

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**BANK OF MONTREAL**

Applicants

– and –

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

Respondents

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**MOTION RECORD  
(RETURNABLE FEBRUARY 20, 2014)**

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February 13, 2014

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Lawyers for FTI Consulting Canada Inc., in  
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TO: SERVICE LIST

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

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# TAB 1

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

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

**BETWEEN:**

**BANK OF MONTREAL**

Applicant

**- and -**

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

Respondents

**NOTICE OF MOTION  
(returnable February 20, 2014)**

**FTI CONSULTING CANADA INC.** (“FTI”), in its capacity as court-appointed receiver (the “**Receiver**”) of all of the assets, undertakings and properties (the “**Property**”) of NFC Acquisition GP Inc., NFC Acquisition L.P., NFC Acquisition Corp., New Food Classics and NFC Land Holdings Corp., (collectively, “**NFC**”) will make a motion to a judge presiding over the Commercial List on Thursday, the 20<sup>th</sup> day of February, 2014, at 10:00 a.m. or as soon after that time as the motion can be heard, at the Courthouse, 330 University Avenue, Toronto, Ontario.

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

**THE MOTION IS FOR:**

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

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- (a) authorizing and directing the Receiver to make an interim distribution to Bank of Montreal (“**BMO**”) on account of the indebtedness of NFC to BMO from the proceeds of the receivership estate of NFC held by the Receiver;
  - (b) reducing the Directors’ Charge (as defined in the Initial Order dated January 17, 2012, made in NFC’s proceedings under the *Companies’ Creditors’ Arrangement Act*, R.S.C., 1985, c. C-3, as amended (the “**CCAA**”) bearing Court file no. CV12-9554-00CL and recognized and preserved in these proceedings by Order of the Court appointing the Receiver dated February 22, 2012) from \$3,000,000 to \$163,366.57;
  - (c) approving the activities of the Receiver as set out in the Sixth Report of the Receiver dated October 27, 2013 and the Seventh Report of the Receiver dated February 13, 2014 (the “**Seventh Report**”); and
2. Such further and other relief as counsel may advise and to this Honourable Court may seem just.

**THE GROUNDS FOR THE MOTION ARE:**

1. On January 17, 2012, NFC filed for and obtained protection under the CCAA and FTI was appointed as monitor.
2. On February 22, 2012, the Court granted an Order appointing of FTI as Receiver of the Property of NFC.

3. As at February 20, 2012, NFC was indebted to BMO in the approximate amount of \$24,500,000, including amounts drawn under the debtor in possession facility granted by BMO in the CCAA proceedings of NFC.

4. As of February 5, 2014, the Receiver is holding funds in the approximate amount of \$10,314,856.19 on account of realizations by the Receiver of substantially all of the assets of NFC.

5. The opinions provided to FTI, in its capacity as monitor to NFC state (subject to the assumptions and qualifications contained therein) that BMO's personal and real property security is valid and enforceable as against a trustee in bankruptcy of NFC over the Property of NFC located in the Provinces of Ontario, Saskatchewan and Alberta.

6. The Receiver respectfully recommends that it authorized to distribute to BMO the amount of \$9,533,652 subject to any additional holdback(s) as the Receiver in consultation with BMO may deem appropriate in the circumstances.

7. The Receiver will continue to hold back approximately \$650,000 to account for: (i) certain unresolved matters in the receivership proceedings, including certain pre-filing statutory lien amounts which may be owing to a repair and storage lien claimant from the proceeds derived from the sale of NFC's finished product; (ii) fees of the Receiver and its counsel going forward; and (iii) legal fees of the directors and officers which are capped in the maximum amount of \$50,000 pursuant to the D&O Claims Process Order (as defined herein).

8. On April 13, 2013, the Court granted an Order approving a procedure for the solicitation, determination and resolution of claims filed against the directors and officers of NFC for claims indemnified and secured by the Directors' Charge (the "**D&O Claims Process Order**").

9. As a result of the Receiver's determination and adjudication of such claims against the directors and officers of NFC, only one claim submitted by claimants was determined by the Receiver to be a Proven Claim (as defined in the D&O Claims Process Order). All other claims were disallowed by the Receiver and were not subject to appeal.

10. The Receiver proposes that the Directors' Charge in the amount of \$917,454 be further reduced to \$163,366.57, representing the amount of the one Proven Claim being held by the Receiver in the Proven Claims Insured Reserve (as defined in the D&O Claims Process Order).

11. Rules 1.04, 1.05, 2.03, 3.02, and 37 of the Rules of Civil Procedure.

12. Such further and other grounds as counsel may advise and this Honourable Court may permit.

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

13. The Seventh Report and the appendices thereto.

14. Such further and other material as counsel may advise and this Honourable Court may permit.

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February 13, 2014

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

TO: THE ATTACHED SERVICE LIST



**SERVICE LIST**  
**(February 13, 2014)**

TO:	<p>TORYS LLP 79 Wellington Street West, Suite 3000 Box 270, TD Centre Toronto, ON M5K 1N2</p> <p>Attention: David Bish / Adam Slavens Tel: 416. 865.7353 / 416.865.7333 Fax: 416. 865.7380 Email: dbish@torys.com / aslavens@torys.com</p> <p>Lawyers for NFC Entities</p>
AND TO:	<p>Gowling Lafleur Henderson LLP 1 First Canadian Place 100 King Street West, Suite 1600 Toronto, ON M5X 1G5</p> <p>Attention: David Cohen / Clifton Prophet Tel: 416.369.6667 / 416.863.3509 Fax: 416.862.7661 Email: david.cohen@gowlings.com / clifton.prophet@gowlings.com</p> <p>Lawyers for the Bank of Montreal</p>

AND TO:	<p>Goodmans LLP Bay Adelaide Centre 333 Bay Street, Suite 3400 Toronto, ON M5H 2S7</p> <p>Attention: Robert Chadwick / Derek Bulas / Logan Willis Tel: 416.597.4285 / 416.597.5914 / 416.597.6299 Fax: 416.979.1234 Email: rchadwick@goodmans.ca / lwillis@goodmans.ca</p> <p>Lawyers for the EdgeStone Capital Partners</p>
AND TO:	<p>Lenczner Slaght Royce Smith Griffin LLP Suite 2600, Box 54 130 Adelaide Street West Toronto, ON M5H 3P5</p> <p>Attention: Peter Osborne / Brendan Gray Tel: 416.865.3094 / 416.865.2945 Fax: 416.865.9010 Email: posborne@litigate.com / bgray@litigate.com</p> <p>Lawyer for certain Directors of the NFC Entities</p>
AND TO:	<p>TD Capital Mezzanine Partners Management Ltd. TD Bank Tower 66 Wellington Street West, 9th Floor Toronto, ON M5K 1A2</p> <p>Attention: Bill O'Connor / Can Cakim / Sandra Mundy Tel: 416.308.1776 Fax: 416.983.6817 Email: bill.oconnor@tdsecurities.com</p>
AND TO:	<p>Plaxton &amp; Company Lawyers 500 - 402 21st Street East Saskatoon, Saskatchewan S7K 0C3</p> <p>Attention: Drew S. Plaxton Tel: 306.653.1500 Fax: 306.664.6659 Email: dsplaxton@plaxtonlaw.com</p> <p>Lawyers for United Food and Commercial Workers, Local 1400</p>

AND TO:	<p>McMillan LLP 1900, 736-6th Avenue S.W. Calgary, AB T2P 3T7</p> <p>Attention: Adam C. Maerov Phone: 403.215.2752 Fax: 403.531.4720 Email: adam.maerov@mcmillan.ca</p> <p>Lawyers for Millard Refrigerated Services, Inc</p>
AND TO:	<p>Miller Thomson LLP Scotia Plaza, 40 King Street West Suite 5800, P.O. Box 1011 Toronto, Ontario M5H 3S1</p> <p>Attention: Mark Frederick Phone: 416 595 8175 Fax: 416 595 8695 Email: mfrederick@millerthomson.ca</p> <p>Lawyers for Sagicor at Lloyd's (Syndicate 1206).</p>

# TAB A

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

THE HONOURABLE )  
 )  
JUSTICE ● )

THURSDAY THE 20TH DAY  
OF FEBRUARY, 2014

**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

**ORDER**

**THIS MOTION** made by FTI Consulting Canada Inc., in its capacity as court-appointed receiver (the “**Receiver**”) of all of the assets, undertakings and properties of NFC Acquisition GP Inc., NFC Acquisition L.P., NFC Acquisition Corp., New Food Classics and NFC Land Holdings Corp (collectively, “**NFC**”) for an order, *inter alia*, directing the Receiver to effect one or more interim distributions from the proceeds of the receivership to Bank of Montreal (“**BMO**”), the details of which are more particularly set out in the seventh report of the Receiver, dated February 13, 2014 (the “**Seventh Report**”), was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Notice of Motion, the Seventh Report and the appendices thereto, filed; 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, although properly served as appears from the Affidavit of Service of Karin Schwarz sworn February 13, 2014, filed:

**Service**

1. **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.

**Activities of the Receiver**

2. **THIS COURT ORDERS** that the Sixth Report dated October 17, 2013, and the Seventh Report be and are hereby accepted, and the activities of the Receiver described therein be and are hereby approved.

**Interim Distributions to BMO**

3. **THIS COURT ORDERS** that the Receiver is hereby authorized and directed to make an interim distribution or distributions to BMO on account of the indebtedness of NFC to BMO from the proceeds in the receivership estate of NFC held by the Receiver in the amount of \$9,533,652 subject to any additional holdback(s) as the Receiver in consultation with BMO may deem appropriate in the circumstances.

**Directors' Charge**

4. **THIS COURT ORDERS** that the Directors' Charge (as defined in the Initial Order dated January 17, 2012, made in NFC's proceedings under the *Companies' Creditors' Arrangement Act*, R.S.C., 1985, c. C-3, as amended bearing Court file no. CV12-9554-00CL and recognized and preserved in these proceedings by Order of the Court appointing the Receiver dated February 22, 2012) be and is hereby reduced to \$163,366.57.

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# TAB 2

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

**SEVENTH 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**”) filed for and obtained protection under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”). Pursuant to an Order of this Honourable Court (the “**Court**”) dated January 17, 2012 (the “**Initial Order**”, a copy of which is attached as **Appendix “A”**), FTI Consulting Canada Inc. was appointed as monitor (“**FTI**” or the “**Monitor**”) and a stay of proceedings was granted against NFC 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 NFC (the “**Property**”) and granted an Order in these proceedings pursuant to section 243(1) of the *Bankruptcy and Insolvency Act* and section 101 of the *Courts of Justice Act*, appointing FTI as receiver of the Property (in that capacity the “**Receiver**”), a copy of which is attached hereto as **Appendix “B”**).

### **PURPOSE OF THIS REPORT**

3. The purpose of this seventh report of the Receiver (the “**Seventh Report**”) is to inform the Court on the following:

- (a) the proposed settlement (the “**Insurance Settlement**”) between the Receiver and Sagikor at Lloyd’s (Syndicate 1206), the insurer (the “**Insurer**”) under the Contamination Products Insurance Policy issued in the name of NFC, and to seek approval of the Insurance Settlement;
- (b) the results of the Directors’ and Officers’ Charge Claims Process (“**D&O Claims Process**”) as approved by the Court by Order dated April 9, 2013;
- (c) the litigation proceedings commenced by MWS Solutions Inc. (“**MWS**”), against NFC, BMO and TD Capital Mezzanine Partners Management Ltd. (“**TD**”) for damages in the amount of \$586,907.39 pursuant to the provisions of the *Construction Lien Act*, R.S.O. 1990, c.C3, as amended (the “**MWS Litigation**”);
- (d) the remaining outstanding matters in the receivership proceedings of NFC; and

- (e) the Receiver's recommendation that the Receiver be authorized to distribute to BMO, subject to such holdback(s) as the Receiver in consultation with BMO may deem appropriate in the circumstances:
- (i) the proceeds of the Insurance Settlement;
  - (ii) funds held by the Receiver in respect of the Directors Charge (as defined in paragraph 21 of the Initial Order) that do not form the Proven Claims Insured Reserve established by the Receiver for Proven Claims (each as defined in the Claims Procedure Order dated April 9, 2013); and
  - (iii) the balance of the net proceeds of sale from the NFC's manufacturing facility located on Seapark Drive in St. Catharines (the "**St. Catharines Property**") which were being held by the Receiver pending resolution of the MWS Litigation, which litigation resulted in a Court-approved settlement payment to 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 is attached hereto as **Appendix "C"** and the Fourth Report of the Receiver, a copy of which is attached hereto as **Appendix "D"**.

#### **BACKGROUND**

5. At the time of its CCAA filing, NFC marketed approximately 300 products to retailers, club stores, and mass merchandiser channels, as well as to leading restaurant operators and institutional foodservice distributors. NFC's retail products were predominantly private

label, offered under various store brand names and represented an estimated 40% market share of frozen burgers sold in grocery stores in Canada.

6. NFC processed value-added meat and other meat-related products at its manufacturing facilities in Saskatoon, Saskatchewan, and St. Catharines, Ontario. The Saskatoon facility primarily produced ground and formed meats and steaking products and was one of the largest and most advanced burger plants in Canada, operating four burger production lines. The St. Catharines facility produced cooked and value-added products.

7. NFC had 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-add meat products (e.g., pork ribs).

8. NFC had two primary distribution channels consisting of retail and food services. The retail sales channel comprised approximately 75% of NFC's gross sales, with the foodservice channel making up the remainder. Some of NFC's largest customers were Loblaw Companies Limited, Wal-Mart Canada and Sysco Canada. The majority of NFC's gross revenues were generated from these customers. Loblaw's alone generated approximately 42% of NFC's revenues while its top ten customers accounted for approximately 82% of revenues.

## INSURANCE SETTLEMENT

### *Events During the CCAA and Receivership Surrounding the Health Hazard Advisories*

9. During the period following the granting of the Initial Order, NFC's production facilities remained in operation in the ordinary course of business (subject to the restrictions contained in the DIP Facility) while the Court approved sale process for NFC's business on a going-concern basis was undertaken jointly by the Monitor and NFC. The sale process was commenced with the intention of maximizing the going concern value of NFC's business for the benefit of its stakeholders.
10. On or about February 15, 2012, the Canadian Food Inspection Agency ("CFIA") was notified of an e-coli related consumer illness alleged to have resulted from consumption of NFC product in Calgary Alberta.
11. On or about February 17, 2012, after receiving a notice of default under its DIP Facility, NFC ceased its going-concern production operations.
12. On February 18, 2012, the CFIA issued a health hazard advisory to the public not to consume certain "Country Morning Beef Burgers" and no name "Club Pack Beef Steakettes" because the products may have contained the e.coli 0157:H7 bacteria ("**E.coli**").
13. On February 22, 2012, the Ontario Superior Court of Justice appointed FTI as the receiver of the Property of NFC. The Receiver did not re-commence production.
14. Beginning on or about February 23, 2012, through to March 15, 2012, the CFIA expanded its health hazard alerts to include additional NFC products and to notify retailers and consumers as to the broadened geographic scope of distribution of the possibly contaminated products throughout Canada.

15. On March 17, 2012, the CFIA issued a further health hazard alert which expanded the scope of the recall to all ground beef products made between July 1, 2011, and February 16, 2012, in Establishment #761, which was NFC's Saskatchewan manufacturing location because the products may be contaminated with E.coli (the "**Expanded Recall**").

16. NFC's Contamination Products Insurance Policy for the period from January 1, 2012, until December 31, 2012, (the "**Policy**") set out a crisis response procedure for incidents that may be covered under the Policy and as a result, forthwith after being advised of the Expanded Recall, the Receiver contacted "red24 Crisis Response Management Centre" to advise of the Expanded Recall.

17. The Receiver understands that E.coli appears to have been introduced to the NFC facility in one or more shipments of raw material beef from one or more of NFC's suppliers.

18. Following its appointment, the Receiver engaged two of NFC's sales representatives to commence a process for the realization of NFC's finished product inventory and collection of its outstanding accounts receivable. The Receiver had significant bargaining power to obtain full value for NFC's finished product inventory and to collect outstanding accounts receivable as a precondition to product sales. This enhanced bargaining power was due to NFC's cessation of operations and the fact that: (i) NFC's finished product was in many instances a customer's sole source of supply of house branded products; and (ii) there were long lead times involved in securing replacement suppliers.

19. From and after the occurrence of the Expanded Recall however, both the Receiver and NFC's customers alike were unable to sell the vast majority of NFC's products. Accordingly, the Expanded Recall brought to a halt, the sale by the Receiver of NFC's finished products.

20. As a result of the Expanded Recall, the Receiver contacted NFC's insurance broker to request that the Insurer be put on notice of a possible claim under the Policy.

### ***The Insurance Policy***

21. Attached hereto as **Appendix "E"** is a copy of the Policy. The Policy liability limit was \$10,000,000 per claim and in aggregate, subject to a \$250,000 retention amount per claim. The Insurer under the Policy is stated to be certain Lloyds Underwriters and was subsequently identified as Sagikor at Lloyds (Syndicate 1206).

22. Under the Policy, the Insurer agreed to indemnify NFC for loss arising from Accidental Product Contamination of all of NFC products, including ingredients and components that were manufactured or distributed. The Policy is stated to cover a number of defined Losses, including Pre-Recall Costs, Recall Costs, Retained Consultants, Increased Costs of Working, Rehabilitation Costs, Incident Response Costs and Loss of Gross Income (each as defined in the Policy) caused by or resulting from Accidental Product Contamination, Malicious Product Tampering or Product Extortion Demand (each as defined in the Policy).

### ***NFC's Insurance Claim***

23. On or about September 2012, the Receiver through its counsel at the time, Fasken Martineau DuMoulin ("**Fasken**") submitted to the Insurer a claim under the Policy for Losses arising from the Expanded Recall, including Recall Costs, Retained Consultant costs and Loss of Gross Income, totalling approximately \$10,396,819 (the "**NFC Insurance Claim**").

