

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

SIXTH REPORT TO THE COURT

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

BACKGROUND

1. On January 17, 2012, 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 Entities**”) filed for and obtained protection under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”). Pursuant an Order of this Honourable Court (the “**Court**”) dated January 17, 2012 (the “**Initial Order**”), FTI Consulting Canada Inc. was appointed as monitor (“**FTI**” or the “**Monitor**”) and a stay of proceedings was granted against the NFC Entities until February 16, 2012. The Initial Order also approved and authorized a DIP credit facility by Bank of Montreal (“**BMO**”) of up to \$10,500,000 (the “**DIP Facility**”). The CCAA stay of proceedings was thereafter extended until March 30, 2012 when it expired without extension. The CCAA proceedings were terminated and FTI was discharged as Monitor by Order dated April 9, 2013.

2. As a result of an unsuccessful going concern sale process in the CCAA proceedings, on February 22, 2012, the Court granted BMO leave in the CCAA proceedings to bring an application for the appointment of FTI as receiver of the property, assets and undertaking of the NFC Entities and granted an Order in these proceedings pursuant to section 243(1) of the *Bankruptcy and Insolvency Act* (the “**BIA**”) and section 101 of the *Courts of Justice Act*, appointing FTI as receiver of the assets, property and undertakings of the NFC Entities (in that capacity the “**Receiver**”) (the “**Receivership Order**”, a copy of which is attached hereto as **Appendix “A”**).

PURPOSE OF THIS REPORT

3. The purpose of this Sixth report of the Receiver (the “**Sixth Report**”) is to seek this Honourable Court’s advice and direction with respect to the relative priorities as between MWS Solutions Inc. (“**MWS**”), a construction lien claimant, and the NFC Entities senior secured lenders, BMO and TD Capital Mezzanine Partners Management Ltd. (“**TD**”), in respect of the net proceeds of the sale by the Receiver of the land and buildings formerly owned by NFC Acquisition Corp., having a municipal address of 15 Seapark Drive, St. Catharines, Ontario (the “**St. Catharines Property**”), which is the subject of a *Construction Lien Act* Statement of Claim dated August 4, 2011 and filed by MWS.

DEFINED TERMS

4. Capitalized terms not otherwise defined herein have the meanings set out in the affidavit Brian Cram sworn January 16, 2012 (the “**Cram Affidavit**”) filed in the CCAA proceedings, a copy of which, without exhibits, is attached hereto as **Appendix “B”**, the Receivership Order, a copy of which is attached hereto as **Appendix “A”** and the Fifth Report of the Receiver, a copy of which, without appendices, is attached hereto as **Appendix “C”**.

THE ST. CATHARINES PROPERTY

5. As more particularly described in the Cram Affidavit, until early 2011, NFC carried on its food processing operations from two owned facilities located in Calgary, Alberta, and a third leased processing facility located in Saskatoon, Saskatchewan.

6. On or about September 16, 2010, the St. Catharines Property was acquired by NFC Acquisition Corp. pursuant to a purchase and sale agreement (the “**Pinty’s Sale Agreement**”) dated August 18, 2010 with Pinty’s Delicious Foods (“**Pinty’s**”) for stated purchase consideration of \$2,000,000. In or about March of 2011, NFC relocated its Calgary food processing operations to the St. Catharines Property and ceased its processing operations in Calgary. At or about the same time, NFC also moved its head office operations from Calgary to leased premises in Burlington, Ontario.

INDEBTEDNESS OF THE NFC ENTITIES

7. As described in the Cram Affidavit, BMO and TD advanced certain credit facilities to the NFC Entities which were secured by the property and assets of the NFC Entities.

8. As set out in the title search for the St. Catharines Property, a copy of which, current to February 11, 2013 is attached hereto as **Appendix “D”**, BMO registered a charge against the St. Catharines Property on February 3, 2011 as charge no NR261208 (the “**BMO Mortgage**”), and TD registered a charge against the St. Catharines Property on February 3, 2011 as charge no NR271942 (the “**TD Mortgage**”).

9. Shortly after commencement of the NFC Entities’ CCAA proceedings, a review of the security held by BMO was conducted by Monitor’s counsel at the time, Fasken Martineau DuMoulin LLP (“**Faskens**”) in respect of the real and personal property of the NFC Entities in

the Provinces of Ontario and Alberta, and by McDougall Gauley LLP (“**McDougall**”) in respect of the property of the NFC Entities in Province of Saskatchewan.

10. The opinions of Faskens and McDougall state that (subject to the assumptions and qualifications contained therein, including the qualification that in certain circumstances, construction liens can take priority over pre-existing charges/mortgages) BMO’s personal and real property security is valid and enforceable as against a trustee in bankruptcy of the NFC Entities over the property of the NFC Entities located in the Provinces of Ontario, Saskatchewan and Alberta.

11. Based upon the anticipated transaction values involved in the NFC Entities’ CCAA going concern Sales Process, the Monitor considered it unlikely that BMO, as first ranking secured lender to NFC, would recover amounts owed to it in full from the realization of the assets of the NFC Entities. As a result, the expenses of a legal review of the security held by TD was deferred until it is determined that there may be proceeds of realization available for distribution to TD after payment of BMO in full.

12. As set out in paragraphs 54 *et seq.* of the Cram Affidavit, as at the date of the NFC Entities’ CCAA Application, the NFC Entities were indebted to BMO in the principal amount of \$16,413,073 and were indebted to TD in the principal amount of \$12,100,000.

13. As set out in the Affidavit of Junior L. M. Del Brocco (a copy of which, without exhibits, is attached hereto as **Appendix “E”**) filed in support of the BMO Receivership Application, as at February 20, 2012, the NFC Entities were indebted to BMO in the amount of approximately \$24,500,000, including amounts drawn under the DIP Facility.

14. By December of 2012, the Receiver held funds in the amount of \$10,900,000 as a result of realizations by the Receiver of the assets of the NFC Entities. Pursuant to a Court Order dated December 14, 2012, the Receiver was authorized to make an interim distribution to BMO in the amount of (i) \$6,000,000 plus; (b) the amount, if any, by which the Director's Charge (in the amount of \$3,000,000) exceeded the aggregate face amount of all Director's Charge Claims filed with the Receiver on or before the Court ordered claims bar date for all Directors' Charge Claims. To date, the Receiver has made interim distributions to BMO in the amount of \$8,082,546.00.

REALIZATIONS BY THE RECEIVER

15. Immediately prior to the Receivership Order, the NFC Entities ceased carrying on business and closed their doors. Following its appointment, the Receiver conducted a sales process for substantially all of the NFC Entities' manufacturing equipment and listed the two Calgary properties and the St Catharines Property for sale. The Receiver also commenced realization efforts on NFC's frozen finished product inventory and accounts receivable, which were substantially disrupted by a Health Canada/Canadian Food Inspection Agency health hazard advisory in respect of substantially all of NFC's ground beef products in mid-March of 2012. Since that time, the Receiver has been pursuing a claim under NFC's contaminated products insurance policy. The Receiver sold one of the Calgary Properties in January of 2012 and is currently working with a prospective buyer and the adjoining landowner to conclude a transaction for the second Calgary property.

16. As described in the Receiver's Fifth Report (**Appendix "C"** hereto) on or about December 21, 2012, the Receiver and Canafriac Inc. ("**Canafriac**") executed an agreement of purchase and sale in respect of the St. Catharines Property, subject to, *inter alia*, approval by the

Court (the “**Canafric Agreement**”). On February 21, 2013, the Court made an order, (the “**St. Catharines Vesting Order**”, a copy of which is attached hereto as **Appendix “F”**) (i) approving the transaction contemplated by the Canafric Agreement; and (ii) effective upon the delivery of a receiver’s certificate confirming satisfaction of the conditions contained in the Canafric Agreement, vesting all of the NFC Entities’ right, title and interest in and to the St. Catharines Property, in Canafric, free and clear of and from any and all Claims (as defined therein), including *inter alia*, security interests and mortgages, including the BMO Mortgage, the TD Mortgage and the MWS Construction Lien (as defined herein).

17. Pursuant to paragraph 7 of the St. Catharines Vesting Order, the proceeds from disposition of the St. Catharines Property, net of the commission payable to Colliers International Inc. (the “**Net Proceeds**”), stand in the place and stead of the St. Catharines Property and any Claims, including the BMO Mortgage, the TD Mortgage and the MWS Construction Lien, attach as against the Net Proceeds with the same priority as the Claims had, with respect to the St. Catharines Property, immediately prior to the sale. The Receiver continues to hold the Net Proceeds in the amount of \$1,529,565.50 pending direction from this Honourable Court.

THE MWS CLAIM

18. During the CCAA proceedings, the Monitor became aware of a statement of claim (the “**Statement of Claim**”), attached hereto as **Appendix ”G”**, filed by MWS as plaintiff and the NFC Entities, BMO and TD Capital Mezzanine Partners Management Ltd., as defendants (collectively, the “**Defendants**”) bearing court file no. 53126/11. Pursuant to the Statement of Claim, MWS claimed, *inter alia*, (i) damages jointly and severally against the Defendants or any one of them in the amount of \$586,907.39 pursuant to the provisions of the

Construction Lien Act, R.S.O. 1990, c.C3, as amended; (ii) a declaration that MWS is entitled to a lien against all of the estate, title and interest of the Defendants or any one of them in the St. Catharines Property, such property being subject to a construction lien registered against the property bearing registration number NR271942 on June 24, 2011 (“**Construction Lien**”); and (iii) that the MWS claim has full priority over the Mortgages granted by the NFC Entities or in the alternative, that the Construction Lien has priority over the Mortgages to the extent of any deficiency in the holdback required to be retained by the Defendants pursuant to the Act or in the further alternative, that the Construction Lien has priority over the Mortgages to the extent that any portion advanced by BMO or TD exceeded the actual value of the St. Catharines Property (the “**Construction Lien Action**”).

19. On February 16, 2012, at the request of the Receiver and MWS, Justice Newbould issued an endorsement, a copy of which is attached hereto as **Appendix “H”**, (i) confirming that the Construction Lien Action is stayed; (ii) ordering that the NFC Entities were not required to file a defence at such time; and (iii) ordering that no steps be taken by the Registrar in St. Catharines to dismiss the MWS Construction Lien.

20. In July of 2013, in order to avoid any concern by MWS that the Construction Lien Action might be dismissed as a result of non-compliance with the applicable litigation procedures under the *Construction Lien Act*, counsel to the Receiver, Mr. Edmond Lamek of Borden Ladner Gervais LLP provided the Receiver’s written consent to the limited lifting of the stay of proceedings contained in the Receivership Order to enable MWS to (only) take such steps as are necessary to set the Construction Lien Action down for trial. A copy of Mr. Lamek’s letter is attached hereto as **Appendix “I”**.

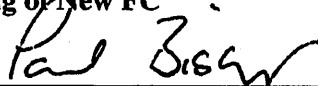
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21. Counsel to the Receiver, counsel to MWS and counsel to BMO have worked together to set a schedule for the determination of the limited issue of the relative priority of the MWS Construction Lien and the BMO and TD Mortgages within the context of these Receivership proceedings. Depending on the outcome of the motion, issues relating to the merits of the Construction Lien Action as between MWS and BMO/TD will be determined within the Construction Lien Action and not in these proceedings before the Commercial List.

22. In that regard, the Receiver seeks the advice and direction of this Honourable Court as to the relative priorities as between MWS as construction lien claimant and BMO and TD as secured lenders to the NFC Entities in respect of the Net Proceeds of the St. Catharines Property being held by the Receiver.

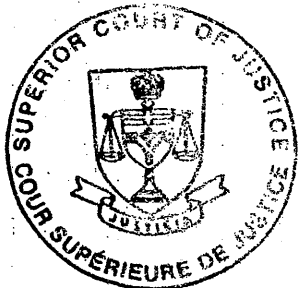
All of which is respectfully submitted this 17th day of October, 2013.

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



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

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.fticonsulting.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.

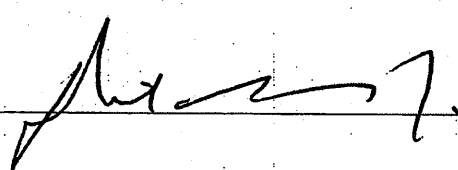
30. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtors.

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.



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

FEB 22 2012

MB

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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**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 GP INC., NFC ACQUISITION CORP. AND
NFC LAND HOLDINGS CORP.**

**AFFIDAVIT OF BRIAN CRAM
(sworn January 16, 2012)**

I, Brian Cram, of the City of London, in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am the President and Chief Executive Officer of New Food Classics ("NFC" or the "Company"). I have been employed by the Company since September, 2010, and have been employed in the food processing industry for 20 years. I am familiar with the day-to-day operations, business affairs, books and records of the Company and NFC Acquisition L.P. (together, the "Partnerships") and NFC Acquisition GP Inc., NFC Acquisition Corp. and NFC Land Holdings Corp. (collectively, the "Applicants", and together with the Partnerships, the "NFC Entities"). As such, I have personal knowledge of the matters to which I depose in this affidavit. Where I do not possess such personal knowledge, I have stated the source of my information and, in all such cases, do verily believe it to be true.

I. RELIEF SOUGHT

2. This Affidavit is sworn in support of an application of the Applicants for certain relief under the *Companies' Creditors Arrangement Act* (the "CCAA"), including, the granting of a

stay of proceedings by this Honourable Court to facilitate the NFC Entities' restructuring and implementation of a sale process with respect to their property and business.

3. The NFC Entities will also be seeking this Court's appointment of FTI Consulting Canada Inc. ("FTI") as monitor in the CCAA proceedings.

4. These measures are required, as set out in more detail herein, due to the current financial situation of the NFC Entities.

5. The NFC Entities believe that commencing proceedings under the CCAA will provide them with the stability they require to restructure their business and implement a sale process with respect to their property and business, all with a view to preserving value and maximizing recoveries for the NFC Entities' stakeholders and providing for the continuation of the business as a going concern.

II. OVERVIEW

6. NFC has a deep and rich history dating back to 1967. The Company is one of the most innovative Canadian food processing companies servicing major national retail and foodservice sales channels. NFC is a Canadian leader in private label value-added ground and formed meats with an estimated 40% market share of the frozen burgers sold in grocery stores. The Company has been a driving force behind the rapid growth of the private label frozen burger category and its focus on innovation and research and development has allowed it to consistently develop leading edge custom products. NFC currently serves a customer base of over 100 customers and enjoys excellent, long-standing relationships with industry leading customers.

7. In recent years, NFC has faced a deterioration in its financial performance and mounting losses. As discussed in greater detail below, it has been a challenge for NFC to adjust wholesale pricing to cover rapid increases in input costs attributable to meat protein commodity markets sitting at all-time highs, supply disruptions caused by a shortfall in North American cattle supplies and high oil prices impacting packaging and freight costs. The start-up costs to bring its St. Catharines, Ontario, manufacturing facility on-line, coupled with the expenses involved in closing its Calgary manufacturing facilities, were also significant and a substantial drain on NFC's cash position. As a result, the NFC Entities have been unable to meet various financial

and other covenants set out in its secured lending agreement and lack the liquidity needed to meet their ongoing payment obligations.

8. The NFC Entities have been unable to successfully restructure their operations and raise capital outside of formal insolvency proceedings and are now insolvent and unable to meet their liabilities as they become due. Without the protection of the CCAA, a shut-down of operations is inevitable, which would be detrimental to the NFC Entities' stakeholders, including their lenders, employees, suppliers and customers. CCAA protection will allow the NFC Entities to maintain operations while giving them the necessary time to facilitate a restructuring and the implementation of a sale process with respect to their property and business.

