

Court File No.: CV-21-00655373-00CL

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

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
FIGR BRANDS, INC., FIGR NORFOLK INC.
AND CANADA'S ISLAND GARDEN INC.**

Applicants

MOTION RECORD

April 23, 2021

BENNETT JONES LLP
One First Canadian Place
Suite 3400, P.O. Box 130
Toronto, Ontario
M5X 1A4

Sean Zweig (LSO# 57307I)
Mike Shakra (LSO# 64604K)
Aiden Nelms (LSO# 74170S)

Tel: 416-863-1200
Fax: 416-863-1716

Lawyers for the Applicants

INDEX

| TAB | DESCRIPTION |
|------------|---|
| 1 | Notice of Motion |
| 2 | Affidavit of Michael Devon sworn April 23, 2021 |
| 3 | Draft Employee Claims Procedure Order |
| 4 | Draft Stay Extension and Fee Approval Order |

TAB 1

**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
FIGR BRANDS, INC., FIGR NORFOLK INC.
AND CANADA'S ISLAND GARDEN INC.**

Applicants

NOTICE OF MOTION

(Returnable April 30, 2021)

(Employee Claims Procedure Order and Stay Extension and Fee Approval Order)

The Applicants (or the "**FIGR Group**") will make a motion before the Honourable Justice Hainey of the Ontario Superior Court of Justice (Commercial List) on Friday, April 30, 2021 at 9:30 a.m. or as soon after that time as the motion can be heard.

PROPOSED METHOD OF HEARING: The motion is to be heard via videoconference as a result of the COVID-19 pandemic, the details of which can be found at Schedule "A" hereto.

THE MOTION IS FOR:

1. An order (the "**Employee Claims Procedure Order**") substantially in the form attached hereto at Tab 3 of this motion record, *inter alia*, establishing a process for the identification, determination and adjudication of Employee Claims (as defined in the Employee Claims Procedure Order) against the FIGR Group and their current and former Directors and Officers (each as defined in the Employee Claims Procedure Order) (the "**Employee Claims Procedure**").
2. An order (the "**Stay Extension and Fee Approval Order**") substantially in the form attached hereto at Tab 4 of this motion record, *inter alia*:
 - (a) abridging the time for service and filing of this notice of motion and the motion record and dispensing with service on any person other than those served;

- (b) extending the Stay Period (as defined below) until and including June 30, 2021;
 - (c) approving the Fourth Report of FTI Consulting Canada Inc. ("**FTI**") in its capacity as monitor (in such capacity, the "**Monitor**"), to be filed (the "**Fourth Report**"), and the activities of the Monitor described therein; and
 - (d) approving the fees and disbursements of the Monitor and its counsel as set out in the Affidavits of Jeffrey Rosenberg and Ryan Jacobs, respectively, attached to the Fourth Report.
3. Such further and other relief as this Honourable Court deems just.

THE GROUNDS FOR THIS APPLICATION ARE:

Background

4. The FIGR Group operates two (2) licensed cannabis facilities – one in Simcoe, Ontario and the other in Charlottetown, Prince Edward Island. Since commencing operations, both facilities have been cash flow negative and the FIGR Group has been dependant on certain of its affiliate companies for funding.
5. Facing significant liquidity issues, potential enforcement action from certain of its creditors and the cessation of its business, the FIGR Group sought protection under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 ("**CCAA**") pursuant to an order (the "**Initial Order**") on January 21, 2021 (the "**CCAA Proceedings**").
6. Among other things, the Initial Order:
- (a) appointed FTI as Monitor;
 - (b) granted an initial 10-day stay of proceedings in favour of the Applicants and their Directors and Officers (the "**Stay Period**");
 - (c) approved the Applicants' ability to borrow under a debtor-in-possession credit facility (the "**DIP Loan**") pursuant to a commitment letter dated January 20, 2021 with Alliance One Tobacco Canada, Inc. (in such capacity, the "**DIP Lender**"), whereby the DIP Lender agreed to provide the DIP Loan in the maximum principal amount of \$8,000,000 (as may be amended from time to time, the "**DIP**

Commitment Letter"), although the DIP Lender's Charge was limited to \$2,500,000; and

- (d) granted the Administration Charge, the Directors' Charge, the DIP Lender's Charge and the Intercompany Charge (each as defined in the Initial Order).

7. On January 29, 2021, the Court granted an amended and restated initial order which, among other things:

- (a) increased the Directors' Charge and the DIP Lender's Charge to \$2,700,000 and \$8,000,000 (plus interest and costs), respectively; and
- (b) extended the Stay Period to and including March 31, 2021.

8. On January 29, 2021, the Court also granted an order (the "**SISP Approval Order**") which, among other things, approved a sale and investment solicitation process (the "**SISP**") in respect of the FIGR Group.

9. On February 22, 2021, the Court granted an Order (the "**Claims Procedure Order**") which, among other things, approved a process for the solicitation, identification, determination and adjudication of claims against the FIGR Group and their present and former Directors and Officers (the "**Claims Procedure**").

10. On February 22, 2021, the Court also granted an Order (the "**Ancillary Order**") which, among other things, approved a key employee retention plan, extended the Stay Period until April 30, 2021 and approved the fees and expenses of the Monitor and its counsel, Cassels, Brock & Blackwell LLP ("**Cassels**"), up to February 7, 2021 and February 12, 2021, respectively.

11. On March 31, 2021, the Court granted an Order (the "**DIP Amendment Order**") which, among other things, authorized the execution of the first amendment to the DIP Commitment Letter which, among other things, increased the maximum borrowings available under the DIP Loan up to \$13,000,000 (which was an increase of \$5,000,000) and authorized a corresponding increase to the DIP Lender's Charge.

12. Since the granting of the DIP Amendment Order, the Applicants have acted in good faith and with due diligence to, among other things, continue stabilizing their business, communicate, with the assistance of the Monitor, with Health Canada, employees, customers (including the

provincial cannabis boards), suppliers and other key stakeholders in the CCAA Proceedings and assist the Monitor with the SISP and Claims Procedure.

Update on the SISP¹

13. Since the update provided in the affidavit of Michael Devon sworn March 25, 2021, the Monitor, together with its affiliate FTI Capital Advisors – Canada ULC and the Applicants, have taken steps to advance the SISP in accordance with the timeline set out in the SISP.

14. Following the distribution of the Bid Process Letter to all Phase 2 Qualified Bidders, the Monitor, with the assistance of the FIGR Group, has been reviewing all Phase 2 Qualified Bids and corresponding with the appropriate Phase 2 Qualified Bidders in an attempt to advance the Phase 2 Qualified Bids into one or more closable transactions.

15. The Monitor continues to advance the SISP in accordance with the SISP Approval Order.

The Employee Claims Procedure Order²

16. The FIGR Group is seeking authorization to undertake the Employee Claims Procedure to identify, determine and adjudicate Employee Claims against the FIGR Group and their present and former Directors and Officers.

17. Employee Claims were expressly excluded from the Claims Procedure Order granted previously in the CCAA Proceedings.

18. The proposed Employee Claims Procedure Order and the underlying Employee Claims Procedure were developed in consultation with the Monitor and its counsel, and the FIGR Group believes that the Employee Claims Procedure Order prescribes an appropriate and effective process to identify, determine and adjudicate Employee Claims.

(i) Employee Claims Package

19. The proposed Employee Claims Procedure Order provides that the Monitor, in consultation with the Applicants, shall deliver an Employee Claims Package containing, among other things, an Employee Claim Statement and a Notice of Dispute of Employee Claim Statement to any Employee with a Claim for vacation pay, termination pay, severance pay, wages, expenses,

¹ Terms in this section not otherwise defined herein have the meanings ascribed to them in the SISP Approval Order.

² Terms not otherwise defined herein have the meaning ascribed to them in the Employee Claims Procedure Order.

commissions, or other remuneration, arising as a result of the termination of employment or a layoff of such Employee by any Applicant prior to the Filing Date or during the CCAA Proceedings.

20. The Employee Claim Statement will include an assessment of the quantum of such Employee's Claim based on the books and records of the FIGR Group and will advise as to certain of the Employee's rights and obligations. The amounts set forth in an Employee Claim Statement will be calculated based on such Employee's contractual entitlement, if applicable. Should an Employee not have a written employment contract or should the employment contract be silent on any such entitlement, the amount set forth in the Employee Claim Statement will be calculated based on the statutory minimum under the *Employment Standards Act*, 2000, S.O. 2000, c. 41, as amended (the "ESA") (or similar applicable provincial statute).

21. The Employee Claims Package will be sent to each Employee, by ordinary mail or electronic mail to the last known address or email address of the Employee, as applicable, within:

- (a) ten (10) Business Days following the date that the proposed Employee Claims Procedure is granted if such Employee's employment with the FIGR Group was terminated prior to or on the date of the Employee Claims Procedure Order; or
- (b) ten (10) Business Days following the date on which an Employee's employment with the FIGR Group is terminated or an Employee's temporary layoff ceases to be temporary under the ESA (or similar applicable provincial statute), if this occurs following the date of the Employee Claims Procedure Order.

(ii) *Dispute of Employee Claim Statement*

22. Should an Employee disagree with the assessment of its Employee Claim as set out in his or her Employee Claim Statement, such Employee must complete and return to the Monitor, prior to the Employee Claims Bar Date, a completed Notice of Dispute of Employee Claim Statement asserting a claim in a different amount supported by the appropriate documentation. The proposed Employee Claims Procedure Order provides for an Employee Claims Bar Date with respect to

Employee Claims of 5:00 p.m. (Toronto time) on the date that is thirty (30) Calendar Days after the date on which the Monitor sends an Employee Claims Package to an Employee having an Employee Claim.

23. The Employee Claims Procedure Order provides that, should the Monitor receive an Employee's Notice of Dispute of Employee Claim Statement on or before the Employee Claims Bar Date, the Monitor shall, in consultation with the FIGR Group:

- (a) review such Notice of Dispute of Employee Claim Statement;
- (b) attempt to resolve any dispute that should arise as a result of the Notice of Dispute of Employee Claim Statement; and
- (c) should a resolution or settlement not be possible, refer such dispute to a Claims Officer or the Court for adjudication on notice to the relevant Employee.

24. Should a Notice of Dispute of Employee Claims Statement not be received by the Employee Claims Bar Date, the Employee's claim will be deemed to be as set out in such Employee's Employee Claim Statement.

25. The proposed Employee Claims Procedure is the most expeditious and efficient method of identifying and resolving the Employee Claims and is necessary to allow the FIGR Group and the Monitor to obtain finality with respect to the Employee Claims.

26. The Monitor believes that the Employee Claims Procedure contemplated by the proposed Employee Claims Procedure Order is reasonable in the circumstances and necessary in order to advance the FIGR Group's restructuring efforts. Accordingly, the Monitor is supportive of the Claims Procedure, as set out in the proposed Claims Procedure Order.

The Stay Extension and Fee Approval Order

(i) Stay Extension

27. Pursuant to the Ancillary Order, the Court extended the Stay Period until and including April 30, 2021. Pursuant to the proposed Stay Extension and Fee Approval Order, the Applicants are seeking an extension of the Stay Period until and including June 30, 2021.

28. It is necessary and in the best interests of the Applicants and their stakeholders that the Stay Period be extended until and including June 30, 2021 as it will, among other things:

- (a) allow the Monitor, with the assistance of the Applicants, to advance the Employee Claims Procedure, should it be approved;
- (b) allow the Monitor, with the assistance of the Applicants, to complete the SISP and seek any necessary Court approvals;
- (c) advance and complete the Claims Procedure in accordance with the Claims Procedure Order; and
- (d) continue to advance matters toward making distributions of sale proceeds to the DIP Lender and to other creditors of the FIGR Group.

29. The Monitor is supportive of the proposed extension of the Stay Period and believes it will not materially prejudice any creditor. The FIGR Group are projected to have sufficient liquidity to fund its obligations and the costs of the CCAA Proceedings through the end of the extended Stay Period.

(ii) Approval of the Fourth Report and Fees

30. The proposed Stay Extension and Fee Approval Order also seeks approval of the Fourth Report and the fees and activities of the Monitor and its counsel, Cassels.

OTHER GROUNDS:

31. The provisions of the CCAA and the inherent and equitable jurisdiction of this Honourable Court.

32. Rules 1.04, 2.03, 3.02, 14.05(2), 16, 38 and 39 of the Ontario *Rules of Civil Procedure*, R.R.O 1990, Reg. 194, as amended and sections 106 and 137(2) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 as amended.

33. 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 this motion:

- (a) the Affidavit of Michael Devon, sworn on April 23, 2021, and the exhibits attached thereto;
- (b) the Factum of the Applicants, to be filed;
- (c) the Fourth Report of the Monitor, to be filed; and
- (d) such further and other evidence as counsel may advise and this Court may permit.

