

**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 April 19, 2012)**

April 12, 2011

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., the Court-appointed Receiver,.

TO: The Service List

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

**THE SERVICE LIST**

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

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

*Lawyers for NFC Entities*

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

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

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

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

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

*Lawyers for the Bank of Montreal*

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

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

*Lawyers for the EdgeStone Capital Partners*

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

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

*Lawyer for certain Directors of the NFC Entities*

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

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

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

**Attention: Paul Bishop / Jamie Engen / Jodi Porepa**  
Tel: 416.649.8053 / 604.601.5698 / 416.649.8070  
Fax: 416.649.8101  
[paul.bishop@fticonsulting.com](mailto:paul.bishop@fticonsulting.com) / [Jamie.Engen@fticonsulting.com](mailto:Jamie.Engen@fticonsulting.com) /  
[jodi.porepa@fticonsulting.com](mailto:jodi.porepa@fticonsulting.com)

*Monitor in respect of the NFC Entities*

**AND TO: Borden Ladner Gervais LLP**  
40 King Street West  
Scotia Plaza  
Toronto, ON M5H 3Y4

**Attention: Roger Jaipargas**  
Tel: 416.367.6266  
Fax: 416.361.7067  
[rjaipargas@blg.com](mailto:rjaipargas@blg.com)

*Counsel to Loblaw Brands Limited*

**AND TO: Trevor Coffey, Manager Portfolio Administration**  
5575 North Service Road  
Suite 300  
Burlington, ON L7L 6M1

Attention: Trevor Coffey  
[Trevor.coffey@rbc.com](mailto:Trevor.coffey@rbc.com)

*Counsel to RBC Customer Service Leasing*

**AND TO:** **Goldman Sloan Nash & Haber LLP**  
Barristers & Solicitors  
480 University Avenue, Suite 1600  
Toronto, ON M5G 1V2

**Attention: Mr. Jeffrey A. Armel**  
Tel: 416-597-6477  
Fax: 416-597-3370  
[armel@gsnh.com](mailto:armel@gsnh.com)

*Counsel to Vipond Systems Group*

**AND TO:** **McMillan LLP**  
1055 W. Georgia St.  
Royal Centre, Suite 1500  
PO Box 11117  
Vancouver, BC  
V6E 4N7

Attention: Mr. Peter J. Reardon

**McMillan LLP**  
Brookfield Place, Suite 4400  
181 Bay Street  
Toronto, Ontario  
Canada M5J 2T3

Attention: Mr. Brett Harrison

*Counsel to Nicola Crosby, Real Estate Asset Management Ltd.*

**AND TO:** **Aird & Berlis LLP**  
Brookfield Place, 181 Bay Street  
Suite 1800, Box 754  
Toronto, ON M5J 2T9  
Canada

Attention: Richard Epstein

*Counsel to Counsel McIntyre Ltd.*

**AND TO:** **Stikeman Elliott LLP**  
5300 Commerce Court West  
199 Bay Street  
Toronto, ON M5L 1B9

Attention: Alex Rose

*Counsel to Sysco Canada Inc.*

**AND TO: GE VFS Canada**  
2300 Meadowvale Blv.  
Suite 200  
Mississauga, ON  
L5N 5P9

Attention:  
[custserv@ge.com](mailto:custserv@ge.com)

**AND TO: MCAP Leasing**  
  
5575 North Service Rd. Ste 300  
Burlington, Ontario  
L7L 6M1

**AND TO: Roynat Inc.**  
  
Suite 300  
666 Burrard St.  
Vancouver, British Columbia  
V6C 2X8

**AND TO: LiftCapital Corporation**  
Valhalla Executive Suites  
300 The East Mall, Suite 401  
Toronto, ON M9B 6B7

Attention: Finella Grosso  
Tel: 416.621.5522 ext.224  
[fgrosso@liftcapital.ca](mailto:fgrosso@liftcapital.ca)

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

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

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

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

**Attention: Jack B. Berkow**  
Tel: 416.364.4082  
Fax: 416.364.3865

Email: [jberkow@berkowcohen.com](mailto:jberkow@berkowcohen.com)

**AND TO:** *Lawyers for MWS Solutions Inc.*  
**Chaitons LLP**  
5000 Yonge Street, 10th Floor  
Toronto, ON M2N 7E9

**Attention: Harvey Chaiton / Maya Poliak**  
Tel: 416.218.1129 / 416.218.1161  
Fax: 416.218.1849 / 416.218.1844  
Email: [Harvey@chaitons.com](mailto:Harvey@chaitons.com) / [Maya@Chaitons.com](mailto:Maya@Chaitons.com)

*Lawyers for Westco MultiTemp Distribution Centres Inc.*

# INDEX

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**BANK OF MONTREAL**

Applicant

- and -

**NFC ACQUISITION GP INC., NFC ACQUISITION CORP. NFC ACQUISITION L.P.,  
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Respondents

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# **TAB 1**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**BANK OF MONTREAL**

Applicant

- and -

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

Respondents

**NOTICE OF MOTION  
(returnable April 19, 2012)**

**FTI CONSULTING CANADA INC.** (“FTI”), 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 Thursday, the 19th day of April, 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) authorizing the Receiver to distribute the sum of \$412,558.92 to Westco Multi Temp Distribution Centres Inc. (“**Westco**”) on account of Westco’s statutory pre-filing lien amount and as more particularly described in the second report of the Receiver, (the “**Second Report**”) dated April 12, 2012.
2. An order substantially in the form attached hereto as **Schedule “B”**:
  - (a) approving the sale of the Purchased Assets, as defined in the purchase agreement between the Receiver and Counsel McIntyre Ltd. (the “**Purchaser**”) dated April 12, 2012, and as more particularly described in the Second Report and vesting the Purchased Assets in the Purchaser upon closing;
3. Such further and other relief as counsel may advise and to this Honourable Court may seem just.

**THE GROUNDS FOR THE MOTION ARE:**

4. The grounds set out in the Second Report and the appendices thereto.
5. Section 100 of the *Court of Justice Act*, R.S.O. 1990, c. C.43, as amended.
6. Rules 1.04, 1.05, 37 and 39 of the Rules of Civil Procedure.
7. 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 Second Report and the appendices thereto.
2. Such further and other material as counsel may advise and this Honourable Court may permit.

April 12, 2012

**FASKEN MARTINEAU DuMOULIN LLP**  
Barristers & Solicitors  
333 Bay Street, Suite 2400  
Toronto, ON M5H 2T6

Edmond B. Lamek (LSUC #33338U)  
Tel: 416 865 4506  
Fax: 416 364 7813

Caitlin Fell (LSUC #60091H)  
Tel: 416 868 3471  
Fax: 416 364 7813

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

TO: The Service List

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

**SERVICE LIST**

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

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

*Lawyers for NFC Entities*

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

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

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

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

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

*Lawyers for the Bank of Montreal*

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

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

*Lawyers for the EdgeStone Capital Partners*

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

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

*Lawyer for certain Directors of the NFC Entities*

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

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

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

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

*Monitor in respect of the NFC Entities*

**AND TO: Borden Ladner Gervais LLP**  
40 King Street West  
Scotia Plaza  
Toronto, ON M5H 3Y4

**Attention: Roger Jaipargas**  
Tel: 416.367.6266  
Fax: 416.361.7067  
[rjaipargas@blg.com](mailto:rjaipargas@blg.com)

*Counsel to Loblaw Brands Limited*

**AND TO: Trevor Coffey, Manager Portfolio Administration**  
5575 North Service Road  
Suite 300  
Burlington, ON L7L 6M1

Attention: Trevor Coffey  
[Trevor.coffey@rbc.com](mailto:Trevor.coffey@rbc.com)

*Counsel to RBC Customer Service Leasing*

**AND TO: Goldman Sloan Nash & Haber LLP**  
Barristers & Solicitors  
480 University Avenue, Suite 1600  
Toronto, ON M5G 1V2

Attention: Mr. Jeffrey A. Armel

*Counsel to Vipond Systems Group*

**AND TO: McMillan LLP**  
1055 W. Georgia St.  
Royal Centre, Suite 1500  
PO Box 11117  
Vancouver, BC  
V6E 4N7

Attention: Mr. Peter J. Reardon

**McMillan LLP**  
Brookfield Place, Suite 4400  
181 Bay Street  
Toronto, Ontario  
Canada M5J 2T3

Attention: Mr. Brett Harrison

*Counsel to Nicola Crosby, Real Estate Asset Management Ltd.*

**AND TO: Aird & Berlis LLP**  
Brookfield Place, 181 Bay Street  
Suite 1800, Box 754  
Toronto, ON M5J 2T9  
Canada

Attention: Richard Epstein

*Counsel to Counsel McIntyre Ltd.*

**AND TO: GE VFS Canada**  
2300 Meadowvale Blv.  
Suite 200

Mississauga, ON  
L5N 5P9

Attention:  
[custserv@ge.com](mailto:custserv@ge.com)

**AND TO: MCAP Leasing**

5575 North Service Rd. Ste 300  
Burlington, Ontario  
L7L 6M1

**AND TO: Roynat Inc.**

Suite 300  
666 Burrard St.  
Vancouver, British Columbia  
V6C 2X8

**AND TO: LiftCapital Corporation**  
Valhalla Executive Suites  
300 The East Mall, Suite 401  
Toronto, ON M9B 6B7

Attention: Finella Grosso  
Tel: 416.621.5522 ext.224  
[fgrosso@liftcapital.ca](mailto:fgrosso@liftcapital.ca)

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

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

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

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

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

**AND TO: Chaitons LLP**  
*Lawyers for MWS Solutions Inc.*



5000 Yonge Street, 10th Floor  
Toronto, ON M2N 7E9

**Attention: Harvey Chaiton / Maya Poliak**  
Tel: 416.218.1129 / 416.218.1161  
Fax: 416.218.1849 / 416.218.1844  
Email: [Harvey@chaitons.com](mailto:Harvey@chaitons.com) / [Maya@Chaitons.com](mailto:Maya@Chaitons.com)

*Lawyers for Westco MultiTemp Distribution Centres Inc.*

**SCHEDULE "A"**

ONTARIO  
SUPERIOR COURT OF JUSTICE  
[COMMERCIAL LIST]

THE HONOURABLE JUSTICE



) THURSDAY THE 19TH DAY  
)  
) OF APRIL, 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

**DISTRIBUTION 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, *inter alia*, an order approving the distribution of the sum of \$412,558.92 to Westco Multi Temp Distribution Centres Inc. (“**Westco**”) was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion and the Motion Record, including the second report of the Receiver (the “**Second Report**”) and on hearing the submissions of counsel for the Receiver, and the Bank of Montreal [no one appearing for any other person on the service

list], although properly served as appears from the affidavit of service of Caitlin Fell sworn April 12, 2012, and 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 Receiver be and is hereby authorized and directed to distribute the sum of \$412,558.92 to Westco on account of Westco's statutory pre-filing lien amount.

3. THIS COURT ORDERS AND DECLARES that upon such payment, the Westco Pre-Filing Lien Charge on the property of the Debtors be and is hereby discharged and vacated.

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**SCHEDULE "B"**

ONTARIO  
SUPERIOR COURT OF JUSTICE  
[COMMERCIAL LIST]

THE HONOURABLE JUSTICE ) THURSDAY THE 19TH DAY  
 )  
 ) OF APRIL, 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, *inter alia*, an order approving the transaction (the “**Transaction**”) contemplated by an agreement of purchase and sale (the “**Sale Agreement**”) between the Receiver and Counsel McIntyre Ltd. (“**Counsel McIntyre**” or the “**Purchaser**”) dated April 12, 2012, and appended to the second report of the Receiver dated April 12, 2012 (the “**Second 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 Second Report and on hearing the submissions of counsel for the Receiver, and the Bank of Montreal [no one appearing for any other person on the service list], although properly served as appears from the affidavit of service of Caitlin Fell sworn April 12, 2012, and 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, including but not limited to, those assets listed in **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), the *Personal Property Security Act* (Ontario) 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 title to each Commission Asset and Spare Part (as those terms are defined in the Sale Agreement) sold by auction and/or sale conducted by the Purchaser in accordance with the Sale Agreement shall, upon receipt by Counsel McIntyre of the purchase price there for, vest absolutely in such purchaser free and clear of and from any and all Claims and Encumbrances and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Commission Assets and Spare Parts are hereby expunged and discharged as against the Commission Assets and the Spare Parts.

5. 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 and the Receiver’s portion of the net proceeds from the auction and/or sale of the Commission Assets and Spare Parts shall stand in the place and stead of the Purchased Assets, the Commission Assets and the Spare Parts respectively, 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,



the Commission Assets and the Spare Parts with the same priority as they had immediately prior to the sale, as if the Purchased Assets, the Commission Assets, and the Spare Parts had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

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

7. THIS COURT ORDERS that, 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.

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 April 19, 2012, the Court approved the agreement of purchase and sale made as of April 12, 2012 (the “**Sale Agreement**”) between the Receiver and Counsel McIntyre 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 6 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 6 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 Company’s right, title and interest in, to and under, or relating to, all of the Company’s machinery, equipment and tools located at the Saskatoon Premises and the St. Catharines Premises including, without limitation, the assets listed in Schedule “B” to the Sale Agreement but specifically excluding the Spare Parts and the Commission Assets as defined therein.