9. The NFC Entities' principal objective is to sell their assets and operations on the most favourable terms possible under the circumstances and to keep the business intact as a going concern to the greatest extent possible. To accomplish these objectives, the NFC Entities have proposed a sale process, as more fully described below. To preserve the value of the business through the sale process, the NFC Entities intend to balance: (i) the need to maintain a "business as usual" footing by minimizing any adverse impact of its restructuring on operations; and (ii) exercising operational conservatism during the sale process, including the avoidance of unnecessary cash outlays. For the reasons described herein, I believe that the prospect for achieving these objectives for the benefit of creditors and other stakeholders will be substantially enhanced and indeed, are only possible if this Court grants the relief requested.

III. HISTORY AND CORPORATE ORGANIZATION

(a) History

10. First headquartered in Calgary, Alberta, the Company began in 1967 as Centennial Packers ("Centennial") and operated as a beef slaughterhouse. In subsequent years, Centennial extended its product offerings into steak cutting, specialty ground products and burger production, before stopping slaughter operations to concentrate on steaking, burger production and specialty ground product offerings. NFC was formed in 2005 and was acquired by entities related to EdgeStone Capital Partners ("Edgestone"), a Toronto, Ontario based private equity firm, in 2006. Edgestone is one of Canada's leading private equity firms with excess of \$2.5 billion of funds committed to date from institutional and high net worth clients. Acquisition

Corp. entered into a services agreement with EdgeStone Capital Equity Fund II-A GP, L.P. on February 6, 2006, pursuant to which advisory services in the nature of strategic, operational, financial and capital market advisory services are provided to Acquisition Corp.

11. Prior to 2006, the business operated under the same umbrella as Centennial Foodservice, a foodservice distributor focused on protein products and serving food service clients across Western Canada.

12. NFC currently maintains two manufacturing facilities located in Saskatoon and St. Catharines, respectively, following the closure of its Brandon Street and 13A Street facilities in Calgary, Alberta in 2010.

13. In June, 2011, the Company relocated its headquarters from Calgary to Burlington, Ontario. This was done, in part, to move key management and sales personnel closer to the Company's major customers, which are themselves headquartered in Toronto.

(b) Corporate Organization

14. An organizational chart of the NFC group of entities is attached as Exhibit "A" hereto.

15. NFC is an Alberta General Partnership. Its registered office is located at 1122 International Boulevard, Suite 601, Burlington, Ontario. NFC is the sole shareholder of NFC Land Holdings Corp. ("Land Holdings"), which is organized under the *Canada Business Corporations Act*. Land Holdings' registered office is located at 2400, 525-8 Avenue S.W., Calgary, Alberta, which is the address of the law firm of Burnet Duckworth & Palmer LLP. Land Holdings was formerly known as Centennial Land Holdings Corp.

16. The partnership units of NFC are held by NFC Acquisition Corp. ("Acquisition Corp."), a corporation organized under the *Business Corporations Act (Ontario)*, and NFC Acquisition L.P. ("Acquisition LP"), which was formed under the laws of the Province of Manitoba. Acquisition Corp.'s registered office is located at 1122 International Boulevard, Suite 601, Burlington, Ontario. Acquisition LP's registered office is located at 600-130 King Street West, Toronto, Ontario.

17. NFC Acquisition GP Inc. ("Acquisition GP"), a corporation organized under the *Business Corporations Act* (Ontario), holds partnership units in Acquisition LP. Acquisition GP's registered office is also located at 1122 International Boulevard, Suite 601, Burlington, Ontario.

18. As more fully described below, the NFC Entities' operations and assets are conducted and held, respectively, by NFC.

IV. THE NFC ENTITIES' BUSINESS

19. NFC is an innovative Canadian food processing company servicing major national retail and foodservice sales channels. NFC's dedicated team of product developers have created a unique, market-leading competitive position by combining distinctive flavour profiles, textures and appearance (home-style), and premium source ingredients (Angus beef, Prime-Rib) with proprietary manufacturing processes. As a result of its commitment to innovation, NFC currently markets approximately 300 products to the retail, club store, and mass merchandiser channels, as well as to leading restaurant operators and foodservice distributors.

20. NFC processes value-added meat and other meat-related products at its manufacturing facilities in Saskatoon, Saskatchewan, and St. Catharines, Ontario. The Saskatoon facility primarily produces ground and formed meats and steaking products and is one of the largest and most advanced burger plants in Canada, operating four burger production lines. Two of these lines utilize the technologically-advanced Formax 700 ("M700") patty-forming equipment. The M700s achieve higher throughput and yield than predecessor technology and can be adjusted in a multitude of unique ways to enhance the quality and other attributes of the patties being produced. NFC is one of a select group of companies known to use this leading-edge equipment in North America. The plant was custom built in a modular format to be expansion-ready for future growth. The design allows for expansion without requiring current production lines to be shut down. The St. Catharines facility is the newer of the two facilities and produces cooked and value-added products.

21. For the year ended December 31, 2010, NFC had net sales of \$103,657,277 and a net loss of \$1,037,977. On a consolidated basis, for the nine months ended September 30, 2011, the NFC group of companies had approximate net sales of \$82,002,000 and an approximate net loss of \$8,112,000.

(a) *Product Lines*

22. Historically, frozen beef burgers had been NFC's primary product line, but over the last several years, the Company has extended into other protein categories (chicken, pork, lamb, seafood, soy), and a growing selection of cooked products and specialty appetizers. NFC's retail products are predominantly private label, offered under various store brand labels.

23. NFC has the following four major product lines:

- (a) ground and formed meats (e.g., ground beef, pork and lamb burgers);
- (b) convenience cooked or ready to eat products (e.g., cooked burgers and meatballs)
- (c) steaking (e.g., beef tenderloin and striploin steaks); and
- (d) value-added meat products (e.g., pork ribs).

(i) *Ground and Formed Meats*

24. Ground and formed meats is the largest product category and generates the majority of NFC's gross revenue. A significant portion of these sales are for burgers manufactured with proprietary formulations and processes. In particular, NFC is a Canadian leader in private label value-added ground and formed meats with an estimated 40% market share of the frozen burgers sold in grocery stores. The frozen burger market in Canada is a very well-developed and important retail category, representing approximately \$200 million in annual sales at retail.

(ii) *Convenience Cooked or Ready to Eat Products*

25. Convenience cooked or ready to eat products represent the second largest product category. The Cooked Products segment includes a full range of precooked food products produced through NFC's barbecue grilling, oven-cooking and deep-frying operations. This has been a growth segment for NFC due to increased demand by consumers for cooked, easy to prepare meals, and a foodservice focus on reducing cooking complexity, reducing "back of the house" labour costs and food safety issues.

(iii) Steaking

26. Steaking is NFC's third largest product category. The custom steak cutting product category consists primarily of custom premium steak cutting services for the foodservice segment. NFC focuses on processing top quality beef ingredients sourced from Canada, USA, Australia and New Zealand. NFC has a competitive advantage through its long tenured employee base of highly skilled master butchers. Additionally, NFC can provide value-added services, such as AAA aging programs, portion control, marinating and bacon wrapping. Steak cutting is less cyclical than NFC's ground and formed meats operations.

(iv) Value-added Meat Products

27. NFC's fourth largest product category is value-added specialty meat products. This category is comprised of mainly hand wrapped items and dry ribs. NFC's line of specialty products provides a complimentary product range to its customer base and leverages the Company's multi-species capabilities. The products do not exhibit the same seasonality as burgers, helping to mitigate sales cyclicity.

(b) Customers and Suppliers

28. NFC has two primary distribution channels consisting of retail and food services. The retail sales channel comprises approximately 75% of NFC's gross sales, with the foodservice channel making up the remainder. Some of NFC's largest customers are Loblaw Companies Limited, Wal-Mart Canada and Sysco Canada. The majority of NFC's gross revenues are generated from these customers. NFC's largest customer generated approximately 42% of the Company's revenues while its top ten customers account for approximately 82% of revenues. NFC's customers have significant pricing power and NFC is largely forced to compete on cost, as profit margins have shrunk and price has become paramount. In addition, NFC does not have the benefit of strong branding and is highly dependent on the private label meat manufacturing business and, therefore, does not have significant pricing power. Additional capacity brought into the market by new entrants has further enhanced the buying power of customers.

29. NFC's largest suppliers are Lakeside Packers/Lakeside Farm Industries Limited, Cargill Canada and AFFCO New Zealand Ltd. These companies supply meat products to NFC, which are then further processed by NFC at its manufacturing facilities. Suppliers to the meat-focused

food processing industry have undergone substantial consolidation in recent years, leaving NFC with few sources of supply and reduced leverage in negotiating pricing and terms.

30. NFC's costs of goods sold include material costs, salaries and benefits, packaging, frozen or refrigerated storage, handling and overhead costs, such as utilities, sanitation, plant supplies, quality testing and insurance. Beef is the main raw material for NFC, representing 50-60% of total costs, and is purchased by NFC on a weekly basis at spot market prices. Beef prices depend on a number of factors, the world-wide demand for protein, the availability and size of cattle herds, and ultimately the pricing of cattle feed, making beef prices, in turn, reliant on corn prices. Factors such as global demand, weather conditions and import bans can also influence beef prices and have contributed to recent relative shortages of meat, which has resulted in higher input costs for NFC. These trends tend to be long-term in nature, as the cycle of herd size is measured in years.

(c) Cash Management

31. The NFC Entities maintain several Canadian dollar bank accounts in Toronto with the Bank of Montreal, its principal secured lender, and separate U.S. dollar bank accounts with Harris Bank.

32. In the ordinary course of business, the NFC Entities utilize an integrated, centralized cash management system to collect and disburse funds (collectively, the "Cash Management System"). The Cash Management System is similar to those commonly employed by corporate entities of comparable size and complexity to the NFC Entities and provides a cost-effective and efficient means of managing the NFC Entities' finances. Part of the Cash Management System includes a general account, through which customer and supplier payments are collected and disbursed, a payroll account, through which employee wages are disbursed and a revolver account, to which any balances in the other accounts are transferred on a daily basis. Petty cash accounts with small balances are also maintained by the NFC Entities. U.S. dollar transactions are processed through the U.S. dollar bank accounts with Harris Bank.

(d) *Regulatory Oversight*

33. Given the nature of the food processing industry, NFC is subject to regulatory oversight from several governmental and non-governmental organizations and agencies including the Canadian Food Inspection Agency, the United States Department of Agriculture, the Technical Standards and Safety Authority, Safe Quality Food Certification ("SQF") the ISNA Halal Certification Agency, the Guelph Food Technology Centre (SQF Institute) and Steritech.

34. The Saskatoon facility has achieved SQF 2000 – Level 2 Certification. SQF is a means of ensuring a rigorous, credible food safety management system, and it is recognized internationally by retailers, foodservice providers and regulatory agencies. SQF incorporates such things as fundamental food safety controls appropriate for low-risk products and a comprehensive implementation of food safety and quality management systems development and auditing processes.

V. ASSETS OF THE NFC ENTITIES

35. Financial statements are prepared for NFC, Acquisition LP and VAP Holdings L.P. ("VAP")¹, which is not involved in these proceedings, but is included on the attached organizational chart in respect of the NFC group of companies. Due to the NFC group of companies' organizational structure as well as the nature of the assets and operations (or lack thereof) held by certain entities within such structure, there are no stand-alone audited financial statements available for Acquisition Corp., Acquisition GP and Land Holdings. As discussed herein, the NFC Entities conduct operations through NFC, and the operations of the NFC Entities are substantially intertwined. The other NFC Entities have been included in these proceedings, in part, due to the fact that they are guarantors under the Term Facility and the Non-Revolving Loan Facility (each, as defined below).

36. The most recent audited financial statements for each of NFC, Acquisition LP and VAP, being for the calendar year ending December 31, 2010, are attached as Exhibit "B" hereto.

¹ VAP was formed in 2006 under the laws of the Province of Manitoba, for the sole purpose of acquiring NFC. VAP formed Acquisition LP, a wholly-owned partnership, to act as an intermediary to acquire NFC. Effective February 3, 2006, VAP, through Acquisition LP, acquired a 99.999% interest in NFC. The remaining 0.001% interest was acquired by Acquisition Corp., the general partner for NFC, which is wholly owned by Acquisition LP.

Acquisition LP's financial statements are consolidated to include NFC, Acquisition Corp and Acquisition LP. VAP's financial statements are consolidated to include Acquisition LP (consolidated), Acquisition GP, VAP Holdings GP Inc. ("VAP GP") and VAP. Like VAP, VAP GP is not involved in these proceedings, but is included on the attached organizational chart in respect of the NFC group of companies.

37. When viewed in isolation, the financial statements and results in respect of the individual NFC Entities do not provide an accurate picture of the NFC Entities' current financial position due to such factors as where assets and liabilities (including bank and other debt) are held within the NFC group of companies. Instead, the unaudited consolidated financial statements of the NFC group of companies for the nine months ended September 30, 2011, attached as Exhibit "C" hereto, provide the most complete available picture of the NFC Entities' financial position. However, as a result of the receipt by the NFC Entities in early-October, 2011 of the funds from the sale and leaseback transaction in respect of the Saskatoon manufacturing facility, there has been a marked improvement in the NFC Entities' balance sheet since that time. Such funds were used by the NFC Entities to pay down certain debt, meaning that the NFC Entities' post-September 30, 2011 balance sheet shows no long-term debt owing to the Bank of Montreal and a reduced amount in respect of the revolver. Nevertheless, the overall financial position of the NFC Entities has continued to decline since September 30, 2011.

38. As of September 30, 2011, the NFC group of companies' total assets had a book value of approximately \$69,797,000. Accounts receivable stood at approximately \$10,290,000. The assets of the NFC group of companies consisted of the following:

	(in \$000s)
Assets	
Current Assets	
Cash	-
Accounts receivable	10,290
Inventory	18,860
Prepaid expenses	359
Current Assets	29,509
Capital Assets	32,322

Intangible Assets	7,966
Total Long Term Assets	40,288
Total Assets	69,797

(a) *NFC*

(i) *Manufacturing Facilities*

(A) **Saskatoon**

39. In August, 2011, NFC completed a sale and leaseback of its Saskatoon manufacturing facility with an arm's-length party. The funds from this transaction were released to the Company in early-October. The purpose of this transaction was to improve NFC's balance sheet and the proceeds were used to pay down debt.

40. NFC leases 105,445 square feet of industrial space at 820 60th Street East, Saskatoon, Saskatchewan used primarily for producing ground and formed meat and steaking products. NFC's leases this premises from Nicola Crosby Real Estate Asset Management Ltd. The lease commenced on September 1, 2011 and runs for a 20 year term ending on October 1, 2031, with an option to renew for an additional 5 years.

(B) **St. Catharines**

41. NFC owns a 36,000 square foot manufacturing facility located at 17 Seapark Drive, St. Catharines, Ontario. This facility produces cooked and value-added products. It was purchased in August, 2010 and became operational in March, 2011.

(C) **Calgary**

42. NFC owns two plants in Calgary, though both have been closed. The plant located on 13A Street was mainly focused on steaking and seafood products before closing in August, 2010 when. The plant located on Brandon Street mainly produced cooked products and was closed in December, 2010. Both plants remain owned by NFC and neither have been sold as of the date hereof.

(ii) Head Office

43. NFC's head office is located at leased premises at 1122 International Boulevard, Suite 601, Burlington, Ontario. The Applicants lease this premises from BFI Canada Inc. The lease commenced on April 1, 2011 and ends on September 29, 2014.

44. NFC also has a sales and procurement office located at Unit A, 610 – 70th Avenue S.E., Calgary, Alberta. The Company's leases this premises from SREIT (Quest Glenmore) Ltd. The lease commenced on September 1, 2011 and ends on August 31, 2016.

