

**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.**

---

**MOTION RECORD OF  
NFC ACQUISITION GP INC., NFC ACQUISITION CORP.,  
NFC LAND HOLDINGS CORP., NEW FOOD CLASSICS AND  
NFC ACQUISITION L.P.  
(Stay Extension Order and Westco Pre-Filing Lien Charge  
(returnable on February 16, 2012))**

---

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

Fax: 416.865.7380

**David Bish** (LSUC#: 41629A)  
Tel: 416.865.7353  
Email : [dbish@torys.com](mailto:dbish@torys.com)

**Adam M. Slavens** (LSUC#: 54433J)  
Tel: 416.865.7333  
Email: [aslavens@torys.com](mailto:aslavens@torys.com)

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

# INDEX

**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.**

**INDEX**

<b>Tab</b>	<b>Document</b>
1.	Notice of Motion
2.	Affidavit of Brian Cram, sworn February 10, 2012
3.	Draft Order

**TAB 1**

**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.**

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

NFC Acquisition GP Inc., NFC Acquisition Corp., NFC Land Holdings Corp. (collectively, the "Applicants"), New Food Classics ("NFC"), and NFC Acquisition L.P. ("Acquisition LP") (NFC and Acquisition LP being the "Partnerships", and together with the Applicants, the "NFC Entities") will make a motion to a judge presiding over the Ontario Superior Court of Justice (Commercial List) (the "Court") on February 16, 2012, at 10:00 a.m. or as soon after such time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

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

**THIS MOTION IS FOR** an order substantially in the form included at tab 3 of the NFC Entities' Motion Record, and such further and other relief as this Honourable Court may deem just.

**THE GROUNDS FOR THE MOTION ARE:**

## **Proceedings to Date**

- (a) On January 17, 2012, the Applicants made an application to the Court pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA"), and the Court made an order (the "Initial Order") granting various relief to the NFC Entities under the CCAA, including, *inter alia*:
- (i) declaring that the Applicants are parties to which the CCAA, applies;
  - (ii) declaring that NFC and Acquisition LP shall, along with the Applicants, enjoy the benefits of the protections and authorizations provided by the Initial Order;
  - (iii) appointing FTI Consulting Canada Inc. as the monitor (the "Monitor"), an officer of this Court, to monitor the business and financial affairs of the NFC Entities;
  - (iv) staying all proceedings taken or that might be taken in respect of the NFC Entities, their directors and officers and the Monitor;
  - (v) authorizing the NFC Entities to obtain and borrow debtor-in-possession financing from the DIP Lender (as such term is defined in the Initial Order) under the DIP Agreement (as such term is defined in the Initial Order);
  - (vi) granting the following priority charges over the property of the NFC Entities:
    - (A) the Administration Charge (as such term is defined in the Initial Order) (to the maximum amount of \$350,000);
    - (B) the Directors' Charge (as such term is defined in the Initial Order) (to the maximum amount of \$3,000,000); and
    - (C) the DIP Lender's Charge (as such term is defined in the Initial Order); and
  - (vii) approving the terms and provisions of the Sale Process (as such term is defined in the Initial Order) and authorizing the NFC Entities and the Monitor to conduct the Sale Process;

## **Extension of Stay**

- (b) the Initial Order granted a stay of proceedings in respect of the NFC Entities until and including February 16, 2012, or such later date as may be ordered by the Court (the “Initial Stay Period”);
- (c) since the commencement of these proceedings, the NFC Entities have continued to carry on business in a manner consistent with the preservation of their business and property and have continued operating their business as a going concern, subject to the terms of the Initial Order;
- (d) with the assistance of the Monitor, the NFC Entities have been communicating and dealing with their stakeholders, including employees, suppliers, and customers;
- (e) with the assistance of the Monitor, the NFC Entities have been conducting the Sale Process, and an extension of the Initial Stay Period to March 30, 2012 (the “Stay Period Extension”), is necessary to provide the NFC Entities and the Monitor with sufficient time to continue to conduct the Sale Process, 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;
- (f) the NFC Entities have acted and continue to act in good faith and with due diligence and do not believe that any creditor will suffer any material prejudice as a result of the Stay Period Extension;
- (g) the DIP Lender and the Monitor support the Stay Period Extension;

**Westco Pre-Filing Lien Charge**

- (h) Westco MultiTemp Distribution Centres Inc. (“Westco”) supplies storage, handling and shipping/transportation services to the NFC Entities, and the continued provision of such services by Westco is integral to the continuation of the NFC Entities’ business as a going concern;

- (i) Westco has accrued and unpaid statutory possessory lien claims under applicable legislation in respect of the NFC Entities' products on hand in Westco's warehouse on January 17, 2011;
- (j) pursuant to a letter agreement among the Monitor, the NFC Entities, Westco, the DIP Lender and TD Mezzanine Partners Management Ltd. ("TD"), a secured creditor of the NFC Entities, in connection with the supply of post-filing services by Westco to NFC, the NFC Entities agreed to request a Court-ordered charge (the "Westco Pre-Filing Lien Charge") in favour of Westco in and to the Property (as such term is defined in the Initial Order) as security for Westco's verified lien amount, which amount shall not exceed \$450,000, ranking in priority immediately subordinate to the Administration Charge (as such term is defined in the Initial Order), but otherwise in priority to the Directors' Charge and the DIP Lender's Charge (each such term, as defined in the Initial Order);
- (k) the NFC Entities are not seeking to have the Westco Pre-Filing Lien Charge prime existing PPSA registrants, aside from the existing secured claims of the DIP Lender and TD, each of which has been provided with notice of this motion;
- (l) in addition to aiding the NFC Entities in continuing to operate their business as a going concern, the continued post-filing supply of services by Westco and the granting of the Westco Pre-Filing Lien Charge will help the NFC Entities' cash flow and facilitate the NFC Entities successfully completing the Sale Process, thereby preserving value and maximizing recoveries for the NFC Entities' stakeholders;
- (m) the Westco Pre-Filing Lien Charge will rank ahead in priority to the Directors' Charge, and the directors and officers of the NFC Entities consent to the creation and such priority ranking of the Westco Pre-Filing Lien Charge;



- (n) the DIP Lender and TD consent to the creation and priority ranking of the Westco Pre-Filing Lien Charge;
- (o) the Monitor is supportive of the Westco Pre-Filing Lien Charge;
- (p) such other grounds set forth in the Affidavit of Brian Cram, sworn February 10, 2012;

**General**

- (q) the provisions of the CCAA and, in particular, Section 11.02 thereof;
- (r) Rules 2.03, 3.02 and 37 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and
- (s) 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:

- (a) the Affidavit of Brian Cram, sworn February 10, 2012;
- (b) the Second Report of the Monitor to be filed in connection with this motion; and
- (c) such further and other material as counsel may advise and this Honourable Court may permit.

