

First Amendment to Warehousing Agreement

- (1) WB Frozen US, LLC
- (2) NewCold Indianapolis, LLC
- (3) FGF Brands Inc
- (4) FGF LLC

Dated January 20, 2023

This First Amendment to Warehousing Agreement is made on January 20, 2023

Between:

- (1) **WB Frozen US, LLC**, a company registered under the laws of Delaware (Company registration: 35-1134102) whose principal place of business is at 50 Maplehurst Drive, Brownsburg, IN 46112 (the "**WB Frozen**"); and
- (2) **NewCold Indianapolis, LLC**, a company registered company registered under the laws of Delaware with offices at 500 W. Madison St, Ste. 3105, Chicago, IL 60661 ("**NewCold**"); and
- (3) **FGF Brands Inc.**, a company registered under the laws of the Province of Ontario with offices at 1295 Ormont Drive, Toronto, Ontario M9L 2W6 Canada ("**FGF Brands**"); and
- (4) **FGF LLC**, a company registered under the laws of Delaware with offices at 122 Stribling San Antonio, TX, 78204-1915 United States ("**FGF LLC**").

The parties to this Amendment agree as follows:

1. **Background:**

- (A) WB Frozen and NewCold entered into a Warehouse Agreement dated 16 November 2022 (the "**Agreement**") under which NewCold agreed to provide the Services (as defined below).
- (B) WB Frozen desires that certain of its affiliates, the FGF Companies (as defined below), also benefit from the Services (as defined below) jointly with WB Frozen and NewCold desires to provide the Services (as defined below) to the FGF Companies (as defined below) jointly with WB Frozen.
- (C) The parties therefore wish to make the amendments to the Agreement as set out in this Amendment with effect from the Amendment Effective Date.

2. **Definitions and interpretation**

- 2.1 In this Amendment, unless the context otherwise requires, and the following definitions shall apply:

"**Amendment**" means this First Amendment to Warehousing Agreement (including any schedule or annexure to it).

"**Amendment Effective Date**" means 16 November 2022.

"**FGF Companies**" means FGF Brands and FGF LLC.

"**Services**" has the meaning ascribed thereto in the Agreement.

3. **Representations and warranties**

- 3.1 Each of the parties represents and warrants to each other that it has taken all corporate action necessary to authorise the execution and performance of this Amendment and such execution and performance will not cause it to be in breach of any agreement to which it is a party or any applicable law or regulation.

4. **Amendments**

- 4.1 With effect from the Amendment Effective Date the parties agree the Agreement is hereby amended as set out below where deletions to the Agreement are shown in struck through text and additions are shown in underlined text.

a)	The parties clause is amended as follows:	<p>Between:</p> <p>(1) WB Frozen US, LLC, a company registered under the laws of Delaware (Company registration: 35-1134102) whose principal place of business is at 50 Maplehurst Drive, Brownsburg, IN 46112 (the "WB Frozen"); and</p> <p>(2) NewCold Indianapolis, LLC, a company registered company registered under the laws of Delaware with offices at 500 W. Madison St, Ste. 3105, Chicago, IL 60661 ("NewCold").</p> <p>(3) FGF Brands Inc., a company registered under the laws of the Province of Ontario with offices at 1295 Ormont Drive, Toronto, Ontario M9L 2W6 Canada ("FGF Brands")</p> <p>(4) FGF LLC, a company registered under the laws of Delaware with offices at 122 Stribling San Antonio, TX, 78204-1915 United States ("FGF LLC")</p>
b)	The definition of "Buffer Percentage" is amended as follows:	"Buffer Percentage" means 0% of the Forecast Pallet spaces;
c)	A new definition of "Customer" is included:	" Customer " means WB Frozen, FGF Brands and FGF LLC jointly;
d)	A new definition of "Customer Entity" is included:	" Customer Entity " refers to any of WB Frozen, FGF Brands and/or FGF LLC, as applicable.
e)	The definition of "Change of Control" is amended as follows:	" Change of Control " means, with respect to NewCold and a Customer Entity (as the case may be), a merger, amalgamation or consolidation with another entity, as a result of which the shareholders of NewCold or a Customer Entity (as the case may be) as of the date of this Agreement collectively own less than a majority of the shares of the surviving entity or collectively do not have the right to elect a majority of the directors, or other governing body, of the surviving entity immediately after that transaction, or (ii) the sale or other transfer of all or substantially all of the assets of NewCold or any Customer Entity in any transaction or series of related transactions except for, in the case of NewCold, a sale or lease of the Warehouse;
f)	The definition of "Products" is updated as follows:	" Products " means the frozen bakery food products sent by or on behalf of any Customer Entity to the Warehouse;
g)	A new clause 1.3 is added:	1.4 In this Agreement references to a "party" shall mean NewCold or the Customer, as applicable.
h)	Clause 8.2 shall be amended as follows:	8.2 NewCold shall present to each Customer Entity, within 1 week of the end of each week (the first week beginning on the Services Commencement Date), an invoice for the Charges incurred by each of them in the preceding week together with details (in a form as reasonably specified by the Customer from time to time) of all the Products stored at the Warehouse during the preceding week. The detailed calculation of Charges based on

