

**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

**MOTION RECORD
(RETURNABLE FEBRUARY 21, 2013)**

February 7, 2013

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

TO: SERVICE LIST

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TAB 1

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

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

NOTICE OF MOTION
(Returnable February 21, 2013)

FTI CONSULTING CANADA INC., in its capacity as court-appointed receiver (the “**Receiver**”) of all of the assets, undertakings and properties of NFC Acquisition GP Inc., NFC Acquisition L.P., NFC Acquisition Corp., New Food Classics and NFC Land Holdings Corp., will make a motion to a judge presiding over the Commercial List on Tuesday, the 21st day of February 2013, at 10:00 a.m. or as soon after that time as the motion can be heard, at the Courthouse, 330 University Avenue, Toronto, Ontario.

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

THE MOTION IS FOR:

1. An order substantially in the form attached hereto as **Schedule “A”**:
 - (a) abridging the time for service of the Notice of Motion and the Motion Record herein such that this motion is properly returnable on February 21, 2013;
 - (b) approving the Receiver’s activities as set out and described in the fifth report of the Receiver, dated February 7, 2013 (the “**Fifth Report**”);

- (c) authorizing the Receiver to enter into an agreement to sell and approving the sale of the Lands (as defined in the purchase agreement) made between the Receiver and Canafric Inc. (the “**Purchaser**”) dated December 21, 2012 and as more particularly described in the Fifth Report;
- (d) vesting the Lands in the Purchaser, upon closing, free and clear of all encumbrances including for greater certainty, the restrictive covenant registered on title to the Lands bearing registration No: NR250763;
- (e) sealing the confidential appendices to the Fifth Report pending further order of the Court; and
- (f) such further and other relief as counsel may advise and to this Honourable Court may seem just.

THE GROUNDS FOR THE MOTION ARE:

1. The grounds set out in the Fifth Report and the appendices thereto (including the confidential appendices thereto, filed separately with the Court).
2. section 61 of the *Conveyancing and Law of Property Act*, R.S.O. 1990, c. C.34, as amended.
3. Section 100 and 137(2) of the *Court of Justice Act*, R.S.O. 1990, c. C.43, as amended.
4. Rules 1.04, 1.05, 2.03, 3.02, and 37 of the Rules of Civil Procedure.
5. Such further and other grounds as counsel may advise and the Court may permit.

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

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

February 7, 2013

- 3 -

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1 First Canadian Place
Toronto, Ontario
M5X 1B8

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

TO: The Service List

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

THE SERVICE LIST

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AND TO:	<p>Trevor Coffey, Manager Portfolio Administration 5575 North Service Road Suite 300 Burlington, ON L7L 6M1</p> <p>Attention: Trevor Coffey Email: trevor.coffey@rbc.com</p> <p>Counsel to RBC Customer Service Leasing</p>
AND TO:	<p>Goldman Sloan Nash & Haber LLP Barristers & Solicitors 480 University Avenue, Suite 1600 Toronto, ON M5G 1V2</p> <p>Attention: Mr. Jeffrey A. Armel Tel: 416-597-6477 Fax: 416-597-3370 Email: armel@gsnh.com</p> <p>Counsel to Vipond Systems Group</p>
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AND TO:	<p>Chaitons LLP 5000 Yonge Street, 10th Floor Toronto, ON M2N 7E9</p> <p>Attention: Harvey Chaiton / Maya Poliak Tel: 416.218.1129 / 416.218.1161 Fax: 416.218.1849 / 416.218.1844 Email: Harvey@chaitons.com / Maya@Chaitons.com</p> <p>Lawyers for Westco MultiTemp Distribution Centres Inc.</p>

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AND TO:	<p>Liftcapital Corporation Valhalla Executive Suites 300 The East mall, Suite 401 Toronto, ON M9B 6B7</p> <p>Attention: Finella Grosso Phone: 416 621 5522 ext. 224 Email: fgrosso@liftcapital.ca</p>
AND TO:	<p>Koskie Minsky LLP 20 Queen Street West Suite 900, Box 52 Toronto, ON M5H 3R3</p> <p>Attention: Demetrios Yiokaris Phone: 416-595-2130 Fax: 416-204-2810 Email: dyiokaris@kmlaw.ca</p> <p>Lawyers for the Canadian Commercial Workers Industry Pension Plan.</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>Pinty's Delicious Foods 5063 North Service Road Suite 201 Burlington, Ontario L7L 5H6</p> <p>Attention: Thane Mackenzie Phone: 905 319 5300 Fax: 905 319 5301 Email: thanem@pintys.com</p>
AND TO:	<p>Keesmaat Dixon Kranjc Lewis & Kovacs LLP P.O Box 916, LCD 1 301-20 Hughson Street South Hamilton, Ontario L8N 3P6</p> <p>Attention: Paul Dixon Phone: 905 527 4948 Fax: 905 527 4948 Email: pdixon@hamiltonlawyers.ca</p> <p>Lawyers for Canafriic Inc.</p>

TAB 2

Court File No.: CV12-9616-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
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BANK OF MONTREAL

Applicant

-and-

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

Respondents

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

BACKGROUND

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

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

PURPOSE OF THIS REPORT

3. The purpose of this fifth report of the Receiver (the “**Fifth Report**”) is to:
- (a) provide the Court with the background information and Receiver’s recommendation relating to the Receiver’s motion for:
 - (i) the approval of the Court, pursuant to subparagraph 3(l)(ii) of the Receivership Order, for the Receiver to enter into and carry out the terms of an agreement of purchase and sale (the “**Canafric Agreement**”) with Canafric Inc. (the “**Purchaser**”) in respect of the land and buildings having a municipal address of 15 Seapark Drive, St. Catharines, Ontario (the “**St. Catharines Property**”) owned by NFC Acquisition Corp. (the “**Proposed Transaction**”);
 - (ii) an order declaring the Restrictive Covenant (as defined below) unenforceable as against the St. Catharines Property and discharging it from title; and

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

DEFINED TERMS

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

THE ST. CATHARINES FACILITY

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

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

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

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

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

THE FAILED CCAA SALES PROCESS

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

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

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

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

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

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

purchase of the St. Catharines Property (the “**Final St. Catharines Bidder**”). However, as more fully outlined in the Monitor’s Third Report to the Court, the Final St. Catharines Bidder withdrew its bid on February 17, 2012, as a result of *inter alia* failed negotiations between the Final St. Catharines Bidder and NFC’s Major Customer. As set out in the Monitor’s Third Report, on February 20, 2012, BMO delivered a Sales Process Default Notice under the DIP Credit Agreement and thereafter commenced these Receivership Proceedings.

SALES PROCESS IN THE RECEIVERSHIP PROCEEDINGS

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

THE TRANSACTION

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

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

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

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

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

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

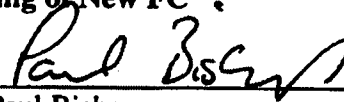
20. The Receiver has reviewed the principal terms of the Canafric Agreement with the parties having an economic interest in the St. Catharines facility including, BMO, the first ranking secured creditor and TD Capital Mezzanine Partners Management Ltd. ("**TD**"), the

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

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

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

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



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

APPENDIX “A”

Court File No. CV 12-9554 00C.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE)	TUESDAY, THE 17TH DAY
)	
MR. JUSTICE MORAWETZ)	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'

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

Court File No. C.J. 12-91554
-0001

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

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NFC Land Holdings Corp.,
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NFC Acquisition L.P.

APPENDIX “B”

Court File No.: CV12-9554-00CL

**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.**

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

February 21, 2012

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Court File No. CV12-9554-00CL

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

1. On January 17, 2012, pursuant to an application brought before the Ontario Superior Court of Justice (Commercial List) (the "**Court**") by NFC Acquisition GP Inc., NFC Acquisition Corp. and NFC Land Holdings Corp. (collectively, the "**Applicants**" and together with NFC Acquisition L.P., and New Food Classics, "**NFC**") under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), the Honourable Mr. Justice Morawetz made an initial order (the "**Initial Order**") in respect of NFC, which, *inter alia*, appointed FTI Consulting Canada Inc. as monitor (the "**Monitor**"), with the powers and obligations set out in the Initial Order and as set forth in the CCAA. A copy of the Initial Order is contained in Tab 1 of the NFC Compendium of Orders filed with the Court.

2. On February 16, 2012, upon motion made by the Applicants, the Court, *inter alia*, extended the stay of proceedings contained in the Initial Order to March 30, 2012, and granted a

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charge in favour of Westco Multi Temp Distribution Centres Inc. (“Westco”), NFC’s Saskatoon cold storage provider, as security for pre-filing statutory lien amounts relating to NFC products released by Westco after the making of the Initial Order. A copy of the February 16, 2012, Order is contained at Tab 4 of the NFC Compendium of Orders. In connection with the February 16, 2012 motion, the Monitor filed its Second Report dated February 13, 2012 (the “**Second Report**”) describing the Monitor’s and the Applicants’ actions with respect to the Transaction Process leading up to February 13, 2012, the date by which final binding proposals for the purchase of NFC’s assets were to be received by the Monitor under the Transaction Process described in paragraphs 36 to 37 of the proposed Monitor’s Pre-Filing Report dated January 16, 2012, (the “**Pre-Filing Report**”) a copy of which can be found at Tab 1 of the NFC Compendium of Monitor’s Reports, and approved in the Initial Order.

PURPOSE OF THIS REPORT

3. The purpose of this Third Report is to inform and update the Court on the following matters:

- (a) Summarizing the Expressions of Interest received by the Monitor as of the January 30, 2012, Transaction Process deadline, as well as the parties (the “**Selected Parties**”) that were invited to participate in Phase 2 of the Transaction Process;
- (b) The course of dealings of the Monitor and NFC with respect to the Selected Parties (as defined herein) during Phase 2 of the Transaction Process; and
- (c) Summarizing the final proposals submitted as of the close of business on February 13, 2012, the final proposal deadline;

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- (d) Summarizing certain material events relating to NFC's products and dealings with certain major NFC customers since February 13, 2012;
- (e) Describing the terms of the DIP Facility approved in the Initial Order, the communications sent by Bank of Montreal ("BMO"), as DIP Lender, to the Applicants on February 20, 2012, and the effect upon the Applicants' ability to carry on business after that date;
- (f) The Monitor's recommendations regarding a realization strategy for the NFC assets.

TERMS OF REFERENCE

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

5. Capitalized terms not otherwise defined herein have the meanings set out in the Pre-Filing Report, the first report of the Monitor dated January 20, 2012 (the "First Report") a copy of which is at Tab 2 of the NFC Compendium of Monitor's Reports and the Second Report.

EXPRESSIONS OF INTEREST RECEIVED BY THE MONITOR

6. On January 30, 2012, the Transaction Process deadline, eleven parties submitted Expressions of Interest (“EOIs”) to the Monitor. Of the eleven EOIs, four were proposals from liquidators, five were from strategic industry parties, and two were submitted by financial buyers. A list of the parties that submitted EOIs, the Selected Bidders, and the parties that submitted Final Offers is filed, but not attached hereto, as Confidential Appendix “A”.

7. On January 31, 2012, the Monitor, NFC and BMO met to evaluate and determine which parties that submitted EOIs would be invited to continue to Phase 2 of the Transaction Process. All submitted EOIs were evaluated and compared on the basis of factors including *inter alia* whether the offer would maximize value for NFC assets, the treatment of NFC’s employees and the closing conditions and other risks associated with a closing of the acquisition. Based on the foregoing evaluation criteria, of the eleven parties who submitted Expressions of Interest, seven Selected Parties were invited to proceed to Phase 2 of the Transaction Process.

DEALINGS AMONG THE MONITOR, NFC AND THE SELECTED PARTIES

8. During Phase 2 of the Transaction Process, the Selected Parties were given additional access to confidential information relating to NFC in the Data Room and were invited to schedule site visits and attend management presentations. During Phase 2 of the Transaction Process, the Monitor responded to over fifty phone calls a day from Selected Parties and their Advisors and followed up with various Selected Parties to offer additional management presentations and opportunities for site tours. In response to the Monitor’s offer, three of the seven Selected Parties attended presentations and conducted site visits of the Applicants’ facilities.

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9. Because NFC's major customers were not committed to NFC pursuant to binding sales contracts, as part of their due diligence process, Selected Parties sought any and all information and comfort that they could obtain with respect to the intention of NFC's major customers to pursue a business relationship with a purchaser of NFC, and the details thereof including future pricing and sales volumes. Significant amounts of customer information were included in the Data Room on a real time basis and the Monitor held ongoing discussions with NFC's major customers to keep them updated on the Transaction Process. This enabled Selected Customers to seek all necessary information with respect to the level of commitment was available regarding future pricing and sales volumes.

10. In addition to the foregoing, the Monitor, with the assistance of senior management of NFC, responded to various requests for additional information by uploading requested supplementary information about the NFC's operations to the Data Room. Upon receipt of a request for additional information, the Monitor undertook to reorganize and catalogue the Data Room to correspond with the format and itemization of each Selected Parties' request to ensure ease and efficiency in the due diligence process. The reorganization and inclusion of any additional information was made available to all the Selected Parties to ensure fairness of the process.

11. On February 8, 2012, the Monitor received a letter from counsel to Selected Party #6 requesting that the Monitor provide additional information pursuant to an itemized list set forth therein, and demanded that the Phase 2 Due Diligence Review period be extended beyond the February 13, 2012, deadline on the basis that new information was progressively being made available in the Data Room since February 1, 2012.

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12. Fasken Martineau, counsel to the Monitor, responded with a letter dated February 9, 2012, explaining that the majority of additional information requested is already contained in the Data Room, to which Selected Party #6 was given access to since February 1, 2012. Fasken Martineau also confirmed that the Monitor has no authority to alter the timelines of the Phase 2 of the Transaction Process.

13. On February 9, 2012, the Monitor received an email from Selected Party #1, stating that they no longer had an interest in proceeding with the bid process and as such would not be submitting a Final Offer.

RECEIPT OF FINAL OFFERS

14. As at 8pm on February 13, 2012, the deadline for submission of final binding offers (“Final Offers”) in the Transaction Process, the Monitor received three Final Offers from the Selected Parties indicated in Confidential Appendix “A”.

15. Following a comparative review of the three Final Offers with the Applicants’ Board of Directors, TD Capital Mezzanine Partners Management Ltd. and BMO, the Monitor worked with NFC management and two of the bidders (one industry party and one financial party) (the “Final Two Bidders”) to refine the terms of their bids in order that they be in a format that is capable of acceptance by NFC and presentation to BMO.

CUSTOMER COMMUNICATIONS

16. As set out in the Applicants’ materials filed in support of the application for the Initial Order, NFC’s financial condition was *inter alia* attributable to its losses from the refusal of certain of NFC’s major customers to authorize price increases for finished product after the

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market prices of inputs such as beef and energy rose in 2010 and 2011. Following the making of the Initial Order, and after discussions and negotiations with NFC and the Monitor, one of NFC's major customers (the "Major Customer") agreed to implement a price increase for products commencing February 1, 2012. This revised pricing information was included in the Data Room and available to Selected Parties.

17. In the early evening of February 13, 2012, NFC was contacted by the Major Customer advising that it had received a competitive bid for the manufacture of certain products currently made by NFC and that NFC had one business day to determine if it would agree to match the competitive bid price (or implicitly lose the customer's business). The competitive bid was alleged by the Major Customer to represent a \$1.7 million annual saving to it, as compared to the current NFC pricing.

18. The Monitor advised the Final Two Bidders of the information given the materiality thereof. In the days between February 13 and February 20, 2012, numerous discussions took place among the Major Customer, NFC, the Monitor and each of the Final Two Bidders in the hope that a transaction could be structured that would result in a going concern sale of the NFC Saskatoon production facility, or possibly both NFC production facilities.

NFC PRODUCT RECALLS

19. On the afternoon of February 15, 2012, the 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. NFC immediately worked with the Federal health authorities and its insurers to implement a product recall and consumer advisory programme (the "Recall"). NFC was able to determine that the batch of raw material

used to produce the allegedly contaminated brand of frozen hamburgers only made up a relatively small (3,800 out of approximately two million cases of frozen hamburger products manufactured by NFC annually) quantity of product, which is readily identifiable by NFC and consumers alike. Though the quantum of possibly contaminated finished goods remaining on hand with NFC was negligible, the Monitor immediately communicated the facts relating to the Recall to the Final Two Buyers forthwith.

20. On February 20, 2012, after further testing, NFC expanded the Recall to include the frozen hamburger products which were manufactured by NFC after the Recalled Products on the same NFC line of equipment (the “Additional Recalled Products”) until that equipment was cleaned and sterilized by NFC’s contractors at the end of the manufacturing shift. The Additional Recalled Products total approximately 767 cases.

TRANSACTION PROCESS

21. Under the Transaction Process, NFC had until the close of business on February 17, 2012, to put forward a form of agreement of purchase and sale to BMO in its capacity as DIP Lender in order for BMO to determine, in its sole discretion, whether it will agree to advance an additional DIP amount of up to \$7 million to fund the working capital requirements of NFC leading up to a going concern sale closing in mid to late March, 2012.

22. The Monitor and NFC management continued to work diligently with the Final Two Buyers and other NFC stakeholders, including the landlord of the Saskatchewan Facility and major customers, in order to conclude a form of Asset Purchase Agreement that would result in a going concern sale transaction. Specifically, a going concern sale transaction that would produce a higher level of recovery to NFC’s creditors, including in particular BMO, relative to a

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non-going concern sale scenario recognizing that a going-concern sale would require BMO to advance up to \$7million in additional working capital (the “**Additional DIP Advance**”) into the NFC business pending the closing of a transaction.

23. On Friday, February 17, 2012, after a further conference call with NFC, the Monitor and the Major Customer, one of the Final Two Bidders formally withdrew from the Transaction Process. A subsequent call was held with the one remaining bidder (the “**Final Bidder**”) and the Major Customer. Following that discussion the Bidder confirmed that it was willing to proceed with an amended form of going concern asset purchase agreement (the “**Amended Offer**”), that would require BMO to fund the full Additional DIP Advance.

24. The Monitor has conducted an analysis of the economic terms of the Amended Offer as compared to a liquidation scenario. Based upon the Monitor’s analysis, the Amended Offer would result in recoveries to BMO which are not materially different than the low end of the Monitors projected recoveries in a Liquidation scenario. However, the Amended Offer requires BMO to make the full Additional DIP Advance and thereby risk incurring material additional losses on the Additional DIP Advance if the Amended Offer fails to close. (In fact even if the proposed transaction closed, BMO would suffer losses on the Additional DIP Advance, given the discount being offered by the Final Bidder for NFC inventory and accounts receivable in the Amended Offer).

25. The Monitor reviewed the Amended Offer with the Board of Directors of the Applicants and presented the results of the Monitor’s comparison of the Amended Offer and the liquidation analysis. The NFC Board asked that the Monitor go back to the Final Bidder to ask for a further revision to the Amended Offer, and asked the Monitor to request BMO to allow for

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certain limited additional funding of NFC's operations for one to two weeks, while a viable going concern transaction could be negotiated with the Final Bidder. The Monitor communicated both requests, and was rejected in both cases.