(iii) Other Material Assets

45. The Company owns and leases various production equipment and machinery located at its facilities as well as computer equipment and software. NFC has entered into certain lease agreements with The Royal Bank of Canada in connection with leases for meat grinders, steak processing machines, hydrostatic scales and similar specialized equipment.

46. NFC licenses Kronos (used for hourly employee time capture), DigiFlex, ROI (used for product formula optimization), and Ceridian Payroll software products as well as various products from Microsoft. NFC has entered into a lease agreement with Dell Financial Services Canada in connection with certain computer equipment.

(iv) Land Holdings

47. NFC is the sole shareholder of Land Holdings. Land Holdings has no assets and does not conduct any operations.

(b) Acquisition LP

48. As described above, Acquisition LP was formed on January 23, 2006 under the laws of the Province of Manitoba, for the sole purpose of acquiring NFC. Effective February 3, 2006, Acquisition LP, acquired a 99.999% interest in NFC. The remaining 0.001% interest was acquired by Acquisition Corp., the general partner for NFC, which is wholly owned by Acquisition LP.

49. Acquisition LP's sole activity is holding its general partnership interest in NFC.

(c) Acquisition Corp.

50. Acquisition Corp.'s sole asset is its general partnership interest in NFC.

(d) Acquisition GP

51. Acquisition GP is the general partner of Acquisition LP, and its sole asset is such general partnership interest. It is also the sole shareholder of Acquisition Corp. It has no other activities.

(e) Land Holdings

52. Land Holdings has no assets and does not conduct any operations.

VI. INDEBTEDNESS AND LIABILITIES OF THE APPLICANTS

53. As of September 30, 2011, the NFC group of companies' total liabilities had a book value of approximately \$58,392,000. As described below, the non-operating entities within the NFC group of companies have no significant liabilities aside from their debt under the Term Facility, the Non-Revolving Loan Facility and the EdgeStone Notes (each, as defined below). The liabilities of the NFC group of companies consisted of the following:

	(in \$000s)
Liabilities	
Current Liabilities	
Bank overdraft	21,957
Accounts payable	10,283
Accrued expense	3,366
Current portion of BMO LTD	2,520
Current portion of capital lease	-
Current Liabilities	38,125
TD Bank Mezzanine Debt	12,100
Bank of Montreal Long Term Debt	4,150
Capital Lease	1,517
Shareholder' Loan	2,500
Long Term Liabilities	20,267
Total Liabilities	58,392

(a) Term Facility

54. Acquisition LP is the borrower under the Second Amended and Restated Credit Agreement effective as of October 31, 2011 (the "Term Facility") by and between Acquisition LP, the other Applicants as guarantor subsidiaries, Bank of Montreal as lender and administrative agent and the other banks, financial institutions and other persons from time to time parties thereto as lenders. The maximum facility limit of the Term Facility is \$21,000,000. The Term Facility is secured by, *inter alia*: (i) a debenture in the amount of \$100,000,000, constituting a first-ranking security interest in the NFC Entities' assets; (ii) an assignment of property insurance; and (iii) a general security agreement.

55. As of January 13, 2012, the principal amount of the Term Facility outstanding, exclusive of accrued interest, costs and other amounts payable thereunder, was approximately \$16,413,073 million.

(b) Non-Revolver Loan Facility

56. Acquisition LP is the borrower under the Second Amended and Restated Senior Subordinated Credit Agreement effective as of October 31, 2011 (the "Non-Revolver Loan Facility") by and between Acquisition LP, the other Applicants as guarantor subsidiaries, the lenders from time to time parties thereto as lenders and TD Capital Mezzanine Partners Management Ltd. as administrative agent for the lenders. The principal amount of the Non-Revolver Loan Facility is \$12,100,000. The Non-Revolver Loan Facility is secured by, *inter alia*: (i) a debenture in the amount of \$25,000,000, constituting a second-ranking security interest in the NFC Entities' assets; (ii) an assignment of property insurance; and (iii) a general security agreement.

57. As of January 13, 2012, the principal amount of the Non-Revolver Loan Facility outstanding, exclusive of accrued interest, costs and other amounts payable thereunder, was approximately \$12,100,000 million.

(c) EdgeStone Notes

58. Acquisition LP is the debtor under the Amended and Restated Subordinated Note dated September 10, 2010 (the "2010 Note") by and between Acquisition LP and EdgeStone Capital

Equity Fund II-A GP, Inc. as lender. The 2010 Note is in the amount of \$1,000,000, bears interest at 14% per annum and has no fixed repayment terms, but is repayable on demand subject to the subordination provisions contained therein.

59. Acquisition LP is also the debtor under the Subordinated Note dated February 2, 2011 (the "2011 Note" and together with the 2010 Note, the "EdgeStone Notes") by and between Acquisition LP and EdgeStone Capital Equity Fund II-A L.P. as lender. The 2011 Note is in the amount of \$1,500,000, bears interest at 18% per annum and has no fixed repayment terms, but is repayable on demand subject to the subordination provisions contained therein.

(d) Accounts Payable

60. As of September 30, 2011, the NFC group of companies had accounts payable of approximately \$10,283,000, the vast majority of which is owed to trade creditors. These trade debts are unsecured and relate to goods and services supplied to NFC by trade creditors. Some of NFC's largest trade creditors are Westco Multitemp Distribution Centres Inc., Kerry Savory – Canada, Canadian Contract Cleaning, Impact Construction Limited and K-Dac Expedite.

61. As of November 26, 2011, the NFC Entities owed arrears in the amount of \$1,662,748.78 to Westco Multitemp Distribution Centres Inc., which may give rise to a commercial lien in respect of inventory held in Saskatoon, Saskatchewan. In addition the NFC Entities owed arrears in the amount of \$101,648.22 to Millard Refrigerated Services Inc., which may give rise to a repair and storage lien in respect of inventory held in Ontario.

(e) Litigation

62. MWS Solutions Inc. has registered Claims for Liens against NFC's St. Catharines manufacturing facility under the *Construction Lien Act* (Ontario) in connection with a dispute regarding a supply and installation agreement.

(f) Environmental

63. A Phase I Environmental Assessment was conducted in 2010 at the site of the St. Catharines manufacturing facility. An approximate 10 square meter area was identified as a potential issue of environmental concern. In 2011, the site was excavated and verification soil

samples were taken to determine that oil residues were removed. Following the receipt of confirmatory soil samples by NFC, the site was backfilled with clean soil.

64. A Phase 1 Environmental Assessment was conducted in 2010 at the site of the Saskatoon manufacturing facility. Based on the results and information reviewed, it was determined that historical land use and adjacent property activities represent a reduced risk for subsurface impacts in connection with the site and no further work was recommended.

(g) PPSA Registrations

65. Attached and marked as Exhibit "D" are summaries prepared by the NFC Entities' counsel, Torys LLP, and their agents of registrations made against the NFC Entities pursuant to the *Personal Property Security Act* (or the equivalent provincial legislation) of Ontario, Alberta, Manitoba and Saskatchewan.

VII. DIRECTORS AND OFFICERS

66. All board meetings of the NFC Entities are held in Toronto. The minute books for Acquisition GP, Acquisition Corp. and Land Holdings are also stored and maintained in Toronto at the offices of the NFC Entities' counsel.

VIII. EMPLOYEES

67. As of January 9, 2012, the NFC Entities had approximately 298 unionized and salaried employees. Of these, approximately 85 people (69 unionized and 16 salaried) are employed at the St. Catharines manufacturing facility, approximately 178 (146 unionized and 32 salaried) people are employed at the Saskatoon manufacturing facility and approximately 35 people are employed in sales and general administration capacities. All employees are employed by NFC.

68. Due to the seasonal nature of NFC's business which coincides with the Canadian barbeque season, production is ramped up at the beginning of the year and typically ramped down in late-summer. Employees are temporarily laid off during non-peak production times as a result.

69. There is a collective agreement in place between NFC and United Food & Commercial Workers Union, Local 1400 in respect of the Saskatoon manufacturing facility dated November 8, 2011 that took effect on November 1, 2011 and runs until October 31, 2014.

70. There is also a collective agreement in place between NFC and United Food and Commercial Workers Canada, Local 175 in respect of the St. Catharines manufacturing facility that took effect on August 1, 2010 and runs until October 31, 2013. This agreement was originally entered into by Pinty's Delicious Foods Inc. (St. Catharines) ("Pinty's"), the former owner of the St. Catharines manufacturing facility prior to Pinty's and NFC entering into an agreement of purchase and sale made on August 18, 2010 in respect of the St. Catharines manufacturing facility.

71. NFC maintains Group Life, Accidental Death and Dismemberment, Dependent Life, Short-Term Disability, Long-Term Disability, Contact Employee Assistance Program, Extended Health Care, Global Medical Assistance Program/Best Doctors, and Dental Care plans and benefits coverage for its employees, all of which are underwritten by Great-West Life.

72. NFC's executive employees are eligible to join a group registered retirement savings plan, and NFC makes contributions to such plans. As of January 13, 2012 NFC is current with respect to these contributions.

73. NFC's non-unionized employees are eligible to join both deferred profit sharing plans (administered by Sun Life) and group registered retirement savings plans. NFC makes contributions to the deferred profit sharing plans. As of January 13, 2012 NFC is current with respect to these contributions.

74. NFC's unionized employees in Saskatchewan are also eligible to join both deferred profit sharing plans (administered by Sun Life) and group registered retirement savings plans. NFC makes contributions to the deferred profit sharing plans pursuant to the collective agreement in place. As of January 13, 2012 NFC is current with respect to these contributions.

75. NFC's unionized employees in St. Catharines participate in the Canadian Commercial Workers Industry Pension Plan, a multi-employer defined contribution plan. NFC makes

contributions to such plan pursuant to the collective agreement in place. As of January 13, 2012 NFC is current with respect to these contributions.

76. The Cash Flow (as defined below) provides for the payment of the necessary pension plan contributions.

77. It is the intention of the NFC Entities to pay wages and honour vacation pay in the ordinary course.

IX. RECENT FINANCIAL DIFFICULTIES AND THE NFC ENTITIES' INSOLVENCY

(a) History of Challenges Facing the Company

78. NFC has faced significant and growing financial difficulties in recent years, especially since the end of 2010, for the reasons described below.

79. It has been a challenge for NFC to adjust wholesale pricing to cover rapid increases in costs attributable to meat protein commodity markets sitting at all-time highs, supply disruptions caused by a large shortfall in North American cattle supplies and high oil prices impacting packaging and freight costs. Meat prices began their climb in late 2010, before commencing a nearly vertical ascent in January and February of 2011, defying all forecasts. However, many annual customer contracts were negotiated prior to this steep rise in costs, eroding NFC's margins and leaving it in a precarious financial position.

80. The volatility of input costs has made passing on these costs to customers a challenge, as there is lag between when NFC must pay its suppliers and when it can renegotiate contracts with its customers to reflect such cost increases. There is no developed beef futures market, so given the necessity of purchasing meats at spot rates on commodity markets, NFC must continually focus on managing its customer pricing in response. There have also been several key customer defections over the last few years that have negatively impacted NFC's sales.

81. A further challenge comes from the fact that the Canadian further-processed protein industry is highly fragmented with numerous small players, whereas the retail and foodservice customers they serve are more concentrated. Canada's relatively consolidated grocery industry provides retailers with significant power to influence pricing. In the current market environment,

retailers are aggressively seeking to reduce the aggregate number of suppliers and drive cost improvements from their supply chain across all categories, hindering the ability of NFC and other industry to players to pass along cost increases to customers. The concentration of meat supply has also been a factor in changing working capital requirements, as many suppliers are requiring NFC to pre-pay for meat, while NFC's customers have been using their own market power to stretch the Company's receivables.

82. In addition, start-up costs and unexpected cost overruns to bring the St. Catharines manufacturing facility on-line, coupled with the expenses involved in closing the Calgary manufacturing facilities, were also significant and were a substantial drain on NFC's cash position. The St. Catharines manufacturing facility was originally projected to open in February, 2011, but technical issues, including faulty engineering work, delayed the opening to April, 2011. Even after opening, there were start-up inefficiencies that led to the facility operating over budget, such as decreased yields and the need for increased labour costs to make up for delays and other technical inefficiencies.

(b) Responses to Challenges

83. In response to the financial difficulties described above, through 2010 and 2011, NFC has undertaken extensive efforts to develop meaningful improvements to its business, including strengthening its sales team and expanding production capacity in existing plants through productivity improvements, including better financial reporting systems and data management, appointing food industry veterans to key management positions, including my hiring in September, 2010, and completing a plant consolidation designed to drive significant cost benefits through lower operating costs and reduced overhead.

84. NFC's decision to move its head office to Burlington in April, 2011, was, in part, driven by a desire to position the Company to recruit quality management and personnel as well as to locate closer to its major customers.

85. Throughout 2011, NFC discussed the need for wholesale price increases with its customers due to the higher input costs and, in some cases, were allowed to increase their wholesale prices but at significantly lower levels than the input cost increases. Beginning in October, 2011, NFC also began actively discussing future price increases and more equitable

pricing mechanisms with its customers due to the magnitude of the higher input costs experienced in 2011 and expected to continue in 2012, though such price increases will only be implemented in 2012. To offset the effect of customer defections in prior years, NFC has worked to diversify its customer base and gain new business from existing customers, which has partially offset decreases in gross profit.

86. Given the industry headwinds and the other factors described above, to date, these operational responses have been largely unsuccessful.

87. There has been a widespread desire among meat processing industry players to consolidate that goes back to as early as 2006. However, for a number of reasons, including the fact that many businesses are family-owned, there has been a dearth of consummated transactions. Beginning in May, 2011, NFC was involved in direct negotiations with a competitor and potential strategic partner, with the goal of negotiating a merger agreement. Such a merger would have helped NFC's negotiating power and provided for operational and logistical synergies. The NFC Entities were responsive to all due diligence/informational requests and did everything possible to support a transaction with this potential strategic partner. Despite their best efforts, negotiations concluded in December, 2011 without an agreement, as both entities needed to evaluate the performance of their businesses in the difficult market. The value of the NFC Entities' business precipitously declined during such period, and continues to do so, as a result of the NFC Entities' worsening liquidity situation.

88. Efforts have been made to secure funding and raise additional capital. As part of the merger discussions discussed above, NFC was involved in extensive refinancing discussions with potential lenders in 2011. Unfortunately, these discussions coincided with NFC's declining financial performance, and despite several near successes, they did not result in any signed commitments. Aside from the successful August, 2011 sale and leaseback transaction involving the Saskatoon manufacturing facility, the proceeds of which were used to pay down debt, efforts to raise additional capital were unsuccessful. In addition, the NFC Entities' existing shareholders declined to invest further funds in the business. Therefore, the management of the NFC Entities are of the view that no additional financing is available to the NFC Entities (other than the DIP Facility defined and described in greater detail below).

(c) *Default under Term Facility*

89. As a result of NFC's financial challenges, the NFC Entities have been unable to meet various financial and other covenants set out in the Term Facility and do not have the liquidity needed to meet their ongoing payment obligations. As at November 26, 2011, the NFC Entities were in default under the Term Facility. Such defaults included: (i) the NFC Entities' borrowings exceeding the permitted borrowing base; (ii) the existence of commercial and repair and storage liens that are not permitted encumbrances on the NFC Entities' property; and (iii) circumstances that require increased borrowing in excess of the permitted borrowing base, constituting a material adverse effect. Through cross-default provisions in the Non-Revolving Loan Facility, the NFC Entities are also in default under this agreement.

90. On December 23, 2011, the NFC Entities entered into a forbearance agreement (the "Forbearance Agreement") with the Bank of Montreal in connection with the Term Facility, whereby the Bank of Montreal and the other lenders agreed to forbear from exercising their rights as a result of continuing defaults under the Term Facility. The forbearance extended to January 6, 2012 (the "Forbearance Period"). Pursuant to the Forbearance Agreement, the NFC Entities were required to, *inter alia*, retain FTI as a financial advisor to, *inter alia*: (i) develop a plan for a sale process; (ii) conduct a full financial analysis of the business; and (iii) assist in the preparation of cash flows.

