**Permitted Encumbrances**") and the Lands shall remain subject to the Permitted Encumbrances. For greater certainty, this Court orders that all of the Claims affecting or relating to the Lands, other than the Permitted Encumbrances, are hereby expunged and discharged as against the Lands.

5. THIS COURT ORDERS AND DIRECTS the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

6. THIS COURT ORDERS AND DIRECTS that upon the filing of the Receiver's Certificate together with a certified copy of this Order with the Registrar of Land Titles of Alberta (the "**Registrar**") and payment of any applicable registration fees, the Registrar shall and is hereby directed to (i) cancel the existing certificates of title to the Lands identified in Schedule "D" hereto; (ii) issue new certificates of title to the Lands in the name of Recon Metal Ltd.; and (iii) delete and expunge from the certificate of title to the Lands all of the Claims listed in Schedule "B" hereto.

7. This Order shall be registered by the Registrar notwithstanding the requirements of section 191(1) of the *Land Titles Act*, R.S.A. 2000, c. L-7.

8. For the purposes of determining the nature and priority of Claims, the proceeds from the sale of the Lands, net of the commissions payable to Barclay Street Real Estate Ltd., (the “**Net Proceeds**”) shall stand in the place and stead of the Lands, and that from and after the delivery of the Closing Certificate, all Claims expunged and discharged as against the Lands shall attach to the Net Proceeds with the same priority as they had with respect to the Lands immediately prior to the sale.

9. The Transaction may be completed without compliance with: (a) the provisions of Part V of the PPSA; (b) the relevant provisions of the *Civil Enforcement Act* (Alberta) R.S.A. 2000, c. C.-15; and (c) section 244 of the *Bankruptcy and Insolvency Act* (Canada) R.S.C 1985 c. B-3 (the “**BIA**”).

10. THIS COURT ORDERS that, notwithstanding:

(a) the pendency of these proceedings;

(b) any applications for a bankruptcy order now or hereafter issued pursuant to the BIA in respect of the Debtors and any bankruptcy order issued pursuant to any such applications; and

(c) any assignment in bankruptcy made in respect of the Debtors;

the vesting of the Lands in the Buyer pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtors and shall not be void or voidable by

creditors of the Debtors, nor shall it constitute nor be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

11. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this order and to assist the Receiver and its agents in carrying out the terms of this order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this order or to assist the Receiver and its agents in carrying out the terms of this order.

Schedule A – Form of Receiver’s Certificate

Court File No. CV-12-9616-00CL

BANK OF MONTREAL

Applicant

- and -

**NFC ACQUISITION GP INC., NFC ACQUISITION CORP.
NFC ACQUISITION L.P., NEW FOOD CLASSICS and
NFC LAND HOLDINGS CORP.**

Respondent

RECEIVER’S CERTIFICATE

RECITALS

1. Pursuant to an Order of the Ontario Superior Court of Justice (the “**Court**”) dated February 22, 2012 (the “**Appointment Order**”), FTI Consulting Canada Inc. was appointed as the receiver (the “**Receiver**”) of the undertaking, property and assets of NFC Acquisition GP Inc., NFC Acquisition L.P., NFC Acquisition Corp., New Food Classics and NFC Land Holdings Corp. (the “**Debtors**”).
2. Pursuant to an Order of the Court dated July 10, 2012, the Court approved the agreement of purchase and sale made as of March 16, 2012, as amended by amending agreements dated March 29, 2012, May 17, 2012 and May 25, 2012 respectively (the “**Sale Agreement**”) between the Receiver and TVR Construction (the “**Purchaser**”) and provided for the vesting in favour of the Purchaser’s nominee, Recon Metal Ltd. (the “**Buyer**”) of the Debtor’s right, title and interest in and to the Lands, which vesting is to be effective with respect to the Lands upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Lands; (ii) that the conditions to Closing as set out in Article 5 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.
3. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

- (a) The Purchaser has paid and the Receiver has received the Purchase Price for the Lands payable on the Closing Date pursuant to the Sale Agreement;
- (b) The conditions to Closing as set out in Article 6 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and

(c) The Transaction has been completed to the satisfaction of the Receiver.

This Certificate was delivered by the Receiver at [TIME] on [DATE].

FTI Consulting Canada Inc., solely in its capacity as court-appointed receiver of the assets, undertakings and properties of **NFC Acquisition GP Inc., NFC Acquisition L.P., NFC Acquisition Corp., New Food Classics and NFC Land Holdings Corp.**, and not in its personal or corporate capacity

By: _____
Name:
Title:

SCHEDULE "B"
CLAIMS TO BE DELETED AND EXPUNGED
FROM TITLE TO REAL PROPERTY

Specific Encumbrances

1. Respecting Plan 5576HC, Block Z, Lot 1, excepting thereout all mines and minerals:
 - (a) 061 097 877 Mortgage
 - (b) 061 097 879 Mortgage

2. Respecting Plan 5576HC, Block Z, Lot 2, excepting thereout all mines and minerals:
 - (a) 061 097 877 Mortgage
 - (b) 061 097 879 Mortgage

3. Respecting Plan 3313JK, Block A, excepting thereout all mines and minerals:
 - (a) 061 101 404 Mortgage
 - (b) 061 101 405 Mortgage

SCHEDULE "C"
PERMITTED ENCUMBRANCES

General Permitted Encumbrances

- (a) All exceptions, reservations and conditions to which the titles to the Lands are subject pursuant to the *Land Titles Act* (Alberta).
- (b) All caveats and instruments registered by or on behalf of the Purchaser.

Specific Permitted Encumbrances

1. Respecting Plan 5576HC, Block Z, Lot 1, excepting thereout all mines and minerals:
 - (a) 771 147 064 Zoning Regulations
 - (b) 011 173 508 Notice of Security Interest re: Fixtures

2. Respecting Plan 5576HC, Block Z, Lot 2, excepting thereout all mines and minerals:
 - (a) 771 147 064 Zoning Regulations
 - (b) 011 173 508 Notice of Security Interest re: Fixtures

3. Respecting Plan 3313JK, Block A, excepting thereout all mines and minerals:
 - (a) 6184JG Caveat: Utility Right of Way
 - (b) 6775JG Caveat: Utility Right of Way
 - (c) 6777JG Caveat: Utility Right of Way
 - (d) 2333JR Caveat: Utility Right of Way
 - (e) 771 147 064 Zoning Regulations

SCHEDULE "D"

1. FIRST

PLAN CALGARY 5576HC
BLOCK Z
LOT ONE (1)
CONTAINING...

<u>LOT</u>	<u>ACRES MORE OR LESS</u>
1	2.00

EXCEPTING THEREOUT ALL MINES AND MINERALS

SECOND

PLAN CALGARY 5576HC
BLOCK Z
LOT TWO (2)
CONTAINING...

<u>LOT</u>	<u>ACRES MORE OR LESS</u>
2	0.94

EXCEPTING THEREOUT ALL MINES AND MINERALS

2. PLAN 3313JK
BLOCK A

EXCEPTING THEREOUT ALL MINES AND MINERALS
AREA: 0.275 HECTARES (0.68 ACRES) MORE OR LESS

Tab 2

Court File No.: CV12-9616-00CL

**ONTARIO
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Respondents

**THIRD REPORT TO THE COURT
SUBMITTED BY FTI CONSULTING CANADA INC.,
IN ITS CAPACITY AS RECEIVER**

July 3, 2012

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Court File No.: CV12-9616-00CL

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SUBMITTED BY FTI CONSULTING CANADA INC.,
IN ITS CAPACITY AS RECEIVER**

1. On January 17, 2012 (the “**CCAA Filing Date**”), pursuant to an application brought before the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) by NFC Acquisition GP Inc., NFC Acquisition Corp. and NFC Land Holdings Corp. (together with NFC Acquisition L.P., and New Food Classics, “**NFC**” or the “**Company**”) under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA Proceedings**”), the Honourable Mr. Justice Morawetz made an initial order (as extended from time to time, the “**Initial Order**”) in respect of NFC, which, *inter alia*, appointed FTI Consulting Canada Inc. as monitor (in that capacity, the “**Monitor**”).

2. After an unsuccessful going-concern sale process (the “**Transaction Process**”) for the NFC business in the CCAA Proceedings, on February 22, 2012, Bank of Montreal (“**BMO**”) brought: (i) a motion in the CCAA Proceedings to lift the stay of proceedings contained in the Initial Order to allow BMO to bring an application for the appointment a receiver of the property, assets and undertaking of NFC (the “**NFC Assets**”); and (ii) an application under section 243(1) of the *Bankruptcy and Insolvency Act* and section 101 of the *Courts of Justice Act* for the appointment of FTI as receiver (in that capacity the “**Receiver**”) of the NFC Assets. The Court granted the BMO motion and the application, and made the Order in these proceedings dated February 22, 2012 (the “**Receivership Order**”), a copy of which is attached hereto as **Appendix “A”**.

PURPOSE OF THIS REPORT

3. The purpose of this third report of the Receiver (the “**Third Report**”) is to:
- (a) provide the Court with a summary of the marketing process of the Company’s two former food processing facilities located in Calgary, Alberta (together, the “**Calgary Facilities**”) owned by NFC Land Holdings Corp., being the land and building having the municipal address of 4211 13A Street SE, Calgary (the “**13A Facility**”), and the land and building having the municipal address of 4043-4089 Brandon Street SE, Calgary (the “**Brandon Facility**”) ;
 - (b) provide the Court with the background information and Receiver’s recommendation relating to the Receiver’s motion for:
 - (i) the approval of the Court, pursuant to subparagraph 3(l)(ii) of the Receivership Order, for the Receiver to enter into and carry out the terms

- of an agreement (the “**TVR Agreement**”) with TVR Construction Inc. (“**TVR**”) to sell the 13A Facility to TVR’s nominee, Recon Metal Ltd., (the “**Nominee Purchaser**”) (the “**Proposed Transaction**”);
- (ii) an order vesting the 13A Facility in the Nominee Purchaser (the “**Vesting Order**”) effective upon closing of the Proposed Transaction;
 - (iii) Approving the Receiver’s activities, as described in this report; and
- (c) such other relief as counsel may advise and the Court permit.

TERMS OF REFERENCE

4. In preparing this report, the Receiver has relied upon unaudited financial information of NFC, NFC’s books and records, certain financial information prepared by NFC and discussions with NFC’s management. The Receiver has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the information. Accordingly, the Receiver expresses no opinion or other form of assurance on the information contained in this report or relied on in its preparation.

5. Capitalized terms not otherwise defined herein have the meanings set out in the Monitor’s Prefiling Report, the Receivership Order and the Receiver’s Second Report (including the Monitor’s Third Report appended thereto).

SALES PROCESS IN THE CCAA PROCEEDINGS

6. Until late 2010, NFC's head office and two of its three food processing facilities were located in Calgary Alberta (the third processing facility was located in Saskatoon, Saskatchewan (the "**Saskatoon Facility**")). In August of 2010, NFC acquired a processing facility in St. Catharines, Ontario and relocated the food processing operations undertaken at the Calgary Facilities to St. Catharines in early 2011 (the "**St. Catharines Facility**"). At or about the same time, NFC moved its head office from Calgary to leased premises in Burlington, Ontario.

7. Following the decision in 2010 to vacate the Calgary Facilities, the Company solicited marketing proposals for the Calgary Facilities from Barclay Street Real Estate Ltd. ("**Barclay's**") and from Colliers International ("**Colliers**"). Copies of the Barclay's proposal and the Colliers proposal are filed but not attached hereto, as **Confidential Appendix "A"** and **Confidential Appendix "B"** respectively.

8. Pursuant to an exclusive listing agreement dated November 11, 2010, NFC engaged Barclay's to market and sell the Calgary Facilities as agent for NFC until August 31, 2011 (the "**Barclay's Listing Agreement**"). A copy of the Barclay's Listing Agreement is filed but not attached hereto as **Confidential Appendix "C"**. It is the Receiver's understanding that the term of the Barclay's Listing Agreement was informally extended by the agreement of NFC and Barclays after August 31, 2011 and that Barclay's continued to be NFC's exclusive agent in respect of the marketing and sale of Calgary Facilities as of the CCAA Filing Date.

CCAA TRANSACTION PROCESS

9. Upon commencement of the CCAA Proceedings, NFC and the Monitor commenced the Court approved Transaction Process for all of property, assets and undertaking of NFC on a going-concern basis, including the Calgary Facilities. The principal steps of the Transaction Process are outlined in paragraph 36 of the Prefiling Report of FTI filed in the CCAA Proceedings, a copy of which, without appendices, is attached hereto as **Appendix “B”**. In the Transaction Process the NFC Assets were offered both *en bloc* and as separate parcels, as follows:

- (i) The Saskatoon Facility (including the associated equipment, inventory and accounts receivable);
- (ii) The St Catharines Facility (including the associated equipment, inventory and accounts receivable);
- (iii) The 13A Facility; and
- (iv) The Brandon Facility.

10. After publishing Sales Ads in the *Globe & Mail National Edition* on January 20 and 23, 2012, the Monitor received eleven Expressions of Interest from interested parties. Of the eleven Expressions of Interest received, only two parties submitted Expressions of Interest for all of the NFC assets on an *en bloc* basis which included the 13A Facility and the Brandon Facility (the “**En Bloc Parties**”). No parties submitted Expressions of Interest for the Calgary Facilities, or either of them, on a stand alone basis. The En Bloc Parties were among the group of “Selected Parties” who were invited to participate in Phase 2 of the Transaction Process and

provided with access to more detailed information in the NFC virtual data room (the “**Data Room**”) . The Monitor also received informal expressions of interest for the Calgary Facilities from third parties outside the Transaction Process, however none of those parties, notwithstanding the Monitor’s request, submitted formal Expressions of Interest that complied with the Court approved Transaction Process. The En Bloc Parties, after reviewing the additional the additional information in the Data Room, declined to submit a binding final proposal. As a result, by the CCAA Transaction Process bid deadline, NFC had received no offers for the purchase of the Calgary Facilities or either of them.

11. A fuller summary of the results of the Transaction Process conducted in the CCAA Proceedings and the results thereof is outlined in further detail in the Receiver’s Second Report to the Court dated April 12, 2012 (the “**Second Report**”). A copy of the Second Report is attached hereto as **Appendix “C”**. As mentioned therein, on February 20, 2012, BMO delivered a Sales Process Default Notice under the DIP Credit Agreement and thereafter commenced these Receivership Proceedings.

SALES PROCESS IN THE RECEIVERSHIP PROCEEDINGS

12. Following the making of the Receivership Order, the Receiver continued to work with Barclay’s to pursue and solidify the various informal expressions of interest that both Barclay’s and FTI as Monitor had received in respect of the Calgary Facilities.

13. As part of that process, the Receiver made inquiries of Barclay’s with respect to the marketing efforts that Barclay’s had undertaken in respect of the Calgary Facilities up to the commencement of the CCAA Proceedings in order to determine whether there would be any benefit to the Receiver embarking upon an entirely new marketing and sales campaign for the

Calgary Facilities, or whether between the Barclay's marketing efforts since November of 2010 and the CCAA Transaction Process, the market for the Calgary Facilities had been duly canvassed.

14. Barclays confirmed that the marketing campaign for the Calgary Facilities included the following: (i) postings on the Barclay's Real Estate website; (ii) weekly updates posted on Kijiji; (iii) an initial mass mailing to Barclay's substantial database of industrial users and developers; (iv) email solicitations to Barclay's network of real estate brokers; (v) a quarterly post-card mailer to 2,800 Barclay's contacts; (vi) an ad in the *Barclay Street Real Estate Ltd. – Industrial Report*; (vii) monthly full page advertisements in the *Western Investor* newspaper¹; (viii) an ad in the Winter 2011 *Alberta Food Processors Association Publication*; (ix) the hand delivery of brochures to seventy five targeted Calgary area businesses/investors; and (x) a telephone solicitation campaign to additional targeted businesses, developers, food processors and landlords. Between November 2010 and the CCAA Filing Date, Barclay's had conducted tours of the Calgary Facilities with approximately twenty interested parties, and since the CCAA Filing Date has conducted an additional six tours of the 13A Facility, and thirty tours of the Brandon Facility.

15. Based on the foregoing, the Receiver is of the view that, between the efforts of Barclay's since November of 2010 and the solicitations made during the Transaction Process, the market for the Calgary Facilities has been fully and duly canvassed, and that there would be no perceptible economic benefit to a period of further marketing of the Calgary Facilities and the 13A Facility in particular.

¹ Circulation of 40,000 subscribers.

THE TRANSACTION

16. TVR was a party that originally expressed an interest in the 13A Facility to Barclays in November of 2011. After a series of negotiations between TVR and Barclay's/the Receiver, and negotiations between Barclay's/the Receiver and the other parties identified by Barclay's that had expressed serious interest in acquiring the 13A Facility, the Receiver agreed, subject to Court approval in accordance with the Receivership Order, to accept the offer to purchase the 13A Facility submitted by TVR. In accordance with the March 29, 2012 amendment to the TVR Agreement, TVR has delivered a non-refundable deposit in the amount of \$100,000 to the receiver which is held in the Fasken Martineau trust account. A redacted copy of the TVR Agreement is attached hereto as **Appendix "D"**. An un-redacted copy of the TVR Agreement is filed but not attached hereto, as **Confidential Appendix "D"**.

17. The Receiver has reviewed the principal business terms of the TVR Agreement with BMO and with TD Capital Mezzanine Partners Management Ltd. ("**TD**"), the second ranking secured creditor of NFC behind BMO, who are the only parties with an economic interest in the Calgary facilities, and has been advised of both of their support for the approval of the TVR Agreement and Proposed Transaction sought herein.

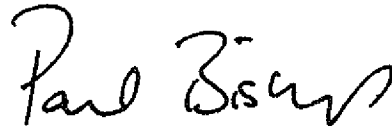
18. Because of the unique nature of the Calgary Facilities, being specialized food processing facilities, appraisals based upon sales of similar food processing facilities in the Calgary area are not readily available. Further it is the Receiver's understanding that many of the parties interested in the 13A Facility (including TVR) did not intend to use the facility for food processing. As such the Receiver and Barclays have compared the price offered by TVR to prices per acre of other industrial land sales in the Calgary area. The purchase price per acre of

the 13A Facility under the TVR Agreement falls within the higher range of prices received for industrial land sales in the Calgary area within the last 12 months. A list of Calgary industrial land sales, including the price obtained for each sale prepared by Barclay's is filed but not attached hereto, as **Confidential Appendix "E"**.

19. Based on the extensive marketing and solicitation processes for the 13A Facility both by Barclays since November of 2010, and undertaken in the Transaction Process, and based upon the support of BMO and TD, the Receiver respectfully recommends that the Court approve the TVR Agreement, authorize the Receiver to carry out the Transaction, and grant the Vesting Order, vesting the 13A Facility in the Nominee Purchaser upon closing of the Transaction.

All of which is respectfully submitted this 3rd day of July, 2012.

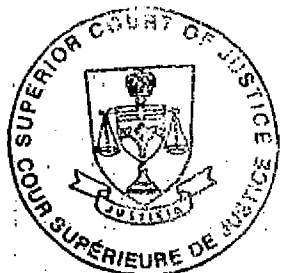
FTI Consulting Canada Inc.
Receiver of the property, assets and
undertaking of New FC



Name: Paul Bishop
Title: Senior Managing Director,
FTI Consulting Canada Inc.

TAB A

Court File No. CV-12-9616-00CL



**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.)

WEDNESDAY, THE 22nd DAY

JUSTICE BROWN)

OF FEBRUARY, 2012

BANK OF MONTREAL**Applicant**

- and -

**NFC ACQUISITION GP INC., NFC ACQUISITION CORP.,
NFC LAND HOLDINGS CORP., NEW FOOD CLASSICS, and
NFC ACQUISITION L.P.**

Respondents

**ORDER
(Appointing Receiver)**

THIS APPLICATION made by the Applicant for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "CJA") appointing FTI Consulting Canada Inc. ("FTI") as receiver (the "Receiver") without security, of all of the assets, undertakings and properties of NFC ACQUISITION GP INC., NFC ACQUISITION CORP., NFC ACQUISITION L.P., NEW FOOD CLASSICS, and NFC LAND HOLDINGS CORP. (collectively, the "Debtors") acquired for, or used in relation to a business carried on by the Debtors, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Affidavit of L.M. Junior Del Brocco sworn February 21, 2012, the Affidavit of Brian Cram, sworn February 10, 2012, and the Affidavit of Brian Cram, sworn January 16, 2012, and the exhibits thereto, and the Pre-Filing Report of FTI dated January 16, 2012, the Second Report to Court of FTI dated February 13, 2012, and the Third Report to Court of FTI dated February 21, 2012, and the Appendices thereto, filed, and on hearing the submissions of counsel for BMO, counsel for the NFC Entities, and counsel for FTI, and such other parties in attendance at the hearing as indicated on the Counsel Slip, no one appearing for any other party although duly served as appears from the Affidavit of Service of Fiorella Sasso, sworn February 22, 2012;

SERVICE

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

APPOINTMENT

2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, FTI is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtors acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof (the "Property").