24. Between September 2012 and August 2013, the Receiver and its counsel spent considerable time and effort compiling the necessary information and documents requested by the Insurer that evidenced the Losses suffered by NFC. The Receiver also engaged special insurance counsel to assist the Receiver in its negotiations with the Insurer with respect to the

quantum and scope of the Losses to be covered by the Insurer under the Policy and, if necessary, to commence litigation.

### ***The Insurance Settlement***

25. On August 29, 2013, the Receiver and the Insurer reached a proposed settlement agreement with respect to the NFC Insurance Claim in the amount of \$7,500,000 less the amount of the \$250,000 retention amount (the “**Insurance Settlement Amount**”) in consideration for the release by the Receiver of any and all claims made or which hereinafter may be made against the Insurer or under the Policy.

26. The Receiver is of the view that the proposed Insurance Settlement Amount is fair and reasonable. The Insurance Settlement Amount represents a 74% recovery from the maximum \$10,000,000 Policy coverage limit less the retention amount. Failure of the parties to settle the NFC Insurance Claim may have resulted in protracted litigation between the Receiver and the Insurer and therefore additional costs in such circumstances where: (i) NFC’s senior secured creditor will likely suffer a shortfall on the total indebtedness owing and; (ii) there was no guarantee that the Receiver would have been able to obtain an amount that was more than the Insurance Settlement Amount, particularly taking into consideration the costs of litigating the matter. Accordingly, the Receiver respectfully recommends that this Court approve the proposed Insurance Settlement.

### **THE D&O CLAIMS PROCESS**

27. On April 9, 2013, the Court approved the D&O Claims Process for the submission, evaluation and adjudication of claims against the current and former directors and officers of NFC which were indemnified and secured by the D&O Charge in the Initial Order. In

this section all capitalized terms not defined elsewhere have the meaning ascribed to them in the D&O Claims Process Order.

28. In accordance with the provisions of the D&O Claims Process, the Receiver took the following steps:

- On April 9, 2013, posted a copy of the Notice to Creditors on the Receiver's website;
- On April 18, 2013, caused the Notice to Creditors to be published in each of the Globe and Mail newspaper (National Edition), the Saskatoon Star Phoenix and the St. Catharines Standard;
- sent the Notice to Creditors and a copy of the D&O Claims Process Order to each Known Creditor and to any Person who requested such documents.

29. The Claims Bar Date under the D&O Claims Process was established as May 31, 2013 (7:00 p.m. Eastern Standard Time).

30. Pursuant to the Interim Distribution Order, on July 17, 2013, the Receiver distributed to BMO the amount of \$2,082,546 representing the amount by which the \$3,000,000 Director's Charge exceeded the aggregate face amount of all Director's Charge Claims filed with the Receiver. Such interim distribution to BMO thereby reduced the Directors' Charge to \$917,454.

31. As of the Claims Bar Date, the Receiver received 24 Proofs of Claim by claimants asserting a Directors' Charge Claim in the collective approximate amount of \$904,190.49. The Receiver reviewed all of the Directors' Charge Claims received and, if necessary, contacted or made inquiries with Claimants to obtain additional documentation or information. Copies of all



Proofs of Claims, Notices of Revision or Disallowance and Notices of Dispute were sent to counsel to the D&Os.

32. Out of the 24 submitted Proofs of Claims, the Receiver issued 23 Notices of Revision or Disallowance disallowing such claims. The remaining Proof of Claim filed by the Labour Standards Division, Ministry of LRWS (Saskatchewan) in the amount of \$163,366.57 (the “**Sask Labour Claim**”) was determined by the Receiver to be a Proven Claim. The Sask Labour Claim was filed on account of amounts owing to 64 former employees of NFC for pay in lieu of notice (the “**Sask Labour Claim**”).

33. Pursuant to the D&O Claims Process, Claimants may file a Notice of Dispute within 14 days after the date of the Notice of Revision or Disallowance (the “**Dispute Deadline**”). By the Dispute Deadline, the Receiver received two Notices of Dispute:

- (i) a Notice of Dispute from the United Food and Commercial Workers, Local 1400 (the “**Union**”) in respect of a claim against the D&Os for union dues deducted from employee wages but not remitted to the Union in the amount of \$5,380.50 during the CCAA for the pay periods January 15-31, 2012 and February 12-21, 2012 (the “**Union Claim**”); and
- (ii) a Notice of Dispute from Handy Rental Centre in respect of a claim for the rental by NFC of a scissor lift in the amount of \$428.98 (the “**Handy Rental Claim**”).

34. The Receiver reviewed the two Notices of Dispute received. Upon realizing that NFC had not remitted the union dues for the stated pay period, the Receiver promptly sent the

Union a Notice of Acceptance of the Union Claim. The entirety of the Union Claim was paid by the Receiver out of Post Receivership Account.

35. With respect to the Handy Rental Claim, Receiver's counsel followed up with Handy Rental Centre to explain that their claim: (i) did not fall within the scope of the D&O Charge; and; (ii) was a pre-filing claim against NFC. As a result of those discussions and explanations, Handy Rental Centre accordingly withdrew its claim.

36. In total, the Receiver denied Proofs of Claims in the approximate amount of \$735,443.42.

37. Pursuant to the Initial Order, the D&Os shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with the Initial Order. The D&Os have submitted the Sask Labour Claim to the relevant D&O insurer. The Receiver has been and will continue to work with counsel to the D&Os with respect to coverage by the Insurer of the Sask Labour Claim.

38. Given that the Sask Labour Claim is the only Proven Claim that has not been paid, the Receiver will continue to hold back the amount of the Sask Labour Claim in the Proven Claims Insured Reserve, which reserve is secured by the Directors' Charge, pending determination of coverage by the D&O Insurer.

#### **THE MWS LITIGATION**

39. As outlined in detail the Sixth Report of the Receiver, attached hereto as **Appendix "H"**, prior to the CCAA proceedings, MWS filed a statement of claim against NFC, BMO and TD, (collectively, the "**Defendants**"). 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*; (ii) a declaration that MWS is entitled to a lien against the Defendant's interest in the St. Catharines Property, or in the alternative, that MWS has priority over the mortgages of BMO and TD to the extent of any deficiency in the holdback required to be retained pursuant to the *Construction Lien Act*.

40. As described in the Sixth Report of the Receiver, 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. On February 21, 2013, the Court made an Order vesting the St. Catharines Property in Canafriac. The proceeds of sale from the St. Catharines Property stood in the place and stead of the property and any claims, including the mortgages of BMO and TD and the MWS construction lien, attached as against the proceeds with the same priority as such claims had immediately prior to the sale. Since the closing of the transaction, the Receiver has been holding net proceeds of sale of the St. Catharines Property in the amount of \$1,529,565.50 pending resolution of the MWS Litigation.

41. On January 27, 2014, the Receiver brought a motion for advice and direction with respect to the relative priorities as between MWS, BMO and TD over the proceeds of sale of the St. Catharines Property.

42. Just prior to the motion, the Receiver was advised by the parties that BMO and MWS reached a settlement agreement whereby the Receiver would pay to MWS the amount of \$271,584.30 (the "**MWS Settlement Amount**") in full and final satisfaction of MWS's claims: (i) pursuant to the *Construction Lien Act*; and (ii) the action brought by MWS against the Defendants. The settlement was approved by Order of the Court on January 27, 2014 (the

“MWS Order”, a copy of which is attached hereto as **Appendix “F”**). Pursuant to the MWS Order, on February 3, 2014 the Receiver wire transferred the MWS Settlement Amount to Berkow Cohen LLP, in trust for MWS.

#### **REMAINING OUTSTANDING MATTERS IN THE RECEIVERSHIP PROCEEDINGS**

43. As outlined in the Sixth Report of the Receiver, the Receiver conducted a sales process for substantially all of NFC’s manufacturing equipment and listed the two Calgary properties and the St Catharines Property for sale. The Receiver sold one of the Calgary properties in May of 2012 and as mentioned above, the St. Catharines Property was sold in December, 2012.

44. The Receiver continues to list for sale and work towards concluding a transaction for the second Calgary property owned by NFC (the “**Brandon St. Facility**”), the remaining asset of NFC to be sold. The Brandon St. Facility has been listed for sale since 2010. As detailed in the Fourth Report of the Receiver, in 2010 NFC engaged Barclays to market and sell its two Calgary properties, including the Brandon St. Facility. Barclays engagement was continued by NFC during the CCAA proceedings and by the Receiver in these proceedings. The Receiver has been working with a potential purchaser of the Brandon St. Facility, however those efforts have been hampered as a result of title impediments/property line issues.

#### **DISTRIBUTION TO BMO**

##### *Indebtedness of NFC to BMO*

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

46. Shortly after commencement of NFC’s CCAA proceedings, a review of the security held by BMO was conducted by Monitor’s counsel at the time, Fasken in respect of the

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

47. The opinions of Faskens and McDougall state that (subject to the assumptions and qualifications contained therein) BMO’s personal and real property security is valid and enforceable as against a trustee in bankruptcy of NFC over the property of NFC located in the Provinces of Ontario, Saskatchewan and Alberta.

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

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

*Prior Distributions by the Receiver to BMO*

50. As mentioned above, the Receiver made interim distributions to BMO in the amount of \$8,082,546.00 representing the amount by which the Director’s Charge exceeded the aggregate face amount of all Director’s Charge Claims filed with the Receiver.

*Distribution to BMO*

51. As of February 5, 2014, the Receiver is holding funds in the approximate amount of \$10,314,856.19 as a result of, *inter alia*, the Insurance Settlement and the proceeds of sale of the St. Catharines Property less the MWS Settlement Amount.

52. As explained in the Fourth Report of the Receiver, the Administration Charge, the DIP Charge, the Westco Pre-filing Lien Charge and the Directors' Charge (each as defined in the Initial Order) established in the CCAA proceedings of NFC were recognized and continued in these Receivership proceedings. All amounts which were secured by the Administration Charge, the Westco Pre-filing Lien Charge and the DIP Charge have been paid in full.

53. Pursuant to the Interim Distribution Order, on July 17, 2013, the Receiver distributed to BMO the amount of \$2,082,546 representing the amount by which the \$3,000,000 Director's Charge exceeded the aggregate face amount of all Director's Charge Claims filed with the Receiver. Such interim distribution to BMO thereby reduced the Directors' Charge to \$917,454.

54. As a result of the determination and adjudication of D&O Charge Claims by the Receiver, the Receiver proposes that the D&O Charge in the amount of \$917,454 be further reduced to \$163,366.57, representing the amount of the Sask Labour Proven Claim being held by the Receiver in the Proven Claims Insured Reserve.

55. The Receiver has determined, in consultation with BMO, that it will continue to hold back approximately \$650,000 to account for: (i) certain unresolved matters, including as described in the Fourth Report of the Receiver, certain pre-filing statutory lien amounts which may be owing to Millard from the proceeds derived from the sale of NFC's finished product that was in the possession of Millard as of the date of the Initial Order; (ii) fees of the Receiver and its counsel going forward; and (iii) legal fees of the D&Os which are capped in the maximum amount of \$50,000 pursuant to the D&O Claims Process.

56. As a result of the foregoing, the Receiver respectfully recommends that it authorized to distribute to BMO the amount of \$9,533,652 subject to any additional holdback(s)

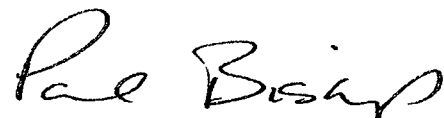
as the Receiver in consultation with BMO may deem appropriate in the circumstances, and which consists of *inter alia*:

- (i) \$7,250,000 representing the proceeds of the Insurance Settlement;
- (ii) \$754,087 representing funds held by the Receiver in respect of the Directors Charge (as defined in paragraph 21 of the Initial Order) that do not form the Proven Claims Insured Reserve established by the Receiver for Proven Claims; and
- (iii) \$1,257,981.12 representing the balance of the net proceeds of sale from the St. Catharines Property after payment of the MWS Settlement Amount.

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All of which is respectfully submitted this 13th day of February, 2014.

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



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



# TAB A

Court File No. CV12-955400C

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE )  
MR. JUSTICE MORAWETZ ) TUESDAY, THE 17TH DAY  
OF JANUARY, 2012

**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.**

**INITIAL ORDER**

THIS APPLICATION, made by NFC Acquisition GP Inc., NFC Acquisition Corp. and NFC Land Holdings Corp. (collectively, the "Applicants"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Brian Cram sworn January 16, 2012 (the "Cram Affidavit") and the Exhibits thereto, filed, and on being advised that the Bank of Montreal ("BMO") and TD Capital Mezzanine Partners Management Ltd. were given notice of this application, and on reading the consent of FTI Consulting Canada Inc. ("FTI") to act as the Monitor (the "Monitor"), filed, and the report of FTI dated January 16, 2012 (the "Pre-Filing Report"), in its capacity as proposed Monitor, filed,

**SERVICE**

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

**APPLICATION**

2. THIS COURT ORDERS AND DECLARES that the Applicants are companies to which the CCAA applies and that the Applicants and New Food Classics and NFC Acquisition L.P. (together, the "Partnerships", and together with the Applicants, the "NFC Entities") shall enjoy the benefits of the protections and authorizations provided by this Order.

**PLAN OF ARRANGEMENT**

3. THIS COURT ORDERS that any of the NFC Entities shall have the authority to file and may, subject to further order of this Court, file with this Court a plan or plans of compromise or arrangement (hereinafter referred to as the "Plan").

**POSSESSION OF PROPERTY AND OPERATIONS**

4. THIS COURT ORDERS that the NFC Entities shall remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, whether real, personal, immovable or movable, inchoate or intangible, including all proceeds thereof (the "Property"). Subject to further Order of this Court, the NFC Entities shall continue to carry on business in a manner consistent with the preservation of their business (the "Business") and Property. The NFC Entities shall be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively, the "Assistants") currently retained or employed by them, with liberty to retain such further Assistants as they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. THIS COURT ORDERS that the NFC Entities shall be entitled to continue to utilize the central cash management system currently in place as described in the Cram Affidavit or replace it with another substantially similar central cash management system with BMO (the "Cash

Management System”) and that BMO shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the NFC Entities of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the NFC Entities, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

6. THIS COURT ORDERS that the NFC Entities shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses, and similar amounts owed to any Assistants, payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and
- (b) the fees and disbursements of any Assistants retained or employed by the NFC Entities in respect of these proceedings, at their standard rates and charges.

7. THIS COURT ORDERS that, except as otherwise provided to the contrary herein, the NFC Entities shall be entitled but not required to pay all reasonable expenses incurred by the NFC Entities in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and
- (b) payment for goods or services actually supplied to the NFC Entities following the date of this Order.

8. THIS COURT ORDERS that the NFC Entities shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "Sales Taxes") required to be remitted by the NFC Entities in connection with the sale of goods and services by the NFC Entities, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the NFC Entities.

9. THIS COURT ORDERS that until a real property lease is disclaimed in accordance with the CCAA, the NFC Entities shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the NFC Entities and the landlord from time to time ("Rent"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

10. THIS COURT ORDERS that, except as specifically permitted herein, the NFC Entities are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the NFC Entities to any of their creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of their Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

### RESTRUCTURING

11. THIS COURT ORDERS that the NFC Entities shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents (as hereinafter defined), have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of their business or operations and to dispose of redundant or non-material assets not exceeding \$100,000 in any one transaction or \$1,000,000 in the aggregate;
- (b) terminate the employment of such of their employees or temporarily lay off such of their employees as they deem appropriate; and
- (c) pursue all avenues of refinancing of their Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing,

all of the foregoing to permit the NFC Entities to proceed with an orderly restructuring of the Business (the "Restructuring").

12. THIS COURT ORDERS that the NFC Entities shall provide each of the relevant landlords with notice of the NFC Entities' intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the NFC Entities' entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the NFC Entities, or by further Order of this Court upon application by the NFC Entities on at least two (2) days' notice to such landlord and any such secured creditors. If the NFC Entities disclaim the lease governing

such leased premises in accordance with Section 32 of the CCAA, they shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to the NFC Entities' claim to the fixtures in dispute.

13. THIS COURT ORDERS that if a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then: (a) during the notice period prior to the effective time of the disclaimer, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the NFC Entities and the Monitor 24 hours' prior written notice; and (b) at the effective time of the disclaimer, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the NFC Entities in respect of such lease or leased premises and such landlord shall be entitled to notify the NFC Entities of the basis on which it is taking possession and to gain possession of and re-lease such leased premises to any third party or parties on such terms as such landlord considers advisable, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

#### **NO PROCEEDINGS AGAINST THE NFC ENTITIES OR THE PROPERTY**

14. THIS COURT ORDERS that until and including February 16, 2012, or such later date as this Court may order (the "Stay Period"), no proceeding or enforcement process in any court or tribunal (each, a "Proceeding") shall be commenced or continued against or in respect of the NFC Entities or the Monitor, or affecting the Business or the Property, except with the written consent of the NFC Entities and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the NFC Entities or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

15. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "Persons" and each being a "Person") against or in respect of the NFC Entities or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the NFC Entities and the Monitor, or leave of this

Court, provided that nothing in this Order shall: (a) empower the NFC Entities to carry on any business which the NFC Entities are not lawfully entitled to carry on; (b) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (c) prevent the filing of any registration to preserve or perfect a security interest; or (d) prevent the registration of a claim for lien.

#### **NO INTERFERENCE WITH RIGHTS**

16. THIS COURT ORDERS that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform or provide any right, renewal right, contract, agreement, licence or permit in favour of or held by the NFC Entities, except with the written consent of the NFC Entities and the Monitor, or leave of this Court.