91. Pursuant to the terms of a First Extension and Amendment to Forbearance Agreement dated January 6, 2012, the Forbearance Period was subsequently extended to January 16, 2012. Pursuant to the terms of a Second Extension and Amendment to Forbearance Agreement dated January 13, 2012, the Forbearance Period was extended for a second time to January 18, 2012.

92. The funding provided by the Bank of Montreal to the NFC Entities to date is significantly in excess of that permitted by the borrowing base calculations. The NFC Entities are overdrawn and do not have the means to repay the amounts owing under the Term Facility, or their other secured obligations. Despite being overdrawn, the NFC Entities would require additional funding in order to continue as a going concern. The Bank of Montreal has informed the NFC Entities that it is not prepared to provide additional funding to the NFC Entities, save and except

the DIP financing discussed hereinafter in the context of a CCAA proceeding for the purpose of effecting a sale of the business as a going concern.

93. Accordingly, the NFC Entities are insolvent. The NFC Entities cannot meet their liabilities as they come due and do not have sufficient cash to continue to fund their operations. Without the protection of the CCAA, a shut-down of operations is inevitable, which would be extremely detrimental to the NFC Entities' lenders, employees, suppliers, and customers. CCAA protection will allow the NFC Entities to maintain operations so as to implement a sale process with respect to their property and business.

X. THE NEED FOR COURT PROTECTION

94. Without additional funding in the form of DIP financing and a stay of proceedings in the context of a CCAA filing, the NFC Entities cannot continue to operate.

95. NFC's next regular payroll for all its existing employees must be funded by no later than January 18, 2012. Other upcoming urgent expenditures include meat purchases, spice additives, packaging, storage, refrigeration and nitrogen costs.

96. During the period in which the restructuring and sale process is undertaken, in order to protect the relative positions of all the creditors of the NFC Entities as of the date of commencement of these proceedings, it is essential that the rights and remedies of the NFC Entities' creditors be stayed and that future cash flow be applied to pay for goods and services purchased after the commencement of these proceedings as well as the costs, including professional fees, incurred as part of the restructuring. In the absence of a stay, creditors of the NFC Entities would be in a position to take precipitous steps that could result in the bankruptcy and liquidation of the NFC Entities, seriously impair potential recoveries for creditors and virtually eliminate the possibility that the business of the NFC Entities can be sold as a going concern, for the benefit of creditors, remaining employees, suppliers and other stakeholders.

97. Among other things, preservation of the status quo will, ideally, assist in the preservation of the business, including satisfying NFC's principal customers with respect to the stability of the restructuring process in place and the prospects for continuing the business as a going concern.

98. The CCAA process provides the best possible framework for the NFC Entities, with the assistance of FTI, the proposed monitor in the proceedings, to attempt to restructure the Applicant with the most positive potential outcome for the creditors and other stakeholders.

(a) Cash Flows

99. As at January 13, 2012, the NFC Entities' consolidated cash balance was approximately \$(16,413,075). With the assistance of FTI, the NFC Entities have conducted a cash flow analysis to determine the amounts required to fund the NFC Entities' operations for the next 13 weeks, assuming the relief sought is granted. Attached as Exhibit "E" is the cash flow projection for the NFC Entities for such period (the "Cash Flow").

(b) DIP Loan

100. In order to continue to operate during these proceeding, it is apparent from the Cash Flow that the NFC Entities require debtor-in-possession financing, as there would otherwise be insufficient monies to pay essential operating expenses and costs associated with these proceedings going forward. As a result, the NFC Entities negotiated with the Bank of Montreal regarding its interest in providing ongoing financing to the NFC Entities required in connection with these proceedings.

101. The Bank of Montreal is prepared to advance a debtor-in-possession loan (the "DIP Facility") on a first-ranking secured basis (subject to an Administration Charge up to a maximum amount of \$350,000, a Directors' and Officers' Charge up to a maximum amount of \$3,000,000 and permitted encumbrances) to provide the necessary funding to the NFC Entities in accordance with the Cash Flow. The NFC Entities seek a charge on the assets, property and undertakings of the NFC Entities to secure the DIP Facility (the "DIP Charge").

102. A copy of the Super-Priority, Senior Secured Debtor-in-Possession Credit Facility Letter Loan Agreement among Acquisition LP, as borrower, the other NFC Entities, as guarantors, and the Bank of Montreal, as lender (in such capacity, the "DIP Lender") in respect of the proposed DIP Facility is attached as Exhibit "F". One of the conditions of the DIP Agreement is the obtaining by the NFC Entities of an initial CCAA order approving the DIP Agreement, in form and substance satisfactory to the Bank of Montreal and its counsel.

103. The current commitment amount of the DIP Facility is \$3,500,000. Further credit approval by the DIP Lender is required to increase the commitment amount from \$3,500,000 to \$10,500,000. Notwithstanding the period covered by the Cash Flow, after February 21, 2012, there shall be no availability for further borrowings under the DIP Facility if, *inter alia*: (i) the DIP Lender declares that a Sales Process Default (as such term is defined in the DIP Agreement) has occurred; or (ii) the DIP Lender has failed to give written notice in its sole and absolute discretion that it is satisfied with the Sale Process to such date, which coincides with the start of the ramp up in NFC operations and meat input purchases necessary for the Canadian barbeque season.

104. Under the terms of the DIP Agreement, the DIP Facility bears interest at the Prime Rate (as such term is defined in the DIP Agreement) plus 6% per annum. There is a DIP Commitment Fee (as such term is defined in the DIP Agreement) of \$150,000 and a monitoring fee of \$10,000 per month.

105. The purposes of the DIP Facility are to: (i) provide for working capital for and for other general corporate purposes, as set out in the Cash Flow; (ii) pay the fees and expenses associated with the DIP Facility; (iii) pay costs and expenses in connection with these proceedings, as set out in the Cash Flow (including the deposit with the Monitor of the premium due in respect of any director and officer insurance contemplated by the Cash Flow, which the Monitor shall be irrevocably authorized to remit to the applicable insurer upon receipt of a direction from the NFC Entities).

106. The DIP Facility terminates at the earliest of: (i) March 30, 2011; (ii) the effective date of a plan of compromise and arrangement of the NFC Entities pursuant to the CCAA; (iii) upon acceleration of the DIP Facility in accordance with the terms of the DIP Agreement or upon the occurrence of a Specified Event of Default (as such term is defined in the DIP Agreement); and (iv) upon any actual or asserted invalidity, impairment or unenforceability of the guarantee of any of the NFC Entities in their capacities as guarantors under the DIP Agreement.

(c) Sale Process

107. The NFC Entities seek approval of a sale process (the "Sale Process") to market and sell their property and business, which Sale Process has been negotiated and developed by the NFC

Entities and FTI, and to which the Bank of Montreal has agreed. The terms and provisions of the Sale Process are more fully described in the Pre-Filing Report of FTI, dated January 16, 2012.

108. The NFC Entities are contemplating the following timeline in connection with this process:

ACTION	DEADLINE
Submission of Expressions of Interest	January 30, 2012
Submission of Final Proposals	February 13, 2012
Selection of Preferred Proposal	February 17, 2012
Closing (Outside Date)	March 30, 2012

109. This accelerated Sale Process is necessitated by the timing of the Canadian barbecue season ramp up and the conditions of the DIP Agreement. However, the universe of likely qualified buyers for the going concern operations of the NFC Entities is known 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 the NFC Entities 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.

110. The Sale Process, including the proposed timeline, are designed to maximize the value received for the NFC Entities' assets and to facilitate a fair and open process in which all interested parties may participate, with a view to preserving value and maximizing recoveries for the NFC Entities' stakeholders, while minimizing any adverse impact on customers, employees and other stakeholders.

111. The NFC Entities are satisfied that the sale process proposed is appropriate in the circumstances and will result in the market for the NFC Entities' property and business being suitably canvassed.

(d) Other Court-Ordered Charges

112. As discussed in greater detail below, the NFC Entities seek certain Court-ordered charges on the assets, property and undertakings of the NFC Entities, in addition to the DIP Charge. It is

the NFC Entities' intention that none of the court-ordered charges described herein will prime existing PPSA registrants, aside from the existing positions of the Bank of Montreal and TD Capital Mezzanine Partners Management Ltd., who shall be provided with notice of these proceedings.

(i) Administration Charge

113. The NFC Entities seek a charge on the assets, property and undertakings of the NFC Entities in the maximum amount of \$350,000 to secure the fees and disbursements incurred in connection with services rendered to the NFC Entities both before and after the commencement of the CCAA proceedings by counsel to the NFC Entities, FTI (if appointed) and FTI's counsel (the "Administration Charge").

114. The NFC Entities worked with FTI to estimate the proposed quantum of the Administration Charge and believe it to be reasonable and appropriate in view of the complexities of the NFC Entities' CCAA proceedings and the services to be provided by the beneficiaries of the Administration Charge.

(ii) Directors' and Officers' Charge

115. To ensure the ongoing stability of the NFC Entities' business during the CCAA period, the NFC Entities require the continued participation of their directors and officers.

116. The NFC Entities are seeking typical provisions staying all proceedings against the directors and officers of the NFC Entities with respect to all claims against the directors or officers that relate to any obligations of the NFC Entities whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers of the NFC Entities.

117. There is an existing claims-made insurance policy with respect to directors' and officer's liability. However, as of the date hereof, the insurer has not admitted coverage with respect to liabilities of the NFC Entities for which the directors may be personally liable and there is potential ambiguity in respect of the extent of coverage for certain liabilities. In the present circumstances, it is not possible to obtain at reasonable cost further coverage that is satisfactory. Accordingly, the NFC Entities are seeking a charge in favour of present directors, former directors during the sixty (60) day period prior to the date of the Initial Order and officers on the

assets, property and undertakings of the NFC Entities in the maximum amount of \$3,000,000 (the "Directors' and Officers' Charge") that will allow the NFC Entities to continue to benefit from the expertise and knowledge of their directors and officers.

118. The quantum of the proposed Directors' and Officers' Charge has been considered by FTI and negotiated by the NFC Entities and The Bank of Montreal. The NFC Entities believe the Directors' and Officers' Charge is reasonable in the circumstances.

(e) The Monitor

119. FTI has consented to act as the Court-appointed Monitor of the NFC Entities, subject to Court approval.

120. FTI is a trustee within the meaning of Section 2 of the *Bankruptcy and Insolvency Act*, as amended, and is not subject to any of the restrictions on who may be appointed as monitor set out in section 11.7(2) of the CCAA.

121. FTI has been working with the NFC Entities and its advisors in the lead-up to these proceedings and has familiarity with the NFC Entities' business and operations. FTI is experienced with this type of proceeding, and is well suited to the role of Court-appointed Monitor in these proceedings.

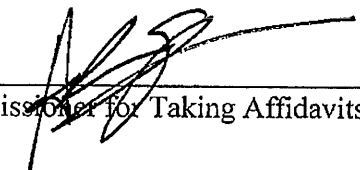
122. FTI, as proposed monitor, has advised me that it is supportive of the relief being sought in favour of the NFC Entities and the existence and amounts of the DIP Charge, the Administration Charge and the Directors' and Officers' Charge.

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XI. SUMMARY

123. The NFC Entities believes that the protections and inherent flexibility of the CCAA process and business advantages of a debtor-in-possession proceeding will enhance the prospects of the NFC Entities' restructuring and implementation of a sale process, all with a view to preserving value and maximizing recoveries for the NFC Entities' stakeholders.

SWORN BEFORE ME at the City of
Toronto, in the Province of Ontario,
this 16th day of January, 2012.



Commissioner for Taking Affidavits
ADAM SLAVENS



BRIAN CRAM

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

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

BACKGROUND

1. On January 17, 2012, 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”) obtained an initial order under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “CCAA”) by the Honourable Mr. Justice Morawetz of the Ontario Superior Court of Justice (Commercial List) (the “Court”). The Initial Order under the CCAA in respect of NFC appointed FTI Consulting Canada Inc. as monitor (“FTI” or the “Monitor”) and granted, *inter alia*, a stay of proceedings against NFC until February 16, 2012. The stay of proceedings was thereafter extended pursuant to a further order by the Court until March 30, 2012. A copy of the Initial Order is attached hereto as **Appendix “A”**.

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2. As a result of the failure of the Sales Process in the CCAA proceedings (the particulars of which are set out in the Third Report of the Monitor, a copy of which is attached hereto as **Appendix “B”**), on February 22, 2012, the Court granted: (i) Bank of Montreal (“**BMO**”) leave in the CCAA proceedings to lift the stay of proceedings to allow BMO to bring an application for the appointment of a receiver of the property, assets and undertaking of NFC (the “**NFC Assets**”); and (ii) an Order in these proceedings pursuant to section 243(1) of the *Bankruptcy and Insolvency Act* (the “**BIA**”) and section 101 of the *Courts of Justice Act*, appointing FTI as receiver of the assets, property and undertakings of NFC (in that capacity the “**Receiver**”) (the “**Receivership Order**”, a copy of which is attached hereto as **Appendix “C”**).

PURPOSE OF THIS REPORT

3. The purpose of this fifth report of the Receiver (the “**Fifth Report**”) is to:
- (a) 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 of purchase and sale (the “**Canafric Agreement**”) with Canafric Inc. (the “**Purchaser**”) in respect of the land and buildings having a municipal address of 15 Seapark Drive, St. Catharines, Ontario (the “**St. Catharines Property**”) owned by NFC Acquisition Corp. (the “**Proposed Transaction**”);
 - (ii) an order declaring the Restrictive Covenant (as defined below) unenforceable as against the St. Catharines Property and discharging it from title; and

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- (iii) vesting the St. Catharines Property in the Purchaser (the “**Vesting Order**”) effective upon closing of the Proposed Transaction, free and clear of the Restrictive Covenant and all claims and encumbrances other than the permitted encumbrances contemplated by the Canafic Agreement;
- (b) approving the Receiver’s activities, as described in this report; and
- (c) such other relief as counsel may advise and the Court permit.

DEFINED TERMS

4. Capitalized terms not otherwise defined herein have the meanings set out in the Monitor’s Prefiling Report, the Monitor’s Third Report, the Receivership Order, the Receiver’s Second Report and the Receiver’s Third Report.

THE ST. CATHARINES FACILITY

5. As more particularly described in the Pre-Filing Report of FTI filed in the CCAA Proceedings (a copy of which, without appendices, is attached hereto as **Appendix “D”**), until 2010, two of NFC’s food processing facilities were located in Calgary, Alberta. NFC’s third food processing facility was located in Saskatoon, Saskatchewan.

6. The St. Catharines Property was acquired by NFC Acquisition Corp on or about September 16 , 2010, pursuant to a purchase and sale agreement (the “**Pinty’s Sale Agreement**”) dated August 18, 2010, with Pinty’s Delicious Foods (“**Pinty’s**”) for a stated purchase price of \$2,000,000. A copy of the Pinty’s Sale Agreement is attached hereto as **Appendix “E”**. In early 2011, NFC relocated its Calgary food processing operations to the St. Catharines Property and

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ceased operations in Calgary. NFC also moved its head office operations from Calgary to Burlington, Ontario at or about the same time.

7. Pursuant to the Sale Agreement, NFC covenanted and agreed that the St Catharines Property would not be used for the processing of “chicken products” for a period of five years from the closing date and that a restrictive covenant be registered on title to the St. Catharines Property. A restrictive covenant was registered by Pinty’s on title to the St Catharine’s Property on September 16, 2010 as instrument number NR250763, a copy of which is attached hereto as **Appendix “F”** (the “**Restrictive Covenant**”), purporting to restrict the processing and/or packaging any edible food product containing any component of chicken or fowl as one of the ingredients on the St Catharines Property for a period of five years.