26. On the afternoon of Monday January 20, 2012, BMO delivered a notice that a "Sales Process Default" under the DIP Credit Agreement had occurred (the "Default Notice"), thereby terminating the Applicants' availability under the DIP Credit Facility.

27. At Meeting of the Board of Directors of NFC held on the evening of February 20, 2012, the Board of Directors of the Applicants resigned *en masse*, and accepted the resignations of the President and Chief Executive Officer of NFC.

MONITOR'S RECOMMENDATION

28. In light of the delivery of the Default Notice by BMO, the resignation of the NFC Board of Directors and management, the lack of funding for NFC's business and the perishable nature of NFC's inventory, the Monitor is of the view that it is vital to have an immediate and orderly shut-down of the NFC manufacturing operations and a swift transition to a court-appointed receivership of the assets of NFC. The Monitor is hopeful that a buyer for the closed NFC manufacturing facilities can be quickly identified among the parties that participated in the Transaction Process, and that the manufacturing facilities can be sold on a turn-key basis in a short period of time, rather than liquidated.

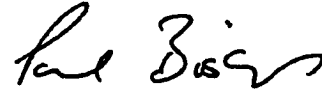
29. The Monitor has prepared a cash flow projection for the conduct of a shut-down receivership of the assets of NFC, which would be funded pursuant to Receiver's Certificates.

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BMO has agreed to fund such Receiver Certificate amounts on a basis and priority consistent with the existing DIP Facility and DIP Charge.

30. FTI Consulting Canada Inc. consents to act as receiver of the assets of NFC.

FTI Consulting Canada Inc.
Monitor of the Applicants



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

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

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced in Toronto

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

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Solicitors for FTI Consulting Canada Inc., Monitor of NFC ACQUISITION GP
INC., NFC ACQUISITION CORP. AND NFC LAND HOLDINGS CORP.

APPENDIX “C”



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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.

)

WEDNESDAY, THE 22nd DAY

)

JUSTICE BROWN

)

OF FEBRUARY, 2012

BANK OF MONTREAL

Applicant

- and -

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

Respondents

**ORDER
(Appointing Receiver)**

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

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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;

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- (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.

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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.

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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.

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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:

<p>BANK OF MONTREAL</p> <p>- and -</p>	<p>Court File No. CV-12-00000-00CL</p> <p>NFC ACQUISITION GP INC. et al.</p>
<p>ONTARIO</p> <p>SUPERIOR COURT OF JUSTICE</p> <p>(PROCEEDING COMMENCED AT TORONTO)</p>	<p>ORDER</p> <p>GOWLING LAFLEUR HENDERSON LLP Barristers and Solicitors 1 First Canadian Place 100 King Street West, Suite 1600 TORONTO, Ontario M5X 1G5</p> <p>Clifton P. Prophet / Frank Lamie LSUC No.: 34845K / 54035S</p> <p>Telephone: (416) 862-3509 / (416) 862-3609 Facsimile: (416) 862-7661</p> <p>Solicitors for the Applicant, Bank of Montreal</p>

APPENDIX “D”

Court File No. _____

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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

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

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

January 16, 2012

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Tel: 416 868 3471
Fax: 416 364 7813

Solicitors for FTI Consulting Canada
Inc., proposed Monitor

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Court File No. _____

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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

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

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

INTRODUCTION

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

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

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

PURPOSE

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

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(collectively, the “**Court Ordered Charges**”); and

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

TERMS OF REFERENCE

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

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

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

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FTI'S QUALIFICATIONS TO ACT AS MONITOR

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

8. Paul Bishop of FTI will have primary carriage of this matter and is a trustee within the meaning of subsection 2(1) of the *Bankruptcy and Insolvency Act* (Canada) ("BIA"). Neither FTI nor any of its representatives have been at any time in the two preceding years:

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

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

RELEVANT BACKGROUND INFORMATION

Business and Affairs of the Applicant

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

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

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

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

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

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

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

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

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

THE APPLICANTS' BUSINESS AND THE NEED FOR A CCAA FILING

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

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

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

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

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

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

FUNDING OF THE CCAA PROCEEDINGS

Cash Flow Projections

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

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

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

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

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

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

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

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

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

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

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

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

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

Proposed DIP Financing

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

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

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

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

BMO SECURITY REVIEW

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

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

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

THE PROPOSED SALES TRANSACTION PROCESS

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

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- (a) Immediately following the making of the Initial Order, the Monitor will contact a list of approximately 11 parties which have been identified by the Applicants as possible qualified purchasers of the Applicants' businesses on a going-concern that are likely to be acceptable to NFC's major customers. The Monitor will also contact NFC's largest customers to identify any additional possible qualified purchasers. The Monitor will also, within 4 days of the commencement of the CCAA Proceedings, advertise the NFC acquisition opportunity in the National Edition of the Globe & Mail for two consecutive days.
- (b) The Proposed Monitor has worked with the Applicants to establish an electronic data room that will contain updated information about the Applicants' assets, business and operations as it becomes available (the "**Data Room**") during the Transaction Process. Qualified interested parties will be required to execute a Confidentiality Agreement in order to receive a copy of the Confidential Information Memorandum prepared by the Proposed Monitor in conjunction with the Applicants' management and to obtain access to the Data Room.
- (c) The NFC assets will be offered for sale en bloc and in four parcels:
 - (i) The Saskatoon operations (including the associated inventory and accounts receivable);
 - (ii) The St Catharines operations (including the associated inventory and accounts receivable);
 - (iii) The Calgary 13A Street Facility; and

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- (iv) The Calgary Brandon Street Facility
- (d) Interested parties will be asked to submit non-binding expressions of interest (“EOI”), including a proposed purchase price for each of the parcels of NFC assets it wishes to acquire on or before January 30, 2012. The EOIs will be used to determine which interested parties, if any, will be invited to continue to participate in the Transaction Process. The Monitor will provide instructions for the required form of non-binding proposal to interested parties in advance of the deadline for submitting such proposals.
- (e) In evaluating EOIs from interested parties, the Applicants and FTI will consider, among other factors, whether the offer maximizes value for NFC assets, treatment of employees and such other factors as would be appropriate in the circumstances as determined by the Applicants and Monitor in their sole discretion. Upon receipt of the proposals the Applicants, in consultation with the Monitor and BMO, will determine at their sole discretion which interested parties, if any will proceed to Phase 2 of the Transaction Process. Further, the Applicants, in consultation with the Monitor and BMO, may at any time terminate the Transaction Process.
- (f) During Phase 2 of the Transaction Process, interested parties who are invited to continue to Phase 2 of the Transaction Process will be given access to additional confidential information relating to NFC in the Data Room. In addition, site visits and access to management will be made available to interested parties during Phase 2.

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- (g) Following a brief additional period of due diligence and Data Room access, each qualified interested party will be requested to submit a final binding offer in the required form. FTI will provide qualified interested parties with a definitive sales agreement. Additional details with respect to the Transaction Process will be communicated to qualified interested parties in advance of the final bid deadline. The final proposals will be due on February 13, 2012. The Applicants, in consultation with the Monitor and BMO, will select a preferred bid on or before February 17, 2012 (the "**Selected Bid**") A final decision will be made by BMO on or before February 21, 2012 as to whether it will fund the remaining DIP Facility balance of \$7 million upon being satisfied, *inter alia*, with the terms of the Selected Bid

- (h) In the event that the Monitor and/or BMO do not agree with the preferred bidder proposed by the Applicant, the Monitor and/or BMO may propose an alternate bidder for approval from the court from the parties that submitted final proposals on or before February 13, 2012.

- (i) It is anticipated that the closing of one or more going concern transaction(s) involving the NFC Saskatoon operations and/or the St Catharines operations will close on or before March 15, 2012.

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

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

THE COURT ORDERED CHARGES

Administrative Charge

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

Directors & Officers Charge

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

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

DIP Charge

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

Summary of the Proposed Rankings of the Court-Ordered Charges

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

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

CONCLUSION

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

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

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

A handwritten signature in black ink that reads "Paul Bishop". The signature is written in a cursive style and is positioned above a horizontal line.

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

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APPENDIX A

FTI Consulting Inc. consent to act as Monitor

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

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

CONSENT TO ACT AS MONITOR

FTI CONSULTING CANADA INC. hereby consents to act as the Monitor of NFC Acquisition GP Inc., NFC Acquisition Corp., NFC Land Holdings Corp., New Food Classics and NFC Acquisition L.P. pursuant to the *Companies' Creditors Arrangement Act* (Canada) in accordance with the terms of an order substantially in the form attached hereto.

DATED this 16 day of January, 2012.

FTI CONSULTING CANADA INC.

Per:

Paul Bisci

Title:

SENIOR MANAGING DIRECTOR

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APPENDIX B

Court File No. _____

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

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

(the "Applicants")

**REPORT ON CASH FLOW STATEMENT
(paragraph 10.2(b) of the CCAA)**

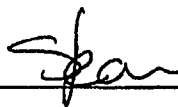
The management of NFC Acquisition GP Inc., NFC Acquisition Corp. and NFC Land Holdings Corp. (collectively, the "Applicants" and together with NFC Acquisition L.P., and New Food Classics, "NFC") has developed the assumptions and prepared the attached statement of projected cash flow of NFC as of the 16th day of January 2012, consisting of a 13 week cash flow for the period January 16, 2012 to April 13, 2012 (the "January 16 Cash Flow").

The hypothetical assumptions are reasonable and consistent with the purpose of the projections as described in Note 1 to the cash flow, and the probable assumptions are suitably supported and consistent with the plans of NFC and provide a reasonable basis for the January 16 Cash Flow. All such assumptions are disclosed in Notes 2 to 6.

Since the January 16 Cash Flow is based on future events, actual results will vary from the information presented and the variations may be material.

The January 16 Cash Flow has been prepared solely for the purpose outlined in Note 1, using the probably and hypothetical assumptions set out in Notes 2 to 6. Consequently readers are cautioned that the January 16 Cash Flow may not be suitable for other purposes.

Dated at Toronto this 16th day of January 2012.



[Name] *Stephane Jean*
[Position] *VP, Finance.*
New Food Classics

New Food Classics
WEEKLY CASH FLOW FORECAST

Week Ending	Week 1 1/26/2012	Week 2 1/27/2012	Week 3 2/5/2012	Week 4 2/10/2012	Week 5 2/17/2012	Week 6 2/24/2012	Week 7 3/2/2012	Week 8 3/9/2012	Week 9 3/16/2012	Week 10 3/23/2012	Week 11 3/30/2012	Week 12 4/6/2012	Week 13 4/13/2012	13 Week Total
Operating Cash Flows														
Cash Inflows														
AR Collections	1,095,240	1,097,200	1,072,255	1,587,000	1,717,000	1,817,000	1,948,758	1,424,400	1,424,400	1,424,400	1,360,724	1,839,458	2,338,458	19,247,272
Total Cash Inflows	1,095,240	1,097,200	1,072,255	1,587,000	1,717,000	1,817,000	1,948,758	1,424,400	1,424,400	1,424,400	1,360,724	1,839,458	2,338,458	19,247,272
Cash Outflows														
AP Trade	1,201,480	1,339,704	1,410,575	1,490,564	1,598,143	2,007,792	2,142,287	2,354,318	2,450,172	2,484,501	2,168,864	2,020,841	1,983,241	24,582,080
Payroll & Benefits	597,350	-	598,812	592,869	592,869	594,171	594,171	594,171	594,172	594,172	594,172	594,172	594,172	7,582,000
Rent & Utilities	6,338	6,338	314,367	81,124	81,124	6,321	84,895	115,094	5,598	5,598	431,872	431,872	133,790	1,486,004
Other	201,874	71,159	67,130	67,319	68,838	78,321	84,087	81,389	85,884	85,884	81,134	81,817	78,827	1,148,739
Contingency	35,000	20,000	25,000	35,000	30,000	30,000	25,000	55,000	55,000	55,000	55,000	55,000	50,000	500,000
Total Cash Outflows	2,032,042	1,437,201	2,385,884	1,883,000	2,337,170	2,125,433	3,311,851	2,854,831	3,237,197	2,854,831	2,878,034	2,371,189	2,405,080	31,884,128
Net Operating Cashflow	(936,802)	(340,001)	(1,313,629)	(296,000)	(620,170)	(308,433)	(1,363,093)	(1,430,431)	(1,812,797)	(1,430,431)	(1,517,310)	(531,731)	(666,622)	(12,736,856)
Restructuring Costs														
Professional Fees	170,000	170,000	155,000	145,000	145,000	145,000	105,000	65,000	65,000	50,000	50,000	50,000	50,000	1,365,000
KEBP	170,000	170,000	155,000	145,000	145,000	145,000	105,000	65,000	65,000	50,000	50,000	50,000	50,000	1,365,000
Total Restructuring Costs	340,000	340,000	310,000	290,000	290,000	290,000	210,000	130,000	130,000	100,000	100,000	100,000	100,000	2,730,000
Net Cash Flow	(1,158,802)	(518,887)	(1,458,229)	(536,000)	(940,340)	(603,863)	(1,573,093)	(1,565,431)	(1,942,987)	(1,530,431)	(1,667,310)	(631,731)	(766,622)	(15,466,856)
Operating Revolver Balance	18,510,733	17,200,000	17,200,000	17,200,000	17,200,000	17,200,000	17,200,000	17,200,000	17,200,000	17,200,000	17,200,000	17,200,000	17,200,000	16,510,733
Net Cashflow	1,185,802	518,887	1,458,229	240,940	665,103	665,365	1,887,323	1,221,561	1,877,798	1,877,798	1,847,340	782,730	615,432	14,101,856
OP Funding	(508,534)	(519,897)	(1,458,229)	(240,940)	(665,103)	(665,365)	(1,887,323)	(1,221,561)	(1,877,798)	(1,877,798)	(1,847,340)	(782,730)	(615,432)	(13,417,568)
Ending Revolver Balance	17,200,000	17,200,000	17,200,000	17,200,000	17,200,000	17,200,000	17,200,000	17,200,000	17,200,000	17,200,000	17,200,000	17,200,000	17,200,000	17,200,000
Cumulative OP Funding	(508,534)	(1,028,431)	(2,486,660)	(2,727,600)	(3,402,703)	(4,068,068)	(5,541,826)	(7,007,257)	(8,885,055)	(10,762,853)	(12,640,193)	(14,517,924)	(16,395,356)	(17,200,000)

Notes

- The purpose of the Cash Flow Forecast is to determine the liquidity requirements for New Food Classics during the CCAA Proceedings.
- Operating receipts have been forecast in the normal course of business based on management's historical analysis as well as an understanding of the Company's customer base under the current economic conditions and the present situation.
- AP Trade is based on management's best estimate.
- Payroll costs and benefit costs, rent, utilities and lease, interest costs and other operating expenses are forecast based on historical analysis, current price levels and management forecast.
- Based on historical purchasing patterns and management forecast, management does not forecast any capital expenditures for the period during the CCAA Proceedings.
- Estimated restructuring costs are based on projected costs associated with legal and professional fees relating to the CCAA Proceedings.

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
NEW FOOD CLASSICS**

Court File No.:

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

Proceedings commenced in Toronto

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

FASKEN MARTINEAU DUMOULIN LLP

Barristers and Solicitors
333 Bay Street, Suite 2400
Bay Adelaide Centre, Box 20
Toronto, Ontario Canada M5H 2T6

EDMOND F.B. LAMEK

(LSUC #33338U)

Tel: 416 865 4506

Fax: 416 364 7813

CAITLIN E. FELL

(LSUC #60091H)

Tel: 416 868 3471

Fax: 416 364 7813

Solicitors for FTI Consulting Canada Inc., proposed monitor of New Food Classics

APPENDIX “E”

THIS AGREEMENT made as of the 18 day of August, 2010.

BETWEEN:

PINTY'S DELICIOUS FOODS INC.
(the "Vendor")

OF THE FIRST PART;

-and-

NEW FOOD CLASSICS
(the "Purchaser")

OF THE SECOND PART;

-and-

VAP HOLDINGS L.P.
(“VAP”)

OF THE THIRD PART.

WHEREAS the Vendor is the registered owner of the lands and building(s) comprising approximately 2.31 acres of land and having a municipal address of 15-17 Seapark Drive, St. Catharines Ontario, being more particularly described in Schedule "A" attached hereto (the "Property");

AND WHEREAS VAP is the indirect parent of the Purchaser and the purchase price herein will be satisfied by way of the issuance of limited partnership units in VAP;

AND WHEREAS the Purchaser herein is desirous of purchasing the Property from the Vendor on the terms as set out herein.

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth in this agreement and the sum of Ten (\$10.00) Dollars paid by each of the Vendor and the Purchaser to the other and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the parties hereby agree and declare as follows:

**ARTICLE 1
INTERPRETATION**

1.1 Definitions

The terms defined herein shall have, for all purposes of this Agreement, the following meanings, unless the context expressly or by necessary implication otherwise requires:

- (a) "Additional Call" has the meaning ascribed thereto in Subsection 5.2(d)(vi);
- (b) "Adjacent Property" means the property immediately adjacent to the west of the Lands comprising approximately 12.61 acres legally described as Part of Lots 9 and 10, Concession 6, Grantham, being Parts 3 and 4 on Reference Plan 30R-9966, City of St. Catharines.
- (c) "Adjustments" means the adjustments to the Purchase Price provided for and determined pursuant to Section 3.2.
- (d) "Agreement" means this agreement of purchase and sale and the schedules attached hereto, as amended from time to time; "Article", "Section" and "Subsection" mean and refer to the specified article, section and subsection of this Agreement.
- (e) "Business Day" means any day, other than a Saturday, Sunday or legal holiday in province of Ontario.

