

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**BANK OF MONTREAL**

Applicant

- and -

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

Respondents

**MOTION RECORD  
(Returnable March 12, 2012)**

March 5, 2012

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Inc., the Court-appointed Receiver,.

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

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# INDEX

Court File No.: CV12-9616-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**BANK OF MONTREAL**

Applicant

- and -

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

Respondents

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# TAB 1

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
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**BANK OF MONTREAL**

Applicant

- and -

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

Respondents

**NOTICE OF MOTION  
(returnable March 12, 2012)**

**FTI CONSULTING CANADA INC.**, in its capacity as court-appointed receiver (the “**Receiver**”) of all of the assets, undertakings and properties of NFC Acquisition GP Inc., NFC Acquisition L.P., NFC Acquisition Corp., New Food Classics and NFC Land Holdings Corp. (the “**Debtors**”), will make a motion to a judge presiding over the Commercial List on Monday, the 12th day of March, 2012, at 10:00 a.m. or as soon after that time as the motion can be heard, at the Courthouse, 330 University Avenue, Toronto, Ontario.

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

**THE MOTION IS FOR:**

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



- (a) approving the sale of the Purchased Assets, as defined in the purchase agreement between the Receiver and Grand River Foods Ltd (the “**Purchaser**”) dated February 28, 2012, and as more particularly described in the first report of the Receiver, dated March 2, 2012 (the “**First Report**”) and vesting the Purchased Assets in the Purchaser upon closing; and
- (b) sealing the confidential appendices to the First Report pending further order of the Court;
- (c) Such further and other relief as counsel may advise and to this Honourable Court may seem just.

**THE GROUNDS FOR THE MOTION ARE:**

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

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

- 1. The First 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 this Honourable Court may permit.

March 5, 2012

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its capacity Court-appointed Receiver

TO: The Service List

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

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**SCHEDULE "A"**

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

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

THE HONOURABLE JUSTICE



) MONDAY THE 12 DAY  
)  
) OF MARCH, 2012

**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 (the “**Sale Agreement**”) between the Receiver and Grand River Foods Ltd. (the “**Purchaser**”) dated February 28, 2012, and appended to the report of the Receiver dated March 2, 2012 (the “**First Report**”), and vesting in the Purchaser, the Debtors’ right, title and interest in and to the “**Purchased Assets**” as defined in the Sale Agreement (the “**Purchased Assets**”), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the First Report and on hearing the submissions of counsel for the Receiver, ~~names of other parties appearing~~ no one appearing for any other person on the service list, although properly served as appears from the affidavit of ~~<\*>~~ sworn March ~~<\*>~~, 2012, filed:

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

2. THIS COURT ORDERS AND DECLARES that the Transaction and the terms therein is hereby approved, and the execution of the Sale Agreement by the Receiver 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 steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

3. 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 Purchased Assets listed on **Schedule "B"** hereto shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any



encumbrances or charges created by the Orders made in Court File No. CV12-9554-00CL dated January 16, 2012 and February 16, 2012, and by the Court in this proceeding on February 22, 2012; and (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Saskatchewan) or any other personal property registry system (all of which are collectively referred to as the “**Encumbrances**”) 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.

4. THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver’s Certificate, all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, 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.

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

6. THIS COURT ORDERS that, 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) 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 in the Purchaser 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) 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. THIS COURT ORDERS that the confidential appendices to the First Report be and are hereby sealed pending further order of this Honourable Court.

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

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. 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.

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**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**

- A. 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**”).
- B. Pursuant to an Order of the Court dated March 12, 2012, the Court approved the agreement of purchase and sale made as of February 28, 2012 (the “**Sale Agreement**”) between the Receiver and Grand River Foods Ltd. (the “**Purchaser**”) and provided for the vesting of the Debtor’s right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (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.
- C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

**THE RECEIVER CERTIFIES** the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;

2. 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
3. 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 – Purchased Assets

“Purchased Assets” is defined in the Sale Agreement as all of the Debtors’ right, title and interest in, to and under, or relating to, the assets listed in Schedule “A” therein.

Schedule “A” comprises of:

Quantity	Asset
1	2007 Formax “M-700” Patty Forming Machine s/n F9FX70 complete with take away conveyor – NFC asset #7277
1	2007 Formax “M-700” Patty Forming Machine s/n F3AZ50 complete with take away conveyor – NFC asset # 7328
2	Cuber/Scorer plus scoring tooling rack and spares – NFC asset # 7021 & 7206
2	Interleveller Paper Feed System with 20” x 48” Rubber Band Belt plus takeaway conveyors for interleveller – NFC asset # 7162, 7060, 7061 & 7082
2	Formax Patty Stackers with takeaway conveyors – NFC asset # 7085, 7086, 7333, 7095, 7096 & 7097
2	Safeline Metal Detector with Belt – NFC asset #7084 & 7209
1	Consolidated HC4400 End Load Cartoner – NFC asset # 7329A, 7329B, 7329, 7290 and 7349
1	Eagle Pack X Ray Machines – NFC asset # 7300
2	Sets of Tender Form Fill Plates (regular) for Formax 700
2	Sets of Tender Form Fill Plates (tapered) for Formax 700
1	Set of Regular Fill Plates
12	Sets Formax 700 primary plates and knockouts
6	Sets Formax 26 primary plates and knockouts
3	Formax Tooling Carts on Wheels

## TAB 2

Court File No.: CV12-9616-00CL

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

Respondents

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

March 5, 2012

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Court File No.: CV12-9616-00CL

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Respondents

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

1. On January 17, 2012, pursuant to an application (the “**CCAA Proceedings**”) brought before the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) by NFC Acquisition GP Inc., NFC Acquisition Corp. and NFC Land Holdings Corp. (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 (as extended from time to time, the “**Initial Order**”) in respect of NFC, which, *inter alia*, appointed FTI Consulting Canada Inc. as monitor (in that capacity, the “**Monitor**”).