		the activities provided in a given week, and information necessary for any Service Credit calculation and any Minimum Annual Revenue Shortfall payment shall be attached to the invoice. NewCold shall produce a separate invoice for any Additional Services performed by NewCold pursuant to clause 5.6 within 1 week of such services being carried out by NewCold.
i)	Clause 17.3 is amended as follows:	17.3 All policies of insurance required to be maintained under clause 17.1 shall: (a) in the case of the coverages referenced in clauses 17.1 (c), (d) and (e), serve as the primary coverage and be with carriers licensed to do business in the state where the Warehouse is located; (b) name each Customer Entity as an additional insured in respect of the coverage specified in clause 17.1(d). NewCold agrees to notify Customer as soon as reasonably practicable of: (i) any cancellation of the insurance coverages referenced in clause 17.1 or (ii) any material change in such insurance coverages to Customer's detriment).
j)	A new clause 18.3 is added:	Except where otherwise expressly directed in writing by Customer with sufficient advance notice, NewCold shall pay any and all Service Credits due to Customer to WB Frozen and each of the Customer Entities acknowledge that such payment shall fully discharge NewCold's obligation to pay such Service Credits.
k)	Clause 28.5 is amended as follows:	28.5 NewCold shall be entitled to sell, lease or transfer (directly or indirectly) all or a material portion of the Warehouse (in each case, a " Transfer ") to an entity other than an Associate, or undergo a Change of Control other than to an Associate, subject to the prior written consent of the Customer, such consent not to be unreasonably withheld, conditioned or delayed and, in any event, such consent shall be deemed to have been given in full if no written objection is received by NewCold within 14 days of its notice to the Customer of its intention to sell, lease or transfer. For the purposes of this sub-clause, it shall be deemed "reasonable" for Customer to withhold, condition or delay its consent where it is evidenced that such third party is (i) of no materially lesser financial standing than NewCold as at the date of this Agreement, (ii) a competitor of any Customer Entity in the U.S. bakery products market or (iii) is likely to cause material reputational damage to any Customer Entity.
l)	Clause 28.6 is amended as follows:	<p>28.6 Any Customer Entity may assign this Agreement to a company in the Customer Group or undergo a Change of Control to a company in the Customer Group by giving written notice to NewCold provided that:</p> <p>(a) it gives NewCold prior written notice evidencing that the proposed assignee is (i) of no lesser financial standing than the applicable Customer Entity as at the date of this Agreement, (ii) not a competitor of NewCold and (iii) not likely to cause material reputational damage to NewCold. Any other assignment, transfer or Change of Control is subject to the prior written consent of NewCold, which will not be unreasonably withheld, conditioned or delayed and, in any event, such consent shall be deemed to have been given in full if no written objection is received by Customer within 14 days of its notice to NewCold of its intention to assign this Agreement or undergo a Change of Control; and</p> <p>(b) if the assignee ceases to be a company in the Customer Group the Customer shall procure that the assignee immediately assign its rights under this Agreement back to the Customer or to another company within the Customer's Group; and</p> <p>(c) any other assignment or transfer by a Customer Entity of any of its rights or obligations under this Agreement, and any other Change of Control of the Customer, shall be subject to the prior written consent of NewCold, not to be unreasonably withheld, conditioned or delayed and, in any event, such consent shall be deemed to have been given in full if no written objection is received by NewCold within 14 days of its notice to the Customer of its intention to assign or transfer;</p> <p>(d) the Customer shall reimburse NewCold in respect of any implementation costs incurred by NewCold as a result of any such assignment or Change of Control.</p>