April 23, 2021

BENNETT JONES LLP

One First Canadian Place
Suite 3400, P.O. Box 130
Toronto, Ontario
M5X 1A4

Sean Zweig (LSO# 57307I)
Mike Shakra (LSO# 64604K)
Aiden Nelms (LSO# 74170S)

Tel: 416-863-1200
Fax: 416-863-1716
Lawyers for the Applicants

Schedule "A"

Join Zoom Meeting

<https://us02web.zoom.us/j/83724375522>

Meeting ID: 837 2437 5522

One tap mobile

+12532158782,,83724375522# US (Tacoma)

+13017158592,,83724375522# US (Washington DC)

Dial by your location

+1 253 215 8782 US (Tacoma)

+1 301 715 8592 US (Washington DC)

+1 312 626 6799 US (Chicago)

+1 346 248 7799 US (Houston)

+1 646 558 8656 US (New York)

+1 669 900 9128 US (San Jose)

Meeting ID: 837 2437 5522

Find your local number: <https://us02web.zoom.us/u/keakOnuas>

**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 FIGR BRANDS, INC., FIGR NORFOLK
INC. AND CANADA'S ISLAND GARDEN INC.**

Court File No.: CV-21-00655373-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings Commenced in Toronto

NOTICE OF MOTION

BENNETT JONES LLP

One First Canadian Place
Suite 3400, P.O. Box 130
Toronto, Ontario
M5X 1A4

Sean Zweig (LSO# 57307I)

Mike Shakra (LSO# 64604K)

Aiden Nelms (LSO# 74170S)

Tel: 416-863-1200

Fax: 416-863-1716

Lawyers for the Applicants

TAB 2

**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
FIGR BRANDS, INC., FIGR NORFOLK INC.
AND CANADA'S ISLAND GARDEN INC.**

Applicants

**AFFIDAVIT OF MICHAEL DEVON
(Sworn April 23, 2021)**

I, Michael Devon, of the city of Toronto, in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am the Chief Financial Officer of FIGR Brands, Inc. ("**FIGR Brands**") and a director of FIGR Norfolk Inc. ("**FIGR Norfolk**") and Canada's Island Garden Inc. ("**CIG**", and together with FIGR Brands and FIGR Norfolk, the "**Applicants**" or the "**FIGR Group**"). As such, I have personal knowledge of the Applicants and the matters to which I depose in this affidavit. Where I have relied on other sources for information, I have so stated and I believe them to be true.

2. I swear this Affidavit in support of a motion by the Applicants for:

- (a) an order (the "**Employee Claims Procedure Order**"), among other things, establishing a process for the identification, determination and adjudication of Employee Claims (as defined in the Employee Claims Procedure Order) against the

FIGR Group and their current and former Directors and Officers (each as defined in the Employee Claims Procedure Order) (the "**Employee Claims Procedure**"); and

- (b) an order (the "**Stay Extension and Fee Approval Order**"), among other things:
- (i) abridging the time for service of the motion record returnable April 30, 2021 and dispensing with service on any person other than those served;
 - (ii) extending the Stay Period (as defined below) until and including June 30, 2021;
 - (iii) approving the Fourth Report of the Monitor, to be filed (the "**Fourth Report**"), and the activities of the Monitor described therein; and
 - (iv) approving the fees and disbursements of the Monitor and its counsel as set out in the Affidavits of Jeffrey Rosenberg and Ryan Jacobs, respectively attached to the Fourth Report (together, the "**Fee Affidavits**").

3. All terms not otherwise defined herein have the meaning ascribed to them in, as applicable: (a) the Employee Claims Procedure Order; (b) the Stay Extension and Fee Approval Order, or (c) my affidavit sworn March 25, 2021 (the "**March 25 Affidavit**") in support of the DIP Amendment Order (as defined below), a copy of which is appended hereto (without exhibits) as Exhibit "A".

4. All references to monetary amounts in this affidavit are in Canadian dollars.

I. INTRODUCTION AND BACKGROUND

5. The FIGR Group operates two (2) licensed cannabis facilities – one in Simcoe, Ontario and the other in Charlottetown, Prince Edward Island. Since commencing operations, both facilities have been cash flow negative and the FIGR Group has been dependent on certain of its affiliate companies for funding.

6. Facing significant liquidity issues, potential enforcement action from certain of its creditors and the cessation of its business, the FIGR Group sought protection under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 ("**CCAA**") pursuant to an Order (the "**Initial Order**") on January 21, 2021 (the "**CCAA Proceedings**"). The facts underlying the FIGR Group's financial circumstances and need for CCAA protection are set out in my affidavit sworn January 21, 2021, in support of the commencement of the CCAA Proceedings, a copy of which is appended hereto (without exhibits) as Exhibit "B", and are not repeated herein.

7. Among other things, the Initial Order:

- (a) appointed FTI Consulting Inc. as monitor of the FIGR Group (in such capacity, the "**Monitor**");
- (b) granted an initial 10-day stay of proceedings in favour of the Applicants and their Directors and Officers (the "**Stay Period**");
- (c) approved the Applicants' ability to borrow under a debtor-in-possession credit facility (the "**DIP Loan**") pursuant to a commitment letter dated January 20, 2021 with Alliance One Tobacco Canada, Inc. (in such capacity, the "**DIP Lender**"), whereby the DIP Lender agreed to provide the DIP Loan in the maximum principal amount of \$8,000,000 (as may be amended from time to time, the "**DIP**

Commitment Letter"), although the DIP Lender's Charge was limited to \$2,500,000; and

- (d) granted the Administration Charge, the Directors' Charge, the DIP Lender's Charge and the Intercompany Charge.

8. On January 29, 2021, the Court granted an Amended and Restated Initial Order (the "**Amended and Restated Initial Order**") which, among other things:

- (a) increased the Directors' Charge and the DIP Lender's Charge to \$2,700,000 and \$8,000,000 (plus interest and costs), respectively; and
- (b) extended the Stay Period to and including March 31, 2021.

9. A copy of the Amended and Restated Initial Order is attached hereto as Exhibit "C".

10. On January 29, 2021, the Court also granted an Order (the "**SISP Approval Order**") which, among other things, approved a sale and investment solicitation process (the "**SISP**") in respect of the FIGR Group. A copy of the SISP Approval Order is attached hereto as Exhibit "D".

11. On February 22, 2021, the Court granted an Order (the "**Claims Procedure Order**") which, among other things, approved a process for the solicitation, identification, determination and adjudication of claims against the FIGR Group and their present and former Directors and Officers (the "**Claims Procedure**"). The Claims Procedure excluded Employee Claims.

12. On February 22, 2021, the Court also granted an Order (the "**Ancillary Order**") which, among other things, approved a key employee retention plan, extended the Stay Period until April 30, 2021 and approved the fees and expenses of the Monitor and its counsel, Cassels Brock &

Blackwell LLP ("**Cassels**"), for the periods from January 21, 2021 to February 7, 2021 and January 22, 2021 to February 12, 2021, respectively.

13. On March 31, 2021, the Court granted an order (the "**DIP Amendment Order**") which, among other things, authorized the execution by the Applicants of the first amendment to the DIP Commitment Letter, which, among other things, increased the maximum borrowing available under the DIP Loan up to \$13,000,000 (which was an increase of \$5,000,000). The DIP Amendment Order also authorized a corresponding increase to the DIP Lender's Charge and approved the fees and expenses of the Monitor and Cassels for the periods from February 7, 2021 to March 14, 2021 and February 13, 2021 to March 14, 2021, respectively.

14. Since the granting of the DIP Amendment Order, the Applicants have continued to act in good faith and with due diligence to, among other things, stabilize their business, communicate, with the assistance of the Monitor, with Health Canada, employees, customers (including the provincial cannabis boards), suppliers and other key stakeholders in the CCAA Proceedings and assist the Monitor with the SISP and the Claims Procedure.

II. UPDATE ON THE SISP¹

15. Since the last update provided in the March 25 Affidavit, the Monitor, together with its affiliate FTI Capital Advisors – Canada ULC, and the Applicants have taken steps to advance the SISP in accordance with the timeline set out in the SISP.

16. Following the distribution of the Bid Process Letter to all Phase 2 Qualified Bidders, the Monitor, with the assistance of the FIGR Group, has been reviewing all Phase 2 Qualified Bids

¹ Terms in this section not otherwise defined herein have the meaning ascribed to them in the SISP Approval Order.

and corresponding with the appropriate Phase 2 Qualified Bidders in an attempt to advance the Phase 2 Qualified Bids into one or more closable transactions.

17. As of the date of this Affidavit, I understand that the Monitor continues to advance the SISP in accordance with the SISP Approval Order and I understand that additional information in this regard will be provided in the Fourth Report.

III. THE EMPLOYEE CLAIMS PROCEDURE ORDER²

18. The FIGR Group, in consultation with the Monitor, has developed the Employee Claims Procedure as set out in the proposed Employee Claims Procedure Order. The proposed Employee Claims Procedure provides a framework for identifying, determining and adjudicating Employee Claims against the FIGR Group and its Directors and Officers.

19. Employee Claims were expressly excluded from the Claims Procedure Order granted previously in the CCAA Proceedings.

(i) Employee Claims Packages

20. The Employee Claims Procedure provides that the Monitor, in consultation with the Applicants, shall deliver an Employee Claims Package containing, among other things, an Employee Claim Statement and a Notice of Dispute of Employee Claim Statement to any Employee with a Claim for vacation pay, termination pay, severance pay, wages, expenses, commissions, or other remuneration, arising as a result of the termination of employment or a layoff of such Employee by any Applicant prior to the Filing Date or during the CCAA Proceedings. The Employee Claim Statement will include an assessment of the quantum of such

² Terms in this section not otherwise defined herein have the meaning ascribed to them in the Employee Claims Procedure Order.

Employee's Claim based on the books and records of the FIGR Group and will advise as to certain of the Employee's rights and obligations.

21. The Employee Claims Package will be sent to each Employee, by ordinary mail or electronic mail to the last known address or email address of the Employee, as applicable, within:

- (a) ten (10) Business Days following the date that the proposed Employee Claims Procedure is granted if such Employee's employment with the FIGR Group was terminated prior to or on the date of the Employee Claims Procedure Order; or
- (b) ten (10) Business Days following the date on which an Employee's employment with the FIGR Group is terminated or an Employee's temporary layoff ceases to be temporary under the *Employment Standards Act, 2000*, S.O. 2000, c. 41, as amended (the "ESA") (or similar applicable provincial statute), if this occurs following the date of the Employee Claims Procedure Order.

22. The amounts set forth in an Employee Claim Statement will be calculated based on such Employee's contractual entitlement, if applicable. Should an Employee not have a written employment contract or should the employment contract be silent on any such entitlement, the amount set forth in the Employee Claim Statement will be calculated based on the statutory minimum under the ESA (or similar applicable provincial statute).

(ii) *Dispute of Employee Claim Statement*

23. Should an Employee disagree with the assessment of its Employee Claim as set out in their Employee Claim Statement, such Employee must complete and return to the Monitor, prior to the Employee Claims Bar Date, a completed Notice of Dispute of Employee Claim Statement

asserting a claim in a different amount supported by the appropriate documentation. The proposed Employee Claims Procedure Order provides for an Employee Claims Bar Date with respect to Employee Claims of 5:00 p.m. (Toronto time) on the date that is thirty (30) Calendar Days after the date on which the Monitor sends an Employee Claims Package to an Employee having an Employee Claim.

24. The Employee Claims Procedure Order provides that the Monitor shall, should it receive an Employee's Notice of Dispute of Employee Claim Statement on or before the Employee Claims Bar Date, review such Notice of Dispute of Employee Claim Statement, in consultation with the FIGR Group. If the Monitor disagrees with the amount of the Employee Claim as set out in the Notice of Dispute of Employee Claim Statement it shall, in consultation with the FIGR Group, attempt to resolve such dispute and settle the purported Employee Claim. Should such a resolution or settlement not be possible, or not be within a time period or manner satisfactory to the Monitor, the Monitor shall, in consultation with the FIGR Group, refer such dispute to a Claims Officer or the Court for adjudication at its election. The Monitor shall forthwith provide written notice to the Employee notifying them of the Monitor's election.

25. Per the proposed Employee Claims Procedure Order, should a Notice of Dispute of Employee Claim Statement not be received by the Employee Claims Bar Date, the Employee's claim will be deemed to be as set out in such Employee's Employee Claim Statement.

26. Approval of the Employee Claims Procedure is necessary to allow the FIGR Group and the Monitor to obtain finality with respect to the Employee Claims, which will be necessary in order to make distributions to unsecured creditors and ultimately bring the CCAA Proceedings to an end.

27. The proposed Employee Claims Procedure is the most expeditious and efficient method of identifying and resolving the Employee Claims. The FIGR Group believes that the proposed Employee Claims Procedure is flexible, fair and appropriate in the circumstances.

28. The Monitor believes that the proposed Employee Claims Procedure contemplated by the proposed Employee Claims Procedure Order is reasonable in the circumstances and necessary in order to advance the FIGR Group's restructuring efforts. Accordingly, the Monitor is supportive of the Employee Claims Procedure, as set out in the proposed Employee Claims Procedure Order.

IV. THE STAY EXTENSION AND FEE APPROVAL ORDER

(i) Stay Extension

29. Under the Ancillary Order, the Court extended the Stay Period until and including April 30, 2021. Pursuant to the Stay Extension and Fee Approval Order, the Applicants are seeking an extension of the Stay Period until and including June 30, 2021.

30. It is necessary and in the best interests of the Applicants and their stakeholders that the Stay Period be extended until and including June 30, 2021, as it will:

- (a) allow the Monitor, with the assistance of the Applicants, to advance the Employee Claims Procedure, should it be approved;
- (b) allow the Monitor, with the assistance of the Applicants, to complete the SISP and seek any necessary Court approvals;
- (c) advance and complete the Claims Procedure in accordance with the Claims Procedure Order; and

- (d) continue to advance matters toward making distributions of sale proceeds to the DIP Lender and to other creditors of the FIGR Group.