Schedule “B” of the Sale Agreement comprises of:

#### Assets Located at the St. Catharines Facility 15 – 17 Seapark Drive St. Catharines, ON L2M 6S5

<i>Item #</i>	<i>Qty</i>	<i>Item Description</i>
1	1	<b>Hydracraft Hydraulics Stainless Steel Bucket Lift</b> s/n 23B-00292 400 lb. cap
2	1	<b>Weiler “1612B” Frozen Meat Block Grinder</b> s/n 94127 150 hp, CO2 injection
3	2	<b>Boldt “SC1411-3” 12” D x 12’ L Stainless Steel Portable Augars</b> s/n N/A & 79523 w/ Motor Drive
4	1	<b>Weiler “MG1109/M360A” Meat Grinder</b> s/n N/A w/ CO2 Injection, 2000 Lb. Cap.
5	2	<b>Hobart “4356” Meat Grinders</b> s/n B286-007 & 63880L w/ 500 Lb. Cap., CO2 Injection
6	1	<b>Hobart “4356-A” Meat Grinder</b> s/n 27-031-122 w/ 500 Lb. Cap., CO2 Injection, 20 Hp.
7	1	<b>Hobart “4356-G” Meat Grinders</b> s/n 1610580 w/ 500 Lb. Cap.
8	1	<b>Food Equipment “814” Processing Mixer</b> s/n 255 w/ 2000 Lb. Cap.

<i>Item #</i>	<i>Qty</i>	<i>Item Description</i>
9	1	<b>Weiler Grinder/Mixer</b>
10	2	<b>Safeline Metal Detectors w/ Inclineable Plastic Link Belt Conveyors</b>
11	1	<b>Stainless Steel Wrapping Table</b>
12	1	<b>Saturn Digital Platform Scale</b> Platform 36" x 36"
13	1	<b>Cardinal "205" Bench Top Digital Scale</b>
14	13	<b>Sections of Pallet Racking</b> 42" x 16'
15	1	<b>8 Step Rolling Ladder</b>
16	1	<b>Stainless Steel Incline 12" x 10' Portable Augar</b>
17	Qty	<b>Stainless Steel Frame Plastic Link Belt Conveyors</b>
18	1	<b>Toledo "PTHN" Digital Platform Scale</b> s/n 5029788 36" x 36" Platform
19	Qty	<b>Stainless Steel Meat Tubs</b> w/ 400 Lb. Cap.
20	1	<b>Champ "1800" Stainless Steel Cheese Slicer</b> s/n 5696
21	1	<b>Hobart/Colin Young Meat Grinder Converted to Cheese Grinder</b> s/n 4356 w/ 500 Lb. Cap.
22	1	<b>Rice Lake "IQ-355-2A" Stainless Steel Digital Platform Scale</b> s/n 124154 w/ 18" x 24" Platform, 75 Kg cap.
23	1	<b>Custom Stainless Steel Electric Meat Bucket Lifter/Dumper</b> w/ 400 Lb. Cap.
24	1	<b>Formax "PFM-19" Patty Forming Machine</b> s/n 514
25	1	<b>Repack "11R04-00969" Vacuum Packaging Machine</b> s/n 206007
26	1	<b>Nordale "MK 11" Box Folding &amp; Gluing Machine</b> s/n MK11E1297
27	1	<b>Domino "DPX500" Laser Coder</b> s/n 082231-0101

<i>Item #</i>	<i>Qty</i>	<i>Item Description</i>
28	1	<b>BEL "505" Box Taper/Closer</b> s/n 505-6150
29	1	<b>Interpak "USA20245S" Box Taper/Closer</b> s/n CMO120SC07
30	1	<b>CMP S-Shape Stainless Steel Frame w/ Nylon Belt Conveyor</b>
31	1	<b>Stein "HPF1144045G" Deep Fryer</b> s/n 462 Hydraulically Operated, Stein SF-11 Filter s/n 248, 40 Hp., Hydraulic System, Stein Hpp 70-160 Hydraulic Power Pack s/n 443 – 70 Hp., 60" Dia. X 60" High Stainless Steel Tank
32	1	<b>Safeline Metal Detector w/ Conveyor</b>
33	1	<b>Stainless Steel Conveyors w/ Steel Mesh Belts</b> 20" x 116"
34	1	<b>Stainless Steel Conveyors w/ Nylon Mesh Belts</b>
35	1	<b>Stainless Steel Conveyors w/ Nylon Mesh Belts</b> 40" x 10' – Corner
36	1	<b>Stainless Steel Conveyors w/ Nylon Mesh Belts</b> 20" x 10' - Corner
37	1	<b>Stainless Steel Conveyors w/ Nylon Mesh Belts</b> 40" x 60" Section
38	1	<b>Stainless Steel Conveyors w/ Nylon Mesh Belts</b> 48" x 10' Section
39	1	<b>Stainless Steel Conveyors w/ Nylon Mesh Belts</b> 40" x 10' Section
40	1	<b>Bridge "LL96" Stainless Steel Metal Bucket Lifter/Bucket</b> s/n 27288-EM
41	1	<b>Bridge Rotary "Titan-4D" Meat Ball Roll Former</b> s/n 25217-1A w/ 4 Depositing Heads
42	1	<b>Bridge Rotary "BT004" Meat Ball Roll Former</b> s/n 26006NR
43	2	<b>Formax "PFM-19" Patty Forming Machines</b> s/n 306 & 428
44	1	<b>Formax "PFM-6" Portable Patty Forming Machine</b> s/n 323
45	5	<b>Safeline Pass Through Metal Detector</b>

<i>Item #</i>	<i>Qty</i>	<i>Item Description</i>
46	2	<b>Stainless Steel Frame Nylon Link Belt Conveyors</b>
47	1	<b>Hydracraft Hydraulics Stainless Steel Bucket Lifter</b>
48	1	<b>Barron Industries "Grill IT 12Z2" Gas Fires Grilling Oven</b> s/n 12X2-2-C 21' Long x 32" wide
49	1	<b>Barron Industries "Grill IT 12Z2" Gas Fires Grilling Oven</b> s/n 12X2-2-C 21' Long x 32" wide
50	1	<b>JSO/Stein "4022" Jet Steam Oven</b> s/n 544 w/ Gas Burner, 22" Long x 40" Wide
51	1	<b>Koppens HLT8000/1000 Oven</b> s/n HLT8000/1000-153 w/ Allen Bradley Controls, 40" wide x 40' Long estimated
52	1	<b>Stein "CM40" Char Marker</b> s/n 161
53	1	<b>Heat &amp; Control "MPO-D-4021" Multi-purpose Oven</b> s/n 186272 w/ 25' Long x 40" wide
54	1	<b>Nitro Drip Curstflow Nitrogen Emmersion System</b> w/ Allen Bradley Control
55	1	<b>Sauce Enrobing Conveyor w/ Wire Mesh Conveyor</b>
56	1	<b>CMP Stainless Steel Frame w/ Nylon Belt Conveyor</b> 30" x 12' Section
57	1	<b>CMP Stainless Steel Frame w/ Nylon Belt Conveyor</b> Corner Section
58	1	<b>CMP Stainless Steel Frame w/ Nylon Belt Conveyor</b> Pocket Paddle Type Section
59	2	<b>Axiom 6 Station Packing Conveyors</b>
60	1	<b>CMP Stainless Steel Frame w/ Nylon Belt Conveyor</b> 40" x 12' Corner
61	1	<b>CMP Stainless Steel Frame w/ Nylon Belt Conveyor</b> 20" x 50" Length
62	1	<b>Capitalisati Scoring Machine</b>
63	1	<b>Triangle Packaging "A612F2RN" Form Fill and Seal Machine</b>



<i>Item #</i>	<i>Qty</i>	<i>Item Description</i>
		s/n 119390 Vibratory Infeed Conveyor, 6 Position Scale, Allen Bradley Control
64	1	<b>Kamflex "V810" Vertical Bucket Conveyor</b> s/n 20001118
65	1	<b>Waukesha "030" Sauce Tanks, Pumps and Agitator</b> s/n 32226902
66	2	<b>Frigoscandia "GS16N-08-18-12NSCR" Spiral Freezers</b> s/n 8767 & 10573
67	1	<b>Wire Mesh Conveyor 30" x 20'</b>
68	1	<b>Shuttle Conveyor w/ Nylon Link Belt Conveyor</b>
69	1	<b>CMP Nylon Link Belt Conveyor</b>
70	1	Toledo "3036" Check Weigher s/n 2790819-2VV
71	1	<b>Domino "DPX500" Laser Coder</b> s/n 082231-0068
72	1	<b>Nordale "MK1000" Packaging Machine</b> s/n MK1000EL327
73	1	<b>Gerrard Ovalstrapping "415" Strapping Machine</b> s/n 24132
74	2	<b>Emplex "55-5C3LA" Bag Sealer w/ Conveyor</b> s/n 14134 & 14121
75	1	<b>Emplex "MPS 6000" Bag Sealer</b> w/ Conveyor
76	1	<b>Hydracraft Bucket Lifter</b>
77	1	<b>Mettler Toledo "Panther" Stainless Steel Digital Floor Scale</b> 48" x 60" Stainless Steel Platform
78	1	<b>Stainless Steel Frame Nylon Link Incline Belt Conveyor</b> 12" x 8' Section
79	Qty	<b>Custom Nylon &amp; Rubber Belt Conveyors</b>
80	1	<b>SWF Machinery "GMAIT4" Carton Erection Machine</b> s/n 892 w/ Nordson Series 3500 Glue Applicator
81	1	<b>1976 Raytheon "QMP1679D-75" Industrial Microwave Tempering Line</b> s/n 0027

<i>Item #</i>	<i>Qty</i>	<i>Item Description</i>
		w/ 24' Long x 30" Wide x 30" High, Discharge Conveyor, (3) Ratheon "Mark 508" Transmitters s/n 0054, 0055, 0056
82	1	<b>Mini Mill MS-303 Vertical Milling Machine</b> s/n 01010810
83	1	<b>Force "FRV30-GH1440B" Engine Lathe</b> s/n 07878 14" Swing, 40" Between Centres
84	1	<b>Pieco 12" Vertical Rotary Grinder</b>
85	1	<b>1998 Powerfist Hydraulic Shop Press</b> s/n 267264 w/ 50 Ton Cap.
86	1	<b>Delta Pedestal Drill Press</b> s/n 013212W4063C
87	1	<b>ESAB "PCM-750i" Plasma Cutter</b> s/n PD-1702171
88	1	<b>Miller "Maxstar 150 STH" Tig Welder</b>
89	1	<b>Miller "Millermatic 252" Mig Welder</b>
90	Qty	<b>Molds and Die Plates</b>
91	Qty	<b>Laboratory Equipment</b>
92		[deleted]
93	1	<b>Raymond "Easi R45 TT" Electric Reach Truck</b> s/n EZ-A-95-04200 w/ 4500 Lb. Cap., 211" Lift, Charger
94		[deleted]
95	1	<b>Raymond "102T-F45L" Electric Pallet Walkie</b> s/n 102-11-18512 w/ Charger
96	1	<b>Hyster "65" Indoor/Outdoor LPG Forklift</b>
97		[deleted]
98	1	<b>2011 Strapack "RQ-8" Overarm Strapper</b> s/n 10010937101
99	1	<b>Damark 14" x 10" Pass Through Shrink Wrap Tunnel</b>
100	1	<b>2007 Strapack Strapper</b> s/n 07011368017
101	1	<b>Shanklin F-555 Flow wrapper</b>

<i>Item #</i>	<i>Qty</i>	<i>Item Description</i>
		s/n F0119 w/ PLC Control, Film Unwind, Sealing Blade, Scrap Winder
102	1	<b>Stainless Steel Frame Nylon Link Belt Conveyor</b>
103	1	<b>2007 Repak "RE20" Flow Wrapper</b> s/n 2040195 w/ Computerized Control
104	Lot	<b>Miscellaneous Equipment consisting of;</b> Pallet Trucks, Gravity Roller Conveyor, Stainless Steel Tables, Hand Wash Sinks, Ladders, Storage Cabinets, Rubbermaid Rolling Tubs, Hand Tools, Hard Ware racks, Torch, Makita Abrasive Cutoff Saw, Tool Boxes, Acetylene Torch and Cart, Hand Carts, Pallet Racking, Digital Scales, Rubber Maid Carts, Barrel Carts, Pedestal Floor fans, Flammable Cabinet
105	1	<b>Knud Simonsen Stainless Steel Vertical Bandsaw</b>
106	1	<b>Fomaco Auto Injection Machine</b>
107	1	<b>Marel "Platino 400" Stamping Machine</b> s/n A045363
108	1	<b>Nobles "Speedscrub" Floor Washer</b>
109	1	<b>Formax "F6" Portable Patty Making Machine</b>
110	2	<b>Custom Breeding Machines</b>
111	1	<b>Dixie Union "Dixie Vac" Packaging Machine</b>
112	1	<b>IQ 355-2A Digital Scale</b> 12" x 18" Platform
113	1	<b>Fairbanks "FB-110-2" Platform Scale</b> s/n S10314001718
114	2	<b>Jacquard Slicing Machines</b>
115	1	<b>Henneken Stainless Steel Tumbler</b>
116	1	<b>Devair 10 Hp. Upright Piston Type Air Compressor</b> s/n 52708SD
117	1	<b>1996 Gardner Denver 30 Hp Screw Type Air Compressor</b> s/n US1233
118	1	<b>Airtek Refridgerated Air Dryer</b>
119	1	<b>2009 Atlas Copco "GA37VSD" 50 Hp. Screw Type Air Compressor</b> s/n AP1577354 w/ Receiving Tank