February 10, 2012

**Torys LLP**  
79 Wellington Street West  
Suite 3000, TD Centre  
Toronto, Ontario M5K 1N2

Fax: 416.865.7380

**David Bish** (LSUC#: 41629A)  
Tel: 416.865.7353  
Email : [dbish@torys.com](mailto:dbish@torys.com)

**Adam M. Slavens** LSUC#: (54433J)  
Tel: 416.865.7333  
Email: [aslavens@torys.com](mailto:aslavens@torys.com)

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

**TO: SERVICE LIST ATTACHED**

NFC ACQUISITION GP INC., NFC ACQUISITION CORP., NFC LAND HOLDINGS CORP.,  
NEW FOOD CLASSICS AND NFC ACQUISITION L.P. (THE "NFC ENTITIES")

SERVICE LIST

**TO: TORYS LLP**  
79 Wellington Street West, Suite 3000  
Box 270, TD Centre  
Toronto, ON M5K 1N2

**Attention: David Bish / Adam Slavens**  
Tel: 416. 865.7353 / 416.865.7333  
Fax: 416. 865.7380  
Email: [dbish@torys.com](mailto:dbish@torys.com) / [aslavens@torys.com](mailto:aslavens@torys.com)

*Lawyers for NFC Entities*

**AND TO: Fasken Martineau DuMoulin LLP**  
333 Bay Street, Suite 2400  
Bay Adelaide Centre, Box 20  
Toronto, ON M5H 2T6

**Attention: Edmond Lamek**  
Tel: 416.865.4506  
Fax: 416.364.7813  
Email: [elamek@fasken.com](mailto:elamek@fasken.com)

*Lawyers for FTI Consulting Canada Inc., Monitor in respect of the NFC Entities*

**AND TO: Gowling Lafleur Henderson LLP**  
1 First Canadian Place  
100 King Street West, Suite 1600  
Toronto, ON M5X 1G5

**Attention: David Cohen / Clifton Prophet**  
Tel: 416.369.6667 / 416.863.3509  
Fax: 416.862.7661  
Email: [david.cohen@gowlings.com](mailto:david.cohen@gowlings.com) / [clifton.prophet@gowlings.com](mailto:clifton.prophet@gowlings.com)

*Lawyers for the Bank of Montreal*

**AND TO: Goodmans LLP**  
Bay Adelaide Centre  
333 Bay Street, Suite 3400  
Toronto, ON M5H 2S7

**Attention: Robert Chadwick / Derek Bulas**  
Tel: 416.597.4285 / 416.597.5914  
Fax: 416.979.1234  
Email: [rchadwick@goodmans.ca](mailto:rchadwick@goodmans.ca) / [dbulas@goodmans.ca](mailto:dbulas@goodmans.ca)

*Lawyers for EdgeStone Capital Partners*

**AND TO: Lenczner Slaght Royce Smith Griffin LLP**  
Suite 2600, Box 54  
130 Adelaide Street West  
Toronto, ON M5H 3P5

**Attention: Peter Osborne / Brendan Gray**  
Tel: 416.865.3094 / 416.865.2945  
Fax: 416.865.9010  
Email: [posborne@litigate.com](mailto:posborne@litigate.com) / [bgray@litigate.com](mailto:bgray@litigate.com)

*Lawyer for certain Directors of the NFC Entities*

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

**Attention: Bill O'Connor / Can Cakim / Sandra Mundy**  
Tel: 416.308.1776  
Fax: 416.983.6817  
Email: [bill.oconnor@tdsecurities.com](mailto:bill.oconnor@tdsecurities.com) / [can.cakim@tdsecurities.com](mailto:can.cakim@tdsecurities.com) / [sandra.mundy@td.com](mailto:sandra.mundy@td.com)

**AND TO: FTI Consulting Canada Inc.**  
TD Waterhouse Tower  
79 Wellington Street West  
Toronto-Dominion Centre  
Suite 2010, P.O. Box 104  
Toronto, ON M5K 1G8

**Attention: Paul Bishop / Jamie Engen / Jodi Porepa**  
Tel: 416.649. 8053 / 604.601.5698 / 416.649.8070  
Fax: 416.649.8101  
Email: [paul.bishop@fticonsulting.com](mailto:paul.bishop@fticonsulting.com) / [Jamie.Engen@fticonsulting.com](mailto:Jamie.Engen@fticonsulting.com) / [jodi.porepa@fticonsulting.com](mailto:jodi.porepa@fticonsulting.com)

*Monitor in respect of the NFC Entities*

**AND TO: Plaxton & Company Lawyers**  
500 - 402 21st Street East  
Saskatoon, Saskatchewan S7K 0C3

**Attention: Drew S. Plaxton**  
Tel: 306.653.1500  
Fax: 306.664.6659  
Email: [dsplaxton@plaxtonlaw.com](mailto:dsplaxton@plaxtonlaw.com)

*Lawyers for United Food and Commercial Workers, Local 1400*

**AND TO: Berkow, Cohen LLP**  
141 Adelaide Street West, Suite 400  
Toronto, ON M5H 3L5

**Attention: Jack B. Berkow**  
Tel: 416.364.4082  
Fax: 416.364.3865  
Email: [jberkow@berkowcohen.com](mailto:jberkow@berkowcohen.com)

*Lawyers for MWS Solutions Inc.*

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED  
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF NFC ACQUISITION GP INC., NFC  
ACQUISITION CORP. AND NFC LAND HOLDINGS CORP.

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

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

Proceeding commenced at Toronto

**NOTICE OF MOTION OF**  
**NFC ACQUISITION GP INC., NFC ACQUISITION CORP.,**  
**NFC LAND HOLDINGS CORP.,**  
**NEW FOOD CLASSICS AND**  
**NFC ACQUISITION L.P.**  
(Stay Extension Order and Westco Pre-Filing Lien Charge  
(returnable on February 16, 2012))

**Torys LLP**

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

Fax: 416.865.7380

**David Bish** (LSUC#: 41629A)

Tel: 416.865.7353

Email : [dbish@torys.com](mailto:dbish@torys.com)

**Adam M. Slavens** LSUC#: 54433J

Tel: 416.865.7333

Email: [aslavens@torys.com](mailto:aslavens@torys.com)

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

**TAB 2**

**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 February 10, 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”). I have been employed by NFC 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 NFC 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 the NFC Entities’ motion for certain relief under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “CCAA”), *inter alia*, an Order granting: (a) the extension of the Initial Stay Period (as defined below) to March



30, 2012 (the “Stay Period Extension”); and (b) the Westco Pre-Filing Lien Charge (as defined below) over the property of the NFC Entities.