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

3. For the reasons set out in the Third Report of the Monitor filed in the CCAA Proceedings, a copy of which is attached hereto as **Appendix “A”** (the “**Monitor’s Third Report**”), on February 22, 2012, Bank of Montreal (“**BMO**”) brought: (i) a motion for leave in the CCAA Proceedings to lift the stay of proceedings contained in the Initial Order to allow BMO to bring an application for the appointment a receiver of the property, assets and undertaking of the NFC entities (the “**NFC Assets**”); and (ii) an application under section 243(1) of the *Bankruptcy and Insolvency Act* and section 101 of the *Courts of Justice Act* for the appointment of FTI as receiver (in that capacity the “**Receiver**”) of the NFC Assets. The Court granted the BMO motion and the application, and made the Order in these proceedings dated February 22, 2012 (the “**Receivership Order**”), a copy of which is attached hereto as **Appendix “B”**.

#### **PURPOSE OF THIS REPORT**

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

- (a) the approval of the Court, pursuant to subparagraph 3(1)(ii) of the Receivership Order, for the Receiver to enter into, and carry out the terms of an agreement with Grand River Foods Ltd. (“**Grand River**”) to sell certain pieces of equipment

owned by NFC (the “**Equipment**”) currently located in the NFC Saskatchewan facility, to Grand River (the “**Transaction**”);

- (b) an order vesting the Equipment in Grand River effective upon closing of the Transaction; and
- (c) such other relief as counsel may advise and the Court permit.

### **TERMS OF REFERENCE**

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

6. Capitalized terms not otherwise defined herein have the meanings set out in the Monitor’s Third Report and the Receivership Order.

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

7. Pursuant to paragraph 44 of the Initial Order, NFC and the Monitor were authorized to conduct the Transaction Process outlined in the Prefiling Report of FTI in the CCAA Proceedings. Immediately following the making of Initial Order, the Monitor contacted 11 parties which had been identified by the Applicants as possible qualified purchasers of the

Applicants' businesses on a going-concern and that were likely to be acceptable to NFC's major customers. The Monitor also contacted NFC's largest customers to identify additional possible qualified purchasers.

8. On January 20 and 23, 2012, the Monitor published the Sales Ad in the *Globe & Mail* National edition, which resulted in forty-one prospective purchasers being identified and making contact with the Monitor. Of those forty-one parties, twenty-two parties executed Confidentiality Agreements and received the Confidential Information Memorandum.

9. Additional details regarding the of Expressions of Interest received by the Monitor, the parties participating in Phase 2 of the Transaction Process, and the Monitor's dealings with the Selected Parties that submitted Final Offers, and the events subsequent thereto are set out in the Monitor's Third Report and the Confidential Appendix "A" thereto.

10. As set out in the Monitor's Third Report, BMO delivered a Sales Process Default Notice under the DIP Credit Agreement and ultimately commenced the Receivership Proceedings.

## **RECEIVER'S RECOMMENDATION**

11. Since the commencement of the Receivership Proceedings, the Monitor has been in touch with approximately 11 of the parties that submitted EOIs that reflected a going concern transaction, in order to determine whether any of them had an interest in acquiring the manufacturing assets of NFC in either Saskatoon or St. Catharines as turn-operations, before the Receiver embarked on soliciting liquidation bids and piecemeal offers for NFC's manufacturing assets. Based on the responses to those communication, the Receiver has concluded that there

are no commercially reasonable or reasonably foreseeable opportunities to sell the Saskatoon manufacturing assets on a turn-key basis, as the parties contacted either had no interest operating from the Saskatoon facility or would only take over the assets on terms that that were financially or legally untenable such as not becoming a successor employer to the Saskatoon Union.

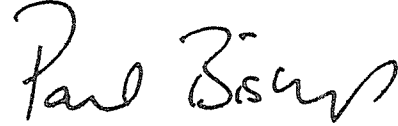
12. During the course of those communications, Grand River approached the Receiver about the possible acquisition of the Equipment. After completing its discussions with the remaining parties that submitted going concern EOIs for the Saskatoon facility, the Receiver commenced negotiation of the terms of an agreement that ultimately resulted in the Agreement of Purchase and Sale with Grand River for the purchase of the Equipment, a redacted copy of which is attached hereto as **Appendix “C”**, and a complete copy is filed but not attached as **Confidential Appendix “C”** (the “**Grand River Agreement**”).

13. As part of the Transaction Process, BMO commissioned an appraisal of the NFC Assets including the NFC Saskatoon facility equipment from Century Services. A copy of the Century Services Appraisal, together with the Receiver’s analysis of the values of the Equipment contained in the Grand River Agreement is filed but not attached as **Confidential Appendix “D”**.

14. Based on the Receiver’s analysis contained in Confidential Appendix “D” and the factors, processes and considerations described above and in the Monitor’s Third Report, the Receiver respectfully recommends that the Court approve the Grand River Agreement, authorize the Receiver to carry out the Transaction, and grant the Vesting Order.