<i>Item #</i>	<i>Qty</i>	<i>Item Description</i>
120	Qty	<b>Refridgeration Equipment Through Out The Plant Compressors and Evaporator Colls</b>
121	1	<b>1995 Cleaver Brooks "SMP-30" Spraymaster Deaerator s/n DG7299</b>
122	1	<b>Alpha Check weigher w/ conveyor</b>
123	1	<b>Cleaver Brooks "M5P-6000LV" Watertube Boiler s/n M5S-19414</b>
124	1	<b>Cleaver Brooks "M5P-6000" Watertube Boilers s/n MS-19359</b>
125	1	<b>Skyjack SJIII3015 Electric Scissor Lift</b>
126	6	<b>Sea Containers</b>
127	Qty	<b>Parts and Spare Parts Machines Located in the Sea Containers Formax Machines, Slicers, High Pressure Pumps, Molds &amp; Dies, Nordale Machine, Pallet Racking</b>
128	Qty	<b>R&amp;D Tumblers, Mixers and Other Equipment, Fridges, Freezers, Stoves, Hollimatic Mixer/Grinders, Holding Cabinets, (Stored at Migson Public Storage)</b>

**Assets Located at the Saskatoon Facility  
820 – 60 Street East  
Saskatoon, SK S7K 8G8**

<i>Item #</i>	<i>Qty</i>	<i>Item Description</i>
129	2	<b>Comairco Sullair “ES11-50H/A/SUL” 50 Hp Screw Type Air Compressors</b> s/n 003-126436 & 003-126437
130	1	<b>Quincy 1.5 Hp Piston Type Air Compressor</b> s/n 5151158
131	2	<b>Comairco Ultramatic Refridgerated Air Dryers</b> ID# 10672 & 10673
132	1	<b>Zeks “10NCDA100” Air Dryer</b> s/n 173873
133	1	<b>Comairco Sullair “LS160-100H/A” Screw Type Air Compressor</b> s/n 200703280086
134	1	<b>2006 Comairco Sullair Refridgerated Air Dryer</b> s/n 321823001
135	1	<b>Sanitizing System</b> – consisting of; National Triplex Booster Package s/n 261525, w/ 3 – 25 hp High pressure pumps, 4-Turbopower “4000N-400A-TP” Water Heaters s/n 1008125693, 0801104794, 0801104795, 0801104796, 400 gal. cap., 2 – Raypak Package Boilers
136	4	<b>Sections Heavy Duty Pallet Racking</b>
137	Lot	<b>Interpak Box Closers, Domino A Series Code Printer, Case Sealer, 6 Sections of Pallet Racking, 2 Gerrard Strapping Machines, Metal Shelving, Step Ladder, Shop Made Gantry, Electric Motors and Assorted Parts etc.</b>
138	1	<b>Amtek “4412” Microwave Tempering Line</b> s/n N/A w/3 – Amtek “AMT7510” Micro-ondes s/n A0366 & A0365 & AO367, Allen Bradley Panelview Plus PLC Control
139	1	<b>Crown Electric Pallet Stacker</b> s/n 6A194320 w/ Charger
140	1	<b>Pallet Truck</b>
141	50	<b>Sections Pallet Racking est 42” x 7’</b>
142	1	<b>Wexxar “ATH” Box Erector</b>

<i>Item #</i>	<i>Qty</i>	<i>Item Description</i>
		s/n 1563R w/ Nordson "3599V" Glue Applicator
143	1	<b>Box Mate "AT-SH" Box Erector</b> s/n 19394 w/ Nordson "Problue7" Glue Applicator
144	1	<b>Interleveller Paper Inserter (spare)</b> w/ 20" x 48" Rubber Band Belt
145	200	<b>Sections of Pallet Racking</b> 42" x 20' est. Uprights
146	6	<b>Push Back Pallet Racking Pods</b> each pod has 96 pallet positions
147	1	<b>Digital Platform Floor Scale</b> w/ Scale Head & 48" x 48" platform
148	5	<b>Western "M-2000A-NSS" Electric Platform Scales</b> s/n S0731, S0960, S3952, S0945, N/A w/ Stainless Steel Platforms
149	4	<b>Canadian Scale Hydraulic Platform Scales</b> s/n N/A w/ Stainless Steel Platforms
150	1	<b>Stainless Steel Dumper and Hopper 4000 Lb. Cap . with Augar Outfeed</b> w/ Western Digital Scale s/n S1138
151	2	<b>Nylon Link Belt Stainless Steel Frame Transfer Conveyors to Grinding Room</b> est. 24" x 50'
152	1	<b>Nylon Link Belt Stainless Steel Frame Transfer Conveyor</b> est. 12" x 40'
153	1	<b>Computer System "Repeat" PLC Control Station and Formulating Program And Product Control and Batching System</b> w/ Multiple Input Stations
154	1	<b>Weiler "1612B" Frozen Block Meat Grinder</b> s/n N/A
155	4	<b>Stainless Steel Metering/Mixing Hoppers</b> w/ Paddle Mixer and Bottom Augar Outfeed, Electric Load Cells, 3000 Lb. Cap.
156	2	<b>Stainless Steel 12" x 25' Inclined Transfer Augars</b> w/ Product feed Hopper
157	1	<b>Weiler "1612B" Frozen Block Meat Grinder</b> s/n N/A

<i>Item #</i>	<i>Qty</i>	<i>Item Description</i>
158	1	<b>Overhead Stainless Steel 24" x 30' Nylon Belt Transfer Conveyor</b>
159	2	<b>Weiler "1109B" Tempered Meat Grinders</b> s/n 021005 & 021004
160	1	<b>Stainless Steel Nylon Belted Inclined Conveyor</b> 24" x 15'
161	3	<b>Stainless Steel Inclined Augars</b>
162	2	<b>Stainless Steel Nylon Belted Transfer Conveyors</b> 12" x 20'
163	4	<b>Weiler "MG 1109" Mixer/Grinders</b> w/ CO2 Injection, Hydraulic Load Cells
164	1	<b>Weiler Meat Grinder</b> w/ Hydraulic Load Cells
165	2	<b>Electric Platform Scales</b> Electric Load Cells, Stainless Platform
166	2	<b>Stainless Steel Nylon Belt Transfer Conveyors</b> 24" x 30' est.
167	1	<b>Townsend "SK-11-320" Skinner</b>
168	3	<b>Safeline Metal Detectors w/ Nylon Belt Conveyors</b> 24" x 10' est.
169	1	<b>Weiler "1109" Meat Grinder</b> s/n 87398
170	4	Scissor Lift/Rotary Tables
171	1	<b>Electric Platform Scale Head and Platform</b>
172	4	<b>Bench Top Digital Scales</b> 18" x 24" est. Platform
173	1	<b>Hobart Cheese Grinder</b>
174	1	<b>Hobart Mixer/Grinder</b> w/ CO2 Injection, Electric Digital Scale
175	2	<b>FPEC "814" Dual Paddle Blender/Mixers</b> s/n 7167, N/A w/ CO2 Injection, Loadcells
176	4	<b>Bridge "LL-96" Vertical Elevator Tub Dumpers</b> s/n 26947-EC, 26950-EC, 26949-EC, 26948-EC
177	2	<b>Weiler "GFH" Metering Hoppers w/ Augar Discharge</b> s/n 93-184, 91-289 w/ Load Cells

<i>Item #</i>	<i>Qty</i>	<i>Item Description</i>
178	2	<b>Formax “F-26” Patty Forming Machines</b> s/n 685 & N/A
179	2	<b>Cuber/Scorer</b>
180	2	<b>Interlevellers Paper Feed System</b> w/ 20” x 48” Rubber Band Belt
181	4	<b>Air Products &amp; Chemicals Nitrogen Tunnels</b> 2-76’ Long, 1-88’ Long, 1-96’ Long, all 30” wide
182	2	<b>Safeline Metal Detectors w/ Nylon Belt Conveyors</b>
183	2	<b>Formax “GS-5” Patty Stackers</b>
184	2	<b>2007 Repak “RE20/6” Vacuum Packaging Machines</b> s/n 2060153 & 2060077
185	2	<b>2002 EBM Automated Plate Conveyor System</b> s/n 01 & 02
186	2	<b>Inline Bag Sealers w/ Nylon Link Conveyors</b>
187	3	<b>All Fill “PW-12” Inline Checkweigh Systems</b> s/n 980190, 980189, N/A
188	1	<b>Nordale “MK-2” Cartoner</b> w/ Nordson “E-3500V” Glue Applicator, Domino Code Printer
189	1	<b>BEL 150 Box Closer</b>
190	QTY	<b>CMP Transfer Conveyors</b>
191	1	<b>Consolidated “TL-20” Automatic Case Loader Sealer Labeller</b> s/n 3830-2 w/ Erector and Robotic Loader
192	1	<b>Platform Scale</b>
193	4	<b>Mettler Toledo Checkweigher</b> w/ Domino Code Printer, Domino Label Printer and Labeller
194	2	<b>Nordale “MK-2” Cartoner</b> w/ Nordson Glue Applicator, Domino Code Printer
195	2	<b>BEL “252” Box Closers</b> s/n 252-10-10952
196	2	<b>Pallet Trucks</b>
197	Qty	<b>Stainless Steel Meat Tubs (approximately 60)</b>
198	6	<b>Bench Top Digital Scales</b> 18” x 24” est. Platform
199	1	<b>Hollymatic Stainless Steel Vertical Bandsaw</b>



<i>Item #</i>	<i>Qty</i>	<i>Item Description</i>
200	2	<b>Jaquard Slicers</b>
201	2	<b>Safeline Metal detectors w/ Nylon Belt Conveyors</b>
202	1	<b>Lutetia Stainless Steel Vacuum Tumbler</b>
203	1	<b>2005 Scanvaegt "B55" Portion Cutter</b> s/n 9093-80-0469 w/ Portioning Conveyor System
204	1	<b>Multivac "R240" Vacuum Packaging Machine</b> s/n N/A
205	1	<b>Safeline Metal Detector w/ Nylon Belt Conveyor</b>
206	3	<b>Crown "RD5220-30" Electric Reach Trucks</b> s/n 1A247442, 1A247482, 1A247483 w/ 258" Lift Height, 3000 Lb. Cap., Chargers
207	2	<b>Crown "RD5220-30" Electric Reach Trucks</b> s/n 1A247440, 1A247441 w/ 288: Lift Height, 3000 Lb. Cap. Chargers
208	1	<b>Toyota "SF BCH25" Electric Forklift</b> s/n 10308 w/ Charger
209	2	<b>Crown "PE3540-60" Electric Walkies</b> s/n 6A194066, 6A194065 w/ 6000 Lb. Cap.
210	1	<b>Lift-A-Loft "MCL28.0-4" Electric Platform Lifter</b> s/n MCE-48-2111 28' Lift, Turret Style Column
211	1	<b>Infratec "1265" Meat Analyzer</b>
212	1	<b>Foss Foodscan</b>
213	Lot	<b>NSF 36" x 42" Griddles, Gas BBQ, Stainless Steel Overhead Hood, Neico Flame Boiler, etc.</b>
214	1	<b>Multivac Flip Flop Vacuum Sealer</b>
215	1	<b>Xtravac Flip Flop Vacuum Sealer</b>
216	1	<b>Strappex Strapping Machine</b>
217	1	<b>Vemag Stuffer</b>
218	Lot	<b>Maintenance Equipment</b> – consisting of; Miller Welder, King Vertical Bandsaw, Abrasive Cutoff Saw, Miller Thunderbolt XL Welder, Work Bench w/ Vice, Engine Lathe, Drill Press, Shop Press, Acetylene Torch, Pressure Washer, Vacuums, Engine Hoist, Pieco

<i>Item #</i>	<i>Qty</i>	<i>Item Description</i>
		Rotary Grinder, Jacks, Tool Boxes, Hardware Racks
219	1	<b>Bobcat “643” Skidsteer</b> s/n 5015M22319 w/ Forks and Bucket
220	1	<b>Nordale “MK-2” Cartoner</b> w/ Nordson “E-3500V” Glue Applicator, Domino Code Printer
221	2	<b>Ossid Flow Wrappers</b>
222	1	<b>Clark Encore Floor Scrubber</b>
223	Qty	<b>Stackers, Coring Machines, BeeHive, Grote Slicing Machine, Vacuum Lifter, Nitrogen Tunnels, Barrels Wave Guides, Grinder Heads, Palet Racking, Dumper Hoppers</b>
224	Lot	<b>Miscellaneous Equipment</b> – consisting of; Step Ladders, Shop Made Gantry, Manlift Cage, Rolling Stairs, Stainless Steel Work Tables, Rolling Shelves, Baggers, etc.