## **II. BACKGROUND**

3. Detailed facts in respect of the NFC Entities and these proceedings are more fully set out in the Affidavit of Brian Cram, sworn January 16, 2012 (the “Initial Cram Affidavit”), a copy of which is included in the Applicants’ Application Record dated January 17, 2012, and may be found on the following website: <http://cfcanada.fticonsulting.com/nfc/>.

4. Capitalized terms used but not defined herein have the meaning ascribed to them in the Initial Order (as defined below).

## **III. PROCEEDINGS TO DATE**

5. On January 17, 2012, the Applicants made an application to the Court pursuant to the CCAA and the Ontario Superior Court of Justice (Commercial List) (the “Court”) made an order (the “Initial Order”) granting various relief to the NFC Entities under the CCAA, including, *inter alia*:

- (a) declaring that the Applicants are parties to which the CCAA applies;
- (b) declaring that the Partnerships shall, along with the Applicants, enjoy the benefits of the protections and authorizations provided by the Initial Order;
- (c) appointing FTI Consulting Canada Inc. as the monitor (the “Monitor”), an officer of this Court, to monitor the business and financial affairs of the NFC Entities;
- (d) staying all proceedings taken or that might be taken in respect of the NFC Entities, their directors and officers and the Monitor;
- (e) authorizing the NFC Entities to obtain and borrow debtor-in-possession financing from the DIP Lender under the DIP Agreement;
- (f) granting the following priority charges over the property of the NFC Entities:
  - (i) the Administration Charge (to the maximum amount of \$350,000);

- (ii) the Directors' Charge (to the maximum amount of \$3,000,000);  
and
  - (iii) the DIP Lender's Charge; and
- (g) approving the terms and provisions of the Sale Process and authorizing the NFC Entities and the Monitor to conduct the Sale Process.

#### **IV. RESTRUCTURING EFFORTS TO DATE**

6. Since the commencement of these proceedings, the NFC Entities have continued to carry on business in a manner consistent with the preservation of their business and property and have continued operating their business as a going concern, subject to the terms of the Initial Order. The NFC Entities have also been conducting the Sale Process, with the assistance of the Monitor.

##### ***(a) Employees, Suppliers and Customers***

7. With the assistance of the Monitor, the NFC Entities have been communicating and dealing with their stakeholders, including employees, suppliers, and customers. The NFC Entities have reached out to suppliers and customers to reassure them that their business continues to operate as a going concern.

8. On January 17, 2012, the NFC Entities' management held teleconferences with fifteen of the NFC Entities' largest customers to notify them of the commencement of these proceedings and the impact such proceedings were expected to have on them. In the first week following the filing, the NFC Entities' management held face-to-face follow up meetings with a subset of the customers, consisting of six key customers. The Monitor participated in some of these meetings. These customers continue to be kept up-to-date on a weekly basis, and, importantly, have remained customers of the NFC Entities during the course of these proceedings, and have supported the Sale Process and the timelines contemplated thereby.

9. The same model was followed by the NFC Entities' management in respect of the NFC Entities' key suppliers. Fifteen of these suppliers were contacted by the NFC Entities' management on January 17, 2012 and January 18, 2012 to notify them of the commencement of these proceedings, the impact such proceedings were expected to have on them and details

regarding the Sale Process and Court-approval thereof. Follow-up meetings have been held with these key suppliers in the subsequent weeks.

10. The NFC Entities have also endeavoured to keep their employees apprised of key developments in these proceedings and their restructuring efforts to date. On January 17, 2012, the NFC Entities' management notified the United Food & Commercial Workers Union, Local 1400 and the United Food and Commercial Workers Canada, Local 175 (together, the "Unions") of these proceedings. The Unions sent representatives to attend at the plant meetings where plant employees were notified of the commencement of these proceedings. The Unions' leadership has maintained an ongoing dialogue with senior plant management and have been kept informed of significant developments in these proceedings. To date, the Unions have been supportive of the NFC Entities throughout these proceedings and await the outcome of the Sale Process. Importantly, no unionized employees have left the plants and it largely remains business-as-usual at the plants.

11. The NFC Entities' non-unionized employees were also notified of these proceedings on January 17, 2012. The employees that work at the plants were notified at the plants by senior plant management. Those employees who were off-site dialed in to the meetings by telephone. Weekly follow-up meetings have been held with the non-unionized employees, and they continue to be kept apprised of key developments in these proceedings as well as the status of the Sale Process.

12. In addition, the NFC Entities and Monitor have negotiated or are in the process of negotiating suitable arrangements with suppliers and vendors regarding the post-filing supply of goods and services ("Post-Filing Supply Arrangements"). Many of the NFC Entities' suppliers are being paid on a COD-basis or quasi-COD-basis, in cases where such suppliers are unable to generate invoices in time to be paid COD. Meat suppliers are being paid by the NFC Entities one-week in advance in order to ensure that there are no disruptions to supply.

13. The NFC Entities have entered into more specialized Post-Filing Supply Arrangements with certain of their suppliers, including Griffith Laboratories Worldwide, Inc. ("Griffith"), CCCSI Canadian Contract Cleaning Specialists Inc. ("CCCSI") and CIMCO Refrigeration ("CIMCO"). Griffith, a spice and meat ingredient supplier, provides the NFC Entities with

proprietary formulations of spices that cannot be replicated by other spice suppliers. In order to fill certain of their customers' orders, the NFC Entities require proprietary spice formulations in order to meet product specifications. CCCSI is the sole supplier of plant sanitation services to the NFC Entities production facilities. These sanitation services must be provided daily, as the plants cannot operate without them. CIMCO Refrigeration supplies the NFC Entities with maintenance and repair services, and is essential to the maintenance and repair of specialized equipment, such as refrigeration units, and is able to accommodate emergency repair needs. The NFC Entities' customers have cooperated with the NFC Entities and Monitor in finalizing certain of these and other Post-Filing Supply Arrangements.

14. Millard Refrigerated Services, Inc. and Millard Refrigerated Services – Canada, ULC (together, "Millard") and Westco MultiTemp Distribution Centres Inc. ("Westco"), each of which supplies essential services to the NFC Entities, had accrued and unpaid statutory possessory lien claims under applicable legislation.