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- (f) **"Building"** means the building(s) situate on the Lands, and includes without limitation, the electrical, heating, ventilating, air conditioning, plumbing, sprinkler, drainage and other mechanical and electrical systems and fixtures installed therein.
- (g) **"Chicken Products"** means any edible food product containing any component of chicken or fowl as one of the ingredients.
- (h) **"Claim"** or **"Claims"** has the meaning ascribed thereto in Subsection 7.2(e).
- (i) **"Closing"** means the closing and consummation of the agreement of purchase and sale for the Property contemplated herein, including without limitation the payment of the Purchase Price and the delivery of the Closing Documents.
- (j) **"Closing Date"** means fifteen (15) days from the date that the last of the conditions herein is waived.
- (k) **"Closing Documents"** means the agreements, instruments and other documents to be delivered by the Vendor to the Purchaser pursuant to Section ARTICLE 5 and the agreements, instruments and other documents to be delivered by the Purchaser to the Vendor pursuant to Section 5.2.
- (l) **"Condition Date"** means 15 days from the Execution Date.
- (m) **"Designated Employees"** has the meaning ascribed in Subsection 7.2(a).
- (n) **"Document Registration Agreement"** has the meaning ascribed thereto in Section 5.4.
- (o) **"Employee Information List"** has the meaning ascribed to it in Schedule "D".
- (p) **"Environmental Laws"** means all applicable federal, provincial, municipal or other regulatory authority laws, by-laws, rules, regulations, policies, guidelines, orders, codes, directives, approvals, licences, permits, standards and judgments now or at any time hereafter in effect relating to or imposing liability or standard of conduct concerning the natural or human environment (including the air, surface water, groundwater, land surface, subsurface, waste, moveable and immovable property, sustainability, building operations, recycling or resource consumption), land use, public or occupational health and safety or the storage, treatment, manufacture, processing, distribution, disposal, use, reuse and recycling of a substance, hazardous or otherwise.
- (q) **"Equipment"** means the equipment located in the Building as itemized in Schedule "C".
- (r) **"Execution Date"** means the date upon which this Agreement is executed and delivered by each of the parties hereto.
- (s) **"Governmental Authority"** means any federal, provincial or municipal government, parliament legislature, or any regulatory authority, agency, ministry, department, commission or board or other representative thereof, or any political subdivision thereof, or any court or (without limitation to the foregoing) any other law, regulation or rule-making entity, having jurisdiction over the Property, the transaction contemplated herein or one or both of the parties, or any person acting under the authority of any of the foregoing (including, without limitation, any arbitrator).
- (t) **"Hazardous Materials"** means any contaminants, pollutants, substances or materials that, when released to the natural environment, could cause, at some immediate or future time, harm or degradation to the natural environment or risk to human health, whether or not such contaminants, pollutants, substances or materials are or shall become prohibited, controlled or regulated by any Governmental Authority and any "contaminants", "dangerous substances", "hazardous materials", "Hazardous Materials", "hazardous wastes", "industrial

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wastes", "liquid wastes", "pollutants" and "toxic substances", all as defined in, referred to or contemplated in federal, provincial and/or municipal legislation, regulations, orders and/or ordinances relating to environmental, health or safety matters.

- (u) "HST" means harmonized sales tax imposed under Part IX of the *Excise Tax Act* (Canada).
- (v) "HST Undertaking and Indemnity" has the meaning ascribed thereto in Section 5.3.
- (w) "Indemnified Purchaser-Related Persons" has the meaning ascribed thereto in Section 6.2.
- (x) "Indemnified Vendor-Related Persons" has the meaning ascribed thereto in Subsection 7.2(e).
- (y) "Lands" means the parcel of land comprising approximately 2.31 acres legally described in Schedule "A" and municipally known as 15-17 Seapark Drive, located in the City of St. Catharines, in the Regional Municipality of Niagara, in the Province of Ontario.
- (z) "Liabilities" has the meaning ascribed thereto in Section 6.2.
- (aa) "LOI" means the Letter of Intent between the Purchaser, the Vendor and VAP dated July 13, 2010.
- (bb) "Notice" has the meaning ascribed thereto in Section 8.17.
- (cc) "Person" means an individual, partnership, corporation, trust, unincorporated organization, government, or any department or agency thereof, and the successors and assigns thereof or the heirs, executors, administrators or other legal representatives of an individual in such capacity.
- (dd) "Pinchin Remediation Report" means the report from Pinchin Environmental dated August 16, 2010 that was delivered by the Purchaser to the Vendor.
- (ee) "Production Office Work" has the meaning ascribed thereto in Subsection 6.9(b).
- (ff) "Promissory Note" has the meaning ascribed to in Section 3.1.
- (gg) "Property" means collectively the Lands, Building and Equipment and all other rights associated with or related to the Property.
- (hh) "Purchase Price" means the sum of Two Million Dollars (\$2,000,000) (CDN) payable in the manner described in Section 3.1.
- (ii) "Purchaser" means New Food Classics.
- (jj) "Purchaser's Solicitors" means Pallett Valo LLP or such other firm or firms of solicitors as are retained by the Purchaser from time to time and notice of which is provided to the Vendor.
- (kk) "Recall List" has the meaning ascribed thereto in Subsection (b) of Schedule "D";
- (ll) "Reciprocal Non-Disclosure Agreement" means the agreement between NFC Acquisition Corp. and the Vendor dated February 2, 2009 as amended by letter agreement between NFC Acquisition Corp. and the Vendor dated July 6, 2010.
- (mm) "Requisition Notice" has the meaning ascribed thereto in Subsection 2.5(b).
- (nn) "UFCW Local 175" means United Food and Commercial Workers Canada, Local 175.

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- (oo) "Undisclosed Historical Claims" has the meaning ascribed thereto in Subsection 7.2(e)
- (pp) "Union Contract" means the collective bargaining agreement between the Vendor and UFCW Local 175 for the period November 1, 2007 to October 31, 2010.
- (qq) "Union Contract Assumption Agreement" means an assignment agreement of the Union Contract to be entered into by the Purchaser on or before Closing, which agreement will contain an indemnity in favour of the Vendor.
- (rr) "Union Contract Renewal Terms" means the terms outlined in Schedule "F" which have been approved by the Purchaser and upon which the Vendor is to renew and amend the Union Contract.
- (ss) "VAP" means VAP Holdings L.P.
- (tt) "VAP LPA" means the amended and restated limited partnership agreement of VAP dated February 6, 2006.
- (uu) "VAP LPA Joinder Agreement" means the joinder agreement to be entered into on Closing by the Vendor pursuant to which the Vendor will become a party to the VAP LPA.
- (vv) "VAP Rights" has the meaning set out in section 3.1(b).
- (ww) "VAP Units" means limited partnership units in VAP.
- (xx) "Vendor" means Pinty's Delicious Foods Inc.
- (yy) "Vendor's Solicitors" means Aylesworth LLP or such other firm or firms of solicitors as are retained by the Vendor from time to time and notice of which is provided to the Purchaser.
- (zz) "Vendor's Work" has the meaning ascribed thereto in Section 6.9.

1.2 Schedules

The following schedules attached hereto form part of this Agreement:

Schedule "A"	Legal Description
Schedule "B"	HST Indemnity
Schedule "C"	Equipment
Schedule "D"	Employee Information List
Schedule "E"	Promissory Note
Schedule "F"	Union Contract Renewal Terms
Schedule "G"	Right of First Refusal Terms
Schedule "H"	Subscription and Note Cancellation

ARTICLE 2 AGREEMENT OF PURCHASE AND SALE

2.1 Purchase and Sale of Property

Upon and subject to the terms and conditions of this Agreement, the Vendor will sell, and the Purchaser will purchase, the Property on the Closing Date in consideration of the payment of the Purchase Price and in all other respects in accordance with the provisions of this Agreement.

2.2 Authorizations

If not already provided, the Vendor shall deliver to the Purchaser, within two (2) Business Days after receipt, authorizations prepared by the Purchaser's Solicitors to

permit the Purchaser to obtain information from any Governmental Authority regarding the Property or the Adjacent Property.

2.3 Vendor's Deliveries

The Vendor covenants and agrees to forthwith deliver (if not already delivered) to the Purchaser, all documents relating to the Property and the Adjacent Property which are relevant to this transaction and which are in the Vendor's possession and control including, without limitation:

- (a) any and all lease agreements, offers to lease, sub-lease agreements, letter agreements, assignments of lease or other occupancy agreements;
- (b) a copy of the most current survey of each of the Property and the Adjacent Property prepared by an accredited Ontario Land Surveyor;
- (c) all utility and property tax, repair, maintenance and replacement documentation for the Property including, without limitation, utility bills for 2009 and realty tax assessments and bills for 2010 and access to invoices for capital expenditures, repair, and maintenance costs for the last two (2) years;
- (d) a list of all litigation against the Vendor affecting the Property as of the date of this Agreement and of all threatened litigation affecting the Property of which the Vendor has received written notice or of which the Vendor is aware as of the date of this Agreement;
- (e) current realty tax assessments, notices and tax bills relating to the Property and copies of any notices of all outstanding realty tax appeals and correspondence relating thereto as well as copies of any working papers issued by the applicable assessment authorities used in calculating an allocation of the assessment;
- (f) copies of any outstanding work orders, notices, directives, letters of non-compliance or other documentation issued by any Governmental Authority affecting the Property;
- (g) all current permits, licenses and agreements relating to the Property issued by, or with, any Governmental Authority;
- (h) copies of any documentation relating to the environmental or soils condition on or adjacent to the Property including, without limitation, copies of any existing Phase I or Phase II environmental assessment reports or remediation reports relating to the Property and any additional, ancillary or other environmental audits, reports or test results which relate thereto or arise or are required or are suggested from the results therefrom including, without limitation, any Ministry of Environment correspondence, reports or orders;
- (i) subdivision, site plan and/or development agreements, engineering drawings, certified area measurement of the Building, as set of plan and specifications for the Building and all other documentation applicable to the development of the Property or the subdivision or area within which the Property are located;
- (j) copies of any applications and submissions (including draft plans) for zoning, rezoning, severance and/or minor variances submitted with respect to the Property by the Vendor;
- (k) a copy of the Union Contract including any correspondence from the United Food and Commercial Workers Canada, Local 175 in accordance with Schedule "D";
- (l) the Employee Information List and copies of any documentation relating to the employees referred to therein; and
- (m) such other material agreements and contracts, correspondence and documentation relating to the Property,

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(collectively referred to as the "Vendor's Deliveries").

The Vendor shall provide the Vendor's Deliveries within two (2) Business Days from the date of its receipt thereof to the Purchaser from time to time as they may come into possession and control of the Vendor up to and until Closing.

2.4 Purchaser's and VAP's Deliveries

The Purchaser and VAP covenant and agree to forthwith deliver (if not already delivered) to the Vendor such documents relating to the Purchaser, VAP and the VAP Units within the Purchaser or VAP's possession or control that are reasonably requested by the Vendor to conduct appropriate due diligence with respect thereto, including, without limitation, the VAP LPA. The Purchaser and VAP further covenant and agree to make available to the Vendor, acting reasonably, such officers and directors of the Purchaser and VAP as the case may be, to respond to such inquiries of the Vendor, deemed by the Vendor as appropriate in respect of its due diligence.

2.5 Title

The Purchaser acknowledges and agrees that:

- (a) on Closing, title to the Property shall be free from all encumbrances, liens, charges and mortgages whatsoever (including local improvement charges) save and except for: (i) any registered municipal agreements and registered agreements with publicly regulated utilities, providing such have been complied with, or security has been posted to ensure compliance and completion as evidenced by a letter from the relevant Governmental Authority or regulated utility; (ii) any minor easements for drainage, storm or sanitary sewers, public utility lines, telephone lines, cable television lines or other services; provided that the same does not, in the sole and absolute opinion of the Purchaser, materially affect the Purchaser's proposed use of the Property; and (iii) the restrictive covenants described in Section 6.4 if such covenants are registered by the Vendor prior to Closing; and
- (b) the Purchaser shall be allowed until 5:00 p.m. on the fifteenth day prior to the Closing Date to examine the title to the Property at its own expense. If within the time allowed for examining title to the Property any valid objection is made in writing to the Vendor (the "Requisition Notice") to: (i) title to the Property; (ii) the fact that the Property may not be insurable on an "all-risks" basis (as such term is customarily used); (iii) the fact that the Property does not comply with all applicable laws and regulations (including Environmental Laws and zoning by-laws); or (iv) the existence of any outstanding municipal or other governmental work orders or deficiency notices relating to the Property which the Vendor shall be unable to discharge, remove, satisfy or remedy prior to the Closing Date and which the Purchaser will not waive, this Agreement, notwithstanding any intermediate acts or negotiations in respect of such objection, shall be terminated. Upon any such termination, none of the parties hereto shall have any further obligations under or liabilities relating to this Agreement or be liable for any costs or damages of the other, save those expressly stated to survive such termination. Except for any valid objection so made and except for any objection going to the root of title or for any other title defect or encumbrance arising after the date the Purchaser conducted its title search, the Purchaser shall be conclusively deemed to have accepted the Vendor's title to the Property and satisfied itself with respect to the other matters referred to in this Section.

2.6 Confidentiality

The Vendor and Purchaser covenant and agree that the terms, obligations and conditions of the Reciprocal Non-Disclosure Agreement and the LOI with respect to confidentiality shall continue in full force and effect and shall apply to the parties herein, this Agreement and all of its terms and provisions with respect to all information obtained and/or disclosed in connection with this Agreement. Notwithstanding the foregoing, following Closing, either of the Vendor or Purchaser, as the case may be, with the prior written

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consent of the other non-disclosing party, which consent shall not be unreasonably withheld or delayed, may publicly disclose that the transfer of the Property has been effected. This Section shall survive Closing and/or the termination of this Agreement.

2.7 Access to Property

The Vendor agrees to allow the Purchaser and the Purchaser's authorized representatives reasonable access to the Property during normal business hours from time to time and hereby authorizes the Purchaser to carry out such tests and inspections thereof as the Purchaser or its authorized representatives may deem necessary or desirable as are authorized by the Vendor acting reasonably. If the transaction contemplated by this Agreement is not completed for any reason, the Purchaser covenants and agrees to repair or pay the cost of repair of any damage occasioned during and resulting from any inspection of the Property conducted by the Purchaser or its authorized representatives within 30 days from the date of termination of this Agreement. The Purchaser covenants and agrees to indemnify and save the Vendor harmless from and against all losses, costs, claims, third party claims, damages, expenses (including legal costs as between a solicitor and its own client) which the Vendor may suffer as a result of the physical damage caused to the Property as a result of the inspection(s) conducted by the Purchaser or its authorized representatives, as outlined above or as a result of any unauthorized tests or inspections. The provision of this Section shall survive Closing or other termination of this Agreement, notwithstanding any other provisions hereof.

2.8 Joint Environmental Testing

Without limiting the rights of the Purchaser under Section 2.7, the Vendor and Purchaser hereby agree that the Purchaser has commissioned a Phase I environment site assessment which shall be addressed to the Vendor and Purchaser, the cost of which shall be shared equally between the Vendor and Purchaser.

2.9 Pinchen Remediation Report

Subject to the following sentence in this Section 2.9, the Purchaser agrees that it will be responsible for the cost of the remediation activities specifically described under the heading "Scope of Work" in the Pinchen Remediation Report. Nothing in this Section 2.9, will restrict or prejudice any claims by the Purchaser pursuant to the environmental indemnity set out at Section 6.2 or any other claims by the Purchaser in respect of any additional remediation that may occur on the gravel area as a result of the soil testing set out in the Pinchen Remediation Report or otherwise.

ARTICLE 3 PURCHASE PRICE

3.1 Payment of Purchase Price

On Closing, the Purchaser shall issue to the Vendor a promissory note in the form attached hereto as Schedule "E" in the amount equal to the Purchase Price (the "Promissory Note"). The Vendor covenants and agrees that, upon the receipt of the Promissory Note from the Purchaser, the Vendor shall immediately subscribe for the VAP Units, receive the VAP Rights as set out below, and assign the Promissory Note to VAP in payment of the subscription price. In consideration of such assignment, the Purchaser shall cause VAP to issue the VAP Units to the Vendor for a subscription price equal to the Purchase Price, and:

- (a) the Vendor, on Closing, further covenants and agrees to enter into the VAP LPA Joinder Agreement and any other documentation reasonably required under the VAP LPA; and
- (b) VAP hereby agrees that it shall: (i) on Closing, issue the VAP Units to the Vendor in an amount which, when issued, will equal 8.5% of the issued and outstanding VAP Units and that the assignment of the Promissory Note from the Vendor to VAP shall satisfy the subscription price for the VAP Units; and (ii) following Closing, issue any additional VAP Units in accordance with Subsection 5.2(d)(i) and (vii) (such right to receive additional VAP Units, the "VAP Rights").

3.2 Adjustments

Realty taxes, including local improvement rates, and water, hydro, fuel and other items of operating costs, excluding insurance premiums shall be adjusted in accordance with the usual practice as of Closing such that the Purchaser shall be entitled to all rents and profits and shall be responsible for all operating expenses pertaining to the Property from and after the Closing Date. The balance due on Closing as shown in the Statement of Adjustments shall be paid by either the Purchaser or the Vendor, as the case may be, to the other party by cash, certified cheque or bank draft on Closing. If on Closing, there are any items in respect of which adjustments cannot finally be made until a later date, adjustments in respect of such items shall be made on an estimated basis on Closing, and the Vendor and the Purchaser shall exchange written undertakings to readjust such items as soon as the required information necessary to make such adjustments is available, but in any event not later than sixty (60) days following the Closing. This Section 3.2 shall survive Closing.

ARTICLE 4 CONDITIONS PRECEDENT

4.1 Conditions Precedent for the Vendor

The obligation of the Vendor to complete this Agreement shall be subject to the following conditions:

- (a) on or before the Condition Date, satisfactory due diligence regarding the VAP LPA and all other material agreements and discussions with third parties or otherwise regarding existing or potential agreements governing VAP and the Purchaser and the VAP Units;
- (b) on or before the Condition Date, satisfactory review of current financial affairs of VAP and the Purchaser;
- (c) on or before Closing, confirmation satisfactory to the Vendor with respect to its 8.5% stake in VAP and confirmation satisfactory to the Vendor as to VAP's interest in the Purchaser;
- (d) on Closing, the Vendor shall have received a legal opinion, in a form satisfactory to the Vendor acting reasonably, that the VAP Units are issued, and the additional VAP Units which may be issued pursuant to section 3.1(b) would be issued, in accordance with the terms of VAP's amended and restated limited partnership agreement
- (e) on or before Closing a \$1,000,000.00 injection by way of subordinated debt in VAP has been completed or is in the process of being completed, and in the event such debt is converted post-Closing to equity, the Vendor shall not be required to contribute to such conversion and the VAP Units owned by the Vendor as of Closing will be automatically adjusted to maintain the Vendor's 8.5% stake;
- (f) on or before Closing, the absence of any material adverse changes from July 13, 2010 in the affairs of the Purchaser or VAP;
- (g) on Closing, all of the terms, covenants and conditions of this Agreement to be complied with or performed by the Purchaser and/or VAP shall have been complied with or performed in all material respects;
- (h) on Closing, the representations and warranties of the Purchaser and VAP set out in Section 6.7 shall be true and accurate in all material respects and the Purchaser and VAP shall have delivered to the Vendor a certificate of the Purchaser and VAP dated the Closing Date to this effect;
- (i) on or before the Condition Date, receipt of approval or consent from UFCW Local 175 to the Union Contract Assumption Agreement;

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- (j) on or before the Condition Date, the Vendor being satisfied with the results of the environmental due diligence on the Property;
- (k) on or before Closing, the Vendor obtaining discharges or commitments to discharge of any existing security registered on title to the Property by any lender of the Vendor on terms satisfactory to the Vendor;
- (l) on or before the Condition Date, the renewal or extension of the Union Contract on terms that will be of no cost to the Vendor;
- (m) on or before Closing, the Vendor shall have not received any written notice of any pending or threatened litigation, injunction, stay or other order of proceedings, or strikes or work stoppages relating to the sale of the Property which would in its opinion, acting reasonably prevent the sale of the Property substantially on the terms set out in this Agreement; and
- (n) on Closing, the absence of any material adverse change having occurred in respect of the Property.

The conditions set forth in Section 4.1 are for the sole benefit of the Vendor and may be waived in whole or in part by the Vendor in its sole discretion, acting reasonably, by written notice to the Purchaser on or prior to the applicable date for the satisfaction of each of them. If any of the conditions is not so waived or satisfied, this Agreement shall automatically terminate and other than as specified herein, none of the parties shall have any rights or obligations hereunder. Closing without written notice by the Vendor to the Purchaser of dissatisfaction with any of the conditions set forth in this Section shall constitute a waiver by the Vendor of the said conditions and the Vendor shall have no rights against the Purchaser following Closing for any such waived conditions.