## **TAB 2**

**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

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

April 12, 2012

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 the Receiver,  
FTI Consulting Canada Inc.

**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

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

1. On January 17, 2012, pursuant to an application (the “**CCAA Proceedings**”) brought before the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) by NFC Acquisition GP Inc., NFC Acquisition Corp. and NFC Land Holdings Corp. (together with NFC Acquisition L.P., and New Food Classics, “**NFC**”) 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. After an unsuccessful going-concern transaction sale process for the NFC business in the CCAA Proceedings, on February 22, 2012, Bank of Montreal (“**BMO**”) brought: (i) a motion in the CCAA Proceedings to lift the stay of proceedings contained in the Initial Order to allow BMO to bring an application for the appointment a receiver of the property, assets and undertaking of NFC (the “**NFC Assets**”); and (ii) an application under section 243(1) of the *Bankruptcy and Insolvency Act* and section 101 of the *Courts of Justice Act* for the appointment of FTI as receiver (in that capacity the “**Receiver**”) of the NFC Assets. The Court granted the BMO motion and 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 “A”**.

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

4. The purpose of this Second 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 Counsel McIntyre Ltd. (“**Counsel McIntyre**”) to sell substantially all remaining manufacturing equipment owned by NFC (the “**Remaining Equipment**”) located

in both the NFC Saskatoon facility and the NFC St. Catharines facility (the “**Premises**”), to Counsel McIntyre, and for the auction by Counsel McIntyre of the office equipment, furniture and computers in the Premises, and the Saskatoon facility spare part inventory (the “**Transaction**”);

- (b) an order vesting the Remaining Equipment in Counsel McIntyre effective upon closing of the Transaction;
- (c) approval of payment of the amounts secured by the Westco Pre-Filing Lien Charge to Westco;
- (d) if, necessary, to set a schedule and process for determining the respective rights of NFC, BMO and the landlord of the Saskatoon Premises, to certain ammonia compressors located in the Saskatoon Premises; and
- (e) 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.

6. Capitalized terms not otherwise defined herein have the meanings set out in the Monitor's Pre-filing Report, the Initial Order, the Monitor's Second Report, 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, a copy of which, without appendices is attached hereto as **Appendix "B"**. Immediately following the making of Initial Order, the Monitor contacted approximately 20 parties which had been identified by NFC or by NFC's major customers as possible qualified purchasers of NFC businesses on a going-concern basis and that were likely to be acceptable to NFC's major customers.

8. After publishing the Sales Ad in the *Globe & Mail* National edition on January 20 and 23, 2012, a total of forty-one prospective purchasers were identified and in communication with the Monitor. Of those forty-one parties, twenty-two 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, a copy of which, without appendices, is attached hereto as **Appendix "C"**. As set out in the Monitor's Third Report, on February 20, 2012, BMO delivered a Sales Process Default Notice under the DIP Credit Agreement and ultimately commenced these Receivership Proceedings.



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

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

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

12. After clarifying a number of the remaining Equipment Proposals received, including certain aspects of the Counsel McIntyre proposal, the Receiver agreed, subject to Court

approval in accordance with the Receivership Order, to the terms of an agreement with Counsel McIntyre for the outright purchase of the Remaining Equipment, and a proceeds sharing arrangement for the auction by Counsel McIntyre of the office equipment furniture and computers located at the Premises, and the spare parts inventory located in the NFC Saskatoon facility (the “**CM Agreement**”). A redacted copy of the CM Agreement is attached hereto as **Appendix “D”**. An un-redacted copy of the CM Agreement will be available for the Court’s review at the return of the Receiver’s motion for the approval of the CM Agreement and Vesting Order.

13. As part of the CCAA Transaction Process, BMO commissioned an appraisal of the NFC Assets, including the Remaining Equipment, from Century Services (the “**CS Appraisal**”). A copy of the CS Appraisal, together with the Receiver’s review of the values of the Remaining Equipment in the CM Agreement will be available for the Court’s review at the return of the Receiver’s motion for the approval of the CM Agreement and Vesting Order.

14. The Receiver has reviewed the principal business terms of the CM Agreement and all of the Remaining Equipment Proposals received by it with BMO and with TD Capital Mezzanine Partners Management Ltd. (“**TD**”), the second ranking secured creditor of NFC behind BMO, and has been advised of their support for the approval of the CM Agreement sought herein. The net proceeds of realization of the CM Agreement are expected by the Receiver to exceed the recoveries under all other Remaining Equipment Proposals received by it, and to exceed the values of the Remaining Equipment set out in the CS Appraisal.

15. Based on the Receiver’s analysis and the factors, solicitation processes and considerations described above in this Report and in the Monitor’s Third Report, the Receiver

respectfully recommends that the Court approve the CM Agreement, authorize the Receiver to carry out the Transaction, and grant the Vesting Order.

#### **PAYMENT OF THE WESTCO PRE-FILING LIEN CHARGE AMOUNT**

16. A copy of the Order of the Court dated February 16, 2012 made in the CCAA Proceedings, granting the Westco Pre-Filing Lien Charge on the Property of NFC in the aggregate amount not to exceed \$450,000 to secure Westco's statutory pre-filing lien amount is attached hereto as **Appendix "E"**. Pursuant to paragraph 24 of the Receivership Order the charges granted in the CCAA Proceedings, including the Westco Pre-Filing Lien Charge were recognized and preserved in these proceedings. Following the making of the Receivership Order the Court ordered charges over the Property rank as among themselves as follows:

- (a) Administration Charge (CCAA);
- (b) Westco Pre-filing Lien Charge (CCAA);
- (c) Receiver's Charge;
- (d) Directors' Charge (CCAA);
- (e) Receiver's Borrowing Charge; and
- (f) DIP Lender's Charge (CCAA).

17. The Receiver, and prior to that time FTI as CCAA Monitor, has been working with Westco to reconcile NFC and Westco records of the hundreds of transactions between NFC and Westco that gave rise to the amounts owed to Westco as at the CCAA filing date which were secured by Westco's statutory possessory lien under the Saskatchewan *Commercial Liens Act*. As a result, Westco has provided the Receiver with a final detailed spreadsheet setting out each

of the transactions involving NFC products that were in Westco's possession on the CCAA filing date, and the amounts owing in respect of each transaction.

18. The Receiver has reviewed the final Westco spreadsheet calculations and has, with its counsel, reviewed the terms of the agreements between NFC and Westco for the shipping of NFC products to Westco's warehouse, and for handling and storage of NFC products by Westco. Based on those reviews, the Receiver is of the view that the amount properly owing to Westco which is secured by the Westco Pre-Filing Lien Charge is \$412,558.92, inclusive of GST (the "**Westco Amount**").

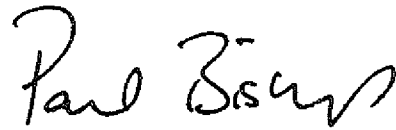
19. The Receiver has reviewed the Westco Amount and the Receiver's analysis of the Westco Prefiling Lien Charge with BMO and TD Bank, and they have consented to the payment of the Westco Amount by the Receiver.

20. Pursuant to paragraph 3(s) of the Receivership Order, the Receiver has paid all amounts which would have been secured by the Administration Charge, and as such no amounts are or will be owing under it. Other than current stub period amounts, there are no amounts outstanding under the Receiver's Charge owing to the Receiver or its counsel. The Receiver is also of the belief that payment of the Westco Amount at this time will not prejudice the remaining subordinate Court ordered charges. As of the date of this Second Report, the Receiver holds approximately \$6.5 million post Receivership accounts (the "**Post Receivership Accounts**") from the proceeds of sale of NFC's assets and collection of accounts receivable. As such, the existing Court ordered charges will remain fully secured by the funds remaining in the Post Receivership Accounts after payment of the Westco Amount.

21. Based on the foregoing, and with the consent of BMO and TD, the Receiver respectfully recommends that this Court approve the payment of the Westco Amount to Westco.

All of which is respectfully submitted this 12th day of April, 2012.

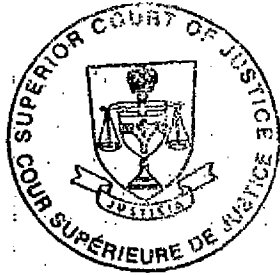
**FTI Consulting Canada Inc.**  
**Receiver of the property, assets and**  
**undertaking of NFC**

A handwritten signature in cursive script that reads "Paul Bishop".

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

# APPENDIX A



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://cfcanada.fticonsulting.com/nfc>.

**GENERAL**

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

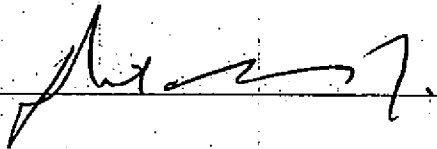
30. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtors.

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

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

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

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

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

FEB 22 2012

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:

Court File No. CV-12-0006-00CL

**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 Lamic**

LSUC No.: 34845K / 54035S

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

Facsimile: (416) 862-7661

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

# APPENDIX B



Court File No. \_\_\_\_\_

*ONTARIO*  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

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

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

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

January 16, 2012

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

Edmond F.B. Lamek  
(LSUC #33338U)  
Tel: 416 865 4506  
Fax: 416 364 7813

Caitlin E. Fell  
(LSUC #60091H)  
Tel: 416 868 3471  
Fax: 416 364 7813

Solicitors for FTI Consulting Canada  
Inc., proposed Monitor

*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  
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AND NFC LAND HOLDINGS CORP.

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

**INTRODUCTION**

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

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

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

### **PURPOSE**

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

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

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

#### **TERMS OF REFERENCE**

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

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

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

## **FTI'S QUALIFICATIONS TO ACT AS MONITOR**

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

8. Paul Bishop of FTI will have primary carriage of this matter and is a trustee within the meaning of subsection 2(1) of the *Bankruptcy and Insolvency Act (Canada)* ("BIA").

Neither FTI nor any of its representatives have been at any time in the two preceding years:

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

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

## **RELEVANT BACKGROUND INFORMATION**

### *Business and Affairs of the Applicant*

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

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

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

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

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

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

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

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

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

#### **THE APPLICANTS' BUSINESS AND THE NEED FOR A CCAA FILING**

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

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

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

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

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

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



## **FUNDING OF THE CCAA PROCEEDINGS**

### *Cash Flow Projections*

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

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

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

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

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

using the Probable and Hypothetical Assumptions<sup>1</sup> as identified by NFC and as discussed with FTI. Copies of the Cash Flow Projections and the report containing the prescribed representations of NFC regarding the preparation of the Cash Flow Projections are already attached hereto collectively as **Appendix "C"**.

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

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

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

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

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

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

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

*Proposed DIP Financing*

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

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

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

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

#### **BMO SECURITY REVIEW**

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

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

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

#### **THE PROPOSED SALES TRANSACTION PROCESS**

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

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

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

- (g) Following a brief additional period of due diligence and Data Room access, each qualified interested party will be requested to submit a final binding offer in the required form. FTI will provide qualified interested parties with a definitive sales agreement. Additional details with respect to the Transaction Process will be communicated to qualified interested parties in advance of the final bid deadline. The final proposals will be due on February 13, 2012. The Applicants, in consultation with the Monitor and BMO, will select a preferred bid on or before February 17, 2012 (the "Selected Bid") A final decision will be made by BMO on or before February 21, 2012 as to whether it will fund the remaining DIP Facility balance of \$7 million upon being satisfied, *inter alia*, with the terms of the Selected Bid
  
- (h) In the event that the Monitor and/or BMO do not agree with the preferred bidder proposed by the Applicant, the Monitor and/or BMO may propose an alternate bidder for approval from the court from the parties that submitted final proposals on or before February 13, 2012.
  
- (i) It is anticipated that the closing of one or more going concern transaction(s) involving the NFC Saskatoon operations and/or the St Catharines operations will close on or before March 15, 2012.

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



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

#### **THE COURT ORDERED CHARGES**

##### *Administrative Charge*

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

##### *Directors & Officers Charge*

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

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

*DIP Charge*

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

*Summary of the Proposed Rankings of the Court-Ordered Charges*

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

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

**CONCLUSION**

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

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

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

A handwritten signature in cursive script, appearing to read "Paul Bishop", written over a horizontal line.

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

# APPENDIX C

**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

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 the Monitor,  
FTI Consulting Canada Inc.