15. Millard maintains the NFC Entities' Eastern centralized warehouse facility. Its continuing supply of post-filing services and cooperation during these proceedings is essential to operating the NFC Entities' business as a going concern. In order to ensure such post-filing services and access to products stored in Millard's warehouse on January 17, 2012, the Monitor, the NFC Entities, Westco, the DIP Lender and TD Mezzanine Partners Management Ltd. ("TD"), a secured creditor of the NFC Entities, entered into a letter agreement dated January 31, 2012, which preserved the pre-filing lien claim of Millard and was without prejudice to the perfection or relative priority of such liens. Without such letter agreement, Millard would have been unwilling to supply post-filing services and release the NFC Entities' products in its possession. Entering into Post-Filing Supply Arrangements with Millard was essential to protecting the NFC Entities' cash flow, ensuring the continuity of supply to the NFC Entities' customers and maintaining customer relationships.

16. As described in greater detail below, the NFC Entities have also made Post-Filing Supply Arrangements with Westco for refrigeration, storage and transportation services.

**(b) Cash Flow**

17. A more complete discussion of the NFC Entities' cash flow is contained in the Second Report of the Monitor filed in connection with this motion (the "Second Report"). The NFC Entities are approximately \$100,000 ahead of their cash flow projections and have not been off-side such projections at any time since the commencement of these proceedings. It is possible that there may be future variances in respect of the cash flow projections due to the timing of certain future receipts and disbursements as a result of calendarization issues, as more fully discussed in the Second Report. A more detailed discussion of the key variances in respect of the cash flow is also more fully discussed in the Second Report. However, the following major changes are of note:

- (a) All of the NFC Entities insurance policies (excluding directors' and officers' insurance), including, without limitation, product liability insurance and property and casualty insurance (collectively, the "Policies") expired on December 31, 2012. The NFC Entities' insurance broker, Jardine Lloyd Thompson, notified them that replacement Policies were only available on an annual pre-paid basis for the full, one-year term at a cost of \$353,371, as opposed to being paid in monthly installments (as previously budgeted) as a result of financing being unavailable to the NFC Entities. Having coverage under the Policies is integral to the NFC Entities continuing to operate as a going concern. The purchase of the Policies was discussed with the DIP Lender, and the DIP Lender agreed that the purchase of the Policies was necessary in the circumstances. Accordingly, there is a variance against the cash flow forecast filed with the Initial Cram Affidavit. Depending on the outcome of the Sale Process and these proceedings, a portion of the cost of the Policies may be reimbursable to the NFC Entities.
- (b) Receipts from customers were approximately \$400,000 higher than expected as a result of timing differences and catch-up payments on invoices that were previously overdue.
- (c) Trade accounts payable was lower than forecast by approximately \$200,000 as a result of, in part, tight cost control by plant managers at the plants.

- (d) Rent and utilities expenses were lower than forecast by approximately \$230,000 as a result of the timing of rent payments made by the NFC Entities to landlords pursuant to the Initial Order and utilities having not yet invoiced the NFC Entities. The NFC Entities' management expects this to reverse in the coming weeks.

**(c) *DIP Financing***

18. The current commitment amount under the DIP Agreement is \$3,500,000. As of February 3, 2012, the NFC Entities received cumulative funding under the DIP Agreement in the approximate amount of \$1,700,000. Further credit approval by the DIP Lender is required to increase the commitment amount from \$3,500,000 to \$10,500,000. After February 21, 2012, there shall be no availability for further borrowings under the DIP Agreement 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. The NFC Entities continue to work closely with the Monitor and DIP Lender to ensure that such further credit approval will be forthcoming, although there is no guarantee of this result. In the event that the DIP Lender does not continue to fund the NFC Entities, the NFC Entities may have to return to Court prior to March 30, 2012.

**(d) *Sale Process***

19. As more fully described in the Second Report, with the assistance of the Monitor, the NFC Entities have been conducting the Sale Process and have worked diligently to advance the Sale Process, 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. The Sale Process has been a priority for the NFC Entities, and the NFC Entities' management has been diligently responding to diligence requests and giving management presentations to prospective purchasers.

20. In accordance with the Sale Process, on or about January 31, 2012, the NFC Entities, the Monitor and the DIP Lender evaluated the non-binding expressions of interest provided by interested parties, and determined which of those parties were eligible to proceed to the second

phase of the Sale Process. The NFC Entities' request for the Stay Period Extension is tied to the following key upcoming dates in respect of the Sale Process:

<b>ACTION</b>	<b>DEADLINE</b>
Submission of Final Proposals	February 13, 2012
Selection of Preferred Proposal	February 17, 2012
Closing (Outside Date)	March 30, 2012

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

21. The Initial Order granted a stay of proceedings in respect of the NFC Entities until and including February 16, 2012, or such later date as may be ordered by the Court (the "Initial Stay Period").

22. As described above, since the commencement of these proceedings, the NFC Entities have worked diligently to continue to operate their business as a going concern and to conduct and advance the Sale Process.

23. The Stay Period Extension is necessary to provide the NFC Entities and the Monitor with sufficient time to continue to conduct and advance the Sale Process. As discussed above, March 30, 2012 is the anticipated outside closing date in respect of the Sale Process and the length of the Stay Period Extension reflects this. However, the DIP Agreement provides funding to only March 15, 2012, at the latest (as described in paragraph 18 hereof), and the NFC Entities may have to return to Court prior to March 30, 2012.

24. The Stay Period Extension is also necessary to provide stability to the NFC Entities' business and to permit them to continue to operate the business as a going concern

25. The NFC Entities have acted and continue to act in good faith and with due diligence and I do not believe that any creditor will suffer any material prejudice as a result of the Stay Period Extension.

26. The DIP Lender and the Monitor support the Stay Period Extension.

## **VI. WESTCO PRE-FILING LIEN CHARGE**

27. Westco supplies storage, handling and shipping/transportation services to the NFC Entities, and the continued provision of such services by Westco is integral to the continuation of the NFC Entities' business as a going concern.

28. Westco has accrued and unpaid statutory possessory lien claims under applicable legislation in respect of the NFC Entities' products on hand in Westco's warehouse on January 17, 2011.

29. Pursuant to a letter agreement (the "Westco Letter Agreement") among the Monitor, the NFC Entities, Westco, the DIP Lender and TD in connection with the supply of post-filing services by Westco to NFC, the NFC Entities agreed to request a Court-ordered charge in favour of Westco in and to the Property as security for Westco's verified lien amount, which amount shall not exceed \$450,000, ranking in priority immediately subordinate to the Administration Charge, but otherwise in priority to the Directors' Charge and the DIP Lender's Charge. The NFC Entities are not seeking to have the Westco Pre-Filing Lien Charge prime existing PPSA registrants, aside from the existing secured claims of the DIP Lender and TD, each of which has been provided with notice of this motion. A copy of the Westco Letter Agreement is attached as Exhibit "A" hereto.