#### **CONTINUATION OF SERVICES AND SUPPLY**

17. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements or arrangements, including, without limitation, by conduct, with the NFC Entities 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, food and food processing safety monitoring, food storage services, facility cleaning services or other services to the Business or the NFC Entities, 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 NFC Entities, and that the NFC Entities shall be entitled to the continued use of its current premises, 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 NFC Entities in accordance with normal payment practices of the NFC Entities or such other practices as may be agreed upon by the supplier or service provider and each of the NFC Entities and the Monitor, or as may be ordered by this Court.

#### **NON-DEROGATION OF RIGHTS**

18. THIS COURT ORDERS that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or



licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the NFC Entities. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

#### **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

19. THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the NFC Entities with respect to any claim against the directors or officers that arose before, on or after the date hereof and that relates 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 for the payment or performance of such obligations, until a compromise or arrangement in respect of the NFC Entities, if one is filed, is sanctioned by this Court or is refused by the creditors of the NFC Entities or this Court.

#### **DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE**

20. THIS COURT ORDERS that the NFC Entities shall indemnify their present directors, former directors during the sixty (60) day period prior to the date hereof and officers against obligations and liabilities that they may incur as directors or officers of the NFC Entities after the commencement of the within proceedings, including, without limitation, wages and source deductions included therein, vacation pay, PST, GST, HST and prospective liability under Saskatchewan legislation for pay in lieu of notice, if any, and without limiting the generality of the foregoing, against all claims, costs and expenses relating to the failure of the NFC Entities after the date hereof to make payments of the nature referred to in paragraphs 8(a), 8(b) and 8(c) of this Order, except to the extent that, with respect to any present director, former director during the sixty (60) day period prior to the date hereof or officer, the obligation or liability was incurred as a result of such director's or officer's gross negligence or wilful misconduct.

21. THIS COURT ORDERS that the present directors, former directors during the sixty (60) day period prior to the date hereof and officers of the NFC Entities shall be entitled to the benefit of and are hereby granted a charge (the "Directors' Charge") on the Property, which charge shall not exceed an aggregate amount of \$3,000,000, as security for the indemnity provided in

paragraph 20 of this Order. The Directors' Charge shall have the priority set out in paragraphs 38 and 40 herein.

22. THIS COURT ORDERS that, notwithstanding any language in any applicable insurance policy to the contrary: (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the NFC Entities' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 20 of this Order.

#### **APPOINTMENT OF MONITOR**

23. THIS COURT ORDERS that FTI Consulting Canada Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the NFC Entities with the powers and obligations set out in the CCAA or set forth herein and that the NFC Entities and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the NFC Entities pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

24. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the NFC Entities' receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) assist the NFC Entities, to the extent required by the NFC Entities, in their dissemination, to the DIP Lender and its counsel on a weekly basis or more frequently as may be reasonably required by the DIP Lender of financial and other information as agreed to between the NFC Entities and the DIP Lender which may be

- used in these proceedings including reporting on a basis to be agreed with the DIP Lender;
- (d) advise the NFC Entities in their preparation of the NFC Entities' cash flow statements and reporting required by the DIP Lender, which information shall be reviewed with the Monitor and delivered to the DIP Lender and its counsel on a periodic basis, but not less than weekly, or as otherwise agreed to by the DIP Lender;
  - (e) advise the NFC Entities in the development of the Plan and any amendments to the Plan;
  - (f) assist the NFC Entities, to the extent required by the NFC Entities, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
  - (g) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the NFC Entities, to the extent that is necessary to adequately assess the NFC Entities' business and financial affairs or to perform its duties arising under this Order;
  - (h) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;
  - (i) hold and administer funds in connection with arrangements made among the NFC Entities, any Person and the Monitor, or by Order of this Court;
  - (j) upon the direction of the NFC Entities, remit to the applicable insurer the premium due in respect of any director and officer insurance contemplated by the Initial CCAA Cash Flow (as such term is defined in the DIP Agreement (as defined below), which funds the Monitor shall hold in trust for the benefit of the NFC Entities' directors and officers pending its receipt of such request;
  - (k) act as the sole sales agent in connection with the supervision of the Sale Process (as defined below); and

- (l) perform such other duties as are required by this Order or by this Court from time to time.

25. THIS COURT ORDERS that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

26. THIS COURT ORDERS that nothing herein contained shall require the Monitor 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 (the "Environmental Legislation"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor'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.

27. THIS COURT ORDERS that that the Monitor shall provide any creditor of the NFC Entities and the DIP Lender with information provided by the NFC Entities in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the NFC Entities is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the NFC Entities may agree.

28. THIS COURT ORDERS that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

29. THIS COURT ORDERS that the Monitor, counsel to the Monitor, counsel to the NFC Entities and counsel to the directors and officers shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the NFC Entities as part of the costs of these proceedings. The NFC Entities are hereby authorized and directed to pay the accounts of the Monitor, counsel to the Monitor, counsel to the NFC Entities and counsel to the directors and officers on a weekly basis.

30. THIS COURT ORDERS that at the request of the NFC Entities, any party in interest, or this Court, the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

#### **ADMINISTRATION CHARGE**

31. THIS COURT ORDERS that the Monitor, counsel to the Monitor and counsel to the NFC Entities shall be entitled to the benefit of and are hereby granted a charge (the "Administration Charge") on the Property, which charge shall not exceed an aggregate amount of \$350,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 38 and 40 hereof.

#### **DIP FINANCING**

32. THIS COURT ORDERS that the NFC Entities are hereby authorized and empowered to obtain and borrow under a credit facility from the Bank of Montreal (the "DIP Lender") in order to finance the NFC Entities' working capital requirements and other general corporate purposes and capital expenditures, provided that borrowings under such credit facility shall not exceed the principal amount of \$10,500,000 unless permitted by further Order of this Court.

33. THIS COURT ORDERS THAT such credit facility shall be on the terms and subject to the conditions set forth in the Super-Priority, Senior Secured Debtor-in-Possession Credit Facility Letter Loan Agreement among the NFC Entities and the DIP Lender dated as of January 16, 2011 (the "DIP Agreement"), filed.

34. THIS COURT ORDERS that the NFC Entities are hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the "Definitive Documents"), as are contemplated by the DIP Agreement or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the NFC Entities are hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the DIP Agreement and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

35. THIS COURT ORDERS that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the "DIP Lender's Charge") on the Property, which DIP Lender's Charge shall not secure any indebtedness under existing credit facilities with the Bank of Montreal that exists before this Order is made. The DIP Lender's Charge shall have the priority set out in paragraphs 38 and 40 hereof.

36. THIS COURT ORDERS that, notwithstanding any other provision of this Order:

- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under the Definitive Documents or the DIP Lender's Charge, the DIP Lender, upon three (3) days' notice to the NFC Entities and the Monitor, may exercise any and all of its rights and remedies against the NFC Entities or the Property under or pursuant to the DIP Agreement, Definitive Documents and the DIP Lender's Charge, including without limitation, to cease making advances to the NFC Entities and set off and/or consolidate any amounts owing by the DIP Lender to the NFC Entities against the obligations of the NFC

Entities to the DIP Lender under the DIP Agreement, the Definitive Documents or the DIP Lender's Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the NFC Entities and for the appointment of a trustee in bankruptcy of the NFC Entities; and

- (c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the NFC Entities or the Property.

37. THIS COURT ORDERS AND DECLARES that the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the NFC Entities under the CCAA, or any proposal filed by the Applicant under the *Bankruptcy and Insolvency Act* of Canada (the "BIA"), with respect to any advances made under the Definitive Documents.

#### **VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

38. THIS COURT ORDERS that the priorities of the Directors' Charge, the Administration Charge and the DIP Lender's Charge (collectively, the "Charges"), as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$350,000);

Second – Directors' Charge (to the maximum amount of \$3,000,000); and

Third – DIP Lender's Charge.

39. THIS COURT ORDERS that the filing, registration or perfection of the Charges shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest in the Property, filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect, under any statute, regulation, rule, instrument or other applicable law.

40. THIS COURT ORDERS that each of the Charges shall constitute a charge on the Property and such Charges shall rank ahead in priority to the existing security interests of the Bank of Montreal and TD Capital Mezzanine Partners Management Ltd., but behind all other

security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "Encumbrances") in favour of any Persons that have not been served with notice of this application. The NFC Entities and the Chargees (as defined below) shall be entitled to seek priority ahead of the Encumbrances on notice to those parties likely to be affected by such priority.

41. THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, the NFC Entities shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the NFC Entities also obtain the prior written consent of the Monitor, the DIP Lender and the beneficiaries of the Directors' Charge and the Administration Charge, or further Order of this Court.

42. THIS COURT ORDERS that the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "Chargees") and/or the DIP Lender thereunder shall not otherwise be limited or impaired in any way by: (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "Agreement") which binds the NFC Entities, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the DIP Agreement or the Definitive Documents shall create or be deemed to constitute a breach by the NFC Entities of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the NFC Entities entering into the DIP Agreement, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and



- (c) the payments made by the NFC Entities pursuant to this Order, the DIP Agreement or the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

43. THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the NFC Entities' interest in such real property leases.

#### **SALE PROCESS**

44. THIS COURT ORDERS that the terms and provisions of the sale process (the "Sale Process"), as described in the Pre-Filing Report, be and they are hereby approved, and the NFC Entities and the Monitor shall be authorized to conduct the Sale Process as contemplated therein.

#### **SERVICE AND NOTICE**

45. THIS COURT ORDERS that the Monitor shall: (a) without delay, publish in The Globe and Mail (National Edition) once a week for two weeks a notice containing the information prescribed under the CCAA; and (b) within five days after the date of this Order: (i) make this Order publicly available in the manner prescribed under the CCAA, (ii) send, together with the NFC Entities, in the prescribed manner, a notice to every known creditor who has a claim against the NFC Entities of more than \$1,000, and (iii) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

46. THIS COURT ORDERS that the NFC Entities and the Monitor 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 NFC Entities' creditors or other interested parties at their respective addresses as last shown on the records of the NFC Entities 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.

47. THIS COURT ORDERS that the NFC Entities, the Monitor, 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 Monitor may post a copy of any or all such materials on its website at <http://cfcanada.fticonsulting.com/nfc>.

#### **GENERAL**

48. THIS COURT ORDERS that the NFC Entities or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

49. THIS COURT ORDERS that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the NFC Entities, the Business or the Property.

50. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States or elsewhere, to give effect to this Order and to assist the NFC Entities, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the NFC Entities and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the NFC Entities and the Monitor and their respective agents in carrying out the terms of this Order.

51. THIS COURT ORDERS that each of the NFC Entities and the Monitor 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 Monitor 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.

52. THIS COURT ORDERS that any interested party (including the NFC Entities and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days'

notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

53. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.

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

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

JAN 17 2012

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

Court File No. CV-12-0554-00CL

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

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
(Commercial List)

Proceeding commenced at Toronto

**INITIAL ORDER**

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

Fax: 416.865.7380

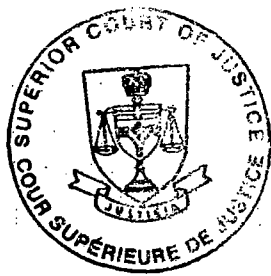
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Lawyers for NFC Acquisition GP Inc.,  
NFC Acquisition Corp.,  
NFC Land Holdings Corp.,  
New Food Classics and  
NFC Acquisition L.P.

# TAB B

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



**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**THE HONOURABLE MR.** )  
 )  
**JUSTICE BROWN** )

**WEDNESDAY, THE 22<sup>nd</sup> DAY  
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;



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- (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.

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- (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

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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.

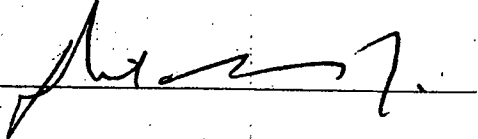
31. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, 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.

- 14 -

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:

Court File No. CV-12-~~555~~-00CL

**NFC ACQUISITION GP INC. et al.**

**BANK OF MONTREAL**

- and -

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(PROCEEDING COMMENCED AT TORONTO)**

**ORDER**

**GOWLING LAFLEUR HENDERSON LLP**

Barristers and Solicitors  
1 First Canadian Place  
100 King Street West, Suite 1600  
TORONTO, Ontario  
MSX 1G5

**Clifton P. Prophet / Frank Lamie**  
LSUC No.: 34845K / 54035S

Telephone: (416) 862-3509 / (416) 862-3609  
Facsimile: (416) 862-7661

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

# TAB C

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”)<sup>1</sup>, 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.

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<sup>1</sup> 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)
<b>Assets</b>	
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
<b>Total Assets</b>	<b>69,797</b>

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

(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-Revolving 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-Revolving 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-Revolving Loan Facility is \$12,100,000. The Non-Revolving 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-Revolving 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 1 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 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-Revolver 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 proceedings, 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:

<b>ACTION</b>	<b>DEADLINE</b>
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.

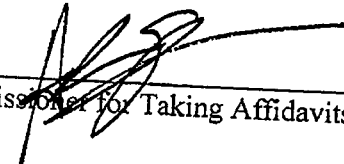
121. FTI has been working with the NFC Entities and its advisors in the lead-up to these proceedings and has familiarity with the NFC Entities' business and operations. FTI is experienced with this type of proceeding, and is well suited to the role of Court-appointed Monitor in these proceedings.

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.

**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 D

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

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

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

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

#### PURPOSE OF THIS REPORT

3. The purpose of this fourth report of the Receiver (the "Fourth Report") is to provide the Court with the background information and Receiver's recommendation relating to the Receiver's motion for:

- (a) an order authorizing and directing the Receiver to distribute to the Canadian Commercial Workers Industry Pension Plan ("CCWIPP") the sum of \$17,407.92 in respect of pension contribution arrears outstanding on the date of the Receivership Order in accordance with section 81.6 of the *Bankruptcy and Insolvency Act* (the "BIA").
- (b) an order authorizing and directing the Receiver to make an interim distribution to the Bank of Montreal ("BMO") from the proceeds of the receivership in the possession of the Receiver in the following amounts (a) \$6,000,000; plus (b) the

amount, if any, by which the \$3,000,000 CCAA Directors' Charge exceeds the aggregate face amount of all Director's Charge Claims filed with the Receiver on or before the Court ordered claims bar date set out in the proposed Directors' Charge Claims Procedure Order, on account of the indebtedness of NFC to BMO and approving the Reimbursement Agreement (as defined below);

- (c) an order approving the activities of the Receiver as set out in the Fourth Report;
- (d) an order approving the fees and disbursements of the Receiver and of Fasken Martineau DuMoulin LLP as counsel to the Receiver to September 30, 2012; and
- (e) such other relief as counsel may advise and the Court permit.

#### **TERMS OF REFERENCE**

4. In preparing this report, the Receiver has relied in part upon unaudited financial information of NFC, NFC's books and records, certain financial information prepared by NFC and discussions with NFC's management ("NFC Information").

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

#### **CCAA PROCEEDINGS - TRANSACTION PROCESS**

6. Pursuant to paragraph 44 of the Initial Order, NFC and the Monitor were authorized to conduct the Transaction Process outlined in the Pre-filing Report of FTI in the CCAA Proceedings. Immediately following the making of Initial Order, the Monitor contacted approximately 20 parties which had been identified by NFC or by NFC's major customers as

possible qualified purchasers of NFC businesses on a going-concern basis and that were likely to be acceptable suppliers to NFC's major customers.

7. Additional details regarding the of Expressions of Interest received by the Monitor, the parties participating in Phase 2 of the Transaction Process, and the Monitor's dealings with the Selected Parties that submitted Final Offers, and the events subsequent thereto are set out in the Monitor's Third Report, a copy of which, without appendices, is attached hereto as Appendix "B". 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 which ultimately led to these Receivership Proceedings.

#### **SOLICITATION OF OFFERS BY THE RECEIVER**

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



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

10. After clarifying a number of the Remaining Equipment Proposals received, including certain aspects of the proposal received from Counsel McIntyre Ltd., the Receiver agreed, subject to Court approval in accordance with the Receivership Order, to the terms of an agreement with Counsel McIntyre for the outright purchase of the Remaining Equipment, and a proceeds sharing arrangement for the auction by Counsel McIntyre of the office equipment furniture and computers located at the Premises, and the spare parts inventory located in the NFC Saskatoon facility (the "**CM Agreement**"). The CM Agreement was approved by the Court on April 19, 2012 and closing of the sale of the Remaining Equipment took place on April 25, 2012.

11. Pursuant to an order of the Court made on July 10, 2012, the Receiver was authorized to sell NFC's former premises located at 4211 13A Street SE, Calgary Alberta to Recon Metal Ltd. That transaction closed on August 12, 2012.

#### **FINISHED PRODUCT INVENTORY SALES BY THE RECEIVER**

12. As set out in the Monitor's Third Report, in expectation of receiving a DIP Credit Facility Default Notice from BMO (which was served on February 20, 2012), NFC did not re-

commence manufacturing operations after the close of business on Friday, February 17, 2012. Upon the appointment of the Receiver, NFC maintained approximately 698,177 kilograms of frozen Finished Product inventory at its third party warehouses, namely Westco in Saskatoon, and Millard in St. Catharines.

13. The vast majority of NFC's products manufactured for the retail market were branded and packaged in the names of NFC's customers. Pursuant to the Receivership Order, the Receiver was authorized to cause NFC to sell the Finished Product inventory to NFC's customers (the "NFC Receivership Customers") without further Court approval. Paragraph 3(k) of the Receivership Order provides that,

"The Receiver is empowered and authorized to cause the Company to sell, convey, transfer its finished goods 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. (underlining added)"

14. In many cases, NFC was the sole and exclusive supplier of frozen hamburger (and similar) products to its retail and institutional customers. Given NFC's manufacturing shut down on February 17, 2012, the upcoming Spring barbeque season, and the lead time necessary for NFC's customers to identify replacement suppliers of frozen hamburger products, the remainder of NFC's Finished Product on hand at NFC was in significant demand, and customers immediately started contacting the Receiver asking to purchase all or substantially of their remaining branded products in the Receiver's possession. The Receiver engaged two former NFC Sales employees on a commission basis to implement the sales of NFC Products to customers, one dealing with retail customers and one dealing with institutional customers (the "Retained Salesmen").