RECEIVER'S POWERS

3. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;

- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to cease to carry on all or any part of the business, or cease to perform any contracts of the Debtors;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time, including former employees of the Debtors, and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors and to exercise all remedies of the Debtors in collecting such monies, including, without limitation, to enforce any security held by the Debtors;
- (f) to settle, extend or compromise any indebtedness owing to the Debtors;
- (g) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtors, for any purpose pursuant to this Order;
- (h) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtors, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

- (i) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (j) to cause the Company to sell, convey, transfer its finished goods inventory (collectively, "**Finished Inventory**"), including by way of bulk transactions, to existing customers of the Debtors, in or out of the ordinary course of business, without the approval of this Court;
- (k) to cause the Company to sell, convey, transfer the entirety of its raw and frozen perishable raw materials inventory (collectively, "**Perishable Inventory**"), including by way of one or more bulk transactions, without the approval of this Court;
- (l) to sell, convey, transfer, lease or assign the Property or any part or parts thereof (other than Finished Inventory and Perishable Inventory) out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any transaction not exceeding \$200,000, provided that the aggregate consideration for all such transactions does not exceed \$600,000; and
 - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, and the equivalent provisions of the Alberta and Saskatchewan *Personal Property Security Acts*, section 31 of the Ontario *Mortgages Act*, and the equivalent the Alberta legislation, as the case may be, shall not be required, and in each case the Ontario *Bulk Sales Act* or equivalent bulk sales legislation in any other Province shall not apply.

- (m) to apply to this Court or the Court in the Provinces of Alberta or Saskatchewan for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (n) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (o) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (p) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtors;
- (q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtors, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtors;
- (r) to exercise any shareholder, partnership, joint venture or other rights which the Debtors may have;
- (s) to pay amounts secured by the Administration Charge (as hereinafter defined) and outstanding as at the date of this Order, within seven days of the making of this Order; and
- (t) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtors, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. THIS COURT ORDERS that (i) the Debtors, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtors, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto

paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE RECEIVER

7. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY

8. THIS COURT ORDERS that no Proceeding against or in respect of the Debtors or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtors or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

9. THIS COURT ORDERS that all rights and remedies against the Debtors, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtors to carry on any business which the Debtors is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtors from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

10. THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtors, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

11. THIS COURT ORDERS that all Persons having oral or written agreements or arrangements, including without limitation by conduct, with the Debtors or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or food or food processing safety monitoring, food storage services, facility cleaning services or other services to the Debtors are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtors' current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtors or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

12. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "Post Receivership Accounts") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided

for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

13. THIS COURT ORDERS AND DECLARES that the employment of all of the Debtors' employees be and is hereby terminated. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA

14. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to whom 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 Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtors, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

15. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the

protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder, and the equivalent legislation in the Provinces of Alberta and Saskatchewan (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

16. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

17. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Property in an amount of up to \$350,000, less the outstanding amounts secured by the Administration Charge (as hereinafter defined) from time to time, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a charge on the Property in the priority set out in paragraph 24 of this Order, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

18. THIS COURT ORDERS that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

19. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

20. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$1,000,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "Receiver's Borrowing Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, with the priority set out in paragraph 24 of this Order, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

21. THIS COURT ORDERS that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

22. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "Receiver's Certificates") for any amount borrowed by it pursuant to this Order.

23. THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates

evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

COURT ORDERED CHARGES

24. THIS COURT ORDERS that subject to paragraphs 25 and 26 below, the Administration Charge, the Directors' Charge and the DIP Lender's Charge provided for in the Initial Order in the CCAA Proceedings made January 17, 2012 (the "Initial Order"), and the Westco Lien Charge provided for in the order of this Court made February 16, 2012 (the "Extension Order") in the CCAA Proceedings be and are hereby recognized and preserved, and shall rank, as among themselves, and *vis a vis* the Encumbrances referred to in Paragraph 40 of the Initial Order, in accordance with the priorities set out in the Initial Order and the Extension Order.

25. THIS COURT ORDERS that the Receiver's Charge shall rank immediately behind the Administration Charge, and immediately ahead of the Directors' Charge.

26. THIS COURT ORDERS that the Receiver's Borrowing Charge shall rank immediately behind the Westco Lien Charge and immediately ahead of the DIP Lender's Charge.

SERVICE AND NOTICE

27. THIS COURT ORDERS that the Receiver be at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the Debtors' creditors or other interested parties at their respective addresses as last shown on the records of the Debtors and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

28. THIS COURT ORDERS that the Plaintiff, the Receiver, and any party who has filed a Notice of Appearance may serve any court materials in these proceedings by e-mailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List from time to time, and the Receiver may post a copy of any or all such materials on its website at <http://cfcanada.fiiconsulting.com/nfc>.

GENERAL

29. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

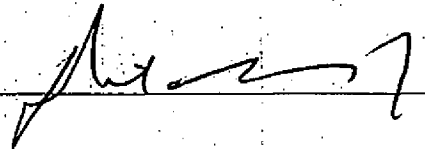
30. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtors.

31. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

32. THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

33. THIS COURT ORDERS that the Applicant shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Applicant's security to be paid by the Receiver from the Debtors' estate with such priority and at such time as this Court may determine.

34. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

A handwritten signature in black ink, appearing to be "M. S. J.", written over a horizontal line.

ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

FEB 22 2012

NB

SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that FTI CONSULTING CANADA INC. the receiver (the "Receiver") of the assets, undertakings and properties NFC ACQUISITION GP INC., NFC ACQUISITION CORP. NFC ACQUISITION L.P., NEW FOOD CLASSICS AND NFC LAND HOLDINGS CORP acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the _____ day of February, 2012 (the "Order") made in an action having Court file number ___-CL-_____, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$ _____, being part of the total principal sum of \$1,000,000 which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of Montreal from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in the priority of the Charges and Encumbrances set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver

to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the _____ day of _____, 2012.

FTI CONSULTING CANADA INC. solely in its capacity as Receiver of the Property, and not in its personal capacity

Per:

Name:

Title:

BANK OF MONTREAL

- and -

NFC ACQUISITION GP INC. et al.

ONTARIO
SUPERIOR COURT OF JUSTICE
(PROCEEDING COMMENCED AT TORONTO)

ORDER

GOWLING LAFLEUR HENDERSON LLP

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100 King Street West, Suite 1600
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Clifton P. Prophet / Frank Lamie

LSUC No.: 34845K / 54035S

Telephone: (416) 862-3509 / (416) 862-3609

Facsimile: (416) 862-7661

**Solicitors for the Applicant,
Bank of Montreal**

TAB B

Court File No. _____

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
NFC ACQUISITION G.P. INC., NFC ACQUISITION CORP.
AND NFC LAND HOLDINGS CORP.

**PRE-FILING REPORT TO THE COURT
SUBMITTED BY FTI CONSULTING CANADA INC.,
IN ITS CAPACITY AS PROPOSED MONITOR**

January 16, 2012

Fasken Martineau DuMoulin LLP
Barristers and Solicitors
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Bay Adelaide Centre, Box 20
Toronto, Ontario Canada M5H 2T6

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Fax: 416 364 7813

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Tel: 416 868 3471
Fax: 416 364 7813

Solicitors for FTI Consulting Canada
Inc., proposed Monitor

Court File No. _____

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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

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**PRE-FILING REPORT TO THE COURT
SUBMITTED BY FTI CONSULTING CANADA INC.,
IN ITS CAPACITY AS PROPOSED MONITOR**

INTRODUCTION

1. FTI Consulting Canada Inc. ("FTI" or the "Proposed Monitor") has been informed that NFC Acquisition GP Inc., NFC Acquisition Corp. and NFC Land Holdings Corp. (collectively, the "Applicants" and together with NFC Acquisition L.P., and New Food Classics, "NFC") intend to make an application under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") for an initial order (the "Initial Order") granting, *inter alia*, a stay of proceedings against NFC until February 15, 2011, (the "Stay Period") and appointing FTI as the monitor (the "Proposed Monitor"). The proceedings to be commenced by the Applicants under the CCAA will be referred to herein as the "CCAA Proceedings".

2. FTI is a trustee within the meaning of section 2 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, and is not subject to any of the restrictions on who may be

appointed as monitor set out in section 11.7(2) of the CCAA. FTI has provided its consent to act as Monitor in these CCAA Proceedings (a copy of which is attached as **Appendix "A"**).

PURPOSE

3. The purpose of this report is to provide the Court with the following:
 - (a) FTI's qualifications to act as Monitor (if appointed);
 - (b) an overview of the state of the business and affairs of NFC and the causes of its financial difficulty;
 - (c) the Proposed Monitor's comments on the Applicants' weekly cash flow forecast of NFC to April 13, 2012 and the reasonableness thereof, in accordance with s.23(1)(b) of the CCAA;
 - (d) the Proposed Monitor's comments on the proposed debtor in possession financing (the "**DIP Financing**");
 - (e) the Proposed Monitor's comments on the proposed sales process (the "**Sales Process**");
 - (f) the Proposed Monitor's comments on the following court-ordered charges contained therein:
 - (i) the administrative charge (the "**Administrative Charge**");
 - (ii) the directors & officers' charge (the "**D&O Charge**"); and
 - (iii) the charge securing the DIP Financing (the "**DIP Charge**");

(collectively, the "Court Ordered Charges"); and

- (g) the Proposed Monitor's conclusions and recommendations.

TERMS OF REFERENCE

4. In preparing this report, the Proposed Monitor has relied upon unaudited financial information of the Applicants, NFC's books and records, certain financial information prepared by the Applicants and discussions with the Applicants' management. The Proposed Monitor has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the information. Accordingly, the Proposed Monitor expresses no opinion or other form of assurance on the information contained in this report or relied on in its preparation. Future oriented financial information reported or relied on in preparing this report is based on management's assumptions regarding future events; actual results may vary from forecast and such variations may be material.

5. Capitalized terms not otherwise defined herein have the meanings defined in the Affidavit of Brian Cram, President and Chief Executive Officer of NFC, sworn January 16, 2012 (the "Cram Affidavit") and filed in support of the application for the Initial Order. The Affidavit describes, *inter alia*, NFC's business, corporate structure, financial position and reasons for commencement of these proceedings. This Report should be read in conjunction with the Affidavit as certain information contained in the Affidavit has not been included herein to avoid unnecessary duplication.

6. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars.

FTI'S QUALIFICATIONS TO ACT AS MONITOR

7. FTI was retained by NFC on December 23, 2011 to provide certain financial advisory and consulting services.

8. Paul Bishop of FTI will have primary carriage of this matter and is a trustee within the meaning of subsection 2(1) of the *Bankruptcy and Insolvency Act* (Canada) ("BIA").

Neither FTI nor any of its representatives have been at any time in the two preceding years:

- (a) the auditor of any of NFC;
- (b) a director, an officer or an employee of any of NFC;
- (c) related to NFC or to any director or officer of NFC; or
- (d) trustee (or related to any such trustee) under a trust indenture is issued by NFC or any person related to NFC, or the holder of a power of attorney under an act constituting a hypothec within the meaning of the *Civil Code of Quebec* that is granted by NFC or any person related to NFC.

9. FTI has consented to act as Monitor should this Honourable Court grant the Applicants' request to commence the CCAA Proceedings in respect of NFC.

RELEVANT BACKGROUND INFORMATION*Business and Affairs of the Applicant*

10. NFC is in the business of manufacturing value-added meat and meatless protein consumer products in Canada. The primary product line consists of frozen beef burgers; however NFC has expanded to various other protein categories and has begun to develop a selection of cooked products and speciality appetizers.

11. NFC operates out of two certified (Canadian Food Inspection Agency, U.S. Department of Agriculture, and Hazard Analysis Critical Control Points) production facilities in Canada, located in St. Catharines, Ontario and Saskatoon, Saskatchewan and has a sales and procurement office located in Calgary, Alberta. NFC's corporate head office is located in leased premises in Burlington, Ontario, where all administrative functions are carried out. NFC also owns two commercial properties in Calgary, Alberta, which it no longer uses and which have been listed for sale by NFC since November, 2010.

12. As of January 11, 2012, the Applicants employ the following employees:

Location	Salaried (non-union)	Hourly (union)
Burlington	23	0
Calgary	12	0
St. Catharines	16	69
Saskatoon	32	146

13. NFC's unionized employees are represented in Saskatoon by the United Food & Commercial Workers Union Local 1400 (the "UFCW 1400 Collective Agreement") and in St. Catharines by UFCW Local 175 (the "UFCW 175 Collective Agreement"). Pursuant to the UFCW 1400 Collective Agreement, NFC's full time unionized employees in Saskatoon are eligible to join group deferred profit sharing plans (defined contribution) as well as a group registered retirement savings plan. As of December 30, 2011 NFC is current with respect to these contributions.

14. In St. Catherines, full-time unionized employees are eligible under the UFCW Local 175 Collective Agreement to participate in the (defined contribution) Canadian

Commercial Workers Industry Pension Plan. As of December 17, 2011 NFC is current with respect to the these contributions and all union dues.

15. NFC's management ("Management") has advised that all salaried and hourly employees have been paid for services performed through to December 30, 2011 and that all associated statutory remittance have been withheld and remitted.

16. The majority of NFC's gross revenues are generated from NFC's largest customers: Loblaw Companies Limited, Wal-Mart Canada and Sysco Canada; its top ten customers account for approximately 82% of the revenues.

THE APPLICANTS' BUSINESS AND THE NEED FOR A CCAA FILING

17. In 2011 the Company sold its products to customers based upon fixed price contracts, which terms ran for a calendar year. Accordingly, the Company took on the risk of an increase in the price of its inputs during the term of the contracts, including, in particular the price of beef and energy costs. During 2011 the wholesale price of beef has increased by approximately 40% and the price of fossil fuels and electricity have on average increased by 5%. The Company was unable to pass on the impact of increased costs for raw materials to their customers in 2011 as a result of the fixed price contracts.

18. In early 2011, the Company closed down two operating plants in Calgary and terminated staff relating to the operations of those plants. The Company relocated its production operations to Saskatoon, Saskatchewan and St. Catharines, Ontario. The overall cost to retrofit and commence operations at the St. Catharines plant was approximately \$10 million over budget. In addition, the production systems at the St. Catharines plant were not optimized and remained highly inefficient in the first few months of production at that location. The Company also

moved its Head Office from Calgary, Alberta to Burlington, Ontario, moving only one staff member. Substantially all new head office staff, including accounting and finance functions, were required to be hired and trained in Burlington. In addition, concurrent with the relocation, NFC installed a new accounting software package. As a result of the complete turn-over of accounting staff and the change in accounting platforms, NFC's management was unable to fully identify the substantial losses that the Company was incurring in 2011 or rectify the situation in a timely manner before it had a material adverse impact on the company's financial situation.

19. The business and affairs of the Applicants and the causes of insolvency are described further in the Cram Affidavit.

20. The Applicants' majority shareholder, Edgestone Capital Partners has advised the Applicants that it is not prepared to invest any additional funds by way of debt or equity into the Applicants' operations in order to fund the Applicants losses or future operations.

21. The Applicants' have asked their principal operating lender, Bank of Montreal ("BMO"), for additional funding for the Applicants' operations. In particular, the Applicants business is seasonal in nature and accordingly requires a material ramp-up in production (and a corresponding increase in working capital funding requirements) in the beginning of March of each year in order to manufacture sufficient customer inventories for the spring/summer barbeque season (the "**Inventory Ramp Up**"). BMO had advised that it is not prepared to advance any additional capital to fund the Applicant's operations unless such capital is provided in the context of a CCAA filing of the Applicants, and as part of that filing, a sales process for the Applicants' business operations and other assets is initiated immediately.

FUNDING OF THE CCAA PROCEEDINGS

Cash Flow Projections

22. The Applicants, with the assistance of FTI have prepared consolidated 13-week cash flow projections for the period commencing January 20, 2012 and ending April 13, 2012 (the “Cash Flow Projections”). A copy of the Cash Flow Projections, together with NFC management’s report thereon is attached as **Appendix “B”**.

23. As shown in the Cash Flow Projections, it is estimated that for the 13-week period, NFC will have approximate total cash inflows of \$19.3 million, total cash outflows of \$32 million and total disbursements relating to the restructuring of \$1.4 million. During the first five weeks of the Cash Flow Projections, NFC’s cash flow requirements project a need for NFC to borrow approximately \$3.5 million, and that during the following eight weeks an additional amount of approximately \$10 million of funding is required to implement the Inventory Ramp Up.

Proposed Monitor's Report on the Reasonableness of the Cash Flow Projections

24. Pursuant to section 23(1)(b) of the CCAA, the Proposed Monitor is required to provide this Honourable Court with the Proposed Monitor’s findings with respect to its review of the NFC’s Cash Flow Projections as to their reasonableness. The Proposed Monitor’s Reports with respect to same is as follows.

25. The Cash Flow Projections have been prepared by the management of NFC for the purpose of determining the liquidity requirements for NFC during the CCAA Proceedings

using the Probable and Hypothetical Assumptions¹ as identified by NFC and as discussed with FTI. Copies of the Cash Flow Projections and the report containing the prescribed representations of NFC regarding the preparation of the Cash Flow Projections are already attached hereto collectively as **Appendix "C"**.

26. FTI's review consisted of inquiries, analytical procedures and discussion related to information supplied to us by certain of the management and employees of NFC. Since Hypothetical Assumptions need not be supported, FTI's procedures with respect to them were limited to evaluating whether they were consistent with the purpose of the Cash Flow Projections. The Proposed Monitor also reviewed the support provided by management of NFC for the Probable Assumptions and the preparation and presentation of the Cash Flow Projections.

27. Based on FTI's review, nothing has come to its attention that causes the Proposed Monitor to believe that, in all respects:

- (a) The Hypothetical Assumptions are not consistent with the purpose of the Cash Flow Projections;
- (b) As at the date of this report, the Probable Assumptions developed by management are not Suitably Supported and consistent with the plans of NFC or do not provide a reasonable basis for the Cash Flow Projections, given the Hypothetical Assumptions; or

¹ All terms used but not defined in this section of the report have the meanings ascribed to them in the Canadian Association of Insolvency and Restructuring Professionals ("CAIRP") Standard of Practice No. 09-1, Cash-Flow Statement, approved, ratified and confirmed by CAIRP members on August 21, 2009.

- (c) The Cash Flow Projections do not reflect the Probable and Hypothetical Assumptions.

28. Since the Cash Flow Projections are based upon Assumptions regarding future events, actual results will vary from the information presented even if the Hypothetical Assumptions occur, and the variations may be material. Accordingly, the Proposed Monitor expresses no assurance as to whether the Cash Flow Projections will be achieved. The Proposed Monitor expresses no opinion or other form of assurance with respect to the accuracy of any financial information presented in this report, or relied upon by it in preparing this report.

29. The Cash Flow Projections have been prepared solely for the purposes of determining the liquidity requirements for NFC during the CCAA Proceedings, using Probable and Hypothetical Assumptions, and readers are cautioned that it may not be appropriate for other purposes.

Proposed DIP Financing

30. Given the anticipation of negative expected cash flow referred to above, in order to maintain going concern operations during the Sales Process and up to the closing of a sale of its operations, the Applicant will require the authority to borrow pursuant to a court-approved interim credit facility. The Applicant and BMO have negotiated the terms of a super-priority CCAA Interim Credit facility with a maximum amount of up to \$10,500,000 (the “**DIP Financing**”). The DIP Financing is to be provided pursuant to the terms of the commitment letter between NFC and BMO (a copy of which is attached as an Exhibit to the Cram Affidavit) (the “**DIP Term Sheet**”).

31. The DIP Term Sheet provides that the initial amount of \$3.5 million has been approved by BMO to fund NFC's operations until February 21, 2012. BMO's approval of the additional approximately \$7 million of DIP funding (required to fund the Inventory Ramp Up) after February 21 is conditional upon BMO, in its sole discretion, being satisfied with the terms of an offer or offers to purchase all or substantially all of the assets of NFC (including a deposit of not less than 15% of the purchase price(s)) obtained in the Transaction Process, failing which the funding availability under the DIP Term Sheet terminates immediately, unless and until a revised cash flow projection is agreed to between NFC and BMO.

32. Pursuant to section 23(1)(b) of the CCAA, the Proposed Monitor is of the view that the assumptions and projections which underlie the Applicant's Cash Flow Projections are reasonable and that a maximum amount of \$3,500,000 in available DIP financing is reasonable and should be sufficient to fund the Applicant's operations in accordance with the Cash Flow Projections until February 21, 2012.

33. Subject to approval of this Honourable Court, the proposed DIP financing contemplates *inter alia*, that BMO will be granted a first charge over all of the NFC's assets subject and subordinate only to the Administrative Charge, the D&O Charge and any existing statutory lien or purchase money security interests which have, by their terms, priority over the existing security interests of BMO over the assets of NFC as of the date of the Initial Order.