30. Without such letter agreement, Westco would have been unwilling to supply post-filing services and release the NFC Entities' products in its possession, as the Westco Pre-Filing Lien Charge stands in place of their lien. Entering into Post-Filing Supply Arrangements with Westco was essential to protecting the NFC Entities' cash flow, ensuring the continuity of supply to the NFC Entities' customers and maintaining customer relationships.

31. Westco is the NFC Entities' major warehouse and freight supplier, and the inventory stored at its premises is needed to service customers and provide them with their product orders. In addition to aiding the NFC Entities in continuing to operate their business as a going concern, the continued post-filing supply of services by Westco and the granting of the Westco Pre-Filing Lien Charge will help the NFC Entities' cash flow and facilitate the NFC Entities successfully completing the Sale Process, thereby preserving value and maximizing recoveries for the NFC Entities' stakeholders.



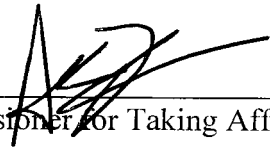
32. The Westco Pre-Filing Lien Charge will rank ahead in priority to the Directors' Charge, and the directors and officers of the NFC Entities consent to the creation and such priority ranking of the Westco Pre-Filing Lien Charge.

33. The DIP Lender and TD consent to the creation and priority ranking of the Westco Pre-Filing Lien Charge. The Monitor is supportive of the Westco Pre-Filing Lien Charge.

**VII. SUMMARY**

34. This Affidavit is sworn in support of the NFC Entities' motion for certain relief under the CCAA, *inter alia*, an Order granting: (a) the Stay Period Extension; and (b) the Westco Pre-Filing Lien Charge over the property of the NFC Entities.

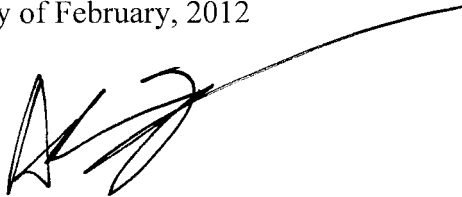
SWORN BEFORE ME at the City of  
Toronto, in the Province of Ontario,  
this 10<sup>th</sup> day of February, 2012.

  
\_\_\_\_\_  
Commissioner for Taking Affidavits

  
\_\_\_\_\_  
BRIAN CRAM

**ADAM MARCUS SLAVENS**  
Barrister and Solicitor, Notary  
Public for the Province of Ontario  
My Commission is unlimited as to time.

This is Exhibit "A" referred to in the  
affidavit of Brian Cram  
sworn before me, this 10th  
day of February, 2012

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

A Commissioner, Etc.

**ADAM MARCUS SLAVENS**  
**Barrister and Solicitor, Notary**  
**Public for the Province of Ontario**  
**My Commission is unlimited as to time.**



FTI Consulting  
TD Waterhouse Tower  
79 Wellington Street West  
Suite 2010, P.O. Box 104  
Toronto ON M5K 1G8  
Tel 416 649 8100  
Fax 416.649.8101  
fticonsulting.com

February 7, 2012

VIA email

Erla Glesby  
President/CEO  
Westco MultiTemp Distribution Centres Inc.  
1555 Chevrier Blvd.  
Winnipeg, Manitoba  
R3T 1Y7

**Re: In the Matter of a Plan of Compromise or Arrangement of NFC Acquisition GP Inc., NFC Acquisition L.P., NFC Acquisition Corp., New Food Classics and NFC Land Holdings Corp. (collectively, "NFC"), Court File No. CV12-955400CL**

On January 17, 2012, NFC sought and obtained protection under the *Companies' Creditors Arrangement Act* (the "CCAA") pursuant to an Order (the "Initial Order") of the Honourable Mr. Justice Morawetz of the Ontario Superior Court of Justice. Pursuant to the Initial Order, FTI Consulting Canada Inc. was appointed as the monitor of NFC (the "Monitor"). A copy of the Initial Order can be found on the Monitor's website at <http://cfcanda.fticonsulting.com/nfc>.

We are writing to you in order to set out the terms of arrangements between Westco MultiTemp Distribution Centres Inc. ("Westco"), NFC and the Monitor, which have been agreed to by Bank of Montreal as DIP Lender and as senior secured lender to NFC ("BMO"), and by TD Capital Mezzanine Partners Management Ltd. ("TD", and together with BMO, the "Secured Creditors"). The arrangements deal with two related but distinct issues, namely (i) the treatment and preservation of Westco's accrued and unpaid statutory lien claims ("Pre-filing Lien Claim") under the applicable legislation in respect of NFC products on hand in Westco's warehouse on January 17, 2012 ("On Hand Products"); and (ii) to establish procedures to protect Westco as a post-CCAA filing supplier of storage (from January 17 onward), handling and shipping/transportation services on behalf of NFC (the "Post-filing Services") and to avoid costly and time consuming calculation and remittance of daily payments to Westco for Post-filing Services.

#### Post-filing Services

The Initial Order (and, in particular, paragraph 17) requires all persons having agreements or arrangements with NFC for the supply of goods and services to continue to supply in accordance with the normal payment practices previously in place with NFC or such other practices as may be agreed upon by the supplier, NFC and the Monitor. The Initial Order and the CCAA also provide that no party is required to extend credit to NFC.

It is not practicable for NFC to calculate and make payments to Westco for Post-filing Services rendered on a daily basis. As such, and further to our recent discussions, in order to protect the position of Westco as a supplier of Post-filing Services, NFC, the Monitor and Westco will enter into the following arrangements for

to



FTI Consulting  
TD Waterhouse Tower  
79 Wellington Street West  
Suite 2010, P.O. Box 104  
Toronto ON M5K 1G8  
Tel 416 649 8100  
Fax 416.649.8101  
fticonsulting.com

the period effective January 17, 2012, until March 31, 2012, unless otherwise terminated or extended by agreement of Westco and the Monitor (the "Term").

1. NFC and Westco have together determined that the projected average weekly cost of Post-filing Services to be requested to be performed by Westco between the date hereof and March 30 is approximately \$100,000, inclusive of HST. Within 2 Business days of the execution of this agreement, NFC will transfer \$200,000 (the "Deposit Amount"), into a trust account (the "Monitor's Trust Account") which has been established and maintained by the Monitor (such deposited funds are hereinafter referred to as the "Westco Post-Filing Trust Amount"), as security for payment of the Post-filing Services provided by Westco. In the event that the Post-filing Services requested by NFC during a given week are reasonably anticipated to exceed the Deposit Amount, NFC shall make an interim payment to Westco on account of such requested Services during the week, such that Westco's remaining exposure for the week is fully covered by the Deposit Amount.