All of which is respectfully submitted this 5th day of March, 2012.

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

A handwritten signature in black ink, appearing to read "Paul Bishop". The signature is written in a cursive style with a large initial "P" and a long, sweeping underline.

---

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

**APPENDIX A**  
**THIRD REPORT OF THE MONITOR**

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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Solicitors for the Monitor,  
FTI Consulting Canada Inc.



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

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

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;

- (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.

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.

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

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



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

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.

- 12 -

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**

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

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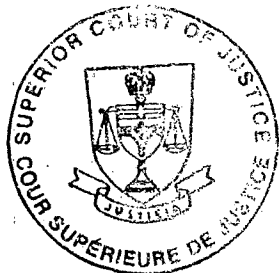
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Solicitors for FTI Consulting Canada Inc., Monitor of NFC ACQUISITION GP  
INC., NFC ACQUISITION CORP. AND NFC LAND HOLDINGS CORP.

**APPENDIX B**  
**ORDER (APPOINTING RECEIVER)**

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



**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR. )

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

)

JUSTICE BROWN )

OF FEBRUARY, 2012

BANK OF MONTREAL

Applicant

- and -

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

Respondents

**ORDER  
(Appointing Receiver)**

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

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

### **SERVICE**

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

### **APPOINTMENT**

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

### **RECEIVER'S POWERS**

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

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

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



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

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

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

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

**DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

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

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

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

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

**NO PROCEEDINGS AGAINST THE RECEIVER**

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

**NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY**

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

**NO EXERCISE OF RIGHTS OR REMEDIES**

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

**NO INTERFERENCE WITH THE RECEIVER**

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

**CONTINUATION OF SERVICES**

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

**RECEIVER TO HOLD FUNDS**

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

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

**EMPLOYEES**

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

**PIPEDA**

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

**LIMITATION ON ENVIRONMENTAL LIABILITIES**

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

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

#### **LIMITATION ON THE RECEIVER'S LIABILITY**

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

#### **RECEIVER'S ACCOUNTS**

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

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

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

#### **FUNDING OF THE RECEIVERSHIP**

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

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

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

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



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

#### **COURT ORDERED CHARGES**

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

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

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

#### **SERVICE AND NOTICE**

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

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

**GENERAL**

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

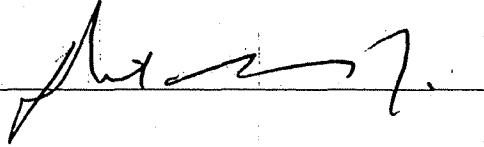
30. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtors.

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

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

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

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

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

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

FEB 22 2012

NB

**SCHEDULE "A"**  
**RECEIVER CERTIFICATE**

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

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

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

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

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

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

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

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

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

DATED the \_\_\_\_\_ day of \_\_\_\_\_, 2012.

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

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

Name:

Title:

**BANK OF MONTREAL**

- and -

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

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

**ORDER**

**GOWLING LAFLEUR HENDERSON LLP**

Barristers and Solicitors

1 First Canadian Place

100 King Street West, Suite 1600

TORONTO, Ontario

M5X 1G5

**Clifton P. Prophet / Frank Lamie**

LSUC No.: 34845K / 54035S

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

Facsimile: (416) 862-7661

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

**APPENDIX C**  
**(REDACTED)**  
**GRAND RIVER AGREEMENT**

2012 **THIS ASSET PURCHASE AGREEMENT** is made this 28th day of February,

**B E T W E E N:**

**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 -

**Grand River Foods Ltd.**, a company governed by the Laws of Ontario

(the "**Purchaser**").

**RECITALS:**

- A. 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.
- B. The Appointment Order authorizes the Vendor to market and sell, subject to obtaining the Vesting Order (as defined herein) from the Court, all or any part of the assets, undertakings and properties of the Company.
- C. The Purchaser has agreed to purchase from the Vendor, and the Vendor has agreed to sell to the Purchaser, all of the Company's right, title and interest in and to the Purchased Assets (as defined herein).

**THEREFORE** the parties agree as follows:

**ARTICLE 1  
DEFINITIONS AND PRINCIPLES OF INTERPRETATION**

**1.1 Definitions**

Whenever used in this Agreement the following words and terms shall have the meanings set out below:



“**Agreement**” means this asset purchase agreement, including all schedules, and all amendments or restatements, as permitted, and references to “**Article**”, “**Section**” or “**Schedule**” mean the specified Article or Section of, or Schedule to, this Agreement.

“**Appointment Order**” has the meaning given in Recital A.

“**Books and Records**” means books and records of the Company relating to the Purchased Assets, including financial, corporate, operations and sales books, records, books of account, sales and purchase records and all other documents, surveys, plans, files, records, assessments, correspondence, and other data and information, financial or otherwise including all data, information and databases stored on computer-related or other electronic media.

“**Business Day**” means any day other than a Saturday, Sunday or statutory holiday in the Province of Ontario.

“**Claims**” includes claims, demands, complaints, grievances, actions, applications, suits, causes of action, orders, charges, indictments, prosecutions or other similar processes.

“**Closing**” means the completion of the transactions described in Section 2.1.

“**Closing Date**” has the meaning given in Section 4.1.

“**Closing Time**” has the meaning given in Section 2.5.

“**Company**” has the meaning given in Recital A.

“**Court**” has the meaning given in Recital A.