8. Immediately to the west of the St Catharines Property is a 12.6 acre parcel of vacant lands owned by Pinty’s which does not have visible buildings or improvement thereon (the “**Adjacent Property**”). Pursuant to the Pinty’s Sale Agreement, Pinty’s was to grant NFC a right of first right of refusal to purchase the Adjacent Property for a period of seven years. The Receiver understands that the Adjacent Property is actively being marketed for sale by Pinty’s. A photograph of the “for sale” sign currently on the Adjacent Property is attached hereto as **Appendix “G”**.

THE FAILED CCAA SALES PROCESS

9. In January 2012, upon commencement of the CCAA Proceedings, NFC and the Monitor implemented the Court approved Sales Process for all of the property, assets and undertaking of NFC on a going-concern basis, including the St. Catharines Property. The principal steps of the Transaction Process are outlined in paragraph 36 of the Prefiling Report.

- 5 -

10. In accordance with the Sales Process, the NFC Assets were offered both *en bloc* and as the following separate parcels:

- (i) The Saskatoon Property (including the associated equipment, inventory and accounts receivable);
- (ii) The St Catharines Property (including the associated equipment (the “**St. Catharines Equipment**”), inventory and accounts receivable);
- (iii) The Calgary 13A Street Property; and
- (iv) The Calgary Brandon Street Property.

11. The Monitor received Phase 1 Expressions of Interest from eleven interested parties, four of whom included the St. Catharines Property in their Expressions of Interest (the “**St. Catharines Bidders**”). Of the four St. Catharines Bidders, only two submitted Expressions of Interest for all of the NFC assets on an *en bloc* basis (the “**En Bloc Parties**”). Three of the St. Catharines Bidders, including the two En Bloc Parties, were among the group of “Selected Parties” who were invited to participate in Phase 2 of the Sales Process.

12. As more particularly described in the Third Report of the Monitor, the Selected Parties invited to participate in Phase 2 of the Sales Process were provided with access to more detailed information through the Data Room. By the CCAA Sales Process bid deadline, NFC had received only one binding proposal which included the purchase of the St. Catharines Property, and two others offering to acquire only the Saskatoon Facility.

13. Following a comparative review of the three binding proposals received, the Monitor proceeded to work with two final bidders, one of whom included in their bid, the

- 6 -

purchase of the St. Catharines Property (the “**Final St. Catharines Bidder**”). However, as more fully outlined in the Monitor’s Third Report to the Court, the Final St. Catharines Bidder withdrew its bid on February 17, 2012, as a result of *inter alia* failed negotiations between the Final St. Catharines Bidder and NFC’s Major Customer. 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 thereafter commenced these Receivership Proceedings.

SALES PROCESS IN THE RECEIVERSHIP PROCEEDINGS

14. Following the making of the Receivership Order, the Receiver engaged Colliers International (“**Colliers**”), to market the St. Catharines Property. The marketing campaign by Colliers in respect of the St. Catharines Property included the following principal activities (i) post-card glossy mailer sent to 3,700 industrial users; (ii) ads in the Colliers Food Advisory Services Group newsletter in Q2 and Q3 of 2012; (iii) html email broadcast; (iv) publication on the Colliers national website; (v) publication on the Colliers Food Advisory Services Group Website as well as dissemination of listing information at the Colliers Food Advisory Services Group monthly conference calls; (vi) LoopNet Posting; (vii) publication in the International Association of Refrigeration Warehouse eNewsletter in May and August of 2012; (viii) an ad in the Globe & Mail on April 17, 2012; (ix) posting on the Multiple Listing Service (MLS); (x) dissemination of listing information with the Ontario Ministry of Agriculture, Food and Rural Affairs in April 2012 and with St. Catharines Economic Development & Customer Service in August 2012; (xi) for sale signage placed on the St. Catharines Property; and (xii) cold calling campaign to Colliers Food Advisory Services database of food companies in southern Ontario. In addition to the foregoing, Colliers conducted numerous tours of the St. Catharines Facility with potential purchasers.

- 7 -

THE TRANSACTION

15. On or about May 7, 2012, the Purchaser submitted an offer to the Receiver to purchase the St. Catharines Property and the St Catharines Equipment located thereon (the “**Initial Canafric Offer**”). However, the Receiver had entered into an agreement dated April 12, 2012 (which was thereafter approved by the Court on April 19, 2012) to sell all of NFCs equipment, including the St Catharines Equipment to Counsel McIntyre Ltd. As a result, the Receiver could not accept the Initial Canafric Offer.

16. On June 4, 2012, Canafric submitted a second offer for the purchase of the St. Catharines Property (the “**Second Offer**”), which was conditional upon (i) Canafric successfully acquiring certain major pieces of the St. Catharines Equipment from Counsel McIntyre, and (ii) the discharge of the Restrictive Covenant from title to the St. Catharines Property. Canafric carries on business under the name “Mortimers Fine Foods” and makes meat pies, including chicken pot pies, and similar English style foods. A print-out of the Purchaser’s chicken product selection from its website is attached hereto as **Appendix “H”**. On June 7, 2012, Canafric withdrew its Second Offer based upon their determination that there would be insufficient time in which to obtain a discharge of the Restrictive Covenant prior to the date set by Counsel McIntyre for the public auction of the St. Catharines Equipment.

17. Following the withdrawal of the Second Offer, and in the event that other potential purchasers may also require, as a condition of their offers, the discharge of the Restrictive Covenant, the Receiver through its then counsel, Fasken Martineau DuMoulin LLP (“**Fasken**”) wrote a letter to Pinty’s (the “**Fasken Letter**”, a copy of which is attached hereto as **Appendix “I”**) requesting that Pinty’s discharge the Restrictive Covenant. The Fasken Letter provided that, based on a review of the relevant case law, the Restrictive Covenant would likely

- 8 -

be unenforceable as against a future successor given that a restriction on the processing of chicken did not benefit or intrinsically enhance the value of the adjacent dominant lands owed by Pinty's, being a vacant field a portion of which is used as a parking lot and that the Restrictive Covenant constituted an unpermitted restraint on trade.

18. On July 5, 2012, Fasken's received a responding letter from Thane Mackenzie, chief financial officer of Pinty's (the "**Pinty's Letter**", a copy of which is attached hereto as **Appendix "J"**). The Pinty's Letter stated that Pinty's disagreed with the determination that the covenant is unenforceable and that the Restrictive Covenant did not benefit the lands. The Pinty's letter further stated that Pinty's would not discharge the Restrictive Covenant, however, it would be willing to entertain offers from any purchasers of the St. Catharines Property or any fair offer to remove the Restrictive Covenant depending on the purchaser.

19. During the autumn of 2012, the Purchaser's counsel re-contacted the Receiver and after a series of negotiations, the Receiver and the Purchaser executed the Canafric Agreement on or about December 21, 2012. The two principal closing conditions in the Canafric Agreement are: (i) approval by the Court; and (ii) the discharge of the Restrictive Covenant from title to the St Catharine's Property. The Purchaser has delivered to the Receiver a deposit in the sum \$100,000.00 in accordance with the Canafric Agreement. A redacted copy of the Canafric Agreement is attached hereto as **Appendix "K"**. An unredacted copy of the Canafric Agreement is filed but not attached hereto, as **Confidential Appendix "A"**.

20. The Receiver has reviewed the principal terms of the Canafric Agreement with the parties having an economic interest in the St. Catharines facility including, BMO, the first ranking secured creditor and TD Capital Mezzanine Partners Management Ltd. ("**TD**"), the

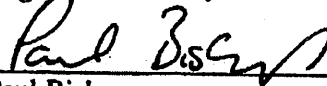
- 9 -

second ranking secured creditor behind BMO. The Receiver has been advised of both BMO and TDs support and approval for the proposed Transaction sought herein.

21. The Receiver is of the view that the market for the St. Catharines Property has been fully and duly canvassed given the lengthy duration of marketing efforts during both the CCAA Sales Process and by Colliers and the Receiver during the Receivership Proceedings. In addition, the secured creditors of NFC who are the only parties with an economic interest in the St. Catharine's Property have approved the proposed purchase price. Based on the foregoing, the Receiver respectfully recommends that the Court approve the Canafric Agreement, order the discharge of the Restrictive Covenant from title to the St Catharines Property, and grant the Vesting Order.

All of which is respectfully submitted this 6th day of February, 2013.

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



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

TAB D



PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

LAND
REGISTRY
OFFICE #30

46324-0072 (LT)

PAGE 1 OF 3
PREPARED FOR KHUGHES1
ON 2013/02/11 AT 15:27:42

* CERTIFIED BY LAND REGISTRAR IN ACCORDANCE WITH LAND TITLES ACT * SUBJECT TO RESERVATIONS IN CROWN GRANT *

PT LT 9 CON 6 GRANTHAM PART 2, 30R710, ST. CATHARINES

PROPERTY REMARKS:

RECENTLY RE-ENTRY FROM 46324-0165

CAPACITY SHARE

PIN CREATION DATE:
2004/01/26

ESTATE/QUALIFIER:

LT CONVERSION QUALIFIED

OWNERS' NAMES

MFC ACQUISITION CORP.

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHRD
** PRINTOUT	INCLUDES ALL DOCUMENT TYPES AND DELETED INSTRUMENTS SINCE: 2004/01/23 **					
**SUBJECT,	ON FIRST REGISTRATION UNDER THE LAND TITLES ACT, TO:					
**	SUBSECTION 44 (1) OF THE LAND TITLES ACT, EXCEPT PARAGRAPH 11, PARAGRAPH 14, PROVINCIAL SUCCESSION DUTIES *					
**	AND ESCHEATS OR FORFEITURE TO THE CROWN.					
**	THE RIGHTS OF ANY PERSON WHO WOULD, BUT FOR THE LAND TITLES ACT, BE ENTITLED TO THE LAND OR ANY PART OF					
**	IT THROUGH LENGTH OF ADVERSE POSSESSION, PRESCRIPTION, MISDESCRIPTION OR BOUNDARIES SETTLED BY					
**	CONVENTION.					
**	ANY LEASE TO WHICH THE SUBSECTION 70(2) OF THE REGISTRY ACT APPLIES.					
**DATE OF	CONVERSION TO LAND TITLES: 2004/01/26 **					
R0179203	1968/10/16	AGREEMENT			THE CORPORATION OF THE CITY OF ST. CATHARINES	C
R0265440	1973/04/13	AGREEMENT			THE CORPORATION OF THE CITY OF ST. CATHARINES	C
REMARKS: SKETCH ATTACHED.						
30R710	1974/01/03	PLAN REFERENCE				C
R0429869	1981/03/31	TRANSFER			J & P POULTRY DISTRIBUTORS LIMITED	C
*** DELETED AGAINST THIS PROPERTY ***						
30R3679	1983/07/26	PLAN REFERENCE				C
R0493091	1985/03/04	NOTICE				C
REMARKS: ZONING REGULATIONS						
R0565446	1988/06/20	AGREEMENT				C
R0655656	1992/10/22	DEBENTURE			THE CORPORATION OF THE CITY OF ST. CATHARINES	C

*** COMPLETELY DELETED ***

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.
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LAND REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

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REGISTRY
OFFICE #30

PAGE 2 OF 3

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46324-0072 (LT)

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REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
		REMARKS: DISCHARGED BY R0728541 CORRECTIONS: DELETED ON 2010/09/09 BY FIRSON, NANCY.			WINMOR FEED COMPANY LTD.	
R0728541	1997/06/24	DISCHARGE		*** COMPLETELY DELETED ***		
		REMARKS: R0655656 CORRECTIONS: DELETED ON 2010/09/10 BY FIRSON, NANCY.				
R0778677	2001/03/23	CHARGE		*** DELETED AGAINST THIS PROPERTY *** PINTY'S PREMIUM FOODS INC.	BANK OF MONTREAL	
NR163154	2007/12/19	APL CH NAME OWNER		*** COMPLETELY DELETED *** J & P POULTRY DISTRIBUTORS LIMITED	PINTY'S DELICIOUS FOODS INC.	
NR163584	2007/12/24	CHARGE		*** DELETED AGAINST THIS PROPERTY *** PINTY'S DELICIOUS FOODS INC.	BANK OF MONTREAL	
NR250761	2010/09/16	DISCH OF CHARGE		*** COMPLETELY DELETED *** BANK OF MONTREAL		
		REMARKS: R0778677.				
NR250762	2010/09/16	DISCH OF CHARGE		*** COMPLETELY DELETED *** BANK OF MONTREAL		
		REMARKS: NR163584.				
NR250763	2010/09/16	APL ANNEX REST COV		PINTY'S DELICIOUS FOODS INC.		C
NR250784	2010/09/16	TRANSFER REMARKS: PLANNING ACT STATEMENTS	\$2,000,000	PINTY'S DELICIOUS FOODS INC.	NFC ACQUISITION CORP.	C
NR261208	2011/02/03	CHARGE	\$100,000,000	NFC ACQUISITION CORP.	BANK OF MONTREAL	C
NR261209	2011/02/03	CHARGE	\$25,000,000	NFC ACQUISITION CORP.	TD CAPITAL MEZZANINE PARTNERS MANAGEMENT LTD.	C
NR271942	2011/06/24	CONSTRUCTION LIEN	\$586,907	MMS SOLUTIONS INC.		C
NR271944	2011/06/24	CONSTRUCTION LIEN		*** COMPLETELY DELETED *** AXIOM MILLWRIGHTING & FABRICATION INC.		C
NR275621	2011/09/05	CERTIFICATE		MMS SOLUTIONS INC.		C

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OFFICE #30

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PAGE 3 OF 3
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REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
NR275819	2011/08/08	CERTIFICATE		*** COMPLETELY DELETED *** AXIOM MILLWRIGHTING & FABRICATION INC.		
NR283974	2011/11/10	DIS CONSTRUCT LIEN		*** COMPLETELY DELETED *** AXIOM MILLWRIGHTING & FABRICATION INC.		
NR289496	2012/01/26	CONSTRUCTION LIEN	\$30,056	VIPOND INC.	NFC ACQUISITION CORP. NEW FOOD CLASSICS NFC ACQUISITION LP BANK OF MONTREAL TD CAPITAL MEZZANINE PARTNERS MANAGEMENT LTD.	C
NR291965	2012/02/29	CERTIFICATE		VIPOND INC.		C
REMARKS: NR271942						
REMARKS: NR271944						
REMARKS: NR271944 . NR275819						
REMARKS: NR289496						
REMARKS: NR289496						

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LAND REGISTRY OFFICE #30

PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

46324-0092 (LT)

PAGE 1 OF 2
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* CERTIFIED BY LAND REGISTRAR IN ACCORDANCE WITH LAND TITLES ACT * SUBJECT TO RESERVATIONS IN CROWN GRANT *

PROPERTY DESCRIPTION: PT LT 9 CON 6 GRANTHAM PART 1, 30R710; ST. CATHARINES

RECENTLY:
RE-ENTRY FROM 46324-0182
CAPACITY SHARE

PROPERTY REMARKS:
ESTATE/QUALIFIER:
FEE SIMPLE
LT CONVERSION QUALIFIED
OWNERS' NAMES
NFC ACQUISITION CORP.