BMO SECURITY REVIEW

34. The Proposed Monitor has requested its counsel, Fasken Martineau DuMoulin LLP ("Faskens") to conduct an independent review of the existing security interests granted by NFC in favour of BMO (the "Existing BMO Security") in respect of the indebtedness and

obligations of NFC to BMO owing as at the CCAA filing date (the “**Existing BMO Debt**”). Faskens is in the process of conducting its review of the Existing BMO Security over the assets of NFC located in the Provinces of Ontario and Alberta. The Proposed Monitor has engaged the firm of McDougall Gauley LLP of Saskatoon to act as its counsel in the Province of Saskatchewan, to *inter alia*, review the Existing BMO Security over NFC’s assets located in Saskatchewan. The Monitor will report to the Court on the results of the Existing BMO Security reviews at or prior to the Applicant’s motion for an extension of the stay contained in the Initial Order.

35. The Proposed Monitor understands that the Toronto-Dominion Bank (“**TD Bank**”) has advanced credit facilities to NFC which are also secured against the assets of NFC subordinate in priority to the Existing BMO Security. Based upon the Proposed Monitor’s understanding of the anticipated value that may be realized from the sale of the assets and operations of NFC, it is possible that BMO will not recover the amount of the Existing BMO Debt from the sale(s) of the assets of NFC in full. The Monitor intends to conduct an independent review of the existing security interests granted by NFC to TD at a later point in time, when the Monitor has a better view as to anticipated proceeds of realization and whether there will be any funds available for distribution to TD Bank.

THE PROPOSED SALES TRANSACTION PROCESS

36. The proposed sale transaction process (“**Transaction Process**”) will be managed in accordance with the following procedures that will be established and communicated by the Applicants and the Monitor to interested parties from time to time. It is anticipated that the Transaction Process will consist of the following principal phases:

- 14 -

- (a) Immediately following the making of the Initial Order, the Monitor will contact a list of approximately 11 parties which have been identified by the Applicants as possible qualified purchasers of the Applicants' businesses on a going-concern that are likely to be acceptable to NFC's major customers. The Monitor will also contact NFC's largest customers to identify any additional possible qualified purchasers. The Monitor will also, within 4 days of the commencement of the CCAA Proceedings, advertise the NFC acquisition opportunity in the National Edition of the Globe & Mail for two consecutive days.

- (b) The Proposed Monitor has worked with the Applicants to establish an electronic data room that will contain updated information about the Applicants' assets, business and operations as it becomes available (the "Data Room") during the Transaction Process. Qualified interested parties will be required to execute a Confidentiality Agreement in order to receive a copy of the Confidential Information Memorandum prepared by the Proposed Monitor in conjunction with the Applicants' management and to obtain access to the Data Room.

- (c) The NFC assets will be offered for sale en bloc and in four parcels:
 - (i) The Saskatoon operations (including the associated inventory and accounts receivable);

 - (ii) The St Catharines operations (including the associated inventory and accounts receivable);

 - (iii) The Calgary 13A Street Facility; and

- 15 -

- (iv) The Calgary Brandon Street Facility

- (d) Interested parties will be asked to submit non-binding expressions of interest (“EOI”), including a proposed purchase price for each of the parcels of NFC assets it wishes to acquire on or before January 30, 2012. The EOIs will be used to determine which interested parties, if any, will be invited to continue to participate in the Transaction Process. The Monitor will provide instructions for the required form of non-binding proposal to interested parties in advance of the deadline for submitting such proposals.

- (e) In evaluating EOIs from interested parties, the Applicants and FTI will consider, among other factors, whether the offer maximizes value for NFC assets, treatment of employees and such other factors as would be appropriate in the circumstances as determined by the Applicants and Monitor in their sole discretion. Upon receipt of the proposals the Applicants, in consultation with the Monitor and BMO, will determine at their sole discretion which interested parties, if any will proceed to Phase 2 of the Transaction Process. Further, the Applicants, in consultation with the Monitor and BMO, may at any time terminate the Transaction Process.

- (f) During Phase 2 of the Transaction Process, interested parties who are invited to continue to Phase 2 of the Transaction Process will be given access to additional confidential information relating to NFC in the Data Room. In addition, site visits and access to management will be made available to interested parties during Phase 2.

- (g) Following a brief additional period of due diligence and Data Room access, each qualified interested party will be requested to submit a final binding offer in the required form. FTI will provide qualified interested parties with a definitive sales agreement. Additional details with respect to the Transaction Process will be communicated to qualified interested parties in advance of the final bid deadline. The final proposals will be due on February 13, 2012. The Applicants, in consultation with the Monitor and BMO, will select a preferred bid on or before February 17, 2012 (the "**Selected Bid**") A final decision will be made by BMO on or before February 21, 2012 as to whether it will fund the remaining DIP Facility balance of \$7 million upon being satisfied, *inter alia*, with the terms of the Selected Bid
- (h) In the event that the Monitor and/or BMO do not agree with the preferred bidder proposed by the Applicant, the Monitor and/or BMO may propose an alternate bidder for approval from the court from the parties that submitted final proposals on or before February 13, 2012.
- (i) It is anticipated that the closing of one or more going concern transaction(s) involving the NFC Saskatoon operations and/or the St Catharines operations will close on or before March 15, 2012.

37. The timelines associated with the Transaction Process are noticeably compressed. This accelerated process is necessitated by the timing of the Inventory Ramp Up and the conditions imposed by BMO upon any agreement to fund the working capital requirements of the Inventory Ramp Up pending a sale of the business. The Proposed Monitor considers it

reasonably likely that the universe of qualified buyers for the going concern operations of NFC has substantially been identified by the Applicants and consists principally of parties who are already manufacturing and supplying similar products to NFC's major customers. These parties are familiar with manufacturing operations such as those owned by NFC and have a history of dealings with NFC's major customers, enabling them to conduct accelerated due diligence and complete an acquisition in a timely fashion. Accordingly the Proposed Monitor is of the view that the timelines associated with the Transaction Process will not have a material adverse impact on the ability of the Applicants and the Monitor to maximize the fair market value of the assets and operations of NFC.

THE COURT ORDERED CHARGES

Administrative Charge

38. The proposed Initial Order provides for an Administration Charge in an amount not to exceed \$350,000, charging the assets of the Applicant to secure the fees and disbursements incurred in connection with services rendered to the Applicant both before and after the commencement of the CCAA Proceedings by counsel to the Applicant, the Proposed Monitor, and the Proposed Monitor's counsel.

Directors & Officers Charge

39. The proposed Initial Order provides for a D&O Charge over the property of NFC in favour of the directors and officers of the Applicants as security for the indemnity contained in the Initial Order in respect of specified obligations and liabilities that they may incur after the commencement of the CCAA Proceeding. The D&O Charge will not exceed an aggregate amount of \$3 million and will rank immediately subsequent to the Administrative Charge and immediately before the DIP Charge. The amount and priority ranking of the D&O Charge have

been negotiated and agreed upon with BMO. The Proposed Monitor is of the view that the quantum and liabilities covered by the directors' and officers' indemnity and D&O Charge are reasonable and appropriate in the circumstances.

DIP Charge

40. The proposed Initial Order provides for a charge in favour of the DIP lenders in the amount not to exceed \$10.5 million charging all of the assets of the Applicant (the "**DIP Charge**"). The DIP Charge is proposed to rank immediately subsequent to the D&O Charge.

Summary of the Proposed Rankings of the Court-Ordered Charges

41. The proposed Initial Order provides that each of the Court Ordered Charges will rank subordinate to any liens or security interests (such as statutory repair and storage liens and purchase money security interests) over the asset of NFC, which, as at the date of the making of the Initial Order, rank in priority to the existing security interests of BMO. Accordingly, parties having such prior ranking interests have not been served with the Application Record herein.

42. FTI believes that the above noted proposed Court-ordered charges and rankings are required and reasonable in the circumstances of the CCAA Proceedings in order to preserve going concern operations of the Applicants until proceeds from an eventual sale are realized.

CONCLUSION

43. The Proposed Monitor is of the view that the relief requested by the Applicant is necessary, reasonable and justified.

44. Accordingly, the Proposed Monitor respectfully supports the Applicant's request for the appointment of a Monitor by this Honourable Court.

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FTI Consulting Canada Inc.
The Proposed Monitor of
New Food Classics

A handwritten signature in black ink, appearing to read "Paul Bishop", written over a horizontal line.

Name: Paul Bishop
Title: Senior Managing Director,
FTI Consulting Canada Inc.

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
NEW FOOD CLASSICS

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

Proceedings commenced in Toronto

**PRE-FILING REPORT TO THE COURT SUBMITTED BY FTI
CONSULTING CANADA INC., IN ITS CAPACITY AS PROPOSED
MONITOR**

FASKEN MARTINEAU DUMOULIN LLP
Barristers and Solicitors
333 Bay Street, Suite 2400
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EDMOND F.B. LAMEK
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Tel: 416 868 3471
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Solicitors for FTI Consulting Canada Inc., proposed monitor of New Food Classics

TAB C

Court File No.: CV12-9616-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BANK OF MONTREAL

Applicant

- and -

**NFC ACQUISITION GP INC., NFC ACQUISITION CORP. NFC ACQUISITION L.P.,
NEW FOOD CLASSICS AND NFC LAND HOLDINGS CORP.**

Respondents

**SECOND REPORT TO THE COURT
SUBMITTED BY FTI CONSULTING CANADA INC.,
IN ITS CAPACITY AS RECEIVER**

1. On January 17, 2012, pursuant to an application (the “**CCAA Proceedings**”) brought before the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) by NFC Acquisition GP Inc., NFC Acquisition Corp. and NFC Land Holdings Corp. (together with NFC Acquisition L.P., and New Food Classics, “**NFC**”) under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), the Honourable Mr. Justice Morawetz made an initial order (as extended from time to time, the “**Initial Order**”) in respect of NFC, which, *inter alia*, appointed FTI Consulting Canada Inc. as monitor (in that capacity, the “**Monitor**”).

2. On February 16, 2012, upon motion made by the Applicants, the Court, *inter alia*, extended the stay of proceedings contained in the Initial Order to March 30, 2012, and granted a charge in favour of Westco Multi Temp Distribution Centres Inc. (“Westco”), NFC’s Saskatoon cold storage provider, as security for pre-filing statutory lien amounts relating to NFC products released by Westco after the making of the Initial Order.

3. After an unsuccessful going-concern transaction sale process for the NFC business in the CCAA Proceedings, on February 22, 2012, Bank of Montreal (“BMO”) brought: (i) a motion in the CCAA Proceedings to lift the stay of proceedings contained in the Initial Order to allow BMO to bring an application for the appointment a receiver of the property, assets and undertaking of NFC (the “NFC Assets”); and (ii) an application under section 243(1) of the *Bankruptcy and Insolvency Act* and section 101 of the *Courts of Justice Act* for the appointment of FTI as receiver (in that capacity the “Receiver”) of the NFC Assets. The Court granted the BMO motion and the application, and made the Order in these proceedings dated February 22, 2012 (the “Receivership Order”), a copy of which is attached hereto as Appendix “A”.

PURPOSE OF THIS REPORT

4. The purpose of this Second Report of the Receiver is to provide the Court with the background information and Receiver’s recommendation relating to the Receiver’s motion for :

- (a) the approval of the Court, pursuant to subparagraph 3(1)(ii) of the Receivership Order, for the Receiver to enter into, and carry out the terms of an agreement with Counsel McIntyre Ltd. (“Counsel McIntyre”) to sell substantially all remaining manufacturing equipment owned by NFC (the “Remaining Equipment”) located

in both the NFC Saskatoon facility and the NFC St. Catharines facility (the “Premises”), to Counsel McIntyre, and for the auction by Counsel McIntyre of the office equipment, furniture and computers in the Premises, and the Saskatoon facility spare part inventory (the “Transaction”);

- (b) an order vesting the Remaining Equipment in Counsel McIntyre effective upon closing of the Transaction;
- (c) approval of payment of the amounts secured by the Westco Pre-Filing Lien Charge to Westco;
- (d) if, necessary, to set a schedule and process for determining the respective rights of NFC, BMO and the landlord of the Saskatoon Premises, to certain ammonia compressors located in the Saskatoon Premises; and
- (e) such other relief as counsel may advise and the Court permit.

TERMS OF REFERENCE

5. In preparing this report, the Receiver has relied upon unaudited financial information of NFC, NFC’s books and records, certain financial information prepared by NFC and discussions with NFC’s management. The Receiver has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the information. Accordingly, the Receiver expresses no opinion or other form of assurance on the information contained in this report or relied on in its preparation.

6. Capitalized terms not otherwise defined herein have the meanings set out in the Monitor's Pre-filing Report, the Initial Order, the Monitor's Second Report, the Monitor's Third Report and the Receivership Order.

CCAA PROCEEDINGS - TRANSACTION PROCESS

7. Pursuant to paragraph 44 of the Initial Order, NFC and the Monitor were authorized to conduct the Transaction Process outlined in the Prefiling Report of FTI in the CCAA Proceedings, a copy of which, without appendices is attached hereto as **Appendix "B"**. Immediately following the making of Initial Order, the Monitor contacted approximately 20 parties which had been identified by NFC or by NFC's major customers as possible qualified purchasers of NFC businesses on a going-concern basis and that were likely to be acceptable to NFC's major customers.

8. After publishing the Sales Ad in the *Globe & Mail* National edition on January 20 and 23, 2012, a total of forty-one prospective purchasers were identified and in communication with the Monitor. Of those forty-one parties, twenty-two executed Confidentiality Agreements and received the Confidential Information Memorandum.

9. Additional details regarding the of Expressions of Interest received by the Monitor, the parties participating in Phase 2 of the Transaction Process, and the Monitor's dealings with the Selected Parties that submitted Final Offers, and the events subsequent thereto are set out in the Monitor's Third Report, a copy of which, without appendices, is attached hereto as **Appendix "C"**. As set out in the Monitor's Third Report, on February 20, 2012, BMO delivered a Sales Process Default Notice under the DIP Credit Agreement and ultimately commenced these Receivership Proceedings.

SOLICITATION OF OFFERS BY THE RECEIVER

10. Following the making of the Receivership Order, the Receiver re-contacted the parties that had submitted EOIs that reflected a going concern transaction, in order to determine whether any of them had an interest in acquiring the manufacturing assets of NFC in either Saskatoon or St. Catharines en bloc, as intact manufacturing operations, before the Receiver embarked on soliciting liquidation bids and other offers for NFC's manufacturing assets. Based on the responses to those inquiries, the Receiver concluded that there were no commercially reasonable or reasonably foreseeable opportunities to sell the Saskatoon or St Catharines manufacturing assets on a turn-key basis, as the parties contacted either had no interest operating from either facility or would only take over the assets on terms that that were financially or legally untenable, such as not becoming a successor employer to the United Food and Commercial Workers Union.

11. Pursuant to a sale transaction approved by the Court on March 12, 2012, a certain line of NFC's manufacturing equipment located in the Saskatoon facility, specifically used to manufacture frozen hamburger products for Loblaws and other former NFC customers, was sold by the Receiver to Grand River Foods Ltd. (the "**Grand River Sale**"). Concurrently with finalizing the Grand River Sale, the Receiver solicited complimentary proposals for the Remaining Equipment. The Receiver received multiple proposals from both Canadian and U.S. auctioneers and liquidators, both in the form of net minimum guarantee auction proposals and outright offers to purchase the Remaining Equipment ("**Remaining Equipment Proposals**").

12. After clarifying a number of the remaining Equipment Proposals received, including certain aspects of the Counsel McIntyre proposal, the Receiver agreed, subject to Court

approval in accordance with the Receivership Order, to the terms of an agreement with Counsel McIntyre for the outright purchase of the Remaining Equipment, and a proceeds sharing arrangement for the auction by Counsel McIntyre of the office equipment furniture and computers located at the Premises, and the spare parts inventory located in the NFC Saskatoon facility (the "CM Agreement"). A redacted copy of the CM Agreement is attached hereto as **Appendix "D"**. An un-redacted copy of the CM Agreement will be available for the Court's review at the return of the Receiver's motion for the approval of the CM Agreement and Vesting Order.

13. As part of the CCAA Transaction Process, BMO commissioned an appraisal of the NFC Assets, including the Remaining Equipment, from Century Services (the "CS Appraisal"). A copy of the CS Appraisal, together with the Receiver's review of the values of the Remaining Equipment in the CM Agreement will be available for the Court's review at the return of the Receiver's motion for the approval of the CM Agreement and Vesting Order.

14. The Receiver has reviewed the principal business terms of the CM Agreement and all of the Remaining Equipment Proposals received by it with BMO and with TD Capital Mezzanine Partners Management Ltd. ("TD"), the second ranking secured creditor of NFC behind BMO, and has been advised of their support for the approval of the CM Agreement sought herein. The net proceeds of realization of the CM Agreement are expected by the Receiver to exceed the recoveries under all other Remaining Equipment Proposals received by it, and to exceed the values of the Remaining Equipment set out in the CS Appraisal.

15. Based on the Receiver's analysis and the factors, solicitation processes and considerations described above in this Report and in the Monitor's Third Report, the Receiver

respectfully recommends that the Court approve the CM Agreement, authorize the Receiver to carry out the Transaction, and grant the Vesting Order.

PAYMENT OF THE WESTCO PRE-FILING LIEN CHARGE AMOUNT

16. A copy of the Order of the Court dated February 16, 2012 made in the CCAA Proceedings, granting the Westco Pre-Filing Lien Charge on the Property of NFC in the aggregate amount not to exceed \$450,000 to secure Westco's statutory pre-filing lien amount is attached hereto as **Appendix "E"**. Pursuant to paragraph 24 of the Receivership Order the charges granted in the CCAA Proceedings, including the Westco Pre-Filing Lien Charge were recognized and preserved in these proceedings. Following the making of the Receivership Order the Court ordered charges over the Property rank as among themselves as follows:

- (a) Administration Charge (CCAA);
- (b) Westco Pre-filing Lien Charge (CCAA);
- (c) Receiver's Charge;
- (d) Directors' Charge (CCAA);
- (e) Receiver's Borrowing Charge; and
- (f) DIP Lender's Charge (CCAA).

17. The Receiver, and prior to that time FTI as CCAA Monitor, has been working with Westco to reconcile NFC and Westco records of the hundreds of transactions between NFC and Westco that gave rise to the amounts owed to Westco as at the CCAA filing date which were secured by Westco's statutory possessory lien under the Saskatchewan *Commercial Liens Act*. As a result, Westco has provided the Receiver with a final detailed spreadsheet setting out each

of the transactions involving NFC products that were in Westco's possession on the CCAA filing date, and the amounts owing in respect of each transaction.

18. The Receiver has reviewed the final Westco spreadsheet calculations and has, with its counsel, reviewed the terms of the agreements between NFC and Westco for the shipping of NFC products to Westco's warehouse, and for handling and storage of NFC products by Westco. Based on those reviews, the Receiver is of the view that the amount properly owing to Westco which is secured by the Westco Pre-Filing Lien Charge is \$412,558.92, inclusive of GST (the "**Westco Amount**").

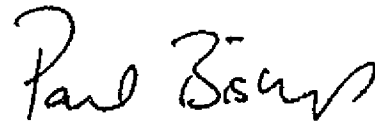
19. The Receiver has reviewed the Westco Amount and the Receiver's analysis of the Westco Prefiling Lien Charge with BMO and TD Bank, and they have consented to the payment of the Westco Amount by the Receiver.

20. Pursuant to paragraph 3(s) of the Receivership Order, the Receiver has paid all amounts which would have been secured by the Administration Charge, and as such no amounts are or will be owing under it. Other than current stub period amounts, there are no amounts outstanding under the Receiver's Charge owing to the Receiver or its counsel. The Receiver is also of the belief that payment of the Westco Amount at this time will not prejudice the remaining subordinate Court ordered charges. As of the date of this Second Report, the Receiver holds approximately \$6.5 million post Receivership accounts (the "**Post Receivership Accounts**") from the proceeds of sale of NFC's assets and collection of accounts receivable. As such, the existing Court ordered charges will remain fully secured by the funds remaining in the Post Receivership Accounts after payment of the Westco Amount.

21. Based on the foregoing, and with the consent of BMO and TD, the Receiver respectfully recommends that this Court approve the payment of the Westco Amount to Westco.

All of which is respectfully submitted this 12th day of April, 2012.

**FTI Consulting Canada Inc.
Receiver of the property, assets and
undertaking of NFC**



Name: Paul Bishop
Title: Senior Managing Director,
FTI Consulting Canada Inc.

TAB D

AGREEMENT OF PURCHASE AND SALE

This Agreement made this 16th day of March, 2012 between:

NFC LAND HOLDINGS CORP.

(the "Vendor")

and

TVR Construction or its Nominee

(the "Purchaser")

RECITALS:

- A. The Vendor, NFC Land Holdings Corp., is the registered owner of the Lands.
- B. On January 16, 2012, the Vendor together with certain affiliated companies and partnerships (collectively "NFC"), obtained an Order (as amended or extended and as may be further amended or restated from time to time, the "CCA Order") from the Ontario Superior Court of Justice (Commercial List) (the "Court") under the *Companies' Creditors Arrangement Act*. Pursuant to the CCA Order, FTI Consulting Canada Inc. is appointed as the monitor of NFC (the "Monitor").
- C. The Vendor has agreed to sell the Lands to the Purchaser and the Purchaser has agreed to purchase the Lands from the Vendor, at the Closing Date, for the Purchase Price, and subject to all of the terms and conditions set forth herein.

