

ONTARIO
SUPERIOR COURT OF JUSTICE
[COMMERCIAL LIST]

THE HONOURABLE) THURSDAY, THE 21st DAY
)
MR. JUSTICE WILTON-SIEGEL) OF FEBRUARY, 2013

BANK OF MONTREAL

Applicant

-and-



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

Respondents

APPROVAL AND VESTING ORDER

THIS MOTION, made by FTI Consulting Canada Inc., in its capacity as the Court-appointed receiver (the "**Receiver**") of the undertakings, property and assets of NFC ACQUISITION GP INC., NFC ACQUISITION CORP., NFC ACQUISITION L.P., NEW FOOD CLASSICS AND NFC LAND HOLDINGS CORP (collectively, the "**Debtors**"), for an order approving the transaction (the "**Transaction**") contemplated by an agreement of purchase and sale between the Receiver and Canafriac Inc. ("**Canafriac**" or the "**Purchaser**") dated December 21, 2012, (the "**Sale Agreement**"), appended to the fifth report of the Receiver dated February 6, 2013 (the "**Fifth Report**"), and vesting in the Purchaser, the Debtors' right, title and interest in and to the "Lands" as defined in the Sale Agreement and described in Schedule "B" hereto (the "**Lands**"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Fifth Report and on hearing the submissions of counsel for the Receiver and Bank of Montreal no one appearing for any other person on the service list,

although properly served as appears from the affidavit of service of Caitlin Fell sworn February 11, 2013, and filed:

1. **THIS COURT ORDERS** that the Fifth Report and the Receiver's activities as set out therein are hereby approved.
2. **THIS COURT ORDERS** that the time for service of the notice of motion and the motion record herein be and is hereby abridged and the service thereof validated, so that the motion is properly returnable today.
3. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved. The Receiver is hereby authorized and directed to take such steps and execute such documents as may be necessary or desirable for the completion of the Transaction. The Receiver and the Purchaser are hereby authorized to enter into non-material amendments to the Sale Agreement by mutual agreement in writing without further order of the Court.
4. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as Schedule "A" hereto (the "Receiver's Certificate"), all of the Debtors' right, title and interest in and to the Lands shall vest absolutely in the Purchaser, free and clear of and from any and all encumbrances, security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed or trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "Claims") including, without limiting the generality of the foregoing: (i) any Court ordered encumbrances or charges established in Court File No. CVIZ-9554-00CL or in this proceeding; (ii) all charges, security interests or claims evidenced by registrations pursuant to the Personal Property Security Act, R.S.A. 2000, c. P-7 (the "PPSA") or any other personal property registry system; (iii) those Claims listed in Schedule "C" hereto; provided that the Claims shall not include the permitted encumbrances and easements listed on Schedule "D" hereto (the "Permitted Encumbrances") and the Lands shall remain subject to the Permitted Encumbrances.
5. **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

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

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

8. THIS COURT ORDERS that, notwithstanding:

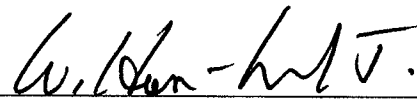
- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (the "BIA") in respect of the Debtors and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy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

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

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

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

11. 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.



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



FEB 21 2013

Schedule A- Form of Receiver's Certificate

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

BANK OF MONTREAL

Applicant

-and-

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

Respondent

RECEIVER'S CERTIFICATE

RECITALS

1. Pursuant to an Order of the Ontario Superior Court of Justice (the "Court") dated February 22, 2012 (the "Appointment Order"), FTI Consulting Canada Inc. was appointed as the receiver (the "Receiver") of the undertaking, property and assets of NFC Acquisition GP Inc., NFC Acquisition L.P., NFC Acquisition Corp., New Food Classics and NFC Land Holdings Corp. (the "Debtors").
2. Pursuant to an Order of the Court dated July 10, 2012, the Court approved the agreement of purchase and sale made as of December 12, 2012 (the "Sale Agreement") between the Receiver and Canafriac Inc. (the "Purchaser") and provided for the vesting in favour of the Purchaser of the Debtor's right, title and interest in and to the Lands (as defined in the Sale Agreement), which vesting is to be effective with respect to the Lands upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Lands; (ii) that the conditions to Closing as set out in Article 5 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.
3. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

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

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

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

By: _____

Name: ●

Title: ●

SCHEDULE "B"

LEGAL DESCRIPTION OF THE LANDS

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

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

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

SCHEDULE "C"
CLAIMS TO BE EXPUNGED

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

SCHEDULE "D"
PERMITTED ENCUMBRANCES

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

BANK OF MONTREAL

- and -

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

Applicant

Respondents

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

APPROVAL AND VESTING ORDER
(Dated Thursday, the 21st day of February, 2013)

BORDEN LADNER GERVAIS LLP

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Edmond Lamek

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Fax: (416) 361-2436

LSUC No. 33338U

Lawyers for FTI Consulting Canada Inc., in its capacity
as Court-appointed Receiver of NFC Acquisition GP
Inc., NFC Acquisition L.P., NFC Acquisition Corp.,
New Food Classics and NFC Land Holdings Corp.