15. Between the Receivership Date and the March 17 HHA (as defined below), NFC, facilitated by the Receiver and the Retained Salesmen, sold approximately \$4.4 million of NFC Products to NFC Receivership Customers. As a result of the March 17 HHA, NFC has been unable to sell the remaining 594,445 thousand kilograms of NFC Finished Product. The Receiver is working with NFC's recall insurers in respect of the unsellable Finished Product, uncollectible accounts receivable and lost sales income resulting from the HHAs and corresponding voluntary recalls.

#### **THE NFC FINISHED PRODUCT HEALTH HAZARD ADVISORIES**

16. On the afternoon of February 15, 2012, FTI, in its capacity as CCAA Monitor learned that a consumer was alleged to have consumed and made ill by E. coli bacteria contained in a frozen hamburger manufactured by NFC's Saskatoon Facility in October of 2011.

17. On February 18, 2012, the CFIA issued a HHA, warning the public not to consume "Country Morning Beef Hamburgers" and "No Name Beef Steakette" products which were manufactured by NFC. NFC immediately halted distribution of these products and the Monitor and NFC representatives notified all of NFC's customers shown on NFC's records as having purchased the NFC Finished Products that were subject to the HHA of the HHA and the requirements of the CFIA for such customers to cease selling and to remove products subject to the HHA from their retail shelves. The Monitor also worked with the Federal health authorities and NFC's insurers to implement a consumer advisory programme. The Monitor was able to determine from NFC's manufacturing records that the batch of raw material used in October 2011 to produce the allegedly contaminated brand of frozen hamburgers made up a relatively small (3,800 out of approximately two million cases of frozen "Country Morning Beef

Hamburgers” and “No Name Beef Steakette” products manufactured by NFC annually) quantity of product, which was readily identifiable by NFC and consumers alike.

18. From February 22, 2012 through to March 15, 2012, the CFIA issued six further HHAs which expanded CFIA’s alerts to include a limited number of additional specified NFC Finished Products.

19. On March 17, 2012, the CFIA issued a further HHA expanding the health hazard alert to include all ground beef products made by NFC between July 1, 2011, and February 15, 2012 in Establishment 761, being NFC’s Saskatoon manufacturing location, because the products may be contaminated with *e.coli 0157:H7* (the “**March 17 HHA**”). A copy of the March 17 HHA is attached hereto as **Appendix “C”**.

20. Concurrently with the issuance of the March 17 HHA by the CFIA, the Receiver immediately halted distribution of all ground beef products made between July 1, 2011 and February 15, 2012. The Receiver also notified NFC customers and NFC Receivership Customers that had purchased Finished Products subject to the March 17 HHA of the March 17 HHA and the warning of the CFIA for NFC Customers and NFC Receivership Customers to cease selling, serving or using products which were subject to the March 17 HHA.

21. On March 21, 2012, the CFIA also requested the Receiver to suspend the sale of all NFC products which were manufactured at the NFC St. Catharines facility (the “**St. Catharines Hold Request**”). On March 24, 2012, the St. Catharines Hold Request was withdrawn by CFIA except for certain NFC country fried steak products.

#### **NFC RECEIVERSHIP CUSTOMERS**

- 9 -

22. Between February 22, 2012, and March 15, 2012, the Receiver caused the Company to sell to NFC Receivership Customers approximately \$4,400,000 of NFC Finished Products. None of the Finished Products sold to NFC Receivership Customers were, at the time of their sale, subject to any of the various HHAs.
23. Substantially all of the sales of NFC Finished Product to NFC Receivership Customers were on a C.O.D. basis. For many purchases by NFC Receivership Customers, freight charges were negotiated between NFC Receivership Customers and the Retained Salesmen and such charges were included in the final purchase price of each sale.
24. Prior to entering into sales discussions, NFC Receivership Customers were also required by the Receiver to pay all amounts outstanding and owed to NFC prior to the Receivership Date.
25. On March 26, 2012, the Receiver wrote to all NFC Receivership Customers (the "March 26 Letter"), a copy of which is attached hereto as Appendix "D", explaining that the Receiver was not in a position to arrange for, or accept any return of purchased Finished Product subject to the various HHAs. The March 26 Letter stated that the purchased Finished Product became the property of NFC Receivership Customers at the time of sale and as such, the NFC Receivership Customers were the owners of the products that were subject to the March 17 HHA and were therefore obligated to comply with all requirements of the CFIA with respect to the products subject to the various HHAs.

**CCWIPP PENSION ARREARS – SECTION 81(6) PRIORITY**

26. On August 23, 2012, the Receiver received correspondence and a proof of claim from Koskie Minsky LLP, on behalf of their client, the CCWIPP, for unpaid pension plan contributions from NFC's St. Catharines location between January 1, 2012 and February 22, 2012, in the amount of \$19,343.95. In NFC's St. Catharines facility, full-time unionized employees were eligible under the UFCW Local 175 Collective Agreement to participate in the (defined contribution) CCWIPP plan.

27. The Receiver has reviewed and discussed the claim with the CCWIPP which has advised the Receiver that it will accept payment in the amount of \$17,407.92 (the "**Outstanding CCWIPP Amount**"), representing the accrued January and February unpaid pension contributions less the administration or late interest fee charges.

28. The Receiver seeks the approval of the Court for a distribution of the Outstanding CCWIPP Amount. In accordance with section 81.6(s) of the BIA, the Outstanding CCWIPP amount appears to rank in priority to the claims of the Secured Lenders.

#### **INTERIM DISTRIBUTION TO BMO**

29. As a result of realizations by the Receiver of NFC's assets to date, including collection of accounts receivable, sales of NFC Finished Products and unused input materials, sales of equipment to Grand River and Counsel McIntyre and the sale of the 13A Street Lands, as at the date of this Fourth Report, the Receiver holds funds in the Receivership Account of approximately<sup>1</sup> \$10,900,000. The principal remaining NFC assets yet to be realized upon, in addition to the claims being pursued by the Receiver under NFC's Recall Insurance Policy

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<sup>1</sup> Cheques issued by the Receiver may be in the process of clearing.

(which contains a \$10,000,000 limit), are the former NFC manufacturing facilities located on Brandon Street in Calgary, and Seapark Drive in St. Catharines.

30. Pursuant to the Receivership Order, the Administration Charge, the DIP Charge, the Westco Pre-filing Lien Charge and the Directors' Charge established in the CCAA Proceedings were recognized and continued in these Receivership proceedings. As at the date of this Fourth Report, all amounts which were secured by the Administration Charge and the Westco Pre-filing Lien Charge have been paid in full, such that there are and will be no amounts owing under or secured by those Charges.

31. The Directors Charge was set in the maximum amount of \$3,000,000. The Receiver has established a Director's Charge Holdback in the amount of \$3,000,000 pending the outcome of the Directors Charge Claims Process which is the subject matter of a motion to be heard on at or about the same time as the within motion, in conjunction with the termination of the NFC CCAA Proceedings.

32. In addition to the Directors' Charge holdback, the Receiver will establish a holdback in the amount of \$400,000 to account for certain unresolved matters, including *inter alia*, certain pre-filing statutory lien amounts owing to Millard from the proceeds derived from the sale of Finished Product that was in the possession of Millard as of the date of the Initial Order. On January 31, 2012. In order to obtain the release of such Finished Product, NFC, Millard, the Monitor and the Secured Lenders reached an agreement whereby the perfection (including without limitation, perfection by possession) and the priority of Millard's pre-filing lien under the *Repair Storage Lien Act*, in respect of the Finished Product that was in Millard's

possession and the proceeds arising from the sale thereof, would be preserved as it existed on the date of the Initial Order.

### NFC INDEBTEDNESS TO BMO

33. As at February 20, 2012, the NFC Entities are indebted to BMO in the approximate amount of \$24,500,000 pursuant to, *inter alia*, a Second Amended and Restated Credit Agreement effective as of October 31, 2011 and pursuant to the DIP Credit Facility approved by the Court in the NFC CCAA Proceedings.
34. As described in the Second Report to the Court of FTI Consulting Canada Inc. in its capacity as Monitor dated February 13, 2012, Fasken, counsel to the Monitor was asked to conduct a review of security held by BMO in respect of NFC's property located in Ontario and Alberta. A similar opinion was also obtained by the Monitor with respect to the validity and perfection of BMO's security in respect of NFC property located in the Province of Saskatchewan by McDougall Gauley LLP. The opinions of Fasken and McDougall state that, subject to the customary opinion assumptions and qualifications, the personal and real property security held by BMO is valid and enforceable as against a trustee in bankruptcy of the NFC Entities over the assets of NFC located in the Provinces of Ontario, Saskatchewan and Alberta.
35. Based on the foregoing, the Receiver recommends that, subject to BMO entering into a reimbursement agreement with the Receiver, it be authorized and directed to make an interim distribution to BMO in the following amounts: (a) \$6,000,000; plus (b) the amount, if any, by which the \$3,000,000 CCAA Directors' Charge exceeds the aggregate face amount of all Director's Charge Claims filed with the Receiver on or before the Court ordered claims bar date



set out in the proposed Directors' Charge Claims Procedure Order, in full satisfaction of the DIP credit facility and on account of the BMO Pre-filing Indebtedness.

36. The form of the proposed reimbursement agreement (the "Reimbursement Agreement") has been settled by the Receiver and BMO, subject to Court approval, and is attached as Appendix "E" hereto.

#### **FEES AND DISBURSEMENTS OF THE RECEIVER AND FASKEN MARTINEAU**

37. Pursuant to paragraphs 17, 18 and 19 of the Receivership Order, any expenditure or liability properly made or incurred by the Receiver, including the fees of the Receiver and the fees and disbursements of counsel to the Receiver (the "Receiver's Counsel") were authorized to be paid on a periodic basis subject to any final passing of the accounts. In addition, the Receiver's Charge was granted as security for, *inter alia*, the fees and disbursements of the Receiver and Receiver's counsel.

38. The Receiver and Receiver's counsel have continued to maintain detailed records of their professional time and costs. The Receiver is seeking the approval of its fees for services rendered and disbursements incurred during the period from February 22, 2012 to October 31, 2012 and those of its counsel, Fasken Martineau DuMoulin LLP ("Fasken"), for the period from February 17, 2012 to September 30, 2012 (respectively, the "Billing Periods").

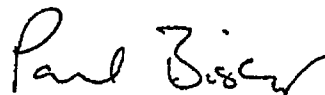
39. The fees and disbursements of the Receiver during the Billing Period total \$574,737.64 , including \$501,559.00 for services, \$7,058.38 for disbursements and taxes of \$66,120.26. The time spent by FTI personnel in the Billing Period is more particularly described

in the Affidavit of Paul Bishop of the Receiver, sworn in support hereof and attached hereto as Appendix "F".

40. The fees and disbursements incurred by Fasken during the Billing Period total \$474,812.40, including fees of \$411,785.50, disbursements of \$8,534.27 and taxes of \$54,492.63. The time spent by Fasken personnel in the Billing Period is more particularly described in the Affidavit of Edmond F. B Lamek, a former partner of Fasken, attached hereto as Appendix "G".

All of which is respectfully submitted this 4<sup>th</sup> day of December, 2012.

**FTI Consulting Canada Inc. in its capacity as  
Receiver of the property, assets and  
undertaking of NFC**



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

# TAB E



**CONTAMINATION PRODUCTS INSURANCE  
WORDING**

**COVERHOLDER:  
JARDINE LLOYD THOMPSON CANADA, INC**

**CANADIAN BINDER WORDING**

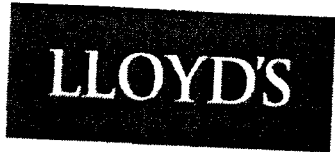
Sagicor at Lloyd's Limited

1 Great Tower Street  
London  
EC3R 5AA

(Tel: 0203 003 6800)

Home State - United Kingdom  
**Authorised and regulated by the Financial Services Authority**

**Important Notice to the Insured: Please read this Policy carefully to ensure that it is in accordance with your requirements and that you understand its terms and conditions. Underwriters should be contacted immediately if any correction is necessary**



**CONTAMINATION PRODUCTS INSURANCE**

Effectuated with certain Lloyd's Underwriters (hereinafter called the "Insurer") through  
**Jardine Lloyd Thompson Canada Inc.**  
Suite 800, 55 University Avenue, Toronto, Ontario  
M5J 2H7

**DECLARATIONS**

THIS POLICY CONTAINS A CLAUSE WHICH MAY LIMIT THE AMOUNT PAYABLE.

**POLICY NO. SPRPG0900104-1**  
**REPLACING POLICY NO. Same**

**NAMED INSURED :** New Food Classics

**INSURED NOTIFICATION ADDRESS:** 4211 13a Street SE, Calgary AB T2G 3J6

**PERIOD OF INSURANCE:** from January 1, 2012 to December 31, 2012  
(both days at 12:01 a.m. Local Standard Time at the Address of the Insured).

**PREMIUM:** CAD 159,750.00 In Full. Plus Applicable Taxes

**LIMITS OF LIABILITY:** CAD 10,000,000.00 Accidental Contamination and Malicious Product Tampering and Products Extortion Demand

CAD 10,000,000.00 In the Aggregate including costs and expenses

CAD 10,000,000.00 Product Extortion Section

**EXCESS:** The Insurer shall not be liable for the first:

CAD 250,000.00 Each and Every Claim  
Nil excess to apply to retained crisis consultants expenses  
Nil excess to apply in respect of Product Extortion Demand

If the Insured shall make any claim knowing the same to be false or fraudulent, as regards amount or otherwise, this Policy shall become void and all claim hereunder shall be forfeited.

NOTIFICATION OF CLAIMS TO:

red 24 Crisis Response Management Centre  
Global: 24 hour Crisis Management 0044 208 737 7999  
United States: 24 hour Crisis Management 1 866 392 4204

And

Adrian Parker  
Lockton Companies LLP  
The St. Botolph Building  
138 Houndsditch  
London EC3A 7AG

WORDINGS  
ATTACHED:

**Wordings, Conditions, Clauses, Endorsements, Warranties and Exclusions applicable to Insurances Bound:**

**As agreed by Lead Underwriter only as per Wording Attached.**

- NMA 2918 – War and Terrorism Exclusion as per Wording
- NMA 5028 – Service of Suit Clause – Canada as per Wording
- Cancellation Clause as per wording
- NMA 1622 – Radioactive Contamination and Explosive Nuclear Assemblies Exclusion Clause as per Wording
- Customer Loss of Gross Income Endorsement as per Wording

All Canadian Insurances bound hereunder shall be subject to the Law and Jurisdiction of a Canadian province or territory as determined by the relevant Insurance Act(s) relevant to the Insured's registered address.

"For purposes of the Insurance Companies Act (Canada), this document was issued in the course of Lloyds Underwriters' insurance business in Canada".

**IDENTIFICATION OF INSURER / ACTION AGAINST INSURER**

This insurance has been effected in accordance with the authorization granted to the undersigned by certain Lloyd's Underwriters, whose names and proportions underwritten by them can be ascertained by reference to Contract No. 6374/09 which bears the seal of Lloyd's Policy Signing Office and has been certified by the Attorney In Fact in Canada for Lloyd's Underwriters and may be seen at the office of the undersigned. The Underwriters identified in the said contract shall be liable hereunder each for his own part and not one for another in proportion to the several sums by each of them subscribed to the said contract.

In any action to enforce the obligations of the Underwriters liable hereunder they can be designated or named as "Lloyd's Underwriters" and such designation shall be binding on the Underwriters liable hereunder as if they had each been individually named as defendant. Service of such proceedings may validly be made upon the Attorney In Fact in Canada for Lloyd's Underwriters, whose address for such service is 1155 rue Metcalfe, Suite 1540, Montreal, Quebec H3B 2V6.

**NOTICE**

Any notice to the Insurer may be validly given to the undersigned. In witness whereof this policy has been signed as authorized by the Insurer, by JARDINE LLOYD THOMPSON CANADA INC.

Per: [Signature]  
Authorized Representative

Per: [Signature: Ulda Rocha]  
Countersignature

Dated: 4<sup>th</sup> January 2012

Dated: Jan 17, 2012

The Insured is requested to read this policy, and if incorrect, return it immediately for alteration. In the event of an occurrence likely to result in a claim under this Insurance, immediate notice should be given to the office designated above.

**CONFORMITY CLAUSE**

It is noted and agreed that wherever the words "Underwriters" and "Insurer" appear in this policy they shall be deemed to be synonymous.

It is further noted and agreed words in the masculine gender within this policy shall include the feminine.

**SEVERAL LIABILITY CLAUSE**

LMA 3333 – Several Liability Notice

The subscribing insurers' obligations under contracts of insurance to which they subscribe are several and not joint and are limited solely to the extent of their individual subscriptions. The subscribing insurers are not responsible for the subscription of any co-subscribing insurer who for any reason does not satisfy all or part of its obligations.