4.2 Conditions Precedent for the Purchaser

The obligation of the Purchaser to complete this Agreement shall be subject to the following conditions:

- (a) on or before the Condition Date, the Purchaser shall be satisfied with the results of its searches, reviews, examinations, inspections, and analyses with respect to the Property, including without limitation, the physical condition of the Property, the environmental condition of the Property (including the Phase I ESA and if conducted, the Phase II ESA), its internal review and due diligence of the Vendor's Deliveries;
- (b) on or before the Condition Date, the Purchaser shall have obtained the approval of the EdgeStone Capital Equity Fund II-A, L.P. Investment Committee;
- (c) on Closing, all of the terms, covenants and conditions of this Agreement to be complied with or performed by the Vendor shall have been complied with or performed in all material respects;
- (d) on Closing, the representations and warranties of the Vendor set out in Section 6.1 shall be true and accurate in all material respects and the Vendor shall have delivered to the Purchaser a certificate of the Vendor dated the Closing Date to this effect;
- (e) on or before Closing, the Purchaser shall have confirmed that the Property and Equipment are or will be on Closing free and clear of any and all encumbrances, liabilities, debts and security interests, save and accept for the restrictive covenant referred to in Section 6.4;
- (f) on or before Closing, the Vendor shall have obtained an approval of a renewal or extension of the Union Contract in accordance with the Union Contract Renewal Terms;
- (g) on Closing, the Equipment, shall be in the same operating condition as it was on July 13, 2010;

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- (h) on Closing, the Building shall be in materially the same condition as it was when the plant operating thereon was in active operation as a Canadian Food Inspection Agency approved plant;
- (i) on or before Closing, the Vendor shall have completed the Vendor's Work or with respect to the Production Office Work, in the event the physical work has been completed, but the Ministry of Labour Order has not yet been cleared, the Vendor has provided the Purchaser with an engineer's certificate certifying completion of all necessary work and an indemnity regarding the clearance of the Ministry Order post-Closing;
- (j) on or before Closing, the Vendor obtaining discharges or commitments to discharge of any existing security registered on title to the Property;
- (k) on or before Closing, the Vendor shall have not received any written notice of any pending or threatened litigation, injunction, stay or other order of proceedings, or strikes or work stoppages relating to the sale of the Property which would in the Purchaser's opinion, acting reasonably prevent the sale of the Property substantially on the terms set out in this Agreement; and
- (l) on Closing, the absence of any material adverse change having occurred in respect of the Property.

The conditions set forth in Section 4.2 are for the sole benefit of the Purchaser, and may be waived in whole or in part by the Purchaser in its sole discretion, acting reasonably, by written notice to the Vendor prior to the applicable date for the satisfaction of each of them. If any of the conditions is not so waived or satisfied, this Agreement shall automatically terminate and other than as specified herein, none of the parties shall have any rights or obligations hereunder. Closing without written notice by the Purchaser to the Vendor of dissatisfaction with any of the conditions set forth in this Section shall constitute a waiver by the Purchaser of the said conditions and the Purchaser shall have no rights against the Vendor following Closing for any such waived conditions.

ARTICLE 5 CLOSING DOCUMENTS

5.1 Vendor's Closing Documents

On or before Closing, subject to the provisions of this Agreement, the Vendor shall prepare and execute or cause to be executed and shall deliver or cause to be delivered to the Purchaser the following:

- (a) A Transfer of the Property in registrable form in favour of the Purchaser, and containing the statements of the Vendor and Vendor's Solicitor under Section 50(22) of the *Planning Act* (Ontario);
- (b) a certified cheque for the balance due on closing, if a credit to the Purchaser is due on the Statement of Adjustments;
- (c) a Statement of Adjustments prepared in accordance with Section 3.2 hereof;
- (d) an undertaking by the Vendor to re-adjust the Adjustments;
- (e) a Bill of Sale for the Equipment;
- (f) a statutory declaration confirming that the Vendor is not a non-resident of Canada within the meaning of Section 116 of the *Income Tax Act* of Canada;
- (g) discharges of monetary lien, charge, mortgage, security interest or similar financial encumbrances registered against title to the Property, including any claim for lien pursuant to the *Construction Lien Act* (Ontario);

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- (h) a certificate of the Vendor confirming that, as of the Closing Date, the representations and warranties of the Vendor set out in Section 6.1 are true and accurate in all material respects;
- (i) an indemnity with respect to the Employees and Union Contract in accordance with Section 7.3;
- (j) a true copy of the renewed or extended Union Contract in form and substance satisfactory to the Purchaser, acting reasonably;
- (k) a right of first refusal agreement in favour of the Purchaser with respect to the Adjacent Property for a period of seven (7) years from Closing, with the base terms and conditions set out on Schedule "G";
- (l) an indemnity with respect to construction liens pursuant to the *Construction Lien Act* (Ontario);
- (m) an indemnity with respect to any and all liabilities or obligations that may be claimed against the Purchaser with respect to the Vendor arising out of the *Bulk Sales Act* (Ontario) or the *Retail Sales Tax Act* (Ontario);
- (n) an engineer's certificate and Vendor's indemnity as described in subsection 4.2(i), if applicable;
- (o) the VAP LPA Joinder Agreement and any other documentation reasonably required under the VAP LPA; and
- (p) all other conveyances and documents which are required which would be normal and usual for a similar transaction and which the Purchaser has reasonably requested on or before the Closing Date to give effect to the proper transfer, assignment and conveyance by the Vendor to the Purchaser of the Property in accordance with the terms herein provided that such other documentation shall not comprise statutory declarations of officers, directors or employees of the Vendor.

All documentation shall be in form and substance acceptable to the Purchaser and the Vendor, each acting reasonably and in good faith, provided that none of such documents shall contain covenants, representations or warranties which are in addition to or more onerous upon the Vendor or the Purchaser than those expressly set forth in this Agreement.

5.2 Purchaser's Closing Documents

On or before Closing, subject to the provisions of this Agreement, the Purchaser shall execute or cause to be executed and shall deliver or cause to be delivered to the Vendor's Solicitors the following:

- (a) a direction regarding title (only in the event that the Transfer is to be engrossed in favour of a Person other than the Purchaser in accordance with Section 8.16);
- (b) the Promissory Note;
- (c) the VAP Units in exchange for the Promissory Note;
- (d) a certificate from a director of VAP, not in his personal capacity, as at Closing stating that:
 - (i) a \$1,000,000.00 injection by way of subordinated debt in VAP has been completed or is in the process of being completed, and in the event such debt is converted post-Closing to equity, the Vendor shall not be required to contribute to such conversion and additional VAP Units will be issued to the Vendor to maintain the Vendor's 8.5% stake as existed as of Closing;

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- (ii) subject to fulfillment of the terms and conditions of Closing, the VAP Units issued to the Vendor have been issued as fully paid units and the Vendor is recorded in the books of VAP as a limited partner of VAP;
- (iii) to the best of management's knowledge, there has been no change in the business affairs (which includes financial affairs) which may materially impact the projected earnings of VAP and NFC for 2010 as disclosed to the Vendor on July 13, 2010 (the Purchaser specifically acknowledging that there are uncertainties inherent in attempting to make projections and forecasts and, accordingly, it is not relying on them and has no claim under this Agreement or otherwise against anyone with respect to the accuracy of such projections and forecasts).
- (iv) VAP holds all of the issued and outstanding limited partnership units in NFC Acquisition L.P.; NFC Acquisition L.P. holds all of the issued and outstanding shares in NFC Acquisition Corp.; NFC Acquisition L.P. and NFC Acquisition Corp. are the two partners in NFC, a general partnership;
- (v) no person has any agreement, right or option to acquire Units of VAP; and
- (vi) VAP's lender is contemplating requiring an equity injection in 2010 (in addition to the injection referred to in subparagraph (d)(i) above) in an amount that, to the best of management's knowledge, may range up to \$3 million (the "Additional Call") and there are no further capital calls outstanding or contemplated with respect to NFC and/or VAP;
- (vii) in the event of an Additional Call, the Vendor will not be required to contribute to such injection and additional VAP Units will be issued to the Vendor to maintain the Vendor's 8.5% stake as existed as of Closing,

(for greater clarity, no adjustment will be made to any additional VAP Units purchased by the Vendor post-Closing or where an additional capital call has been made beyond subparagraphs (d)(i) and (vi) above to which the Vendor has not contributed);
- (e) a certified cheque for the balance due, if a credit to the Vendor is due on the Statement of Adjustments;
- (f) an undertaking by the Purchaser to re-adjust the Adjustments;
- (g) the Union Contract Assumption Agreement (containing an indemnity with respect to Employees) incorporating the provisions of Section 7.2;
- (h) a right of first refusal agreement between the Purchaser and Vendor with respect to the Adjacent Property;
- (i) the HST Undertaking and Indemnity;
- (j) the covenant and undertaking of VAP, NFC Acquisition L.P. and the Purchaser to complete the matters set out in Schedule "H"; and
- (k) all other documents which the Vendor reasonably requests to give effect to the transaction contemplated by this Agreement and to result in the proper assumption of the Property by the Purchaser.

All documentation shall be in form and substance acceptable to the Purchaser and the Vendor each acting reasonably and in good faith.

5.3 Registration and Other Costs

- (a) The Vendor shall be responsible for the costs of the Vendor's Solicitors and the Vendor's Representatives in respect of this transaction. The Purchaser shall be responsible for the costs of the Purchaser's Solicitors and the Purchaser's Representatives in respect of this transaction. Notwithstanding the foregoing,

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regardless of whether the transaction contemplated herein is completed, the Purchaser will reimburse the Vendor for all third party costs that are incurred during the negotiations of the extension of the Union Contract, provided that the Vendor shall not incur aggregate expenses in the excess of Thirty Thousand Dollars (\$30,000) without the prior consent of the Purchaser. The Vendor shall advise the Purchaser in writing once it has incurred expenses in an aggregate amount of 85% of the Thirty Thousand Dollars (\$30,000) expense limitation contemplated herein. Reimbursement of expenses shall be subject to the Vendor providing reasonable supporting documentation and are to be paid on a current basis within thirty (30) days of receipt of a statement and applicable supporting documentation from the Vendor.

- (b) The Purchaser shall be responsible for and pay any land transfer taxes payable on the transfer of the Property, all registration fees payable in respect of registration by it of any documents on Closing (other than discharges of encumbrances which are required to be made by the Vendor) and all federal and provincial sales and other taxes payable by the purchaser upon or in connection with the conveyance or transfer of the Property, including provincial retail sales tax and goods and services tax.
- (c) The Vendor and the Purchaser acknowledge that the transaction contemplated herein is subject to the payment of HST. The Purchaser is or will be on or before Closing registered under the *Excise Tax Act* (Canada) (the "Act"). The Purchaser will self-assess for HST on the qualifying portion of the Purchase Price and remit HST directly to the Receiver General of Canada and indemnify and save the Vendor harmless with respect to same.

5.4 Escrow Closing and Registration

The Vendor and the Purchaser covenant and agree to cause their respective solicitors to enter into a document registration agreement (the "Document Registration Agreement") in the form recommended by the Law Society of Upper Canada to govern the electronic submission of the Transfer for the Property to the applicable Land Registry Office. The Document Registration Agreement shall outline or establish the procedures and timing for completing all registrations electronically and provide for all Closing Documents and closing funds to be held in escrow pending the submission of the Transfer to the Land Registry Office and all other documents to be registered on Closing and their acceptance by virtue of each registration document being assigned a registration number. The Document Registration Agreement shall also provide that if there is a problem with the Teraview electronic registration system which does not allow the parties to electronically register all registration documents on Closing, the Closing Date shall be deemed to be extended until the next day when the system is accessible and operating for the Land Registry Office applicable to the Property.

ARTICLE 6 REPRESENTATIONS, WARRANTIES, COVENANTS AND INDEMNITIES

6.1 Vendor's Representations

The Vendor hereby represents and warrants to and in favour of the Purchaser (and acknowledges that the Purchaser is relying on such representations and warranties in connection with the purchase of the Property) that:

- (a) it is a corporation duly existing under the laws of the Province of Ontario and has the necessary corporate authority, power and capacity to own the Property and to enter into this Agreement and to carry out this Agreement and the documents and transactions contemplated herein on the terms and conditions herein contained;
- (b) the Vendor is not and on Closing will not be a non-resident of Canada within the meaning of Section 116 of the *Income Tax Act* (Canada);
- (c) the Vendor is not aware of any pending or threatened condemnation or expropriation proceedings relating to the Property;

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- (d) to the best of the knowledge, information and belief of the Vendor, there is no litigation or proceeding, including appeals and applications for review, in progress and no litigation or claim threatened against or relating to the Vendor affecting the Property before any Governmental Authority which materially adversely affects the Property or the Designated Employees, and there is no judgment, decree, injunction, rule or order of any Governmental Authority which adversely affects the Property or the Designated Employees;
- (e) no Person has any lease or license or right to occupy the Property or the Adjacent Property and no Person (other than the Purchaser) has an option or right of first refusal or is otherwise entitled to purchase or acquire any interest in the Property or the Adjoining Property or any part or either thereof;
- (f) all accounts for material work and services performed or materials placed or furnished upon or in respect of construction at the Property will have been fully paid by Closing and no one will be entitled on Closing to claim a lien under the *Construction Lien Act* (Ontario) for work performed by or on behalf of the Vendor;
- (g) no written notice has been received by the Vendor which remains outstanding at Closing from any Governmental or quasi-Governmental Authority advising of any defects in the construction, state of repair or state of completion of the Building or any installations therein, or relating to any work order, deficiency or non-compliance with any building restrictions, zoning by-laws, fire codes, environmental protection legislation, or other regulation, nor to the best of the Vendor's knowledge, information and belief, does any situation exist that could give rise to such notices;
- (h) the Equipment is fully paid for and there are no liens or encumbrances affecting the Equipment;
- (i) the Property and its existing or past uses by the Vendor, including without limitation, the addition of a freezer unit to the Building after January 14, 2000, comply with all federal, provincial or local laws, regulations, orders or approvals of any Governmental Authority having jurisdiction;
- (j) the Lands are zoned by the municipal authority having jurisdiction to permit the Vendor's current or past use;
- (k) there are no restrictive covenants (other than the ones referred to in Section 6.4), municipal by-laws or other laws or regulations which in any way prohibit the use of the Property for the purposes for which it was being used by the Vendor, and Vendor has not received notice of nor to the best of the Vendor's knowledge, information and belief, are there any proposed changes to the official plan or zoning by-laws which would affect or prohibit such uses;
- (l) to the best of the Vendor's knowledge, information and belief, no portion of the Building contains asbestos or has ever been insulated with urea formaldehyde foam insulation;
- (m) the Property is and will be on Closing serviced by all required municipal, private and public utility services including, without limitation, storm and sanitary sewers, water, hydro, telephone and gas services, and that such services are adequate and sufficient for the Building, and have been fully paid for and that the cost thereof is not chargeable against the Property by way of local improvement charges;
- (n) to the best of the Vendor's knowledge, information and belief, the Lands have never been used for a landfill, dump or waste disposal site;
- (o) to the best of the Vendor's knowledge, information and belief, there are no encroachments over the boundaries of the Lands;

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- (p) there is now and will on Closing be full ingress and egress to and from the Property to and from the public highway(s) abutting or adjacent to the Property;
- (q) the Vendor is not aware of any material defects in the structural components of the Building and without limiting the generality of the foregoing, is not aware of any material defects in the roof or the heating, ventilating, air conditioning, elevating and other mechanical and electrical systems installed therein;
- (r) with respect to the environmental condition of the Property, save and except with respect to the potential mould issue described in subsection 6.9(b), to the best of the Vendor's knowledge, information and belief, there are no Hazardous Materials and no underground storage tanks within, on or under the Property; the Vendor has not received any notice of non-compliance under the *Environmental Protection Act* (Ontario) with respect to the Property; there are no existing or threatened environmental claims related to releases of Hazardous Materials at or from the Property or to breaches of Environmental Laws; the Property is compliant with all Environmental Laws; and the Vendor has no reason to believe that any cause of action for such exists with respect to the Property;
- (s) the sale contemplated in this Agreement is not the sale of all or substantially all of the Vendor's assets and is not a sale in bulk as defined in the *Bulk Sales Act* (Ontario);
- (t) to the best of the Vendor's knowledge, information and belief, the Equipment listed in Schedule "C" is in the same operating condition as it was on July 13, 2010 and was in operable and good working order when last used in active production;
- (u) there are no contracts, licenses, service or maintenance agreements relating to the operation, maintenance or management of the Property and the Vendor acknowledges and agrees that the Purchaser shall not assume any such contracts and shall incur no liability with respect to same;
- (v) the Employee Information List is accurate, complete, true and correct;
- (w) all wages, benefits and insurance premiums, vacation pay, pay equity adjustments and any claims related to wages and/or benefits have been paid to date and all payments under Workplace Safety and Insurance legislation, employment insurance and Canada Pension Plan remissions, all claims for discrimination or damages for any wrong-doing whatsoever related to the Recall List Employees have either been satisfied or disclosed to the Purchaser;
- (x) the Vendor has provided the Vendor's Deliveries in accordance with this Agreement;
- (y) the execution and delivery of this Agreement by the Vendor and the sale of the Property herein provided for have been duly authorized by all necessary corporate action, and the Vendor has all requisite corporate power and authority to enter into this Agreement and to carry out the transaction of purchase and sale contemplated herein; and
- (z) to the best of the Vendor's knowledge, information and belief, there are not any existing or future obligations to pay or any proposed assessment of local improvement charges in relation to the Property and there are no agreements with a municipal corporation or other Governmental Authority, the effect of which would be to provide for a future obligation to pay or a future assessment of local improvement charges in connection with the Property.

The phrase to the "best of the Vendor's knowledge, information and belief" includes the knowledge, information and belief of the Vendor and all of its officers, directors, plant and office manager(s) and all persons involved in the management of the Property.

6.2 Vendor's Environmental Indemnity

The Vendor shall protect, indemnify and hold the Purchaser, its directors, officers, shareholders, employees, agents, representatives, successors, its affiliates and assigns and any successors to the Purchaser's interest in the Property (collectively, the "Indemnified Purchaser-Related Persons"), harmless from and against any and all actual or potential claims, liabilities, damages, losses, fines, penalties, orders, remediation cost recovery actions, judgments, awards, costs and expenses of whatever kind or nature (collectively the "Liabilities") and including, without limitation, the full amount of all legal fees and expenses on a solicitor and his own client basis, all consultants' fees and expenses, the costs of removal, treatment, storage and disposal of contaminants and remediation of the Property and adjacent properties, the costs of defending and/or counterclaiming or claiming over against third parties in respect of any claim, demand, action, order or proceeding of any nature or kind whatsoever, any cost, liability or damage arising out of a settlement of any claim, order, demand, action or proceeding and costs and expenses of investigation which at any time or from time to time are suffered or incurred by, or which any of the Indemnified Purchaser-Related Persons is subject to, and which arise out of or relate in any way directly or indirectly to:

- (a) any violation of Environmental Laws by the Vendor or its predecessors in title at the Property which shall have occurred prior to Closing;
- (b) the presence, on or before Closing, of any Hazardous Materials in, on or under the Property or in, on or under adjacent lands or water bodies where such Hazardous Materials have migrated from or been released from the Property or do so in the future; or
- (c) any use, handling, production, generation, manufacture, transportation, storage, handling, disposal or release of any Hazardous Materials by the Vendor or on, under about or from the Property (including, without limitation, the release of Hazardous Materials from the Property to any other properties), whether by the Vendor or by any tenant, occupier or owner of the Property or by any other Person which shall have occurred prior to Closing.