31. As demonstrated in the Cash Flow Forecast to be appended to the Fourth Report, the Applicants are forecast to have sufficient liquidity to fund their obligations and the costs of the CCAA Proceedings through the end of the extended Stay Period.

32. I understand that the Monitor is supportive of the proposed extension of the Stay Period and believes it will not materially prejudice any creditor.

(ii) Approval of the Fourth Report and Fees

33. The proposed Stay Extension and Fee Approval Order seeks approval of the Fourth Report and the fees and activities of the Monitor and its counsel described therein. I understand that the Monitor and its counsel will prepare the Fee Affidavits, which will be attached to the Fourth Report.

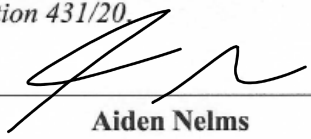
V. CONCLUSION

34. Since the granting of the Initial Order, the Applicants have acted and continue to act in good faith and with due diligence to, among other things, stabilize their business and assist with the SISP and the Claims Process, each with the view of maximizing value for their stakeholders.

35. I believe that the relief sought and described herein is in the best interests of the FIGR Group and their stakeholders. Further, I understand that the Monitor and the DIP Lender are supportive of the relief described herein and do not believe that any creditor will be materially prejudiced by the granting of the Employee Claims Procedure Order and the Stay Extension and Fee Approval Order.

36. I swear this affidavit in support of the Applicants' motion for the Employee Claims Procedure Order and the Stay Extension and Fee Approval Order, and for no other or improper purpose.

SWORN BEFORE ME over)
videoconference on this 23rd day of April)
2021. The affiant was located in the City of)
Toronto, in the Province of Ontario and the)
Commissioner was located in the City of)
Toronto, in the Province of Ontario. This)
affidavit was commissioned remotely as a)
result of COVID-19 and the declaration was)
administered in accordance with Ontario)
Regulation 431/20.)



Aiden Nelms

A Commissioner for Oaths in and for the
Province of Ontario



Michael Devon

This is Exhibit “A” *referred to in the*

affidavit of Michael Devon

sworn before me, this 23rd

day of April, 2021

.....

.....
A COMMISSIONER FOR TAKING AFFIDAVITS

**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
FIGR BRANDS, INC., FIGR NORFOLK INC.
AND CANADA'S ISLAND GARDEN INC.**

Applicants

**AFFIDAVIT OF MICHAEL DEVON
(Sworn March 25, 2021)**

I, Michael Devon, of the city of Toronto, in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am the Chief Financial Officer of FIGR Brands, Inc. ("**FIGR Brands**") and a director of FIGR Norfolk Inc. ("**FIGR Norfolk**") and Canada's Island Garden Inc. ("**CIG**", and together with FIGR Brands and FIGR Norfolk, the "**Applicants**" or the "**FIGR Group**"). As such, I have personal knowledge of the Applicants and the matters to which I depose in this affidavit. Where I have relied on other sources for information, I have so stated and I believe them to be true.

2. I swear this Affidavit in support of a motion by the Applicants for:

(a) an order (the "**DIP Amendment Order**"), among other things:

(i) abridging the time for service of the motion record returnable March 31, 2021 and dispensing with service on any person other than those served;

- (ii) authorizing the execution by the Applicants of the first amendment to the DIP Commitment Letter (as defined below) (the "**DIP Amendment**"), which will, among other things, increase the maximum borrowing available under the DIP Loan (as defined below) up to \$13,000,000 (which is an increase of \$5,000,000);
- (iii) authorizing an increase to the DIP Lender's Charge (as defined in the Amended and Restated Initial Order) up to a maximum amount of \$13,000,000 (plus interest and costs);
- (iv) approving the Third Report of the Monitor, to be filed (the "**Third Report**"), and the activities described therein; and
- (v) approving the fees and disbursements of the Monitor and its counsel as set out in the Affidavits of Jeffrey Rosenberg and Ryan Jacobs, respectively (together, the "**Fee Affidavits**").

3. All terms not otherwise defined herein have the meaning ascribed to them in: (a) the DIP Amendment Order; or (b) my affidavit sworn February 16, 2021 in support of the Claims Procedure Order and the Ancillary Order (each as defined below), a copy of which is appended hereto (without exhibits) as Exhibit "A", as applicable.

4. All references to monetary amounts in this affidavit are in Canadian dollars.

I. INTRODUCTION AND BACKGROUND

5. The FIGR Group operates two (2) licensed cannabis facilities – one in Simcoe, Ontario and the other in Charlottetown, Prince Edward Island. Since commencing operations, both facilities

have been cash flow negative and the FIGR Group has been dependant on certain of its affiliate companies for funding.

6. Facing significant liquidity issues, potential enforcement action from certain of its creditors and the cessation of its business, the FIGR Group sought protection under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 ("**CCAA**") pursuant to an Order (the "**Initial Order**") on January 21, 2021 (the "**CCAA Proceedings**"). The facts underlying the FIGR Group's financial circumstances and need for CCAA protection are set out in my affidavit sworn January 21, 2021, in support of the commencement of the CCAA Proceedings, a copy of which is appended hereto (without exhibits) as Exhibit "B", and are not repeated herein.

7. Among other things, the Initial Order:

- (a) appointed FTI as Monitor;
- (b) granted an initial 10-day stay of proceedings in favour of the Applicants and their Directors and Officers (the "**Stay Period**");
- (c) approved the Applicants' ability to borrow under a debtor-in-possession credit facility (the "**DIP Loan**") pursuant to a commitment letter dated January 20, 2021 with Alliance One Tobacco Canada, Inc. (in such capacity, the "**DIP Lender**"), whereby the DIP Lender agreed to provide the DIP Loan in the maximum principal amount of \$8,000,000 (as may be amended from time to time, the "**DIP Commitment Letter**"), although the DIP Lender's Charge was limited to \$2,500,000; and
- (d) granted the Administration Charge, the Directors' Charge, the DIP Lender's Charge and the Intercompany Charge.

8. On January 29, 2021, the Court granted an Amended and Restated Initial Order (the "**Amended and Restated Initial Order**") which, among other things:

- (a) increased the Directors' Charge and the DIP Lender's Charge to \$2,700,000 and \$8,000,000 (plus interest and costs), respectively; and
- (b) extended the Stay Period to and including March 31, 2021.

9. A copy of the Amended and Restated Initial Order is attached hereto as Exhibit "C".

10. On January 29, 2021, the Court also granted an Order (the "**SISP Approval Order**") which, among other things, approved a sale and investment solicitation process (the "**SISP**") in respect of the FIGR Group.

11. On February 22, 2021, the Court granted an Order (the "**Claims Procedure Order**") which, among other things, approved a process for the solicitation, identification, determination and adjudication of claims against the FIGR Group and their present and former Directors and Officers (the "**Claims Procedure**").

12. On February 22, 2021, the Court also granted an Order (the "**Ancillary Order**") which, among other things, approved a key employee retention plan, extended the Stay Period until April 30, 2021 and approved the fees and expenses of the Monitor and its counsel, Cassels Brock & Blackwell LLP, for the periods from January 21, 2021 to February 7, 2021 and January 22, 2021 to February 12, 2021 respectively.

13. Since the granting of the Claims Procedure Order and the Ancillary Order, the Applicants have continued to act in good faith and with due diligence to, among other things, stabilize their business, communicate, with the assistance of the Monitor, with Health Canada, employees,

customers (including the provincial cannabis boards), suppliers and other key stakeholders in the CCAA Proceedings and assist the Monitor with the SISP and Claims Procedure.

II. UPDATE ON THE SISP¹

14. Since the granting of the SISP Approval Order, the Monitor, together with their affiliate FTI Capital Advisors – Canada ULC, and the Applicants have taken steps to advance the SISP in accordance with the timeline set out in the SISP.

15. The Phase 1 Bid Deadline occurred on February 26, 2021 at 5:00pm (Eastern Time). Following the Phase 1 Bid Deadline, and in accordance with the SISP Approval Order, the Monitor and the Applicants, in consultation with the DIP Lender, prepared and distributed the Bid Process Letter for Phase 2. The Bid Process Letter was distributed to all Phase 2 Qualified Bidders by the Monitor and posted on the Monitor's Website. Among other things, the Bid Process Letter established the Phase 2 Bid Deadline and outlined certain Phase 2 qualification criteria. A copy of the Bid Process Letter is attached hereto as Exhibit "D".

16. As of the date of this Affidavit, I understand that the Monitor continues to advance Phase 2 of the SISP in accordance with the SISP Approval Order and the Bid Process Letter.

III. THE DIP AMENDMENT ORDER

(i) The DIP Amendment

17. As previously noted, pursuant to the Amended and Restated Initial Order, the Court authorized and empowered the FIGR Group to obtain and borrow a credit facility from the DIP

¹ Terms in this section not otherwise defined herein have the meaning ascribed to them in the SISP Approval Order.

Lender to finance the FIGR Group's working capital requirements and other general corporate purposes and capital expenditures. The Court also:

- (a) approved the DIP Commitment Letter; and
- (b) granted the DIP Lender's Charge up to a maximum amount of \$8,000,000 (plus interest and costs).

18. As a result of certain revised revenue and expense projections, timing variances regarding a number of receipts, as well as additional time expected to be required in order to get to the close of a sale, the FIGR Group's management, in consultation with the Monitor and the DIP Lender, have determined that the FIGR Group will require additional funding to complete the SISP and administer the Claims Procedure. The FIGR Group, with the assistance of the Monitor, has prepared revised and extended consolidated cash flow projections that reflect the FIGR Group's go-forward cash flow needs (the "**Revised Cash Flow Projection**"). I understand from the Monitor that the Revised Cash Flow Projection will be attached to the Third Report.

19. As part of its ongoing support for the FIGR Group and the CCAA Proceedings, the DIP Lender has agreed to advance an additional \$5,000,000 pursuant to the DIP Amendment. A substantially final draft of the DIP Amendment is attached hereto as Exhibit "E". I understand a copy of the fully executed DIP Amendment will be attached to the Third Report.

20. Pursuant to the terms of the DIP Amendment:

- (a) the DIP Loan will be increased by \$5,000,000 to a maximum amount of \$13,000,000; and

- (b) the negative cash-flow variance threshold allowable in any calendar week will be increased to \$1,000,000 from \$250,000.

21. As a result of the DIP Amendment and the additional funds available thereunder, the DIP Amendment Order seeks to increase the quantum of the DIP Lender's Charge to a maximum of \$13,000,000 (plus interest and costs). The DIP Amendment and the corresponding increase to the DIP Lender's Charge are based on the go-forward funding needs of the Applicants and will allow them to continue to operate in the ordinary course while the SISP is completed and the Claims Procedure is administered. It is a condition of the DIP Amendment (and the availability of funds thereunder) that the DIP Lender's Charge be increased.

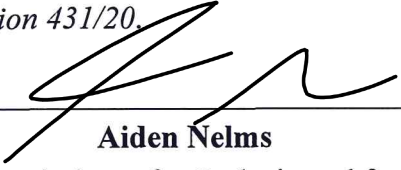
22. It is my view that the DIP Amendment is in the best interests of the FIGR Group's stakeholders as it will provide the FIGR Group with the funds necessary to continue its operations while the SISP and Claims Procedure are completed, which will provide significant benefit to the FIGR Group's stakeholders. Further, I understand that the Monitor and the DIP Lender are supportive of the relief described herein and the Monitor does not believe that any creditor will be materially prejudiced by the granting of the DIP Amendment Order.

(ii) Approval of the Third Report and Fees

23. The proposed DIP Amendment Order seeks approval of the Third Report and the fees and activities of the Monitor and its counsel described therein. I understand that the Monitor and its counsel will prepare the Fee Affidavits, which will be attached to the Third Report.

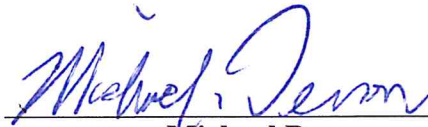
24. I swear this affidavit in support of the Applicants' motion for the DIP Amendment Order and for no other or improper purpose.

SWORN BEFORE ME over)
videoconference on this 25th day of March)
2021. The affiant was located in the City of)
Toronto, in the Province of Ontario and the)
Commissioner was located in the City of)
Toronto, in the Province of Ontario. This)
affidavit was commissioned remotely as a)
result of COVID-19 and the declaration was)
administered in accordance with Ontario)
Regulation 431/20.)



Aiden Nelms

A Commissioner for Oaths in and for the
Province of Ontario



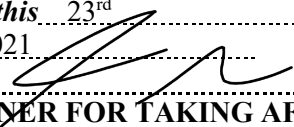
Michael Devon

This is Exhibit **“B”** *referred to in the*

affidavit of Michael Devon

sworn before me, this 23rd

day of April, 2021



.....
A COMMISSIONER FOR TAKING AFFIDAVITS

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
FIGR BRANDS, INC., FIGR NORFOLK INC.
AND CANADA'S ISLAND GARDEN INC.**

Applicants

**AFFIDAVIT OF MICHAEL DEVON
(Sworn January 21, 2021)**

I, Michael Devon, of the city of Toronto, in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am the Chief Financial Officer of FIGR Brands, Inc. ("**FIGR Brands**") and a director of FIGR Norfolk Inc. ("**FIGR Norfolk**") and Canada's Island Garden Inc. ("**CIG**", and together with FIGR Brands and FIGR Norfolk, the "**Applicants**" or the "**FIGR Group**"). As such, I have personal knowledge of the Applicants and the matters to which I depose in this affidavit. Where I have relied on other sources for information, I have so stated and I believe them to be true.
2. All references to currency in this affidavit are in Canadian dollars unless noted otherwise.