“**Encumbrances**” means liens, charges, security interests, pledges, leases, title retention agreements, mortgages, restrictions on use, development or similar agreements, easements, rights-of-way, title defects, options or adverse claims or encumbrances of any kind or character whatsoever.

“**Governmental Authorities**” means governments, regulatory authorities, governmental departments, agencies, commissions, bureaus, officials, ministers, Crown Companies, courts, bodies, boards, tribunals or dispute settlement panels or other law or regulation-making organizations or entities: (a) having or purporting to have jurisdiction on behalf of any nation, province, territory, state or other geographic or political subdivision thereof; or (b) exercising, or entitled or purporting to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power.

“**GST/PST**” means all tax exigible pursuant to the *Excise Tax Act* (Canada) and the regulations thereunder.

“**Laws**” means currently existing applicable statutes, by-laws, rules, regulations, orders, ordinances or judgments, in each case of any Governmental Authority having the force of law.

“**Parties**” means the Vendor and the Purchaser collectively, and “**Party**” means any one of them.

“**Person**” means any individual, sole proprietorship, partnership, firm, entity, unincorporated association, unincorporated syndicate, unincorporated organization, trust, body corporate, Governmental Authority, and where the context requires any of the foregoing when they are acting as trustee, executor, administrator or other legal representative.

“**PST**” means tax payable pursuant to the Saskatchewan *Provincial Sales Tax Act*.

“**Purchase Price**” has the meaning given in Section 2.2.

“**Purchased Assets**” means all of the Company’s right, title and interest in, to and under, or relating to, the assets listed in **Schedule “A”** hereto,

“**Sales Taxes**” has the meaning set out in Section 2.4.

“**Stated Book Value**” has the meaning ascribed thereto in Section 2.6.

“**Spare Parts Inventory**” means all inventory of spare parts relating to the Purchased Assets, as listed in **Schedule “B”** hereto.

“**Vesting Order**” has the meaning given in Section 4.1.

## 1.2 **Certain Rules of Interpretation**

In this Agreement:

- (a) Currency – All references to money amounts are to lawful currency of Canada.
- (b) Governing Law – This Agreement is a contract made under and shall be governed by and construed in accordance with the Laws of the Province of Ontario and the federal Laws of Canada applicable in the Province of Ontario.
- (c) Headings – Headings of Articles and Sections are inserted for convenience of reference only and shall not affect the construction or interpretation of this Agreement.
- (d) Including – Where the word “including” or “includes” is used in this Agreement, it means “including (or includes) without limitation”.
- (e) No Strict Construction – The language used in this Agreement is the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against any Party.

- (f) Number and Gender – Unless the context otherwise requires, words importing the singular include the plural and vice versa and words importing gender include all genders.
- (g) Severability – If, in any jurisdiction, any provision of this Agreement or its application to any Party or circumstance is restricted, prohibited or unenforceable, such provision shall, as to such jurisdiction, be ineffective only to the extent of such restriction, prohibition or unenforceability without invalidating the remaining provisions of this Agreement and without affecting the validity or enforceability of such provision in any other jurisdiction or without affecting its application to other Parties or circumstances.
- (h) Time Periods – Unless otherwise specified, time periods within or following which any payment is to be made or act is to be done shall be calculated by excluding the day on which the period commences and including the day on which the period ends and by extending the period to the next Business Day following if the last day of the period is not a Business Day.

**1.3 Entire Agreement**

This Agreement and the agreements and other documents required to be delivered pursuant to this Agreement, constitute the entire agreement between the Parties and set out all the covenants, promises, warranties, representations, conditions, understandings and agreements between the Parties relating to the subject matter of this Agreement and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written. There are no covenants, promises, warranties, representations, conditions, understandings or other agreements, oral or written, express, implied or collateral between the Parties in connection with the subject matter of this Agreement except as specifically set forth in this Agreement and the Purchaser shall acquire the Purchased Assets as is and where is basis subject to the benefit of the representations and warranties in this Agreement. Any cost estimates, projections or other predictions contained or referred to in any other material that has been provided to the Purchaser or any of its affiliates, subsidiaries, agents or representatives are not and shall not be deemed to be representations or warranties of the Vendor or any of its affiliates, subsidiaries, agents, employees or representatives.

**1.4 Schedules**

The schedule to this Agreement, listed below, is an integral part of this Agreement:

<b>Schedule</b>	<b>Description</b>
Schedule "A"	Purchased Assets
Schedule "B"	Spare Parts Inventory

**ARTICLE 2  
PURCHASE AND OPTION TO PURCHASE**

**2.1 Purchase and Sale of Purchased Assets**

On the Closing Date, subject to the terms and conditions of this Agreement:

- (a) the Vendor shall transfer, sell, convey, assign and deliver unto the Purchaser, and the Purchaser shall acquire and accept, all of the Company's and the Vendor's, if any, right, title and interest in and to the Purchased Assets; and
- (b) the Purchaser shall pay the Purchase Price as provided in Section 2.2.

**2.2 Purchase Price**

The amount payable by the Purchaser for the Purchased Assets, exclusive of all applicable Sales Taxes, shall be [REDACTED] (the "**Purchase Price**").

**2.3 Satisfaction of Purchase Price**

The Purchaser shall satisfy the Purchase Price by paying to the Vendor, at the Closing Time, the Purchase Price.