The foregoing indemnity includes all foreseeable and all unforeseeable consequential damages directly or indirectly arising therefrom and this Section shall survive Closing and shall not merge for a period of two (2) years from the date of Closing.

6.3 Construction Lien Indemnity

The Vendor covenants and agrees to indemnify, reimburse and hold harmless the Indemnified Purchaser-Related Persons from and against any and all claims, damages, losses, liabilities, demands, suits, judgments, causes of action, legal proceedings, penalties or other sanctions and any and all costs and expenses arising in connection therewith (including, without limitation, legal fees and disbursements on a solicitor and client basis (including, without limitation, all such legal fees and disbursements in connection with any and all appeals) which may in any way result from or arise out of or be in relation to the registration of construction liens on the Property pursuant to the *Construction Lien Act* (Ontario), in the period between the Closing Date and forty-five (45) days following the Closing Date, or with respect to any other construction lien claim whatsoever with respect to the Property, by any contractor, subcontractor and/or material supplier that provided services and/or material supplies for any improvement to the Property prior to the Closing Date. This Section shall survive Closing.

6.4 Restrictive Covenant

The Purchaser covenants and agrees that the Property shall not be used for the processing and/or packaging of any Chicken Products for a period of five (5) years from Closing. Accordingly, the Purchaser acknowledges and agrees that title to the Property will either be subject to such restrictive covenant on Closing or the Purchaser shall consent to the registration of such restrictive covenant on Closing.

6.5 Co-Pack Agreement

The Purchaser and the Vendor covenant and agree to negotiate in good faith a mutually beneficial "co-pack" arrangement relating to the processing of oven roasted chicken breast strips by the Vendor for marketing by the Purchaser. This covenant is not a condition of Closing and shall survive Closing if negotiations are proceeding at the time of Closing.

6.6 Operation Before Closing

The Building, the Equipment and all other things being purchased shall be and remain until Closing or termination of this Agreement at the risk of Vendor and the Vendor shall maintain the Property in the same state of repair and condition as existed on July 13, 2010. Until Closing or termination of this Agreement, the Vendor shall maintain insurance coverage in a minimum amount of \$2,000,000.00 and hold all such insurance policies and the proceeds thereof in trust for the parties as their interests may appear and in the event of substantial damage, the Purchaser may either terminate this Agreement and have all monies paid returned without interest or deduction or else take the proceeds of any insurance and complete the purchase. No insurance shall be transferred on Closing.

6.7 Purchaser's/VAP Representations

The Purchaser and/or VAP, as the case may be, hereby represent and warrant to and in favour of the Vendor (and acknowledges that the Vendor is relying on such representations and warranties in connection with the payment of the Purchase Price by way of VAP Units) that:

- (a) The Purchaser has the necessary corporate authority, power and capacity to enter into this Agreement and to carry out this Agreement and the documents and transactions contemplated herein on the terms and conditions herein contained;
- (b) VAP has the necessary corporate authority, power and capacity to issue the VAP Units as contemplated in Section 3.1 and to enter into this Agreement and to carry out this Agreement and the documents and transactions contemplated herein on the terms and conditions herein contained;
- (c) to the best of the knowledge, information and belief of the Purchaser and VAP, there is no litigation or proceeding, including appeals and applications for review, in progress and no litigation or claim threatened against or relating to the VAP or the Purchaser that would prevent the issuance of the VAP Units;
- (d) the Purchaser is not and on Closing will not be a non-resident of Canada within the meaning of Section 116 of the *Income Tax Act* (Canada); and
- (e) the Purchaser/VAP has provided the Purchaser's Deliveries in accordance with this Agreement.

The phrase to the "best of the knowledge, information and belief of the Purchaser and VAP" includes the knowledge, information and belief of the Purchaser and VAP and all of their respective officers, directors, plant and office manager(s) as the case may be and all persons involved in the management of the business and affairs of the Purchaser and VAP.

6.8 Survival

Except as otherwise specifically provided in this Agreement, the representations and warranties contained in Sections 6.1 and 6.7 shall not merge on Closing but shall continue in full force and effect for a period of two (2) years following the Closing Date to the extent that written notice of a claim has been made thereunder prior to that date.

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6.9 Vendor's Covenants

The Vendor covenants and agrees to complete the following on or before Closing (the "Vendor's Work"):

- (a) removal of the diesel tank located at the Property and repair and/or remediation of any resulting damage or contamination from the diesel tank to the satisfaction of the Purchaser; and
- (b) any remediation of the production offices required to clear the Ministry of Labour Order regarding potential mould (the "Production Office Work").

**ARTICLE 7
COVENANTS AND INDEMNITIES REGARDING EMPLOYEES**

7.1 Extension or Renewal of the Union Contract

The Vendor covenants and agrees to use its best efforts to negotiate an extension or renewal of the Union Contract on the Union Contract Renewal Terms.

7.2 Purchaser's Employee Covenant

The Purchaser covenants and agrees that, provided the Union Contract has been extended or renewed in accordance with this Agreement, the Purchaser shall:

- (a) offer employment to not less than 65 of the Vendor's employees (comprised of 6 salary and 59 union employees of the Property) from the Employee Information List, on substantially the same terms and conditions:
 - (i) with respect to the salaried employees, as previously employed; and
 - (ii) with respect to the union employees, as contained in the renewed or extended Union Contract;
- (b) in the event the Purchaser wishes to hire additional employees, it shall first offer employment to the employees from the Recall List in the same manner as set out above (the employees which accept the Purchaser's offer are hereinafter collectively referred to as the "Designated Employees");
- (c) assume the liabilities of the Vendor with respect to:
 - (i) accrued and future benefits of the Designated Employees; and
 - (ii) any severance or other costs associated with the termination of any of the Designated Employees,

which for greater clarity includes current benefits, defined contribution pension and other post employment benefits;

- (d) assume the Union Contract as amended and enter into the Union Contract Assumption Agreement on Closing; and
- (e) indemnify and save the Vendor, its officers, directors, employees, representatives, and agents, as well as its shareholders, affiliates and their officers, directors, employees, representatives, and agents (collectively, the "Indemnified Vendor-Related Persons"), harmless from and against any and all claims, demands, causes of action, legal proceedings, liabilities, obligations, losses, costs, penalties, actions, suits, levies, damages (direct, indirect, consequential or otherwise), judgments, executions, penalties or other sanctions, of every nature and kind whatsoever, whether accrued, actual, contingent or otherwise, including claims for severance or other costs associated with the termination of employment, pension costs and post employment benefits claims and any and all costs, expenses and disbursements of any nature and kind whatsoever (including without limiting the generality of the foregoing legal fees on a solicitor and client basis,

court costs and interest, including those incurred in connection with any and all appeals) (collectively, "Claims" or individually, a "Claim") that any Indemnified Vendor-Related Persons may at any time hereafter sustain or incur as a result of or arising out of any Claim against the Indemnified Vendor-Related Persons, whether groundless or otherwise, by or on behalf of any of the Designated Employees, save and except for any Claims relating to the pre-Closing period (whether such Claims were asserted prior to Closing or not), but not disclosed to the Purchaser in the Employee Information List whether or not the Vendor had knowledge of same (the "Undisclosed Historical Claims").

7.3 Vendor's Employee Indemnity

The Vendor covenants and agrees that it shall:

- (u) be responsible for any severance or other costs associated with the termination of any of the Vendor's employees other than the Designated Employees which, for greater clarity, includes the pension and other post employment benefits in respect of retired employees employed at the Property as of Closing; and
- (b) indemnify and save the Indemnified Purchaser-Related Persons harmless from and against any and all Claims (which for greater clarity, includes the Undisclosed Historical Claims) that any Indemnified Purchaser-Related Persons may at any time hereafter sustain or incur as a result of or arising out of any Claim asserted against the Indemnified Purchaser-Related Persons, whether groundless or otherwise, by or on behalf of any employee of the Vendor, save and except for the Designated Employees.

ARTICLE 8 GENERAL

8.1 Gender and Number

Unless the context requires otherwise, words importing the singular include the plural and vice versa and words importing gender include all genders.

8.2 Captions and Table of Contents

The caption, headings and table of contents contained herein are for reference only and in no way affect this Agreement or its interpretation.

8.3 Obligations as Covenants

Each agreement and obligation of any of the parties hereto in this Agreement, even though not expressed as a covenant, is considered for all purposes to be a covenant.

8.4 Applicable Law

This Agreement shall be construed and enforced in accordance with the laws of the Province of Ontario and the laws of Canada applicable thereto and shall be treated in all respects as an Ontario contract.

8.5 Currency

All reference to currency in this Agreement shall be deemed to be reference to Canadian dollars. All certified cheques or bank drafts to be tendered pursuant to this Agreement shall be drawn on a Canadian deposit taking institution listed on Schedule I of the *Bank Act* (Canada).

8.6 Invalidity

If any provision contained in this Agreement or the application thereof to any person or circumstance, to any extent, shall be invalid or unenforceable, the remainder of this Agreement or the application of such provision to any person, party or circumstance other than those to which it is held invalid or unenforceable shall not be affected thereby. Each

provision in this Agreement shall be separately valid and enforceable to the fullest extent permitted by law.

8.7 Amendment of Agreement

No supplement, amendment, modification, waiver or termination (other than a termination pursuant to Article 4) of this Agreement shall be binding unless executed in writing by the parties hereto in the same manner as the execution of this Agreement.

8.8 Time

Time shall be of the essence of this Agreement. Except as expressly set out in this Agreement, the computation of any period of time referred to in this Agreement shall exclude the first day and include the last day of such period. The time limit for performing or completing any matter under this Agreement may be extended or abridged by an agreement in writing by the parties or by their respective solicitors. All references to specific times in this Agreement shall be to eastern standard time.

8.9 Further Assurances

Except as otherwise expressed in this Agreement, each of the parties hereto shall, without receiving additional consideration therefore, from time to time hereafter and upon any reasonable request of the other, execute and deliver, make or cause to be made all such further acts, deeds, assurances and things as may be required or necessary to more effectually implement and carry out the true intent and meaning of this Agreement.

8.10 Entire Agreement

This Agreement and the Schedules attached hereto and any agreements, instruments and other documents herein contemplated to be entered into between, by or including the parties hereto constitute the entire agreement between the parties hereto pertaining to the agreement of purchase and sale provided for herein and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, with respect thereto, and there are no other warranties or representations and no other agreements between the parties hereto in connection with the agreement of purchase and sale provided for herein except as specifically set forth in this Agreement or the Schedules attached hereto.

8.11 Waiver

No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision (whether or not similar) nor shall any waiver constitute a continuing waiver unless otherwise expressed or provided. No waiver of any default, breach or non-compliance under this Agreement shall be effective unless in writing and signed by the party to be bound by the waiver or its solicitor.

8.12 Solicitors as Agents and Tender

Any notice, approval, waiver, agreement, instrument, document or communication permitted, required or contemplated in this Agreement may be given or delivered and accepted or received by the Purchaser's Solicitors on behalf of the Purchaser and by the Vendor's Solicitors on behalf of the Vendor and any tender of Closing Documents and balance due on Closing may be made upon the Vendor's Solicitors and the Purchaser's Solicitors, as the case may be.

8.13 Merger

Except as otherwise expressly set out herein, this Agreement shall merge with the closing of the transaction contemplated herein.

8.14 Survival

Except as otherwise provided in this Agreement, no representations, warranties, covenants or agreements of the Vendor or the Purchaser shall survive Closing. This provision survives Closing.

8.15 Successors and Assigns

All provisions in this Agreement shall be binding upon the parties hereto and their respective successors and assigns and shall enure to the benefit of and be enforceable by the parties hereto and their respective successors and their permitted assigns pursuant to the terms and conditions of this Agreement.

8.16 Assignment

This Agreement may not be assigned by the Purchaser or Vendor to any Person without the prior written consent of the other party, save and except that the Purchaser may assign this Agreement without the consent of the Vendor (or direct title on Closing) to any Person that is wholly owned within the current organizational structure of VAP and the Purchaser such that the Vendor will be an 8.5% direct or indirect owner of the Property; provided that the Purchaser shall not be relieved of its obligations or liabilities hereunder until Closing has been completed.

8.17 Notice

Any notice, demand, approval, consent, information, agreement, offer, request or other communication (hereinafter referred to as a "Notice") to be given under or in connection with this Agreement shall be in writing and shall be given by any party or their respective solicitors by personal delivery during regular business hours on any Business Day or by facsimile transmission or electronic transmission, addressed or sent as set out below or to such other address or electronic number as may from time to time be the subject of a Notice:

(a) Vendor: Pinty's Delicious Foods Inc.

5063 North Service Rd
Burlington, Ontario
L7L 5H6

Attention: Thane MacKenzie
Facsimile: (905) 319-5303
Email: thancm@pintvs.com

(b) or to the Vendor's Solicitors:

Aylesworth LLP
P.O. Box 124, 18th Floor
Ernst and Young Tower
Toronto-Dominion Centre
222 Bay Street,
Toronto, Ontario
M5K 1H1

Attention: James Spence
Facsimile: (416) 777-4000
Email: jspence@aylaw.com

(c) Purchaser: New Food Classics

The Exchange Tower
130 King Street West
Suite 600, P.O. Box 187
Toronto, Ontario

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M5X 1A6

Attention: Sarah Goel
Facsimile: (416) 860-9838
Email: sgoel@edgestone.com

(d) or to the Purchaser's Solicitor:

Pallett Valo LLP
90 Burnhamthorpe Road West
Suite 1600
Mississauga, Ontario
L5B 3C3

Attention: Pamela Green
Facsimile: (905) 273-6920
Email: pgreen@pallettvalo.com

Any Notice, if personally delivered, shall be deemed to have been validly and effectively given and received on the date of such delivery and if sent by facsimile or email transmission prior to 5:00 p.m. on a Business Day, shall be deemed to have been validly and effectively given and received on such Business Day, otherwise it shall be deemed to have been received on the next following Business Day.

8.18 *Planning Act of Ontario*

This Agreement and the transactions reflected herein are subject to compliance with Section 50 of the *Planning Act* (Ontario).

8.19 *Exclusivity*

From and after the Execution Date, the Vendor covenants and agrees not to negotiate or enter into discussions with any other Persons or offer the Property or any interest therein for sale or lease.

8.20 *Commissions*

The Parties represent each to the other that no agent was engaged in this transaction and that no real estate commission is owing to any agent in respect of the transactions contemplated by this Agreement.

3.21 Facsimiles and Counterparts

All parties agree that this Agreement may be executed in counterpart and transmitted by telecopier, facsimile or other electronic communication and that the reproduction of signatures in counterpart by way of telecopier, facsimile or other electronic communication will be treated as though such reproduction were executed originals. Each party undertakes to provide the other with a copy of this Agreement bearing original signatures within a reasonable time after the Execution Date.

IN WITNESS WHEREOF the Vendor and the Purchaser have executed this Agreement as evidenced by their properly authorized officers as of the day and year first above written.

PINTY'S DELICIOUS FOODS INC.

Per: [Signature]
Name: Randy B. Cain
Title: President & C.E.O.

Per: _____
Name: _____
Title: _____
I/We have authority to bind the Corporation.

NEW FOOD CLASSICS, by it Managing Partner

NFC ACQUISITION CORP.

Per: [Signature]
Name: ~~ASST~~
Title: President / CEO

Per: [Signature]
Name: Jeffrey Brown
Title:

I/We have the authority to bind the Corporation.

We have the authority to bind the Partnership.

VAP HOLDINGS L.P., by its General Partner

VAP HOLDINGS GP INC.

Per: [Signature]
Name: A. S. [unclear]
Title: President / CEO

Per: [Signature]
Name: Jeffrey Brown
Title:

I/We have the authority to bind the Corporation.

- 24 -

We have the authority to bind the Partnership

Schedule "A"Legal DescriptionFIRSTLY:

Part of Lot 9, Concession 6, Grantham, being Part 1 on Plan 30R-710, St. Catharines

PIN: 46324-0092

SECONDLY:

Part of Lot 9, Concession 6, Grantham, being Part 2 on Plan 30R-710, St. Catharines

PIN: 46324-0072

THIRDLY:

Part of Lot 9, Concession 6, Grantham, being Part 3 on Plan 30R-710, subject to an Easement as in Instrument No. R0265030, St. Catharines

PIN: 46324-0088

Schedule "B"

HST Undertaking and Indemnity

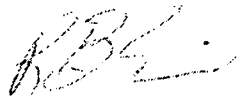
TO: PINTY'S DELICIOUS FOODS INC. (the "Vendor")
AND TO: Aylesworth LLP, its solicitors
RE: Sale by the Vendor to the undersigned of the Vendor's interest in the lands known municipally as 15-17 Seapark Drive, St. Catharines (the "Property")

The undersigned hereby declares, certifies, and agrees as follows:

- (1) it is purchasing the Property as principal for its own account and same is not being purchased by the Purchaser as an agent, trustee or otherwise on behalf of or for another person;
- (2) it is registered under Subdivision d of Division V of Part IX of the Excise Tax Act (Canada) (the "Act") for the collection and remittance of harmonized sales tax ("HST"); its registration number is R888, and such registration is in good standing and has not been revoked;
- (3) it shall be liable, shall self assess and remit to the appropriate governmental authority all HST which is payable under the Act in connection with the transfer of Property all in accordance with the Act; and
- (4) it shall indemnify and save harmless the Vendor from and against any and all HST, penalties, costs and/or interest which may become payable by or assessed against the Vendor as a result of any failure by the Purchaser to comply with the provisions of this Undertaking and Indemnity.