I. RELIEF REQUESTED

3. I swear this affidavit in support of an urgent Application by the Applicants for an Order (the "**Initial Order**") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), *inter alia*:

- (a) declaring that the Applicants are parties to which the CCAA applies;
- (b) appointing FTI Consulting Canada Inc. ("**FTI**" or the "**Proposed Monitor**") as an officer of the Court to monitor the assets, business, and affairs of the Applicants (once appointed in such capacity, the "**Monitor**");
- (c) approving the Applicants' ability to borrow under a debtor-in-possession ("**DIP**") credit facility (the "**DIP Loan**") to finance their working capital requirements and other general corporate purposes, post-filing expenses and costs;
- (d) staying, for an initial period of not more than ten (10) days (the "**Stay of Proceedings**"), all proceedings and remedies taken or that might be taken in respect of the Applicants, the Monitor or the Directors and Officers (as defined below), or affecting the Applicants' business or the Property (as defined below), except with the written consent of the Applicants and the Monitor, or with leave of the Court; and
- (e) granting the following priority charges (collectively, the "**Charges**") over the Applicants' current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof (collectively, the "**Property**");

- (i) the Administration Charge (as defined below) in favour of the Monitor, counsel to the Monitor, and counsel to the Applicants;
- (ii) the Directors' Charge (as defined below) in favour of the Directors and Officers;
- (iii) the DIP Lender's Charge in favour of the DIP Lender (each as defined below); and
- (iv) the Intercompany Charge (as defined below) in favour of any Intercompany Lender (as defined below).

4. If the Initial Order is granted, the Applicants intend to return to Court within ten (10) days (the "**Comeback Hearing**") to seek approval of an amended and restated Initial Order, which, among other things, would:

- (a) extend the Stay of Proceedings;
- (b) increase the quantum of each of the DIP Lender's Charge, the Directors' Charge and the Administration Charge;
- (c) approve a sale and investment solicitation process (the "**SISP**"); and
- (d) seek such other relief as may be required to advance the Applicants' restructuring.

II. OVERVIEW

5. The FIGR Group operates two cannabis facilities – one in Simcoe, Ontario and the other in Charlottetown, Prince Edward Island ("**PEI**"). Since commencing operations, both facilities

have been cash flow negative and are dependant on indirect subsidiaries of New Pyxus International (as defined below) for funding. As described below, Alliance One International Tabak B.V. ("**AOI Tabak**"), an indirect subsidiary of New Pyxus International, was owed approximately \$189,729,870 by FIGR Brands as at November 30, 2020, which amount has only increased since that date as a result of further advances and accruing interest.

6. AOI Tabak is no longer prepared to continue funding the FIGR Group without an exit strategy. As a result, the Applicants are seeking protection under the CCAA to, among other things, obtain additional financing in order to continue operations and to implement a restructuring and consummate a transaction that would see all or a portion of the Applicants' business sold as a going concern.

7. Subject to certain conditions, including Court approval, Alliance One Tobacco Canada, Inc. (in such capacity, the "**DIP Lender**") has agreed to provide additional financing through the DIP Loan to, *inter alia*, provide the Applicants with the liquidity necessary to continue to operate while the SISP is conducted. As noted above, the relief in respect of the SISP is intended to be sought at the Comeback Hearing.

8. The CCAA filing and the proposed SISP are intended to benefit all of the Applicants' stakeholders, including the FIGR Group's employees, customers, suppliers and contracting parties, and Health Canada and relevant provincial regulators.

III. CORPORATE STRUCTURE OF THE FIGR GROUP

9. A copy of the FIGR Group's current corporate structure is attached hereto as Exhibit "A". FIGR Brands is a wholly-owned, indirect subsidiary of Pyxus International, Inc. ("**New Pyxus International**").

10. On June 15, 2020, Pyxus International Inc., as it then was ("**Original Pyxus International**"), and 4 affiliated debtors (collectively, the "**US Debtors**") each filed a voluntary petition for relief under title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as amended in the United States Bankruptcy Court (the "**US Court**") for the District of Delaware (the "**Pyxus Chapter 11 Proceedings**").

11. On August 21, 2020, the Amended Joint Prepackaged Chapter 11 Plan of Reorganization in respect of the US Debtors (the "**US Plan**") became effective and on September 11, 2020, the US Court entered a Final Decree closing each of the US Debtors' cases except Original Pyxus International which is being administered under the name Old Holdco, Inc. Under the US Plan, the US Debtors' debt was reduced by more than USD\$400 million and certain debt maturities were extended. The primary purpose of the Pyxus Chapter 11 Proceedings was to enhance the US Debtors' financial flexibility with a view to strengthening the company with a foundation that bolsters its position in target markets with long-term value for all stakeholders, and to refocus the US Debtors' business on its core-operations.

12. For the purpose of this affidavit and for greater certainty, all references to the Applicants include all predecessor entities.

A. FIGR Brands

13. FIGR Brands was incorporated under the *Business Corporations Act*, SBC 2002, c 57 (British Columbia) on October 28, 2019. FIGR Brands' principal place of business is located in Toronto, Ontario and its registered head office is located in Vancouver, British Columbia. FIGR Brands is the majority shareholder of each of FIGR Norfolk and CIG. A copy of FIGR Brands' corporate profile report is attached hereto as Exhibit "B".

14. On December 30, 2020, FIGR Brands amalgamated (the "**FIGR Amalgamation**") with its wholly-owned subsidiary, FIGR Canada Holdings ULC ("**FIGR Canada**"), formerly FIGR Inc., pursuant to a certificate of amalgamation (the "**Certificate of Amalgamation**"). A copy of the Certificate of Amalgamation is attached hereto as Exhibit "C". I understand that the FIGR Amalgamation was completed as part of an earlier-established global tax and structuring plan.

B. FIGR Norfolk

15. FIGR Norfolk was originally incorporated as Goldleaf Pharm Inc. ("**Goldleaf**") under the Ontario *Business Corporations Act*, R.S.O. 1990, c. B.16 on March 6, 2014. On February 28, 2019, Goldleaf changed its name to FIGR Norfolk Inc. pursuant to articles of amendment. A copy of FIGR Norfolk's corporate profile report is attached hereto as Exhibit "D".

16. FIGR Norfolk was founded by Larry W. Huszczo ("**Huszczo**") and Catherine M. Armstrong ("**Armstrong**"). Both Huszczo and Armstrong continue to be involved in the day-to-day operations of FIGR Norfolk.

17. Pursuant to a Share Purchase Agreement dated January 29, 2018 (the "**FIGR Norfolk SPA**"), Canadian Cultivated Products Ltd. (the former name of one of the amalgamated entities

which now forms FIGR Brands) ("**Canadian Cultivated**") acquired 80% of the common shares of what was then Goldleaf (the "**Norfolk Common Shares**") from Huszczo and Armstrong. Concurrently with the execution of the FIGR Norfolk SPA, Canadian Cultivated, Huszczo and Armstrong entered into a unanimous shareholders' agreement in respect of FIGR Norfolk (the "**FIGR Norfolk USA**"). A copy of the FIGR Norfolk USA is attached hereto as Exhibit "E".

18. As a result of the FIGR Amalgamation, the Norfolk Common Shares that were the subject of the FIGR Norfolk SPA are now owned directly by FIGR Brands. FIGR Brands owns 80% of the Norfolk Common Shares, while Huszczo and Armstrong each own 10% of the Norfolk Common Shares.

C. CIG

19. CIG was incorporated under the PEI *Business Corporation Act*, R.S.P.E.I. 1988, c B-6.01 on August 8, 2013. CIG's principal place of business and registered head office are located in Charlottetown, PEI. CIG currently carries on business under the trade name "FIGR East". A copy of CIG's corporate profile report is attached hereto as Exhibit "F".

20. On January 25, 2018, Canadian Cultivated entered into several share purchase agreements (collectively, the "**CIG SPAs**") with the shareholders of CIG, whereby it acquired 75% of the common shares of CIG (the "**CIG Common Shares**"). Concurrently with the execution of the CIG SPAs, Canadian Cultivated and the shareholders of CIG entered into a unanimous shareholders' agreement (the "**CIG USA**"). Through subsequent purchases, Canadian Cultivated increased its holdings in CIG and as of the date of this affidavit, as a result of the FIGR Amalgamation, FIGR Brands owns 94.25% of the CIG Common Shares. A copy of the CIG USA is attached hereto as Exhibit "G".

IV. BUSINESS OF THE APPLICANTS

A. The Cannabis Industry in Canada

21. The cannabis industry has evolved, and continues to evolve, rapidly in Canada. Licenses to cultivate, process and/or sell cannabis, among other things, are regulated under the *Cannabis Act*, S.C. 2018, c. 16, as amended and related regulations (together, the "**Cannabis Act**").

22. On October 17, 2018, recreational use of cannabis was legalized in Canada. On that date, the Cannabis Act, which regulates retail cannabis for recreational/adult-use, medical cannabis and industrial hemp in Canada, came into effect. Additionally, cannabis was removed as a controlled substance from the *Controlled Drugs and Substances Act*, S.C. 1996, c. 19, and the *Access to Cannabis for Medical Purposes Regulations* were repealed.

23. On October 17, 2019, the Cannabis Act was amended to broaden the scope of legal cannabis products, to include edible cannabis, cannabis extracts and cannabis topicals.

24. The cannabis industry continues to be a highly regulated industry, with the Cannabis Act regulating the possession, cultivation, production, distribution, sale, research, testing, import, export and promotion of cannabis.

B. Business

25. The FIGR Group is a vertically integrated cannabis business with expertise at each stage of the cannabinoid product life-cycle, from cultivation and extraction to brand development, marketing and sales. The FIGR Group applies a consumer-driven approach to developing premium

brands and is dedicated to selling high-quality, consumer cannabinoid products in Canada. As a result, the FIGR Group's products capture a broad customer base.

26. The FIGR Group's brand portfolio was developed to target the varying consumer demands along with the different sales and distribution channels within the market (the "**FIGR Product Portfolio**"). The FIGR Group produces an array of premium cannabis and hemp-derived CBD products including, among others, dried flower, pre-roll, tincture oil and vape cartages.

27. The FIGR Group supplies various cannabinoid products to a number of provincial purchasing entities pursuant to supply agreements, including:

- (a) British Columbia (BC Liquor Distribution Branch);
- (b) Alberta (Alberta Gaming, Liquor and Cannabis Commission);
- (c) Manitoba (Manitoba Liquor and Lotteries);
- (d) Ontario (Ontario Cannabis Retail Corporation);
- (e) PEI (PEI Cannabis Management Corporation);
- (f) Nova Scotia (Nova Scotia Liquor Corporation);
- (g) Saskatchewan (Saskatchewan Liquor and Gaming Authority);
- (h) Newfoundland (Newfoundland Labrador Liquor Corporation); and
- (i) New Brunswick (Cannabis NB Ltd.).

28. The FIGR Group also has sale and supply agreements in place with a number of private third-party purchasers and retailers. The FIGR Product Portfolio was created with the intention of offering a carefully crafted product for every consumer type in the market. The FIGR Product Portfolio was developed using a consumer-centric strategy and is the product of significant consumer driven market research coupled with the FIGR Group's extensive knowledge in the cannabis space. Additionally, the FIGR Group leverages the sentry seed-to-sale tracking platform to position itself as a leading competitor in the cannabis industry.

1. *The Facilities and Production*

29. The FIGR Group has advanced cannabis cultivation and cannabinoid extraction and processing facilities which include high-quality indoor and purpose-built greenhouse cannabis cultivation and cannabinoid extraction infrastructure at the CIG Facility and the Norfolk Facility (each as defined below).

(i) *The CIG Facility*

30. CIG's original facility was a purpose-built indoor cannabis processing and hydroponic cultivation facility located in an industrial park in Charlottetown, PEI (the "**Original CIG Facility**"). The Original CIG Facility contained 24,000 square feet of production-licensed area with a production capacity capable of yielding approximately 1,400 kilograms of dried cannabis and dried cannabis equivalent products per annum.

31. In November 2019, CIG completed the expansion of the Original CIG Facility to add an additional 306,200 square feet of hydroponic cultivation space through the construction of a

purpose-built greenhouse adjacent to the Original CIG Facility (the "**CIG Expansion Facility**") and together with the Original CIG Facility, the "**CIG Facility**").

32. Following the completion of the CIG Expansion Facility, and after obtaining the necessary regulatory approvals from Health Canada, the CIG Facility has an annual production capacity of approximately 43,170 kilograms which is derived from approximately 163,904 square feet of flowering area.

33. There is a mechanics lien on title to the CIG Facility which relates to a dispute between Fitzgerald & Snow (2010) Ltd, CIG's general contractor in respect of the CIG Expansion Facility, and one of its subcontractors (the "**CIG Mechanics Lien**"). I understand that the dispute relating to the CIG Mechanics Lien is proceeding to arbitration. A copy of the CIG Mechanics Lien is attached hereto as Exhibit "H".