Now, therefore, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby conclusively acknowledged, the parties hereto covenant and agree as follows:

**ARTICLE 1
INTERPRETATION**

1.1 Definitions

In this Agreement:

- (a) "Agreement" means this agreement of purchase and sale and all schedules attached hereto, as the same may be amended, supplemented, revised or restated from time to time;
- (b) "Applicable Law" means any statute, law, ordinance, rule, regulation, regulatory policy, by-law (zoning or otherwise), order, judgment, decree, treaty, guidelines

or administrative requirements having the force of law or other requirement having the force of law or restriction of any kind whatever, including, but without limiting the generality of the foregoing, Environmental Laws, as applicable to the Lands;

- (c) **"Approval and Vesting Order"** means an order of the Court approving this Agreement and having the effect of vesting the Lands in the name of the Purchaser on Closing, free and clear of all Encumbrances other than the Permitted Encumbrances, in registerable form and in substance satisfactory to the Purchaser, acting reasonably, and on notice to a service list acceptable to the Purchaser, acting reasonably, such order to be substantially in the form of the order attached hereto as Schedule "D" hereto;
- (d) **"Approval and Vesting Order Condition"** has the meaning set forth in Section 5.3 hereof;
- (e) **"Balance Due on Closing"** shall have the meaning set forth in Section 2.2 hereof;
- (f) **"Business Day"** means any day in the Province of Alberta that is not a Saturday, Sunday or a statutory holiday;
- (g) **"Closing"** means the completion of the transaction of purchase and sale for the Lands contemplated by this Agreement;
- (h) **"Closing Date"** means that date which is the tenth (10th) Business Day following the date on which the Mutual Conditions have been satisfied such that the Approval and Vesting Order is in a form that is registerable at the Alberta Land Titles Office, or such other date as the Vendor and Purchaser may agree in writing;
- (i) **"Closing Time"** means 11:00 A.M. (Alberta time) on the Closing Date or such other time as may be determined by the Vendor in its sole discretion;
- (j) **"Court"** shall have the meaning set forth in the Recitals hereto;
- (k) **"Deposit"** shall have the meaning set forth in Section 2.2 hereof;
- (l) **"Encumbrance"** means any security interest, lien, charge, pledge, encumbrance, mortgage, title retention agreement, easement, encroachment, right-of-way, restrictive covenant, licence, lease, agreement or any other claim of any nature or kind, whether financial or otherwise;
- (m) **"Environment"** means the environment or natural environment as defined in any Environmental Law, and includes, without limitation, air, surface water, ground water, land surface, soil, subsurface strata, a sewer system and the environment in the workplace;

- (n) **“Environmental Assessment Reports”** means, collectively, all of the reports, documents and correspondence listed in Schedule “C” attached hereto and forming a part hereof;
- (o) **“Environmental Laws”** means all laws relating in full or in part to the protection or preservation of the Environment, product liability and employee and public health and safety and includes, without limitation, those Applicable Laws relating to the storage, generation, use, handling, manufacture, processing, labelling, advertising, sale, display, transportation, treatment, release, discharge and/or disposal of Hazardous Substances, including without limitation, the *Canadian Environmental Protection Act, 1999*, S.C. 1999, c.33, the *Transportation of Dangerous Goods Act, 1992*, c.34, the *Environmental Protection and Enhancement Act (Alberta)* and any regulation, order, guideline or policy made pursuant to any of such statutes or in respect of any of such statutes;
- (p) **“ETA”** shall have the meaning set forth in Section 2.3 hereof;
- (q) **“Execution Date”** means the date this Agreement has been signed by all of the parties hereto accepting the terms and conditions of this Agreement;
- (r) **“Governmental Authorities”** means all governments and government officials whether federal, provincial or municipal and all other regulatory authorities that have jurisdiction over the Lands, the Environment to the Lands, and Hazardous Substances at or near the Lands;
- (s) **“GST”** means all goods and services taxes levied pursuant to Section 165(1) of the *Excise Tax Act (Canada)*;
- (t) **“Hazardous Substances”** means any substance or constituent thereof, sound, vibration, ray, heat, odour, radiation, energy, which is or is deemed to be, alone or in any combination, a pollutant, contaminant, source of pollution or contamination, waste of any nature, hazardous substance, hazardous material, toxic substance, dangerous substance or dangerous good including as defined, judicially interpreted or identified in any Environmental Law;
- (u) **“Improvements”** means all buildings, fixtures, equipment, vehicles and appurtenances constructed or located on the Lands or any part or parts thereof;
- (v) **“Information”** shall have the meaning set forth in Section 3.2 hereof;
- (w) **“Land Titles Office”** means the land titles office for Alberta established pursuant to the *Land Titles Act (Alberta)*;
- (x) **“Lands”** means those lands in Calgary, Alberta the legal descriptions of which are set forth in Schedule “A” attached hereto including all Improvements;
- (y) **“Monitor”** means FTI Consulting Canada Inc.;

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- (z) **“Municipality”** means The City of Calgary, a municipal corporation established pursuant to the laws of the Province of Alberta;
- (aa) **“Mutual Conditions”** means the Approval and Vesting Order Condition and the No Appeal Condition for the benefit of the Vendor and the Purchaser set forth in Section 5.3 hereof;
- (bb) **“No Appeal Condition”** shall have the meaning set forth in Section 5.3 hereof;
- (cc) **“Permitted Encumbrances”** means those Encumbrances listed on Schedule “B” hereto;
- (dd) **“Place of Closing”** means the offices of the Vendor’s Solicitors or at such other place as the Vendor and the Purchaser may agree in writing;
- (ee) **“Plans and Documents”** shall have the meaning set forth in Section 6.1 hereof;
- (ff) **“Purchase Price”** shall have the meaning set forth in Section 2.1 hereof;
- (gg) **“Purchaser”** means TVR Construction or its Nominee designated by the Purchaser by notice in writing to the Vendor, not less than two (2) Business Days prior to service of the Vendor’s motion for the Approval and Vesting Order;
- (hh) **“Purchaser’s Conditions”** means all of the conditions for the benefit of the Purchaser set forth in Section 5.2 hereof;
- (ii) **“Purchaser’s Condition Date”** means the date which is the fifteenth (15th) Business Day following the Execution Date;
- (jj) **“Purchaser’s Solicitors”** means ██████;
- (kk) **“Undertaking”** shall have the meaning set forth in Section 7.2 hereof;
- (ll) **“Vendor”** means NFC Land Holdings Corp.;
- (mm) **“Vendor’s Conditions”** means all of the conditions for the benefit of the Vendor set forth in Section 5.1 hereof; and
- (nn) **“Vendor’s Solicitors”** means Fasken Martineau.

1.2 Grammar

Grammatical variations of any terms defined herein have similar meanings; words importing the singular number shall include the plural and vice versa; and words importing the masculine gender shall include the feminine and neuter genders and vice versa.

1.3 Headings

The headings of any article, section or part thereof are inserted for the purposes of convenience only and do not form a part of this Agreement. All uses of the words "hereto", "herein", "hereof", "hereby" and "hereunder" and similar expressions refer to this Agreement and not to any particular section or portion of it.

1.4 Schedules

The following schedules are attached hereto and form a part of this Agreement:

- Schedule "A" - Legal Description of the Lands
- Schedule "B" - Permitted Encumbrances
- Schedule "C" - Environmental Assessment Reports
- Schedule "D" - Approval and Vesting Order

1.5 Amounts

All amounts expressed herein are expressed exclusive of applicable Taxes.

ARTICLE 2 AGREEMENT OF PURCHASE AND SALE

2.1 Purchase Price

The Vendor hereby agrees to sell the Lands and Improvements to the Purchaser and the Purchaser hereby agrees to purchase the Lands and Improvements from the Vendor, as at the Closing Date, at and for the Purchase Price and on and subject to all of the terms and conditions set forth herein. The purchase price (the "Purchase Price") for the Lands and Improvements, subject to adjustments as provided herein, shall be the sum of \$ [REDACTED].

2.2 Payment of Purchase Price

- (a) The Purchaser covenants and agrees to pay the Purchase Price in lawful money of Canada as follows:
 - (i) the sum of \$ [REDACTED] (the "Deposit"), which amount will be paid by the Purchaser to the Vendor's Solicitors on the Execution Date and be invested by the Vendor's Solicitors in an interest bearing trust account. The Deposit (and interest earned thereon) shall be non-refundable to the Purchaser except only if the Purchaser's Conditions and the Mutual Conditions are not satisfied or, to the extent permitted, waived, or the Vendor materially breaches the terms of this Agreement, in which case the Deposit shall be returned to the Purchaser. The Deposit (and interest

earned thereon) shall be credited on account of the Purchase Price and released to the Vendor on Closing; and

- (ii) the balance of the Purchase Price shall be paid to the Vendor's Solicitors on the Closing Date, subject to the adjustments provided for herein, by way of a certified negotiable solicitor's trust cheque or bank draft drawn on or issued by a Canadian chartered bank (the "Balance Due on Closing").
- (b) If the Purchaser's Conditions and the Mutual Conditions have been satisfied or, to the extent permitted, waived, and the within transaction shall not be completed for any reason other than a material breach by the Vendor of a term of this Agreement, then the Deposit (and interest thereon) shall be retained by the Vendor but without prejudice to any rights or remedies that the Vendor may have at law or in equity or under this Agreement in connection with any default of the Purchaser.

2.3 Goods and Services Taxes/Other Taxes

In addition to the Purchase Price, the Purchaser shall pay to the Vendor on Closing all federal, provincial and other sales, value-added, GST, land transfer and all other taxes whatsoever which are exigible in connection with the transactions contemplated by this Agreement, together with all duties or other charges properly payable by the Purchaser upon or in connection with the conveyance and transfer of the Lands. The Purchaser does hereby indemnify and save the Vendor harmless from and against all claims for payment of the above-mentioned taxes including penalties and interest thereon and any liability or costs incurred as a result of any failure to pay such taxes when due.

The Purchaser hereby represents and warrants that it is now or will be by no later than the Closing Date registered for GST in accordance with the requirements of the provisions of the *Excise Tax Act* (Canada) (the "ETA"). In addition to all other taxes payable by the Purchaser at Closing, the Purchaser agrees to pay to the Vendor all GST payable in respect of the purchase of the Lands unless the Purchaser shall deliver to the Vendor a statutory declaration on Closing attesting to its GST registration and attaching a copy of its up-to-date GST registration number and such other evidence of registration as the Vendor reasonably requests in which case, notwithstanding the foregoing, the Vendor shall not collect such GST and the Purchaser shall be responsible to pay or account for the GST directly to the Receiver General of Canada in the manner and within the time prescribed by the ETA (subject to its available input tax credits).

The Purchaser does hereby indemnify and save harmless the Vendor from any GST, penalty, interest or other amounts which may be payable by or assessed against the Vendor under the ETA as a result of or in connection with the Vendor not collecting and remitting any GST applicable on the sale of the Lands.

2.4 Adjustments

Any rents and all realty taxes, rates, levies, assessments, including local improvement rates, and other items which are normally adjusted as between a buyer and a seller of property

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and interests similar to the Lands, shall be apportioned and allowed to the Closing Date, the Closing Date itself to be apportioned to the Purchaser.

ARTICLE 3 STATUS OF LANDS

3.1 "As-Is Where-is"

The Purchaser acknowledges and agrees that the Lands and each and every part thereof are being purchased on an "as-is where-is" basis as they exist as of the Closing Date and that from and after the Closing Date the Vendor shall have no liability or responsibility whatsoever in respect of the Lands, including but not limited to liability or responsibility arising from or in connection with any Hazardous Substances at, on, under, about, or migrating to or from the Lands, or the environmental condition of the Lands or of any land or Environment in proximity to the Lands. The Purchaser acknowledges and agrees that Information relating to the Lands which is included in this Agreement or obtained by the Purchaser from the Vendor (including, without limitation, the Plans and Documents and the Environmental Assessment Reports and any information arising therefrom) has been provided solely for the convenience of the Purchaser and is not warranted to be accurate, complete or reliable and does not constitute any representation or warranty and does not form part of the terms of this Agreement.

3.2 Own Analysis

The Purchaser acknowledges and agrees that: (i) it has entered into this Agreement on the basis that the Vendor does not warrant title to the Lands and that the Purchaser has conducted (and will conduct) its own investigations and inspections of the Lands and all matters and things connected with or in any way related to the Lands; (ii) it has satisfied itself (or will satisfy itself) with respect to the Lands and all matters and things connected with or in any way related to the Lands; and (iii) it has relied (and will rely) entirely upon its own investigations and inspections in entering into this Agreement and in concluding the transaction contemplated by this Agreement, notwithstanding the provision to the Purchaser (including its directors, officers, employees, Affiliates, agents, advisors and representatives) by the Vendor of any Plans and Documents, listings, reports or other documents or information (collectively, "Information") relating to the Lands which are in the possession of the Vendor including, without limitation, the Environmental Assessment Reports and any information arising therefrom.

3.3 No Representation by Vendor

The Purchaser hereby acknowledges and agrees that it has satisfied itself with respect to and acknowledges that neither the Vendor nor any party acting or purporting to act on behalf of the Vendor has made any representation, warranty, statement or promise, save and except as are expressly stated herein, with respect to or in any way related to any matter or thing whatsoever including, without limitation:

- (a) The title, description, nature, quality, quantity, size, merchantability, fitness for any purpose, state, condition, cost, undue expenses, validity or location of all or any of the Lands or the right of the Vendor to sell or assign same, or as to the

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accuracy or completeness of the Information provided or made available to the Purchaser;

- (b) the validity, registration, enforceability or priority of any mortgages, charges, liens, encumbrances, security interests, claims of any nature or kind or demands of whatsoever nature or kind affecting or in any way related to all or any of the Lands;
- (c) the state, condition, location, age, currency, obsolescence, value, usability of or any other matters arising out of or in any way connected with any building and other permanent fixtures forming part of the Lands and any equipment or facilities thereon or therein;
- (d) the compliance of the Lands and their use in accordance with Applicable Laws;
- (e) the environmental condition of the Lands;
- (f) the uses, present or future, made or to be made of the Lands;
- (g) the existence, nature, kind, state or scope, identity, effect or consequences of any Hazardous Substances on, under, about or migrating to or from the Lands;
- (h) the existence, state, nature, kind, identity, extent, effect or consequences of any administrative orders, control orders, abatement orders, compliance orders or any other orders, proceedings, directions, issues or actions taken under or pursuant to Environmental Laws or any other Applicable Law;
- (i) the existence, state, nature, kind, identity, extent, effect or consequences of any liability, responsibilities, or obligations arising from or in relation to the environmental condition of the Lands or any Applicable Law including, without limitation, any obligation with respect to any Hazardous Substances at, on, under, about, or migrating to or from the Lands and any obligations to compensate any person for costs incurred in connection with or damages suffered as a result of the presence or migration of any Hazardous Substances at, on, under, about, to, or from the Lands or elsewhere;
- (j) the zoning of the Lands, the planning status of the Lands, the condition, existence or location of services on or near the Lands, the use to which the Lands can be put or the fulfillment or satisfaction of any subdivision condition;
- (k) the manner in which the Vendor carried on its business; and
- (l) the existence and validity of any licenses, permits or authorizations from any Governmental Authority, court, regulatory authority or other person whatsoever having or purporting to have jurisdiction over the Vendor, the Lands, the business carried on by the Vendor, or any sale, transfer, conveyance, lease, consignment, assignment, disposition or other dealings with the Lands.

3.4 Environmental Release, Indemnity and Covenant Not to Sue

The Purchaser agrees that, and that there are no representations, covenants and agreements otherwise, it is purchasing the Lands in their present state, condition and location including, without limitation, the environmental condition of the Lands, the existence of any Hazardous Substances at, on, under, about, or migrating to or from the Lands, and any impact of any environmental condition at the Lands or any Hazardous Substances at or migrating to or from or to the Lands, whether presently known or later discovered.

The Purchaser, from and after the Closing Date, shall assume all liabilities and responsibilities, whether presently known or later discovered and regardless of the source or cause of the same, with respect to the environmental condition of the Lands, the existence of any Hazardous Substances at, on, under, about, or migrating to, through or from the Lands, and any impact of any environmental condition at the Lands or any Hazardous Substances, at, on, under, about, or migrating to or from the Lands, and the Purchaser does hereby indemnify and hold the Vendor (the "Indemnified Party"), harmless with respect thereto, and the Purchaser hereby agrees: (a) to release the Indemnified Party from any and all claims of any nature or kind, whether by or based upon statute, common law, or in equity, that the Purchaser may now or in the future have in relation thereto; and (b) that it will not alone or in concert with any other person pursue any action, claim of any nature or kind, dispute or proceeding against the Indemnified Party in relation thereto.

ARTICLE 4 REPRESENTATIONS AND WARRANTIES

4.1 Purchaser's Representations and Warranties

The Purchaser hereby represents, warrants and covenants to and with the Vendor now and on Closing that:

- (a) the Purchaser is acting as a principal and not as an agent, trustee or other representative;
- (b) the Purchaser is a corporation, duly incorporated and existing under the laws of its jurisdiction of incorporation and has the requisite power and authority to make this Agreement, complete this Agreement, and perform all its obligations hereunder including effecting all corporate registrations in the Province of Alberta necessary to be the registered owner of title to the Lands;
- (c) no registration, notice, consent, approval or filing under any Applicable Laws, including (without limitation) the *Investment Canada Act* and the *Competition Act* (Canada), is required as a condition or result of the Purchaser making the Agreement, or the completion or performance of this Agreement, including the purchase of the Lands by the Purchaser hereunder;
- (d) this Agreement, and each of the other agreements, documents and instruments to be executed by the Purchaser on or before Closing, have been or will be duly executed and delivered by the Purchaser and will constitute valid and binding

obligations of the Purchaser, enforceable in accordance with the terms hereof or thereof, as the case may be; after Closing, the Purchaser will have assets worth more than [three million dollars (\$3,000,000)] not including the Lands; and

- (e) the Purchaser is registered pursuant to the ETA under number ■ RT001.

4.2 Vendor's Representations and Warranties

The Vendor hereby represents and warrants to the Purchaser now and on Closing that:

- (a) The Vendor is not a non-resident of Canada within the meaning of that term as used in the *Income Tax Act* (Canada);
- (b) The Vendor is incorporated and validly existing under the laws of Canada and has not been dissolved;
- (c) The Vendor has, or will have after obtaining the Approval and Vesting Order, all necessary authority to execute and deliver this Agreement and all other documents and instruments contemplated herein or therein to which it is or will be party and to perform its obligations hereunder and thereunder; and
- (d) This Agreement, and each of the other agreements, documents and instruments to be executed by the Vendor on or before Closing, have been or will be duly executed and delivered by the Vendor and, subject to obtaining the Approval and Vesting Order, will constitute valid and binding obligations of the Vendor, enforceable in accordance with their terms subject only to any limitation under Applicable Laws relating to: (i) bankruptcy, winding-up, insolvency, arrangement, fraudulent preference and conveyance, assignment and preference and other similar laws of general application affecting creditors' rights; and (ii) the discretion that a court may exercise in the granting of equitable remedies such as specific performance and injunction.

4.3 No Collateral Agreements

It is agreed that there is no representation, promise, warranty, collateral agreement, term or condition of any kind made by or on behalf of the Vendor affecting this Agreement or the Lands or supported hereby other than expressed herein in writing. The Purchaser acknowledges that this Agreement entirely replaces and supercedes all previous agreements and correspondence and contains all the terms, conditions, and provisions agreed upon between the parties hereto, and is not subject to any collateral or oral agreement, undertaking or representation (negligent or otherwise) of any kind.

**ARTICLE 5
CONDITIONS**

5.1 Vendor's Conditions

The obligation of the Vendor to complete the transaction of purchase and sale which is contemplated herein is subject to and conditional upon the following matters (each of which is inserted for the sole benefit of the Vendor and may be waived in whole or in part by the Vendor) being satisfied on or by the date specified therefore (which shall be the Closing Date unless otherwise specified) and in the event that any one of the following conditions is neither complied with nor waived by the Vendor then, in such event, this Agreement shall terminate thereafter subject to the performance of all those obligations that survive termination and the Deposit together with any accrued interest thereon shall forthwith be returned to the Purchaser (subject to the Purchaser's obligations set forth in this Agreement) and neither party shall have any further liability to the other (save for the Purchaser's obligations as set forth in this Agreement):

- (a) no part of the Lands shall have been removed from the control of the Vendor by any means or process;
- (b) no action or proceeding, at law or in equity, shall have been commenced or threatened by any person to enjoin, restrict or prohibit the consummation of the transactions contemplated by this Agreement that has not at the Closing Time been dismissed, quashed or permanently stayed without any further rights of appeal or leave to appeal;
- (c) all consents or approvals from or notifications to any lender, landlord, lessor or other third person required under the terms of any agreement, lease or instrument in connection with the consummation of the transactions contemplated hereby, shall have been duly obtained or given, as the case may be;
- (d) all consents or approvals from, orders and authorizations of, notifications to and licences from any persons (or registrations, declarations, filings or recordings with any such authorities) required in connection with the consummation of the transactions contemplated by this Agreement, the making of the Agreement, the Closing, or the performance of any of the terms and conditions thereof, in form and substance satisfactory to the Vendor and the Vendor's Solicitors, shall have been duly obtained or given, as the case may be;
- (e) the representations and warranties of the Purchaser contained in the Agreement shall be true and correct in all material respects as at the Closing Date and with the same force and effect as if made at and of such time;
- (f) the Purchaser shall have paid to the Vendor all amounts required to be paid by it under this Agreement; and
- (g) the Purchaser shall have performed, in all material respects, its obligations and covenants under this Agreement to the extent required to be performed on or before the Closing Date.