Schedule "C"Equipment

1. Frigo #1 A76
2. Frigo#2 GS61W
3. Refrigeration -- us was used for complete plant operations
4. 200 KVA transformer -- 2500 amps service
5. Central High pressure sanitation system
6. Compressors
7. Hydraulic System
8. Koppens Fryer
9. Office furniture
10. Take-away conveyor used for Frigo #2
11. Outdoor Bulk Oil Vessel
12. Ice Machine



August 18, 2010

Schedule "D"

Employee Information List

The Vendor covenants and agrees to provide a list to the Purchaser of all pertinent information regarding their employees at the Property and the Union Contract including, without limitation:

- (a) the names and titles of all active employees which currently comprises 6 non-union and 59 union employees (such union employees to be determined based on the seniority rights of the existing Union Contract), each of whom is currently employed, was currently employed or was on lay off at the Property as at June 15, 2010, together with the location of their employment;
- (b) the names and titles of all union employees that have elected to remain on the recall list for the Property which consists of not more than 13 employees (the "Recall List");
- (c) the date each employee was hired, the date each employee was laid off and the status of their respective seniority rights;
- (d) a list and copies of all written employment contracts between the Vendor and each employee and where no written contract exists, a list of all terms of the employment relationship;
- (e) the rate of annual remuneration of each employee at the date hereof, any bonuses paid since the end of the Vendor's last completed financial year and all other bonuses, incentive schemes and benefits to which each employee is entitled;
- (f) the amount of vacation pay to which each employee is entitled on the date hereof;
- (g) the status of all wages, benefits and insurance premiums, vacation pay, pay equity adjustments, WSIB payments, EI payments, CPP payments and any claims related to wages and/or benefits, in relation to work performed before Closing;
- (h) a list of all grievances, disciplinary matters, decisions of an arbitrator or the Labour Relations Board, claims under the *Labour Relations Act* or the *Employment Standards Act*, actions for breach of contract or wrongful dismissal by any employees and claims for reinstatement made by employees under the *Workplace Safety and Insurance Act*, over the past two (2) year period;

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- (i) a list of the amount and description of accrued and future benefits for all employees which, for greater clarity, in both cases, includes current benefits, defined contributions and other post employment benefits; and
- (j) particulars of all other material terms and conditions of employment or engagement of the employees and the positions held by them.

Schedule "E"Promissory Note

Date: ■, 2010

Cdn. \$2,000,000.00

FOR VALUE RECEIVED the undersigned hereby unconditionally promises to pay to or to the order of Pinty's Delicious Foods Inc. (the "Lender") the principal sum of \$2,000,000.00, together with interest on the principal amount outstanding from time to time at the rate of [10]% per annum before and after maturity, default and judgment and until actual payment. Interest shall be due and payable in equal semi-annual installments in arrears on ■ and ■, commencing ■, 2011. Principal shall be due and payable on ■, 2015 (the "Maturity Date").

The undersigned may prepay in whole or in part its obligations hereunder (which shall include accrued in trust up to the date of any such prepayment), without notice, bonus or penalty.

The undersigned waives presentment for payment, notice of non-payment, protest and notice of protest of this Promissory Note and diligence in collection or bringing suit.

Neither the Lender nor the undersigned may assign any of its rights or obligations under this Promissory Note without the prior written consent of the other party. Notwithstanding the restrictions on assignment set forth herein, the assignment of this Promissory Note, as contemplated by that certain Agreement of Purchase and Sale dated as of ■ (the "Purchase Agreement"), by and among the Lender, the undersigned and VAP Holdings LP, is hereby approved and consented to by both the Lender and the undersigned.

Notices hereunder shall be given in accordance with the Purchase Agreement.

This Promissory Note shall be governed by and construed in accordance with the laws of the Province of Ontario and the applicable laws of Canada therein.

**NEW FOOD CLASSICS, by its Managing Partner
NFC ACQUISITION CORP.**

Per: _____

Name:

Title:

Per: _____

Name:

Title:

I/We have the authority to bind the Corporation.

We have the authority to bind the Partnership.

Schedule "F"

Union Contract Renewal Terms

Memorandum of Settlement

Pinty's Delicious Foods Inc.,
(hereafter called the Employer)

and

United Food and Commercial Workers Union, Local 175
(Hereafter called the Union)

The parties here to agree to the terms of this memorandum constituting a full settlement of all issues in dispute

The undersigned representative of the parties do hereby agree to recommend complete acceptance of all the terms of this memorandum to their respective principals

The parties herein agree that the terms of the agreement shall be from August 1, 2010 to October 31, 2013

The parties herein agree that the said agreement shall include the terms of the previous collective agreement which will expire on October 31, 2010 and the following amendments are incorporated:

- 1. Schedule to the Union Contract.

For the Employer

For the Union

Pinty's Delicious Foods Inc.,
and
United Food and Commercial Workers Canada, Local 175

July 22, 2010

CCWIPP Stabilization Fund

- 1. Year one adjustment, the Employer agrees to increase current CCWIPP (Canadian Commercial Workers Industry Pension Plan) contributions (\$0.70 to plan and \$0.15 to Stabilization Fund), by an additional \$0.20 per hour to the stabilization fund effective November 1, 2010 (based on maximum forty hour week).

If the Stabilization Fund is discontinued by FSCO, and consequently C.C.W.I.P.P. schedule of pension benefits is reduced the contribution to the Stabilization Fund will be directed to offsetting benefits reductions

The Union reserves the right to move monies from the current contribution to the Stabilization fund if required by the Trustees.

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Dental Plan:

The Employer shall contribute, in addition to its current contribution of \$0.32 (thirty two cents) per straight time hours paid, an additional \$0.08 (eight cents) per hour to the Dental plan effective November 1, 2010, a further \$0.08 (eight cents) per hour will become effective May 1, 2011

Schedule A - Wages**Year 1 Adjustments**

The employer shall pay \$1.00 less than the current hourly rates from the start up of operations for a period of six months; thereafter the wage rates in effective prior to the start up of operations shall be restored

Year 2 Adjustments

One time lump sum payment of \$520.00 on November 1, 2011

Year 3 Adjustments

Increase \$0.25 on all rates effective November 1, 2012

Letters of Understanding

All the letters of understanding to be renewed except as follows:

Vacation Pay Advance (2001) – page 43
Used Vacation Entitlement (2007) – page 45
Cantrell Line Premium – page 46

Letter of Understanding regarding time limits (page 39) to be incorporated into agreement at end of article 7.07

New Hire Rates

New hire wage progression to be extended from 12 to 18 months

Start - 80% of classification rate

12 Months - 90% of classification rate

18 Months -- 100% of classification rate

Employer reserves the right to hire at up to 100% of classification rate

Sanitation

Remove from Grade 5. Agreed to remove classification of sanitation from Collective Agreement

Schedule A - Notes

Delete note 4

Consent to Early Termination

The parties agree to take such steps as may be required to obtain the consent of the Ontario Labour Relations Board (OLRB) to give effect to this agreement.

Part time Collective Agreement

Part time Collective Agreement to be revised to incorporate full time agreement amendments to applicable part time clauses unless otherwise expressly agreed. (note; full time benefit provisions not applicable; except CCWIPP and Dental Benefits; part time employees are eligible for recognized Ontario Statutory Holidays, exclusive of personal floaters)

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Schedule A Student Rates

Increase to current Employment Standards Act (ESA) Ontario minimum

Letters of Understanding

Renew all Letters except:

Vacation Pay Advance -- page 35

Add Heading "re: Students" - page 31

Add Heading "re: Scheduling Work Assignment" -- page 32

Letter of Understanding regarding time limits (page 36) to be incorporated into agreement at end of article 7.07

Consent to Early Termination

The parties agree to take such steps as may be required to obtain the consent of the Ontario Labour Relations Board (OLRB) to give effect to this agreement.

Schedule "G"

Right of First Refusal Terms

1. If the Vendor shall receive an offer or interest (an "Offer") from a third party (the "Offeror") to purchase all or part of the Adjacent Property, it shall first deliver copy of Offer or contemplated terms of Offer, as the case may be, to the Purchaser.
2. Purchaser shall have ten (10) business days to match the purchase price set out in the Offer.
3. If Purchaser does not match, Vendor is free to sell to the Offeror on the terms set out in the Offer. If transaction does not close in accordance with the Offer, this Right of First Refusal reappplies.
4. If less than all of the Adjacent Property is to be sold, this Right of First Refusal applies to the remainder.
5. If Purchaser matches the purchase price, the parties shall complete the transaction on the following terms and those terms which are the usual subject of a purchase and sale of this type of property:
 - i. The Vendor shall deliver all documents in its possession or control and the usual governmental authorizations with respect to the Adjacent Property within two (2) business days;
 - ii. The Purchaser shall have a 20 business day conditional period to conduct due diligence, which period shall be extended in the event that the Purchaser's environmental due diligence recommends that a Phase II Environmental Site Assessment be conducted;
 - iii. The Vendor shall provide disclosure and representations and warranties similar to those in Subsections 2.3(f) and (h) and Subsections 6.1(n) and (r), respectively, of the Agreement of Purchase and Sale to which this Schedule "G" is attached; and
 - iv. Closing shall be ten (10) business days from waiver of the last of the Purchaser's conditions.
6. The Vendor has advised that it may wish to transfer the Adjacent Property to a wholly-owned subsidiary (the "Successor Owner") prior to Closing. In such an event:
 - i. The Vendor covenants and agrees to provide satisfactory evidence to the Purchaser on Closing confirming that the Successor Owner is a wholly-owned subsidiary;

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- ii. The Vendor shall cause the Successor Owner to enter to the right of first agreement with the Purchaser and the Vendor in accordance with subsection 5.1(k);
- iii. The right of first refusal agreement shall contain a covenant that the Successor Owner shall remain wholly owned by the Vendor during the term of the said agreement; and
- iv. The Vendor shall also provide the disclosure and the representations required in subsection 5 iii. above.

Schedule "H"

Subscription and Note Cancellation

The following steps shall be undertaken in connection with the VAP Units subscription and cancellation:

1. The Purchaser will issue the Note to the Vendor equal to the Purchase Price.
2. The Vendor shall immediately subscribe for VAP Units in accordance with the Agreement of Purchase and Sale to which this Schedule "H" is attached and assign the Note to VAP to satisfy the subscription price therefor.
3. VAP will subscribe for limited partnership units of NFC Acquisition L.P. ("NFC LP") and will assign the Note to NFC LP to satisfy the subscription price therefor.
4. NFC LP will subscribe for partnership units of NFC and will assign the Note to NFC to satisfy the subscription price therefor.
5. NFC will cancel the Note.

All these steps will be completed at or immediately following Closing.

11240787.2
14458-2033

APPENDIX “F”

LRO # 30 Application To Annex Restrictive Covenants 8.119
 The applicant(s) hereby applies to the Land Registrar.

Registered as NR250763 on 2010 09 16 at 15:19
 yyyy mm dd Page 1 of 2

Properties

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

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

PIN 46324 - 0088 LT
Description PT LT 9 CON 6 GRANTHAM PART 3, 30R710; S/T RO285030; ST. CATHARINES
Address 13 SEAPARK DRIVE
 ST. CATHARINES

Applicant(s)

Name PINTY'S DELICIOUS FOODS INC.
Address for Service 5083 North Service Road,
 Suite 201,
 Burlington, Ontario
 L7L 5H6

I, Jack Vanderlaan, Chairman, have the authority to bind the corporation.
 This document is not authorized under Power of Attorney by this party.

Statements

Schedule: See Schedules

Signed By

Shafiq Yusuffi Adamali Dar 222 Bay Street, PO Box 124, Ernst acting for Signed 2010 09 15
 & Young Tower Applicant(s)
 Toronto
 M5K 1H1

Tel 4167770101
 Fax 4168861398

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

Submitted By

AYLESWORTH LLP 222 Bay Street, PO Box 124, Ernst 2010 09 16
 & Young Tower
 Toronto
 M5K 1H1

Tel 4167770101
 Fax 4168861398

Fees/Taxes/Payment

Statutory Registration Fee \$60.00
 Total Paid \$60.00

File Number

Applicant Client File Number : 16030-2

RESTRICTIVE COVENANTS

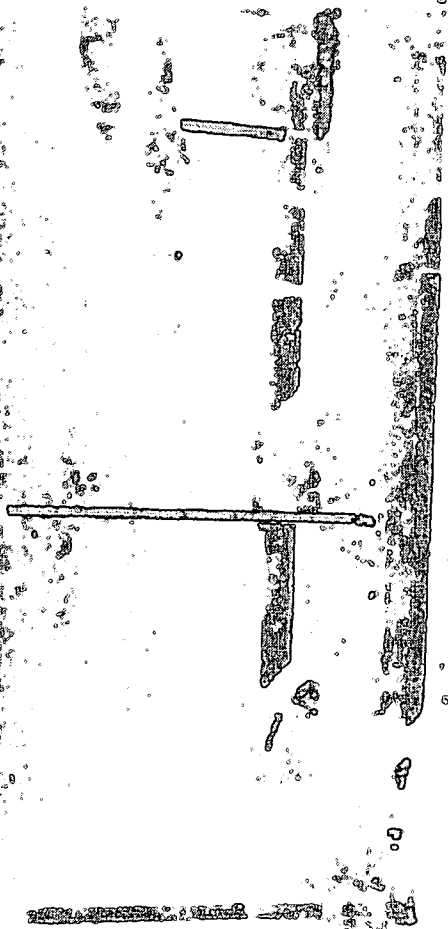
1. The lands to which these restrictions shall be annexed are legally described as Part of Lot 9, Concession 6, Grantham, being Part 1 on Plan 30R-710, St. Catharines (being the lands contained within PIN 46324-0092), Part of Lot 9, Concession 6, Grantham, being Part 2 on Plan 30R-710, St. Catharines (being the lands contained within PIN 46324-0072) and Part of Lot 9, Concession 6, Grantham, being Part 3 on Plan 30R-710, subject to an easement as in Instrument No. R0265030, St. Catharines (being the lands contained within PIN 46324-0088) (collectively, the "Property").
2. These restrictions shall run with the Property and be in force for a period of five (5) years from the date of registration hereof.
3. The Property shall not be used for the processing and/or packaging of Chicken Products.
4. For the purposes of these covenants, "Chicken Products" shall mean any edible food product containing any component of chicken or fowl as one of the ingredients.
5. To the intent that the benefit of these covenants may be annexed to and run with the Property, the Transferee for itself, its successors and assigns, covenants and agrees with the Transferor, its successors and assigns, from time to time of all or any part or parts of the said Property, will observe and comply with the stipulations, restrictions and provisions herein set out and that nothing will be produced, packaged or done upon the said Property or any part thereof in breach or violation of or contrary to the fair meaning of the said stipulations, restrictions and provisions set forth herein.

APPENDIX “G”


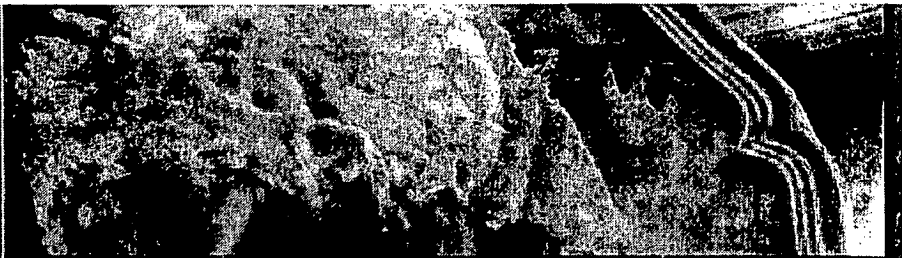
LAND FOR SALE

12.6 ACRES

INQUIRE 905 319 5300 EX 5277



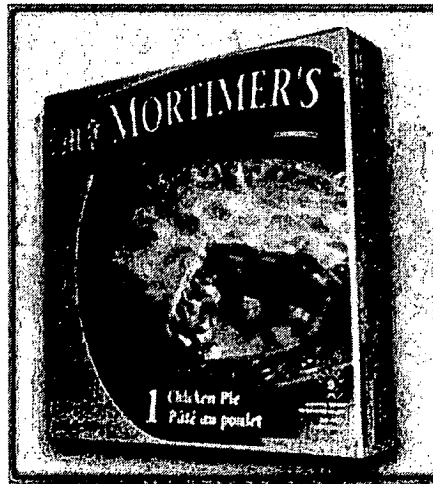
APPENDIX “H”

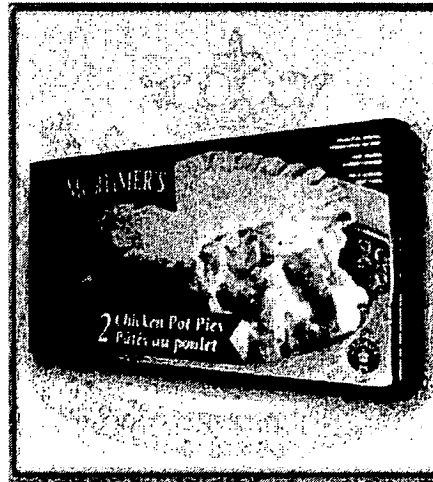
About Mortimer's Products Recipes Customer Service

Chicken Products
Beef Products
Vegetarian Products
Other Products

Mortimer's - Chicken Products

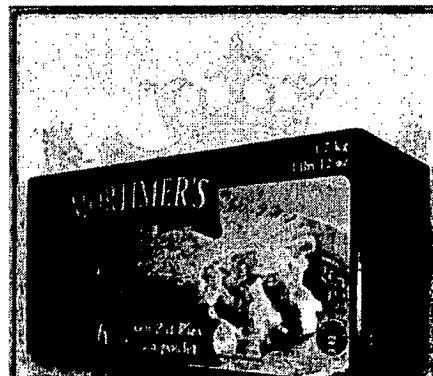


Chicken Pie
A hearty savoury pie, filled with chicken meat and chunky vegetables in a rich chicken stock.



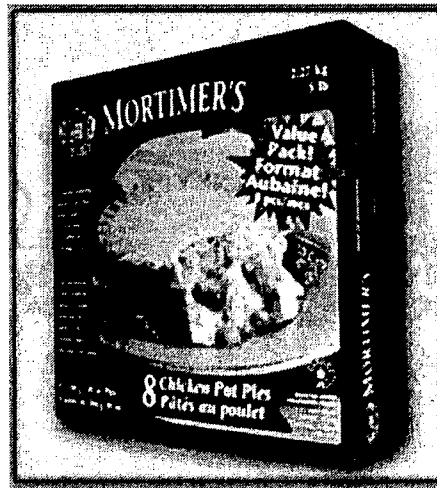
Chicken Pot Pie (2 Pack)
Mortimer's Chicken Pot Pies are packed with chicken meat and vegetables in thick chicken gravy. The meat content of this fully cooked savoury pie is very high, making it a satisfying entree by itself.

The light pastry crust melts in your mouth.



Chicken Pot Pie (6 Pack)
Mortimer's Chicken Pot Pies are packed with chicken meat and vegetables in thick chicken gravy. The meat content of this fully cooked savoury pie is very high, making it a satisfying entree by itself.

The light pastry crust melts in your mouth.



Chicken Pot Pie (8 Pack)
 Mortimer's Chicken Pot Pies are packed with chicken meat and vegetables in thick chicken gravy. The meat content of this fully cooked savoury pie is very high, making it a satisfying entree by itself.

The light pastry crust melts in your mouth.