Unless otherwise agreed by the Parties, all amounts payable to the Vendor shall be paid to the Vendor by bank draft drawn upon a Canadian chartered bank or by negotiable cheque payable in Canadian funds and certified by a Canadian chartered bank or trust company or by wire transfer of immediately available funds to an account specified by the Vendor.

**2.4 Sales and Transfer Taxes**

- (a) All amounts payable by the Purchaser to the Vendors pursuant to this Agreement do not include any GST, PST, or other value added, sales, use, consumption, multi-staged, personal property, customs, excise, stamp, transfer, or similar taxes, duties, or charges, (collectively "**Sales Taxes**") and all Sales Taxes are the responsibility and for the account of the Purchaser. If the Vendors are required by law or by administration thereof to collect any applicable Sales Taxes from the Purchaser, the Purchaser shall pay such Sales Taxes (by certified cheque or bank draft) to the Vendors concurrent with the payment of any consideration payable pursuant to this Agreement, unless the Purchaser qualifies for an exemption from any such applicable Sales Taxes, in which case the Purchaser shall consider accepting, in lieu of payment of such applicable Sales Taxes to the Vendors, delivery of such certificates, elections, or other documentation required by law or the administration thereof to substantiate and effect the exemption claimed by the Purchaser. Where the Vendors are not required by law or by administration thereof to collect applicable Sales Taxes, the Purchaser shall pay such Sales Taxes directly to the appropriate taxing authority and shall provide evidence of such payment to the Vendors upon request.

- (b) The Purchaser shall indemnify and save the Vendor harmless from and against all claims and demands for payment of the taxes referenced in this Section, including penalties and interest thereon and any liability or costs incurred as a result of any failure to pay such taxes when due.
- (c) The Purchaser shall, at all times, indemnify and hold harmless the Vendors, their directors, officers, and employees against and in respect of any and all amounts assessed by any taxing authority in the event that any Sales Tax exemption claimed by the Purchaser was inapplicable, invalid, or not properly made, including all taxes, interest, and penalties assessed and including all reasonable legal and professional fees incurred by the Vendors, their directors, officers, and employees as a consequence of or in relation to any such assessment. Notwithstanding anything else in this Agreement, this indemnity shall survive the Closing Date in perpetuity and shall not be subject to any caps or restrictions.

## 2.5 Closing

Closing shall take place at 10:00 a.m. (the “Closing Time”) on the Closing Date at the offices of the Vendor’s solicitors, or such other time and location as the Parties may agree upon in writing. Any tender of documents or money hereunder may be made upon the Vendor or the Purchaser or upon the solicitors acting for the Party on whom tender is desired.

## 2.6 First Option to Purchase

The Vendor shall grant to the Purchaser a first option to purchase some or all of the Spare Parts Inventory in connection with the Purchased Assets.

The purchase price for any item or items of Spare Parts Inventory shall be equal to 75% of the stated book value of the Spare Parts. For the purposes hereof, the “Stated Book Value” of a Spare Part shall be the stated book value assigned to it in Schedule “B” hereof.

The rights granted in this Section 2.6 may be exercised by the Purchaser upon receipt by the Vendor of a notice provided by the Purchaser within thirty (30) days of execution of this Agreement containing a final list of the Spare Parts Inventory it wishes to acquire together with a certified cheque for the purchase price thereof. All applicable Sales Taxes shall be paid by the Purchaser in accordance with Section 2.4 above.

## 2.7 No Assumption of Liabilities

Except as expressly set out in this Agreement, the Purchaser is not assuming, and shall not be deemed to have assumed, any liabilities, obligations, contracts (written or unwritten) or commitments of the Company or the Vendor pursuant to this Agreement or as a result of the transactions described in this Agreement.

## 2.8 Breach by Purchaser

If the Purchaser fails to comply with the terms of this Agreement on the Closing Date, the Vendor may by notice to the Purchaser elect to treat this Agreement as having been

repudiated by the Purchaser. In that event the Purchased Assets may be resold and/or reassigned by the Vendor. In addition, the Purchaser shall pay to the Vendor on demand the deficiency, if any, arising upon such resale and reassignment (after deducting the expenses of resale and reassignment) together with interest and all other damages or charges occasioned by or resulting from the default by the Purchaser.

### **ARTICLE 3 REPRESENTATIONS AND WARRANTIES OF THE PARTIES**

#### **3.1 Representations and Warranties of the Vendor**

The Vendor hereby represents and warrants to the Purchaser the matters set out below.

- (a) 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.
- (b) Subject to the issuance of the Vesting Order, the Vendor has all necessary power and authority to enter into this Agreement and to carry out its obligations under this Agreement. This Agreement constitutes a valid and binding obligation of the Vendor enforceable against it in accordance with its terms subject to any limitations imposed by Law.
- (c) The Vendor is not a non-resident of Canada for the purposes of the *Income Tax Act* (Canada).
- (d) The Vendor has not engaged in any act, and has not failed to take any action, that has or could result in an Encumbrance affecting any of the Purchased Assets (other than any charge in favour of the Vendor arising under the Appointment Order).
- (e) The Company is duly registered under Subdivision (d) of Division V of Part IX of the *Excise Tax Act* (Canada) with respect to the goods and services tax and harmonized sales tax, and its registration number is 80964 8348 RT0001.

#### **3.2 Representations and Warranties of the Purchaser**

The Purchaser hereby represents and warrants to the Vendor the matters set out below.