34. CIG owns the CIG Facility and the approximately 15 acres of land on which it is located.

(ii) ***The FIGR Norfolk Facility***

35. FIGR Norfolk's facility is located in Simcoe, Ontario and is licensed for cultivation by Health Canada (the "**FIGR Norfolk Facility**"). The FIGR Norfolk Facility consists of approximately 19,100 square feet of indoor space allocated for cultivation and processing. The FIGR Norfolk Facility has an annual production capacity of approximately 1,205 kilograms of dried cannabis and dried cannabis equivalent. The FIGR Norfolk Facility employs a hydroponic cultivation method to grow its premium quality cannabis. In July 2018, Goldleaf (the predecessor name of FIGR Norfolk) purchased the 18.72 acre plot of vacant land adjacent to the FIGR Norfolk Facility to accommodate a proposed expansion, but no expansion has been undertaken to date.

36. FIGR Norfolk owns the FIGR Norfolk Facility and the land on which it is situated.

C. Cannabis Licenses

37. FIGR Norfolk holds a Standard Cultivation, Standard Processing and Sale for Medical Purposes licence (the "**FIGR Norfolk Licence**") under the Cannabis Act. The licensed site is located at 11 Grigg Drive in Simcoe, Ontario. The most recent amendment to the FIGR Norfolk Licence was granted on May 8, 2020. The FIGR Norfolk Licence expires on September 28, 2021. Pursuant to the FIGR Norfolk Licence, FIGR Norfolk is authorized to conduct the following activities at the licensed site:

- (i) possess cannabis;
- (ii) obtain dried cannabis, fresh cannabis, cannabis plants or cannabis plant seeds by cultivating, propagating and harvesting cannabis;
- (iii) for the purpose of testing, to obtain cannabis by altering its chemical or physical properties by any means;
- (iv) produce cannabis, other than obtain it by cultivating, propagating or harvesting it; and
- (v) sell recreational or medicinal dried cannabis, fresh cannabis, cannabis plants or cannabis plant seeds to authorized individuals under the Cannabis Act.

38. CIG holds a Standard Cultivation, Standard Processing and Sale for Medical Purposes licence (the "**CIG Licence**"). The licensed site is located at 7 Innovation Way, Charlottetown, PEI,

Canada. The CIG Licence was renewed on June 12, 2020 and expires on June 12, 2023. Pursuant to the CIG Licence, CIG is authorized to conduct the following activities at the licensed site:

- (i) possess cannabis;
- (ii) obtain dried cannabis, fresh cannabis, cannabis plants or cannabis plant seeds by cultivating, propagating and harvesting cannabis;
- (iii) produce cannabis, other than obtain it by cultivating, propagating or harvesting it; and
- (iv) sell recreational or medicinal dried cannabis, fresh cannabis, cannabis plants, cannabis plant seeds, edible cannabis, cannabis topicals or cannabis extracts to authorized individuals under the Cannabis Act.

39. FIGR Norfolk and CIG are subject to a comprehensive and rigorous regulatory regime as set out in the Cannabis Act and enforced by Health Canada. This regime requires ongoing compliance, record keeping, and reporting. There are strict site, security and operational requirements, including that directors, officers, individuals in a position to exercise direct control, and key individuals on the ground at the licensed site must hold security clearances.

D. Employees

1. General Overview

40. The FIGR Group currently employs 189 people (the "**Employees**"). The Employees and their designations are further detailed in the chart below:

| Employee Designation | CIG | FIGR Norfolk | FIGR Brands | Total |
|------------------------------|------------|---------------------|--------------------|--------------|
| <i>Full Time (Salaried)</i> | 27 | 11 | 19 | 56 |
| <i>Full Time (Hourly)</i> | 99 | 13 | 0 | 112 |
| <i>Full Time (Temporary)</i> | 15 | 0 | 0 | 15 |
| <i>Part Time (Salaried)</i> | 1 | 0 | 0 | 1 |
| <i>Part Time (Hourly)</i> | 1 | 0 | 0 | 1 |
| <i>On Leave</i> | 1 | 2 | 1 | 4 |
| Total | 144 | 25 | 20 | 189 |

41. The aggregate payroll, and respective payroll providers, for the FIGR Group are as follows:

- (a) FIGR Brands – approximately \$170,000 semi-monthly (administered through Ceridian);
- (b) FIGR Norfolk – approximately \$59,000 bi-weekly (administered through Good Redden Klosler LLP); and
- (c) CIG – approximately \$244,229 bi-weekly (administered through ADP, LLC).

(b) Retention and Severance Entitlements

42. Certain executives and key employees of the FIGR Group were subject to key employee retention arrangements with New Pyxus International (collectively, the "**Pyxus Retention Agreements**"). I understand that all amounts owing under the Pyxus Retention Agreements were paid in full on or prior to January 15, 2021.

43. Pursuant to amendments to the Pyxus Retention Agreements, New Pyxus International has also guaranteed certain termination and severance obligations owing to certain executives and key employees of the FIGR Group.

(c) Agency Agreement

44. On January 11, 2021, FIGR Canada and Velvet Management Inc. ("**Velvet**") entered into a Services Agreement (the "**Agency Agreement**"). Under the Agency Agreement, Velvet is responsible for the promotion and commercialization of the Products (as that term is defined in the Agency Agreement) for the Term (as that term is defined in the Agency Agreement) to government-operated or government-licensed provincial and territory physical and online cannabis retailer. The Agency Agreement does not allow Velvet to promote or commercialize the Products for sale to medical customers and customers who purchase the Products for sale to medical customers only. A copy of the Agency Agreement is attached hereto as Exhibit "I".

E. Owned and Leased Real Property

45. As detailed above, the Applicants own the CIG Facility, the FIGR Norfolk Facility and the land on which they are located.

46. The FIGR Group also leases certain office space located at: (i) Atria III, 2225 Sheppard Avenue East, Suite No. 900, Toronto, ON (the "**Ontario Office Space**") and (ii) 23 Fourth Street, Charlottetown, PEI (the "**PEI Office Space**").

47. The Ontario Office Space is leased pursuant to a Lease of Office Space Agreement between FIGR Inc. (the former name of one of the amalgamated entities which now forms FIGR Brands) and Dorsay Development Corporation and Ontario Holdings Ltd dated June 18, 2019 (the

"Ontario Office Space Lease Agreement"). The Office Space Lease Agreement is guaranteed by Alliance One International GmbH ("**AOI**"), a Swiss entity related to the FIGR Group, pursuant to a Guarantee Agreement dated June 18, 2019 (the "**Ontario Office Space Lease Agreement Guarantee**"). Copies of the Ontario Office Space Lease Agreement and the Ontario Office Space Lease Agreement Guarantee are attached hereto as Exhibit "J" and Exhibit "K", respectively.

48. The PEI Office Space is leased pursuant to an Offer to Lease by and between Twinprop Investments Inc. and CIG dated December 1, 2020 (the "**PEI Office Space Lease Agreement**"). A copy of the PEI Office Space Lease Agreement is attached hereto as Exhibit "L".

F. Suppliers

49. The FIGR Group relies on a number of vendors and third-party service providers to operate its business. For instance, logistics providers, lab services and utility providers are all essential to the FIGR Group's operations. The FIGR Group is current with respect to most of their obligations under a number of agreements with these vendors and third-party service providers.

G. Excise Duty

50. Cannabis producers are required to post security pursuant to the *Excise Act, 2001*, S.C. 2002, c. 22. The security provides the Canada Revenue Agency ("**CRA**") with financial assurance for any outstanding excise duty payable. The security can be posted in the form of a surety bond or a deposit with the CRA.

51. The security required to be posted with the CRA is calculated as the highest amount of cannabis duties payable for a calendar month in the previous 12 calendar months. These duties are

calculated, in part, based on the expected number of grams or milligrams of packaged cannabis products sold to the recreational market.

52. As of the date of this affidavit:

- (a) FIGR Norfolk has provided a deposit with the CRA in the amount of \$5,000; and
- (b) CIG has provided a surety bond through Intact Insurance in the amount of \$300,000 which is secured via a irrevocable letter of credit issued by Provincial.

H. Intellectual Property

53. The Canadian trademarks are currently held by FIGR Inc. The FIGR Group is in the process of filing the necessary paperwork with the various intellectual property offices to update/amend the ownership entity to FIGR Brands (as a result of the FIGR Amalgamation).

54. Certain other intellectual property, such as trade names and plant genetics, are held by other Applicants.

I. Cash Management and Credit Cards

55. The FIGR Group maintains six (6) bank accounts – one (1) with Provincial Credit Union Limited ("**Provincial**") and five (5) with Bank of Montreal.

56. The FIGR Group's cash management system is managed out of Toronto, Ontario and Charlottetown, PEI. As detailed below, funding from AOI has been provided to FIGR Brands and subsequently disbursed by FIGR Brands to each of FIGR Norfolk and CIG, respectively.

57. CIG has one corporate credit with Collabria Visa through Provincial.

V. FINANCIAL POSITION OF THE FIGR GROUP

58. The FIGR Group has been cash flow negative since inception and has been reliant on funding from New Pyxus International and its indirect subsidiaries.

59. A copy of the FIGR Group's unaudited consolidated balance sheet as at November 30, 2020 is attached hereto as Exhibit "M". Certain information contained in this unaudited balance sheet is summarized below.

A. Assets

60. As at November 30, 2020, the FIGR Group had total consolidated assets with a book value of approximately \$153,166,418, which consisted primarily of the following:

| Asset Type | Value |
|--|--------------|
| Current Assets: \$27,869,914 | |
| Cash | \$1,774,333 |
| Third Party Receivables | \$1,765,619 |
| Prepaid Expenses and Deposits | \$1,242,673 |
| Harmonized sales tax receivable | \$588,582 |
| Inventory | \$20,896,163 |
| Biological Assets | \$1,458,254 |
| Other Assets | \$144,290 |
| Non-Current Assets: \$125,296,504 | |
| Investment Tax Credits | \$468,240 |
| Intangible Assets | \$33,214,283 |

| Asset Type | Value |
|-------------------------------|----------------------|
| Right-of-use Lease Assets | \$417,121 |
| Property, Plant and Equipment | \$91,196,859 |
| Total | \$153,166,418 |

B. Liabilities

61. As at November 30, 2020, the unaudited book value of the FIGR Group's consolidated liabilities was approximately \$203,362,540:

| Liability Type | Value |
|---|----------------------|
| Current Liabilities: \$4,624,163 | |
| Accounts Payables and Accrued Liabilities | \$4,208,106 |
| Harmonized sales tax payable | \$217,507 |
| Lease Obligations | \$131,877 |
| Current Portion of Long-Term Debt | \$66,672 |
| Non-Current Liabilities: \$198,738,377 | |
| Lease Obligations | \$336,497 |
| Long-Term Debt | \$627,633 |
| Related Party Payable | \$189,729,870 |
| Deferred tax liability | \$8,044,377 |
| Total | \$203,362,540 |

C. Secured Obligations

62. The FIGR Group does not have any secured funded debt. All of the intercompany advances have been made on an unsecured basis.

63. Attached as Exhibit "N" are search results from searches conducted against each of the Applicants under the *Personal Property Security Act* (Ontario), the *Personal Property Security Act* (British Columbia) and the *Personal Property Security Act* (Prince Edward Island).

64. There is a registered financing statement against CGI in PEI, and FIGR Inc. (the former name of one of the amalgamated entities which now forms FIGR Brands) has a number of registered financing statements against it in Ontario.

65. The party with a registration against CGI is Compaction Credit Ltd., and the collateral secured was described as follows:

"[o]ne 2x13 litre extraction unit serial number P4900 manufacturer Advanced Extraction Systems and all present and after acquired attachments, accessories, repair parts and other goods placed on the said extraction unit (the "Collateral") and all proceeds that are present or after acquired personal property with respect to the Collateral.

66. The party with certain registrations against FIGR Inc. is Jim Pattison Industries Ltd. These registrations are all in respect of certain leased motor vehicles.

67. The parties with registrations will not be served for the application for the Initial Order, and are not proposed to be primed. The Applicants expect to seek to prime them at the Comeback Hearing.

D. Unsecured Intercompany Obligations

1. *The AOI Note*

68. FIGR Inc. was the borrower under a promissory note (the "**AOI Note**") issued to AOI. The AOI Note bears interest at a rate equal to 0.5% plus the arithmetic average of: (a) LIBOR 1-month rate plus 0.025%; and (b) US prime rate plus 0.015%. As at November 30, 2020, approximately \$189,729,870 was outstanding under the AOI Note.

69. The AOI Note has no stated maturity and may be prepaid at any time.

70. Proceeds from the AOI Note were used by FIGR Inc. to fund its obligations and those of CIG and FIGR Norfolk through intercompany notes detailed below. On December 30, 2020, AOI assigned (the "**AOI Assignment**") its rights under the AOI Note to its parent company and sole shareholder, AOI Tabak (the "**AOI Assignment Agreement**").

71. Copies of the AOI Note and the AOI Assignment Agreement are attached hereto as Exhibit "O" and Exhibit "P", respectively.