Contact Us

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APPENDIX “I”

Fasken Martineau DuMoulin LLP
Barristers and Solicitors
Patent and Trade-mark Agents

www.fasken.com

333 Bay Street, Suite 2400
Bay Adelaide Centre, Box 20
Toronto, Ontario, Canada M5H 2T6

**FASKEN
MARTINEAU** 

416 366 8381 Telephone
416 364 7813 Facsimile
1 800 268 8424 Toll free

Caitlin Fell
Direct 416.888.3471
cfell@fasken.com

June 19, 2012
File No.: 290110.00001

VIA COURIER

Pinty's Delicious Foods Inc.
5063 North Service Road,
Suite 201,
Burlington, Ontario
L7L 5H6

Attention: Jack Vanderlaan

Re: Discharge of Restrictive Covenant

We act for FTI Consulting Canada Inc., court appointed receiver ("FTI" or the "Receiver") of the property, assets and undertakings of New Food Classics ("NFC") pursuant to the order of the Honourable Mr. Justice Brown of the Superior Court of Justice dated February 22, 2012 (the "Receivership Order"). Pursuant to the Receivership Order FTI is authorized, with the further approval of the court, to sell the property of NFC, including the NFC property municipally known as 15-17 Seapark Drive, St. Catharines Ontario, and being more particularly described as:

1. Part of Lot 9, Concession 6, Grantham, being Part 1 on Plan 30R-710 St. Catharines. Pin: 46324-0092;
2. Part of Lot 9, Concession 6, Grantham, being Part 2 on Plan 30R-710, St. Catharines. Pin: 46324-0072; and
3. Part of Lot 9, Concession 6, Grantham, being Part 3 on Plan 30R-710, St. Catharines. Pin: 46324-0088 (collectively, the "Property")

We understand that Pinty's Delicious Foods ("Pinty's" or the "Vendor") sold the Property to NFC pursuant to a purchase and sale agreement dated August 18, 2010 (the "Agreement") between Pinty's and NFC (the "Purchaser") and VAP Holdings L.P. We also understand that, as a condition of the Agreement and prior to the closing of the sale of the Property, a restrictive covenant was registered on title to the Property by Pinty's purporting to preclude the processing/packaging of chicken products on the Property for a period of five years (the "Restrictive Covenant").

DM_TOR/290110.00001/5715818.1

**FASKEN
MARTINEAU**

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The Receiver has obtained several expressions of interest to purchase the Property (the "Potential Offers"). However, a condition precedent of a majority of the Potential Offers has been the discharge of the Restrictive Covenant from title.

We have consulted with our real estate colleagues and have reviewed the applicable Canadian case law regarding restrictive covenants. The courts have confirmed that a restrictive covenant must be capable of benefiting the dominant lands. This means that the restrictive covenant must touch and concern the land and that there must be a direct and palpable benefit that is enjoyed by the owner of the adjoining land. In this case, the Restrictive Covenant currently registered on title does not touch and concern the adjoining land owned by Pinty's, but rather is an unpermitted restraint on commerce and trade. The adjoining land which has the benefit of the restrictive covenant is a vacant field, a portion of which is used as a parking lot. The restriction on the processing of chicken does not benefit or intrinsically enhance the value of the vacant field/parking lot. As such, the restrictive covenant cannot be said to touch and concern the land, and is therefore unenforceable against future successors.

Given the unenforceability of the restrictive covenant, the Receiver intends to bring a motion to have the restrictive covenant removed from title to the Property. However, rather than the Receiver undertaking the expense of such a motion, we are writing to you to kindly request that you discharge the Restrictive Covenant from title to the Property or, alternatively, authorize us to discharge the covenant on your behalf. The Receiver will cover all reasonable costs associated with the discharge. Please let us know at your earliest convenience as Potential Offers are pending.

Yours truly,

FASKEN MARTINEAU DuMOULIN LLP

Caitlin Fell

CF/ms

APPENDIX “J”



July 5, 2012

Via Email

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

Re: Discharge of Restrictive Covenant Regarding 15-17 Seapark Dr St Catharines, On

With respect to your letter dated June 19, 2012 regarding the Restrictive Covenant on the property known as municipal address 15-17 Seapark Drive, St Catharines Ontario we provide the following response:

- We disagree with your contention that the covenant is not enforceable.
- We disagree that the existence of the covenant does not benefit our lands.
- We are not willing to discharge the Restrictive Covenant.
- We are willing to entertain offers from any purchasers of the property regarding the purchase of adjoining lands or any fair offer for the removal of the Restrictive Covenant depending upon the proposed purchaser.

Please address all future correspondence to the undersigned.

Yours truly,



Thane Mackenzie, CA
Chief Financial Officer
Pintys Delicious Foods Inc.
thanem@pintys.com

APPENDIX “K”

**AGREEMENT OF PURCHASE AND SALE
(15 – 17 SEAPARK DRIVE)**

This Agreement made this day of December, 2012 between:

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

and

CANAFRIC INC.
(the “Purchaser”)

RECITALS:

- A. NFC Acquisition Corp. is the registered owner of the Lands (as defined herein). PT Lot 9, Con 6 Grantham, Parts 1, 2 and 3, Reference Plan 30R-710, St Catharines and known municipally as 15 Seapark Drive, St. Catharines, Ontario (the "Lands").
- B. The Vendor was appointed receiver of the assets, undertakings and properties of NFC Acquisition GP Inc., NFC Acquisition L.P., NFC Acquisition Corp., New Food Classics and NFC Land Holdings Corp. (collectively, “NFC” or the “Company”) pursuant to an order (the “Appointment Order”) of the Superior Court of Justice (Ontario) (Commercial List) (the “Court”) dated February 22, 2012.
- C. The Appointment Order authorizes the Vendor to market and sell, subject to obtaining the Approval and Vesting Order (as defined herein) from the Court, all or any part of the assets, undertakings and properties of NFC.
- D. The Vendor has agreed to sell the Lands to the Purchaser and the Purchaser has agreed to purchase all of NFC’s right, title and interest in and to the Lands from the Vendor, at the Closing Date, for the Purchase Price, and subject to all of the terms and conditions set forth herein.
- E. The Vendor has sold the Equipment to Counsel McIntyre/Harry Davis & Company.
- F. The Purchaser intends to complete the purchase of the Lands from the Vendor and has no interest in acquiring the Equipment from Harry Davis & Company.

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

ARTICLE I INTERPRETATION

1.1 Definitions

In this Agreement:

- (a) "Agreement" means this agreement of purchase and sale and all schedules attached hereto, as the same may be amended, supplemented, revised or restated from time to time;
- (b) "Applicable Law" means any statute, law, ordinance, rule, regulation, regulatory policy, by-law (zoning or otherwise), order, judgment, decree, treaty, guidelines or administrative requirements having the force of law or other requirement having the force of law or restriction of any kind whatever, including, but without limiting the generality of the foregoing, Environmental Laws, as applicable to the Lands;
- (c) "Approval and Vesting Order" means an order of the Court approving this Agreement and vesting the Lands in the name of the Purchaser on Closing free and clear of all Encumbrances other than the Permitted Encumbrances, in registrable form and in substance satisfactory to the Purchaser, acting reasonably, and on notice to a service list acceptable to the Purchaser, acting reasonably;
- (d) "Approval and Vesting Order Condition" has the meaning set forth in Subsection 5.3(a) hereof;
- (e) "Balance Due on Closing" shall have the meaning set forth in Section 2.2 hereof;
- (f) "Business Day" means any day in the Province of Ontario that is not a Saturday, Sunday or a statutory holiday;
- (g) "Closing" means the completion of the transaction of purchase and sale for the Lands contemplated by this Agreement;
- (h) "Closing Date" means that date which is the Twentieth(20th) Business Day following the date on which the Mutual Conditions have been satisfied such that the Approval and Vesting Order is in a form that is registrable at the land registry office for the Province of Ontario in accordance with Section 5.3(a)(i), or such other date as the Vendor and Purchaser may agree in writing;
- (i) "Closing Time" means 11:00 A.M. (Ontario time) on the Closing Date or such other time as may be determined by the Vendor in its sole discretion;

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

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contamination, waste of any nature, hazardous substance, hazardous material, toxic substance, dangerous substance or dangerous good including as defined, judicially interpreted or identified in any Environmental Law;

- (v) "Improvements" means all buildings, fixtures and appurtenances thereof and all other fixed improvements constructed on the Lands or any part or parts thereof;
- (w) "Information" shall have the meaning set forth in Section 3.2 hereof;
- (x) "Lands" means those lands in St. Catharines, Ontario the legal description of which is set forth in Schedule "A" including all Improvements;
- (y) "Mutual Conditions" means the Approval and Vesting Order Condition and the No Appeal Condition for the benefit of the Vendor and the Purchaser set forth in Subsection 5.3(a) hereof;
- (z) "No Appeal Condition" shall have the meaning set forth in Subsection 5.3(a) hereof;
- (aa) "Permitted Encumbrances" means those Encumbrances listed on Schedule "B" hereof;
- (bb) "Place of Closing" means the offices of the Vendor's Solicitors or at such other place as the Vendor and Purchaser may agree in writing;
- (cc) "Plans and Documents" shall have the meaning set forth in Subsection 6.1(a) hereof;
- (dd) "Purchase Price" shall have the meaning set forth in Section 2.1 hereof;
- (ee) "Purchaser's Conditions" means all of the conditions for the benefit of the Purchaser set forth in Section 5.2 hereof;
- (ff) "Purchaser's Condition Date" means the date which is the Thirtieth (30th) Business Day following the Execution Date;
- (gg) "Purchaser's Solicitors" means Koenig Dixon Kranje Lewis & Kovacs LLP, Attention: Paul S. Dixon;
- (hh) "Restrictive Covenant" means the covenant prohibiting the processing and/or packaging of Chicken Products registered against the Lands as Instrument No. NR250763.
- (ii) "Vendor's Conditions" means all of the conditions for the benefit of the Vendor set forth in Section 5.1 hereof; and
- (jj) "Vendor's Solicitors" means Borden Ladner Gervais LLP, Attention: Edmond Lamak.

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

2.3 Taxes

In addition to the Purchase Price, the Purchaser shall pay to the Vendor on Closing all federal, provincial and other sales, value-added, and all other taxes whatsoever which are exigible in connection with the transactions contemplated by this Agreement, together with all duties or other charges properly payable by the Purchaser upon or in connection with the conveyance and transfer of the Lands. The Purchaser does hereby indemnify and save the Vendor harmless from and against all claims for payment of the above-mentioned taxes including penalties and interest thereon and any liability or costs incurred as a result of any failure to pay such taxes when due, but this indemnity shall not extend to cover realty taxes and penalties which have accrued prior to Closing and are the responsibility of the Vendor except as may be provided for in this Agreement or by way of adjustments.

The Purchaser hereby represents and warrants that it is now or will be by no later than the Closing Date registered for GST/HST in accordance with the requirements of the provisions of the *Excise Tax Act* (Canada) (the "ETA"). In addition to all other taxes payable by the Purchaser at Closing, the Purchaser agrees to pay to the Vendor all harmonized sales tax ("HST") payable in respect of the purchase of the Lands unless the Purchaser shall deliver to the Vendor a statutory declaration on Closing attesting to its GST/HST registration and attaching a copy of its up-to-date HST registration number in which case, notwithstanding the foregoing, the Vendor shall not collect such HST and the Purchaser shall be responsible to pay or account for the HST directly to the Receiver General of Canada within the time prescribed by the ETA. The Purchaser hereby agrees to indemnify and save harmless the Vendor from any HST, penalty, interest or other amounts which may be payable by or assessed against the Vendor under the ETA as a result of or in connection with the Vendor's failure to collect and remit any HST or other value-added tax applicable on the sale of the Lands.

2.4 Adjustments

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

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**ARTICLE 3
STATUS OF LANDS****3.1 "As-Is Where-Is"**

The Purchaser acknowledges and agrees that the Lands and each and every part thereof are being purchased on an "as-is where-is" basis as they exist as of the Closing Date and that from and after the Closing Date the Vendor shall have no liability or responsibility whatsoever in respect of the Lands, including but not limited to liability or responsibility arising from or in connection with any Hazardous Substances at, on, under, about or migrating to or from the Lands, or the environmental condition of the Lands or of any land or Environment in proximity to the Lands. The Purchaser acknowledges and agrees that information relating to the Lands which is included in this Agreement or obtained by the Purchaser from the Vendor has been provided solely for the convenience of the Purchaser and is not warranted to be accurate, complete or reliable and does not constitute any representation or warranty and does not form part of the terms of this Agreement.

3.2 Own Analysis

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

3.3 No Representation by Vendor

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

- (a) the title, description, nature, quality, quantity, size, merchantability, fitness for any purpose, state, condition, cost, undue expenses, validity or location of any fixtures forming part of the Lands or all or any of the Lands or the right of the Vendor to sell or assign same, or as to the accuracy or completeness of the information provided or made available to the Purchaser;

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

3.4 Environmental Release, Indemnity and Covenant Not to Sue

The Purchaser agrees that, and that there are no representations, covenants and agreements otherwise, it is purchasing the Lands in their present state, condition and location including, without limitation, the environmental condition of the Lands, the existence of any

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Hazardous Substances at, on, under, about or migrating to or from the Lands, and any impact of any environmental condition at the Lands or any Hazardous Substances at or migrating to or from or to the Lands, whether presently known or later discovered.

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

ARTICLE 4 REPRESENTATIONS AND WARRANTIES

4.1 Purchaser's Representations and Warranties

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

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

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4.2 Vendor's Representations and Warranties

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

- (a) the Vendor is not a non-resident of Canada within the meaning of that term as used in the *Income Tax Act* (Canada);
- (b) the Vendor has been appointed by the Court as receiver of the assets, undertakings and properties of the Company pursuant to the Appointment Order, a copy of which has been provided to the Purchaser;
- (c) subject to the issuance of the Approval and Vesting Order, the Vendor has all necessary power and authority to enter into this Agreement and to carry out its obligations under this Agreement; and
- (d) this Agreement constitutes a valid and binding obligation of the Vendor enforceable against it in accordance with its terms subject to any limitations imposed by Applicable Law.

4.3 No Collateral Agreements

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

ARTICLE 5 CONDITIONS

5.1 Vendor's Conditions

The obligation of the Vendor to complete the transaction of purchase and sale which is contemplated herein is subject to and conditional upon the following matters (each of which is inserted for the sole benefit of the Vendor and may be waived in whole or in part by the Vendor) being satisfied on or by the date specified therefor (which shall be the Closing Date unless otherwise specified):

- (a) no part of the Lands shall have been removed from the control of the Vendor by any means or process;
- (b) no action or proceeding, at law or in equity, shall have been commenced or threatened by any person to enjoin, restrict or prohibit the consummation of the transactions contemplated by this Agreement that has not at the Closing Time been dismissed, quashed or permanently stayed without any further rights of appeal or leave to appeal;

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- (c) all consents or approvals from or notifications to any lender, landlord, lessor or other third person required under the terms of any agreement, lease or instrument in connection with the consummation of the transactions contemplated hereby, shall have been duly obtained or given, as the case may be;
- (d) all consents, reliance/transmittal letters or approvals from, orders and authorizations of, notifications to and licences from any persons (or registrations, declarations, filings or recordings with any such authorities) required in connection with the consummation of the transactions contemplated by this Agreement, the making of the Agreement, the Closing, or the performance of any of the terms and conditions thereof, in form and substance satisfactory to the Vendor's Solicitors, shall have been duly obtained or given, as the case may be;
- (e) the representations and warranties of the Purchaser contained in the Agreement shall be true and correct in all material respects as at the Closing Date and with the same force and effect as if made at and of such time;
- (f) the Purchaser shall have paid to the Vendor all amounts required to be paid by it under this Agreement; and
- (g) the Purchaser shall have performed, in all material respects, its obligations and covenants under this Agreement to the extent required to be performed on or before the Closing Date.

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

5.2 Purchaser's Conditions

The obligation of the Purchaser to complete the transaction of purchase and sale which is contemplated herein is subject to and conditional upon the following matters (each of which is inserted for the sole benefit of the Purchaser and may be waived in whole or in part by the Purchaser) being satisfied on or by the Purchaser's Condition Date:

- (a) **REVIEW AND ACCEPTANCE, IN THE PURCHASER'S SOLE AND ABSOLUTE DISCRETION, OF SATISFACTORY REPORTS ON THE FOLLOWING:**
 - (i) Environmental Assessment Reports provided by the Vendor and any additional environmental reports or studies prepared for the Purchaser at its own cost; and
 - (ii) Review and approval of any as-built drawings and boundary surveys for the Lands and any structural or building condition reports including any prepared for the Purchaser at its own cost;

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- (b) The Purchaser satisfying itself that the obligations of the Vendor prior title holders have been compiled with in regard to the Permitted Encumbrances; and
- (c) The Vendor having the Restrictive Covenant deleted from the title to the Lands without an appeal having been taken to the court order on or before the date for satisfaction of the Mutual Conditions.

Prior to the Purchaser's Condition Date, the Purchaser shall forward written notice to the Vendor confirming that it is satisfied or has waived each of the Purchaser's Conditions save for the condition set forth in Section 5.2 (c) failing which this Agreement shall be at an end and the Vendor's Solicitors shall refund the Deposit to the Purchaser without interest or deduction.

5.3 Conditions Respecting Approval and Vesting Order

- (a) The obligations of the Vendor and the Purchaser to complete the transaction of purchase and sale contemplated herein shall be subject to and conditional upon the further conditions that: (i) on or before the date which is **TWENTY (20)** Business Days following the date on which all of the Purchaser's Conditions have been satisfied or waived, the Vendor shall have obtained the Order to delete the Restrictive Covenant set forth in Section 5.2(c) above and the Approval and Vesting Order (the "Approval and Vesting Order Condition"); and (ii) on or before the date which **FOURTY (40)** Business Days following the date on which all of the Purchaser's Conditions have been satisfied or waived, all appeal periods with respect to the Section 5.2(c) Order and the Approval and Vesting Order shall have expired with no appeal having been commenced and no other legal challenges to the Section 5.2(c) Order and the Approval and Vesting Order having been commenced (the "No Appeal Condition"). The Vendor or the Vendor's Solicitors shall forward written notice to the Purchaser's Solicitors confirming that the Mutual Conditions have been satisfied. * SEE BELOW
- (b) The Approval and Vesting Order Condition has been inserted for the benefit of both the Vendor and the Purchaser and may not be waived by either party, but may be extended by written agreement of both parties.
- (c) The No Appeal Condition has been inserted for the benefit of both the Vendor and the Purchaser and may be waived by written agreement of both parties.

ARTICLE 6 ADDITIONAL AGREEMENTS

6.1 Vendor Deliveries

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

- * Notwithstanding the dates referred to above for satisfying the Mutual Conditions including the deletion of the Restrictive Covenant set forth in Section 5.2(c); the Vendor and Purchaser covenant and agree that the Mutual Conditions shall be satisfied, and the Restrictive Covenant set forth in Section 5.2(c) shall be deleted on or before February 28, 2013, which date may be extended by the written agreement of both parties.

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- (a) copies of or access to all plans, studies, reports, records, tests, agreements, real property reports and generally all documentation or materials and information in its actual possession, if any, (collectively, the "Plans and Documents") which relate to the ownership, physical state and development status of the Lands; and
- (b) copies of the Permitted Encumbrances and of all of the Environmental Assessment Reports and any boundary survey for the Lands which the Vendor may have.