- (a) The Purchaser is a company governed by the Laws of Ontario.
- (b) The Purchaser has all necessary corporate power and authority to enter into this Agreement and to carry out its obligations under this Agreement. This Agreement constitutes a valid and binding obligation of the Purchaser enforceable against it in accordance with its terms subject to any limitations imposed by Law.

**ARTICLE 4  
VESTING ORDER;  
PURCHASED ASSETS ACQUIRED ON AN "AS IS, WHERE IS" BASIS**

**4.1 Vesting Order**

Unless otherwise agreed by the Parties, Closing shall occur two (2) Business Days after the issuance by the Court of a vesting or other appropriate order by the Court (the "**Vesting Order**") inter alia, approving and authorizing the Receiver to enter into and carry out the terms of this Agreement and vesting title in and to the Purchased Assets in the Purchaser on Closing pursuant to the terms and conditions of this Agreement (such Closing date, the "**Closing Date**").

**4.2 Acquisition of Assets on "As Is, Where Is" Basis**

The Purchaser hereby acknowledges and agrees as follows:

- (a) the Purchased Assets are purchased on an "as is, where is" basis at the Closing Date;
- (b) it has conducted or will conduct its own searches and investigations relating to the Purchased Assets;
- (c) it has conducted such inspections of the Purchased Assets as it deemed appropriate, satisfied itself with respect to the Purchased Assets and all matters connected with or related to the Purchased Assets, and relied entirely upon its own investigations and inspections in entering into this Agreement to acquire the Purchased Assets without regard to any information made available or provided by the Vendor or its officers, directors, employees or agents;
- (d) it will accept the Purchased Assets in their state, condition and location as at the Closing Time and except as expressly set forth in this Agreement, the Vendor makes no representations, warranties, statements or promises on its own behalf or on behalf of the Company in favour of the Purchaser concerning the Purchased Assets, which the Purchaser acknowledges are being acquired on an as-is where is basis, or the uses or applications of the Purchased Assets, whether express or implied, statutory or collateral, arising by operation of Law or otherwise, including express or implied warranties of merchantability, fitness for a particular purpose, title, description, quantity, condition or quality, and that any and all conditions and warranties expressed or implied by the *Sale of Goods Act* (Ontario) do not apply to the sale of the Purchased Assets and are hereby waived by the Purchaser; and
- (e) without limiting the generality of foregoing, it acknowledges and accepts that the description of the Purchased Assets, Spare Parts Inventory and any portion thereof contained in the Schedules hereto is for the purpose of identification only; and that no representation, warranty or condition has or will be given by the Vendor or any other party concerning completeness or the accuracy of such descriptions or with respect to any data room set up by the Vendor.

#### **4.3 Title and Risk**

The Purchased Assets shall remain at the risk of the Vendor, to the extent of its interest, until Closing. If there occurs any material damage to the Purchased Assets prior to Closing, then the Purchaser may, at its option: (a) complete the Closing without reduction of the Purchase Price, in which event all applicable proceeds of insurance or compensation shall be payable to the Purchaser; or (b) terminate the Agreement, with the result that the Parties shall be released from all obligations and liabilities arising under this Agreement.

#### **4.4 Transfer and Delivery of Purchased Assets**

The Purchaser acknowledges that it shall be the Purchaser's sole responsibility to obtain, at its own expense, any consents, approvals or any further documentation or assurances which may be required to carry out the terms of this Agreement, including in respect of any Purchased Assets subject to lease or any Purchased Assets which are not assignable without the consent or other action of a third party or parties. Notwithstanding the foregoing, the Vendor shall execute and deliver to the Purchaser all such bills of sale, assignments, instruments of transfer, deeds, assurances, consents and other documents as shall be reasonably necessary to effectively transfer to the Purchaser, or as the Purchaser may direct, all the Company's and the Vendor's, if any, right, title and interest in, to and under, or in respect of, the Purchased Assets, provided that any such documents shall contain no representations or warranties of the Vendor except for those provided herein; the Vendor shall deliver up or cause to be delivered up to the Purchaser, or as the Purchaser may direct, the Purchased Assets, free and clear of all Encumbrances by way of the Vesting Order and shall execute and deliver such documents to effect registrations, recordings and filings with public authorities as may be reasonably required in connection with the transfer of ownership to the Purchaser of the Purchased Assets.

### **ARTICLE 5 CONDITIONS PRECEDENT**

#### **5.1 Conditions Precedent of the Purchaser**

The obligations of the Purchaser to complete the purchase of the Purchased Assets under this Agreement shall be subject to the satisfaction of or compliance with, at or before the Closing Time, each of the following conditions precedent (each of which is acknowledged to be inserted for the exclusive benefit of the Purchaser and may be waived by it in whole or in part):

- (a) all of the representations and warranties of the Vendor made in or pursuant to this Agreement shall be true and correct at the Closing Time and with the same effect as if made at and as of the Closing Time (except as such representations and warranties may be affected by the occurrence of events or transactions expressly contemplated and permitted by this Agreement) and the Purchaser shall have received a certificate from a senior officer of the Vendor confirming to his knowledge, without personal liability, the truth and correctness of such representations and warranties;
- (b) the Vendor shall have performed or complied with, in all material respects, all its obligations, covenants and agreements under this Agreement;