2. **The CIG Note**

72. CIG is the borrower under a promissory note (the "**CIG Note**") issued by FIGR Inc. (the former name of one of the amalgamated entities which now forms FIGR Brands). The CIG Note bears interest at a rate equal to 1.0% plus the arithmetic average of: (a) LIBOR 1-month rate plus 0.025%; and (b) US prime rate plus 0.015%.

73. Proceeds from the CIG Note were used by CIG to fund the construction of the CIG Expansion Facility and CIG's operating losses. The CIG Note has no stated maturity and may be prepaid at any time.

74. As at November 30, 2020, approximately \$93,910,479 was outstanding under the CIG Note.

75. A copy of the CIG Note is attached hereto as Exhibit "Q".

3. The FIGR Norfolk Note

76. FIGR Norfolk is the borrower under a promissory note issued by FIGR Inc. (the former name of one of the amalgamated entities which now forms FIGR Brands) (the "**FIGR Norfolk Note**") pursuant to the FIGR Norfolk USA. The FIGR Norfolk Note bears interest at a rate of 9% per annum, compounded quarterly and payable monthly commencing January 29, 2020 and thereafter on the first day of each month for the remainder of the term. The FIGR Norfolk Note matures on January 29, 2023.

77. Proceeds from the FIGR Norfolk Note were used by FIGR Norfolk to fund operating losses.

78. As at November 30, 2020, approximately \$40,103,454 was outstanding under the FIGR Norfolk Note.

79. A copy of the FIGR Norfolk Note is attached hereto as Exhibit "R".

4. Other Unsecured Obligations and Claims

(a) ACOA Contribution Agreement

80. CIG entered into a Contribution Agreement with the Atlantic Canada Opportunities Agency ("ACOA") on June 10, 2019 (the "**Contribution Agreement**"). A copy of the Contribution Agreement is attached hereto as Exhibit "S". ACOA is a Canadian Federal economic development agency responsible for creating opportunities for economic growth in Canada's Atlantic Provinces.

81. Pursuant to the Contribution Agreement, ACOA agreed to contribute up to \$800,000 (the "**Contribution Amount**") for the expansion of the CIG Expansion Facility. Pursuant to the terms of the Contribution Agreement, CIG is obligated to repay the Contribution Amount in monthly installments between the period of March 1, 2021 and February 1, 2029. Approximately \$627,633 remains outstanding under the Contribution Agreement as at November 30, 2020.

(b) Third Party Suppliers

82. Given the nature of its business, the FIGR Group relies on a number of vendors and third party service providers and, as such, are party to a number of agreements for the provision of certain essential services including, among other things, insurance, phone and internet, security, utilities, professional costs and other services provided in connection with operating a business in the cannabis industry. As of the date of this affidavit, the FIGR Group is indebted to certain third party suppliers.

(c) Shareholder Obligations:

83. Pursuant to the FIGR Norfolk USA, FIGR Brands is obligated to fund the operational requirements of FIGR Norfolk provided, however, that as soon as FIGR Norfolk has sufficient cash flow to finance its own operations it is required to do so instead of incurring additional debt (the "**Operational Funding Obligations**"). To date, the Operational Funding Obligations have been met through amounts lent under the FIGR Norfolk Note. The FIGR Norfolk Note requires FIGR Norfolk to make interest payments on the principal amount outstanding beginning January 29, 2020. FIGR Norfolk is in arrears in respect of these payment obligations.

84. In addition, pursuant to the FIGR Norfolk USA, FIGR Brands was obligated to fund the construction of the FIGR Norfolk Facility, including, on commercially reasonable terms and in certain circumstances, the financing of at least an 80,000 square foot facility for the phase II buildout of the FIGR Norfolk Facility with the size, cost and type of facility to be determined by the shareholders of FIGR Norfolk, acting reasonably. The FIGR Norfolk shareholders are also obligated, in this context, to pursue replacement financing from third party lenders on certain terms stipulated in the Norfolk USA and otherwise on commercially reasonable terms. To date, the FIGR Norfolk shareholders have yet to establish terms concerning the size, cost or type of facility contemplated by any phase II expansion, nor have they been able to obtain third party financing for any such expansion on the terms contemplated by the FIGR Norfolk USA.

5. Employee Liabilities

85. As discussed above, the FIGR Group's aggregate payroll is as follows:

- (a) FIGR Brands – approximately \$170,000 semi-monthly;

- (b) FIGR Norfolk – approximately \$59,000 bi-weekly; and
- (c) CIG – approximately \$244,229 bi-weekly.

86. While the FIGR Group is current with respect to its payment of payroll and the remittance of employee source reductions, its ability to meet future payroll obligations, including payroll due in respect of FIGR Norfolk on January 23, CIG on January 30 and FIGR Brands on January 31 is contingent on the granting of the relief sought in the Initial Order.

VI. THE PROPOSED DIP LOAN

87. On January 20, 2021, FIGR Brands, as borrower (in such capacity, the "**Borrower**"), FIGR Norfolk and CIG, as guarantors (in such capacity, the "**Guarantors**" and each a "**Guarantor**") and the DIP Lender, entered into a term sheet in respect to the DIP Loan (the "**DIP Term Sheet**"). A copy of the DIP Term Sheet is attached hereto as Exhibit "T".

88. The DIP Term Sheet provides for a super-priority, DIP interim, non-revolving credit facility up to a maximum principal amount of \$8 million. The interest rate applicable to advances under the DIP Loan is 8% per annum and shall accrue and be paid on the Maturity Date (as defined in the DIP Term Sheet).

89. The DIP Loan is conditional, among other things, upon the granting of a priority charge over the Property in favour of the DIP Lender to secure the amounts borrowed under the DIP Loan (the "**DIP Lender's Charge**"). In accordance with the DIP Term Sheet, the DIP Loan is to be used during these CCAA proceedings (the "**CCAA Proceedings**") to fund:

- (a) working capital needs in accordance with the Cash Flow Forecast (as defined below);
- (b) fees and expenses associated with the DIP Loan (including without limitation certain expenses, fees of the Monitor, and legal fees of counsel to the DIP Lender, the Applicants and the Monitor); and
- (c) such other costs and expenses of the FIGR Group as agreed to by the DIP Lender, in writing.

90. The DIP Loan is subject to customary covenants, conditions precedent, and representations and warranties made by the Applicants to the Lender. The DIP Loan must be repaid in full by the date that is the earlier of:

- (a) the occurrence of an Event of Default (as defined in the DIP Term Sheet); and
- (b) June 30, 2021.

91. The amount of the DIP Loan to be funded during the initial Stay of Proceedings (up to \$2.5 million) is only that portion that is necessary to ensure the continued operation of the Applicants' business in the ordinary course during the initial 10 days.

VII. RELIEF SOUGHT

A. Stay of Proceedings

92. The FIGR Group urgently requires a broad stay of proceedings to prevent enforcement action by certain contractual counter parties and to provide the FIGR Group with breathing space

while it conducts the SISP, all the while permitting its business to continue to operate as a going concern.

93. The FIGR Group is concerned about its failure to meet certain obligations as they become due. It would be detrimental to the FIGR Group's business if proceedings were commenced or continued, or rights and remedies were executed, against the FIGR Group. Absent the Stay of Proceedings, the FIGR Group will not be able to continue to operate its business.

94. In light of the foregoing, the Stay of Proceedings is in the best interests of the FIGR Group and its stakeholders. I understand that the Proposed Monitor believes that the Stay of Proceedings is appropriate in the circumstances.

B. Proposed Monitor

95. The proposed Initial Order contemplates that FTI will act as Monitor in the Applicants' CCAA Proceedings. I understand that FTI has consented to act as Monitor of the Applicants in the CCAA Proceedings if the proposed Initial Order is granted. A copy of FTI's consent to act as Monitor is attached hereto as Exhibit "U".

C. Ability to Pay Certain Pre-Filing Amounts

96. Pursuant to the proposed Initial Order, the Applicants are seeking authorization (but not the obligation) to pay, among other things:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and employee expenses payable on or after the date of this Order, in each case

incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and

- (b) with the consent of the Monitor and the DIP Lender, amounts owing for goods and services actually supplied to the Applicants and all outstanding amounts related to honouring customer obligations whether existing before or after the date of the proposed Initial Order, incurred in the ordinary course of business and consistent with existing policies and procedures.

97. I believe this relief is necessary to maintain ordinary course operations, particularly given the highly regulated nature of the FIGR Group's business. The FIGR Group's ability to operate its business in the normal course is dependent on its ability to obtain an uninterrupted supply of certain goods and services.

98. I understand that the Monitor and the DIP Lender are supportive of that relief.

D. Administration Charge

99. The Initial Order provides for a Court-ordered charge in favour of the Proposed Monitor, as well as counsel to the Proposed Monitor and the Applicants, over the Property, to secure payment of their respective fees and disbursements incurred in connection with services rendered in respect of the Applicants up to a maximum amount of \$600,000 (the “**Administration Charge**”). The Administration Charge is proposed to rank ahead of and have priority over all of the other Charges.

100. The Applicants require the expertise, knowledge, and continued participation of the proposed beneficiaries of the Administration Charge during the CCAA Proceedings in order to

complete a successful restructuring. Each of the beneficiaries of the Administration Charge will have distinct roles in the Applicants' restructuring.

101. The Applicants and the Proposed Monitor worked collaboratively to estimate the quantum of the Administration Charge required, which takes into account the limited retainers the professionals currently have and their existing outstanding fees. I believe that the Administration Charge is fair and reasonable in the circumstances. I understand that the Proposed Monitor is also of the view that the Administration Charge is fair and reasonable in the circumstances.

E. Directors' Charge

102. Under the Initial Order, the Applicants are seeking to stay all proceedings against the directors and officers of the Applicants (collectively, the "**Directors and Officers**").

103. I am advised by Sean Zweig of Bennett Jones LLP, and believe that, in certain circumstances, directors and officers can be held liable for obligations of a company, including those owed to employees and government entities. Among other things, I understand that these obligations may include unpaid accrued wages and unpaid accrued vacation pay, together with unremitted excise, sales, goods and services, and harmonized sales taxes.

104. It is my understanding that the Applicants' present and former Directors and Officers who are or were employed by the Applicants are among the potential beneficiaries under liability insurance policies maintained by New Pyxus International for the benefit of itself and its direct and indirect subsidiaries. However, I understand that these policies have various exceptions, exclusions and carve-outs and that they may not provide sufficient coverage against the potential liability that the Directors and Officers could incur in connection with the CCAA Proceedings.

105. Given the risks related to these CCAA Proceedings and the uncertainty surrounding available indemnities and insurance, I understand that the current Directors and Officers' involvement in the CCAA Proceedings is conditional upon the granting of a priority charge in favour of the Directors and Officers in the amount of \$2 million (the "**Directors' Charge**"). The Director's Charge would serve as security for the indemnification obligations and potential liabilities the Directors and Officers may face during the initial 10-day period of the CCAA Proceedings. The Directors' Charge is proposed to rank in priority to the DIP Lender's Charge and the Intercompany Charge, but subordinate to the Administration Charge.

106. The Applicants believe that the Directors' Charge is reasonable in the circumstances. I understand that the Proposed Monitor is supportive of the Directors' Charge and its quantum.

F. DIP Lender's Charge

107. The DIP Term Sheet provides, among other things, that the DIP Loan is contingent on the granting of the DIP Lender's Charge. The proposed Initial Order contemplates that the DIP Lender's Charge will rank subordinate to Administration Charge and the Directors' Charge, but in priority to the Intercompany Charge and all other claims (except secured creditors who did not receive notice of this application).

108. Pursuant to the proposed Initial Order, the DIP Lender's Charge will secure all of the credit advanced under the DIP Loan. The DIP Lender's Charge will not secure obligations incurred prior to the CCAA Proceedings.

109. The amount to be funded under the DIP Loan during the initial Stay of Proceedings is limited to the amount necessary to ensure the continued operations of the Applicants' business.

Correspondingly, the DIP Lender's Charge under the proposed Initial Order is limited to the amount to be funded during the initial Stay of Proceedings. The Applicants intend to seek an increase to the DIP Lender's Charge at the Comeback Hearing.

G. Intercompany Charge

110. Should the Initial Order be granted, to the extent that any member of the FIGR Group (each an "**Intercompany Lender**") makes any payment or incurs or discharges any obligation that is a payment or obligation of one or more of the other members of the FIGR Group (other than the Intercompany Lender) or otherwise transfers value to or for the benefit to one or more of the other members of the FIGR Group (other than the Intercompany Lender, as applicable), it is proposed that such Intercompany Lender be granted a charge on the Property in the amount of such payment or obligation or transfer (the "**Intercompany Charge**").

111. The Intercompany Charge is necessary to protect members of the FIGR Group (and their respective creditors) for any obligation an Intercompany Lender incurs on behalf of another member of the FIGR Group (other than its own obligations) and to secure such amounts.

112. The proposed Initial Order contemplates that the Intercompany Charge will rank subordinate to Administration Charge, the Directors' Charge and the DIP Lender's Charge, but in priority to all other claims (except secured creditors who did not receive notice of this application). The Intercompany Charge will not secure any intercompany advances made by an Intercompany Lender to an Intercompany Borrower before the date of the Initial Order.

H. Cash Flow Forecast

113. With the assistance of the Proposed Monitor, the Applicants have undertaken a cash flow analysis to determine the quantum of funding required to finance their operations, assuming the Initial Order is granted, over the 13-week period from January 16, 2021, to April 16, 2021 (the "**Cash Flow Forecast**"). I understand that the Cash Flow Forecast will be attached to the pre-filing report of the Proposed Monitor.