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,  
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NFC ACQUISITION GP INC., NFC ACQUISITION CORP. AND  
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THIRD REPORT TO THE COURT  
SUBMITTED BY FTI CONSULTING CANADA INC.,  
IN ITS CAPACITY AS MONITOR

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

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

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**

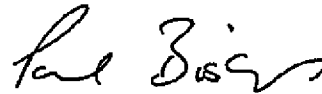
28. In light of the delivery of the Default Notice by BMO, the resignation of the NFC Board of Directors and management, the lack of funding for NFC's business and the perishable nature of NFC's inventory, the Monitor is of the view that it is vital to have an immediate and orderly shut-down of the NFC 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.

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.



# APPENDIX D

**THIS ASSET PURCHASE AGREEMENT** is made this 12th day of April, 2012

**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 -

**Counsel McIntyre Ltd.**, a corporation incorporated under the laws of the Province 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).
- D. The Purchaser intends to sell the Purchased Assets, the Commission Assets and Spare Parts to purchasers in accordance with the Purchaser's standard auction procedures, subject to the terms of this Agreement, by way of retail, wholesale or private sale (referred to collectively as "**Sales**"), followed, to the extent desired, by public auctions ("**Auction**") to be held at each of the Premises.

**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.

**“Auction”** or **“Auctions”** has the meaning given in Recital D.

**“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”** means all losses, damages, expenses, liabilities (whether accrued, actual, contingent, latent or otherwise), interest, penalties, costs, claims, complaints and demands of whatever nature or kind, including all legal fees and costs on a substantial indemnity basis.

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

**“Closing Date”** has the meaning given in Section 5.1.

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

**“Commission Assets”** means all of the Company’s right, title and interest in, to and under, or relating to, those items described in **Schedule “A”** hereto.

**“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.

**“HST”** means Ontario Harmonized Sales Tax.

**“Inspection Date”** means the day(s) on which the Purchaser inspected the Purchased Assets, Spare Parts and Commission Assets for the purpose of making its offer to the Vendor in respect of the transaction contemplated by this Agreement.

**“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.

**“Occupancy Costs”** has the meaning ascribed thereto in Section 3.1.

**“Occupancy Period”** has the meaning ascribed thereto in Section 3.1.

**“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.

**“Premises”** means the Saskatoon Premises and the St. Catharines Premises.

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

**“Purchaser Insurance Coverage”** has the meaning given in Section 4.2(e).

**“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, all of the Company’s machinery, equipment and tools located at the Saskatoon Premises and the St. Catharines Premises including, without limitation, the assets listed in **Schedule “B”** hereto but specifically excluding the Spare Parts and the Commission Assets.

“**Purchaser Indemnified Parties**” has the meaning given in Section 3.8.

“**Regulated Materials**” has the meaning given in Section 5.4.

“**Removal Deadline**” means, with respect to the Saskatoon Premises, the sixtieth (60<sup>th</sup>) day following the issuance by the Court of the Vesting Order and, with respect to the St. Catharines Premises, the ninetieth (90<sup>th</sup>) day following the issuance by the Court of the Vesting Order, or subject to Section 3.31(b), such later date as may be agreed to by the Vendor and the Purchaser.

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

“**Saskatoon Premises**” means the land and building comprising the NFC manufacturing facility located at 820 60th Street East, Saskatoon, Saskatchewan.

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

“**St. Catharines Premises**” means the land and building comprising the NFC manufacturing facility located at 15-17 Seapark Drive, St. Catharines, Ontario.

“**Vendor Indemnified Parties**” has the meaning given in Section 3.7.

“**Vendor Portion**” has the meaning given in Section 2.8.

“**Vesting Order**” has the meaning given in Section 5.1.

## 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"	Commission Assets

Schedule "B"	Purchased Assets
Schedule "C"	Spare Parts

## ARTICLE 2 PURCHASE OF PURCHASED ASSETS

### 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 and Deposit

Subject to the provisions of Section 5.5 hereof, the amount payable by the Purchaser for the Purchased Assets, exclusive of all applicable Sales Taxes, shall be (the "Purchase Price").

The Vendor acknowledges receipt of a deposit from the Purchaser in the amount (the "Deposit") on account of the Purchase Price.

### 2.3 Satisfaction of Purchase Price

The Purchaser shall satisfy the balance of the Purchase Price by paying to the Vendor, at the Closing Time, the Purchase Price, net of the amount of the Deposit and the Vendor shall apply the Deposit against 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 Vendor pursuant to this Agreement do not include any GST, PST, HST 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 Vendor is 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 Vendor concurrent with the payment of any consideration payable

pursuant to this Agreement. Notwithstanding the foregoing, the Vendor shall accept (and execute where required), in lieu of payment of applicable Sales Taxes to the Vendor, such certificates, elections (including an HST joint election certificate), or other documentation required by law or the administration thereof such that, to the extent available under applicable legislation, the Purchaser shall not be required to pay Sales Taxes to the Vendor at Closing. Where the Vendor is 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 Vendor 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 Vendor, its 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 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.

## **2.7 Breach by Purchaser**

If the Purchaser fails to comply with the terms of this Agreement on the Closing Date providing all the conditions precedent to the obligation of the Purchaser to complete the purchase of the Purchased Assets have been satisfied, 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 (after application of the Deposit), 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.

## **2.8 Sale of Spare Parts and Commission Assets**

The Purchaser hereby agrees to sell, as agent for the Vendor, the Spare Parts and Commission Assets at the Auction(s) and/or Sale(s) conducted by the Purchaser hereunder. The proceeds of sale of the Spare Parts and Commission Assets (excluding Sales Taxes (which shall be collected and remitted by the Purchaser) and buyer's premium which shall be solely for the Purchaser's account) shall be allocated 70% to the Vendor (the "**Vendor Portion**") and 30% to the Purchaser (the "**Purchaser Portion**"). The Purchaser shall pay the Vendor Portion in respect of any Sale or Auction of Spare Parts and the Commission Assets within ten (10) Business Days following the Removal Deadline in respect of the Premises at which Spare Parts and Commission Assets are situate. For greater certainty, there shall be no commission or fee payable to the Purchaser in respect of the sale of Spare Parts and Commission Assets, other than the Purchaser Portion. The Purchaser shall not be responsible for the collection of the purchase price from third party purchasers of Spare Parts or Commission Assets unless the Purchaser specifically authorizes or permits their removal from the Premises.

## **ARTICLE 3**

### **POSSESSION, DELIVERY AND REMOVAL OF PURCHASED ASSETS**

#### **3.1 Access to the Premises and Occupancy Costs**

From and after the Closing Date, the Vendor shall provide the Purchaser and its agents, employees and representatives with unrestricted exclusive access (other than the right of the Vendor to have reasonable ongoing access) to the Premises from the Closing Date to the Removal Deadline (the "**Occupancy Period**") including before and after normal business hours, for the purposes of showing the Purchased Assets, the Spare Parts and the Commission Assets to prospective purchasers and preparing for and conducting the Sales and Auctions and removing the Purchased Assets, the Spare Parts and the Commission Assets. The Vendor shall inform all other persons, firms or corporations that their access to the Premises must be coordinated through the Purchaser. On the Closing Date, the Vendor shall deliver to the Purchaser keys to the Premises, particulars of the alarm codes and names of all persons, firms or corporations who have access to the Premises. The Vendor agrees to pay all rent and shall be responsible for the continued supply of all utilities to the Premises, including, without limitation, gas, water, heat, alarm services, hydro and telephone, and for the maintenance of fire and third-party liability insurance on the Premises all at the Vendor's sole cost (the "**Occupancy Costs**") through to the Removal Deadline. Between the date of the execution of this Agreement and the Closing Date the Purchaser may have reasonable access to the Premises during business hours with the accompaniment of a representative of the Vendor.

#### **3.2 Conduct of Sales and Auctions**

The Vendor acknowledges that the Purchaser intends to sell the Purchased Assets, Spare Parts and Commission Assets by one or more Sales and Auctions at the Premises. The Vendor hereby consents to the use by the Purchaser of the phrase "Public Auction Sale, New

Food Classics” and the use of any other trade names or trade marks owned by NFC in advertisements for the Auctions during the period up to and including the date of the applicable Auction. The Purchaser shall not have the right to supplement the Purchased Assets being sold on the Premises.

### **3.3 Removal of Purchased Assets**

- (a) The Purchaser shall be responsible for removing the Purchased Assets from the Premises by the Removal Deadline and shall, subject to the terms hereof, leave that portion of the Premises occupied by the Purchased Assets in an orderly and workmanlike condition following such removal. The Vendor shall supervise the removal of the Purchased Assets from the Premises. Should the Purchaser abandon, fail to remove or fail to cause any of the Purchased Assets to be removed from the Premises, the Purchaser shall reimburse the Vendor for the costs incurred by the Vendor with the preparation, removal and shipping of such Purchased Assets. The disassembling and moving of Purchased Assets will be conducted at the expense of the Purchaser. Notwithstanding the foregoing or anything to the contrary, it is understood and agreed that:
  - (i) The Purchaser shall not be responsible for the removal of any of NFC books, records or documents which may be located at the Premises;
  - (ii) The Purchaser shall not be responsible for the removal, restoration (including the filling of any pits) or repair of any pre-existing garbage, debris or damage at the Premises; and
  - (iii) The Purchaser shall be entitled to abandon and shall not be required to remove or dispose of any of the Spare Parts and/or Commission Assets not removed from the Premises.
- (b) Subject to Section 3.3 hereof, after completion of the Auction or Sale by the Purchaser at a Premises, the Purchaser shall supervise the removal of all of the Purchased Assets, Spare Parts and Commission Assets (to the extent Spare Parts and Commission Assets are sold and removed from the Premises) from the Premises, which removal shall be at no cost to the Vendor and shall be done in a workmanlike manner, consistent with good industrial practice, and completed by the Removal Deadline, or such later date as may be agreed to by the Vendor and the Purchaser. If the Removal Deadline is extended at the request of the Purchaser in respect of a particular Premises, then the Purchaser shall be responsible for and shall pay to, and indemnify the Vendor for, all actual occupancy costs of such Premises during such additional occupancy period on a per diem basis.
- (c) The Purchaser shall be responsible for leaving those portions of the Premises affected by the activities and occupation of the Purchaser and any persons removing Purchased Assets, Spare Parts and Commission Assets following a Sale or Auction in an orderly manner and workmanlike condition, including the

placement of absorbent material on the floors and/or to broom sweep spills of oil, lubricants, grease or any other liquid after removal of the Purchased Assets, Spare Parts of Commission Assets, but only with respect to any spill, that occurs during the Occupancy Period, including during the removal of a Purchased Asset, Spare Parts or Commission Assets and except for any spills caused by the Vendor, its agents, employees or invitees. The Purchaser shall remedy or repair any condition resulting from the removal of Purchased Assets, Spare Parts or Commission Assets and except for any spills caused by the Vendor, its agents, employees or invitees in accordance with industry standards, including without limitation, having all electrical wires and air/water/other lines removed and/or capped to the buss bar/nearest wall, all bolts "blown off", all oil and other lubricants and fluids being removed from the machines and their pits and subsequently disposed of, but only to the extent that such oil, lubricants, grease, fluids, or other liquids were not, as of the commencement of the Occupancy Period, located in such pits or otherwise caused by the Purchaser and/or its invitees. The obligations of the Purchaser under this Agreement extend only to the portions of the Premises utilized by the Purchaser or by purchasers removing Purchased Assets, Spare Parts or Commission Assets.

#### 3.4 Regulated Materials

Notwithstanding the foregoing or anything to the contrary, no provision of this Agreement shall be construed so as to require the Purchaser to investigate, clean up, remove or remedy any adverse or other environmental condition existing at the Premises, or to be responsible for any environmental liabilities, or be liable for the investigation, clean up or remediation of any environmental liabilities, including any cost relating to any investigation, clean up or remediation of such environmental condition or liability or any Regulated Materials (as hereinafter defined) or other adverse environmental condition existing at, under, on or near the Premises, or contained in the Purchased Assets, Spare Parts or Commission Assets save and except to the extent that the Purchaser or its agents, employees, invitees and guests have caused a spill of such Regulated Materials at, under, on or near the Premises. For greater certainty, it is acknowledged and confirmed that the Purchaser shall not be responsible, liable for or shall otherwise be required to handle or move any or all Regulated Materials relating to, contained in or forming part of the Purchased Assets, Spare Parts or Commission Assets or otherwise located at, on or around the Premises. For the purposes of this Agreement, "**Regulated Materials**" means any substance or material that is or becomes prohibited, controlled or regulated by any governmental authority whether federal, provincial, regional, municipal or local, including, without limitation, any paints, solvents, PCBs, asbestos, contaminants, pollutants, dangerous substances, toxic substances, designated substances, controlled products, wastes, hazardous wastes, subject wastes, regulated materials, dangerous goods or petroleum, its derivatives, by-products or other hydrocarbons, all as defined in or pursuant to any laws, regulations, by-laws, guidelines, policies, approvals, permits or orders rendered by any governmental authority.