- (c) the Vendor shall have executed and delivered, or caused to be executed and delivered, to the Purchaser on or prior to the Closing Date the documents required to complete the transactions contemplated in this Agreement as may reasonably be required by the Purchaser or its solicitors;
- (d) there shall be no order issued by Governmental Authority delaying, restricting or preventing, and no pending or threatened Claim or judicial or administrative proceeding, or investigation against any Party by any Person, for the purpose of enjoining, delaying, restricting or preventing, the consummation of the transactions contemplated in this Agreement or otherwise claiming that this Agreement or the consummation of such transactions is improper or would give rise to proceedings under any Laws;
- (e) the Appointment Order and the Vesting Order shall have been issued and entered by a court of competent jurisdiction and such orders shall not have been stayed, varied, vacated or subject to pending appeal and no order shall have been issued which restrains or prohibits the completion of the transaction contemplated hereby; and
- (f) all consents, approvals and authorizations of any Person required in connection with the completion of any of the transactions contemplated by this Agreement, the execution of this Agreement, the Closing or the performance of any of the terms and conditions of this Agreement, shall have been obtained at or before the Closing Time on terms acceptable to the Purchaser, acting reasonably.

If any of the foregoing conditions in this Section 5.1 has not been fulfilled by the Closing Time, the Purchaser may terminate this Agreement by notice to the Vendor, in which event the Purchaser is released from all obligations under this Agreement, and unless the Purchaser can show that the condition relied upon could reasonably have been performed by the Vendor, the Vendor is also released from all obligations under this Agreement. However, the Purchaser may waive compliance with any condition in whole or in part if it sees fit to do so, without prejudice to its rights of termination in the event of non-fulfilment of any other condition, in whole or in part, or to its rights to recover damages, if any, for the breach of any representation, warranty, covenant or condition contained in this Agreement.

## **5.2 Conditions Precedent of the Vendor**

The obligations of the Vendor to complete the sale of the Purchased Assets under this Agreement shall be subject to the satisfaction of or compliance with, at or before the Closing Time, each of the following conditions precedent (each of which is acknowledged to be inserted for the exclusive benefit of the Vendor and may be waived by it in whole or in part):

- (a) all of the representations and warranties of the Purchaser made in or pursuant to this Agreement shall be true and correct at the Closing Time and with the same effect as if made at and as of the Closing Time (except as such representations and warranties may be affected by the occurrence of events or transactions expressly contemplated and permitted by this Agreement) and the Vendor shall

have received a certificate from a senior officer of the Purchaser confirming to his knowledge, without personal liability, the truth and correctness of such representations and warranties;

- (b) the Purchaser shall have performed or complied with, in all material respects, all its obligations, covenants and agreements under this Agreement;
- (c) the Purchaser shall have executed and delivered or caused to be executed and delivered to the Vendor on or prior to the Closing Date the documents required to complete the transactions contemplated in this Agreement as may reasonably be required by the Vendor or its solicitors, including, without limitation, an indemnity in respect of applicable Sales Taxes as contemplated by Section 2.4 hereof;
- (d) there shall be no order issued by a Governmental Authority delaying, restricting or preventing, and no pending or threatened Claim or judicial or administrative proceeding, or investigation against any Party by any Person, for the purpose of enjoining, delaying, restricting or preventing, the consummation of the transactions contemplated in this Agreement or otherwise claiming that this Agreement or the consummation of such transactions is improper or would give rise to proceedings under any Laws; and
- (e) all consents, approvals and authorizations of any Person required in connection with the completion of any of the transactions contemplated by this Agreement, the execution of this Agreement, the Closing or the performance of any of the terms and conditions of this Agreement, shall have been obtained at or before the Closing Time on terms acceptable to the Vendor, acting reasonably.

If any of the foregoing conditions in this Section 5.2 has not been fulfilled by the Closing Time, the Vendor may terminate this Agreement by notice to the Purchaser, in which event the Vendor is released from all obligations under this Agreement, and unless the Vendor can show that the condition relied upon could reasonably have been performed by the Purchaser, the Purchaser is also released from all obligations under this Agreement. However, the Vendor may waive compliance with any condition in whole or in part if it sees fit to do so, without prejudice to its rights of termination in the event of non-fulfilment of any other condition, in whole or in part, or to its rights to recover damages, if any, for the breach of any representation, warranty, covenant or condition contained in this Agreement.

## **ARTICLE 6 OTHER COVENANTS OF THE PARTIES; GENERAL**

### **6.1 Books and Records**

At Closing, the Vendor shall deliver to the Purchaser, at the Purchaser's sole expense, copies of the Books and Records that relate to the Purchased Assets and that are in the possession of the Vendor or that are reasonably within the Vendor's control.

**6.2 Survival of Representations, Warranties and Covenants**

All representations, warranties and covenants contained in this Agreement on the part of each of the Parties shall survive the Closing, and the execution and delivery of this Agreement.

**6.3 Vendor's Capacity**

The Vendor is entering into this Agreement solely in its capacity as receiver of the undertakings, properties and assets of the Company pursuant to the Appointment Order and not in its personal or any other capacity and the Vendor and its agents, officers, directors and employees will have no personal or corporate liability under or as a result of this Agreement, or otherwise in connection herewith, save and except for any negligence, wilful misconduct or fraud. Any claim against the Vendor shall be limited to, and only be enforceable against, the assets, undertakings and properties of the Company then held by or available to it in its said capacity as receiver of the assets, undertakings and properties of the Company and shall not apply to its personal property and assets held by it in any other capacity; provided, however, that the foregoing limitation shall not apply in connection with any claim made against the Vendor for any negligence, wilful misconduct or fraud.