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

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

6.2 Test and Studies

At any time and from time to time after the Execution Date and continuing to the Purchaser's Condition Date, the Purchaser and its duly authorized agents, consultants, employees and representatives shall be entitled to attend upon the Lands for the purpose of making inspections or conducting tests, assessments or surveys, provided the Purchaser shall make good and restore any loss, damage, injury or death caused by the Purchaser, its agents, consultants, employees and representatives (whether as a direct result of such inspections or assessments or otherwise howsoever) and shall indemnify and save harmless the Vendor from all such loss, damage, injury or death. Such access is granted at the Purchaser's sole risk, and the Vendor shall have no liability to the Purchaser or any of its agents, consultants, employees or representatives for any injury, claims of any nature or kind, causes of action, costs, losses, damages or expenses arising therefrom or relating to the inadequacy, insufficiency, incompleteness, inaccuracy, unavailability or condition of the Lands. In conducting any physical inspections and environmental assessments, the Purchaser shall cause as little disturbance, damage and loss to the Lands as is possible. Intrusive testing of any part of the Lands shall only be carried out with the Vendor's prior written approval and in compliance with Applicable Laws and the Vendor's conditions and requirements, which may be imposed by the Vendor in the Vendor's reasonable discretion. If for any reason the transaction contemplated herein is not completed, the Purchaser shall destroy all reports, documents and other information related to any test, studies or other actions undertaken pursuant to this Agreement.

Without limiting any of its other rights at law, in equity or otherwise under this Agreement, the Vendor reserves the right to offset against the Deposit the costs of repairs and

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restorations of the Lands required as a result of damage caused by the Purchaser's inspections or tests which has not been repaired or restored by the Purchaser to the reasonable satisfaction of the Vendor.

6.3 Permitted Encumbrances

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

6.4 Compliance with Permitted Encumbrances and Applicable Laws

The Purchaser covenants and agrees:

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

6.5 Expropriation

If prior to Closing the whole of the Lands or any material portion is taken by any Governmental Authorities or other authority or is required for any Governmental Authorities' or other authority's use, then the following provision shall apply: (a) in the event that the expropriation is of a material portion of the Lands, or any of the parcels comprising the Lands, the Purchaser may elect by notice given to the Vendor within ten (10) Business Days after receipt of notice of the proposed expropriation (and the Closing Date shall be extended as necessary so that such period of time may be allowed the Purchaser prior to Closing) to receive the proceeds of expropriation or an equivalent adjustment to the Purchase Price and complete this Agreement or terminate this Agreement provided that if at the expiry of the time period set out above the Purchaser has not made an election as aforesaid the Purchaser shall be

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conclusively deemed to have elected to receive the proceeds of expropriation, or an equivalent adjustment to the Purchase Price accordingly and complete this Agreement; and (b) in the event that the expropriation is not with respect to a material portion of the Lands the Purchaser shall be required to receive the proceeds of expropriation or an equivalent adjustment to the Purchase Price and complete this Agreement. Any dispute between the parties as to the materiality of the portion of the Lands being expropriated shall be decided by an independent accredited appraiser, appointed by the Vendor.

ARTICLE 7 CLOSING ARRANGEMENTS

7.1 Closing Date and Closing

The Closing shall occur on the Closing Date at the Closing Time at the Place of Closing.

7.2 Vendor's Closing Documentation

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

- (a) a registrable copy of the Approval and Vesting Order for the Lands;
- (b) a statement of adjustments;
- (c) all keys to the improvements in the Vendor's actual possession;
- (d) reliance or transmittal letters from the consultants who prepared each of the Environmental Assessment Reports or building condition/structural reports, if any, addressed to the Purchaser and its lender/mortgagee;
- (e) an affidavit regarding Section 116 of the *Income Tax Act* (Canada);
- (f) an undertaking to readjust any errors or omissions in the statement of adjustments;
- (g) a certificate, dated the Closing Date, confirming that all of the representations and warranties of the Vendor contained in this Agreement are true as of the Closing Date, with the same effect as though made as of the Closing Date;
- (h) an order registered deleting the Restrictive Covenant from the title to the Lands as required by Section 5.2(d);
- (i) all original Plans, Documents and surveys relating to the Lands in the Vendor's actual possession and control; and
- (j) such further and other documentation reasonable and customary relative to the completion of a transaction of the nature of the transaction contemplated by this

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Agreement as the Purchaser may reasonably require in a form and content satisfactory to the Purchaser acting reasonably.

7.3 Purchaser's Closing Documentation

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

- (a) an undertaking to readjust any errors or omissions in the statement of adjustments;
- (b) certificate of the Purchaser attesting to the Purchaser's GST/HST registration number with a copy of its GST/HST registration number attached to such declaration;
- (c) an indemnity from the Purchaser in favour of the Vendor with respect to the Purchaser's payment of HST in a reasonable form that is provided by the Vendor;
- (d) the Purchaser's indemnity as required by Sections 6.4(a) and (b);
- (e) a certificate, dated the Closing Date, confirming that all of the representations and warranties of the Purchaser contained in this Agreement are true as of the Closing Date, with the same effect as though made as of the Closing Date;
- (f) if required by the provision of any Permitted Encumbrances or by any party to any Permitted Encumbrances, an individual assumption agreement in a form required by such Permitted Encumbrances;
- (g) the Balance Due on Closing; and
- (h) such further and other documentation reasonable and customary relative to the completion of a transaction of the nature of the transaction contemplated by this Agreement as the Vendor may reasonably require in a form and content satisfactory to the Vendor acting reasonably.

7.4 Closing Trust Conditions

The deliveries referred in Sections 7.2 and 7.3 shall be subject to such reasonable solicitor's trust conditions as may be agreed upon between the Vendor's Solicitors and the Purchaser's Solicitors. Notwithstanding any other provision hereof, it is agreed that such trust conditions shall require that the entire Balance Due on Closing be paid to the Vendor's Solicitors in trust prior to the Purchaser proceeding to register the Approval and Vesting Order.

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**ARTICLE 8
MISCELLANEOUS**

8.1 Tender of Monies

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

8.2 Non-Merger

The covenants, representations, warranties and agreements herein contained on the part of the Purchaser and Vendor shall not merge in the Closing, but shall continue in full force and effect notwithstanding the delivery and registration of the Approval and Vesting Order.

8.3 Assignment

This Agreement shall ensure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns, provided that neither party shall assign the benefit of this Agreement without the prior written consent of the other party.

8.4 Notices

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

In the case of the Purchaser:

CANAFRIC INC.
5341 JOHN LUCAS DR, BURLINGTON, ON
L7L 6A5

Attention:	Mr Suvrat Pandya
Telephone No.:	905 336 0000
Fax No.:	905 336 0909

With copies to:	Kesimant Dixon Kraje Lewis & Kovacs LLP
	301-20 Hughson Street South
	Hamilton, ON L8N 2A1
	Telephone No.: (905)527-0202
	Fax No.: (905)527-4948
	Attention: Paul S. Dixon
	E-mail: pdixon@hamiltonlawyers.ca

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And To: AZIZ HARJI & CO

Attention: Mr. Aziz Harji
Telephone No.: 905 305 0042
Fax No.: 905 305 0049

In the case of the Vendors:

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

Attention:
Telephone No.:
Fax No.:

With copies to:

Borden Ladner Gervais LLP
40 King Street West
Scotia Plaza, Box 20
Toronto, Ontario M5H 3Y4

Attention: Edmond Lamek
Telephone No.: 416.367.6311
Fax No.: 416.361.7067
E-mail: elamek@blg.com

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

8.5 Unenforceability of Covenants

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

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8.6 Time of Essence

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

8.7 Notice of Agreement

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

8.8 Governing Law

This Agreement shall be governed by and construed and enforced in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

8.9 No Commissions

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

8.10 Counterparts

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

Remainder of page intentionally blank. Signature page follows.

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

CANAFRIC INC.

Per: SH Pandya
Name: Mr Suvrut Pandya
Title: Director
I have authority to bind the Corporation

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

Per: J. J. Jensen
Name: JAMES JENSEN
Title: MANAGING DIRECTOR
I have authority to bind the Corporation


SCHEDULE "A"
LEGAL DESCRIPTION OF THE LANDS

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

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

Part Lot 9, Concession 6, Grantham, being Part 3 on Reference Plan 30R-710, S/T RO265030, City of St. Catharines (PIN No. 46324-0088(LT)).

SCHEDULE "B"
PERMITTED ENCUMBRANCES

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

SCHEDULE "C"
ENVIRONMENTAL ASSESSMENT REPORTS

TAB 3

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

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

THE HONOURABLE) THE 21st DAY
)
) OF FEBRUARY, 2013

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

APPROVAL AND VESTING ORDER

THIS MOTION, made by FTI Consulting Canada Inc., in its capacity as the Court-appointed receiver (the “**Receiver**”) of the undertakings, property and assets of NFC ACQUISITION GP INC., NFC ACQUISITION CORP., NFC ACQUISITION L.P., NEW FOOD CLASSICS AND NFC LAND HOLDINGS CORP (collectively, the “**Debtors**”), for an order approving the transaction (the “**Transaction**”) contemplated by an agreement of purchase and sale between the Receiver and [Canafriic Inc.] (“**Canafriic**” or the “**Purchaser**”) dated December 12, 2012, (the “**Sale Agreement**”), appended to the fifth report of the Receiver dated February 6, 2013 (the “**Fifth Report**”), and vesting in the Purchaser, the Debtors’ right, title and interest in and to the “**Lands**” as defined in the Sale Agreement and described in Schedule “**B**” hereto (the “**Lands**”), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Fifth Report and on hearing the submissions of counsel for the Receiver, Bank of Montreal [and Canafriic, Vipond, MWS, Pinty’s] no one appearing for any

other person on the service list], although properly served as appears from the affidavit of service of Caitlin Fell sworn ●, 2013, and filed:

1. **THIS COURT ORDERS** that the Fifth Report and the Receiver's activities as set out therein are hereby approved.

2. **THIS COURT ORDERS** that the time for service of the notice of motion and the motion record herein be and is hereby abridged and the service thereof validated, so that the motion is properly returnable today.

3. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved. The Receiver is hereby authorized and directed to take such steps and execute such documents as may be necessary or desirable for the completion of the Transaction. The Receiver and the Purchaser are hereby authorized to enter into non-material amendments to the Sale Agreement by mutual agreement in writing without further order of the Court.

4. **THIS COURT ORDERS AND DECLARES** that the restrictive covenant registered against the Lands as instrument number NR250763 (the "**Restrictive Covenant**") is unenforceable as against, and does not bind, the Lands.

5. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as Schedule "A" hereto (the "Receiver's Certificate"), all of the Debtors' right, title and interest in and to the Lands shall vest absolutely in the Purchaser, free and clear of and from (A) the Restrictive Covenant; and (B) any and all encumbrances, security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed or trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise

(collectively, the "Claims", and together with the Restrictive Covenant, the "Encumbrances") including, without limiting the generality of the foregoing: (i) any Court ordered encumbrances or charges established in Court File No. CVIZ-9554-00CL or in this proceeding; (ii) all charges, security interests or claims evidenced by registrations pursuant to the Personal Property Security Act, R.S.A. 2000, c. P-7 (the "PPSA") or any other personal property registry system; (iii) those Claims listed in Schedule "C" hereto; provided that the Encumbrances shall not include the permitted encumbrances and easements listed on Schedule "D" hereto (the "Permitted Encumbrances") and the Lands shall remain subject to the Permitted Encumbrances.

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

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

8. THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the proceeds from the sale of the Lands, net of the commissions payable to Colliers International (the "Net Proceeds") shall stand in the place and stead of the Lands, and that from and after the delivery of the Receiver's Certificate, all Claims expunged and discharged as against the Lands shall attach to the Net Proceeds with the same priority as they had with respect to the Lands immediately prior to the sale.

9. THIS COURT ORDERS that, notwithstanding:
- (a) the pendency of these proceedings;
 - (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (the “BIA”) in respect of the Debtors and any bankruptcy order issued pursuant to any such applications; and
 - (c) any assignment in bankruptcy made in respect of the Debtors;

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

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

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

12. 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

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Court, as may be necessary or desirable to give effect to this order or to assist the Receiver and its agents in carrying out the terms of this order.

SCHEDULE "A"
FORM OF RECEIVER'S CERTIFICATE

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

BANK OF MONTREAL

Applicant

-and-

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

Respondent

RECEIVER'S CERTIFICATE

RECITALS

1. Pursuant to an Order of the Ontario Superior Court of Justice (the "Court") dated February 22, 2012 (the "Appointment Order"), FTI Consulting Canada Inc. was appointed as the receiver (the "Receiver") of the undertaking, property and assets of NFC Acquisition GP Inc., NFC Acquisition L.P., NFC Acquisition Corp., New Food Classics and NFC Land Holdings Corp. (the "Debtors").

2. Pursuant to an Order of the Court dated July 10, 2012, the Court approved the agreement of purchase and sale made as of December 12, 2012 (the "Sale Agreement") between the Receiver and [Canafriac Inc.] (the "Purchaser") and provided for the vesting in favour of the Purchaser of the Debtor's right, title and interest in and to the Lands (as defined in the Sale Agreement), which vesting is to be effective with respect to the Lands upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Lands; (ii) that the conditions to Closing as set out in Article 5 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

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

THE RECEIVER CERTIFIES the following:

- (i) The Purchaser has paid and the Receiver has received the Purchase Price for the Lands payable on the Closing Date pursuant to the Sale Agreement;
- (ii) The conditions to Closing as set out in Article 5 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and
- (iii) The Transaction has been completed to the satisfaction of the Receiver.

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

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

By: _____
Name: ●
Title: ●

SCHEDULE "B"
LEGAL DESCRIPTION OF THE LANDS

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

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

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

SCHEDULE "C"
ENCUMBRANCES TO BE EXPUNGED

RESTRICTIVE COVENANT

1. Restrictive Covenant No. NR250763 dated September 16, 2010 in favour of Pinty's Delicious Foods Inc.

CLAIMS

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

SCHEDULE "D"
PERMITTED ENCUMBRANCES

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

TAB 4

Revised: May 11, 2010

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

**ONTARIO
SUPERIOR COURT OF JUSTICE**

[COMMERCIAL LIST]

THE HONOURABLE _____)
)
)
JUSTICE _____)
WEEKDAY, THE #
DAY OF MONTH, 20YR

~~BETWEEN:~~

PLAINTIFF

Plaintiff

THE HONOURABLE) THE 21st DAY
)
)
) OF FEBRUARY, 2013

BANK OF MONTREAL

Applicant

- and -

DEFENDANT

Defendant

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

Respondents

APPROVAL AND VESTING ORDER

THIS MOTION, made by ~~{RECEIVER'S NAME}~~ETI Consulting Canada Inc., in its capacity as the Court-appointed receiver (the "~~Receiver~~") of the undertakings, property and assets of ~~{DEBTOR}~~(NEC ACQUISITION GP INC., NEC ACQUISITION CORP., NEC ACQUISITION L.P., NEW FOOD CLASSICS AND NEC LAND HOLDINGS CORP (collectively, the "~~Debtor~~")"Debtors", for an order approving the sale ~~transaction~~ (the "~~Transaction~~") contemplated by an agreement of purchase and sale (the "~~Sale Agreement~~") between the Receiver and ~~[NAME OF PURCHASER]~~Canafric Inc. ("~~Canafric~~" or the "~~Purchaser~~") dated ~~{DATE}~~and December 12, 2012, (the "~~Sale Agreement~~"), appended to the ~~Report~~fifth report of the Receiver dated ~~{DATE}~~February 6, 2013 (the "~~Fifth Report~~"), and vesting in the Purchaser, the ~~Debtor's~~Debtors' right, title and interest in and to the assets ~~described~~"Lands" as defined in the Sale Agreement (the "~~Purchased Assets~~"and described in Schedule "B" hereto (the "~~Lands~~"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Fifth Report and on hearing the submissions of counsel for the Receiver, ~~{NAMES OF OTHER PARTIES APPEARING}~~Bank of Montreal [and Canafric, Vipond, MWS, Pinty's] no one appearing for any other person on the service list], although properly served as appears from the affidavit of ~~{NAME}~~service of Caitlin Fell sworn ~~{DATE}~~February 6, 2013, and filed[†]:

1. THIS COURT ORDERS that the Fifth Report and the Receiver's activities as set out therein are hereby approved.

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

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2. **THIS COURT ORDERS** that the time for service of the notice of motion and the motion record herein be and is hereby abridged and the service thereof validated, so that the motion is properly returnable today*.*

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

4. **THIS COURT ORDERS AND DECLARES** that the restrictive covenant registered against the Lands as instrument number NR250763 (the "**Restrictive Covenant**") is unenforceable as against and does not bind the Lands.

5. ~~2.~~ **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as Schedule "A" hereto (the "Receiver's Certificate"), all of the ~~Debtor's~~ Debtors' right, title and interest in and to the ~~Purchased Assets described in the Sale Agreement [and listed on Schedule B hereto]~~ Lands shall vest absolutely in the Purchaser, free and clear of and from (A) the Restrictive Covenant; and (B)

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

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

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

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

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

7. THIS COURT ORDERS that upon the registration in the Land Registry Office for the [Registry Division] effective upon delivery of {LOCATION} of a Transfer/Deed of Land in

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

~~-5-~~

~~the form prescribed by the Land Registration Reform Act duly executed by the Receiver}}~~ Land Titles Division of {LOCATION} of an Application for Vesting Order in the form prescribed by the ~~Land Titles Act and/or the Land Registration Reform Act~~⁶, 's Certificate by the Receiver to the Purchaser. * all of the Encumbrances affecting or relating to the *Lands, other than the Permitted Encumbrances, be and* are hereby expunged and discharged as against the *Lands, and the Land Registrar is hereby directed to enter the Purchaser Canafric Inc., as the owner of the subject real property Lands identified in Schedule B hereto (the "Real Property") in fee simple, and is hereby directed to delete and expunge from title to the Real Property Lands all of the ~~Claims~~ Encumbrances listed in Schedule "C" hereto.

8. 4. ~~THIS COURT ORDERS~~ that for the purposes of determining the nature and priority of Claims, the ~~net proceeds~~⁷ from the sale of the ~~Purchased Assets~~ Lands, net of the commissions payable to Colliers International (the "Net Proceeds") shall stand in the place and stead of the ~~Purchased Assets~~ Lands, and that from and after the delivery of the Receiver's Certificate, all Claims and ~~Encumbrances~~ expunged and discharged as against the Lands shall attach to the ~~net proceeds from the sale of the Purchased Assets~~ Net Proceeds with the same priority as they had with respect to the ~~Purchased Assets~~ Lands immediately prior to the sale⁸, as if the ~~Purchased Assets~~ had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

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

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

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

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

~~--6--~~

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

7 THIS COURT ORDERS that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (~~Canada~~ the "BIA") in respect of the Debtors and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtors;

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

~~-7-~~

10. ~~8-~~ THIS COURT ORDERS AND DECLARES that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).

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

12. ~~9-~~ 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~~. order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this ~~Order~~ or to assist the Receiver and its agents in carrying out the terms of this ~~Order~~.

Schedule A— Form of Receiver's Certificate

Court File No. — CV-12-9616-00CL

BANK OF MONTREAL

- and -

Applicants

Court File No.: CV12-9616-00CL

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 21, 2013)

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