The closing of the transaction of purchase and sale contemplated herein by the Vendor shall be deemed to be waiver by the Vendor of compliance with any condition inserted for its benefit and not satisfied on the Closing Date.

5.2 Purchaser's Conditions

The obligation of the Purchaser to complete the transaction of purchase and sale which is contemplated herein is subject to and conditional upon the following matters (each of which is inserted for the sole benefit of the Purchaser and may be waived in whole or in part by the Purchaser) being satisfied on or by the date specified therefore and in the event that any one of the following conditions is neither complied with nor waived by the Vendor then, in such event, this Agreement shall terminate thereafter subject to the performance of all those obligations that survive termination and the Deposit together with any accrued interest thereon shall forthwith be returned to the Purchaser (subject to the Purchaser's obligations as set forth in this Agreement) and neither party shall have any further liability to the other (save for the Purchaser's obligations as set forth in this Agreement);

- (a) on or before the Purchaser's Condition Date, the Purchaser shall provide the Vendor with notice in writing that the Purchaser is satisfied with the following and if such notice is not provided by the Purchaser or the Purchaser does not advise the Vendor that this condition is waived, the transaction of purchase and sale contemplated herein shall terminate:
 - (i) All Permitted Encumbrances;
 - (ii) All Plans and Documents;
 - (iii) All Environmental Assessment Reports; and
 - (iv) The Lands can be used for the Purchaser's intended purpose.

5.3 Conditions Respecting Approval and Vesting Order

- (a) The obligations of the Vendor and the Purchaser to complete the transaction of purchase and sale contemplated herein shall be subject to and conditional upon the further conditions that: (i) on or before the date which is thirty (30) Business Days following the date on which all of the Purchaser's Conditions have been satisfied or waived, the Vendor shall have obtained the Approval and Vesting Order (the "Approval and Vesting Order Condition"); and (ii) all appeal periods with respect to the Approval and Vesting Order shall have expired with no appeal having been commenced and no other legal challenge to the Approval and Vesting Order having been commenced (the "No Appeal Condition").
- (b) The Approval and Vesting Order Condition has been inserted for the benefit of both the Vendor and the Purchaser and may not be waived by either party, but may be extended by written agreement of both parties.

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- (c) The No Appeal Condition has been inserted for the benefit of both the Vendor and the Purchaser and may be waived by written agreement of both parties.

ARTICLE 6
ADDITIONAL AGREEMENTS

6.1 Vendor Deliveries

Within two (2) Business Days after the Execution Date, the Vendor shall provide or have provided the Purchaser with:

- (d) copies of or access to all plans, studies, reports, records, tests, agreements, real property reports and generally all documentation or materials and information in its actual possession, if any, (collectively, the "Plans and Documents") which relate to the ownership, physical state and development status of the Lands; and
- (e) copies of all of the Environmental Assessment Reports.

The Vendor shall execute any consents or authorizations prepared by the Purchaser as may be reasonably required to release file information regarding the Lands from the Municipality or other Governmental Authorities provided that such consents and authorizations shall not permit any inspection or investigation of the Lands or any part thereof. For greater certainty, the Vendor is only required to deliver copies of existing Environmental Assessment Reports. If the Purchaser wishes to complete further environmental assessments, the Purchaser is required to do so at its own expense.

If for any reason the transaction contemplated herein is not completed, the Purchaser shall return the Plans and Documents and all copies of the Environmental Assessment Reports and all other materials and copies thereof which it has obtained from the Vendor (or others as a result of such consents or authorizations having been given by the Vendor) along with any copies, notes, memoranda or reports prepared or made by the Purchaser or its agents, consultants, employees, representatives or advisors.

6.2 Test and Studies

At any time and from time to time after the Execution Date and continuing to the Purchaser's Condition Date, the Purchaser and its duly authorized agents, consultant, employees and representatives shall be entitled to attend upon the Lands for the purpose of making inspections or conducting tests, assessments or surveys, provided the Purchaser shall make good and restore any damage or loss caused by the Purchaser, its agents, consultants, employees or representatives (whether as a direct result of such inspections or assessments or otherwise howsoever) and shall indemnify and save harmless the Vendor from all loss, damage, injury or death. Such access is granted at the Purchaser's sole risk, and the Vendor shall have no liability to the Purchaser or any of its agents, consultants, employees or representatives for any injury, claims of any nature or kind, causes of action, costs, losses, damages or expenses arising therefrom or relating to the inadequacy, insufficiency, incompleteness, inaccuracy, unavailability or condition of the Lands. In conducting any physical inspections and environmental assessments, the Purchaser shall cause as little disturbance, damage and loss to the Lands as is possible. Intrusive testing of any part of the Lands shall only be carried out with the Vendor's prior written approval and in compliance with Applicable Laws and the Vendor's conditions and

requirements, which may be imposed by the Vendor in the Vendor's absolute and sole discretion. If for any reason the transaction contemplated herein is not completed, the Purchaser shall destroy all reports, documents and other information related to any test, studies or other actions undertaken pursuant to this Agreement.

Without limiting any of its other rights at law, in equity or otherwise under this Agreement, the Vendor reserves the right to offset against the Deposit, the costs of repairs and restorations of the Lands required as a result of damage caused by the Purchaser's inspections or tests which has not been repaired or restored by the Purchaser to the satisfaction of the Vendor.

6.3 Permitted Encumbrances

The Purchaser agrees to accept title to the Lands subject to all of the Permitted Encumbrances. The Purchaser covenants and agrees to satisfy itself as to compliance with all of the Permitted Encumbrances and the Vendor shall not be required to provide letters or certificates of compliance or any releases or partial releases of same. On Closing, title to the Lands shall be free from all Encumbrances, save and except for Permitted Encumbrances.

6.4 Compliance with Permitted Encumbrances and Applicable Laws

The Purchaser covenants and agrees:

- (a) to assume on Closing and be bound by and to comply with all provisions of the Permitted Encumbrances, at the Purchaser's sole cost and expense, and the Purchaser hereby covenants and agrees with the Vendor to discharge, perform and fulfill all terms, covenants, provisos, conditions, stipulations, obligations and liabilities of the Vendor under the Permitted Encumbrances, whether arising before or after the Closing, in the same manner and to the same extent as if the Purchaser had executed the same in the place and stead of the Vendor. The Purchaser shall indemnify and hold harmless the Vendor with respect thereto, whether or not such compliance or non-compliance occurs before, on or after Closing. If required by the provisions of any Permitted Encumbrances, or by any party to any Permitted Encumbrances, the Purchaser shall enter into an agreement directly with the other parties to such Permitted Encumbrances confirming such assumption; and
- (b) to assume on Closing, at the Purchaser's sole cost and expense, complete responsibility for compliance with all Applicable Laws which apply to the Lands and the use thereof by the Purchaser. The Purchaser shall indemnify and hold harmless the Vendor with respect thereto, whether or not such compliance or non-compliance occurs before, on or after Closing.

6.5 Expropriation

If prior to Closing the whole of the Lands or any material portion is taken by any Governmental Authorities or other authority or is required for any Governmental Authorities' or other authority's use, then the following provision shall apply: (a) in the event that the expropriation is of a material portion of the Lands, or any of the parcels comprising the Lands,

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the Purchaser may elect by notice given to the Vendor within ten (10) Business Days after receipt of notice of the proposed expropriation (and the Closing Date shall be extended as necessary so that such period of time may be allowed the Purchaser prior to Closing) to receive the proceeds of expropriation or an equivalent adjustment to the Purchase Price and complete this Agreement or terminate this Agreement provided that if at the expiry of the time period set out above the Purchaser has not made an election as aforesaid the Purchaser shall be conclusively deemed to have elected to receive the proceeds of expropriation, or an equivalent adjustment to the Purchase Price accordingly and complete this Agreement; and (b) in the event that the expropriation is not with respect to a material portion of the Lands the Purchaser shall be required to receive the proceeds of expropriation or an equivalent adjustment to the Purchase Price and complete this Agreement. Any dispute between the parties as to the materiality of the portion of the Lands being expropriated shall be decided by an independent accredited architect, appointed by the Vendor.

ARTICLE 7 CLOSING ARRANGEMENTS

7.1 Closing Date and Closing

The Closing shall occur on the Closing Date at the Closing Time at the Place of Closing. In the event the Closing Date is on a date when the Land Titles Office is closed, the Closing Date shall take place on the following Business Day that the Land Titles Office is open.

7.2 Vendor's Closing Documentation

On or before the date which is the fifth (5th) Business Day before the Closing Date, the Vendor shall deliver or cause to be delivered to the Purchaser's Solicitors the following, duly executed by the Vendor (as applicable) and, where applicable, by such other parties as may be specified or required:

- (a) a registrable Approval and Vesting Order;
- (b) a statement of adjustments;
- (c) all keys to the Improvements in the Vendor's actual possession;
- (d) a certificate regarding Section 116 of the *Income Tax Act* (Canada);
- (e) an undertaking to readjust any errors or omissions in the statement of adjustments (the "**Undertaking**");
- (f) a certificate, dated the Closing Date, confirming that all of the representations and warranties of the Vendor contained in this Agreement are true and correct or have been performed (as the case may be) as of the Closing Date, with the same effect as though made as of the Closing Date;

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- (g) a copy of the Monitor's certificate confirming that all conditions of Closing of the transaction of purchase and sale contemplated by this Agreement have been satisfied or waived; and
- (h) all original Plans and Documents relating to the Lands in the Vendor's actual possession and control.

7.3 Purchaser's Closing Documentation

On or before the Closing Date, the Purchaser shall deliver or cause to be delivered to the Vendor's Solicitors the following, duly executed by the Purchaser (as applicable) and, where applicable, by such other parties as may be specified or required:

- (a) a counterpart of the Undertaking;
- (b) a certificate of the Purchaser attesting to the Purchaser's GST registration number with a copy of its GST registration number printed from the Canada Revenue Agency website attached to such declaration;
- (c) an indemnity from the Purchaser in favour of the Vendor with respect to the Purchaser's payment of GST in a reasonable form that is provided by the Vendor;
- (d) a certificate, dated the Closing Date, confirming that all of the representations and warranties of the Purchaser contained in this Agreement are true and correct or have been performed (as the case may be) as of the Closing Date, with the same effect as though made as of the Closing Date;
- (e) if required by the provision of any Permitted Encumbrances or by any party to any Permitted Encumbrances, an individual assumption agreement in a form required by such Permitted Encumbrances;
- (f) the Balance Due on Closing; and
- (g) such further and other documentation reasonable and customary relative to the completion of a transaction of the nature of the transaction contemplated by this Agreement as the Vendor may reasonably require in a form and content satisfactory to the Vendor acting reasonably.

7.4 Closing Trust Conditions

The deliveries referred in Sections 7.2 and 7.3 shall be subject to such reasonable solicitor's trust conditions for the City of Calgary which are not inconsistent with this Agreement and as may be agreed upon between the Vendor's Solicitors and the Purchaser's Solicitors or, failing such agreement as determined by arbitration by a single arbitrator appointed by agreement of the Vendor and the Purchaser or by the Court of Queen's Bench of Alberta on application by either party. Notwithstanding any other provision hereof it is agreed that such trust conditions shall require that the entire cash Balance Due on Closing be paid to the Vendor's Solicitors in trust prior to the Purchaser proceeding to register the Approval and Vesting Order.

**ARTICLE 8
MISCELLANEOUS**

8.1 Tender of Monies

Any tender of documents and money hereunder may be made on the Vendor or the Vendor's Solicitors or on the Purchaser or the Purchaser's Solicitors, as the case may be, and money may be tendered by certified negotiable solicitor's trust cheque or a bank draft drawn on or issued by a Canadian chartered bank.

8.2 Non-Merger

The covenants, representations, warranties and agreements herein contained on the part of the Purchaser and Vendor shall not merge in the Closing, but shall continue in full force and effect notwithstanding the delivery and registration of the Approval and Vesting Order and any such unfulfilled covenants or agreements at the time the Purchaser requests the transfer may be set out in the transfer to the Purchaser or by way of separate agreement, which the Purchaser covenants to sign if required by the Vendor.

8.3 Assignment

Subject to the Purchaser's right hereunder to appoint a buyer to take title to the Lands, this Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns, provided that neither party shall assign the benefit of this Agreement without the prior written consent of the other party.

8.4 Notices

Any notice, request, consent, demand, approval, acceptance, waiver or other document required or permitted to be given hereunder shall be in writing and shall be given by personal delivery thereof or by facsimile or email [printed notice?] to:

In the case of the Purchaser:

TVR Construction
4039 16th Street SE, Calgary, AB T2G 3R8

Attention: Vaughn Reid
Telephone No.: (403)819-4766
Fax No.: [REDACTED]

With copies to:

[REDACTED]

Attention: [REDACTED]
Telephone No.: [REDACTED]
Fax No.: [REDACTED]

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In the case of the Vendor:

FTI Consulting Canada Inc. Receiver of New Food Classics
 TD Waterhouse Tower
 79 Wellington Street West
 Suite 2010, P.O. Box 104
 Toronto, ON M5K 1G8

Attention: Jamie Engen
 Telephone No.: 604.417 7375
 Fax No.: 416.649.8101
 Email: Jamie.Engen@FTIConsulting.com

With copies to:

Fasken Martineau
 333 Bay Street
 Suite 2400
 Toronto, ON M5H 2T6

Attention: Edmond Lamek
 Telephone No.: 416.865.4506
 Fax No.: 416.364.7813
 Email: ELamek@Fasken.com

Any notice, if delivered in person, shall be deemed to have been validly and effectively given and received on the date of personal delivery. Any notice, if sent by facsimile or email transmission and received before 5:00 p.m. (Alberta time) on a Business Day shall be deemed to have been validly and effectively given and received on the date of transmission and otherwise shall be deemed to have been validly and effectively given and received on the next Business Day. By giving to the other party at least three (3) Business Days' notice thereof, either party may, at any time and from time to time, change its address for delivery or communication for purposes of this section.

8.5 Unenforceability of Covenants

If any term, covenant or condition of this Agreement or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and each term, covenant or condition of this Agreement shall be valid and enforced to the fullest extent permitted by law.

8.6 Time of Essence

It is expressly understood that time shall be of the essence of this Agreement.

8.7 Notice of Agreement

The Purchaser hereby covenants and agrees that it will not register this Agreement, notice thereof or any caveat, caution, certificate of pending litigation or any other documents which may affect title to the Lands.

8.8 Governing Law

This Agreement shall be governed by and construed and enforced in accordance with the laws of the Province of Alberta and the laws of Canada applicable therein and shall enure to the benefit of and be binding upon the parties hereto and their respective successors or permitted assigns.

8.9 No Commissions

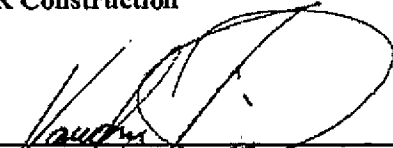
The Vendor shall be responsible for payment of all fees or commissions to Barclay Street Real Estate Ltd. that the Vendor has agreed in writing to pay to Barclay Street Real Estate Ltd. in connection with the Lands and/or the transactions contemplated by this Agreement. Each of the parties represents and warrants that it has not executed any documentation or taken any other step that would make the other party responsible for real estate commissions or fees. Each party hereto agrees that if any person or entity, other than Barclay Street Real Estate Ltd., makes a claim for brokerage commissions or finder's fees related to this Agreement or the sale of the Lands and such claim is made by, through or on account of any acts or alleged acts of said party or its representatives, said party will protect, indemnify, defend and hold the other party harmless from and against any and all loss, liability, cost, damage and expense (including reasonable legal fees) in connection therewith.

8.10 Counterparts

This Agreement may be executed in counterparts, each of which shall be deemed to be an original and all of which shall constitute one and the same agreement. Transmission by facsimile or other electronic format of an executed counterpart of this Agreement shall be deemed to constitute due and sufficient delivery of such counterpart.

IN WITNESS WHEREOF the parties have duly executed this Agreement as of the date first written above.

TVR Construction

By: 
 Name: VAUGHN REID
 Title: PRESIDENT

By: _____
 Name:
 Title:

I/We have authority to bind the Corporation

FTI Consulting Canada Inc. in its capacity as receiver of NFC Land Holdings Corp. And not in its personal or corporate capacity

By: _____
 Name:
 Title:

SCHEDULE "A"
LEGAL DESCRIPTIONS OF THE LANDS

1. FIRST

PLAN CALGARY 5576HC
BLOCK Z
LOT ONE (1)
CONTAINING...

LOT	ACRES MORE OR LESS
1	2.00

EXCEPTING THEREOUT ALL MINES AND MINERALS

SECOND

PLAN CALGARY 5576HC
BLOCK Z
LOT TWO (2)
CONTAINING...

LOT	ACRES MORE OR LESS
2	0.94

EXCEPTING THEREOUT ALL MINES AND MINERALS

(the "Plan 5576HC Lands")

2. PLAN 3313JK

BLOCK A
EXCEPTING THEREOUT ALL MINES AND MINERALS
AREA: 0.275 HECTARES (0.68 ACRES) MORE OR LESS

(the "Plan 3313JK Lands")

SCHEDULE "B"
PERMITTED ENCUMBRANCES

- (A) General Permitted Encumbrances applicable to the Lands:
- (i) All exceptions, reservations and conditions to which the titles to the Lands are subject pursuant to the *Land Titles Act* (Alberta).
 - (ii) All caveats and instruments registered by or on behalf of the Purchaser.
- (B) Specific Permitted Encumbrances for each parcel of the Lands as outlined below:

Registration Number	Date (D/M/Y)	Particulars
<u>Plan 5576HC Lands:</u>		
771 147 064	20/10/1977	Zoning Regulations
011 173 508	21/06/2001	Notice of Security Interest Re: Fixtures In favour of - ABN AMRO Bank Canada
<u>Plan 3313JK Lands:</u>		
6184JG	25/10/1965	Utility Right of Way
6775JG	15/11/1965	Utility Right of Way
6777JG	15/11/1965	Utility Right of Way
2333JR	08/08/1966	Utility Right of Way
771 147 064	20/10/1977	Zoning Regulations

SCHEDULE "C"
ENVIRONMENTAL ASSESSMENT REPORTS

1. Phase 1 Environmental Site Assessment dated April 21, 2002 performed by P. Machibroda Engineering Ltd.

2. Phase 2 Environmental Site Assessment dated July 2001 performed by ISM Integrated Site Management

3. Phase 1 Environmental Site Assessment dated December 2005 performed by Golder Associates Ltd.

4. Phase 2 Environmental Site Assessment dated January 2006 performed by Golder Associates Ltd.

5. Update Phase 1 Environmental Site Assessment dated January 17, 2012 performed by Golder Associates Ltd.

SCHEDULE "D"
APPROVAL AND VESTING ORDER

AMENDED AGREEMENT OF PURCHASE AND SALE
(4211 13A STREET)

This Agreement made this 29th day of March, 2012 between:

BETWEEN:


FTI CONSULTING CANADA INC. solely in its capacity as court-appointed receiver of the assets, undertakings and properties of NFC Acquisition GP Inc., NFC Acquisition L.P., NFC Acquisition Corp., New Food Classics and NFC Land Holdings Corp.
and not in its personal capacity
(the "Vendor")

and

TVR CONSTRUCTION

RECITALS:


- A. NFC Land Holdings Corp., is the registered owner of the Lands.
- B. The Vendor was appointed receiver of the assets, undertakings and properties of NFC Acquisition GP Inc., NFC Acquisition L.P., NFC Acquisition Corp., New Food Classics and NFC Land Holdings Corp. (collectively, "NFC" or the "Company") pursuant to an order (the "Appointment Order") of the Superior Court of Justice (Ontario) (Commercial List) (the "Court") dated February 22, 2012.
- C. The Appointment Order authorizes the Vendor to market and sell, subject to obtaining the Vesting Order (as defined herein) from the Court, all or any part of the assets, undertakings and properties of NFC.
- D. The Vendor has agreed to sell the Lands to the Purchaser and the Purchaser has agreed to purchase all of NFC's right, title and interest in and to the the Lands from the Vendor, at the Closing Date, for the Purchase Price, and subject to all of the terms and conditions set forth herein.