m)	<p>Clause 30.3 is deleted and replaced with the following clause:</p>	<p>30.3 The addresses and email addresses for service of notices are:</p> <p>(a) For NewCold:</p> <p>FAO: Legal Department, Gravinnen van Nassauboulevard 105, 4811 BN Breda, Netherlands;</p> <p>legal.hq@newcold.com</p> <p>(b) For the Customer:</p> <p>FAO: Simona Ionita, 1295 Ormont Drive, Toronto, ON M9L 2W6 Canada, Email: simona.ionita@fgfbrands.com</p> <p>with a copy to: Legal Department, 1295 Ormont Drive, Toronto, ON M9L 2W6 Canada, Email: leganotices@wonderbrands.com</p> <p>Each of WB Frozen, FGF Brands and FGF LLC acknowledge and agree that a notice served to the above address or above email address shall constitute valid service of such notice by NewCold on each of WB Frozen, FGF Brands and FGF LLC.</p>
n)	<p>A new clause 42 is added:</p>	<p>42. Conduct of the Customer Entities</p> <p>42.1 Each of the Customer Entities shall be jointly and severally liable for the Customer's obligations under this Agreement.</p> <p>42.2 Each of FGF Brands and FGF LLC irrevocably appoint WB Frozen to act as their authorised representative in relation to all matters concerning this Agreement. Accordingly, save where otherwise expressly set out in this Agreement, NewCold and the Customer agree that:</p> <p>42.2.1 NewCold shall have discharged any obligation to obtain the consent of the Customer or to have consulted with the Customer or take any similar or comparable action in relation to the Customer required of the NewCold to the extent it has obtained the consent of the WB Frozen, consulted with WB Frozen or taken such similar or comparable action with WB Frozen;</p> <p>42.2.2 To the extent the Customer has an obligation to or right to obtain NewCold's consent, consult with NewCold, notify or make any request of NewCold or take any similar or comparable action in relation to NewCold in connection with this Agreement, such obligation or right shall be discharged or exercised solely by WB Frozen (including where for and on behalf of FGF Brands and FGF LLC).</p> <p>42.2.3 WB Frozen shall manage and conduct any Disputes for and on behalf of any of the Customer Entities;</p> <p>42.2.5 Where, subject to the terms of this Agreement, NewCold has any liability or payment obligation to the Customer that is directly and unequivocally related to one particular Customer Entity, it shall discharge such liability by way of payment to the applicable Customer Entity from which the liability directly relates. For example, if NewCold has liability relating to damaged Product of FGF Brands, it shall discharge such liability by way of payment to FGF Brands. However, where NewCold has any liability or payment obligation to the Customer that is not directly relating to one particular Customer Entity, then except where otherwise expressly directed in writing by Customer, NewCold shall discharge such liability by way of payment to WB Frozen and such discharge shall also discharge such liability to the extent it was owed to FGF Brands and/or FGF LLC. For example, if NewCold has liability relating to Service Credits owed, it shall discharge such liability by way of payment to WB Frozen; and</p>