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## SECTION 1: INSURING CLAUSES

- INSURING AGREEMENT
- INSURED EVENTS
- LOSSES
- PRE-RECALL COSTS
- 1.1 Underwriters agree subject to the terms, Conditions, limitations and Exclusions of this Policy to reimburse the **Insured** in excess of the **Retention**, but not exceeding the **Limit(s)** of **Liability**, for all or any **Loss**, namely all or any **Pre-Recall Costs, Recall Costs, Retained Consultants, Increased Cost of Working, Rehabilitation Costs, Incident Response Costs** and **Loss of Gross Income**, caused by or resulting from any **Insured Event** first discovered during the **Period of Insurance** and notified to **Underwriters** in accordance with the terms of this Policy:
- 1.2 The following are the **Insured Events** under this Policy:-
- (a) any actual **Accidental Product Contamination**;
  - (b) any **Malicious Product Tampering**;
  - (c) any **Product Extortion Demand**.
- 1.3 **Loss** is limited to those **Losses** described in (a)-(g) below which are in fact incurred by the **Insured** within 12 months following the date when the relevant **Insured Event** was first discovered by the **Insured**:
- (a) The reasonable and necessary costs and expenses prior to a recall comprising reasonable and necessary:
    - costs and fees of experts and advisors other than **Retained Consultants** referred to in (c) below with the prior agreement of **Underwriters**;
    - costs incurred by or on behalf of the **Insured** to ascertain, identify or examine **Accidental Product Contamination** and **Malicious Product Tampering** and its or their effect.
  - (b) The reasonable and necessary costs and expenses of recall or withdrawal of **Insured Products** comprising reasonable and necessary:
    - costs of a customer recalling the **Insured Products** on behalf of the **Insured** including those **Insured Products** that are components or ingredients of the customer's own products limited to an amount equivalent to the cost which the **Insured** would itself have incurred if the **Insured** had performed the recall itself;
    - additional expense of rent or hire of additional warehouse storage;
    - costs of examining, disposing, reworking or destroying the **Insured Products** whichever is the less but not exceeding the cost of replacement;
    - the value of any recalled or destroyed **Contaminated Products**, including the value of packaging materials that cannot be reused, calculated on a actual cash value basis or a replacement cost basis, whichever is less
    - costs of redistributing the **Insured Products**;
    - costs of communications and media announcements, and reasonable and necessary costs of public relations specialists or consultants hired in relation to such communications and announcements;

- transportation costs of **Insured Products** being moved from any purchaser or customer, to a destination designated by the **Insured**;
- remuneration paid for employee overtime specifically to recall **Insured Products**;
- additional costs to hire additional staff;
- out of pocket expenses of employees;
- other costs relating to cancellation of promotional advertising retail shelf slotting fees.

RETAINED CONSULTANTS

(c) The reasonable and necessary fees and expenses of specialist response, crisis, recall and public relations consultants as agreed by **Underwriters** and as detailed in the **Schedule**. No **Retention** shall apply in respect of such fees and expenses.

INCREASED COST OF WORKING

(d) The reasonable additional extra expenses which are over and above the cost of conducting the ordinary course of business during the **Period of Insurance** where it is necessary for the **Insured** to clean or repair the location or property affected by the **Insured Event**. This may include but is not limited to :

- cleaning and/or repairing machinery, distribution vehicles and location;
- the extra expense of maintaining a minimum workforce for up to a maximum of six months from the date of discovery of the **Insured Event**;
- the increased cost of subcontracting to another manufacturer or distributor during the restoration of facilities, property, or operations.

REHABILITATION COSTS

(e) The additional costs necessarily and reasonably incurred by the **Insured** to re-establish the brand-name or reputation of the **Insured Products** affected by the **Insured Event** to the projected level of sales or market share level prior to the contamination, sublimited to 50% of the **Limit of Liability**.

INCIDENT RESPONSE COSTS

(f) Any other additional costs excluding the costs of consultants reasonably and necessarily incurred by the **Insured** in responding to the consequences of an **Insured Event** following its discovery.

LOSS OF GROSS INCOME

(g) **Loss of Gross Income** incurred as a direct result of an ascertainable reduction in the **Insured's** sales income caused solely and directly by any **Insured Event** but in any event only in respect of such losses incurred within 12 months following the date when the relevant **Insured Event** was first discovered by the **Insured**.

In the event of any claim for loss of **Gross Income** the **Insured** shall as soon as practicable provide **Underwriters** with a written computation of loss, including full and complete details of how the loss has been calculated and of any assumptions or projections that have been made or relied upon in making such calculation, and supported by such documentary evidence as **Underwriters** or where applicable the **Forensic Accountants** may reasonably require; the **Insured** shall thereafter provide **Underwriters** or where applicable the **Forensic Accountants** with such documents or other assistance as they may reasonably require.

In any calculation of loss of **Gross Income** under this **Policy** account shall be taken without limitation of the following:

- (i) any savings, recoveries or offsetting of losses which the **Insured** has made or which the **Insured** could reasonably have been expected to make;
- (ii) any other steps which the **Insured** could or might reasonably be expected to take to mitigate such losses;
- (iii) gross income arising from sales of the relevant type of **Insured Product** in the twelve month period immediately prior to the happening of the **Insured Event**;
- (iv) a reasonable projection of the profitability of the relevant type of **Insured Product** in the twelve month period following the **Insured Event** as if the **Insured Event** had not happened; and
- (v) all material changes in market conditions or other circumstances of whatsoever nature which would have or which would have been likely to affect the future sales of and gross income derived from sales of the relevant type of **Insured Product**.

Underwriters may at its discretion refer the **Insured's** computation of loss to the **Forensic Accountants** for their written determination of the amount of such loss; the **Forensic Accountants'** written determination shall include similar details as those required under (a) above. Any dispute concerning the **Forensic Accountants'** written determination shall be referred to arbitration pursuant to Clause 4.9.

**SECTION 2 : EXCLUSIONS**

Underwriters shall have no liability under this **Policy** in respect of any **Loss**:

- EXISTING CLAIMS 2.1 directly or indirectly arising out of or in any way involving any event or circumstance which has been discovered or is known or should reasonably have been known by the **Insured** prior to the **Period of Insurance**;
- RETROACTIVE DATE 2.2 directly or indirectly arising out of or in any way involving any **Insured Product** manufactured prior to the **Retroactive Date**;
- SIMILAR PRODUCT 2.3 directly or indirectly arising out of or in any way involving reports of an actual or alleged malicious or accidental contamination of or tampering with a competitor product or a similar product not being any of the **Insured Product** not manufactured processed or distributed by the **Insured**;
- GOVERNMENTAL BAN 2.4 directly or indirectly arising out of or in any way involving any governmental ban and/or regulations relating to any material or the production process of an **Insured Product**;
- 2.4A directly or indirectly arising out of or in any way involving any intentional violation of any governmental ban and/or regulations relating to any material or the production process of any **Insured Products** or involving any governmental ban and/or regulations which is/are imposed after the date of manufacture of the relevant **Insured Products**;
- FRAUD/DISHONESTY 2.5 directly or indirectly arising out of or in any way involving the deliberate, fraudulent, illegal, malicious, dishonest or criminal act by any director(s), officer(s) or trustee(s) of the **Insured**;
- CONTRACTUAL LIABILITY 2.6 comprising any losses or expenses incurred by customers or suppliers of the **Insured** as a result of an **Insured Event** involving **Insured Products** or not, unless specifically covered under this **Policy** or agreed by endorsement;

- THIRD PARTY LIABILITY 2.7 comprising or directly or indirectly arising out of or in any way involving any liability to third parties arising from bodily injury, sickness, disease or death of persons or animals or from property damage or any other liability to third parties;
- PROCEDURE FAILURES BY THIRD PARTIES 2.8 directly or indirectly arising out of or in any way involving the failure by a third party to adhere to procedures approved and supplied by the **Insured** regarding the care, maintenance, consumption or use of any **Insured Products**;
- NUCLEAR, RADIOACTIVE CONTAMINATION 2.9 directly or indirectly arising out of or in any way involving any nuclear radiation or radioactive contamination except for those approved processes or techniques that are approved by appropriate governmental or other applicable regulatory authority;
- BRAND IMPAIRMENT 2.10 directly or indirectly arising out of or in any way involving any actual, alleged or threatened failure, contamination or impairment of any **Insured Products** that would not or would not if proved to exist cause bodily injury or sickness to a third party or animal, or property damage.
- WAR & TERRORISM 2.11 Any act of terrorism means an act, including but not limited to the use of force or violence and/or the threat thereof, of use of physical, chemical, biological, or other violence against persons or property by an individual or group whose announced or apparent objective is to further purported political, social, and/or religious beliefs, and which is intended to: (1) put the public at large or a section of the public in fear, or (2) coerce or intimidate a government or individuals to modify their behaviour or policies.

This also excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to the above.

Underwriters allege that by reason of this exclusion, any loss, damage, cost expense is not covered by this insurance the burden of proving the contrary shall be upon the Assured.

This exclusion shall not apply when an insured product is the sole, direct target of the individual or group described.

### SECTION 3: CLAIMS AND NOTICE PROVISIONS

Each of the following Clauses 3.1-3.5 inclusive are conditions precedent to the rights of the **Insured** under this **Policy** and **Underwriters** shall have no liability in respect of any **Loss** to the extent that the **Insured** has not complied with the requirements of those clauses in relation to such **Loss**:

- WHEN TO NOTIFY 3.1 (a) The **Insured** shall give **Underwriters** written notice as soon as practicable of any **Insured Event** first discovered by the **Insured** during the **Period of Insurance** provided always that such written notice is given to **Underwriters** during the same **Period of Insurance** or if the **Insured** renews this insurance with **Underwriters** within twenty-eight (28) days after its expiry;
- (b) any such notification under (a) above shall in each case be deemed to have been made during the **Period of Insurance** which expired immediately prior to the commencement of the twenty-eight (28) day period referred to in (a) above.
- WHO TO NOTIFY 3.2 Any notice under Clause 3.1 shall be given in writing to **Underwriters**, and delivered to the addresses specified in the **Schedule** for this purpose.
- WHAT TO NOTIFY 3.3 The **Insured** shall give **Underwriters** specific written notice of the **Insured Event** and of any **Loss** in each case with full particulars including the circumstances, dates and persons and products involved.

- OTHER INSURANCE 3.4 This Policy shall apply in excess of any other valid and collectible insurance including any similar insurance provided by **Underwriters**.
- FINAL LOSS NOTIFICATION 3.5 A final written statement of **Loss** containing full particulars of the **Loss** must be received by **Underwriters** no later than 24 months after the first discovery of the **Insured Event**.

**SECTION 4: CONDITIONS**

- LIMIT OF LIABILITY 4.1 **Underwriters** total liability under this **Policy** in respect of any one **Insured Event** and in the aggregate in respect of all **Losses** in respect of all **Insured Events** shall not exceed the **Limit(s)** of **Liability** as stated in the **Schedule**.
- DUE DILIGENCE 4.2 The **Insured** shall take all reasonable and necessary steps:
  - (a) to avoid the happening of any **Insured Event**; or
  - (b) to mitigate so far as practicable the risk of an **Insured Event** happening during the **Period of Insurance**; and
  - (c) to mitigate any **Loss** arising as a result of an **Insured Event**.
- INTERIM PAYMENTS 4.3 During a **Loss** which is insured and if requested by the **Insured** **Underwriters** may at its discretion agree to make interim payments on receipt of a final proof of loss or partial proof of loss report.
- MERGERS AND ACQUISITIONS 4.4 The **Insured** shall advise **Underwriters** of any **Take-over or Merger**. This **Policy** shall apply only to any **Loss** arising from **Insured Products** manufactured prior to the date of such **Take-over or Merger** unless otherwise agreed by **Underwriters**
- NEW PRODUCTS 4.5 Any new product that is different to the existing products cited in the **Application Form** must be notified to **Underwriters** together with the **Insured's** written confirmation that it is not aware of any **Insured Event** affecting such new product and agreed with **Underwriters** before it is accepted as an **Insured Product** for the purpose of this **Policy**.
- CONFIDENTIALITY 4.6 The **Insured** will use all reasonable efforts not to disclose the existence of this **Policy** unless required to do so by law.
- FRAUDULENT CLAIMS 4.7 If the **Insured** shall make any request for payment in respect of any **Loss** knowing the same to be false or fraudulent, as regards amount or otherwise, this **Policy** shall become void and all entitlements to payment in respect of any **Loss** shall be forfeited.
- THIRD PARTY RIGHTS 4.8 No party who is not an **Insured** shall be entitled to enforce any term of this **Policy** for its own benefit under the **Contracts Rights of Third Parties Act 1999** or otherwise.
- ARBITRATION 4.9 All Canadian Insurances bound hereunder shall be subject to the law and jurisdiction of a Canadian province or territory as determined by the relevant insurance Act(s)
- POLICY CONSTRUCTION 4.10 (a) Unless otherwise agreed, the construction, interpretation and meaning of the provisions of this **Policy** shall be determined in accordance with the law and jurisdiction of a Canadian province or territory as determined by the relevant insurance Act(s).

- (b) The marginal notes and titles of paragraphs in this Policy are included for descriptive purposes only and do not form part of this Policy for the purpose of its construction or interpretation.
- (c) In this Policy references to any statute shall be to that statute as amended or reenacted from time to time.

WAIVER OR AMENDMENT

4.11 The terms of this Policy shall not be waived or changed except by endorsement issued by Underwriters or intended to be issued by Underwriters to form part of this Policy.

DATA PROTECTION

4.12 Underwriters records and holds data in accordance with the Data Protection Act 1998. Underwriters also follow strict security procedures in the storage and disclosure of information provided to prevent unauthorised access or loss of such information.

Underwriters may find it necessary to pass data to other firms or businesses that supply products and services associated with this Policy.

Further, by accessing and updating various databases Underwriters may share information with other firms and public bodies, including the police, in order to substantiate information and prevent or detect fraud. If the Insured provide false or inaccurate information and Underwriters suspect fraud this fact will be recorded and the information will be available to other organisations that have access to the databases.

Underwriters can supply details of databases Underwriters access or contribute to on request.

DOCUMENT MANAGEMENT

4.13 Underwriters may hold documents relating to this Policy and any claim or loss in electronic form and may destroy the originals. An electronic copy of any such document will be admissible in evidence to the same extent as, and carry the same weight as, the original.

**SECTION 5 : DEFINITIONS**

For the purposes of this Policy, the following Definitions apply:

ACCIDENTAL PRODUCT CONTAMINATION

- 5.1 "Accidental Product Contamination" shall mean:-
- (a) an unintentional, inadvertent error other than an error in design or specification made by the Insured; or
  - (b) the introduction of an ingredient or component supplied by a third party that is contaminated or unfit for its intended purpose;

During manufacture, blending, mixing, compounding, packaging, labelling including the instructions for use, storage or distribution of any Insured Products or storage of the Insured Products whilst in the care or custody of the Insured,

Provided that in the event of its consumption or use as intended it would lead to or has led to bodily injury, sickness, or disease of any person, animal or livestock physically manifesting itself within 120 days of its consumption or use, or would lead to or has led to physical property damage to tangible property owned by a third person

APPLICATION FORM

5.2 "Application Form" shall mean the written application or proposal including any attachments made by the Insured to Underwriters

EMPLOYEE

5.3 "Employee(s)" shall mean any person employed under a contract of service or apprenticeship during or prior to commencement of the Period of Insurance.

FORENSIC ACCOUNTANTS	5.4	"Forensic Accountants" shall mean a firm of accountants selected by Underwriters as and when required for the purpose of Clause 1.3(g).
GROSS INCOME	5.5	"Gross Income" shall mean the difference between: <ul style="list-style-type: none"> <li>(a) income from sales of the relevant <b>Insured Products</b> that could have been reasonably projected but which has been lost solely and directly as a result of the relevant <b>Insured Event</b>; and</li> <li>(b) savings of variable costs which arise as a result of those sales not having been achieved, including without limitation cost of sales, cost of raw materials and all other saved costs.</li> </ul>
INSURED	5.6	"Insured(s)" shall mean the company or corporation specified as the <b>Insured</b> in the <b>Schedule</b> .
INSURED PRODUCTS	5.7	"Insured Products" shall mean all products including their ingredients and components once incorporated therein of the <b>Insured</b> that are in production or have been manufactured, packaged or distributed by or to the order of the <b>Insured</b> including any new products which <b>Underwriters</b> has accepted in writing as a new product under Clause 4.5.
LIMIT OF LIABILITY	5.8	"Limit of Liability" shall mean the <b>Limit of Liability</b> under this <b>Policy</b> as specified in the <b>Schedule</b> .
LOSS	5.9	"Loss" shall mean <b>Pre-Recall Costs, Recall Costs, Retained Consultants, Increased Costs of Working, Rehabilitation Costs, Incident Response Costs</b> or loss of <b>Gross Income</b> , each as described in Clause 1.3.
MALICIOUS PRODUCT TAMPERING	5.10	"Malicious Product Tampering" shall mean the actual or threatened intentional, malicious and illegal alteration or adulteration of the <b>Insureds Products</b> whether in conjunction with a <b>Product Extortion Demand</b> or not so as to give the <b>Insured</b> or consumers reasonable cause to consider the <b>Insured Products</b> unfit or dangerous for their intended use.
PERIOD OF INSURANCE	5.11	"Period of Insurance" shall mean the period specified in the <b>Schedule</b> .
POLICY	5.12	"Policy" shall mean: <ul style="list-style-type: none"> <li>(a) the <b>Schedule, Insuring Clauses, Exclusions, Conditions, Definitions</b> and other terms contained herein; and</li> <li>(b) any endorsement attaching to and forming part of the <b>Policy</b> either at inception or during the <b>Period of Insurance</b>; and</li> <li>(c) the <b>Application Form</b>.</li> </ul>
PRODUCT EXTORTION DEMAND	5.13	"Product Extortion Demand" shall mean any threat or connected series of threats received by the <b>Insured</b> to commit <b>Malicious Product Tampering</b> for the purpose of soliciting money, securities or property.
UNDERWRITERS	5.14	"Underwriters" shall mean Sagicor at Lloyds Limited.
RETENTION	5.15	"Retention" shall mean the amount of <b>Deductible</b> as specified in the <b>Schedule</b> .
CO-INSURANCE	5.16	"Coinsurance" shall mean the percentage of any loss which is retained by the <b>Insured</b> in excess of and in addition to the <b>Deductible</b> specified in the <b>Schedule</b> . This will only apply to the <b>Accidental</b> section 1.2 (a) in the <b>Schedule</b> .