FIN_CREATION_DATE:
2004/01/26

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
** PRINTOUT INCLUDES ALL DOCUMENT TYPES AND DELETED INSTRUMENTS SINCE: 2004/01/23 **						
**SUBJECT.	ON FIRST REGISTRATION UNDER THE LAND TITLES ACT, TO:					
**	SUBSECTION 44 (1) OF THE LAND TITLES ACT, EXCEPT PARAGRAPH 11, PARAGRAPH 14, PROVINCIAL SUCCESSION DUTIES *					
**	AND ESCHEATS OR FORFEITURE TO THE CROWN.					
**	THE RIGHTS OF ANY PERSON WHO WOULD, BUT FOR THE LAND TITLES ACT, BE ENTITLED TO THE LAND OR ANY PART OF					
**	IT THROUGH LENGTH OF ADVERSE POSSESSION, PRESCRIPTION, MISDESCRIPTION OR BOUNDARIES SETTLED BY					
**	CONVENTION.					
**	ANY LEASE TO WHICH THE SUBSECTION 70(2) OF THE REGISTRY ACT APPLIES.					
**DATE OF CONVERSION TO	LAND TITLES: 2004/01/26 **					
30R710	1974/01/03	PLAN REFERENCE				C
RO493091	1985/03/04	NOTICE				C
REMARKS: ZONING REGULATIONS						
RO773695	2006/10/20	TRANSFER				
REMARKS: PT 1 30R710						
RO778677	2001/03/23	CHARGE			PINTY'S PREMIUM FOODS INC.	
NR163009	2007/12/18	APL CH NAME OWNER			BANK OF MONTREAL	
NR163584	2007/12/24	CHARGE			PINTY'S DELICIOUS FOODS INC.	
REMARKS: DELETED AGAINST THIS PROPERTY *** THE CORPORATION OF THE CITY OF ST. CATHARINES						
REMARKS: DELETED AGAINST THIS PROPERTY *** PINTY'S PREMIUM FOODS INC.						
REMARKS: COMPLETELY DELETED *** PINTY'S PREMIUM FOODS INC.						
REMARKS: DELETED AGAINST THIS PROPERTY *** PINTY'S DELICIOUS FOODS INC.						

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PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
NR250761	2010/09/16	DISCH OF CHARGE		*** COMPLETELY DELETED *** BANK OF MONTREAL		
	REMARKS: RC776677.					
NR250762	2010/09/16	DISCH OF CHARGE		*** COMPLETELY DELETED *** BANK OF MONTREAL		
	REMARKS: NR163584.					
NR250763	2010/09/16	APL ANNEX REST COV		PINTY'S DELICIOUS FOODS INC.		C
NR250784	2010/09/16	TRANSFER	\$2,000,000	PINTY'S DELICIOUS FOODS INC.		C
	REMARKS: PLANNING ACT STATEMENTS					
NR261208	2011/02/03	CHARGE	\$100,000,000	NFC ACQUISITION CORP.		C
NR261209	2011/02/03	CHARGE	\$25,000,000	NFC ACQUISITION CORP.		C
NR271942	2011/06/24	CONSTRUCTION LIEN	\$586,907	MWS SOLUTIONS INC.		C
NR271944	2011/06/24	CONSTRUCTION LIEN		*** COMPLETELY DELETED *** AXIOM MILLWRIGHTING & FABRICATION INC.		
NR275621	2011/08/05	CERTIFICATE		MWS SOLUTIONS INC.		C
	REMARKS: NR271942					
NR275819	2011/08/08	CERTIFICATE		*** COMPLETELY DELETED *** AXIOM MILLWRIGHTING & FABRICATION INC.		
	REMARKS: RE: NR271944					
NR283974	2011/11/10	DIS CONSTRUCT LIEN		*** COMPLETELY DELETED *** AXIOM MILLWRIGHTING & FABRICATION INC.		
	REMARKS: NR271944. NR275819					
NR289496	2012/01/26	CONSTRUCTION LIEN	\$30,056	VIFOND INC.		C
NR291965	2012/02/29	CERTIFICATE		VIFOND INC.		C
	REMARKS: NR289496					
				NFC ACQUISITION CORP. NEW FOOD CLASSICS NFC ACQUISITION LP BANK OF MONTREAL TD CAPITAL MEZZANINE PARTNERS MANAGEMENT LTD.		

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46324-0088 (LT)

PAGE 1 OF 3
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PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

PROPERTY DESCRIPTION: PT LT 9 CON 6 GRANTHAM PART 3, 30R710; S/T R0265030; ST. CATHARINES

PROPERTY REMARKS:
ESTATE/QUALIFIER:
FEE SIMPLE
LT CONVERSION QUALIFIED
OWNERS' NAMES
NFC ACQUISITION CORP.
RECENTLY:
RE-ENTRY FROM 46324-0178
CAPACITY SHARE

PIN CREATION DATE:
2004/01/26

13 SEAPAK DRIVE

REG. NDR.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
** PRINTOUT	INCLUDES ALL DOCUMENT TYPES AND DELETED INSTRUMENTS SINCE: 2004/01/23 **					
**SUBJECT.	ON FIRST REGISTRATION UNDER THE LAND TITLES ACT, TO:					
**	SUBSECTION 44 (1) OF THE LAND TITLES ACT, EXCEPT PARAGRAPH 11, PARAGRAPH 14, PROVINCIAL SUCCESSION DUTIES *					
**	AND ESCHEATS OR FORFEITURE TO THE CROWN.					
**	THE RIGHTS OF ANY PERSON WHO WOULD, BUT FOR THE LAND TITLES ACT, BE ENTITLED TO THE LAND OR ANY PART OF					
**	IT THROUGH LENGTH OF ADVERSE POSSESSION, PRESCRIPTION, MISDESCRIPTION OR BOUNDARIES SETTLED BY					
**	CONVENTION.					
**	ANY LEASE TO WHICH THE SUBSECTION 70 (2) OF THE REGISTRY ACT APPLIES.					
**DATE OF CONVERSION TO	LAND TITLES: 2004/01/26 **					
R0179203	1968/10/16	AGREEMENT			THE CORPORATION OF THE CITY OF ST. CATHARINES	C
R0265030	1973/04/05	AGREEMENT			THE CORPORATION OF THE CITY OF ST. CATHARINES	C
	REMARKS: SKETCH ATTACHED. EASEMENT					
R0277313	1973/09/25	CHARGE			NATIONAL TRUST COMPANY LIMITED	
	REMARKS: DISCHARGED BY R0758203 - DELETED 06/01/10 BY JP					
30R710	1974/01/03	PLAN REFERENCE				
R0391972	1978/12/22	CHARGE				
	REMARKS: DISCHARGED BY R0758204 - DELETED 06/01/10 BY JP					
R0493091	1985/03/04	NOTICE			CANADIAN IMPERIAL BANK OF COMMERCE	C
	REMARKS: ZONING REGULATIONS					

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.
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LAND REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

PAGE 2 OF 3
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46324-0088 (LT)

OFFICE #30
 * CERTIFIED BY LAND REGISTRAR IN ACCORDANCE WITH LAND TITLES ACT * SUBJECT TO RESERVATIONS IN CROWN GRANT *

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
RO759341	1999/09/23	TRANSFER		*** DELETED AGAINST THIS PROPERTY *** BLACK CREEK RETIREMENT PARKS LTD.	PINTY'S PREMIUM FOODS INC.	
RO778677	2001/03/23	CHARGE		*** DELETED AGAINST THIS PROPERTY *** PINTY'S PREMIUM FOODS INC.	BANK OF MONTREAL	
NR163009	2007/12/18	APL CH NAME OWNER		*** COMPLETELY DELETED *** PINTY'S PREMIUM FOODS INC.	PINTY'S DELICIOUS FOODS INC.	
NR163584	2007/12/24	CHARGE		*** DELETED AGAINST THIS PROPERTY *** PINTY'S DELICIOUS FOODS INC.	BANK OF MONTREAL	
NR250761	2010/09/16	DISCH OF CHARGE		*** COMPLETELY DELETED *** BANK OF MONTREAL		
NR250762	2010/09/16	DISCH OF CHARGE		*** COMPLETELY DELETED *** BANK OF MONTREAL		
NR250763	2010/09/16	APL ANNEX REST COV		PINTY'S DELICIOUS FOODS INC.		C
NR250784	2010/09/16	TRANSFER	\$2,000,000	PINTY'S DELICIOUS FOODS INC.	NFC ACQUISITION CORP.	C
NR261208	2011/02/03	CHARGE	\$100,000,000	NFC ACQUISITION CORP.	BANK OF MONTREAL	C
NR261209	2011/02/03	CHARGE	\$25,000,000	NFC ACQUISITION CORP.	TD CAPITAL MEZZANINE PARTNERS MANAGEMENT LTD.	C
NR271942	2011/06/24	CONSTRUCTION LIEN	\$586,907	MWS SOLUTIONS INC.		C
NR271944	2011/06/24	CONSTRUCTION LIEN		*** COMPLETELY DELETED *** AXIOM MILLWRIGHTING & FABRICATION INC.		
NR275621	2011/08/05	CERTIFICATE		MWS SOLUTIONS INC.		C
NR275819	2011/08/08	CERTIFICATE		*** COMPLETELY DELETED *** AXIOM MILLWRIGHTING & FABRICATION INC.		

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.
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PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

PAGE 3 OF 3

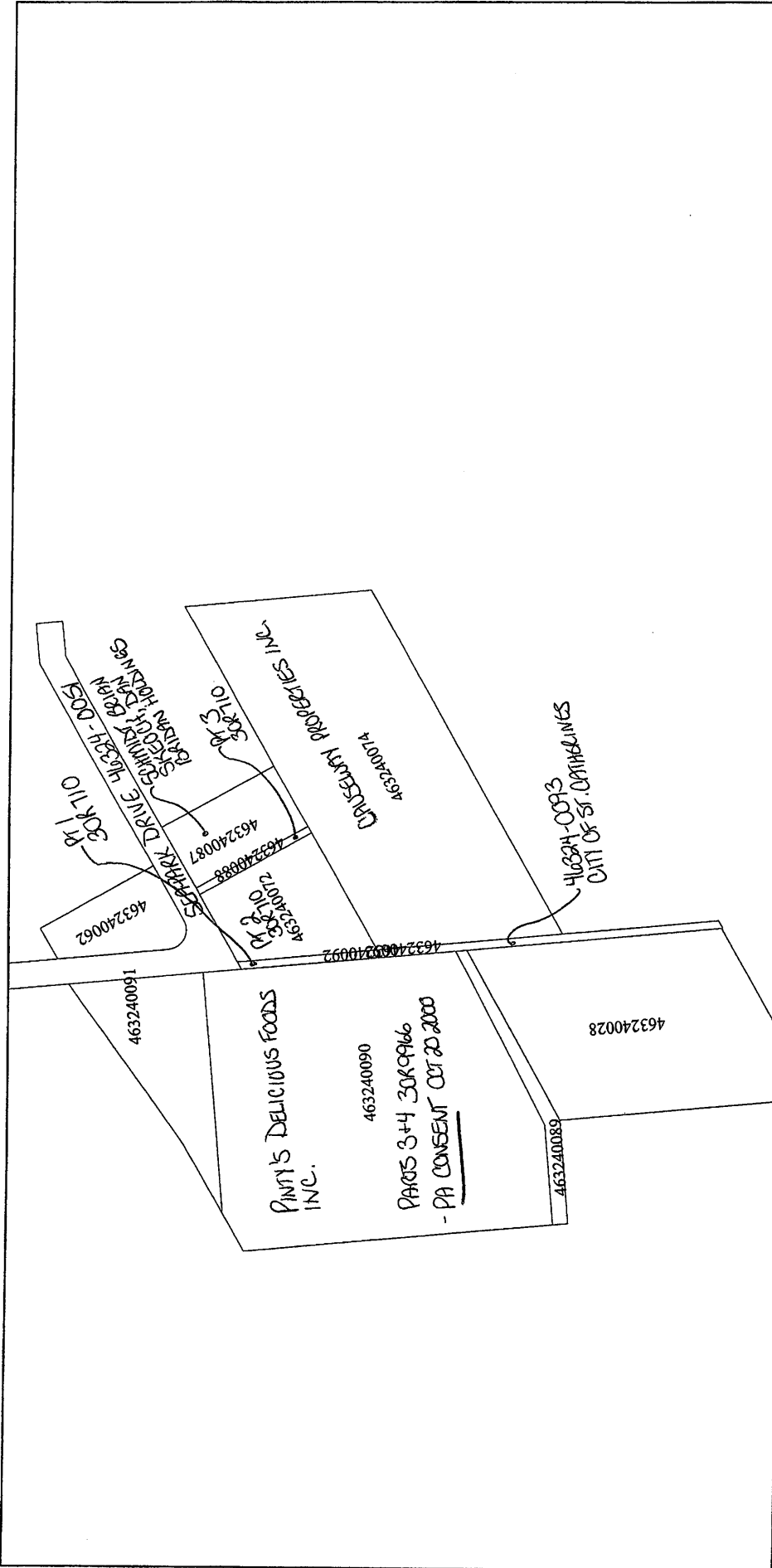
PREPARED FOR KHUGHES1

ON 2013/02/11 AT 15:13:25

* CERTIFIED BY LAND REGISTRAR IN ACCORDANCE WITH LAND TITLES ACT * SUBJECT TO RESERVATIONS IN CROWN GRANT *

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHED
NR283974	2011/11/10	DIS CONSTRUCT LIEN		*** COMPLETELY DELETED *** AXIOM MILLWRIGHTING & FABRICATION INC.		
		REMARKS: NR271944, NR275819				
NR289496	2012/01/26	CONSTRUCTION LIEN	\$30,056	VIFOND INC.		C
NR291965	2012/02/29	CERTIFICATE		VIFOND INC.	NFC ACQUISITION CORP. NEW FOOD CLASSICS NFC ACQUISITION LP BANK OF MONTREAL TD CAPITAL MEZZANINE PARTNERS MANAGEMENT LTD.	C
		REMARKS: NR289496				

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.
NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.



Feb 11, 2013

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Teranet Customer Service Centre: 1-800-208-5263 (Toronto: 416-360-1190)

TAB E

Court File No.:

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

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

**APPLICATION UNDER section 243 of the *Bankruptcy and Insolvency Act*,
R.S.C. 1985, c. B-3, as amended, and under section 101 of the
Courts of Justice Act, R.S.O. 1990, c. C.43**

**AFFIDAVIT OF L.M. JUNIOR DEL BROCCO
(Sworn February 21, 2012)**

I, L.M. JUNIOR DEL BROCCO, of the City of Toronto, in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am a Senior Manager, Special Accounts Management Unit, Bank of Montreal (“**BMO**” or the “**Applicant**”). I have day-to-day responsibility for the New Food Classics (“**NFC**” or the “**Company**”), NFC Acquisition L.P., NFC Acquisition GP Inc., NFC Acquisition Corp., NFC Land Holdings Corp. (collectively, the “**NFC Entities**”) accounts on behalf of BMO and as such I have personal knowledge of the matters herein deposed, save and except where I refer to

- 2 -

matters based on information and belief, in which case I verily believe that information to be true.

I. PURPOSE

2. I am swearing this affidavit in support of an application by BMO for an Order pursuant to s. 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "**BLA**") and s. 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C-43 (the "**CJA**"), *inter alia*, appointing FTI Consulting Canada Inc. ("**FTI**") as receiver (in such capacities, the "**Receiver**"), without security, of all of the assets, property and undertaking (collectively, the "**Property**") of the NFC Entities.