		42.2.4 All requests for Additional Services shall be made by WB Frozen including where the Additional Services are to be provided in respect of Products belonging to FGF Brands and FGF LLC.																	
o)	A new clause 3 is added to Part 1 (Charges Mechanism) of Schedule 1:	3. Ordering and Invoicing Procedure 3.1 Each of the Customer Entities shall send separate orders to NewCold for Services. NewCold shall invoice each of the Customer Entities separately for the Charges relating to the Services ordered by each particular Customer Entity. Charges (or deductions) relating to one Customer Entity shall not be included on an invoice issued to another Customer Entity unless Customer has provided Newcold with express written approval. Notwithstanding the foregoing, Service Credits shall be paid in accordance with clause 18.3 of the Agreement. The provisions of this clause are subject to the successful completion of multi-customer implementation by NewCold. Notwithstanding the foregoing and for the avoidance of doubt, Customer remains jointly and severally liable for its obligation to pay invoices.																	
p)	Paragraphs 1(j) and (k) of Part 2 (Operating Specification) of Schedule 2 are amended as follows:	(j) Storage temperature: between -0.4°F to -20°F, plus or minus 3.8°F (k) Temperature of product delivered to Warehouse: 0°F to 10 °F, plus or minus 3.8°F																	
q)	Paragraph 3(a) of Part 2 (Operating Specification) of Schedule 2 is deemed deleted and replaced as follows:	(a) Inbound characteristics (i) total anticipated requirement of inbound Pallets: 561,000 Pallets/year (ii) peak 1,404 Pallets/day <table><tr><th>Year</th><th>1</th><th>2</th><th>3</th><th>4</th><th>5 and beyond</th></tr><tr><td>Handling Volume: pallets in by truck</td><td>478,125</td><td>561,000</td><td>561,000</td><td>561,000</td><td>561,000</td></tr></table>						Year	1	2	3	4	5 and beyond	Handling Volume: pallets in by truck	478,125	561,000	561,000	561,000	561,000
Year	1	2	3	4	5 and beyond														
Handling Volume: pallets in by truck	478,125	561,000	561,000	561,000	561,000														
r)	Paragraph 4(a) of Part 2 (Operating Specification) of Schedule 2 is deemed deleted and replaced as follows:	(a) Outbound characteristics (i) total anticipated requirement of outbound Pallets: 561,000 Pallets/year (ii) peak 1,680 Pallets/day <table><tr><th>Year</th><th>1</th><th>2</th><th>3</th><th>4</th><th>5 and beyond</th></tr><tr><td>Handling Volume:</td><td>478,125</td><td>561,000</td><td>561,000</td><td>561,000</td><td>561,000</td></tr></table>						Year	1	2	3	4	5 and beyond	Handling Volume:	478,125	561,000	561,000	561,000	561,000
Year	1	2	3	4	5 and beyond														
Handling Volume:	478,125	561,000	561,000	561,000	561,000														

		pallets out by truck																	
s)	The first two sentences of paragraph 5(a) of Part 2 (Operating Specification) of Schedule 2 is amended as follows:	a) The Customer Products will be stored by NewCold in the Warehouse at an agreed temperature of -0.4°F, plus or minus 3.8°F. NewCold may elect to store Product at -20°F.																	
t)	The table paragraph 5(a) of Part 2 (Operating Specification) of Schedule 2 is deemed deleted and replaced with the following table:	<table><tr><th><u>Year</u></th><th><u>1</u></th><th><u>2</u></th><th><u>3</u></th><th><u>4</u></th><th><u>5 and beyond</u></th></tr><tr><td>Forecasted average weekly storage volume of Pallet Positions in the Warehouse</td><td>28,125</td><td>33,000</td><td>33,000</td><td>33,000</td><td>33,000</td></tr></table>						<u>Year</u>	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5 and beyond</u>	Forecasted average weekly storage volume of Pallet Positions in the Warehouse	28,125	33,000	33,000	33,000	33,000
<u>Year</u>	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5 and beyond</u>														
Forecasted average weekly storage volume of Pallet Positions in the Warehouse	28,125	33,000	33,000	33,000	33,000														
u)	Paragraph 5(b) of Part 2 (Operating Specification) of Schedule 2 is amended as follows:	(b) NewCold will reserve storage positions with relevant pallet height and weight characteristics below: Height (i) 17,500 storage positions of 100" (ii) 7,750 storage positions of 90" (iii) 7,750 storage positions of 80" Weight (iv) 19,500 storage positions of max 1700 lbs. (v) 13,500 storage positions with weight limit between 2200-2600 lbs.																	
v)	The tables in paragraph 1.1 of Part 4 (Term Forecast) of Schedule 2 are deleted and replaced with the tables set out at paragraph 1 of Annex 1 of this Amendment																		

4.2 No purported variation of this Amendment shall be valid unless it is in writing and signed by or on behalf of each party.