- RETROACTIVE DATE 5.17 "Retroactive Date" shall mean the retroactive date if any as specified in the **Schedule**.
- SCHEDULE 5.18 "Schedule" shall mean the **Schedule** attached to this **Policy**.
- TAKE-OVER OR MERGER 5.19 "Take-over or Merger" shall mean any sale of the **Insured** named in the **Schedule** or its merger with or acquisition by another entity such that the **Insured** is not the surviving entity and no longer:-
- (a) controls the composition of the board of directors; or
  - (b) controls more than half the voting power; or
  - (c) holds more than half of the issued share capital
- of that entity.

ADDITIONAL CLAUSES  
EFFECTIVE INCEPTION

This Policy contains a clause which may limit the amount payable.

It is hereby understood and agreed that the following shall apply:-

WAR AND TERRORISM EXCLUSION ENDORSEMENT

Notwithstanding any provision to the contrary within this insurance or any endorsement thereto it is agreed that this insurance excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any of the following regardless of any other cause or event contributing concurrently or in any other sequence to the loss;

- (1) war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power; or
- (2) any act of terrorism.

For the purpose of this endorsement an act of terrorism means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.

This endorsement also excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to (1) and/or (2) above.

If the Underwriters allege that by reason of this exclusion, any loss, damage, cost or expense is not covered by this insurance the burden of proving the contrary shall be upon the Assured.

In the event any portion of this endorsement is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

NMA2918

**SERVICE OF SUIT CLAUSE (CANADA)**

(Action against Insurer)

(In respect of Canadian Locations Only for Global Contracts)

In any action to enforce the obligations of the Underwriters they can be designated or named as "Lloyd's Underwriters" and such designation shall be binding on the Underwriters as if they had each been individually named as defendant. Service of such proceedings may validly be made upon the Attorney In Fact in Canada for Lloyd's Underwriters, whose address for such service is 1155, rue Metcalfe, Suite 2220, Montreal, Quebec, H3B 2V6.

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10/08/06

Form approved by Lloyd's Market Association

**CANCELLATION CLAUSE**

This Policy may be cancelled by the **Assured**, by surrender to **Underwriters**, or any authorised agent or by the mailing to **Underwriters** written notice stating when the cancellation shall be effective. This Policy may be cancelled by the **Underwriters** by mailing to the **Assured**, at the address shown in this **Policy**, written notice stating when not less than ninety (90) days thereafter such cancellation shall be effective, except in the instance of non-payment when **Underwriters** shall be entitled to cancel this policy on the expiry of ten (30) days prior notice in writing to the **Assured** for non-payment of the **Premium**. The mailing of notice as aforesaid shall be sufficient proof of notice. The effective hour and date of cancellation stated in the notice shall become the end of the **Policy Period**. In either case, delivery of such written notice by hand shall be deemed to be equivalent to mailing.

In the event of cancellation by the **Assured**, the earned premium shall be computed in accordance with the customary short rate table and procedures. In the event of cancellation by **Underwriters**, the earned premium shall be computed pro-rata. Premium adjustment may be made either at the time that cancellation is effected or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.

**RADIOACTIVE CONTAMINATION AND EXPLOSIVE NUCLEAR ASSEMBLIES EXCLUSION  
CLAUSE**

*(Approved by Lloyd's Underwriters' Non-Marine Association)*

This Policy does not cover

(a) loss or destruction of or damage to any property whatsoever or any loss or expense whatsoever resulting or arising therefrom or any consequential loss

(b) any legal liability of whatsoever nature

directly or indirectly caused by or contributed to by or arising from

(i) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel

(ii) the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

4/4/68

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**CUSTOMER LOSS OF GROSS INCOME ENDORSEMENT**

This endorsement is to indemnify loss of the **Insured Named Customer's Gross Income** solely specific to contract and to supply by the **Insured** incurred as a direct result of an ascertainable reduction in the **Insured Named Customer's** sales income caused solely and directly by any **Insured Event** and **Insured Finished Product** but in any event only in respect of such losses incurred within twelve months following the date when the relevant **Insured Event** was first discovered by the **Insured**.

In the event of any claim for loss of the **Insured Named Customer's Gross Income** the **Insured** shall as soon as practicable provide **Underwriters** with a written computation of loss, including full and complete details of how the loss has been calculated and of any assumptions or projections that have been made or relied upon in making such calculation, and supported by such documentary evidence as **Underwriters** or where applicable the **Forensic Accountants** may reasonably require; the **Insured** and the **Insured's Customers** shall thereafter provide **Underwriters** or where applicable the **Forensic Accountants** with such documents or other assistance as they may reasonably require.

In any calculation of loss of **Gross Income** under this **Policy** account shall be taken without limitation of the following:

- (i) any savings, recoveries or offsetting of losses which the **Insured Named Customer's** has made or which the **Insured Named Customer's** could reasonably have expected to make;
- (ii) any other steps which the **Insured Named Customer's** could or might reasonably be expected to take to mitigate such losses;
- (iii) gross income arising from sales of the relevant type of **Insured Finished Product** in the twelve month period immediately prior to the happening of the **Insured event**;
- (iv) a reasonable projection of the profitability of the relevant type of **Insured Product** in the twelve month period following the **Insured Event** as if the **Insured Event** had not happened; and
- (v) All material changes in market conditions or other circumstances of whatsoever nature which would have or been likely to affect the future sales of and the gross income derived from sales of the relevant type of **Insured Finished Product**.

Underwriters may at its discretion refer the **Insured's** and the **Insured Named Customer's** computation of loss to the **Forensic Accountants** for their written determination of the amount of such loss; the **Forensic Accountants'** written determination shall include similar details as those required under (a) above. Any dispute concerning the **Forensic Accountants'** written determination shall be referred to arbitration pursuant to Clause ....

**Sublimit:**

The **Sublimit** of liability for **Customer Loss of Gross Income** under this endorsement shall not exceed:

10% each and every **Insured Event**.

And

10% in the aggregate for Customers Loss of Gross Income

This Sub-limit of insurance is part of and not in addition to the **Limit(s) of Liability** as stated in the Policy Schedule.

**Deductible:**

The **Deductible** as stated in the **Policy Schedule** shall apply to **Customer Loss of Gross Income**.

**Coinurance:**

The **Insured** shall themselves be liable for Nil % of the amount each and every **Customer Loss Of Gross Income**

Additional  
Premium: CAD Nil % in respect of **Customer Loss Of Gross Income**

(RE)INSURERS LIABILITY CLAUSE

**(Re)insurer's liability several not joint**

The liability of a (re)insurer under this contract is several and not joint with other (re)insurers party to this contract. A (re)insurer is liable only for the proportion of liability it has underwritten. A (re)insurer is not jointly liable for the proportion of liability underwritten by any other (re)insurer. Nor is a (re)insurer otherwise responsible for any liability of any other (re)insurer that may underwrite this contract.

The proportion of liability under this contract underwritten by a (re)insurer (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of the syndicate taken together) is shown next to its stamp. This is subject always to the provision concerning "signing" below.

In the case of a Lloyd's syndicate, each member of the syndicate (rather than the syndicate itself) is a (re)insurer. Each member has underwritten a proportion of the total shown for the syndicate (that total itself being the total of the proportions underwritten by all the members of the syndicate taken together). The liability of each member of the syndicate is several and not joint with other members. A member is liable only for that member's proportion. A member is not jointly liable for any other member's proportion. Nor is any member otherwise responsible for any liability of any other (re)insurer that may underwrite this contract. The business address of each member is Lloyd's, One Lime Street, London EC3M 7HA. The identity of each member of a Lloyd's syndicate and their respective proportion may be obtained by writing to Market Services, Lloyd's, at the above address.

**Proportion of liability**

Unless there is "signing" (see below), the proportion of liability under this contract underwritten by each (re)insurer (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of the syndicate taken together) is shown next to its stamp and is referred to as its "written line".

Where this contract permits, written lines, or certain written lines, may be adjusted ("signed"). In that case a schedule is to be appended to this contract to show the definitive proportion of liability under this contract underwritten by each (re)insurer (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of the syndicate taken together). A definitive proportion (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of a Lloyd's syndicate taken together) is referred to as a "signed line". The signed lines shown in the schedule will prevail over the written lines unless a proven error in calculation has occurred.

Although reference is made at various points in this clause to "this contract" in the singular, where the circumstances so require this should be read as a reference to contracts in the plural.

21/6/07  
LMA3333

**All other terms and conditions remain unaltered**

**red 24**

**What to do in a crisis**

**Notification procedures**

In the event of an incident that may be covered under the terms of the policy, contact the red24 CRISIS RESPONSE MANAGEMENT CENTRE, an independent specialist crisis management consultant company. The centre is staffed by multilingual personnel covering all common languages.

Red24 is available globally, 24 hours a day, 7 days a week, on a priority to advise, assist and respond to emergency situations involving Contaminated Products Insurance (Crisis Management) policy holders worldwide (at the Insured's option). Notification to the red24 CRISIS MANAGEMENT CENTRE is independent of, and does not supersede, policy requirements of notice to the Company.

The 24 hour crisis response contact number for the CRISIS CENTRE HOTLINE is:-

**GLOBAL: 24 HOUR CRISIS MANAGEMENT                      0044 208 737 7999**

**UNITED STATES: 24 HOUR CRISIS MANAGEMENT    1 866 392 4204**

Please quote policy reference if available. Callers will speak directly or receive an immediate call back from an experienced consultant.

In the event of an incident that may be covered under this policy, and whether or not red24 have been contacted, one of the following Company representatives are to be notified (in order of preference) in accordance with the terms of the notice requirements of this policy:

	BUSINESS TELEPHONE	BUSINESS FACSIMILE
Alan Trownson (Claims Manager)	0044 (0) 203 003 6800	0044 (0) 207 327 4407
Stewart Eaton (Class Underwriter)	0044 (0) 203 003 6970	0044 (0) 207 327 4407

**All written communications should be addressed to:**

**Sagicor at Lloyds Limited, 1 Great Tower Street, London EC3R 5AA**

**red24****What to expect when you call the red24 crisis response management centre hotline**

- 1 During your first telephone contact with the red24 crisis response management centre hotline, you will be asked some brief questions regarding the key details of the crisis, threat or problem.
- 2 After getting this preliminary information, you will be asked for a phone number where you can be reached during the next hour.
- 3 red24 will then make a deployment decision based on the nature and geographical location of the incident.
- 4 Within the first hour after initial contact, a red24 consultant will return your call to discuss the deployment decision and to determine an appropriate course of action. The red24 consultant will work with you to develop a strategy for dealing with the early stages of the potential crisis.
- 5 If red24 personnel are dispatched on site, they will provide your company with further guidance on handling the situation.



## Sagicor at Lloyds

### POLICYHOLDER COMPLAINTS

We are dedicated to providing you with a high quality service and we want to ensure that we maintain this at all times. If you feel that we have not offered you a first class service please write and tell us and we will do our best to resolve the problem.

Any query or complaint about your policy should be addressed in the first instance to:

Compliance Director  
Sagicor at Lloyds Limited,  
1 Great Tower Street,  
London EC3R 5AA

Telephone 020 3003 6800

# LLOYD'S

## NOTICE CONCERNING PERSONAL INFORMATION

By purchasing insurance from certain Underwriters at Lloyd's, London ("Lloyd's"), a customer provides Lloyd's with his or her consent to the collection, use and disclosure of personal information, including that previously collected, for the following purposes:

- the communication with Lloyd's policyholders
- the underwriting of policies
- the evaluation of claims
- the detection and prevention of fraud
- the analysis of business results
- purposes required or authorised by law

For the purposes identified, personal information may be disclosed to Lloyd's related or affiliated organizations or companies, their agents/mandataries, and to certain non-related or unaffiliated organizations or companies.

Further information about Lloyd's personal information protection policy may be obtained from the customer's broker or by contacting Lloyd's on 514 861 8361 or through [info@lloyds.ca](mailto:info@lloyds.ca)

07/05  
LSW1543

Should a policyholder wish to file a complaint relative to a policy with Lloyd's Underwriters effected through you, the policyholder must be provided with the following Lloyd's Underwriters' Complaint Protocol:

**LLOYD'S UNDERWRITERS' POLICYHOLDERS' COMPLAINT PROTOCOL**

If you have a complaint with any aspect of your policy with Lloyd's Underwriters:

You may contact the broker/agent who arranged your policy for you. Should you be dissatisfied with the outcome of your broker's resolution, please submit your written complaint to:

Lloyd's Canada Inc.  
Broker Management Services  
1155 rue Metcalfe, Suite 2220  
Montreal, Quebec H3B 2V6

Tel: 1-877-4LLOYDS  
Fax: (514) 861-0470  
E-mail: [lineage@lloyds.ca](mailto:lineage@lloyds.ca)

Your written complaint will be forwarded to Lloyd's Policyholder and Market Assistance Department in London which ensures that Lloyd's Underwriters and their representatives' deal with claims and complaints in an acceptable manner. It acts as an impartial mediator. When undertaking a review this Department takes account of general legal principles, good insurance practice, and whether all events surrounding a given case have been considered fairly.

If you are dissatisfied with Lloyd's Policyholder and Market Assistance Department's final letter from London, you may ask the General Insurance OmbudService (GIO) to arrange for mediation. Mediation is not available until Lloyd's has issued its final letter of position on your complaint. The GIO assists in the resolution of conflicts between insurance customers and their insurance companies. GIO works with only those companies offering home, automobile or business insurance.

OR

You may contact the General Insurance OmbudService (GIO) who will contact Lloyd's on your behalf. However, you must first have tried to resolve your problem with your insurance company.

The GIO can be reached across Canada at its national toll-free number: 1-877-225-0446

For more information or to submit the facts of your insurance-related dispute, please visit the GIO website at [www.gio-scad.org](http://www.gio-scad.org).

GIO - Alberta can be contacted where a policyholder is not satisfied with the basis on which a premium for basic coverage for a private passenger vehicle was determined, or considers that an insurer, directly or indirectly, has taken an adverse contractual action with respect to insurance for basic coverage.

In Québec, you may also avail yourself of the services of Autorité des marchés financiers (l'Autorité). Should you be dissatisfied with Lloyd's Policyholder and Market Assistance Department's final letter from London, you may request Lloyd's Canada Inc. to send your complaint to l'Autorité who will study your file and may recommend mediation, if it deems this action appropriate and if both parties agree to it. L'Autorité can be reached at:

**Autorité des marchés financiers (l'Autorité)**  
Québec City (418) 525-0311  
Montréal (514) 395-0311  
Toll-free: 1-866-526-0311

E-mail: [Renseignements-consommateur@lautorite.qc.ca](mailto:Renseignements-consommateur@lautorite.qc.ca)

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In the event that the Complaints Department is unable to resolve your complaint, it may be possible for you to refer it to the Financial Ombudsman Service. Further details will be provided at the appropriate stage of the complaints process.

Jardine Lloyd Thompson Canada  
 Inc. (CDN \$)  
 Box 3, 800 - 55 University Ave  
 Toronto, ON M5J 2H7  
 Phone : 416-941-9551 Fax : 416-941-9022

<b>INVOICE # 463731</b>		Page 1
ACCOUNT NO. MISSI-5	OP JDON	DATE 01/17/12
AMOUNT PAID		AMOUNT DUE \$ 13,149.00

The Corporation of the City of  
 Mississauga User Program  
 300 City Centre Drive  
 Mississauga, ON L5B 3C1

\*\*\* PLEASE RETURN TOP PORTION WITH REMITTANCE \*\*\*

Itm #	Eff Date	Trn	Description	Amount
INVOICE #	463731			
99CWS8	12/31/11	+EN	December 2011 User Program	\$ 12,175.00
99CWS9	12/31/11	OST	Ontario Retail Sales Tax	\$ 974.00
			<b>Invoice Balance:</b>	<b>\$ 13,149.00</b>



Policy No. CA00001294L109A  
 Client No. NEWF002  
 Replaces Policy No. Same

**Insurance Confirmation No. 39967  
 Summary Page**

This summary page and attached pages constitute your Insurance Confirmation. This document confirms that we have arranged the insurance described in this Insurance Confirmation on your behalf.

This Insurance Confirmation will be automatically cancelled on delivery of a Policy, Renewal Certificate, or Endorsement to the Named Insured at the mailing address shown below. However, it may also be cancelled before such a document is issued, if the insurer gives proper notice of cancellation to the Named Insured and any other party entitled to this notice of cancellation.

**NAMED INSURED:** New Food Classics  
**MAILING AND/OR NOTIFICATION ADDRESS:** 4211 13A Street SE  
 Calgary, AB T2G 3J6  
**INSURANCE COVERAGE:** Umbrella Insurance

**POLICY PERIOD:** Effective Date: December 31, 2010      Expiry Date: December 31, 2011      12:01 A.M.  
 Standard Time at the Mailing and/or Notification Address of the Named Insured

**TOTAL PREMIUM:** \$40,000.00 CAD (Minimum & Retained)

The terms and conditions of the Insurance coverage are described in abbreviated form in this Insurance Confirmation. The policy or policies issued or intended to be issued in replacement of this document will set out the terms and conditions more precisely. You should check over this Insurance Confirmation and immediately advise the issuing office of Jardine Lloyd Thompson Canada Inc in writing of any discrepancies, inaccuracies, or necessary changes.

**Premiums are due and payable on the Effective Date unless other terms of payment have been arranged.**

Date Issued: December 24, 2010  
 Issued at: Jardine Lloyd Thompson Canada  
 Box 3, 800 - 55 University Ave  
 Toronto, ON M5J 2H7

Jardine Lloyd Thompson Canada Inc.