2. By 12:00 p.m. (all times Eastern) on Friday of each week during the Term, Westco shall render and deliver by email (with a copy to the Monitor at Jodi.Porepa@fticonsulting.com) an invoice to NFC for (i) the Post-filing Services which have been provided by Westco to NFC during the seven days commencing the previous Friday (ie: through to end of day Thursday) ("Post-Filing Weekly Invoice").

3. By 12:00 p.m. on each Monday during the Term, NFC shall pay (the "NFC Payment") to Westco by wire transfer the amount of the Post-Filing Weekly Invoice (or such greater or lesser amount agreed to by Westco and NFC in writing, i.e. corrected for any inaccuracies in the Post-Filing Weekly Invoice), and shall, by 5:00p.m., send Westco an email confirming that the wire payment has been initiated, containing the wire details as they are provided by BMO ("Confirming Email"). In the event of an unresolved *bona fide* dispute between NFC and Westco over any portion of the Post-Filing Weekly Invoice amount (a "Disputed Amount"), the Disputed Amount shall be paid by NFC to the Monitor and held in the Monitor's Trust Account pending resolution by agreement of NFC and Westco, or Court order. Westco shall be entitled to withhold providing Post-Filing Services to NFC after the close of business on any Monday during the Term that Westco has not received the Confirming Email by 5:00pm., until such time as Westco has received confirmation of the receipt of the NFC Payment into its bank account.

4. In the event that Westco has not received the NFC Payment for the Prior Week by 5:00p.m. on a Tuesday, it shall immediately notify the Monitor of such non-receipt by email at Jodi.Porepa@fticonsulting.com with a copy to NFC (a "Non Payment Notice"). Following Receipt of a Non Payment Notice, the Monitor shall, by 12:00 noon the following Business Day, remit to Westco, from the Deposit Amount, the amount of the Post-Filing Weekly Invoice (up to the Deposit Amount) by wire transfer to Westco.

5. Westco shall be entitled to continue to withhold providing Post-filing Services to NFC after the close of business on any Tuesday during the Term that Westco has not received the NFC Payment, until such time as NFC has replenished the Monitor's Trust Account back to the full Deposit Amount and evidence thereof has been provided to Westco. In the event that the Deposit Amount is not replenished by NFC within 3 business days, Westco may deliver an invoice addressed to NFC to the Monitor at Jodi.Porepa@fticonsulting.com for unbilled Post-filing services provided to NFC prior to the suspension thereof, and the Monitor shall pay that Invoice (subject to holding back any Disputed Amount) from funds in the Monitor's Trust Account, up to the remaining portion of the Deposit Amount.

DM\_TOR290110-00001/5443368.4



FTI Consulting  
TD Waterhouse Tower  
79 Wellington Street West  
Suite 2010, P.O. Box 104  
Toronto ON M5K 1G8  
Tel 416 649 8100  
Fax 416.649.8101  
fticonsulting.com

### No Set Off

In addition to the foregoing, the parties agree that any amounts received by Westco from NFC or the Monitor hereunder on account of Post-filing Services shall not be applied on account of, or set off against, any amounts owing by NFC to Westco prior to the date of the Initial Order.

### Pre-filing Lien Claims

NFC, the Secured Creditors and the Monitor each hereby acknowledge that the release by Westco of any of the On Hand Products held by Westco pursuant to the terms of its agreements with the Debtor shall be without prejudice to the perfection (including, without limitation, perfection by possession), quantification, allocation, scope or validity of Westco's Pre-Filing Lien Claims in respect of such On Hand Products. Westco has asserted that it has Pre-Filing Lien Claims over On Hand Products of up to a maximum amount of \$450,000 (the "Lien Cap"), which amount has not been agreed to by NFC or the Monitor. It is the intention of Westco, NFC and the Monitor to work together to agree, by March 31, 2012, upon the total amount properly payable to Westco in respect of its Pre-filing Lien Claim over On Hand Goods released from Westco's possession pursuant to this Agreement, failing which, the Monitor shall seek the advice and direction of the Court as to the amount so payable to Westco, to a maximum amount equal to the Lien Cap (the "Verified Lien Amount").

The Verified Lien Amount shall be due and payable to Westco on the earlier of: (i) termination of this Agreement; (ii) termination of the CCAA proceedings; or (iii) the Court approval of a distribution of the proceeds of sale or liquidation of all or substantially all of the assets of NFC.

The parties to this Agreement hereby consent and agree to the following:

- a) NFC and the Secured Creditors confirm and agree that the Prefiling Lien Claim of Westco up to the Verified Lien Amount, shall extend to, and form a lien over, the direct or indirect proceeds arising from any sale of the On Hand Products by NFC, or the sale of any Accounts Receivable arising in respect of the sale of On Hand Products (the "Proceeds"), with the same scope, validity and priority as the Pre-filing Lien Claim over On Hand Products;
- b) Any and all interests that the Secured Creditors may now have or hereafter acquire in and to the Proceeds be and are hereby postponed and subordinated to the security constituted by the Westco Prefiling Lien Claim over the Proceeds up to the Verified Lien Amount, to the same extent of the existing, scope, validity and priority of the Westco Pre-filing Lien Claim over On Hand Products;
- c) At the stay extension motion to be brought by February 16, 2012, NFC undertakes to request a Court ordered charge in favour of Westco in and to the the Property (as defined in the Initial Order) as security for the Verified Lien Amount (the "Westco Pre-filing Lien Charge"), ranking immediately behind the Administrative Charge (as such term is defined in the Initial Order). The Secured Creditors hereby consent to the creation and ranking of the Westco Pre-

A handwritten signature or initials in the bottom right corner of the page.



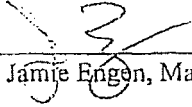
FTI Consulting  
TD Waterhouse Tower  
79 Wellington Street West  
Suite 2010, P.O. Box 104  
Toronto ON M5K 1G8  
Tel 416 649 8100  
Fax 416.649.8101  
fticonsulting.com

filing Lien Charge. In the event that the Court does not order the Westco Pre-filing Lien Charge on February 16, 2012, Westco may thereafter withhold the provision of Post-filing Services to NFC until such time as the parties (acting diligently and reasonably) negotiate the terms of a further agreement to secure, preserve and protect the Westco Pre-filing Lien Claim in respect of On Hand Products released to date and to be released by Westco under such further agreement, or failing such an agreement, pending further order of the Court.

If you agree with the foregoing, please sign and return a copy of this letter, which will constitute the agreement of Westco, NFC, the Secured Creditors and the Monitor with respect to the subject matter hereof.

Yours very truly,

**FTI Consulting Canada Inc., in its capacity as  
CCAA Monitor of NFC Acquisition GP Inc.,  
NFC Acquisition L.P., NFC Acquisition Corp.,  
New Food Classics and NFC Land Holdings Corp.**

  
Per: Jamie Engon, Managing Director

The Undersigned hereby acknowledge and agree to terms of this Letter Agreement as of the date first written above.