Now, therefore, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby conclusively acknowledged, the parties hereto covenant and agree as follows: 



**ARTICLE 1
INTERPRETATION**

1.1 Definitions

In this Agreement:

- (a) **"Agreement"** means this agreement of purchase and sale and all schedules attached hereto, as the same may be amended, supplemented, revised or restated from time to time;
- (b) **"Applicable Law"** means any statute, law, ordinance, rule, regulation, regulatory policy, by-law (zoning or otherwise), order, judgment, decree, treaty, guidelines or administrative requirements having the force of law or other requirement having the force of law or restriction of any kind whatever, including, but without limiting the generality of the foregoing, Environmental Laws, as applicable to the Lands;
- (c) **"Approval and Vesting Order"** means an order of the Court approving this Agreement and having the effect of vesting the Lands in the name of the Purchaser on Closing, free and clear of all Encumbrances other than the Permitted Encumbrances, in registerable form and in substance satisfactory to the Purchaser, acting reasonably, and on notice to a service list acceptable to the Purchaser, acting reasonably, such order to be substantially in the form of the order attached hereto as Schedule "D" hereto;
- (d) **"Approval and Vesting Order Condition"** has the meaning set forth in Section 5.3 hereof;
- (e) **"Balance Due on Closing"** shall have the meaning set forth in Section 2.2 hereof;
- (f) **"Business Day"** means any day in the Province of Alberta that is not a Saturday, Sunday or a statutory holiday;
- (g) **"Closing"** means the completion of the transaction of purchase and sale for the Lands contemplated by this Agreement;
- (h) **"Closing Date"** means that date which is the tenth (10th) Business Day following the date on which the Mutual Conditions have been satisfied such that the Approval and Vesting Order is in a form that is registerable at the Alberta Land Titles Office, or such other date as the Vendor and Purchaser may agree in writing;
- (i) **"Closing Time"** means 11:00 A.M. (Alberta time) on the Closing Date or such other time as may be determined by the Vendor in its sole discretion; 

- (j) "Court" shall have the meaning set forth in the Recitals hereto;
- (k) "Deposit" shall have the meaning set forth in Section 2.2 hereof;
- (l) "Encumbrance" means any security interest, lien, charge, pledge, encumbrance, mortgage, title retention agreement, easement, encroachment, right-of-way, restrictive covenant, licence, lease, agreement or any other claim of any nature or kind, whether financial or otherwise;
- (m) "Environment" means the environment or natural environment as defined in any Environmental Law, and includes, without limitation, air, surface water, ground water, land surface, soil, subsurface strata, a sewer system and the environment in the workplace;
- (n) "Environmental Assessment Reports" means, collectively, all of the reports, documents and correspondence listed in Schedule "C" attached hereto and forming a part hereof;
- (o) "Environmental Laws" means all laws relating in full or in part to the protection or preservation of the Environment, product liability and employee and public health and safety and includes, without limitation, those Applicable Laws relating to the storage, generation, use, handling, manufacture, processing, labelling, advertising, sale, display, transportation, treatment, release, discharge and/or disposal of Hazardous Substances, including without limitation, the *Canadian Environmental Protection Act, 1999*, S.C. 1999, c.33, the *Transportation of Dangerous Goods Act, 1992*, c.34, the *Environmental Protection and Enhancement Act* (Alberta) and any regulation, order, guideline or policy made pursuant to any of such statutes or in respect of any of such statutes;
- (p) "ETA" shall have the meaning set forth in Section 2.3 hereof;
- (q) "Execution Date" means the date this Agreement has been signed by all of the parties hereto accepting the terms and conditions of this Agreement;
- (r) "Governmental Authorities" means all governments and government officials whether federal, provincial or municipal and all other regulatory authorities that have jurisdiction over the Lands, the Environment to the Lands, and Hazardous Substances at or near the Lands;
- (s) "GST" means all goods and services taxes levied pursuant to Section 165(1) of the *Excise Tax Act* (Canada);
- (t) "Hazardous Substances" means any substance or constituent thereof, sound, vibration, ray, heat, odour, radiation, energy, which is or is deemed to be, alone or in any combination, a pollutant, contaminant, source of pollution or contamination, waste of any nature, hazardous substance, hazardous material, toxic substance, dangerous substance or dangerous good including as defined, judicially interpreted or identified in any Environmental Law; 

- (u) "Improvements" means all buildings, fixtures and appurtenances constructed on the Lands or any part or parts thereof;
- (v) "Information" shall have the meaning set forth in Section 3.2 hereof;
- (w) "Land Titles Office" means the land titles office for Alberta established pursuant to the *Land Titles Act* (Alberta);
- (x) "Lands" means those lands in Calgary, Alberta the legal descriptions of which are set forth in Schedule "A" attached hereto including all Improvements;
- (y) "Municipality" means The City of Calgary, a municipal corporation established pursuant to the laws of the Province of Alberta;
- (z) "Mutual Conditions" means the Approval and Vesting Order Condition and the No Appeal Condition for the benefit of the Vendor and the Purchaser set forth in Section 5.3 hereof;
- (aa) "No Appeal Condition" shall have the meaning set forth in Section 5.3 hereof;
- (bb) "Permitted Encumbrances" means those Encumbrances listed on Schedule "B" hereto;
- (cc) "Place of Closing" means the offices of the Vendor's Solicitors or at such other place as the Vendor and the Purchaser may agree in writing;
- (dd) "Plans and Documents" shall have the meaning set forth in Section 6.1 hereof;
- (ee) "Purchase Price" shall have the meaning set forth in Section 2.1 hereof;
- (ff) "Purchaser" means TVR Construction, or its Nominee designated by the Purchaser by notice in writing to the Vendor, not less than two (2) Business Days prior to service of the Vendor's motion for the Approval and Vesting Order;
- (gg) "Purchaser's Conditions" means all of the conditions for the benefit of the Purchaser set forth in Section 5.2 hereof;
- (hh) "Purchaser's Condition Date" means the date which is the fifty-fifth (55th) Business Day following the Execution Date;
- (ii) "Purchaser's Solicitors" means ;
- (jj) "Undertaking" shall have the meaning set forth in Section 7.2 hereof;
- (kk) "Vendor's Conditions" means all of the conditions for the benefit of the Vendor set forth in Section 5.1 hereof; and
- (ll) "Vendor's Solicitors" means Fasken Martineau DuMoulin LLP. 

1.2 Grammar

Grammatical variations of any terms defined herein have similar meanings; words importing the singular number shall include the plural and vice versa; and words importing the masculine gender shall include the feminine and neuter genders and vice versa.

1.3 Headings

The headings of any article, section or part thereof are inserted for the purposes of convenience only and do not form a part of this Agreement. All uses of the words "hereto", "herein", "hereof", "hereby" and "hereunder" and similar expressions refer to this Agreement and not to any particular section or portion of it.

1.4 Schedules

The following schedules are attached hereto and form a part of this Agreement:

- Schedule "A" - Legal Description of the Lands
- Schedule "B" - Permitted Encumbrances
- Schedule "C" - Environmental Assessment Reports

1.5 Amounts

All amounts expressed herein are expressed exclusive of applicable Taxes.

ARTICLE 2 AGREEMENT OF PURCHASE AND SALE

2.1 Purchase Price

The Vendor hereby agrees to sell the Lands to the Purchaser and the Purchaser hereby agrees to purchase the Lands from the Vendor, as at the Closing Date, at and for the Purchase Price and on and subject to all of the terms and conditions set forth herein. The purchase price (the "Purchase Price") for the Lands, subject to adjustments as provided herein, shall be the sum of [REDACTED]

2.2 Payment of Purchase Price

- (a) The Purchaser covenants and agrees to pay the Purchase Price in lawful money of Canada as follows: *W*

- (i) ~~the sum of \$100,000 (the "Deposit"), which amount will be paid by the Purchaser to the Vendor's Solicitors on the Execution Date and be invested by the Vendor's Solicitors in an interest bearing trust account. The Deposit (and interest earned thereon) shall be non-refundable to the Purchaser except only if the Purchaser's Conditions and the Mutual Conditions are not satisfied or, to the extent permitted, waived, or the~~

~~Vendor materially breaches the terms of this Agreement, in which case the Deposit shall be returned to the Purchaser. The Deposit (and interest earned thereon) shall be credited on account of the Purchase Price and released to the Vendor on Closing; Intentionally Deleted~~

- (ii) the sum of \$ [REDACTED] (the "Non-Refundable Deposit"); which amount will be paid by the Purchaser to the Vendor's Solicitors within ten (10) Business Days following the Execution Date and be invested by the Vendor's Solicitors in an interest bearing trust account. The Non-Refundable Deposit (and interest earned thereon) shall be non-refundable to the Purchaser. The Non-Refundable Deposit (and interest earned thereon) shall be credited on account of the Purchase Price and released to the Vendor on Closing; and
 - (iii) the balance of the Purchase Price shall be paid to the Vendor's Solicitors on the Closing Date, subject to the adjustments provided for herein, by way of a certified negotiable solicitor's trust cheque or bank draft drawn on or issued by a Canadian chartered bank (the "Balance Due on Closing").
- (b) If the Purchaser's Conditions and the Mutual Conditions have been satisfied or, to the extent permitted, waived, and the within transaction shall not be completed for any reason other than a material breach by the Vendor of a term of this Agreement, then the Deposit (and interest thereon) (and for greater certainty, the Non-Refundable Deposit and interest thereon) shall be retained by the Vendor but without prejudice to any rights or remedies that the Vendor may have at law or in equity or under this Agreement in connection with any default of the Purchaser.

2.3 Goods and Services Taxes/Other Taxes

In addition to the Purchase Price, the Purchaser shall pay to the Vendor on Closing all federal, provincial and other sales, value-added, GST, land transfer and all other taxes whatsoever which are exigible in connection with the transactions contemplated by this Agreement, together with all duties or other charges properly payable by the Purchaser upon or in connection with the conveyance and transfer of the Lands. The Purchaser does hereby indemnify and save the Vendor harmless from and against all claims for payment of the above-mentioned taxes including penalties and interest thereon and any liability or costs incurred as a result of any failure to pay such taxes when due.

The Purchaser hereby represents and warrants that it is now or will be by no later than the Closing Date registered for GST in accordance with the requirements of the provisions of the *Excise Tax Act* (Canada) (the "ETA"). In addition to all other taxes payable by the Purchaser at Closing, the Purchaser agrees to pay to the Vendor all GST payable in respect of the purchase of the Lands unless the Purchaser shall deliver to the Vendor a statutory declaration on Closing attesting to its GST registration and attaching a copy of its up-to-date GST registration number and such other evidence of registration as the Vendor reasonably requests in which case, notwithstanding the foregoing, the Vendor shall not collect such GST and the Purchaser shall be

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responsible to pay or account for the GST directly to the Receiver General of Canada in the manner and within the time prescribed by the ETA (subject to its available input tax credits).

The Purchaser does hereby indemnify and save harmless the Vendor from any GST, penalty, interest or other amounts which may be payable by or assessed against the Vendor under the ETA as a result of or in connection with the Vendor not collecting and remitting any GST applicable on the sale of the Lands.

2.4 Adjustments

Any rents and all realty taxes, rates, levies, assessments, including local improvement rates, and other items which are normally adjusted as between a buyer and a seller of property and interests similar to the Lands, shall be apportioned and allowed to the Closing Date, the Closing Date itself to be apportioned to the Purchaser.

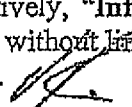
ARTICLE 3 STATUS OF LANDS

3.1 "As-Is Where-is"

The Purchaser acknowledges and agrees that the Lands and each and every part thereof are being purchased on an "as-is where-is" basis as they exist as of the Closing Date and that from and after the Closing Date the Vendor shall have no liability or responsibility whatsoever in respect of the Lands, including but not limited to liability or responsibility arising from or in connection with any Hazardous Substances at, on, under, about, or migrating to or from the Lands, or the environmental condition of the Lands or of any land or Environment in proximity to the Lands. The Purchaser acknowledges and agrees that Information relating to the Lands which is included in this Agreement or obtained by the Purchaser from the Vendor (including, without limitation, the Plans and Documents and the Environmental Assessment Reports and any information arising therefrom) has been provided solely for the convenience of the Purchaser and is not warranted to be accurate, complete or reliable and does not constitute any representation or warranty and does not form part of the terms of this Agreement.

3.2 Own Analysis

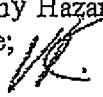
The Purchaser acknowledges and agrees that: (i) it has entered into this Agreement on the basis that the Vendor does not warrant title to the Lands and that the Purchaser has conducted (and will conduct) its own investigations and inspections of the Lands and all matters and things connected with or in any way related to the Lands; (ii) it has satisfied itself (or will satisfy itself) with respect to the Lands and all matters and things connected with or in any way related to the Lands; and (iii) it has relied (and will rely) entirely upon its own investigations and inspections in entering into this Agreement and in concluding the transaction contemplated by this Agreement, notwithstanding the provision to the Purchaser (including its directors, officers, employees, Affiliates, agents, advisors and representatives) by the Vendor of any Plans and Documents, listings, reports or other documents or information (collectively, "Information") relating to the Lands which are in the possession of the Vendor including, without limitation, the Environmental Assessment Reports and any information arising therefrom.



3.3 No Representation by Vendor

The Purchaser hereby acknowledges and agrees that it has satisfied itself with respect to and acknowledges that neither the Vendor nor any party acting or purporting to act on behalf of the Vendor has made any representation, warranty, statement or promise, save and except as are expressly stated herein, with respect to or in any way related to any matter or thing whatsoever including, without limitation:

- (a) the title, description, nature, quality, quantity, size, merchantability, fitness for any purpose, state, condition, cost, undue expenses, validity or location of all or any of the Lands or the right of the Vendor to sell or assign same, or as to the accuracy or completeness of the Information provided or made available to the Purchaser;
- (b) the validity, registration, enforceability or priority of any mortgages, charges, liens, encumbrances, security interests, claims of any nature or kind or demands of whatsoever nature or kind affecting or in any way related to all or any of the Lands;
- (c) the state, condition, location, age, currency, obsolescence, value, usability of or any other matters arising out of or in any way connected with any building and other permanent fixtures forming part of the Lands and any equipment or facilities thereon or therein;
- (d) the compliance of the Lands and their use in accordance with Applicable Laws;
- (e) the environmental condition of the Lands;
- (f) the uses, present or future, made or to be made of the Lands;
- (g) the existence, nature, kind, state or scope, identity, effect or consequences of any Hazardous Substances on, under, about or migrating to or from the Lands;
- (h) the existence, state, nature, kind, identity, extent, effect or consequences of any administrative orders, control orders, abatement orders, compliance orders or any other orders, proceedings, directions, issues or actions taken under or pursuant to Environmental Laws or any other Applicable Law;
- (i) the existence, state, nature, kind, identity, extent, effect or consequences of any liability, responsibilities, or obligations arising from or in relation to the environmental condition of the Lands or any Applicable Law including, without limitation, any obligation with respect to any Hazardous Substances at, on, under, about, or migrating to or from the Lands and any obligations to compensate any person for costs incurred in connection with or damages suffered as a result of the presence or migration of any Hazardous Substances at, on, under, about, to, or from the Lands or elsewhere;



- (j) the zoning of the Lands, the planning status of the Lands, the condition, existence or location of services on or near the Lands, the use to which the Lands can be put or the fulfillment or satisfaction of any subdivision condition;
- (k) the manner in which the Vendor carried on its business; and
- (l) the existence and validity of any licenses, permits or authorizations from any Governmental Authority, court, regulatory authority or other person whatsoever having or purporting to have jurisdiction over the Vendor, the Lands, the business carried on by the Vendor, or any sale, transfer, conveyance, lease, consignment, assignment, disposition or other dealings with the Lands.

3.4 Environmental Release, Indemnity and Covenant Not to Sue

The Purchaser agrees that, and that there are no representations, covenants and agreements otherwise, it is purchasing the Lands in their present state, condition and location including, without limitation, the environmental condition of the Lands, the existence of any Hazardous Substances at, on, under, about, or migrating to or from the Lands, and any impact of any environmental condition at the Lands or any Hazardous Substances at or migrating to or from or to the Lands, whether presently known or later discovered.

The Purchaser, from and after the Closing Date, shall assume all liabilities and responsibilities, whether presently known or later discovered and regardless of the source or cause of the same, with respect to the environmental condition of the Lands, the existence of any Hazardous Substances at, on, under, about, or migrating to, through or from the Lands, and any impact of any environmental condition at the Lands or any Hazardous Substances, at, on, under, about, or migrating to or from the Lands, and the Purchaser does hereby indemnify and hold the Vendor (the "Indemnified Party"), harmless with respect thereto, and the Purchaser hereby agrees: (a) to release the Indemnified Party from any and all claims or any nature or kind, whether by or based upon statute, common law, or in equity, that the Purchaser may now or in the future have in relation thereto; and (b) that it will not alone or in concert with any other person pursue any action, claim of any nature or kind, dispute or proceeding against the Indemnified Party in relation thereto.

**ARTICLE 4
REPRESENTATIONS AND WARRANTIES**

4.1 Purchaser's Representations and Warranties

The Purchaser hereby represents, warrants and covenants to and with the Vendor now and on Closing that:

- (a) the Purchaser is acting as a principal and not as an agent, trustee or other representative;
- (b) the Purchaser is a corporation, duly incorporated and existing under the laws of its jurisdiction of incorporation and has the requisite power and authority to make this Agreement, complete this Agreement, and perform all its obligations

hereunder including effecting all corporate registrations in the Province of Alberta necessary to be the registered owner of title to the Lands;

- (c) no registration, notice, consent, approval or filing under any Applicable Laws, including (without limitation) the *Investment Canada Act* and the *Competition Act* (Canada), is required as a condition or result of the Purchaser making the Agreement, or the completion or performance of this Agreement, including the purchase of the Lands by the Purchaser hereunder;
- (d) this Agreement, and each of the other agreements, documents and instruments to be executed by the Purchaser on or before Closing, have been or will be duly executed and delivered by the Purchaser and will constitute valid and binding obligations of the Purchaser, enforceable in accordance with the terms hereof or thereof, as the case may be;
- (e) after Closing, the Purchaser will have assets worth more than [REDACTED] not including the Lands; and
- (f) the Purchaser is registered pursuant to the ETA under number: [REDACTED] RT001.

4.2 Vendor's Representations and Warranties

The Vendor hereby represents and warrants to the Purchaser now and on Closing that:

- (a) the Vendor is not a non-resident of Canada within the meaning of that term as used in the *Income Tax Act* (Canada);
- (b) The Vendor has been appointed by the Court as receiver of the assets, undertakings and properties of the Company pursuant to the Appointment Order, a copy of which has been provided to the Purchaser.
- (c) Subject to the issuance of the Vesting Order, the Vendor has all necessary power and authority to enter into this Agreement and to carry out its obligations under this Agreement. This Agreement constitutes a valid and binding obligation of the Vendor enforceable against it in accordance with its terms subject to any limitations imposed by Law. the Vendor will have after obtaining the Approval and Vesting Order, all necessary authority to execute and deliver this Agreement and all other documents and instruments contemplated herein or therein to which it is or will be party and to perform its obligations hereunder and thereunder.

4.3 No Collateral Agreements

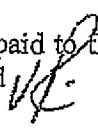
It is agreed that there is no representation, promise, warranty, collateral agreement, term or condition of any kind made by or on behalf of the Vendor affecting this Agreement or the Lands or supported hereby other than expressed herein in writing. The Purchaser acknowledges that this Agreement entirely replaces and supercedes all previous agreements and correspondence and contains all the terms, conditions, and provisions agreed upon between the

parties hereto, and is not subject to any collateral or oral agreement, undertaking or representation (negligent or otherwise) of any kind.

**ARTICLE 5
CONDITIONS**

5.1 Vendor's Conditions

The obligation of the Vendor to complete the transaction of purchase and sale which is contemplated herein is subject to and conditional upon the following matters (each of which is inserted for the sole benefit of the Vendor and may be waived in whole or in part by the Vendor) being satisfied on or by the date specified therefor (which shall be the Closing Date unless otherwise specified) and in the event that any one of the following conditions is neither complied with nor waived by the Vendor then, in such event, this Agreement shall terminate thereafter subject to the performance of all those obligations that survive termination and the Deposit together with any accrued interest thereon shall forthwith be returned to the Purchaser (subject to the Purchaser's obligations set forth in this Agreement) and neither party shall have any further liability to the other (save for the Purchaser's obligations as set forth in this Agreement):

- (a) no part of the Lands shall have been removed from the control of the Vendor by any means or process;
- (b) no action or proceeding, at law or in equity, shall have been commenced or threatened by any person to enjoin, restrict or prohibit the consummation of the transactions contemplated by this Agreement that has not at the Closing Time been dismissed, quashed or permanently stayed without any further rights of appeal or leave to appeal;
- (c) all consents or approvals from or notifications to any lender, landlord, lessor or other third person required under the terms of any agreement, lease or instrument in connection with the consummation of the transactions contemplated hereby, shall have been duly obtained or given, as the case may be;
- (d) all consents or approvals from, orders and authorizations of, notifications to and licences from any persons (or registrations, declarations, filings or recordings with any such authorities) required in connection with the consummation of the transactions contemplated by this Agreement, the making of the Agreement, the Closing, or the performance of any of the terms and conditions thereof, in form and substance satisfactory to the Vendor and the Vendor's Solicitors, shall have been duly obtained or given, as the case may be;
- (e) the representations and warranties of the Purchaser contained in the Agreement shall be true and correct in all material respects as at the Closing Date and with the same force and effect as if made at and of such time;
- (f) the Purchaser shall have paid to the Vendor all amounts required to be paid by it under this Agreement; and 

- (g) the Purchaser shall have performed, in all material respects, its obligations and covenants under this Agreement to the extent required to be performed on or before the Closing Date.