**6.4 Notices**

Any notice, consent or approval required or permitted to be given in connection with this Agreement shall be in writing and shall be sufficiently given if delivered (whether in person, by courier service or other personal method of delivery), or if transmitted by facsimile:

- (a) in the case of a notice to the Vendor at:

FTI Consulting Canada Inc.  
TD Waterhouse Tower  
79 Wellington St. West  
Suite 210, P.O. Box 104  
Toronto, Ontario M5K 1G8

Attention: Jamie Engen  
Fax No.: (416) 649-8100

with a copy to:

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

Attention: Edmond F.B. Lamek  
Fax No.: (416) 364-7813

- (b) in the case of a notice to the Purchaser at:

Grand River Foods Ltd.  
190 Vondrau Drive, Cambridge Ontario, N3E 1B8

Attention: Steve Hanson shanson@grandriverfood.com  
Fax No.: (519) 650-1303

With a copy to:

Miller Thomson LLP  
200 Queens Avenue, Suite 2010, London, Ontario

Attention: Glenn Jones gjones@millerthomson.com  
Fax No.: (519) 858-8511

Any notice delivered or transmitted to a Party as provided above shall be deemed to have been given and received on the day it is delivered or transmitted, provided that it is delivered or transmitted on a Business Day prior to 5:00 p.m. local time in the place of delivery or receipt. However, if the notice is delivered or transmitted after 5:00 p.m. local time or if such day is not a Business Day then the notice shall be deemed to have been given and received on the next Business Day.

Any Party may, from time to time, change its address by giving notice to the other Party in accordance with the provisions of this Section.

#### **6.5 Assignment**

The Purchaser may at any time assign any of its rights or obligations arising under this Agreement to any affiliate of the Purchaser; provided, however, that in the event of any such assignment, the Purchaser shall not be released from liability in respect of any assigned obligations. Subject to the foregoing, no Party may assign this Agreement or any rights or obligations arising under this Agreement without the prior written consent of the other Party.

#### **6.6 Expenses**

Each of the Parties shall pay their respective legal, accounting, and other professional advisory fees, costs and expenses incurred in connection with the transactions contemplated in this Agreement, and the preparation, execution and delivery of this Agreement and all documents and instruments executed pursuant to this Agreement.

#### **6.7 Time of the Essence**

Time shall be of the essence in respect of the obligations of the Parties arising prior to Closing under this Agreement.

**6.8 Enurement**

This Agreement shall enure to the benefit of and be binding upon the Parties and their respective successors (including any successor by reason of amalgamation of any Party) and permitted assigns.

**6.9 Amendment**

No amendment, supplement, modification or waiver or termination of this Agreement and, unless otherwise specified, no consent or approval by any Party, shall be binding unless executed in writing by the Party to be bound thereby.

**6.10 Further Assurances**

The Parties shall, with reasonable diligence, do all such things and provide all such reasonable assurances as may be required to consummate the transactions contemplated by this Agreement, and each Party shall provide such further documents or instruments required by any other Party as may be reasonably necessary or desirable to effect the purpose of this Agreement and carry out its provisions, whether before or after the Closing provided that the reasonable costs and expenses of any actions taken after Closing at the request of a Party shall be the responsibility of the requesting Party.

**6.11 Execution and Delivery**

This Agreement may be executed by the Parties in counterparts and may be executed and delivered by facsimile and all such counterparts and facsimiles shall together constitute one and the same agreement.


**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

**IN WITNESS OF WHICH** the Parties have executed this Agreement.

**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:

**Grand River Foods Ltd.**

By:  \_\_\_\_\_  
Name: STEVEN G. HANSON C.A.  
Title: C.O.O./C.F.O.

**SCHEDULE "A"**  
**THE PURCHASED ASSETS**

Quantity	Asset
1	2007 Formax "M-700" Patty Forming Machine s/n F9FX70 complete with take away conveyor – NFC asset #7277
1	2007 Formax "M-700" Patty Forming Machine s/n F3AZ50 complete with take away conveyor – NFC asset # 7328
2	Cuber/Scorer plus scoring tooling rack and spares – NFC asset # 7021 & 7206
2	Interleveller Paper Feed System with 20" x 48" Rubber Band Belt plus takeaway conveyors for interleveller – NFC asset # 7162, 7060, 7061 & 7082
2	Formax Patty Stackers with takeaway conveyors – NFC asset # 7085, 7086, 7333, 7095, 7096 & 7097
2	Safeline Metal Detector with Belt – NFC asset #7084 & 7209
1	Consolidated HC4400 End Load Cartoner – NFC asset # 7329A, 7329B, 7329, 7290 and 7349
1	Eagle Pack X Ray Machines – NFC asset # 7300
2	Sets of Tender Form Fill Plates (regular) for Formax 700
2	Sets of Tender Form Fill Plates (tapered) for Formax 700
1	Set of Regular Fill Plates
12	Sets Formax 700 primary plates and knockouts
6	Sets Formax 26 primary plates and knockouts
3	Formax Tooling Carts on Wheels

**SCHEDULE "B"**  
**SPARE PARTS INVENTORY**



BANK OF MONTREAL

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

Applicant

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**Proceeding commenced at TORONTO**

**MOTION RECORD**

**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., Receiver of  
NFC ACQUISITION GP INC., NFC ACQUISITION  
CORP. AND NFC LAND HOLDINGS CORP. and not  
in its personal or corporate capacity