Per: *Ulda Rocha*

Per: *J.M. Kastner*

It is understood that you have provided complete and accurate information to insurers and that you have complied with your legal duty to disclose, before inception of the insurance policy, all material matters relating to the risk (i.e. all information which would influence the judgment of a prudent insurer in determining whether to underwrite the risk and if so upon what terms and at what premium). If all such information has not been disclosed, insurers have the right to void the policy from its inception which may lead to claims not being paid. If you believe that you may not have complied with this duty, you should contact us immediately.



**PRIMARY UMBRELLA LIABILITY COVERAGE**

Attached to and Forming Part of Insurance Confirmation No. 39967

**FULL NAMED INSURED**

New Food Classics

**LIMIT**

\$ 2,000,000 Excess of Scheduled Underlying Insurance

**INSURER**

XL Insurance Company Limited

**ENDORSEMENTS**

- Named Insured Endorsement
- Follow form - Personal Injury Liability
  - Contractual Injury
  - Employers Liability
  - Employee Benefits Liability
  - Property Damage to Real Property
- SPF No. 7 Standard Excess Automobile policy
- Asbestos Exclusion
- Cancellation Clause 90 Days
- Care, Custody or Control Exclusion - Personal Property
- Data Exclusion
- Employment Discrimination and Employment Related Practices Exclusion
- ERISA Exclusion
- Fungus Liability Exclusion
- Absolute Pollution Exclusion - Hostile Fire
- Professional Liability Exclusion
- Terrorism Exclusion
- Silica or Silica Related Dust Exclusion
- Political Risk Exclusion
- Kidnap & Ransom Exclusion
- Designated Products Exclusion - Neutraceutical Products

**SELF INSURED RETENTION**

\$10,000

**SCHEDULE OF UNDERLYING INSURANCE**

INSURER: CNA  
 COVERAGE: Commercial General Liability  
 LIMIT: \$2,000,000

INSURER: CNA  
 COVERAGE: Primary Automobile Liability  
 LIMIT: \$1,000,000

**POLICY FORM AND/OR WORDINGS**

Policy Terms and Conditions  
 Commercial Umbrella Liability - Subject to the terms, conditions and exclusions in the XL Insurance Company Limited Standard Umbrella Occurrence Wording Form # 1N-UM-01

**POLICY TERRITORY**

Canada

**THIS POLICY CONTAINS A CLAUSE(S) WHICH MAY LIMIT THE AMOUNT PAYABLE.** Page 2 of 2



Policy No. EXT35468  
 Client No. NEWF002  
 Replaces Policy No. EXT33646

**Insurance Confirmation No. 40074  
 Summary Page**

This summary page and attached pages constitute your Insurance Confirmation. This document confirms that we have arranged the insurance described in this Insurance Confirmation on your behalf.

This Insurance Confirmation will be automatically cancelled on delivery of a Policy, Renewal Certificate, or Endorsement to the Named Insured at the mailing address shown below. However, it may also be cancelled before such a document is issued, if the insurer gives proper notice of cancellation to the Named Insured and any other party entitled to this notice of cancellation.

**NAMED INSURED:** New Food Classics  
**MAILING AND/OR NOTIFICATION ADDRESS:** 4211 13A Street SE  
 Calgary, AB T2G 3J6  
**INSURANCE COVERAGE:** Excess Umbrella Liability

**POLICY PERIOD:** Effective Date: December 31 2010      Expiry Date: December 31, 2011      12:01 A.M.  
 Standard Time at the Mailing and/or Notification Address of the Named Insured

**TOTAL PREMIUM:** \$13,000.00 Plus applicable taxes

The terms and conditions of the insurance coverage are described in abbreviated form in this Insurance Confirmation. The policy or policies issued or intended to be issued in replacement of this document will set out the terms and conditions more precisely. You should check over this Insurance Confirmation and immediately advise the issuing office of Jardine Lloyd Thompson Canada Inc in writing of any discrepancies, inaccuracies, or necessary changes.

**Premiums are due and payable 30 days after binding**

Date Issued: December 31, 2010  
 Issued at: Jardine Lloyd Thompson Canada  
 Box 3, 800 - 55 University Ave  
 Toronto, ON M5J 2H7

Jardine Lloyd Thompson Canada Inc.

Per:

Per:

It is understood that you have provided complete and accurate information to insurers and that you have complied with your legal duty to disclose, before inception of the insurance policy, all material matters relating to the risk (i.e. all information which would influence the judgment of a prudent insurer in determining whether to underwrite the risk and if so upon what terms and at what premium). If all such information has not been disclosed, insurers have the right to void the policy from its inception which may lead to claims not being paid. If you believe that you may not have complied with this duty, you should contact us immediately.

**ELLIOTT  
SPECIAL RISKS LP**

A Market International company

130 Adelaide Street West  
Suite 810, Toronto, Ontario  
M5H 3P5

December 31, 2010

BY EMAIL:

1 Page(s)

ILDA ROCHA  
JARDINE LLOYD THOMPSON CANADA INC.  
TORONTO Ontario

Dear Ilda:

RE: NEW FOOD CLASSICS

We are pleased to confirm coverage bound as follows:

Type:	Excess Umbrella Liability
Term:	December 31, 2010 to December 31, 2011
Limit:	\$10,000,000 xs \$18Mil xs u/l
Premium:	\$13,000.00
Retained Prem:	\$3,250.00
Comm:	15.00 %
Carrier:	Certain Lloyds Underwriters under Contract ESR2010001 100.00%

Policy #: EXT35468

Terms: Asbestos  
Environmental Liability – Hostile Fire  
Terrorism Exclusion  
Data Exclusion  
Fungi & Fungal Derivatives Exclusion

**\*\* Please note that a new Policy with a new Policy Number will be issued this year based on agreed renewal terms. \*\***

Your broker's cheque, net of commission is required 30 days after binding, payable to Elliott Special Risks LP in trust.

Regards,

Jessica Laforet for:  
LINDA MEZZABOTTA  
You can reach this sender at [lmezzabotta@elliottsr.com](mailto:lmezzabotta@elliottsr.com)  
or TOLL FREE: 1-800-223-8858



# ELLIOTT SPECIAL RISKS LP



A Market International company

## IN THE EVENT OF A CLAIM

**\*\*\*PLEASE NOTE THE FOLLOWING NEW CLAIMS REPORTING INSTRUCTIONS\*\*\***

**PLEASE REPORT ANY OCCURRENCES, CLAIMS, ACTIONS OR SUITS AS SOON AS POSSIBLE, TO THE FOLLOWING:**

Email: [claims@elliottsr.com](mailto:claims@elliottsr.com)

Elliott Special Risks LP  
130 Adelaide Street West  
Suite 810  
Toronto, ON M5H 3P5  
Attn: Claims Department

Tel: (416) 601-1133 x2275  
Toll-free: (800) 223-8858  
Fax: (416) 601-1150

The reporting condition of the policy requires that you report any incidents which might give rise to a claim, even if no such claim has yet been received. Failure to promptly report an incident may jeopardize the investigation and defence of a subsequent legal action. To avoid the risk that individual losses may be denied as a result of late reporting, please report all incidents promptly.

# ELLIOTT SPECIAL RISKS LP

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A Market International company

## NOTICE TO POLICYHOLDERS

Effective January 1, 2010, and in accordance with amendments made to the Insurance Companies Act (Canada), this notice serves to confirm the following:

For purposes of the Insurance Companies Act (Canada), this document was issued in the course of Lloyd's Underwriters' insurance business in Canada.

This notice shall form part of the policy to which it is attached.

The logo for Lloyd's, featuring the word "LLOYD'S" in a bold, serif font, set against a dark, textured rectangular background.

### NOTICE CONCERNING PERSONAL INFORMATION

By purchasing insurance from certain Underwriters at Lloyd's, London ("Lloyd's"), a customer provides Lloyd's with his or her consent to the collection, use and disclosure of personal information, including that previously collected, for the following purposes:

- the communication with Lloyd's policyholders
- the underwriting of policies
- the evaluation of claims
- the detection and prevention of fraud
- the analysis of business results
- purposes required or authorised by law

For the purposes identified, personal information may be disclosed to Lloyd's related or affiliated organisations or companies, their agents/mandataires, and to certain non-related or unaffiliated organisations or companies.

Further information about Lloyd's personal information protection policy may be obtained from the customer's broker or by contacting Lloyd's on 514 861 8361 or through [info@lloyds.ca](mailto:info@lloyds.ca)

07/05  
LSW1543



## LLOYD'S UNDERWRITERS CODE OF CONSUMER RIGHTS & RESPONSIBILITIES

Lloyd's Underwriters are committed to safeguarding your rights when you shop for insurance and when you submit a claim following a loss. Your rights include the right to be informed fully, to be treated fairly, to timely complaint resolution, and to privacy. These rights are grounded in the contract between you and your underwriters and the insurance laws of your province/territory. With rights, however, come responsibilities including, for example, the expectation that you will provide complete and accurate information to the underwriters with whom insurance is being negotiated. Your policy outlines other important responsibilities. Underwriters and intermediaries acting on your behalf, and governments also have important roles to play in ensuring that your rights are protected.

### *Right to Be Informed*

In dealing with Lloyd's Underwriters, you will be represented by an intermediary, such as a broker acting as your agent, and they may deal with other intermediaries. From the intermediary with whom you deal, you can expect to access clear information about your policy, your coverage, and the claims settlement process. You have the right to an easy-to-understand explanation of how insurance works and how it will meet your needs. You also have a right to know how premiums are calculated based on relevant facts.

A policy issued by Lloyd's Underwriters will expire on the day specified in the policy. If you wish to renew the policy, the intermediary with whom you deal will have to approach the Underwriters participating in it, often through another intermediary. If Lloyd's Underwriters are given the information they require to determine renewal terms for the policy at least 45 days prior to its expiry, under normal circumstances, they will advise the intermediary who approaches them of any changes to the policy terms at least 30 days prior to the expiration of the policy. Terms may subsequently change if there is a change in material facts prior to the expiration date.

Intermediaries may receive payments from Lloyd's Underwriters in a variety of ways, which may include the payment of commissions. Lloyd's strongly supports the disclosure and transparency of these commission arrangements. You have the right to ask the intermediary with whom you deal for details of how and by whom the intermediary is being paid.

Lloyd's Underwriters accept business as members of syndicates each of which is managed by a 'managing agent'. Lloyd's has risk management procedures in place in respect of the relationship between Lloyd's managing agents and any related companies that act as intermediaries. This is to ensure that the managing agent makes proper disclosures of any such arrangements. A policyholder may ask the intermediary with whom he is dealing to disclose if it is a related company to a Lloyd's managing agent. Depending on the jurisdiction, disclosure may be required in writing.

### *Responsibility to Ask Questions and Share Information*

To safeguard your right to purchase appropriate coverage at a competitive price, you should ask questions about your policy so that you understand what it covers and what your obligations are under it. You can access information through brochures and websites, as well as through one-on-one meetings with the intermediary with whom you deal. You have the option to shop the marketplace for the combination of coverages and service levels that best suits your insurance needs. To maintain your protection against loss, you must promptly inform your underwriters of any change in your circumstances through the intermediary with whom you deal. The Underwriters with whom renewal is being negotiated must be given information required to determine renewal terms of your policy, via the intermediary whom you are dealing with, at least 45 days prior to the expiration of the policy.

The logo for Lloyd's, featuring the word "LLOYD'S" in a bold, serif font, set against a dark, textured rectangular background.

### *Right to Complaint Resolution*

Lloyd's Underwriters are committed to high standards of customer service. If you have a complaint about the service you have received, you have a right to access the Lloyd's complaint resolution process for Canada. The intermediary with whom you deal can provide you with information about how you can ensure that your complaint is heard and promptly handled. Disputes involving claims settlement matters may be handled by the independent General Insurance OmbudService [www.gio-scad.org](http://www.gio-scad.org) where your complaint may be referred to an independent Mediator or Senior Adjudicative Officer.

### *Responsibility to Resolve Disputes*

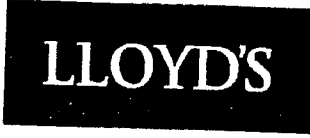
You should always enter into the dispute resolution process in good faith, provide required information in a timely manner, and remain open to recommendations made by independent observers as part of that process.

### *Right to Professional Service*

You have the right to deal with insurance professionals who exhibit a high ethical standard, which includes acting with honesty, integrity, fairness and skill. Brokers and agents must exhibit extensive knowledge of the product, its coverages and its limitations in order to best serve you.

### *Right to Privacy*

Because it is important for you to disclose any and all information required by underwriters with whom insurance is being negotiated on your behalf to provide the insurance coverage that best suits you, you have the right to know from the intermediary with whom you deal the purposes for which Lloyd's Underwriters will use your personal information. This information will not be disclosed to anyone except as permitted by law. You should know that Lloyd's Underwriters are subject to Canada's privacy laws with respect to their business in Canada.



**EXCESS LIABILITY INSURANCE**  
 Effected with certain Lloyd's Underwriters (hereinafter called the "Insurer") through  
**ELLIOTT SPECIAL RISKS LP**  
 130 Adelaide Street West, Suite 810  
 Toronto, ON M5H 3P5

**EXCESS LIABILITY POLICY**

**DECLARATIONS**

POLICY NUMBER: EXT35468

Replacing Policy: EXT33646

- 1. **Named Insured:** NEW FOOD CLASSICS (as more fully described in the underlying Insurance)  
**Address:** 4211 13A Street S.E.,  
 Calgary, Alberta  
 T2G 3J6
- 2. **Policy Period:** From: December 31, 2010 To: December 31, 2011  
 12:01 a.m. Standard Time at the address of the Named Insured as stated above.
- 3. **Premium:** \$13,000.00  
**Retained Premium:** \$3,250.00
- 4. **Limits of Liability:** \$10,000,000 Each Occurrence  
 \$10,000,000 Aggregate
- 5. **Type of Coverage:** Excess Umbrella Liability
- 6. **Cancellation:** 30 Days
- 7. **Schedule of Underlying Insurance:** See Page 2
- 8. **Currency:** CANADIAN DOLLARS

Subject to XS-HF940707, Lloyds Identification of Insurer Form and the following endorsements attached hereto and forming part of this Policy.  
 E94A, E95A, E96A, E99

Signed on behalf of THE INSURER by ELLIOTT SPECIAL RISKS LP  
 XS-0710-LP



Policy No.: EXT35468

DECLARATIONS (Continued) – Page 2

7. Schedule of Underlying Insurance:

<u>Item No.</u>	<u>Carrier, Policy Number and Period</u>	<u>Type of Policy</u>	<u>Applicable Limits</u>
1.	XL Insurance Company Limited Policy No. CA00001294408 December 31, 2010 to December 31, 2011	Umbrella Liability	\$18,000,000 Each Occurrence \$18,000,000 Aggregate (where applicable)

### EXCESS LIABILITY POLICY INSURING AGREEMENTS

In consideration of the payment of the premium and subject to the Declarations, Terms and Conditions hereof, the Insurer hereby agrees:

#### 1. COVERAGE:

To pay on behalf of the Insured all sums which the Insured shall become legally obligated to pay as damages as more fully defined by the term Ultimate Net Loss in excess of and arising out of the hazards covered in the underlying insurance as shown in Item 7 of the Declarations (hereinafter referred to as "Underlying Insurance") but only up to an amount not exceeding the limit shown in Item 4 of the Declarations.

The coverage provided by this Policy shall, except as herein stated, follow the insuring agreements, conditions and exclusions of the Underlying Insurance (whether primary or excess) immediately preceding the layer of coverage provided by this Policy, including any change by endorsements. Should any alteration be made in the Underlying Insurance during the currency of this Policy the Insured shall promptly provide the Insurer with a copy of such changes. Should any change be made in the premiums for any Underlying Insurance then the premium herein other than the minimum premium shall be correspondingly altered.

The limits of the underlying insurance shall be maintained in full effect during the currency of this Policy except for reduction of limits by exhaustion of aggregate limits (if any) contained therein solely by payment of claims resulting from accidents or occurrences happening during the period of this Policy. Failure of the Insured to comply with the foregoing shall not invalidate this Policy but in the event of such failure the Insurer shall be liable only to the extent that it would have been liable had the Insured complied therewith.

In the event of the failure including the bankruptcy, insolvency, receivership, liquidation or winding up of any insurer who has issued a policy described in the Schedule of Underlying Insurance, this Policy shall not apply as a replacement of such policy, but shall apply only to the same extent it would have applied in the absence of such failure.

Unless aggregate limits are specifically stated in Item 7 of the Declarations, the coverage provided by this Policy applies only with respect to each accident or occurrence for limits in excess of the amount provided for same in the underlying insurance and does not apply over any reduced amount of underlying insurance in the event of the exhaustion or reduction of aggregate limits (if any) in the underlying insurance.

If aggregate limits are specifically stated in Item 7 of the Declarations, this Policy will apply in excess of reduced underlying insurance provided such reduction in the underlying insurance is solely the result of accidents or occurrences reported after the inception date of this Policy. The Insured shall give the Insurer written notice as soon as possible of any reduction or exhaustion of such aggregate limit in the underlying insurance.

There is no limit to the number of claims or occurrences during the Policy Period for which claims may be made, except that the Insurer's total Limit of Liability,

- (a) arising out of the Products and the Completed Operations Hazard, or both combined, or
- (b) arising from the rendering of or the failure to render any professional service, or
- (c) arising out of any coverage contained in an Underlying Insurance if such coverage is subject to an aggregate limit of liability,

shall not exceed the amount stated in Item 4 of the Declarations as respects all claims or occurrences during each Annual Period.