The closing of the transaction of purchase and sale contemplated herein by the Vendor shall be deemed to be waived by the Vendor of compliance with any condition inserted for its benefit and not satisfied on the Closing Date.

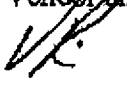
5.2 Purchaser's Conditions

The obligation of the Purchaser to complete the transaction of purchase and sale which is contemplated herein is subject to and conditional upon the following matters (each of which is inserted for the sole benefit of the Purchaser and may be waived in whole or in part by the Purchaser) being satisfied on or by the date specified therefor and in the event that any one of the following conditions is neither complied with nor waived by the Vendor then, in such event, this Agreement shall terminate thereafter subject to the performance of all those obligations that survive termination and the Deposit together with any accrued interest thereon shall forthwith be returned to the Purchaser (subject to the Purchaser's obligations as set forth in this Agreement) and neither party shall have any further liability to the other (save for the Purchaser's obligations as set forth in this Agreement);

- (a) on or before the Purchaser's Condition Date, the Purchaser shall provide the Vendor with notice in writing that the Purchaser is satisfied with the following, and if such notice is not provided by the Purchaser or the Purchaser does not advise the Vendor that this condition is waived, the transaction of purchase and sale contemplated herein shall terminate:
 - (i) All Permitted Encumbrances;
 - (ii) All Plans and Documents;
 - (iii) All Environmental Assessment Reports; and
 - (iv) The status of the Purchaser's application to the Municipality for a change of use/zoning, such that the Lands can be used for the Purchaser's intended purpose.

5.3 Conditions Respecting Approval and Vesting Order

- (a) The obligations of the Vendor and the Purchaser to complete the transaction of purchase and sale contemplated herein shall be subject to and conditional upon the further conditions that: (i) on or before the date which is thirty (30) Business Days following the date on which all of the Purchaser's Conditions have been satisfied or waived, the Vendor shall have obtained the Approval and Vesting Order (the "Approval and Vesting Order Condition"); and (ii) all appeal periods with respect to the Approval and Vesting Order shall have expired with no appeal having been commenced and no other legal challenge to the Approval and Vesting Order having been commenced (the "No Appeal Condition"). 

- (b) The Approval and Vesting Order Condition has been inserted for the benefit of both the Vendor and the Purchaser and may not be waived by either party, but may be extended by written agreement of both parties.
- (c) The No Appeal Condition has been inserted for the benefit of both the Vendor and the Purchaser and may be waived by written agreement of both parties. 

**ARTICLE 6
ADDITIONAL AGREEMENTS**

6.1 Vendor Deliveries

Within two (2) Business Days after the Execution Date, the Vendor shall provide or have provided the Purchaser with:

- (d) copies of or access to all plans, studies, reports, records, tests, agreements, real property reports and generally all documentation or materials and information in its actual possession, if any, (collectively, the "Plans and Documents") which relate to the ownership, physical state and development status of the Lands; and
- (e) copies of all of the Environmental Assessment Reports.

The Vendor shall execute any consents or authorizations prepared by the Purchaser as may be reasonably required to release file information regarding the Lands from the Municipality or other Governmental Authorities provided that such consents and authorizations shall not permit any inspection or investigation of the Lands or any part thereof. For greater certainty, the Vendor is only required to deliver copies of existing Environmental Assessment Reports. If the Purchaser wishes to complete further environmental assessments, the Purchaser is required to do so at its own expense.

If for any reason the transaction contemplated herein is not completed, the Purchaser shall return the Plans and Documents and all copies of the Environmental Assessment Reports and all other materials and copies thereof which it has obtained from the Vendor (or others as a result of such consents or authorizations having been given by the Vendor) along with any copies, notes, memoranda or reports prepared or made by the Purchaser or its agents, consultants, employees, representatives or advisors.

6.2 Test and Studies

At any time and from time to time after the Execution Date and continuing to the Purchaser's Condition Date, the Purchaser and its duly authorized agents, consultant, employees and representatives shall be entitled to attend upon the Lands for the purpose of making inspections or conducting tests, assessments or surveys, provided the Purchaser shall make good and restore any damage or loss caused by the Purchaser, its agents, consultants, employees or representatives (whether as a direct result of such inspections or assessments or otherwise howsoever) and shall indemnify and save harmless the Vendor from all loss, damage, injury or death. Such access is granted at the Purchaser's sole risk, and the Vendor shall have no liability to the Purchaser or any of its agents, consultants, employees or representatives for any injury, claims of any nature or kind, causes of action, costs, losses, damages or expenses arising therefrom or relating to the inadequacy, insufficiency, incompleteness, inaccuracy, unavailability or condition of the Lands. In conducting any physical inspections and environmental assessments, the Purchaser shall cause as little disturbance, damage and loss to the Lands as is possible. Intrusive testing of any part of the Lands shall only be carried out with the Vendor's prior written approval and in compliance with Applicable Laws and the Vendor's conditions and

requirements, which may be imposed by the Vendor in the Vendor's absolute and sole discretion. If for any reason the transaction contemplated herein is not completed, the Purchaser shall destroy all reports, documents and other information related to any test, studies or other actions undertaken pursuant to this Agreement.

Without limiting any of its other rights at law, in equity or otherwise under this Agreement, the Vendor reserves the right to offset against the Deposit, the costs of repairs and restorations of the Lands required as a result of damage caused by the Purchaser's inspections or tests which has not been repaired or restored by the Purchaser to the satisfaction of the Vendor.

6.3 Permitted Encumbrances

The Purchaser agrees to accept title to the Lands subject to all of the Permitted Encumbrances. The Purchaser covenants and agrees to satisfy itself as to compliance with all of the Permitted Encumbrances and the Vendor shall not be required to provide letters or certificates of compliance or any releases or partial releases of same. On Closing, title to the Lands shall be free from all Encumbrances, save and except for Permitted Encumbrances.

6.4 Compliance with Permitted Encumbrances and Applicable Laws

The Purchaser covenants and agrees:

- (a) to assume on Closing and be bound by and to comply with all provisions of the Permitted Encumbrances, at the Purchaser's sole cost and expense, and the Purchaser hereby covenants and agrees with the Vendor to discharge, perform and fulfill all terms, covenants, provisos, conditions, stipulations, obligations and liabilities of the Vendor under the Permitted Encumbrances, whether arising before or after the Closing, in the same manner and to the same extent as if the Purchaser had executed the same in the place and stead of the Vendor. The Purchaser shall indemnify and hold harmless the Vendor with respect thereto, whether or not such compliance or non-compliance occurs before, on or after Closing. If required by the provisions of any Permitted Encumbrances, or by any party to any Permitted Encumbrances, the Purchaser shall enter into an agreement directly with the other parties to such Permitted Encumbrances confirming such assumption; and
- (b) to assume on Closing, at the Purchaser's sole cost and expense, complete responsibility for compliance with all Applicable Laws which apply to the Lands and the use thereof by the Purchaser. The Purchaser shall indemnify and hold harmless the Vendor with respect thereto, whether or not such compliance or non-compliance occurs before, on or after Closing.

6.5 Expropriation

If prior to Closing the whole of the Lands or any material portion is taken by any Governmental Authorities or other authority or is required for any Governmental Authorities' or other authority's use, then the following provision shall apply: (a) in the event that the expropriation is of a material portion of the Lands, or any of the parcels comprising the Lands,

the Purchaser may elect by notice given to the Vendor within ten (10) Business Days after receipt of notice of the proposed expropriation (and the Closing Date shall be extended as necessary so that such period of time may be allowed the Purchaser prior to Closing) to receive the proceeds of expropriation or an equivalent adjustment to the Purchase Price and complete this Agreement or terminate this Agreement provided that if at the expiry of the time period set out above the Purchaser has not made an election as aforesaid the Purchaser shall be conclusively deemed to have elected to receive the proceeds of expropriation, or an equivalent adjustment to the Purchase Price accordingly and complete this Agreement; and (b) in the event that the expropriation is not with respect to a material portion of the Lands the Purchaser shall be required to receive the proceeds of expropriation or an equivalent adjustment to the Purchase Price and complete this Agreement. Any dispute between the parties as to the materiality of the portion of the Lands being expropriated shall be decided by an independent accredited architect, appointed by the Vendor.

**ARTICLE 7
CLOSING ARRANGEMENTS**

7.1 Closing Date and Closing

The Closing shall occur on the Closing Date at the Closing Time at the Place of Closing. In the event the Closing Date is on a date when the Land Titles Office is closed, the Closing Date shall take place on the following Business Day that the Land Titles Office is open.

7.2 Vendor's Closing Documentation

On or before the date which is the fifth (5th) Business Day before the Closing Date, the Vendor shall deliver or cause to be delivered to the Purchaser's Solicitors the following, duly executed by the Vendor (as applicable) and, where applicable, by such other parties as may be specified or required:

- (a) a registrable Approval and Vesting Order;
- (b) a statement of adjustments;
- (c) all keys to the Improvements in the Vendor's actual possession;
- (d) a certificate regarding Section 116 of the *Income Tax Act* (Canada);
- (e) an undertaking to readjust any errors or omissions in the statement of adjustments (the "Undertaking");
- (f) a certificate, dated the Closing Date, confirming that all of the representations and warranties of the Vendor contained in this Agreement are true and correct or have been performed (as the case may be) as of the Closing Date, with the same effect as though made as of the Closing Date;

- (g) a copy of the Receiver's certificate confirming that all conditions of Closing of the transaction of purchase and sale contemplated by this Agreement have been satisfied or waived; and
- (h) all original Plans and Documents relating to the Lands in the Vendor's actual possession and control.

7.3 Purchaser's Closing Documentation

On or before the Closing Date, the Purchaser shall deliver or cause to be delivered to the Vendor's Solicitors the following, duly executed by the Purchaser (as applicable) and, where applicable, by such other parties as may be specified or required:

- (a) a counterpart of the Undertaking;
- (b) a certificate of the Purchaser attesting to the Purchaser's GST registration number with a copy of its GST registration number printed from the Canada Revenue Agency website attached to such declaration;
- (c) an indemnity from the Purchaser in favour of the Vendor with respect to the Purchaser's payment of GST in a reasonable form that is provided by the Vendor;
- (d) a certificate, dated the Closing Date, confirming that all of the representations and warranties of the Purchaser contained in this Agreement are true and correct or have been performed (as the case may be) as of the Closing Date, with the same effect as though made as of the Closing Date;
- (e) if required by the provision of any Permitted Encumbrances or by any party to any Permitted Encumbrances, an individual assumption agreement in a form required by such Permitted Encumbrances;
- (f) the Balance Due on Closing; and
- (g) such further and other documentation reasonable and customary relative to the completion of a transaction of the nature of the transaction contemplated by this Agreement as the Vendor may reasonably require in a form and content satisfactory to the Vendor acting reasonably.

7.4 Closing Trust Conditions

The deliveries referred in Sections 7.2 and 7.3 shall be subject to such reasonable solicitor's trust conditions for the City of Calgary which are not inconsistent with this Agreement and as may be agreed upon between the Vendor's Solicitors and the Purchaser's Solicitors or, failing such agreement as determined by arbitration by a single arbitrator appointed by agreement of the Vendor and the Purchaser or by the Court of Queen's Bench of Alberta on application by either party. Notwithstanding any other provision hereof it is agreed that such trust conditions shall require that the entire cash Balance Due on Closing be paid to the Vendor's Solicitors in trust prior to the Purchaser proceeding to register the Approval and Vesting Order.

ARTICLE 8
MISCELLANEOUS

8.1 Tender of Monies

Any tender of documents and money hereunder may be made on the Vendor or the Vendor's Solicitors or on the Purchaser or the Purchaser's Solicitors, as the case may be, and money may be tendered by certified negotiable solicitor's trust cheque or a bank draft drawn on or issued by a Canadian chartered bank.

8.2 Non-Merger

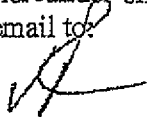
The covenants, representations, warranties and agreements herein contained on the part of the Purchaser and Vendor shall not merge in the Closing, but shall continue in full force and effect notwithstanding the delivery and registration of the Approval and Vesting Order and any such unfulfilled covenants or agreements at the time the Purchaser requests the transfer may be set out in the transfer to the Purchaser or by way of separate agreement, which the Purchaser covenants to sign if required by the Vendor.

8.3 Assignment

Subject to the Purchaser's right hereunder to appoint a buyer to take title to the Lands, this Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns, provided that neither party shall assign the benefit of this Agreement without the prior written consent of the other party.

8.4 Notices

Any notice, request, consent, demand, approval, acceptance, waiver or other document required or permitted to be given hereunder shall be in writing and shall be given by personal delivery thereof or by facsimile or email to:

In the case of the Purchaser: 

TVR Construction
4039 16th Street East,
Calgary AB

T2G 3R8

Attention: Vaughn Reid
Telephone No.: (403) 819 4766
Fax No.:

With copies to:



Attention:
Telephone No.:
Fax No.:



In the case of the Vendor:

FTI Consulting Canada Inc. Receiver of New Food Classics
TD Waterhouse Tower
79 Wellington Street West
Suite 2010, P.O. Box 104
Toronto, ON M5K 1G8

Attention: Jamie Engen
Telephone No.: 604.417 7375
Fax No.: 416.649.8101
Email: Jamie.Engen@FTIConsulting.com

With copies to:

Fasken Martineau DuMoulin LLP
333 Bay Street
Suite 2400
Toronto, ON M5H 2T6

Attention: Edmond Lamek
Telephone No.: 416.865.4506
Fax No.: 416.364.7813
Email: ELamek@Fasken.com

Any notice, if delivered in person, shall be deemed to have been validly and effectively given and received on the date of personal delivery. Any notice, if sent by facsimile or email transmission and received before 5:00 p.m. (Alberta time) on a Business Day shall be deemed to have been validly and effectively given and received on the date of transmission and otherwise shall be deemed to have been validly and effectively given and received on the next Business Day. By giving to the other party at least three (3) Business Days' notice thereof, either party may, at any time and from time to time, change its address for delivery or communication for purposes of this section.

8.5 Unenforceability of Covenants

If any term, covenant or condition of this Agreement or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and each term, covenant or condition of this Agreement shall be valid and enforced to the fullest extent permitted by law.

A handwritten signature in black ink, appearing to be the initials 'JK' or similar, written over the end of the paragraph.

8.6 Time of Essence

It is expressly understood that time shall be of the essence of this Agreement.

8.7 Notice of Agreement

The Purchaser hereby covenants and agrees that it will not register this Agreement, notice thereof or any caveat, caution, certificate of pending litigation or any other documents which may affect title to the Lands.

8.8 Governing Law

This Agreement shall be governed by and construed and enforced in accordance with the laws of the Province of Alberta and the laws of Canada applicable therein and shall enure to the benefit of and be binding upon the parties hereto and their respective successors or permitted assigns.

8.9 No Commissions

The Vendor shall be responsible for payment of all fees or commissions to Barclay Street Real Estate Ltd. that the Vendor has agreed in writing to pay to Barclay Street Real Estate Ltd. in connection with the Lands and/or the transactions contemplated by this Agreement. Each of the parties represents and warrants that it has not executed any documentation or taken any other step that would make the other party responsible for real estate commissions or fees. Each party hereto agrees that if any person or entity, other than Barclay Street Real Estate Ltd., makes a claim for brokerage commissions or finder's fees related to this Agreement or the sale of the Lands and such claim is made by, through or on account of any acts or alleged acts of said party or its representatives, said party will protect, indemnify, defend and hold the other party harmless from and against any and all loss, liability, cost, damage and expense (including reasonable legal fees) in connection therewith.

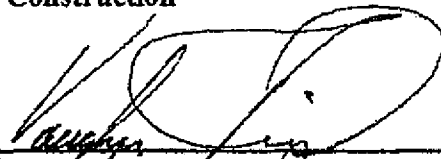
8.10 Counterparts

This Agreement may be executed in counterparts, each of which shall be deemed to be an original and all of which shall constitute one and the same agreement. Transmission by facsimile or other electronic format of an executed counterpart of this Agreement shall be deemed to constitute due and sufficient delivery of such counterpart.

IN WITNESS WHEREOF the parties have duly executed this Agreement as of the date first written above.



TVR Construction

By: 
Name: Vaughn Reid
Title: President

By: _____
Name:
Title:

I/We have authority to bind the Corporation

FTI Consulting Canada Inc. in its capacity as receiver of the property, assets and undertaking of NFC and not in its personal or corporate capacity

By: _____
Name:
Title:

SCHEDULE "A"
LEGAL DESCRIPTIONS OF THE LANDS

1. FIRST

PLAN CALGARY 5576HC

BLOCK Z

LOT ONE (1)

CONTAINING...

LOT ACRES MORE OR LESS

1 2.00

EXCEPTING THEREOUT ALL MINES AND MINERALS

SECOND

PLAN CALGARY 5576HC

BLOCK Z

LOT TWO (2)

CONTAINING...

LOT ACRES MORE OR LESS

2 0.94

EXCEPTING THEREOUT ALL MINES AND MINERALS

(the "Plan 5576HC Lands")


2. PLAN 3313JK

BLOCK A

EXCEPTING THEREOUT ALL MINES AND MINERALS

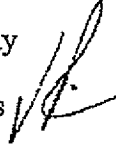
AREA: 0.275 HECTARES (0.68 ACRES) MORE OR LESS

(the "Plan 3313JK Lands")



SCHEDULE "B"
PERMITTED ENCUMBRANCES

- (A) General Permitted Encumbrances applicable to the Lands:
- (i) All exceptions, reservations and conditions to which the titles to the Lands are subject pursuant to the *Land Titles Act* (Alberta).
 - (ii) All caveats and instruments registered by or on behalf of the Purchaser.
- (B) Specific Permitted Encumbrances for each parcel of the Lands as outlined below:

<u>Registration Number</u>	<u>Date (D/M/Y)</u>	<u>Particulars</u>
<u>Plan 5576HC Lands:</u>		
771 147 064	20/10/1977	Zoning Regulations
011 173 508	21/06/2001	Notice of Security Interest Re: Fixtures In favour of - ABN AMRO Bank Canada
<u>Plan 3313JK Lands:</u>		
6184JG	25/10/1965	Utility Right of Way
6775JG	15/11/1965	Utility Right of Way
6777JG	15/11/1965	Utility Right of Way
2333JR	08/08/1966	Utility Right of Way
771 147 064	20/10/1977	Zoning Regulations 

SCHEDULE "C"
ENVIRONMENTAL ASSESSMENT REPORTS

1. Phase 1 Environmental Site Assessment dated April 21, 2002 performed by P. Machibroda Engineering Ltd.

2. Phase 2 Environmental Site Assessment dated July 2001 performed by ISM Integrated Site Management

3. Update Phase 1 Environmental Site Assessment dated January 17, 2012 performed by Golder Associates Ltd. *VR*

AMENDING AGREEMENT

Agreement made this 17th day of May, 2012.

BETWEEN: FTI Consulting Canada Inc, solely in its capacity as court-appointed receiver of the assets, undertakings and properties of NFC Acquisition GP Inc., NFC Acquisition L.P., NFC Acquisition Corp., and NFC Land Holdings Corp. and not in its personal capacity (herein called the "Vendor")

AND: TVR Construction (And Or Nominee)
(herein called the "Purchaser")

WHEREAS by a certain Agreement of Purchase and Sale dated March 16th, 2012 made between the Vendor and the Purchaser, amended by an Agreement dated March 29th, 2012, (collectively referenced as the "Agreement,") the Purchaser agrees to purchase certain real property located at Plan: 5576HC and Plan 3313JK of the province of Alberta. The Vendor and Purchaser hereby agree to the following:


1. To amend the Agreement by adding that the Purchaser hereby identifies the nominated purchaser as Recon Metal Ltd.

It is declared and agreed that all covenants, clauses, conditions, powers, matters and things whatsoever contained in or implied from the said Agreement shall continue in full force and apply, except as to those which are amended by the terms as set forth herein and the said Agreement as amended hereunder is hereby ratified and confirmed.

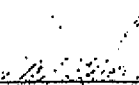
This Agreement shall enure to the benefit of the heirs, executors, administrators, successors and assigns of the parties hereto and all covenants shall be deemed to be joint and several.