3. BMO, the senior secured creditor of the NFC Entities, is seeking the appointment of the Receiver because (a) a material adverse change in the NFC Entities' business has occurred insofar as BMO has been advised of the resignation of the President and CEO of the NFC Entities and the resignation, *en masse*, of the Board of Directors of NFC Acquisition GP Inc., NFC Acquisition Corp., NFC Land Holdings Corp., (b) the Sale Process approved by this Court in the Initial Order (the "**Sale Process**") did not result in a going concern offer more favourable than the low end of projected recoveries under a liquidation scenario; (c) as of the close of business on February 17, 2012, the only remaining going concern offer required BMO to make further significant advances and to risk incurring material additional losses under the DIP Credit Facility (as defined below) if such offer was further pursued, and (d) the NFC Entities' current financial circumstances seriously impair their viability and negatively impact the value of BMO's collateral, as is set out in more detail below, in the Affidavits of Brian Cram on behalf of the NFC Entities, and in the Reports to Court of FTI in its capacity as the Monitor of the NFC Entities in Ontario Superior Court of Justice Commercial List Court File Number CV12-9554-00CL (the "**CCAA Proceeding**").

4. As at February 20, 2012, the NFC Entities are indebted to BMO in the approximate amount of \$24,500,000.

II. BACKGROUND

5. The NFC Entities are engaged in the business of food processing, serving major national retail and foodservice sales channels throughout Canada. NFC's headquarters are located in Burlington, Ontario. A detailed description of the corporate history of the NFC Entities is set out in the Affidavit of Brian Cram, sworn January 16, 2012, in the CCAA Proceeding.

6. On January 17, 2012, the Honourable Mr. Justice Morawetz issued an Order (the "**Initial Order**") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the "**CCAA**") in the CCAA Proceeding which, *inter alia*, (a) stayed proceedings taken or that might be taken in respect of the NFC Entities and their Directors and Officers; (b) authorized the NFC Entities to obtain and borrow debtor-in-possession financing from BMO under the DIP Credit Facility (as defined below); (c) approved the terms and provisions of a Sale Process and authorized the NFC Entities and the Monitor to Conduct the Sale Process (the "**Sale Process**"); and (d) appointed FTI as the monitor, an Officer of this Court, to monitor the business and financial affairs of the NFC Entities. A copy of the Initial Order is contained in Tab 1 of the NFC Compendium of Orders filed with the Court in the CCAA Proceeding.

7. BMO is the senior-secured lender and the lender under the debtor-in-possession facility ("**DIP Lender**" and "**DIP Credit Facility**", respectively), approved by this Honourable Court in the Initial Order.

8. The NFC Entities are indebted and liable to BMO in an approximate amount totaling \$24,500,000 pursuant to, *inter alia*, a Second Amended and Restated Credit Agreement effective as of October 31, 2011 (the "**Term Facility**"), wherein Acquisition LP was the borrower and the remaining NFC Entities are guarantors, and the DIP Credit Facility. The NFC Entities' indebtedness to BMO and on general account is secured by, *inter alia*, a properly perfected security interest in all of the property, assets and undertakings of the NFC Entities.

9. BMO's security interests pursuant to the Term Facility were perfected in the Province of Ontario by registrations under the *Personal Property Security Act* (the "**PPSA**"). Summaries of the registrations made against the NFC Entities pursuant to the PPSA (or equivalent provincial

- 4 -

legislation) of Ontario, Alberta, Manitoba, and Saskatchewan are attached as Exhibit "D" to the Affidavit of Brian Cram sworn January 16, 2012, in the CCAA Proceeding.

III. SALE PROCESS & SALE PROCESS DEFAULT

10. As detailed in the Third Report to Court of FTI in the CCAA Proceedings, none of the offers received during the Sale Process for the purchase of the business and assets of the NFC Entities as a going concern would be likely to yield better recoveries than the low end of FTI's projected recoveries in a liquidation scenario. Further, in order to proceed with the most favourable offer presented, BMO would be required to risk incurring material additional losses on further advances under the DIP Credit Facility. As I understand it, a thorough discussion of the Sale Process and offers submitted therein is set out in the Monitor's Third Report to Court in the CCAA Proceeding.

11. Following discussions with the NFC Entities and their Directors on February 20, 2012, which included a request by the NFC Entities for further time and further funding from BMO, and a request by BMO that the Directors remain in place to supervise an orderly wind-down process, no agreement could be reached for the continuation of the NFC Entities as debtors in possession and BMO was compelled to give notice in accordance with the DIP Credit Facility that it was terminating its funding thereunder.

12. On February 20, 2012, BMO delivered to the NFP Entities and their counsel written notice of a Sales Process Default (as defined in the DIP Credit Facility) having occurred in accordance with the DIP Credit Facility. A Sales Process Default is a Specified Event of Default under the DIP Credit Facility. Accordingly, a Specified Event of Default has occurred under the DIP Credit Facility. A copy of the Letter dated February 20, 2012, notifying the NFP Entities of the Sales Process Default is attached hereto and marked as **Exhibit "A"**.

13. In the circumstances, BMO, in its capacity as DIP Lender, will not support a continuation of the CCAA Proceeding and the Sale Process and will not provide further funding to the NFC Entities.

IV. RESIGNATION OF BOARD OF DIRECTORS, PRESIDENT, & CEO

14. On Monday, February 20, 2012, BMO and its counsel were notified that the President and CEO of the NFC Entities and the Board of Directors of NFC Acquisition GP Inc., NFC Acquisition Corp., NFC Land Holdings Corp. would resign, *en masse*, effective at 7:00 p.m. EST on February 20, 2012.

15. In view of the foregoing, BMO is concerned that there will be no effective ongoing management of the NFC Entities following the resignation of the Board of Directors and the President and CEO of the NFC Entities.

V. NEED FOR A RECEIVER

16. As a result of the problems described above, the appointment of the proposed Receiver is necessary and urgently required in order to secure the property and assets of the NFC Entities, which includes perishable food inventory, and to proceed with an orderly realization and maximization of the value of the NFC Entities' assets for the benefit of stakeholders.

17. The DIP Credit Facility provides, *inter alia*, for BMO's appointment of a receiver upon the occurrence of a Specified Event of Default (as defined in the DIP Credit Facility). A copy of the DIP Credit Facility is attached as Exhibit "F" to the Affidavit of Brian Cram, sworn January 16, 2012, in the CCAA Proceeding.

18. As set out in the Affidavit of Brian Cram, sworn January 16, 2012, in the CCAA Proceeding, the company is not able to meet its liabilities as they come due. In particular, the NFC Entities cannot repay the Term Facility and are therefore insolvent.

19. The appointment of a receiver is in the interests of justice and is just, convenient, and necessary for the protection of NFC, its estate, and the interests of BMO and other creditors.

20. FTI has consented to act as the receiver in respect of the NFC entities, if so appointed by this Honourable Court. FTI's Consent to Act as receiver will be filed with this Honourable Court on the morning of February 22, 2012.

21. FTI has acted as the Monitor of the NFC Entities in the CCAA Proceeding and has reviewed the financial position of the NFC Entities. In support of BMO's application to appoint a receiver, I understand that FTI will be delivering a Court Report setting out certain of the details of the NFC Entities' current financial and operational situation.

22. The NFC Entities' representatives have advised me that they will not oppose the appointment of the Receiver.

VI. CONCLUSION


23. BMO is concerned that immediate steps must be taken in order to preserve the value of the Property. Failure to appoint a Receiver will likely result in a significant decrease in the value of the NFC Entities business and a reduction in recoveries for its stakeholders.

24. As a result of the prejudice to BMO of the continued operation of the stay of proceedings in the CCAA Proceeding in circumstances where there are no Directors or upper management of the NFC Entities, I believe that it is just and equitable that the CCAA stays be lifted to permit the Receiver to be appointed in order to effect an orderly wind down of the business of the NFC Entities.

25. For the reasons set out above, I believe that it is just and equitable and in the interests of BMO, the NFC Entities, and its stakeholders that FTI is appointed Receiver of the NFC Entities.

26. I swear this affidavit in support of BMO's application for the appointment of FTI as the Receiver of the NFC Entities and for no other or improper purpose.

SWORN before me at the Regional Municipality of Waterloo, in the Province of Ontario, on February 21, 2012.



Commissioner for Taking Oaths

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L.M. JUNIOR DEL BROCCO

TAB F

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

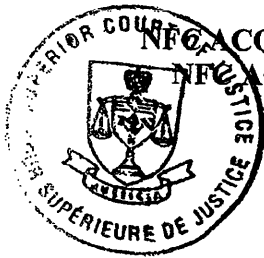
**ONTARIO
SUPERIOR COURT OF JUSTICE
[COMMERCIAL LIST]**

THE HONOURABLE)	THURSDAY, THE 21 st DAY
)	
MR. JUSTICE WILTON-SIEGEL)	OF FEBRUARY, 2013

BANK OF MONTREAL

-and-

Applicant



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

Respondents

APPROVAL AND VESTING ORDER

THIS MOTION, made by FTI Consulting Canada Inc., in its capacity as the Court-appointed receiver (the “Receiver”) of the undertakings, property and assets of NFC ACQUISITION GP INC., NFC ACQUISITION CORP., NFC ACQUISITION L.P., NEW FOOD CLASSICS AND NFC LAND HOLDINGS CORP (collectively, the “Debtors”), for an order approving the transaction (the “Transaction”) contemplated by an agreement of purchase and sale between the Receiver and Canafriac Inc. (“Canafriac” or the “Purchaser”) dated December 21, 2012, (the “Sale Agreement”), appended to the fifth report of the Receiver dated February 6, 2013 (the “Fifth Report”), and vesting in the Purchaser, the Debtors’ right, title and interest in and to the “Lands” as defined in the Sale Agreement and described in Schedule “B” hereto (the “Lands”), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Fifth Report and on hearing the submissions of counsel for the Receiver and Bank of Montreal no one appearing for any other person on the service list,

- 2 -

although properly served as appears from the affidavit of service of Caitlin Fell sworn February 11, 2013, and filed:

1. **THIS COURT ORDERS** that the Fifth 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 Purchaser, free and clear of and from any and all encumbrances, security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed or 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. CVIZ-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; (iii) those Claims listed in Schedule "C" hereto; provided that the Claims shall not include the permitted encumbrances and easements listed on Schedule "D" hereto (the "Permitted Encumbrances") and the Lands shall remain subject to the Permitted Encumbrances.
5. **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

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6. THIS COURT ORDERS that effective upon delivery of the Receiver's Certificate by the Receiver to the Purchaser, all of the Claims affecting or relating to the Lands, other than the Permitted Encumbrances, be and are hereby expunged and discharged as against the Lands, and the Land Registrar is hereby directed to enter Canafric Inc. as the owner of the Lands identified in Schedule B hereto in fee simple, and is hereby directed to delete and expunge from title to the Lands all of the Claims listed in Schedule "C" hereto.

7. THIS COURT ORDERS that 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 Colliers International (the "Net Proceeds") shall stand in the place and stead of the Lands, and that from and after the delivery of the Receiver's 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.

8. 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* (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.

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

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10. THIS COURT ORDERS AND DIRECTS that the documents marked as Confidential Appendix "A" to the Fifth Report shall be treated as confidential and shall be sealed and segregated from the public court record pending further order of this Court.

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.

W. J. H. H. H. H. H.

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



FEB 21 2013

- 5 -

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 December 12, 2012 (the "Sale Agreement") between the Receiver and Canafriac Inc. (the "Purchaser") and provided for the vesting in favour of the Purchaser of the Debtor's right, title and interest in and to the Lands (as defined in the Sale Agreement), 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.

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THE RECEIVER CERTIFIES the following:

- (i) 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;
- (ii) 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.

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: ●

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SCHEDULE "B"**LEGAL DESCRIPTION OF THE LANDS**

Part of Lot 9, Concession 6, Grantham, being Part 1 on Plan 30R-710, City of St. Catharines (PIN No. 46324-0092).

Part of Lot 9, Concession 6, Grantham, being Part 2 on Reference Plan 30R-710, City of St. Catharines (PIN No. 46324-0072).

Part of Lot 9, Concession 6, Grantham, being Part 3 on Plan 30R-710, City of St. Catharines (PIN No. 46324-0088).

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SCHEDULE "C"
CLAIMS TO BE EXPUNGED

1. Mortgage No. NR261208 registered February 3, 2011 in favour of the Bank of Montreal.
2. Mortgage No. NR261209 registered February 3, 2011 in favour of TD Capital Mezzanine Partners Management Ltd.
3. Construction Lien NR271942 registered June 24, 2011 in favour of MWS Solutions Inc.
4. Construction Lien NR289496 registered January 26, 2012 in favour of Vipond Inc.
5. Certificate of Action NR275621 registered August 5, 2011.
6. Certificate of Action NR291965 registered February 29, 2012.

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SCHEDULE "D"
PERMITTED ENCUMBRANCES

1. Instrument Number RO179203 being an agreement between the Corporation of the City of St. Catharines and Brian Field Acres Development Limited.
2. Instrument Number RO265440 being a development agreement between The Corporation of the City of St. Catharines and Cavanis Construction Limited.
3. Instrument Number RO565446 being a development agreement between The Corporation of the City of St. Catharines and J&P Poultry Distributors Limited.
4. Instrument Number RO493091 being a notice regarding airport zoning regulations registered by the Department of Transport.

BANK OF MONTREAL

- and -

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

Applicant

Respondents

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

APPROVAL AND VESTING ORDER
(Dated Thursday, the 21st day of February, 2013)

BORDEN LADNER GERVAIS LLP

Barristers and Solicitors
Scotia Plaza
40 King Street West
Toronto, Ontario
M5H 3Y4

Edmond Lamek

Tel: (416) 367-6311
Fax: (416) 361-2436
LSUC No. 33338U

Lawyers for FTI Consulting Canada Inc., in its capacity
as Court-appointed Receiver of NFC Acquisition GP
Inc., NFC Acquisition L.P., NFC Acquisition Corp.,
New Food Classics and NFC Land Holdings Corp.

TAB G

Court File No. 53126/11

**ONTARIO
SUPERIOR COURT OF JUSTICE**

**IN THE MATTER OF THE CONSTRUCTION LIEN ACT,
R.S.O. 1990 c. C. 30, as amended**

BETWEEN:

MWS SOLUTIONS INC.

Plaintiff

- and -

**NEW FOOD CLASSICS, NFC ACQUISITION CORP.,
NFC ACQUISITION L.P., NFC ACQUISITION GP INC.,
BANK OF MONTREAL and
TD CAPITAL MEZZANINE PARTNERS MANAGEMENT LTD.**

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the Plaintiff(s) lawyer(s) or, where the Plaintiff(s) do(es) not have a lawyer, serve it on the Plaintiff(s), and file it, with proof of service, in this Court office **WITHIN TWENTY DAYS** after this statement of claim is served on you.

IF YOU PAY THE PLAINTIFF'S CLAIM and \$1,000.00 for costs, within the time for serving and filing your statement of Defence you may move to have this proceeding dismissed by the court. If you believe the amount claimed for cost is excessive, you may pay the plaintiff's claim and \$100.00 for costs and have the costs assessed by the court.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: 4 AUGUST 2011

Issued by: 
Local Registrar

Address of the Court Office:
Ontario Superior Court of Justice
59 Church Street
St. Catharines ON L2R 7N8

TO: New Food Classics
15-17 Seapark Drive
St. Catharines, Ontario
L2M 6S5

AND TO: NFC Acquisition Corp.
4211 13A Street SE
Calgary, Ontario
T2G 3J6

AND TO: NFC Acquisition Corp.
145 King Street West
No. 1000
Toronto, Ontario
M5H 1J8

AND TO: NFC Acquisition L.P.
145 King Street West
No. 1000
Toronto, Ontario
M5H 1S8

AND TO: NFC Acquisition GP Inc.
145 King Street West
No. 1000
Toronto, Ontario
M5H 1S8

AND TO: NFC Acquisition GP Inc.