Nothing in this Agreement shall oblige the Purchaser and the Purchaser shall not, in fact, be liable for any environmental obligations or liabilities which are existing obligations or liabilities of NFC. The Vendor acknowledges that during the Occupancy Period, the Purchaser is not in care, management, possession or control of the Premises as contemplated by any

environmental laws, regulations, by-law, guidelines, policies, approvals, permits or orders of any governmental authority.

### **3.5 Procedures for Removal of Purchased Assets**

The Purchaser shall implement procedures satisfactory to the Vendor and shall supervise the removal of Purchased Assets, Spare Parts and Commission Assets from the Premises by purchasers of Purchased Assets in accordance with the "Procedures For Equipment Removal" set out in the Purchaser's proposal to the Vendor dated March 9, 2012. The Purchaser shall be responsible for the compliance by purchasers from it with the "Procedures for Equipment Removal".

### **3.6 Phone Numbers**

Throughout the Occupancy Period, the Vendor agrees, at its own expense, to maintain NFC's main telephone numbers and at least one telephone line serving each of the Premises in working order which will be forwarded to a telephone number designated by the Purchaser, if required by the Purchaser.

### **3.7 Purchaser's Indemnities**

Purchaser agrees to indemnify and save harmless the Vendor and its representatives and advisors from and against all Claims, suffered or incurred by any of them from and after the date hereof as a result of or arising directly or indirectly out of or in connection with any negligence or misconduct of the Purchaser or its employees, contractors, licencees, agents or invitees during the Occupancy Period, including, without limitation, failure to comply with the Purchaser's "Procedures for Equipment Removal".

In addition to any other provision for indemnification by the Purchaser contained in this Agreement, the Purchaser will indemnify and save harmless the Vendor and its directors, officers, employees, agents and advisors (collectively, the "**Vendor Indemnified Parties**") from and against: all Claims incurred by the Vendor Indemnified Parties directly or indirectly resulting from and arising out of or relating to any breach of any covenant of the Purchaser contained in this Agreement or from any inaccuracy or misrepresentation in any representation or warranty set forth in this Agreement by the Purchaser including all Claims incurred by the Vendor Indemnified Parties directly or indirectly as a result of the Purchaser not collecting or remitting the Transfer Taxes. The provisions of this Section 3.7 will inure to the benefit of the Vendor Indemnified Parties and their respective successors and assigns.

### **3.8 Vendor's Indemnities**

The Vendor agrees to indemnify and save harmless the Purchaser and its directors, officers, employees, agents and advisors (collectively, the "**Purchaser Indemnified Parties**") from and against all Claims suffered or incurred by the Purchaser Indemnified Parties directly or indirectly resulting from and arising out of or relating to any breach of any covenant of the Vendor contained in this Agreement or from any inaccuracy or misrepresentation in any representation or warranty set forth in this Agreement by the Vendor. The provisions of this

Section 3.8 will inure to the benefit of the Purchaser Indemnified Parties and their respective successors and assigns.

**ARTICLE 4**  
**REPRESENTATIONS AND WARRANTIES OF THE PARTIES**

**4.1 Representations and Warranties of the Vendor**

The Vendor hereby represents and warrants to the Purchaser the matters set out below, all of which shall survive the completion of the transaction contemplated hereby.

- (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 books and records of the Company indicate that the Company is 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.
- (e) Since the date of the Appointment Order, the Vendor has not authorized any person to use the Purchased Assets to manufacture products, and to the Vendor's knowledge, the Purchased Assets have not been used by any person to manufacture products; and
- (f) To the Vendor's knowledge, the Purchased Assets, Spare Parts and Commission Assets remain at the Premises in substantially the same form and condition as when inspected by the Purchaser, subject only to such alterations as have been disclosed by the Vendor to the Purchaser prior to the date of this Agreement.

**4.2 Representations and Warranties of the Purchaser**

The Purchaser hereby represents and warrants to the Vendor the matters set out below, all of which shall survive the completion of the transaction contemplated hereby.

- (a) The Purchaser is a company governed by the Laws of Ontario.
- (b) The Purchaser is not a non-resident of Canada for the purposes of the *Income Tax Act* (Canada).

- (c) The Purchaser 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 86222 8863 RT0001.
- (d) 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.
- (e) The Purchaser (or its agent) will secure, on or before Closing, a certificate of insurance in the amount of \$2,000,000 in respect of the Purchaser's occupancy of the Premises, the conduct of Sales and Auctions at the Premises and the removal of Purchased Assets from the Premises ("**Purchaser Insurance Coverage**").

**ARTICLE 5**  
**VESTING ORDER;**  
**PURCHASED ASSETS ACQUIRED ON AN "AS IS, WHERE IS" BASIS**

**5.1 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 Vendor to enter into and carry out the terms of this Agreement and vesting title in and to the Purchased Assets in the Purchaser free and clear of all Encumbrances on Closing pursuant to the terms and conditions of this Agreement (such Closing date, the "**Closing Date**"). The Vendor agrees that:

- (a) It shall use its commercially reasonable best efforts to obtain the Vesting Order within fifteen (15) days following the date of execution of this Agreement, failing which, at the sole option of the Purchaser, this Agreement may be terminated and the Deposit returned to it without interest, set-off or deduction. Notwithstanding the foregoing, the Purchaser shall be entitled to extend the time required for the Vendor to obtain the Vesting Order for a period of up to forty-five days from the date hereof;
- (b) The form and content of the Vesting Order shall be satisfactory to Purchaser, acting reasonably; and
- (c) The Vendor shall, in its application to the Court for the Vesting Order, use its commercially reasonable best efforts to ensure that the amount of the Purchase Price is redacted so as to ensure that it is not publicly disclosed in any materials filed by the Vendor in connection with its application to the Court for the Vesting Order.

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

Subject to terms of this Agreement, the Purchaser hereby acknowledges and agrees as follows:

- (a) the Purchased Assets are being purchased on an “as is, where is” basis at the Inspection 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 Inspection Date 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 (subject to the terms hereof), 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, 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.

### **5.3 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; (b) complete the Closing with an adjustment to the Purchase Price as contemplated by Section 5.5; or (c) terminate the Agreement, with the result that the Parties shall be released from all obligations and liabilities arising under this Agreement.

### **5.4 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. Provided however, the Vendor

shall be exclusively responsible, at its own expense, to obtain, prior to the Closing Time, the consent or release of interest of any third party in respect of any Purchased Assets subject to a lease (or other similar financing arrangement) 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.

### **5.5 Adjustment to Purchase Price**

Notwithstanding anything contained in this Agreement to the contrary, the Purchased Assets shall be in the same condition, location, quantity and quality as the same existed when they were previously inspected by the Purchaser on the Inspection Date.

Subject to the provisions of Section 5.3, if there is any damage to or loss of any Purchased Asset or if the Vendor is not permitted, is prevented or is not able or entitled to convey a Purchased Asset to the Purchaser in accordance with the terms hereof (a "**Removed Purchased Asset**"), then the Purchase Price shall be reduced by the dollar amount corresponding to the Removed Purchased Asset, as set out in Schedule "B" hereto under the heading "*Section 5.5 Amount*".

## **ARTICLE 6 CONDITIONS PRECEDENT**

### **6.1 Conditions Precedent to the Obligation of the Purchaser to Close**

The obligations of the Purchaser to complete the purchase of the Purchased Assets and the transactions contemplated by 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 6.1 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 the Deposit returned to the Purchaser without interest, set-off or deduction, 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.

## **6.2 Conditions Precedent to the Obligation of the Vendor to Close**

The obligations of the Vendor to complete the sale of the Purchased Assets and the transactions contemplated by 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;
- (b) the Purchaser shall have performed or complied with, in all material respects, all its obligations, covenants and agreements under this Agreement;
- (c) The Vendor is satisfied in all respects with the Purchaser Insurance Coverage;
- (d) 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;
- (e) 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
- (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 Vendor, acting reasonably.

If any of the foregoing conditions in this Section 6.2 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 7 OTHER COVENANTS OF THE PARTIES; GENERAL

### 7.1 Books and Records

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

## 7.2 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.

## 7.3 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.

## 7.4 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 T 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:

c/o Counsel RB Capital, LLC  
267 Central Avenue  
White Plains, NY 10606

Attention: Jonathan Reich  
Fax. No.: (914) 614-1801

With a copy to:

Aird & Berlis LLP  
181 Bay Street, Suite 1800  
Toronto, ON M5J 2T9

Attention: Kenneth R. Rosenstein  
Fax. No.: (416) 863-1515

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.

#### **7.5 Assignment**

No Party may assign this Agreement or any rights or obligations arising under this Agreement without the prior written consent of the other Party.

#### **7.6 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.

#### **7.7 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.

#### **7.8 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.

**7.9 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.

**7.10 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.

**7.11 Execution and Delivery**

This Agreement may be executed by the Parties in counterparts and may be executed and delivered by facsimile or PDF and all such counterparts, facsimiles and/or PDFs 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: Paul Bishop  
Title: Senior Managing Director

**COUNSEL McINTYRE LTD.**

By: \_\_\_\_\_  
Name: Jonathan Reich  
Title: President

By: \_\_\_\_\_  
Name:  
Title:

**SCHEDULE "A"**  
**COMMISSION ASSETS**

ALL OFFICE EQUIPMENT, OFFICE FURNITURE, COMPUTERS AND COMPUTER  
SYSTEMS LOCATED AT THE PREMISES.

**SCHEDULE "B" - PURCHASED ASSETS**

Saskatoon Facility  
820 – 60 Street East  
Saskatoon, SK S7K 8G8

<i>Item #</i>	<i>Qty</i>	<i>Item Description</i>	<i>Sec</i>
1	2	<b>Comairco Sullair "ES11-50H/A/SUL" 50 Hp Screw Type Air Compressors</b> s/n 003-126436 & 003-126437	
2	1	<b>Quincy 1.5 Hp Piston Type Air Compressor</b> s/n 5151158	
3	2	<b>Comairco Ultramatic Refridgerated Air Dryers</b> ID# 10672 & 10673	
4	1	<b>Zeks "10NCDA100" Air Dryer</b> s/n 173873	
5	1	<b>Comairco Sullair "LS160-100H/A" Screw Type Air Compressor</b> s/n 200703280086	
6	1	<b>2006 Comairco Sullair Refridgerated Air Dryer</b> s/n 321823001	
7	1	<b>Sanitizing System – consisting of;</b> National Triplex Booster Package s/n 261525, w/ 3 – 25 hp High pressure pumps, 4-Turbopower "4000N-400A-TP" Water Heaters s/n 1008125693, 0801104794, 0801104795, 0801104796, 400 gal. cap., 2 – Raypak Package Boilers	
8	4	<b>Sections Heavy Duty Pallet Racking</b>	
9	Lot	<b>Interpak Box Closers, Domino A Series Code Printer, Case Sealer, 6 Sections of Pallet Racking, 2 Gerrard Strapping Machines, Metal Shelving, Step Ladder, Shop Made Gantry, Electric Motors and Assorted Parts etc.</b>	
10	1	<b>Amtek "4412" Microwave Tempering Line</b> s/n N/A w/3 – Amtek "AMT7510" Micro-ondes s/n A0366 & A0365 & AO367, Allen Bradley Panelview Plus PLC Control	
11	1	<b>Crown Electric Pallet Stacker</b> s/n 6A194320 w/ Charger	



Saskatoon Facility  
 820 - 60 Street East  
 Saskatoon, SK S7K 8G8

<i>Item #</i>	<i>Qty</i>	<i>Item Description</i>	<i>Sec</i>
12	1	<b>Pallet Truck</b>	
13	50	<b>Sections Pallet Racking est 42" x 7'</b>	
14	1	<b>Wexxar "ATH" Box Erector</b> s/n 1563R w/ Nordson "3599V" Glue Applicator	
15	1	<b>Box Mate "AT-SH" Box Erector</b> s/n 19394 w/ Nordson "Problue7" Glue Applicator	
16	1	<b>Interleveller Paper Inserter (spare)</b> w/ 20" x 48" Rubber Band Belt	
17	200	<b>Sections of Pallet Racking</b> 42" x 20' est. Uprights	
18	6	<b>Push Back Pallet Racking Pods</b> each pod has 96 pallet positions	
19	1	<b>Digital Platform Floor Scale</b> w/ Scale Head & 48" x 48" platform	
20	5	<b>Western "M-2000A-NSS" Electric Platform Scales</b> s/n S0731, S0960, S3952, S0945, N/A w/ Stainless Steel Platforms	
21	4	<b>Canadian Scale Hydraulic Platform Scales</b> s/n N/A w/ Stainless Steel Platforms	
22	1	<b>Stainless Steel Dumper and Hopper 4000 Lb. Cap . with Augar Outfeed</b> w/ Western Digital Scale s/n S1138	
23	2	<b>Nylon Link Belt Stainless Steel Frame Transfer Conveyors to Grinding Room</b> est. 24" x 50'	
24	1	<b>Nylon Link Belt Stainless Steel Frame Transfer Conveyor</b> est. 12" x 40'	
25	1	<b>Computer System "Repeat" PLC Control Station and Formulating Program And Product Control and Batching System</b> w/ Multiple Input Stations	