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

\_\_\_\_\_  
Per:

**Westco MultiTemp Distribution Centres Inc.**

\_\_\_\_\_  
Per:

**Bank of Montreal**



FTI Consulting  
TD Waterhouse Tower  
79 Wellington Street West  
Suite 2010, P.O. Box 104  
Toronto ON M5K 1G8  
Tel 416 649 8100  
Fax 416.649.8101  
fticonsulting.com

filing Lien Charge. In the event that the Court does not order the Westco Pre-filing Lien Charge on February 16, 2012, Westco may thereafter withhold the provision of Post-filing Services to NFC until such time as the parties (acting diligently and reasonably) negotiate the terms of a further agreement to secure, preserve and protect the Westco Pre-filing Lien Claim in respect of On Hand Products released to date and to be released by Westco under such further agreement, or failing such an agreement, pending further order of the Court.

If you agree with the foregoing, please sign and return a copy of this letter, which will constitute the agreement of Westco, NFC, the Secured Creditors and the Monitor with respect to the subject matter hereof.

Yours very truly,

**FTI Consulting Canada Inc., in its capacity as  
CCAA Monitor of NFC Acquisition GP Inc.,  
NFC Acquisition L.P., NFC Acquisition Corp.,  
New Food Classics and NFC Land Holdings Corp.**

---

Per: Jamie Engen, Managing Director

The Undersigned hereby acknowledge and agree to terms of this Letter Agreement as of the date first written above.

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



---

Per: **BRIAN A. CRAM**  
**PRESIDENT & CEO**  
Westco MultiTemp Distribution Centres Inc.

---

Per:

**Bank of Montreal**





FTI Consulting  
TD Waterhouse Tower  
79 Wellington Street West  
Suite 2010, P.O. Box 104  
Toronto ON M5K 1G8  
Tel 416 649 8100  
Fax 416.649.8101  
ficonsulting.com

filing Lien Charge. In the event that the Court does not order the Westco Pre-filing Lien Charge on February 16, 2012, Westco may thereafter withhold the provision of Post-filing Services to NFC until such time as the parties (acting diligently and reasonably) negotiate the terms of a further agreement to secure, preserve and protect the Westco Pre-filing Lien Claim in respect of On Hand Products released to date and to be released by Westco under such further agreement, or failing such an agreement, pending further order of the Court.

If you agree with the foregoing, please sign and return a copy of this letter, which will constitute the agreement of Westco, NFC, the Secured Creditors and the Monitor with respect to the subject matter hereof.

Yours very truly,

**FTI Consulting Canada Inc., in its capacity as  
CCAA Monitor of NFC Acquisition GP Inc.,  
NFC Acquisition L.P., NFC Acquisition Corp.,  
New Food Classics and NFC Land Holdings Corp.**

\_\_\_\_\_  
Per: Jamie Engen, Managing Director

The Undersigned hereby acknowledge and agree to terms of this Letter Agreement as of the date first written above.

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

\_\_\_\_\_  
Per:

**Westco MultiTemp Distribution Centres Inc.**

*Erla Gleesby*  
\_\_\_\_\_  
Per: **ERLA GLEESBY, PRESIDENT + CEO**

**Bank of Montreal**



FTI Consulting  
TD Waterhouse Tower  
79 Wellington Street West  
Suite 2010, P.O. Box 104  
Toronto ON M5K 1G8  
Tel 416 649 8100  
Fax 416.649.8101  
fticonsulting.com

filing Lien Charge. In the event that the Court does not order the Westco Pre-filing Lien Charge on February 16, 2012, Westco may thereafter withhold the provision of Post-filing Services to NFC until such time as the parties (acting diligently and reasonably) negotiate the terms of a further agreement to secure, preserve and protect the Westco Pre-filing Lien Claim in respect of On Hand Products released to date and to be released by Westco under such further agreement, or failing such an agreement, pending further order of the Court.

If you agree with the foregoing, please sign and return a copy of this letter, which will constitute the agreement of Westco, NFC, the Secured Creditors and the Monitor with respect to the subject matter hereof.

Yours very truly,

**FTI Consulting Canada Inc., in its capacity as  
CCAA Monitor of NFC Acquisition GP Inc.,  
NFC Acquisition L.P., NFC Acquisition Corp.,  
New Food Classics and NFC Land Holdings Corp.**

\_\_\_\_\_  
Per: Jamie Engen, Managing Director

The Undersigned hereby acknowledge and agree to terms of this Letter Agreement as of the date first written above.

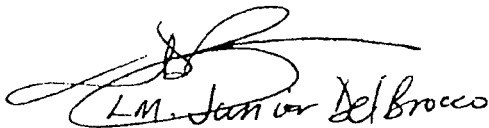
**NFC Acquisition GP Inc., NFC Acquisition L.P.,  
NFC Acquisition Corp., New Food Classics  
and NFC Land Holdings Corp.**

\_\_\_\_\_  
Per:

**Westco MultiTemp Distribution Centres Inc.**

\_\_\_\_\_  
Per:

**Bank of Montreal**

  
*L.M. Jean or Del Brocco  
Senior Manager.*

DM\_TOR/290110-00001/5443368.4



FTI Consulting  
TD Waterhouse Tower  
79 Wellington Street West  
Suite 2010, P.O. Box 104  
Toronto ON M5K 1G8  
Tel 416 649 8100  
Fax 416.649.8101  
fticonsulting.com

\_\_\_\_\_  
Per:

**TD Capital Mezzanine Partners Management Ltd.**

  
\_\_\_\_\_  
Per:

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED  
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF NFC ACQUISITION GP INC., NFC  
ACQUISITION CORP. AND NFC LAND HOLDINGS CORP.