4211 13 A Street SE
Calgary, Ontario
T2G 3J6

AND TO: Bank of Montreal
19th Floor, 1 First Canadian Place
100 King Street West
Toronto, Ontario
M5X 1H3

AND TO: TD Capital Mezzanine Partners Management Ltd.
TD Waterhouse Tower
79 Wellington Street West, 6th Floor
Toronto, Ontario
M5K 1A2

AND TO: TD Capital Mezzanine Partners Management Ltd.
66 Wellington Street West
9th Floor
Toronto, Ontario
M5K 1A2

CLAIM

1. The Plaintiff claims against the Defendants, jointly and severally:
 - (a) payment of the sum of \$586,907.39 from the Defendants, or any of them, pursuant to the provisions of the *Construction Lien Act*, R.S.O. 1990, c.C.30, as amended (the "*Act*");
 - (b) payment of pre-judgment and post-judgment interest on any sums awarded in favour of the Plaintiff pursuant to the terms of the *Courts of Justice Act*, R.S.O. 1990, c.C. 43, as amended;
 - (c) a declaration that the Plaintiff is entitled to a lien against all of the estate, title and interest of any one or more of the Defendants in the lands and premises against which the Claim for Lien attached hereto as Schedule "A" (the "**Lands**") is registered;
 - (d) costs of this action on a substantial indemnity basis;
 - (e) that in default of payment of the said sum of \$586,907.39 plus costs and interest, an Order that the estate and interest of the Defendants in the lands and premises to which the Lien more particularly described in Schedule "A" hereto attaches and which are the subject matter of this action, be sold and the proceeds applied towards payment of the Plaintiff's claim as aforesaid pursuant to the provisions of the *Act*;
 - (f) full priority over the mortgages in favour of the Defendants, Bank of Montreal and TD Capital Mezzanine Partners Management Ltd., or alternatively, priority over the said mortgages to the extent that any portion of the said mortgages

advanced by the mortgagees exceeded the actual value of the Lands which are the subject matter of this action at the time the first lien arose, or, in the further alternative, priority over the said mortgages to the extent of any unadvanced portions thereof, or, in the further alternative, priority to the extent that there are deficiencies in the holdback required to be retained pursuant to the provisions of the *Act*;

- (g) for all purposes aforesaid, and for all other purposes, that accounts be taken, and directions be given under the supervision and direction of this Honourable Court; and
- (h) such further and other relief and declaration as the nature of this case may require and as this Honourable Court may deem just.

2. The Plaintiff, MWS Solutions Inc. (“MWS”) is a corporation incorporated pursuant to the laws of Ontario.
3. The Defendant, NFC Acquisition Corp. (the “Owner”) is a corporation incorporated pursuant to the laws of Ontario, and is the registered owner of the Lands.
4. The Defendant, NFC Acquisition L.P. (“NFC L.P.”) is a limited partnership with a principal place of business in Ontario.
5. The Defendant, NFC Acquisition GP Inc. (“NFC GP”) is a corporation incorporated pursuant to the laws of Ontario, and is the general partner of NFC L.P.
6. The Defendant, New Food Classics (“New Food Classics”) is a general partnership of

which NFC Corp. and NFC L.P. are partners.

7. The Defendant, Bank of Montreal (“**BMO**”) is a Bank listed in Schedule I of the *Bank Act*, 1991, c. 46 and is a mortgagee of the Lands by virtue of a Charge/Mortgage to it in the principal amount of \$100,000,000 registered against title to the Lands on or about February 3, 2011 (the “**BMO Mortgage**”).
8. The Defendant, TD Capital Mezzanine Partners Management Ltd. (“**TD Capital**”) is a corporation incorporated pursuant to the laws of Ontario and is a mortgagee of the Lands by virtue of a Charge/Mortgage to it in the principal amount of \$25,000,000 registered against title to the Lands on or about February 3, 2011 (the “**TD Capital Mortgage**”, together with the BMO Mortgage, the “**Mortgages**”).
9. MWS states that New Food Classics entered into a contract with the Owner with respect to the relocation and installation of equipment and related components and construction on the Lands in St. Catharines, Ontario (the “**Project**”), the particulars of which are unknown to MWS at this time.
10. Pursuant to an agreement made in or about January 2011 (the “**Agreement**”), MWS contracted with New Food Classics to supply materials, services and labour in relation to the Project. It was agreed that MWS would be compensated on a time and material basis.
11. Pursuant to the Agreement, MWS delivered invoices to New Food Classics in respect of the Project in the total amount of \$2,715,843.04.

12. Pursuant to the Agreement, and beginning on or about January 8, 2011 and continuing through to May 10, 2011, MWS performed works and supplied materials and services as aforesaid to the Project.
13. To date, there remains due and owing to MWS, the amount of \$586,907.39 (HST included).
14. By reason of supplying the materials and services as aforesaid, MWS became entitled to a lien upon the interest of the Defendants of the Lands for the outstanding balance owing to it in the amount of \$586,907.39 (HST included), together with costs of this action, pursuant to the provisions of the *Act*.
15. At all material times, the Lands were owned by the Owner, and are the Lands for which MWS supplied services and materials at the request of, on behalf of, with the consent, and/or for the direct benefit of the Owner, and accordingly, the Owner is and was a statutory owner within the meaning of the *Act*.
16. On June 24, 2011, MWS caused a Claim for Lien, in the amount of \$586,907.39 (HST included), to be registered against title to the Lands, which Claim for Lien was electronically registered as Instrument No. NR271942 with the Land Registrar at St. Catharines, a copy of which is attached hereto as Schedule "A".
17. MWS states that the Defendants, pursuant to their statutory obligations, were required to maintain not only the statutory holdback, but in addition thereto, the amount of MWS's Claim for Lien in the sum of \$586,907.39 (HST included) and MWS therefore states that

it is entitled to be paid by the Defendants, or any one of them, the said sum due and owing to it as hereinbefore set out. MWS pleads and relies upon Sections 21 and 24 of the *Act*.

18. MWS further states that the statutory holdback of the Defendants, or any one of them, is equal to or greater than the amount of MWS's claim. MWS therefore claims to be entitled to be paid by the Defendants, or any one of them, the sum due and owing to it as hereinbefore set out. MWS pleads and relies upon Sections 21, 22 and 23 of the *Act*.
19. MWS further states that New Food Classic's failure to pay the amount of \$586,907.39 (HST included) for services and materials provided by MWS constitutes a breach of the Agreement.
20. MWS states that the Mortgages were given and taken by the Owner with the intention of securing financing of the Project or were registered after the time when the Lien arose with respect to the Project and MWS therefore claims that its Lien on the Lands has full priority over the Mortgages.
21. In the alternative, MWS states that its Lien on the Lands has full priority over the Mortgages to the extent of any deficiency in the holdback required to be retained by the Defendants pursuant to the provisions of the *Act*.
22. In the further alternative, MWS states that its Lien on the Lands has priority over the Mortgages to the extent that any portion advanced exceeded the actual value of the Lands at the time when the first lien arose.

23. In the further alternative, MWS states that its Lien on the Lands has priority over the Mortgages to the extent of any unadvanced portions thereof.
24. MWS states that the particulars of all advances pursuant to the Mortgages are within the knowledge of the Defendants.
25. MWS further states that by reason of the furnishing of its services and materials to the Project, it has enhanced the value of the Lands and the Owner has received the benefit of same and each of the Defendants have been unjustly enriched in the amount of \$586,907.39 (HST included) at the expense of and to the detriment of MWS.
26. MWS pleads and relies upon the doctrine of unjust enrichment.
27. Alternatively, MWS states that it is entitled to payment of its claim from the Defendants, or any one of them, on the basis of quantum meruit.
28. MWS proposes that this action be tried at St. Catharines, Ontario.

Dated: August 3, 2011

BERKOW, COHEN LLP
Barristers
141 Adelaide St. W., Ste. 400
Toronto, Ontario
M5H 3L5

Jack B. Berkow
LSUC #2150630

Angela Hewko
LSUC #51121U

Tel: (416) 364-4900
Fax: (416) 364-3865

Lawyers for the Plaintiff

SCHEDULE "A"

LRO # 30 Construction Lien

Received as NR271942 on 2011 06 24 at 11:36

The applicant(s) hereby applies to the Land Registrar.

yyyy mm dd Page 1 of 2

Properties

PIN 46324 - 0092 LT
Description PT LT 9 CON 6 GRANTHAM PART 1, 30R710; ST. CATHARINES
Address 15 SEAPARK DRIVE ST. CATHARINES

PIN 46324 - 0072 LT
Description PT LT 9 CON 6 GRANTHAM PART 2, 30R710; ST. CATHARINES
Address 15 SEAPARK DR ST. CATHARINES

PIN 46324 - 0088 LT
Description PT LT 9 CON 6 GRANTHAM PART 3, 30R710; S/T RO265030; ST. CATHARINES
Address 13 SEAPARK DRIVE ST. CATHARINES

Consideration

Consideration \$ 586,907.39

Claimant(s)

Name MWS SOLUTIONS INC.
Address for Service 62 Schaefer Street, Waterloo, Ontario N2L 4C5
solicitor
Berkow Cohen
141 Adelaide Street West, Suite 400
Toronto, Ontario, M5H 3L5

I, Jason McKellar, am the agent of the lien claimant and have informed myself of the facts stated in the claim for lien and believe them to be true.

I, Jason McKellar, have the authority to bind the corporation.

This document is not authorized under Power of Attorney by this party.

Statements

Name and Address of Owner NFC ACQUISITION CORP. @ 4211 13A Street SE, Calgary, Ontario T2G 3J6 Name and address of person to whom lien claimant supplied services or materials New Food Classics @ 15 - 17 Seapark Drive, St. Catherines, Ontario, L2M 6S5

Time within which services or materials were supplied from 2011/01/08 to 2011/05/10 Short description of services or materials that have been supplied The relocation, supply and installation of mechanical and electrical equipment and related components, including an electrical system and a boiler system. Contract price or subcontract price \$2,715,843.04 (inc. GST/HST) Amount claimed as owing in respect of services or materials that have been supplied \$586,907.39 (inc. GST/HST)

The lien claimant claims a lien against the interest of every person identified as an owner of the premises described in said PIN to this lien

Signed By

Peter Currie 64 Rusholme Rd. acting for Signed 2011 06 23
Toronto Applicant(s)
M6J 3H6
Tel 4165931301
Fax 4165934734

I have the authority to sign and register the document on behalf of the Applicant(s).

LRO # 30 Construction Lien

Received as NR271942 on 2011 06 24 at 11:36

The applicant(s) hereby applies to the Land Registrar.

yyyy mm dd Page 2 of 2

Submitted By

711219 ONTARIO LIMITED

64 Rusholme Rd.
Toronto
M6J 3H6

2011 06 24

Tel 4165931301

Fax 4165934734

Fees/Taxes/Payment

Statutory Registration Fee \$60.00

Total Paid \$60.00

MWS SOLUTIONS INC.

and

NEW FOOD CLASSICS ET AL.
Defendants

Plaintiffs

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceedings commenced at TORONTO

STATEMENT OF CLAIM

BERKOW, COHEN LLP
Barristers
141 Adelaide Street West
Suite 400
Toronto, Ontario
M5H 3L5

JACK B. BERKOW
LSUC #15063 O

ANGELA HEWKO
LSUC #51121 U

Solicitors for the Plaintiffs
tel: (416) 364-4900
fax: (416) 364-3865

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TAB H

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 GP INC., NFC
ACQUISITION CORP. AND NFC LAND HOLDINGS CORP.

Court File No. CV-12-9554-00CL

Feb 16-12

16 February, 2012

The relief sought is appropriate. I am
satisfied with the actions of the Plaintiff. Order
to go as requested.

The NFC applicants have received
notice that a construction lien action
in St. Catharines will be dismissed
if steps are not taken in 45 days to
file a defence. In light of the stay of
proceedings in the United States, the
construction lien action is stayed and
no defence is required at this time.

It is ordered that no steps
be taken by the Applicant
to dismiss the action or
otherwise.

36366-2001 13210293.3

J. W. J.

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

Proceeding commenced at Toronto

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

(Stay Extension Order and Westco Pre-Filing Lien Charge
(returnable on February 16, 2012))

Torys LLP

79 Wellington Street West
Suite 300, TD Centre
Toronto, Ontario M5K 1N2

Fax: 416.865.7380

David Bish (LSUC#: 41629A)

Tel: 416.865.7353

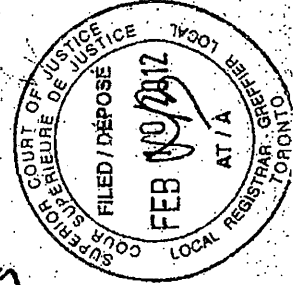
Email: dbish@torys.com

Adam M. Slavens (LSUC#: 54433J)

Tel: 416.865.7333

Email: aslavens@torys.com

Lawyers for NFC Acquisition GP Inc.,
NFC Acquisition Corp.,
NFC Land Holdings Corp.,
New Food Classics and
NFC Acquisition L.P.



TAB I

Edmond Lamek
T 416.367.6311
F 416.361.7067
elamek@blg.com

Borden Ladner Gervais LLP
Scotia Plaza, 40 King Street W
Toronto, ON, Canada M5H 3Y4
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blg.com



July 16, 2013

Via Email Only

Scott Crocco
Berkow, Cohen LLP
Barristers & Solicitors
141 Adelaide Street West
Suite 400
Toronto, ON M5H 3L5

Dear Scott:

Re: FTI Consulting Canada Inc. and New Food Classics et. al

We are the lawyers for FTI Consulting Canada Inc. in its capacity as court appointed Receiver of the property, assets and undertaking of the New Food Classics and its related entities (collectively "NFC"). I am writing to you with reference to a *Construction Lien Act* proceeding (Court File No. 53126-11), being MWS Solutions Inc. v. NFC, Bank of Montreal and TD Capital Mezzanine Partners Management Ltd. (the "CLA Action").

You have advised that you act for the plaintiff in the CLA Action, MWS Solutions Inc. You have asked for the Receiver's written consent to the lifting of the stay of proceedings contained in the Order of the Honourable Justice Brown dated February 22, 2012 appointing the Receiver (the "Receivership Order"), so that you may set the CLA Action down for trial in accordance with the time constraints under the *Construction Lien Act* in order to avoid the possibility of the CLA Action being dismissed.

As you are aware paragraph 8 of the Receivership Order provides:

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 leave of this Court and any and all Proceedings currently underway against or in respect of the Debtors or the Property are hereby stayed and suspended pending further order of this Court.

In that regard, I confirm on behalf of the Receiver that, subject to the next sentence, the Receiver hereby consents, in accordance with paragraph 8 of the Receivership Order, to MWS Solutions Inc. taking such steps, and only such steps, as are necessary to set the CLA Action down for trial as required by the *Construction Lien Act* and that thereafter no further steps be taken by you, or by the Court supervising the CLA Action, in furtherance of the CLA Action. In that regard, we attach hereto a Notice of Stay of Proceedings which the Receiver requires, as a condition of the

Receiver's consent, that your firm files in the CLA Action forthwith after setting it down for trial in accordance with the Receiver's consent contained herein.

Please do not hesitate to contact me if you have any questions. We look forward to receiving a copy of the CLA Action trial record materials, and I confirm that my firm can accept service on behalf of the Receiver, on behalf of NFC.

Please also provide us with a copy of the Notice of Stay as stamped by the Court in the CLA Action once filed. Trusting this is satisfactory.

Yours very truly,
BORDEN LADNER GERVAIS LLP

Edmond F.B. Lamek
EFBL/mlp
Enclosure(s)

cc: C. Prophet (via email only)
J. Engen (via email only)

BANK OF MONTREAL

Court File No.: CV12-9616-00CL

Applicants

- and -

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

Respondents

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

MOTION RECORD

(RETURABLE NOVEMBER 20, 2013)

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1 First Canadian Place

Toronto, Ontario

M5X 1B8

Lawyers for FTI Consulting Canada Inc., in
its capacity Court-appointed Receiver