Saskatoon Facility  
 820 - 60 Street East  
 Saskatoon, SK. S7K 8G8

<i>Item #</i>	<i>Qty</i>	<i>Item Description</i>	<i>Sect</i>
26	1	Weiler "1612B" Frozen Block Meat Grinder s/n N/A	
27	4	Stainless Steel Metering/Mixing Hoppers w/ Paddle Mixer and Bottom Auger Outfeed, Electric Load Cells, 3000 Lb. Cap.	
28	2	Stainless Steel 12" x 25' Inclined Transfer Augars w/ Product feed Hopper	
29	1	Weiler "1612B" Frozen Block Meat Grinder s/n N/A	
30	1	Overhead Stainless Steel 24" x 30' Nylon Belt Transfer Conveyor	
31	2	Weiler "1109B" Tempered Meat Grinders s/n 021005 & 021004	
32	1	Stainless Steel Nylon Belted Inclined Conveyor 24" x 15'	
33	3	Stainless Steel Inclined Augars	
34	2	Stainless Steel Nylon Belted Transfer Conveyors 12" x 20'	
35	4	Weiler "MG 1109" Mixer/Grinders w/ CO2 Injection, Hydraulic Load Cells	
36	1	Weiler Meat Grinder w/ Hydraulic Load Cells	
37	2	Electric Platform Scales Electric Load Cells, Stainless Platform	
38	2	Stainless Steel Nylon Belt Transfer Conveyors 24" x 30' est.	
39	1	Townsend "SK-11-320" Skinner	
40	3	Safeline Metal Detectors w/ Nylon Belt Conveyors 24" x 10' est.	
41	1	Weiler "1109" Meat Grinder s/n 87398	
42	4	Scissor Lift/Rotary Tables	

Saskatoon Facility  
 820 -- 60 Street East  
 Saskatoon, SK S7K 8G8

<i>Item #</i>	<i>Qty</i>	<i>Item Description</i>	<i>Sec</i>
43	1	<b>Electric Platform Scale Head and Platform</b>	
44	4	<b>Bench Top Digital Scales</b> 18" x 24" est. Platform	
45	1	<b>Hobart Cheese Grinder</b>	
46	1	<b>Hobart Mixer/Grinder</b> w/ CO2 Injection, Electric Digital Scale	
47	2	<b>FPEC "814" Dual Paddle Blender/Mixers</b> s/n 7167, N/A w/ CO2 Injection, Loadcells	
48	4	<b>Bridge "LL-96" Vertical Elevator Tub Dumpers</b> s/n 26947-EC, 26950-EC, 26949-EC, 26948-EC	
49	2	<b>Weiler "GFH" Metering Hoppers w/ Augar Discharge</b> s/n 93-184, 91-289 w/ Load Cells	
50	2	<b>Formax "F-26" Patty Forming Machines</b> s/n 685 & N/A	
51	2	<b>Cuber/Scorer</b>	
52	2	<b>Interlevellers Paper Feed System</b> w/ 20" x 48" Rubber Band Belt	
53	4	<b>Air Products &amp; Chemicals Nitrogen Tunnels</b> 2-76' Long, 1-88' Long, 1-96' Long, all 30" wide	
54	2	<b>Safeline Metal Detectors w/ Nylon Belt Conveyors</b>	
55	2	<b>Formax "GS-5" Patty Stackers</b>	
56	2	<b>2007 Repak "RE20/6" Vacuum Packaging Machines</b> s/n 2060153 & 2060077	
57	2	<b>2002 EBM Automated Plate Conveyor System</b> s/n 01 & 02	
58	2	<b>Inline Bag Sealers w/ Nylon Link Conveyors</b>	
59	3	<b>All Fill "PW-12" Inline Checkweigh Systems</b> s/n 980190, 980189, N/A	

Saskatoon Facility  
 820 - 60 Street East  
 Saskatoon, SK S7K 8G8

<i>Item #</i>	<i>Qty</i>	<i>Item Description</i>	<i>Sec</i>
60	1	Nordale "MK-2" Cartoner w/ Nordson "E-3500V" Glue Applicator, Domino Code Printer	
61	1	BEL 150 Box Closer	
62	QTY	CMP Transfer Conveyors	
63	1	Consolidated "TL-20" Automatic Case Loader Sealer Labeller s/n 3830-2 w/ Erector and Robotic Loader	
64	1	Platform Scale	
65	4	Mettler Toledo Checkweigher w/ Domino Code Printer, Domino Label Printer and Labeller	
66	2	Nordale "MK-2" Cartoner w/ Nordson Glue Applicator, Domino Code Printer	
67	2	BEL "252" Box Closers s/n 252-10-10952	
68	2	Pallet Trucks	
69	Qty	Stainless Steel Meat Tubs (approximately 60)	
70	6	Bench Top Digital Scales 18" x 24" est. Platform	
71	1	Hollymatic Stainless Steel Vertical Bandsaw	
72	2	Jaquard Slicers	
73	2	Safeline Metal detectors w/ Nylon Belt Conveyors	
74	1	Lutetia Stainless Steel Vacuum Tumbler	
75	1	2005 Scanvaegt "B55" Portion Cutter s/n 9093-80-0469 w/ Portioning Conveyor System	
76	1	Multivac "R240" Vacuum Packaging Machine s/n N/A	
77	1	Safeline Metal Detector w/ Nylon Belt Conveyor	

Saskatoon Facility  
 820 - 60 Street East  
 Saskatoon, SK S7K 8G8

<i>Item #</i>	<i>Qty</i>	<i>Item Description</i>	<i>Sec</i>
78	3	<b>Crown "RD5220-30" Electric Reach Trucks</b> s/n 1A247442, 1A247482, 1A247483 w/ 258" Lift Height, 3000 Lb. Cap., Chargers	
79	2	<b>Crown "RD5220-30" Electric Reach Trucks</b> s/n 1A247440, 1A247441 w/ 288" Lift Height, 3000 Lb. Cap. Chargers	
80	1	<b>Toyota "SFBCH25" Electric Forklift</b> s/n 10308 w/ Charger	
81	2	<b>Crown "PE3540-60" Electric Walkies</b> s/n 6A194066, 6A194065 w/ 6000 Lb. Cap.	
82	1	<b>Lift-A-Loft "MCL28.0-4" Electric Platform Lifter</b> s/n MCE-48-2111 28' Lift, Turret Style Column	
83	1	<b>Infratec "1265" Meat Analyzer</b>	
84	1	<b>Foss Foodscan</b>	
85	Lot	<b>NSF 36" x 42" Griddles, Gas BBQ, Stainless Steel Overhead Hood, Neico Flame Boiler, etc.</b>	
86	1	<b>Multivac Flip Flop Vacuum Sealer</b>	
87	1	<b>Xtravac Flip Flop Vacuum Sealer</b>	
88	1	<b>Strappex Strapping Machine</b>	
89	1	<b>Vemag Stuffer</b>	
90	Lot	<b>Maintenance Equipment</b> - consisting of; Miller Welder, King Vertical Bandsaw, Abrasive Cutoff Saw, Miller Thunderbolt XL Welder, Work Bench w/ Vice, Engine Lathe, Drill Press, Shop Press, Acetylene Torch, Pressure Washer, Vacuums, Engine Hoist, Pieco Rotary Grinder, Jacks, Tool Boxes, Hardware Racks	
91	1	<b>Bobcat "643" Skidsteer</b> s/n 5015M22319 w/ Forks and Bucket	

Saskatoon Facility  
820 - 60 Street East  
Saskatoon, SK. S7K 8G8

<i>Item #</i>	<i>Qty</i>	<i>Item Description</i>	<i>Sec</i>
92	1	<b>Nordale "MK-2" Cartoner w/ Nordson "E-3500V" Glue Applicator, Domino Code Printer</b>	
93	2	<b>Ossid Flow Wrappers</b>	
94	1	<b>Clark Encore Floor Scrubber</b>	
95	Qty	<b>Stackers, Coring Machines, BeeHive, Grote Slicing Machine, Vacuum Lifter, Nitrogen Tunnels, Barrels Wave Guides, Grinder Heads, Palet Racking, Dumper Hoppers</b>	
96	Lot	<b>Miscellaneous Equipment</b> - consisting of; Step Ladders, Shop Made Gantry, Manlift Cage, Rolling Stairs, Stainless Steel Work Tables, Rolling Shelves, Baggers, etc.	

**SCHEDULE "B" - PURCHASED ASSETS**

St. Catharines Facility  
 15 – 17 Seapark Drive  
 St. Catharines, ON L2M 6S5

<i>Item #</i>	<i>Qty</i>	<i>Item Description</i>	<i>Se</i>
1	1	<b>Hydracraft Hydraulics Stainless Steel Bucket Lift</b> s/n 23B-00292 400 lb. cap	
2	1	<b>Weiler "1612B" Frozen Meat Block Grinder</b> s/n 94127 150 hp, CO2 injection	
3	2	<b>Boldt "SC1411-3" 12" D x 12' L Stainless Steel Portable Augars</b> s/n N/A & 79523 w/ Motor Drive	
4	1	<b>Weiler "MG1109/M360A" Meat Grinder</b> s/n N/A w/ CO2 Injection, 2000 Lb. Cap.	
5	2	<b>Hobart "4356" Meat Grinders</b> s/n B286-007 & 63880L w/ 500 Lb. Cap., CO2 Injection	
6	1	<b>Hobart "4356-A" Meat Grinder</b> s/n 27-031-122 w/ 500 Lb. Cap., CO2 Injection, 20 Hp.	
7	1	<b>Hobart "4356-G" Meat Grinders</b> s/n 1610580 w/ 500 Lb. Cap.	
8	1	<b>Food Equipment "814" Processing Mixer</b> s/n 255 w/ 2000 Lb. Cap.	
9	1	<b>Weiler Grinder/Mixer</b>	
10	2	<b>Safeline Metal Detectors w/ Inclineable Plastic Link Belt Conveyors</b>	
11	1	<b>Stainless Steel Wrapping Table</b>	
12	1	<b>Saturn Digital Platform Scale</b> Platform 36" x 36"	

St. Catharines Facility  
 15 - 17 Seapark Drive  
 St. Catharines, ON L2M 6S5

<i>Item #</i>	<i>Qty</i>	<i>Item Description</i>	<i>Se</i>
13	1	Cardinal "205" Bench Top Digital Scale	
14	13	Sections of Pallet Racking 42" x 16'	
15	1	8 Step Rolling Ladder	
16	1	Stainless Steel Incline 12" x 10' Portable Augar	
17	Qty	Stainless Steel Frame Plastic Link Belt Conveyors	
18	1	Toledo "PTHN" Digital Platform Scale s/n 5029788 36" x 36" Platform	
19	Qty	Stainless Steel Meat Tubs w/ 400 Lb. Cap.	
20	1	Champ "1800" Stainless Steel Cheese Slicer s/n 5696	
21	1	Hobart/Colin Young Meat Grinder Converted to Cheese Grinder s/n 4356 w/ 500 Lb. Cap.	
22	1	Rice Lake "IQ-355-2A" Stainless Steel Digital Platform Scale s/n 124154 w/ 18" x 24" Platform, 75 Kg cap.	
23	1	Custom Stainless Steel Electric Meat Bucket Lifter/Dumper w/ 400 Lb. Cap.	
24	1	Formax "PFM-19" Patty Forming Machine s/n 514	
25	1	Repack "11R04-00969" Vacuum Packaging Machine s/n 206007	
26	1	Nordale "MK 11" Box Folding & Gluing Machine s/n MK11E1297	
27	1	Domino "DPX500" Laser Coder	



St. Catharines Facility  
 15 - 17 Seapark Drive  
 St. Catharines, ON L2M 6S5

<i>Item #</i>	<i>Qty</i>	<i>Item Description</i>	<i>Se</i>
		s/n 082231-0101	
28	1	<b>BEL "505" Box Taper/Closer</b> s/n 505-6150	
29	1	<b>Interpak "USA20245S" Box Taper/Closer</b> s/n CMO120SC07	
30	1	<b>CMP S-Shape Stainless Steel Frame w/ Nylon Belt Conveyor</b>	
31	1	<b>Stein "HPF1144045G" Deep Fryer</b> s/n 462 Hydraulically Operated, Stein SF-11 Filter s/n 248, 40 Hp., Hydraulic System, Stein Hpp 70-160 Hydraulic Power Pack s/n 443 - 70 Hp., 60" Dia. X 60" High Stainless Steel Tank	
32	1	<b>Safeline Metal Detector w/ Conveyor</b>	
33	1	<b>Stainless Steel Conveyors w/ Steel Mesh Belts</b> 20" x 116"	
34	1	<b>Stainless Steel Conveyors w/ Nylon Mesh Belts</b>	
35	1	<b>Stainless Steel Conveyors w/ Nylon Mesh Belts</b> 40" x 10' - Corner	
36	1	<b>Stainless Steel Conveyors w/ Nylon Mesh Belts</b> 20" x 10' - Corner	
37	1	<b>Stainless Steel Conveyors w/ Nylon Mesh Belts</b> 40" x 60" Section	
38	1	<b>Stainless Steel Conveyors w/ Nylon Mesh Belts</b> 48" x 10' Section	
39	1	<b>Stainless Steel Conveyors w/ Nylon Mesh Belts</b> 40" x 10' Section	
40	1	<b>Bridge "LL96" Stainless Steel Metal Bucket Lifter/Bucket</b> s/n 27288-EM	
41	1	<b>Bridge Rotary "Titan-4D" Meat Ball Roll Former</b> s/n 25217-1A w/ 4 Depositing Heads	