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

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

Proceeding commenced at Toronto

**AFFIDAVIT OF BRIAN CRAM**  
(Sworn February 10, 2012)

**Torys LLP**

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

Fax: 416.865.7380

**David Bish** (LSUC#: 41629A)

Tel: 416.865.7353

Email : [dbish@torys.com](mailto:dbish@torys.com)

**Adam M. Slavens** LSUC#: (54433J)

Tel: 416.865.7333

Email: [aslavens@torys.com](mailto:aslavens@torys.com)

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

**TAB 3**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE ) THURSDAY, THE 16TH DAY  
 )  
JUSTICE ) OF FEBRUARY, 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.**

**ORDER**

**(Stay Extension and Westco Pre-Filing Lien Charge)**

**THIS MOTION**, made by NFC Acquisition GP Inc., NFC Acquisition Corp., NFC Land Holdings Corp. (collectively, the “Applicants”), New Food Classics (“NFC”), and NFC Acquisition L.P. (“Acquisition LP”) (NFC and Acquisition LP being the “Partnerships”, and together with the Applicants, the “NFC Entities”) for an Order substantially in the form enclosed in the Motion Record of the NFC Entities was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Notice of Motion, filed, the Affidavit of Brian Cram, sworn February 10, 2012 (the “Cram Affidavit”), filed, and the Second Report of FTI Consulting Canada Inc., in its capacity as monitor of the NFC Entities (the “Monitor”), dated February ■, 2012 (the “Second”), filed, and upon hearing the submissions of counsel for the NFC Entities, counsel for the Monitor, counsel for the Bank of Montreal and counsel for Westco MultiTemp Distribution Centres Inc. (“Westco”), no one appearing for any other person on the service list, although properly served as appears from the Affidavit of Elizabeth Nigro sworn February 10, 2012, filed, and upon being advised that no other persons were served with the aforementioned materials:

1. **THIS COURT ORDERS** that all capitalized terms not otherwise defined herein shall have the meaning given to such terms in the Initial Order of the Honourable Mr. Justice Morawetz, dated January 17, 2012 (the “Initial Order”).

### **SERVICE**

2. **THIS COURT ORDERS** that the time for service of the Motion Record, including the Cram Affidavit and the First Report, be and it is hereby abridged, if necessary, so that the motion is properly returnable today, and that further service thereof be and it is hereby dispensed with, and that service of the aforementioned materials, be and it is hereby validated in all respects.

### **APPROVAL OF ACTIONS AND ACTIVITIES OF THE MONITOR**

3. **THIS COURT ORDERS** that the Pre-Filing Report of the Monitor, dated January 16, 2012, filed in its capacity as proposed Monitor, be and it is hereby approved and the actions and activities of the Monitor described therein be and they are hereby approved.

4. **THIS COURT ORDERS** that the First Report of the Monitor, dated January 20, 2012, filed, be and it is hereby approved and the actions and activities of the Monitor described therein be and they are hereby approved.

5. **THIS COURT ORDERS** that the Second Report, filed, be and it is hereby approved and the actions and activities of the Monitor described therein be and they are hereby approved.

### **EXTENSION OF THE STAY PERIOD**

6. **THIS COURT ORDERS** that the Stay Period, is hereby extended until and including March 30, 2012.

### **WESTCO PRE-FILING LIEN CHARGE**

7. **THIS COURT ORDERS** that Westco shall be entitled to the benefit of and is hereby granted a charge (the “Westco Pre-Filing Lien Charge”) on the Property, which charge shall not exceed an aggregate amount of \$450,000, as security for the Verified Lien Amount (as such term is defined in the Cram Affidavit). The Westco Pre-Filing Lien Charge shall rank in priority

immediately subordinate to the Administration Charge but otherwise in priority to the the Directors' Charge and the DIP Lender's Charge.

8. **THIS COURT ORDERS** that the Westco Pre-Filing Lien Charge shall constitute a charge on the Property and shall rank in priority to the existing security interests of the Bank of Montreal and TD Capital Mezzanine Partners Management Ltd., but behind all other Encumbrances in favour of any Persons that have not been served with notice of this Motion.

9. **THIS COURT ORDERS** that the filing, registration or perfection of the Westco Pre-Filing Lien Charge shall not be required, and that the Westco Pre-Filing Lien Charge 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 Westco Pre-Filing Lien Charge coming into existence, notwithstanding any such failure to file, register, record or perfect, under any statute, regulation, rule, instrument or other applicable law.

10. **THIS COURT ORDERS** that except as otherwise expressly provided for in the Initial Order, 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, the Westco Pre-Filing Lien Charge, unless the NFC Entities also obtain the prior written consent of the Monitor and Westco, or further Order of this Court.

11. **THIS COURT ORDERS** that the Westco Pre-Filing Lien Charge shall not be rendered invalid or unenforceable and the rights and remedies of Westco 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 the 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 Agreement which binds the NFC Entities, and notwithstanding any provision to the contrary in any Agreement:

- (a) the creation of the Westco Pre-Filing Lien Charge shall not create or be deemed to constitute a breach by the NFC Entities of any Agreement to which it is a party;



- (b) Westco shall not have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Westco Pre-Filing Lien Charge; and
- (c) the granting of the Westco Pre-Filing Lien Charge, does not and will not constitute a preference, fraudulent conveyance, transfer at undervalue, oppressive conduct, or other challengeable or voidable transaction under any applicable law.

12. **THIS COURT ORDERS** that, to the extent the Westco Pre-Filing Lien Charge creates a charge over leases of real property in Canada, the Westco Pre-Filing Lien Charge shall only be a charge in the NFC Entities' interest in such real property leases.

### **MISCELLANEOUS**

13. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada against all persons, firms, corporations, governmental, municipal and regulatory authorities against whom it may be enforceable.

14. **THIS COURT HEREBY ORDERS AND REQUESTS** the aid and recognition of any court, tribunal, regulatory, governmental 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, governmental and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the NFC Entities, the Monitor and their respective agents, as may be necessary or desirable to give effect to this Order or to assist the NFC Entities, the Monitor and their respective agents in carrying out the terms of this Order.

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

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

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

**ORDER**

**(Stay Extension and Westco Pre-Filing Lien Charge)**

**Torys LLP**

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

Fax: 416.865.7380

**David Bish (LSUC#: 41629A)**

Tel: 416.865.7353

Email : [dbish@torys.com](mailto:dbish@torys.com)

**Adam M. Slavens (LSUC#: 54433J)**

Tel: 416.865.7333

Email: [aslavens@torys.com](mailto:aslavens@torys.com)

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

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED  
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF NFC ACQUISITION GP INC., NFC  
ACQUISITION CORP. AND NFC LAND HOLDINGS CORP.

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

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

Proceeding commenced at Toronto

**MOTION RECORD OF**

**NFC ACQUISITION GP INC., NFC ACQUISITION CORP.,  
NFC LAND HOLDINGS CORP.,  
NEW FOOD CLASSICS AND  
NFC ACQUISITION L.P.**  
(Stay Extension Order and Westco Pre-Filing Lien Charge  
(returnable on February 16, 2012))

**Torys LLP**

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

Fax: 416.865.7380

**David Bish** (LSUC#: 41629A)

Tel: 416.865.7353

Email : [dbish@torys.com](mailto:dbish@torys.com)

**Adam M. Slavens** LSUC#: 54433J

Tel: 416.865.7333

Email: [aslavens@torys.com](mailto:aslavens@torys.com)

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