IN WITNESS HEREOF the parties hereto have executed this Agreement as of the first date above written.

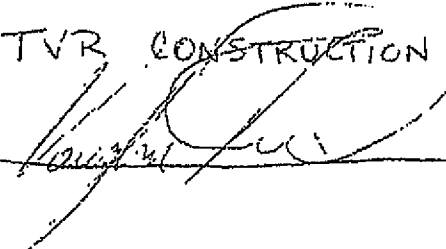
FTI CONSULTING CANADA INC.



RECON METAL LTD.



TVR CONSTRUCTION



WARRANT OF CONDITIONS AND AMENDING AGREEMENT

Agreement made this 25th day of May, 2012

BETWEEN FTI Consulting Canada Inc. solely in its capacity as court-appointed receiver of the assets, undertakings and properties of NFC Acquisition GP Inc., NFC Acquisition LP, NFC Acquisition Corp., and NFC i and Holdings Corp. and not in its personal capacity (herein called the "Vendor")

AND: Recon Metal Ltd. (herein called the "Purchaser")

WHEREAS by a certain Agreement of Purchase and Sale dated March 16th, 2012 made between the Vendor and the Purchaser, amended by an Amending Agreement dated March 29th, 2012, and amended by a second Amending Agreement dated May 17th, 2012 (collectively referenced as the "Agreement") the Purchaser agrees to purchase certain real property located at Plan: 55701C and Plan 3313JK of the province of Alberta.

NOW THIS AGREEMENT WITNESSETH that in consideration of the covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each of the parties herein the parties do covenant and agree as follows:

- 1. The Purchaser hereby waives all conditions as outlined in Clause 5.2. (a) (i), (ii), (iii) and (iv) of the Agreement.
- 2. To amend Clause 2.1 (Purchase Price) of the Agreement to read as follows: "The purchase price for the Lands subject to adjustments as provided herein shall be the sum of [REDACTED]"

3. See below
 It is declared and agreed that all covenants, clauses, conditions, powers, matters and things whatsoever contained in or implied from the said Agreement shall continue in full force and apply, except as to those which are amended by the terms as set forth herein and the said Agreement as amended hereunder is hereby ratified and confirmed. This Agreement shall endure to the benefit of the heirs, executor, administrators, successors and assigns of the parties hereto and all covenants shall be deemed to be joint and several.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the first date above written

FTI CONSULTING CANADA INC.

RECON METAL LTD.

3. To amend clause 4.2 of the Agreement, by inserting subsection (d) to read as follows: "The Vendor hereby agrees to evacuate all ammonia from the lands prior to the Closing Date."

TVR CONSTRUCTION
[Signature]

WAIVER OF CONDITIONS AND AMENDING AGREEMENT

Agreement made this 25th day of May, 2012.

BETWEEN: FTI Consulting Canada Inc. solely in its capacity as court-appointed receiver of the assets, undertakings and properties of NFC Acquisition GP Inc., NFC Acquisition L.P, NFC Acquisition Corp., and NFC Land Holdings Corp. and not in its personal capacity (herein called the "Vendor")

AND: Recon Metal Ltd. (herein called the "Purchaser")

WHEREAS by a certain Agreement of Purchase and Sale dated March 16th, 2012 made between the Vendor and the Purchaser, amended by an Amending Agreement dated March 29th, 2012, and amended by a second Amending Agreement dated May 17th, 2012 (collectively referenced as the "Agreement,") the Purchaser agrees to purchase certain real property located at Plan: 5576HC and Plan 3313JK of the province of Alberta.

NOW THIS AGREEMENT WITNESSETH that in consideration of the covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each of the parties hereto the parties do covenant and agree as follows:

- 1. The Purchaser hereby waives all conditions as outlined in Clause 5.2, (a), (i), (ii), (iii) and (iv) of the Agreement,
2. To amend Clause 2.1 (Purchase Price) of the Agreement to read as follows: "The purchase price for the Lands, subject to adjustments as provided herein, shall be the sum of [redacted] [table with V and P columns]

It is declared and agreed that all covenants, clauses, conditions, powers, matters and things whatsoever contained in or implied from the said Agreement shall continue in full force and apply, except as to those which are amended by the terms as set forth herein and the said Agreement as amended hereunder is hereby ratified and confirmed.

This Agreement shall enure to the benefit of the heirs, executors, administrators, successors and assigns of the parties hereto and all covenants shall be deemed to be joint and several.

IN WITNESS HEREOF the parties hereto have executed this Agreement as of the first date above written.

This Agreement shall be open for acceptance in writing by the Purchaser until four (4:00) o'clock p.m. MST on the 8th day of June, 2012, by executing and returning a copy of this Agreement to the Vendor.

Table with 2 columns labeled V and P.

RECON METAL LTD.

[Signature] JOHN THOMPSON

Tab 3

Court File No. [REDACTED] CV-12-9616-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
[COMMERCIAL LIST]

THE HONOURABLE) [REDACTED] TUESDAY THE [REDACTED] 10TH DAY
JUSTICE [REDACTED]) OF [REDACTED] JULY, 20 [REDACTED] 2012

BETWEEN:-

~~PLAINTIFF~~

Plaintiff

BANK OF MONTREAL

Applicant

- and -

~~DEFENDANT~~

Defendant

NEC ACQUISITION GP INC., NEC ACQUISITION CORP.,
NEC ACQUISITION L.P., NEW FOOD CLASSICS and
NECLAND HOLDINGS CORP.

Respondents

APPROVAL AND VESTING ORDER

THIS MOTION, made by [RECEIVER'S NAME] FTI Consulting Canada Inc., in its capacity as the Court-appointed receiver (the "Receiver") of the ~~undertaking~~ undertakings, property and assets of [DEBTOR] (the "Debtor" NEC ACQUISITION GP INC., NEC ACQUISITION CORP., NEC ACQUISITION L.P., NEW FOOD CLASSICS AND NEC LAND HOLDINGS CORP. (collectively, the "Debtors")), for an order approving the sale-transaction (the

~~“Transaction”~~) contemplated by an agreement of purchase and sale (the ~~“Sale Agreement”~~) between the Receiver and ~~[NAME OF PURCHASER]~~ (TVR Construction (“TVR” or the “Purchaser”) dated ~~[DATE]~~ and appended to the Report March 16, 2012, as amended by written amending agreements dated March 29, 2012, May 17, 2012 and May 25, 2012 (collectively, the “Sale Agreement”), each appended to the third report of the Receiver dated ~~[DATE]~~ July 3, 2012 (the ~~“Third Report”~~), and vesting in the Purchaser ~~the Debtor’s~~ ’s nominee, Recon Metal Ltd. (the “Buyer”), the Debtors’ right, title and interest in and to the assets ~~described~~ “Lands” as defined in the Sale Agreement (the “Purchased Assets Lands”), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Third Report and on hearing the submissions of counsel for the Receiver, ~~[NAMES OF OTHER PARTIES APPEARING]~~ Bank of Montreal [and TVR, no one appearing for any other person on the service list], although properly served as appears from the affidavit of ~~[NAME]~~ service of Caitlin Fell sworn ~~[DATE]~~ [REDACTED], 2012, and filed[†]:

1. THIS COURT ORDERS that the Third Report and the Receiver’s activities as set out therein are hereby approved.
2. THIS COURT ORDERS that the time for service of the notice of motion and the motion record herein be and is hereby abridged and the service thereof validated, so that the motion is properly returnable today.

[†] ~~This model order assumes that the time for service does not need to be abridged. The motion seeking a vesting order should be served on all persons having an economic interest in the Purchased Assets, unless circumstances warrant a different approach. Counsel should consider attaching the affidavit of service to this Order.~~

3. THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved;²—and the execution of the Sale Agreement by the Receiver³ is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction. The Receiver and for the conveyance of the Purchased Assets to the Purchaser, are hereby authorized to enter into non-material amendments to the Sale Agreement by mutual agreement in writing without further order of the Court.

4. ~~2.~~ THIS COURT ORDERS AND DECLARES that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as **Schedule "A"** hereto (the "**Receiver's Certificate**"), all of the ~~Debtor's~~Debtors' right, title and interest in and to the ~~Purchased Assets described in the Sale Agreement [and listed on Schedule B hereto]~~⁴ Lands shall vest absolutely in the ~~Purchaser~~Buyer, free and clear of and from any and all encumbrances, security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected,

² ~~In some cases, notably where this Order may be relied upon for proceedings in the United States, a finding that the Transaction is commercially reasonable and in the best interests of the Debtor and its stakeholders may be necessary. Evidence should be filed to support such a finding, which finding may then be included in the Court's endorsement.~~

³ ~~In some cases, the Debtor will be the vendor under the Sale Agreement, or otherwise actively involved in the Transaction. In some cases, care should be taken to ensure that this Order authorizes either or both of the Debtor and the Receiver to execute and deliver documents, and take other steps.~~

⁴ ~~To allow this Order to be free standing (and not require reference to the Court record and/or the Sale Agreement), it may be preferable that the Purchased Assets be specifically described in a Schedule.~~

registered or filed and whether secured, unsecured or otherwise (collectively, the "Claims"⁵) including, without limiting the generality of the foregoing: (i) any Court ordered encumbrances or charges created by the Order of the Honourable Justice [NAME] dated [DATE] established in Court File No. CV12-9554-00CL or in this proceeding; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario, R.S.A. 2000, c. P-7 (the "PPSA")) or any other personal property registry system; and (iii) those Claims listed on Schedule C hereto (all of which are collectively referred to as the "Encumbrances", which term "B" hereto, provided that the Claims shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule D) and, for "C" hereto (the "Permitted Encumbrances") and the Lands shall remain subject to the Permitted Encumbrances. For greater certainty, this Court orders that all of the Encumbrances Claims affecting or relating to the Purchased Assets Lands, other than the Permitted Encumbrances, are hereby expunged and discharged as against the Purchased Assets Lands.

5. THIS COURT ORDERS AND DIRECTS the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

6. 3. THIS COURT ORDERS that upon the registration in the Land Registry Office for the [Registry Division of {LOCATION}] of a Transfer/Deed of Land in the form prescribed by the Land Registration Reform Act duly executed by the Receiver][Land Titles Division of {LOCATION}] of an Application for Vesting Order in the form prescribed by the Land Titles Act

⁵The "Claims" being vested out may, in some cases, include ownership claims, where ownership is disputed and the dispute is brought to the attention of the Court. Such ownership claims would, in that case, still continue as against the net proceeds from the sale of the claimed asset. Similarly, other rights, titles or interests could also be vested out, if the Court is advised what rights are being affected, and the appropriate persons are served. It is the Subcommittee's view that a non-specific vesting out of "rights, titles and interests" is vague and therefore undesirable.

and/or the ~~Land Registration Reform Act~~⁶, the Land THIS COURT ORDERS AND DIRECTS that upon the filing of the Receiver's Certificate together with a certified copy of this Order with the Registrar of Land Titles of Alberta (the "Registrar") and payment of any applicable registration fees, the Registrar shall and is hereby directed to enter the Purchaser as the owner of the subject real property (i) cancel the existing certificates of title to the Lands identified in Schedule B hereto (the "Real Property") in fee simple, and is hereby directed to "D" hereto; (ii) issue new certificates of title to the Lands in the name of Recon Metal Ltd.; and (iii) delete and expunge from the certificate of title to the Real Property Lands all of the Claims listed in Schedule C "B" hereto.

7. This Order shall be registered by the Registrar notwithstanding the requirements of section 191(1) of the Land Titles Act, R.S.A. 2000, c. L-7.

8. 4. THIS COURT ORDERS that for For the purposes of determining the nature and priority of Claims, the net proceeds⁷ from the sale of the Purchased Assets Lands, net of the commissions payable to Barclay Street Real Estate Ltd., (the "Net Proceeds") shall stand in the place and stead of the Purchased Assets Lands, and that from and after the delivery of the Receiver's Closing Certificate, all Claims and Encumbrances expunged and discharged as against the Lands shall attach to the net proceeds from the sale of the Purchased Assets Net Proceeds with the same priority as they had with respect to the Purchased Assets immediately prior to the sale⁸;

⁶ Elect the language appropriate to the land registry system (Registry vs. Land Titles).

⁷ The Report should identify the disposition costs and any other costs which should be paid from the gross sale proceeds, to arrive at "net proceeds".

⁸ This provision crystallizes the date as of which the Claims will be determined. If a sale occurs early in the insolvency process, or potentially secured claimants may not have had the time or the ability to register or perfect proper claims prior to the sale, this provision may not be appropriate, and should be amended to remove this crystallization concept.

~~as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control~~Lands immediately prior to the sale.

~~5. THIS COURT ORDERS AND DIRECTS the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.~~

~~6. THIS COURT ORDERS that, pursuant to clause 7(3)(e) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Company's records pertaining to the Debtor's past and current employees, including personal information of those employees listed on Schedule "B-3" to the Sale Agreement. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtor.~~

9. The Transaction may be completed without compliance with: (a) the provisions of Part V of the PPSA; (b) the relevant provisions of the *Civil Enforcement Act* (Alberta) R.S.A. 2000, c. C.-15; and (c) section 244 of the *Bankruptcy and Insolvency Act* (Canada) R.S.C 1985 c. B-3 (the "BIA").

10. 7-THIS COURT ORDERS that, notwithstanding:

(a) the pendency of these proceedings;

(b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada)BIA in respect of the DebtorDebtors and any bankruptcy order issued pursuant to any such applications; and

(c) any assignment in bankruptcy made in respect of the ~~Debtor~~Debtors;

the vesting of the ~~Purchased Assets~~Lands in the ~~Purchaser~~Buyer pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the ~~Debtor~~Debtors and shall not be void or voidable by creditors of the ~~Debtor~~Debtors, nor shall it constitute nor be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the ~~Bankruptcy and Insolvency Act~~ (Canada)BIA or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

8. ~~THIS COURT ORDERS AND DECLARES~~ that the Transaction is exempt from the application of the ~~Bulk Sales Act~~ (Ontario).

11. ~~9. THIS COURT HEREBY REQUESTS~~This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this ~~Order~~order and to assist the Receiver and its agents in carrying out the terms of this ~~Order~~order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this ~~Order~~order or to assist the Receiver and its agents in carrying out the terms of this ~~Order~~order.

Schedule A – Form of Receiver’s Certificate

Court File No. CV-12-9616-00CL

ONTARIO

SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

BETWEEN:-

PLAINTIFF

Plaintiff

BANK OF MONTREAL

Applicant

- and -

DEFENDANT

Defendant

NFC ACQUISITION GP INC., NFC ACQUISITION CORP.,
NFC ACQUISITION L.P., NEW FOOD CLASSICS and
NFC LAND HOLDINGS CORP.

Respondent

RECEIVER’S CERTIFICATE

RECITALS

1. A. Pursuant to an Order of the Honourable [NAME OF JUDGE] of the Ontario Superior Court of Justice (the “Court”) dated [DATE OF ORDER], [NAME OF RECEIVER] February 22, 2012 (the “Appointment Order”), FTL Consulting Canada Inc. was appointed as the receiver (the “Receiver”) of the undertaking, property and assets of [DEBTOR] (the “Debtor” NFC Acquisition GP Inc., NFC Acquisition L.P., NFC Acquisition Corp., New Food Classics and NFC Land Holdings Corp. (the “Debtors”).



2. B. Pursuant to an Order of the Court dated [DATE], July 10, 2012, the Court approved the agreement of purchase and sale made as of [DATE OF AGREEMENT] March 16, 2012, as amended by amending agreements dated March 29, 2012, May 17, 2012 and May 25, 2012 respectively (the “Sale Agreement”) between the Receiver [Debtor] and [NAME OF PURCHASER] and TVR Construction (the “Purchaser”) and provided for the vesting in favour

of the Purchaser's nominee, Recon Metal Ltd. (the "Buyer") of the Debtor's right, title and interest in and to the ~~Purchased Assets~~ Lands, which vesting is to be effective with respect to the ~~Purchased Assets~~ Lands upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the ~~Purchased Assets~~ Lands; (ii) that the conditions to Closing as set out in section ~~5~~ Article 5 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

3. ~~C.~~ Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

- (a) ~~1.~~ The Purchaser has paid and the Receiver has received the Purchase Price for the ~~Purchased Assets~~ Lands payable on the Closing Date pursuant to the Sale Agreement;
- (b) ~~2.~~ The conditions to Closing as set out in section ~~6~~ Article 6 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and
- (c) ~~(a)~~ The Transaction has been completed to the satisfaction of the Receiver.

~~3.~~ This Certificate was delivered by the Receiver at  [TIME] on  [DATE].

~~[NAME RECEIVER],~~ FTL Consulting Canada Inc., solely in its capacity as ~~Receiver~~ court-appointed receiver of the ~~undertaking, property and assets of~~ assets, undertakings and properties of NFC Acquisition GP Inc., NFC Acquisition L.P., NFC Acquisition Corp., New Food Classics and NFC Land Holdings Corp., and not in its personal or corporate capacity

By: _____
Name:
Title:

SCHEDULE "B"
CLAIMS TO BE DELETED AND EXPUNGED
FROM TITLE TO REAL PROPERTY

Specific Encumbrances

1. Respecting Plan 5576HC, Block Z, Lot 1, excepting thereout all mines and minerals:
 - (a) 061 097 877 Mortgage
 - (b) 061 097 879 Mortgage

2. Respecting Plan 5576HC, Block Z, Lot 2, excepting thereout all mines and minerals:
 - (a) 061 097 877 Mortgage
 - (b) 061 097 879 Mortgage

3. Respecting Plan 3313JK, Block A, excepting thereout all mines and minerals:
 - (a) 061 101 404 Mortgage
 - (b) 061 101 405 Mortgage

~~Schedule B—Purchased Assets~~ **SCHEDULE “C”**
PERMITTED ENCUMBRANCES

General Permitted Encumbrances

- (a) All exceptions, reservations and conditions to which the titles to the Lands are subject pursuant to the *Land Titles Act* (Alberta).
- (b) All caveats and instruments registered by or on behalf of the Purchaser.

Specific Permitted Encumbrances

1. Respecting Plan 5576HC, Block Z, Lot 1, excepting thereout all mines and minerals:
- (a) 771 147 064 Zoning Regulations
- (b) 011 173 508 Notice of Security Interest re: Fixtures
2. Respecting Plan 5576HC, Block Z, Lot 2, excepting thereout all mines and minerals:
- (a) 771 147 064 Zoning Regulations
- (b) 011 173 508 Notice of Security Interest re: Fixtures
3. Respecting Plan 3313JK, Block A, excepting thereout all mines and minerals:
- (a) 6184JG Caveat: Utility Right of Way
- (b) 6775JG Caveat: Utility Right of Way
- (c) 6777JG Caveat: Utility Right of Way
- (d) 2333JR Caveat: Utility Right of Way
- (e) 771 147 064 Zoning Regulations

~~Schedule C — Claims to be deleted and expunged from title to Real Property~~ SCHEDULE
"D"

1. FIRST

PLAN CALGARY 5576HC

BLOCK Z

LOT ONE (1)

CONTAINING...

LOT _____ ACRES MORE OR LESS

1 _____ 2.00

EXCEPTING THEREOUT ALL MINES AND MINERALS

SECOND

PLAN CALGARY 5576HC

BLOCK Z

LOT TWO (2)

CONTAINING...

LOT _____ ACRES MORE OR LESS

2 _____ 0.94

EXCEPTING THEREOUT ALL MINES AND MINERALS

2. PLAN 3313JK

BLOCK A

EXCEPTING THEREOUT ALL MINES AND MINERALS

AREA: 0.275 HECTARES (0.68 ACRES) MORE OR LESS

BANK OF MONTREAL

Revised May 11, 2010, 14-

and NFC ACQUISITION GP INC., NFC ACQUISITION CORP.,
NFC ACQUISITION L.P., NEW FOOD CLASSICS and
NFC LAND HOLDINGS CORP.

Applicant

Respondents

Court File No. CV-12-9616-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
[COMMERCIAL LIST]

Proceeding commenced at TORONTO

APPROVAL AND VESTING ORDER

FASKEN MARTINEAU DUMOULIN LLP

Barristers and Solicitors
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CAITLIN E. FELL

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Solicitors for FTI Consulting Canada Inc., Receiver of
NFC ACQUISITION GP INC., NFC ACQUISITION
CORP. AND NFC LAND HOLDINGS CORP. and not
in its personal or corporate capacity

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Legend:	
<u>Insertion</u>	
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	Count
Insertions	196
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Moved from	2
Moved to	2
Style change	0
Format changed	0
Total changes	340

BANK OF MONTREAL, Applicant

v.

**NFC ACQUISITION GP INC., NFC ACQUISITION L.P., NFC ACQUISITION CORP.,
NEW FOOD CLASSICS AND NFC LAND HOLDINGS CORP.**, Respondents

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

Proceedings commenced in Toronto

MOTION RECORD

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NFC ACQUISITION GP INC., NFC ACQUISITION CORP. NFC ACQUISITION
L.P., NEW FOOD CLASSICS AND NFC LAND HOLDINGS CORP.