St. Catharines Facility  
 15 - 17 Seapark Drive  
 St. Catharines, ON L2M 6S5

<i>Item #</i>	<i>Qty</i>	<i>Item Description</i>	<i>Se</i>
42	1	Bridge Rotary "BT004" Meat Ball Roll Former s/n 26006NR	
43	2	Formax "PFM-19" Patty Forming Machines s/n 306 & 428	
44	1	Formax "PFM-6" Portable Patty Forming Machine s/n 323	
45	5	Safeline Pass Through Metal Detector	
46	2	Stainless Steel Frame Nylon Link Belt Conveyors	
47	1	Hydracraft Hydraulics Stainless Steel Bucket Lifter	
48	1	Barron Industries "Grill IT 12Z2" Gas Fires Grilling Oven s/n 12X2-2-C 21' Long x 32" wide	
49	1	Barron Industries "Grill IT 12Z2" Gas Fires Grilling Oven s/n 12X2-2-C 21' Long x 32" wide	
50	1	JSO/Stein "4022" Jet Steam Oven s/n 544 w/ Gas Burner, 22" Long x 40" Wide	
51	1	Koppens HLT8000/1000 Oven s/n HLT8000/1000-153 w/ Allen Bradley Controls, 40" wide x 40' Long estimated	
52	1	Stein "CM40" Char Marker s/n 161	
53	1	Heat & Control "MPO-D-4021" Multi-purpose Oven s/n 186272 w/ 25' Long x 40" wide	
54	1	Nitro Drip Curstflow Nitrogen Emmersion System	

St. Catharines Facility  
 15 – 17 Seapark Drive  
 St. Catharines, ON L2M 6S5

<i>Item #</i>	<i>Qty</i>	<i>Item Description</i>	<i>Se</i>
		w/ Allen Bradley Control	
55	1	Sauce Enrobing Conveyor w/ Wire Mesh Conveyor	
56	1	CMP Stainless Steel Frame w/ Nylon Belt Conveyor 30" x 12' Section	
57	1	CMP Stainless Steel Frame w/ Nylon Belt Conveyor Corner Section	
58	1	CMP Stainless Steel Frame w/ Nylon Belt Conveyor Pocket Paddle Type Section	
59	2	Axiom 6 Station Packing Conveyors	
60	1	CMP Stainless Steel Frame w/ Nylon Belt Conveyor 40" x 12' Corner	
61	1	CMP Stainless Steel Frame w/ Nylon Belt Conveyor 20" x 50" Length	
62	1	Capitalisati Scoring Machine	
63	1	Triangle Packaging "A612F2RN" Form Fill and Seal Machine s/n 119390 Vibratory Infeed Conveyor, 6 Position Scale, Allen Bradley Control	
64	1	Kamflex "V810" Vertical Bucket Conveyor s/n 20001118	
65	1	Waukesha "030" Sauce Tanks, Pumps and Agitator s/n 32226902	
66	2	Frigoscandia "GS16N-08-18-12NSCR" Spiral Freezers s/n 8767 & 10573	
67	1	Wire Mesh Conveyor 30" x 20'	
68	1	Shuttle Conveyor w/ Nylon Link Belt Conveyor	

St. Catharines Facility  
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<i>Item #</i>	<i>Qty</i>	<i>Item Description</i>	<i>Se</i>
69	1	<b>CMP Nylon Link Belt Conveyor</b>	
70	1	Toledo "3036" Check Weigher s/n 2790819-2VV	
71	1	<b>Domino "DPX500" Laser Coder</b> s/n 082231-0068	
72	1	<b>Nordale "MK1000" Packaging Machine</b> s/n MK1000EL327	
73	1	<b>Gerrard Ovalstrapping "415" Strapping Machine</b> s/n 24132	
74	2	<b>Emplex "55-5C3LA" Bag Sealer w/ Conveyor</b> s/n 14134 & 14121	
75	1	<b>Emplex "MPS 6000" Bag Sealer w/ Conveyor</b>	
76	1	<b>Hydracraft Bucket Lifter</b>	
77	1	<b>Mettler Toledo "Panther" Stainless Steel Digital Floor Scale</b> 48" x 60" Stainless Steel Platform	
78	1	<b>Stainless Steel Frame Nylon Link Incline Belt Conveyor</b> 12" x 8' Section	
79	Qty	<b>Custom Nylon &amp; Rubber Belt Conveyors</b>	
80	1	<b>SWF Machinery "GMAIT4" Carton Erection Machine</b> s/n 892 w/ Nordson Series 3500 Glue Applicator	
81	1	<b>1976 Raytheon "QMP1679D-75" Industrial Microwave Tempering Line</b> s/n 0027 w/ 24' Long x 30" Wide x 30" High, Discharge Conveyor, (3) Ratheon "Mark 508" Transmitters s/n 0054, 0055, 0056	
82	1	<b>Mini Mill MS-303 Vertical Milling Machine</b> s/n 01010810	

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<i>Item #</i>	<i>Qty</i>	<i>Item Description</i>	<i>Se</i>
83	1	Force "FRV30-GH1440B" Engine Lathe s/n 07878 14" Swing, 40" Between Centres	
84	1	Pieco 12" Vertical Rotary Grinder	
85	1	1998 Powerfist Hydraulic Shop Press s/n 267264 w/ 50 Ton Cap.	
86	1	Delta Pedestal Drill Press s/n 013212W4063C	
87	1	ESAB "PCM-750i" Plasma Cutter s/n PD-1702171	
88	1	Miller "Maxstar 150 STH" Tig Welder	
89	1	Miller "Millermatic 252" Mig Welder	
90	Qty	Molds and Die Plates	
91	Qty	Laboratory Equipment	
92		[deleted]	
93	1	Raymond "Easi R45 TT" Electric Reach Truck s/n EZ-A-95-04200 w/ 4500 Lb. Cap., 211" Lift, Charger	
94		[deleted]	
95	1	Raymond "102T-F45L" Electric Pallet Walkie s/n 102-11-18512 w/ Charger	
96	1	Hyster "65" Indoor/Outdoor LPG Forklift	
97		[deleted]	
98	1	2011 Strapack "RQ-8" Overarm Strapper s/n 10010937101	
99	1	Damark 14" x 10" Pass Through Shrink Wrap Tunnel	
100	1	2007 Strapack Strapper s/n 07011368017	
101	1	Shanklin F-555 Flow wrapper s/n F0119	

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<i>Item #</i>	<i>Qty</i>	<i>Item Description</i>	<i>Se</i>
		w/ PLC Control, Film Unwind, Sealing Blade, Scrap Winder	
102	1	<b>Stainless Steel Frame Nylon Link Belt Conveyor</b>	
103	1	<b>2007 Repak "RE20" Flow Wrapper</b> s/n 2040195 w/ Computerized Control	
104	Lot	<b>Miscellaneous Equipment consisting of;</b> Pallet Trucks, Gravity Roller Conveyor, Stainless Steel Tables, Hand Wash Sinks, Ladders, Storage Cabinets, Rubbermaid Rolling Tubs, Hand Tools, Hard Ware racks, Torch, Makita Abrasive Cutoff Saw, Tool Boxes, Acetylene Torch and Cart, Hand Carts, Pallet Racking, Digital Scales, Rubber Maid Carts, Barrel Carts, Pedestal Floor fans, Flammable Cabinet	
105	1	<b>Knud Simonsen Stainless Steel Vertical Bandsaw</b>	
106	1	<b>Fomaco Auto Injection Machine</b>	
107	1	<b>Marel "Platino 400" Stamping Machine</b> s/n A045363	
108	1	<b>Nobles "Speedscrub" Floor Washer</b>	
109	1	<b>Formax "F6" Portable Patty Making Machine</b>	
110	2	<b>Custom Breeding Machines</b>	
111	1	<b>Dixie Union "Dixie Vac" Packaging Machine</b>	
112	1	<b>IQ 355-2A Digital Scale</b> 12" x 18" Platform	
113	1	<b>Fairbanks "FB-110-2" Platform Scale</b> s/n S10314001718	
114	2	<b>Jacquard Slicing Machines</b>	
115	1	<b>Henneken Stainless Steel Tumbler</b>	
116	1	<b>Devair 10 Hp. Upright Piston Type Air Compressor</b> s/n 52708SD	
117	1	<b>1996 Gardner Denver 30 Hp Screw Type Air</b>	

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<i>Item #</i>	<i>Qty</i>	<i>Item Description</i>	<i>Se</i>
		<b>Compressor</b> s/n US1233	
118	1	<b>Airtek Refridgerated Air Dryer</b>	
119	1	<b>2009 Atlas Copco "GA37VSD" 50 Hp. Screw Type Air Compressor</b> s/n AP1577354 w/ Receiving Tank	
120	Qty	<b>Refridgeration Equipment Through Out The Plant Compressors and Evaporator Colls</b>	
121	1	<b>1995 Cleaver Brooks "SMP-30" Spraymaster Deaerator</b> s/n DG7299	
122	1	<b>Alpha Check weigher w/ conveyor</b>	
123	1	<b>Cleaver Brooks "M5P-6000LV" Watertube Boiler</b> s/n M5S-19414	
124	1	<b>Cleaver Brooks "M5P-6000" Watertube Boilers</b> s/n MS-19359	
125	1	<b>Skyjack SJIII3015 Electric Scissor Lift</b>	
126	6	<b>Sea Containers</b>	
127	Qty	<b>Parts and Spare Parts Machines Located in the Sea Containers Formax Machines, Slicers, High Pressure Pumps, Molds &amp; Dies, Nordale Machine, Pallet Racking</b>	
128	Qty	<b>R&amp;D Tumblers, Mixers and Other Equipment, Fridges, Freezers, Stoves, Hollimatic Mixer/Grinders, Holding Cabinets, (Stored at Migson Public Storage)</b>	

**SCHEDULE "C"**

**SPARE PARTS**

ALL SPARE PARTS INVENTORY LOCATED IN THE SASKATOON PREMISES

12081391.5



# APPENDIX E



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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE  
MR. JUSTICE NEWBOULD

)  
)  
)

THURSDAY, THE 16TH DAY  
OF FEBRUARY, 2012

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

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

**ORDER**

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

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

**ON READING** the Notice of Motion, filed, the Affidavit of Brian Cram, sworn February 10, 2012 (the "Cram Affidavit"), filed, and the Second Report of FTI Consulting Canada Inc., in its capacity as monitor of the NFC Entities (the "Monitor"), dated February 13, 2012 (the "Second Report"), filed, and upon hearing the submissions of counsel for the NFC Entities, counsel for the Monitor, counsel for the Bank of Montreal and counsel for Westco MultiTemp Distribution Centres Inc. ("Westco"), no one appearing for any other person on the service list, although properly served as appears from the Affidavit of Elizabeth Nigro sworn February 10,

2012, filed, and upon being advised that no other persons were served with the aforementioned materials:

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

#### **SERVICE**

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

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

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

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

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

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

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

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

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

is defined in the Cram Affidavit). The Westco Pre-Filing Lien Charge shall rank in priority immediately subordinate to the Administration Charge but otherwise in priority to the Directors' Charge and the DIP Lender's Charge.

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

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

10. **THIS COURT ORDERS** that except as otherwise expressly provided for in the Initial Order, or as may be approved by this Court, the NFC Entities shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, the Westco Pre-Filing Lien Charge, unless the NFC Entities also obtain the prior written consent of the Monitor and Westco, or further Order of this Court.

11. **THIS COURT ORDERS** that the Westco Pre-Filing Lien Charge shall not be rendered invalid or unenforceable and the rights and remedies of Westco thereunder shall not otherwise be limited or impaired in any way by: (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing Agreement which binds the NFC Entities, and notwithstanding any provision to the contrary in any Agreement:

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

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

**MISCELLANEOUS**


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

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

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

FEB 16 2012

NB



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

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

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

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

Proceeding commenced at Toronto

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

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

Fax: 416.865.7380

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

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

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

**BANK OF MONTREAL**, Applicant

v.

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

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

**Proceedings commenced in Toronto**

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**MOTION RECORD**

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**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