4.3 Except as set out in clause 4, the Agreement shall continue in full force and effect.

5. Governing law and jurisdiction

5.1 This Amendment and any dispute claim or obligation (whether contractual or non-contractual) arising out of or in connection with it, its subject matter, validity, negotiation, interpretation, performance or lack thereof, termination or formation shall be governed by the laws of Delaware.

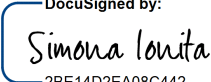
5.2 Any claims, controversies, disputes, or actions must be brought in federal court in Wilmington, New Castle, Delaware; provided that, if the federal court lacks jurisdiction, then such claims, controversies, disputes, or actions must be brought in state court in Wilmington, New Castle, Delaware. The parties consent to personal jurisdiction in Delaware for purposes of this Amendment only.

6. Waiver of a Jury Trial

6.1 Each party (for itself and its successors and assigns) irrevocably waives all rights it may have to demand a trial by jury of cause of action, proceeding, claim or counterclaim based upon, arising out of or in any way related to this Amendment, the relationship of the parties or any dispute between the parties in any legal action or proceeding of any type brought by any party to this Amendment against any other such party, whether arising in contract, tort or otherwise. Any such claim or cause of action shall be tried by a court sitting without a jury. This waiver extends to all rights to demand a trial by jury arising from any source, including but not limited to the Constitution of the United States, the Constitution of any state, common law, or any applicable statute or regulation. Each party hereby acknowledges that it is knowingly and voluntarily waiving the right to demand trial by jury.

This Amendment has been signed as of the date appearing at the head of page 1 to be effective as of the Amendment Effective Date.

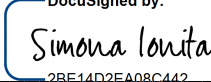
WB Frozen US, LLC

By:  DocuSigned by:
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Name: Simona Ionita

Title: VP – Supply Chain

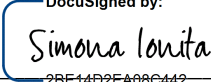
FGF Brands Inc.

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Name: Simona Ionita

Title: VP – Supply Chain

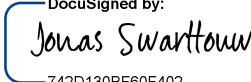
FGF LLC

By:  DocuSigned by:
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Name: Simona Ionita

Title: VP – Supply Chain

NewCold Indianapolis, LLC

By:  DocuSigned by:
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Name: Jonas Swarttouw

Title: President

NewCold Indianapolis, LLC

By:  _____
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Name: Trae Richardson

Title: Vice President

Annex

Handling IN & OUT							
<u>Year</u>	<u>Transition</u>	<u>Transition</u>	<u>Total Year 1</u>	<u>Total Year 2</u>	<u>3</u>	<u>4</u>	<u>5</u>
<u>Calendar Year</u>	<u>Q4 2022</u>	<u>Q1 2023</u>	<u>2023/2024</u>	<u>2024/2025</u>	<u>2025/2026</u>	<u>2026/2027</u>	<u>2027/2028</u>
Forecasted Handling*	42,500	95,625	478,125	561,000	561,000	561,000	561,000
Minimum Handling Guarantee by WB**	30,000	67,500	337,500	396,000	396,000	396,000	396,000
<i>Minimum Handling / Forecasted Handling</i>	<i>70.588%</i>	<i>70.588%</i>	<i>70.588%</i>	<i>70.588%</i>	<i>70.588%</i>	<i>70.588%</i>	<i>70.588%</i>

*Based on stock turn of 17 of forecasted storage volumes, transition based on stock turn of 17/4.

**Based on a stock turn of 15 combined with the minimum guaranteed storage volume, which equates to 70.588% of the Term Forecast.

Storage							
<u>Year</u>	<u>Transition</u>	<u>Transition</u>	<u>Total Year 1</u>	<u>Total Year 2</u>	<u>3</u>	<u>4</u>	<u>5</u>
<u>Calendar Year</u>	<u>Q4 2022</u>	<u>Q1 2023</u>	<u>2023/2024</u>	<u>2024/2025</u>	<u>2025/2026</u>	<u>2026/2027</u>	<u>2027/2028</u>
Forecasted Pallet Positions Utilized	10,000	22,500	28,125	33,000	33,000	33,000	33,000
Minimum Guarantee by WB*	8,000	18,000	22,500	26,400	26,400	26,400	26,400
Capacity Reserved by NewCold for WB	10,000	22,500	28,125	33,000	33,000	33,000	33,000

*80% of forecasted annual storage positions.