The inclusion or addition hereunder of more than one Insured shall not operate to increase the Insurer's limits of liability beyond those set forth in the Declarations.

#### 2. DEFINITIONS:

When used in this Policy, including endorsements forming a part thereof:

##### Ultimate Net Loss

The term "Ultimate Net Loss" means the sum actually paid or payable in cash in the settlement or satisfaction of losses for which the Insured is liable either by adjudication or compromise with the written consent of the Insurer, after making proper deduction for all recoveries and salvages collectible but excludes expenses and costs.

##### Costs

The term "Costs" means interest on judgments, investigation, adjustment and

legal expenses including taxed court costs and premium on bonds, for which the Insured is not covered by the Underlying Insurance excluding however (a) all expenses for salaried employees and counsel on general retainer, (b) all office expenses of the Insured, and (c) regular fees paid to counsel on general retainer.

##### Annual Period

The term "Each Annual Period" shall mean each consecutive period of one year commencing from the inception date of this Policy, or, if the last consecutive period is less than twelve months, to such period of less than twelve months.

#### 3.a) ENVIRONMENTAL EXCLUSION:

This Policy does not apply to:

- A. Bodily Injury, Personal Injury or Property Damage arising out of the actual, alleged or threatened discharge, dispersal, release or escape of pollutants:
  - 1) At or from premises owned, rented or occupied by an Insured;
  - 2) At or from any site or location used by or for an Insured or others for the handling, storage, disposal, processing or treatment of waste;
  - 3) Which are at any time transported, handled, stored, treated, disposed

- of, or processed as waste by or for an Insured or any person or organization for whom the Insured may be legally responsible; or
- 4) At or from any site or location on which an Insured or any contractors or subcontractors working directly or indirectly on behalf of an Insured are performing operations:
  - a) if the pollutants are brought on or to the site or location in connection with such operations, or
  - b) if the operations are to test for, monitor, clean up, remove, contain,



treat, detoxify or neutralize the pollutants.

- B. Any loss, cost or expense arising out of any governmental direction or request that an Insured test for, monitor, clean up, remove, contain, treat, detoxify or neutralize pollutants.
- C. Fines, penalties, punitive or exemplary damages arising directly or indirectly out of the discharge, dispersal, release or escape of pollutants.

"Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapor, soot, fumes, acids,

alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

Sub-paragraphs 1) and 4)a) of paragraph A of this exclusion do not apply to "bodily injury," "personal injury" or "property damage" caused by heat, smoke or fumes from a hostile fire. As used in this Exclusion, a hostile fire means one which becomes uncontrollable or breaks out from where it was intended to be.

It is agreed that if the pollution exclusion in the underlying insurance is more restrictive than the exclusion herein, this policy shall follow the pollution exclusion of the underlying insurance.

### 3.b) NUCLEAR ENERGY LIABILITY EXCLUSION:

It is agreed that this Policy does not apply:

- (a) to liability imposed by or arising under the Nuclear Liability Act; nor
- (b) to "bodily injury", "personal injury", or "property damage" with respect to which an Insured under this policy is also insured under a contract of nuclear energy liability insurance (whether the Insured is unnamed in such contract and whether or not it is legally enforceable by the Insured) issued by the Nuclear Insurance Association of Canada or any other insurer or group or pool of insurers or would be an Insured under any such policy but for its termination upon exhaustion of its limit of liability; nor
- (c) to "bodily injury", "personal injury", or "property damage" resulting directly or indirectly from the nuclear energy hazard arising from:
  - (i) the ownership, maintenance, operation or use of a nuclear facility by or on behalf of an Insured;
  - (ii) the furnishing by an Insured of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any nuclear facility; and
  - (iii) the possession, consumption, use, handling, disposal or transportation of fissionable substances, or of other radioactive material (except radioactive isotopes, away from a nuclear facility, which have reached the final stage of fabrication so as to be useable for any scientific, medical, agricultural, commercial or industrial purpose) used, distributed, handled or sold by an Insured.

As used in this Policy:

- 1. The term "nuclear energy hazard" means the radioactive, toxic, explosive, or other hazardous properties of radioactive material;
- 2. The term "radioactive material" means uranium, thorium, plutonium,

neptunium, their respective derivatives and compounds, radioactive isotopes of other elements and any other substances that the Atomic Energy Control Board may, by regulation, designate as being prescribed substances capable of releasing atomic energy, or as being requisite for the production, use or application of atomic energy;

- 3. The term "nuclear facility" means:
  - (a) any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of plutonium, thorium and uranium or any one or more of them;
  - (b) any equipment or device designed or used for
    - (i) separating the isotopes of plutonium thorium and uranium or any one or more of them
    - (ii) processing or utilizing spent fuel, or
    - (iii) handling, processing, or packaging waste;
  - (c) any equipment or device used for the processing, fabricating or alloying of plutonium, thorium or uranium enriched in the isotope uranium 233 or in the isotope uranium 235, or any one or more of them if at any time the total amount of such material in the custody of the Insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;
  - (d) any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste radioactive material; and includes the site on which any of the foregoing is located, together with all operations conducted thereon and all premises used for such operations.
- 4. The term "fissionable substance" means any prescribed substance that is, or from which can be obtained, a substance capable of releasing atomic energy by nuclear fission.

### 3.c) ASBESTOS EXCLUSION:

It is agreed that this Policy does not apply:

Any claim, directly or indirectly, based upon, arising out of or related to:

- A) Asbestos or any asbestos-related injury or damage, or
- B) Any alleged act, error, omission, or duty involving asbestos, its use,

exposure, presence, existence, detection, removal, elimination, or avoidance, or

- C) The use, exposure, presence, existence, detection, removal, elimination, or avoidance of asbestos in any environment, building or structure.

### 4. CONDITIONS:

#### Premium

The premium for this Policy shall be computed on the basis set forth under Item 3 of the Declarations. At the end of "Each Annual Period" the earned premium shall be computed as thus defined. If the earned premium thus computed is more than the deposit premium paid, the Named Insured shall immediately pay the excess to the Insurer; if less, the Insurer shall return the difference to the Named Insured, but the Insurer shall receive the annual minimum premium for each annual period.

In the event of additional Insureds being added to the coverage under the Underlying Insurance during currency hereof, prompt notice shall be given to the Insurer who shall be entitled to charge an appropriate additional premium hereon.

#### Notice of Loss

Whenever it appears that an Occurrence covered hereunder is likely to involve the Insurer, written notice shall be sent to the Insurer as soon as practicable. Such notice shall contain particulars sufficient to identify the Insured and also reasonably obtainable information respecting the time, place and circumstances of the Occurrence.

#### Assistance and Co-Operation

The Insurer shall not be called upon to assume charge of the settlement or defence of any claim made, suit brought or proceeding instituted against the Insured; but the Insurer shall have the right and shall be given the opportunity to associate with the Insured in the defence and control of any claim, suit or proceeding reasonably likely to involve the Insurer. In such event the Insured and the Insurer shall co-operate fully.

The Insured shall (a) co-operate with the underlying Insurer or insurers, as required by the terms of the Underlying Insurance, (b) comply with all the terms and conditions thereof and (c) enforce any right of contribution or indemnity against any person or organization who may be liable to the Insured, because of liability with respect to which insurance is afforded under this Policy and the Underlying Insurance.

**Appeals**

In the event the Insured or the Insured's underlying Insurers elect not to appeal a judgment in excess of the underlying limits, the Insurer may elect to make such appeal at its cost and expense, and shall be liable for the taxable costs and disbursements and interest incidental thereto, but in no event shall the liability of the Insurer for Ultimate Net Loss exceed the amount set forth in Item 4 of the Declarations for any one occurrence and in addition the cost and expense of such appeal.

**Action Against Insurer**

No action shall lie against the Insurer with respect to any one Occurrence unless as a condition precedent thereto the Insured shall have fully complied with all terms of this Policy, nor until the amount of the Insured's obligation to pay an amount of Ultimate Net Loss in excess of the underlying or retained limit shall have been finally determined either by judgment against the Insured after actual trial or by written agreement of the Insured, the claimant and the Insurer. The Insured shall make a definite claim for any loss for which the Insurer may be liable within twelve months after such final determination. Claim for any subsequent payments made by the Insured on account of the same Occurrence shall be similarly made. All losses covered by this Policy shall be due and payable within thirty days after they are respectively claimed and proven in conformity with this Policy.

**Subrogation**

Inasmuch as this Policy is "Excess Coverage", the Insured's right of recovery

against any person or other entity cannot be exclusively subrogated to the Insurer. It is therefore, understood and agreed that in case of any payment hereunder, the Insurer will act in concert with all other interests (including the Insured) concerned, in the exercise of such rights of recovery. The apportioning of any amounts which may be so recovered shall follow the principle that any interests (including the Insured) that shall have paid an amount over and above any payment hereunder, shall first be reimbursed up to the amount paid by them, the Insurer is then to be reimbursed out of any balance then remaining up to the amount paid hereunder; lastly, the interests (including the Insured) of which this coverage is in excess are entitled to claim the residue, if any. Expenses necessary to the recovery of any such amounts shall be apportioned between the interests (including the Insured) concerned, in the ratio of their respective recoveries as finally settled.

**Cancellation**

This Policy may be cancelled by the Named Insured by mailing to the Insurer written notice stating when thereafter the cancellation shall be effective. This Policy may be cancelled by the Insurer by written notice to the Named Insured at the address shown in this Policy, such notice to be not less than the number of days set forth in Item 6 of the Declarations. The mailing of notice as aforesaid shall be sufficient proof of notice. The effective date and hour of cancellation stated in the notice shall become the end of the Policy Period. Delivery of such written notice either by the Named Insured or by the Insured or by the Insurer shall be equivalent to mailing.

If the Named Insured cancels, earned premium shall be computed in accordance with the customary short rate table and procedure, but shall not be less than the Retained Premium described in the Declarations attached hereto.

If the Insurer cancels, earned premium shall be computed pro rata. Premium adjustment may be made either at the time cancellation is effected or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.

.....

IN WITNESS WHEREOF, the Insurer has caused this Policy to be signed by its authorized representative.



IDENTIFICATION OF INSURER / ACTION AGAINST INSURER

Lloyd's Approved Coverholder ("the Coverholder"):

Elliott Special Risks LP  
130 Adelaide Street West, Suite 810  
Toronto, Ontario  
M5H 3P5

Where LLOYD'S UNDERWRITERS are subscribing insurers to the policy forming part hereof, the following applies to them:

**IDENTIFICATION OF INSURER/ACTION AGAINST INSURER**

This insurance has been effected in accordance with the authorization granted to the Coverholder by the Underwriting Members of the Syndicates whose definitive numbers and proportions are shown in Agreement No. ESR2010001 (hereinafter referred to as "the Underwriters"). The Underwriters shall be liable hereunder each for his own part and not one for another in proportion to the several sums that each of them has subscribed to the said Agreement.

In any action to enforce the obligations of the Underwriters they can be designated or named as "Lloyd's Underwriters" and such designation shall be binding on those Underwriters as if they had each been individually named as defendant. Service of such proceedings may validly be made upon the Attorney In Fact in Canada for Lloyd's Underwriters, whose address for such service is 1155, rue Metcalfe, Suite 2220, Montreal, Quebec, H3B 2V6.

**NOTICE**

Any notice to Lloyd's Underwriters may be validly given to the Coverholder.

POLICY NUMBER: EXT35468  
INSURED: NEW FOOD CLASSICS

TERRORISM EXCLUSION

It is agreed that the insurance in this Policy does not apply to any actual or alleged liability arising directly or indirectly, in whole or in part, out of "Terrorism" or out of any activity or decision of a government agency or other entity to prevent, respond to or terminate "Terrorism". This exclusion applies regardless of any other contributing or aggravating cause or event that contributes concurrently or in any sequence to the loss, damage, cost or exposure.

"Terrorism" means an ideologically motivated unlawful act or acts, including but not limited to the use of violence or force or threat of violence or force, committed by or on behalf of any group(s), organization(s) or government(s) for the purpose of influencing any government and/or instilling fear in the public or a section of the public.

It is further agreed that if the "Terrorism" exclusion in the underlying insurance is more restrictive than the exclusion herein, this policy shall follow the "Terrorism" exclusion of the underlying insurance.

All other terms and conditions remain unchanged.

POLICY NUMBER: EXT35468  
INSURED: NEW FOOD CLASSICS

DATA EXCLUSION

This insurance does not apply to any liability for:

- erasure, destruction, corruption, misappropriation, misinterpretation of "Data";
- erroneously creating, amending, entering, deleting or using "Data";

Including any loss of use arising therefrom.

Additionally this insurance does not apply to any liability arising out of the distribution or display of "Data", by means of an Internet Website, the Internet, an intranet, extranet, or similar device or system designed or intended for electronic communication of "Data".

Wherever used in this endorsement, the term "Data" means representations of information or concepts, in any form.

It is agreed that if the "Data" exclusion in the underlying insurance is more restrictive than the exclusion herein, this policy shall follow the "Data" exclusion of the underlying insurance.

All other terms and conditions remain unchanged.

POLICY NUMBER: EXT35468  
 INSURED: NEW FOOD CLASSICS

**FUNGI and FUNGAL DERIVATIVES EXCLUSION**

This insurance shall not apply to:

- a. Any actual or alleged liability arising directly or indirectly, from the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, presence of, spread of, reproduction, discharge or other growth of any "fungi" or "spores" however caused, including any costs or expenses incurred to prevent, respond to, test for, monitor, abate, mitigate, remove, cleanup, contain, remediate, treat, detoxify, neutralize, assess or otherwise deal with or dispose of "fungi" or "spores"; or
- b. any supervision, instructions, recommendations, warnings, or advice given or which should have been given in connection with a. above; or
- c. any obligation to pay damages, share damages with or repay someone else who must pay damages because of such injury or damage referred to in a. or b. above.

This exclusion applies regardless of the cause of the loss or damage, other causes of the injury, damage, expense or costs or whether other causes acted concurrently or in any sequence to produce the injury, damage, expenses or costs.

For the purpose of this endorsement, the following definitions are added:

"Fungi" includes, but is not limited to, any form or type of mould, yeast, mushroom, or mildew whether or not allergenic, pathogenic or toxigenic, and any substance, vapour or gas produced by, emitted from or arising out of any "Fungi" or "Spores" or resultant mycotoxins, allergens, or pathogens.

"Spores" includes, but is not limited to, any reproductive particle or microscopic fragment produced by, emitted from or arising out of any "fungi".

It is further agreed that if the Fungi & Fungal Derivatives exclusion in the underlying insurance is more restrictive than the exclusion herein, this Policy shall follow the fungi and fungal derivatives exclusion of the underlying insurance.

All other terms and conditions remain unchanged.

# TAB F

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

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

THE HONOURABLE )  
 ) MONDAY, THE 27TH DAY  
 )  
JUSTICE WILTON-SIEGEL ) OF JANUARY, 2014

**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

**ORDER**

THIS MOTION for directions made by FTI Consulting Canada Inc. in its capacity as court-appointed receiver (the "Receiver") of the property, assets and undertaking of NFC ACQUISITION GP INC., NFC ACQUISITION CORP. NFC ACQUISITION L.P., NEW FOOD CLASSICS AND NFC LAND HOLDINGS CORP. (collectively, the "Debtors") was heard this day at 330 University Avenue, Toronto, Ontario.

ON BEING ADVISED of the consent of the parties in interest, Bank of Montreal, MWS Solutions Inc. and the Receiver and on hearing the submissions of counsel for the said parties,



1. THIS COURT ORDERS that the time for service of the Receiver' Notice of Motion for directions is hereby validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

2. THIS COURT ORDERS that the Receiver forthwith pay MWS Solutions Inc. the sum of \$271,584.30, in full and final satisfaction of its claims pursuant to the *Construction Lien Act* and the action brought by MWS Solutions Inc. as plaintiff against the Debtors, Bank of Montreal and the TD Mezzanine Partners Management Ltd., as identified in the files of the Ontario Superior Court of Justice as Court File No. 53126/11.

A. Khan d. K.

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JAN 27 2014

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**BANK OF MONTREAL**  
-- Applicants --

v.

Court File No.: CV-11-2229-00  
**NFC ACQUISITION GP INC. et al.**  
-- Respondents --

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(IN BANKRUPTCY AND INSOLVENCY)**  
  
(PROCEEDING COMMENCED AT TORONTO)

ORDER

**GOWLING LAFLEUR HENDERSON LLP**  
Barristers & Solicitors  
1 First Canadian Place,  
100 King Street West, Suite 1600  
Toronto, ON M5X 1G5

**Clifton P. Prophet, LSUC#34845K**  
Tel: 416.862.3509  
Fax: 416.862.7661

**Haddon C Murray, LSUC#61640P**  
Tel: 416.862.3604  
Fax: 416.863.3498

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

**TAB G**

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**

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

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**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

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**

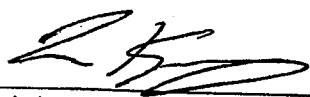
23. BMO is concerned that immediate steps must be taken in order to preserve the value of the Property. Failure to appoint a Receiver will likely result in a significant decrease in the value of the NFC Entities business and a reduction in recoveries for its stakeholders.

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.

  
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Commissioner for Taking Oaths

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\_\_\_\_\_  
L.M. JUNIOR DEL BROCCO

**TAB H**

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 Canafrie Inc. ("**Canafrie**") 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”**.

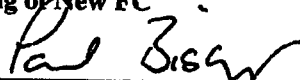
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21. Counsel to the Receiver, counsel to MWS and counsel to BMO have worked together to set a schedule for the determination of the limited issue of the relative priority of the MWS Construction Lien and the BMO and TD Mortgages within the context of 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

**BANK OF MONTREAL**

**Applicants**

Court File No.: CV12-9616-00CL

- 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**

**(RETURNABLE FEBRUARY 20, 2014)**

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