114. The Cash Flow Forecast indicates that the Applicants urgently require DIP financing to ensure that they have the liquidity required to meet their obligations and continue their business operations during the Stay of Proceedings.

VIII. CONCLUSION

115. The proposed Initial Order is in the best interests of the Applicants and their stakeholders. The Stay of Proceedings and the DIP Loan will allow the Applicants to continue ordinary course operations with the breathing space and stability necessary to develop a plan for their restructuring. Absent the Stay of Proceedings and the DIP Loan, the Applicants will be unable to fund payroll and will be forced to cease their operations, which would be detrimental to the value of their business, and in turn, the interests of their stakeholders.


116. In the circumstances, I believe that the CCAA Proceedings are the only viable means of restructuring the Applicants' business for the benefit of their stakeholders and that the relief sought in the Initial Order is limited to what is reasonably necessary to stabilize the Applicants' business.

SWORN BEFORE ME over)
videoconference on this 21st day of January)
2021. The affiant was located in the City of)
Toronto, in the Province of Ontario and the)
Commissioner was located in the Town of)
Kimberley, in the Province of Ontario. This)
affidavit was commissioned remotely as a)
result of COVID-19 and the declaration was)
administered in accordance with Ontario)
Regulation 431/20.)



Aiden Nelms

A Commissioner for Oaths in and for the
Province of Ontario



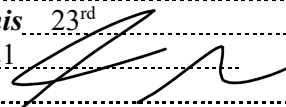
Michael Devon

This is Exhibit “C” *referred to in the*

affidavit of Michael Devon

sworn before me, this 23rd

day of April, 2021

A handwritten signature in black ink, appearing to be 'M. Devon', is written over the signature line of the affidavit text.

.....
A COMMISSIONER FOR TAKING AFFIDAVITS



Court File No. CV-21-00655373-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.)

FRIDAY, THE 29th

JUSTICE HAINEY)

DAY OF JANUARY, 2021

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 FIGR
BRANDS, INC., FIGR NORFOLK INC. AND CANADA'S ISLAND GARDEN INC.
(collectively, the "**Applicants**")

AMENDED AND RESTATED INITIAL ORDER

(amending Initial Order dated January 21, 2021)

THIS APPLICATION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") was heard this day by Zoom videoconference at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Michael Devon sworn January 21, 2021 and the Exhibits thereto (the "**Devon Affidavit**"), the affidavit of Michael Devon sworn January 25, 2021 and the Exhibits thereto (the "**Second Devon Affidavit**"), the Pre-Filing Report of FTI Consulting Canada Inc. ("**FTI**") in its capacity as proposed monitor of the Applicants dated January 21, 2021 and the First Report of FTI in its capacity as monitor dated January 27, 2021 (the "**First Report**"), and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for the Applicants, counsel for FTI in its capacity as court-appointed monitor (the "**Monitor**"), counsel for Alliance One Tobacco Canada, Inc. (the "**DIP Lender**"), and such other parties listed on the Counsel Slip, no one appearing for any other party although duly served as appears from the Affidavit of Service of Aiden Nelms sworn January 26, 2021;

SERVICE

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

APPLICATION

2. **THIS COURT ORDERS AND DECLARES** that each of the Applicants is a company to which the CCAA applies.

PLAN OF ARRANGEMENT

3. **THIS COURT ORDERS** that each of the Applicants shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "**Plan**").

POSSESSION OF PROPERTY AND OPERATIONS

4. **THIS COURT ORDERS** that the Applicants shall remain in possession and control of their respective current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the Applicants shall continue to carry on business in a manner consistent with the preservation of their business (the "**Business**") and Property. The Applicants are authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or employed by them, with liberty to retain such further Assistants as they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. **THIS COURT ORDERS** that the Applicants shall be entitled to continue to utilize the central cash management system currently in place as described in the Devon Affidavit or, with the consent of the Monitor and the DIP Lender, replace it with another substantially similar central cash management system (the "**Cash Management System**") and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire

into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicants of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicants, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

6. **THIS COURT ORDERS** that the Applicants shall be entitled but not required to pay the following expenses whether incurred prior to or after the date of this Order:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and employee expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;
- (b) with the consent of the Monitor and the DIP Lender, amounts owing for goods and services actually supplied to the Applicants and all outstanding amounts related to honouring customer obligations whether existing before or after the date of this Order, incurred in the ordinary course of business and consistent with existing policies and procedures; and
- (c) the fees and disbursements of any Assistants retained or employed by the Applicants in respect of these proceedings, at their standard rates and charges.

7. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, and subject to the Definitive Documents (as defined below), the Applicants shall be entitled but not required to pay all reasonable expenses incurred by the Applicants in carrying on the Business in the ordinary course prior to, on, or, after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors' and officers' insurance), maintenance and security services; and
- (b) payment for goods or services actually supplied to the Applicants following the date of this Order.

Payments for amounts incurred prior to this Order shall require the consent of the Monitor and the DIP Lender, or leave of this Court.

8. **THIS COURT ORDERS** that the Applicants shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance; (ii) Canada Pension Plan; and (iii) income taxes.
- (b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Applicants in connection with the sale of goods and services by the Applicants, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicants.

9. **THIS COURT ORDERS** that until a real property lease is disclaimed in accordance with the CCAA, the Applicants shall pay all amounts constituting rent or payable as rent under real

property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the applicable Applicant and the landlord from time to time ("**Rent**"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

10. **THIS COURT ORDERS** that, except as specifically permitted herein and pursuant to the Definitive Documents, the Applicants are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicants to any of their creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of their Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

11. **THIS COURT ORDERS** that each of the Applicants shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents, have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of its business or operations, and to dispose of redundant or non-material assets not exceeding \$250,000 in any one transaction or \$1,000,000 in the aggregate;
- (b) sell inventory in the ordinary course of business consistent with past practice, or otherwise with the consent of the Monitor and the DIP Lender;
- (c) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate; and
- (d) pursue all avenues of refinancing of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing,

all of the foregoing to permit the Applicants to proceed with an orderly restructuring of the Business.

12. **THIS COURT ORDERS** that the applicable Applicant shall provide each relevant landlord with notice of the Applicant's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes such Applicant's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the applicable Applicant, or by further Order of this Court upon application by the applicable Applicant on at least two (2) days notice to such landlord and any such secured creditors. If any Applicant disclaims a lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to such Applicant's claim to the fixtures in dispute.

13. **THIS COURT ORDERS** that if a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then: (a) during the notice period prior to the effective time of the disclaimer, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the applicable Applicant and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the applicable Applicant in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE APPLICANTS OR THE PROPERTY

14. **THIS COURT ORDERS** that until and including March 31, 2021, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Applicants or the Monitor or their respective employees and representatives acting in such

capacities, or affecting the Business or the Property, except with the written consent of the Applicants and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicants or affecting the Business or the Property, are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

15. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Applicants or the Monitor, or their respective employees and representatives acting in such capacities, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall: (i) empower the Applicants to carry on any business which the Applicants are not lawfully entitled to carry on; (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA; (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 RIGHTS

16. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicants, except with the written consent of the Applicants and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

17. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Applicants 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, security services, payroll services, insurance, transportation services, utility or other services to the Business or the Applicants, 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 Applicants, and that the Applicants shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicants in accordance with normal payment practices of the Applicants or such other practices as may be agreed upon by the supplier or service provider and each of the Applicants and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

18. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicants. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

19. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicants with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicants whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicants, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicants or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

20. **THIS COURT ORDERS** that the Applicants shall indemnify their directors and officers against obligations and liabilities that they may incur as a director or officer of the Applicants after the commencement of the within proceedings, except to the extent that, with respect to any officer

or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

21. **THIS COURT ORDERS** that the directors and officers of the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of \$2,700,000, as security for the indemnity provided in paragraph 20 of this Order. The Directors' Charge shall have the priority set out in paragraphs 40 and 42 herein.

22. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary: (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge; and (b) the Applicants' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any director's and officer's insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 20 of this Order.

APPOINTMENT OF MONITOR

23. **THIS COURT ORDERS** that FTI is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicants with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicants pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

24. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicants' receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;

- (c) assist the Applicants, to the extent required by the Applicants, in their dissemination, to the DIP Lender and its counsel on a weekly basis of financial and other information as agreed to between the Applicants and, the DIP Lender which may be used in these proceedings including reporting on a basis to be agreed with the DIP Lender;
- (d) advise the Applicants in their preparation of the Applicant's cash flow statements and reporting required by the DIP Lender, which information shall be reviewed with the Monitor and delivered to the DIP Lender and its counsel on a periodic basis, but not less than weekly, or as otherwise agreed to by the DIP Lender;
- (e) monitor all payments, obligations or transfers as between the Applicants for purposes of determining the amounts subject to the Intercompany Charges (as defined below);
- (f) advise the Applicants in their development of the Plan (if any) and any amendments to the Plan;
- (g) assist the Applicants, to the extent required by the Applicants, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (h) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicants, to the extent that is necessary to adequately assess the Applicant's business and financial affairs or to perform its duties arising under this Order;
- (i) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
- (j) perform such other duties as are required by this Order or by this Court from time to time.

25. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property or be deemed to take possession of the Property, pursuant to any provision of any federal, provincial or other law respecting, among other things, the manufacturing, possession, processing and distribution of cannabis or cannabis products including, without limitation, under the *Cannabis*

Act S.C. 2018, c.16, the *Controlled Drugs and Substances Act*, S.C. 1996, c. 19, the *Excise Tax Act*, R.S.C., 1985, c. E-15, the *Ontario Cannabis Licence Act*, S.O. 2018, c. 12, Sched. 2, the *Ontario Cannabis Control Act*, S.O. 2017, c. 26, Sched. 1, the *Prince Edward Island Cannabis Management Corporation Act*, R.S.P.E.I. 1988, c C-1.3, the *Prince Edward Island Cannabis Control Act*, R.S.P.E.I. 1988, c C-1.2, the *British Columbia Cannabis Control and Licensing Act*, S.B.C. 2018, c. 29, the *British Columbia Cannabis Distribution Act*, S.B.C. 2018, c. 28, or other such applicable federal or provincial legislation or regulations (collectively, the "**Cannabis Legislation**"), and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof within the meaning of any Cannabis Legislation or otherwise, and nothing in this Order shall be construed as resulting in the Monitor being an employer or successor employer within the meaning of any statute, regulation or rule of law or equity for any purpose whatsoever.

26. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, the *Ontario Occupational Health and Safety Act*, the *Prince Edward Island Environmental Protection Act*, R.S.P.E.I. 1988, c E-9, the *Prince Edward Island Occupational Health and Safety Act*, R.S.P.E.I. 1988, c O-1.01, the *British Columbia Environmental Management Act*, S.B.C. 2003, c 53, the *British Columbia Water Protection Act*, RSBC 1996, c 484, the *British Columbia Occupational Health and Safety Regulation*, B.C. Reg. 296/97, and all regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

27. **THIS COURT ORDERS** that, in addition to the rights and protections afforded to the DIP Lender under this Order or at law, the DIP Lender shall not incur any liability or obligation as a result of the carrying out of the provisions of this Order, including under any Cannabis Legislation, save and except for any gross negligence or willful misconduct on its part.

28. **THIS COURT ORDERS** that that the Monitor shall provide any creditor of the Applicants, including without limitation, the DIP Lender, with information provided by the Applicants in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicants is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicants may agree.

29. **THIS COURT ORDERS** that, in addition to the rights and protections afforded to the Monitor under the CCAA or as an officer of this Court, neither the Monitor nor its respective employees and representatives acting in such capacities shall incur any liability or obligation as a result of the appointment of the Monitor or the carrying out by it of the provisions of this Order, including under any Cannabis Legislation, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

30. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Applicants shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, whether incurred prior to, on or subsequent to, the date of this Order, by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicants on a weekly basis, and in addition, the Applicants are hereby authorized to pay to the Monitor and counsel to the Monitor a retainer in the aggregate amount of \$100,000, to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

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

32. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, and the Applicants' counsel shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$600,000 as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 40 and 42 hereof.

DIP FINANCING

33. **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to obtain and borrow under a credit facility from the DIP Lender in order to finance the Applicants' working capital requirements and other general corporate purposes and capital expenditures.

34. **THIS COURT ORDERS** that such credit facility shall be on the terms and subject to the conditions set forth in the commitment letter between the Applicants and the DIP Lender dated as of January 20, 2021 (as may be amended from time to time, the "**Commitment Letter**"), filed.

35. **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the "**Definitive Documents**"), as are contemplated by the Commitment Letter or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Applicants are hereby authorized and directed to pay and perform all of their indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the Commitment Letter and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

36. **THIS COURT ORDERS** that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the "**DIP Lender's Charge**") on the Property, which DIP Lender's

Charge shall not exceed the amount of \$8,000,000 (plus interest and costs) or secure an obligation that exists before this Order is made. The DIP Lender's Charge shall have the priority set out in paragraphs 40 and 42 hereof.

37. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under the Definitive Documents or the DIP Lender's Charge, the DIP Lender, upon 5 days notice to the Applicants and the Monitor, may exercise any and all of its rights and remedies against the Applicants or the Property under or pursuant to the Commitment Letter, Definitive Documents and the DIP Lender's Charge, including without limitation, to cease making advances to the Applicants and set off and/or consolidate any amounts owing by the DIP Lender to the Applicants against the obligations of the Applicants to the DIP Lender under the Commitment Letter, the Definitive Documents or the DIP Lender's Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicants and for the appointment of a trustee in bankruptcy of the Applicants; and
- (c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicants or the Property.

38. **THIS COURT ORDERS AND DECLARES** that, unless otherwise agreed to by the DIP Lender, the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise filed by any of Applicants under the CCAA, or any proposal filed by any of the Applicants under the BIA, with respect to any advances made under the Definitive Documents.

INTERCOMPANY LENDING

39. **THIS COURT ORDERS** that to the extent that any Applicant (an "**Intercompany Lender**") after the date of this Order makes any payment to or on behalf of, or incurs any obligation on behalf of, or discharges any obligation of, an Applicant (other than itself) (the "**Debtor Applicant**") or otherwise transfers value to or for the benefit of one or more Applicants (other than the Debtor Applicant), such Intercompany Lender is hereby granted a charge (each an "**Intercompany Charge**") on all of the Property of such Debtor Applicant in the amount of such payment, obligation or transfer. The Intercompany Charge shall have the priority set out in paragraphs 40 and 42 herein.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

40. **THIS COURT ORDERS** that the priorities of the Directors' Charge, the Administration Charge, the DIP Lender's Charge and each Intercompany Charge (collectively, the "**Charges**"), as among them, shall be as follows:

First - Administration Charge (to the maximum amount of \$600,000);

Second - Directors' Charge (to the maximum amount of \$2,700,000);

Third - DIP Lender's Charge (to the maximum amount of \$8,000,000 (plus interest and costs)); and

Fourth - Intercompany Charge.

41. **THIS COURT ORDERS** that the filing, registration or perfection of the Charges shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

42. **THIS COURT ORDERS** that each of the Charges (all as constituted and defined herein) shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person.

43. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges unless the Applicants also obtain the prior written consent of the Monitor, the DIP Lender and the beneficiaries of the Charges, or further Order of this Court.

44. **THIS COURT ORDERS** that the Charges, the Commitment Letter and the Definitive Documents shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") and/or the DIP Lender thereunder shall not otherwise be limited or impaired in any way by: (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Applicants, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the Commitment Letter or the Definitive Documents shall create or be deemed to constitute a breach by the Applicants of any Agreement to which they are a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Applicants entering into the Commitment Letter, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and
- (c) the payments made by the Applicants pursuant to this Order, the Commitment Letter or the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

45. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the applicable Applicant's interest in such real property leases.

SERVICE AND NOTICE

46. **THIS COURT ORDERS** that the Monitor shall: (i) without delay, publish in the Globe and Mail, National Edition, a notice containing the information prescribed under the CCAA; and (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against any of the Applicants of more than \$1,000 (excluding individual employees, former employees with retirement savings plan entitlements, and retirees and other beneficiaries who have entitlements under any retirement savings plans), and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

47. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: <http://cfcanada.fticonsulting.com/figr>.

48. **THIS COURT ORDERS** that the Applicants and the Monitor and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Applicants' creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in

satisfaction of a legal or judicial obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2175 (SOR/DORS).

GENERAL

49. **THIS COURT ORDERS** that each of the Applicants, the DIP Lender or the Monitor may from time to time apply to this Court to amend, vary or supplement this Order or for advice and directions in the discharge of its powers and duties under this Order or in the interpretation of this Order hereunder.

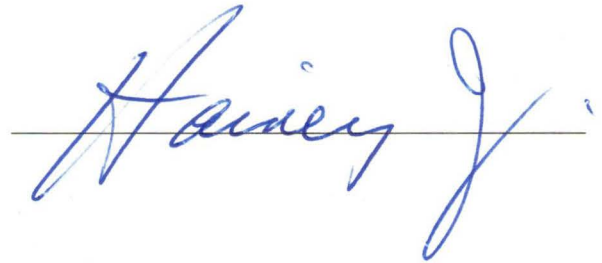
50. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of any of the Applicants, the Business or the Property.

51. **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 Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

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

53. **THIS COURT ORDERS** that any interested party (including each of the Applicants and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

54. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.

A handwritten signature in blue ink, appearing to read "Hainey J.", is written over a horizontal line. The signature is cursive and includes a period at the end.

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36*, AS AMENDED AND IN THE MATTER OF FIGR BRANDS, INC., FIGR NORFOLK INC. AND CANADA'S ISLAND GARDEN INC.

Court File No.: CV-21-00655373-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings Commenced in Toronto

**AMENDED AND RESTATED INITIAL
ORDER**

BENNETT JONES LLP
One First Canadian Place
Suite 3400, P.O. Box 130
Toronto, Ontario
M5X 1A4

Sean Zweig (LSO# 57307I)
Mike Shakra (LSO# 64604K)
Aiden Nelms (LSO# 74170S)

Tel: 416-863-1200
Fax: 416-863-1716

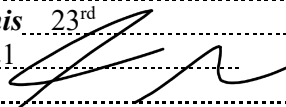
Lawyers for the Applicants

This is Exhibit “D” *referred to in the*

affidavit of Michael Devon

sworn before me, this 23rd

day of April, 2021

A handwritten signature in black ink, appearing to be 'M. Devon', is written over the signature line of the affidavit text.

.....
A COMMISSIONER FOR TAKING AFFIDAVITS



Court File No. CV-21-00655373-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.

)

FRIDAY, THE 29th

JUSTICE HAINEY

)

DAY OF JANUARY, 2021

)

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 FIGR
BRANDS, INC., FIGR NORFOLK INC. AND CANADA'S ISLAND GARDEN INC.
(collectively, the "**Applicants**")

SISP APPROVAL ORDER

THIS MOTION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), for an order, *inter alia*, approving the SISP (as defined below) and certain related relief, was heard this day by Zoom videoconference at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion of the Applicants, the affidavit of Michael Devon sworn January 25, 2021, the First report of FTI Consulting Canada Inc. (the "**First Report**"), in its capacity as monitor of the Applicants (the "**Monitor**"), filed, and on hearing the submissions of counsel for the Applicants, counsel for the Monitor, counsel for Alliance One Tobacco Canada Inc. (in such capacity, the "**DIP Lender**"), and such other counsel as were present, no one else appearing although duly served as appears from the affidavit of service of Aiden Nelms sworn January 26, 2021;

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that capitalized terms used in this Order and not otherwise defined herein shall have the meanings ascribed to them under the Sale and Investment Solicitation Process attached hereto as Schedule "A" (the "**SISP**") or the Amended and Restated Initial Order dated January 29, 2021 (the "**Amended and Restated Initial Order**"), as applicable.

APPROVAL OF THE SISP

3. **THIS COURT ORDERS** that the SISP (subject to any amendments thereto that may be made in accordance therewith and with this Order) be and is hereby approved and the Monitor, together with its affiliate, FTI Capital Advisors – Canada ULC ("**FTI Capital Advisors**"), and the Applicants are authorized and directed to carry out the SISP in accordance with its terms and this Order, and are hereby authorized and directed to take such steps as they consider necessary or desirable in carrying out each of their obligations thereunder, subject to prior approval of this Court being obtained before completion of any transaction(s) under the SISP.
4. **THIS COURT ORDERS** that the Applicants, the Monitor, FTI Capital Advisors and their respective Assistants, affiliates, partners, directors, employees, advisors, agents and controlling persons shall have no liability with respect to any and all losses, claims, damages or liability of any nature or kind to any person in connection with or as a result of performing their duties under the SISP, except to the extent of such losses, claims, damages or liabilities arising or resulting from the gross negligence or wilful misconduct of the Applicants, the Monitor or FTI Capital Advisors, as applicable, as determined by this Court.
5. **THIS COURT ORDERS** that notwithstanding anything contained herein or in the SISP, the Monitor and FTI Capital Advisors shall not take possession of the Property or be deemed to take possession of the Property, including pursuant to any provision of the Cannabis Legislation.

6. **THIS COURT ORDERS** that the Monitor or the Applicants may apply to this Court for directions with respect to the SISP at any time.

PIPEDA

7. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Applicants, the Monitor, FTI Capital Advisors and their respective Assistants are hereby authorized and permitted to disclose and transfer to each Phase 1 Qualified Bidder personal information of identifiable individuals but only to the extent desirable or required to negotiate or attempt to complete a transaction pursuant to the SISP (a "**Transaction**"). Each Phase 1 Qualified 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 for the purpose of effecting a Transaction, and if it does not complete a Transaction, shall return all such information to the Applicants, the Monitor or FTI Capital Advisors, as applicable, or in the alternative destroy all such information and provide confirmation of its destruction if requested by the Applicants, the Monitor or FTI Capital Advisors. The Successful Bidder(s) shall maintain and protect the privacy of such information and, upon closing of the Transaction(s) contemplated in the Successful Bid(s), shall be entitled to use the personal information provided to it that is related to the Business and/or Property acquired pursuant to the SISP in a manner that is in all material respects identical to the prior use of such information by the Applicants, and shall return all other personal information to the Applicants, the Monitor or FTI Capital Advisors or ensure that all other personal information is destroyed and provide confirmation of its destruction if requested by the Applicants, the Monitor or FTI Capital Advisors, as applicable.

GENERAL

8. **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 Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding,

or to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order.

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

10. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. on the date of this Order.



Toronto Estates Office
330 University Avenue, 9th Fl,
Toronto, ON
M5G 1R7

TF

SCHEDULE "A"

[attached]

SALE AND INVESTMENT SOLICITATION PROCESS

On January 21, 2021, FIGR Brands, Inc., FIGR Norfolk Inc. and Canada's Island Garden Inc. (collectively, the “**Applicants**”) were granted an initial order (as amended and restated from time to time, the “**Initial Order**”) under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**” and the Applicants' proceedings thereunder, the “**CCAA Proceedings**”), by the Ontario Superior Court of Justice (Commercial List) (the “**Court**”). All capitalized terms utilized herein and not otherwise defined shall have the meaning ascribed to them in the Initial Order.

Pursuant to an order dated January 29, 2021 (the “**SISP Approval Order**”) the Court approved, among other things, the sale and investment solicitation process (the “**SISP**”) described herein. In accordance with the SISP Approval Order, FTI Consulting Canada Inc., with the assistance of its affiliate FTI Capital Advisors Canada ULC (the “**Monitor**”), with the assistance of the Applicants, will conduct the SISP. The SISP is intended to solicit interest from qualified parties in an acquisition or refinancing of the business or a sale of a portion of or all the assets and/or the business of the Applicants by way of merger, reorganization, recapitalization, sale or other similar transaction.

This document (the “**SISP Procedure**”) outlines the SISP, which will include a notification process followed by two (2) phases of activity for qualified interested bidders (“**Phase 1**” and “**Phase 2**”, respectively).

Opportunity

1. The SISP is intended to solicit interest in, and opportunities for, a sale of all or part of the Property and/or an investment in the Business (the “**Opportunity**”). The Opportunity may include one or more of a restructuring, recapitalization or other form of reorganization of the business and affairs of the Applicants as a going concern or a sale of all, substantially all or one or more components of the Property and the Business as a going concern or otherwise.
2. Except to the extent otherwise set forth in a definitive agreement with a successful bidder, any sale of the Property or an investment in the Business will be on an “as is, where is” basis and without surviving representations or warranties of any kind, nature, or description by the Monitor or the Applicants, or any of their respective agents or advisors, and, in the event of a sale, all of the right, title and interest of the Applicants in and to the Property to be acquired will be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options, and interests therein and thereon pursuant to Court orders, to the extent that the Court deems it appropriate to grant such relief and except as otherwise provided in such Court orders.

Timeline

3. The following table sets out the key milestones under the SISP:

| Milestone | Deadline |
|---|--|
| Commence solicitation of interest from parties, including delivering NDA and Teaser Letter, and upon execution of NDA, CIM and Phase 1 data room. | Preliminary solicitation efforts commenced on January 22, 2021 The Monitor will send the Teaser Letter and the NDA to each Known Potential Bidder by no later than February 4, 2021 |
| Phase 1 Bid Deadline | February 26, 2021 at 5:00 PM (Eastern Time) |
| Phase 2 Bid Deadline | To be Specified in Phase 2 Bid Process Letter |

Any extensions or amendments to the deadlines above will be communicated to Phase 1 Qualified Bidders or Phase 2 Qualified Bidders (each as defined below), as applicable, in writing and such extensions or amendments shall be posted on the website the Monitor maintains in respect of the CCAA Proceedings at <http://cfcanada.fticonsulting.com/figr> (the “**Monitor’s Website**”).

Solicitation of Interest: Notice of the SISP

4. As soon as reasonably practicable, but in any event by no later than February 4, 2021:
 - (a) the Monitor, with the assistance of the Applicants and in consultation with Alliance One Tobacco Canada, Inc. (the “**DIP Lender**”), will prepare a list of potential bidders, including: (i) parties that have approached the Monitor or the Applicants and advised that they have an interest in the Opportunity; (ii) local and international strategic and financial parties who the Monitor and/or the Applicants, in consultation with the DIP Lender, believe may be interested in purchasing all or part of the Business and Property or investing in the Applicants pursuant to the SISP; and (iii) any other credible parties as determined by the Monitor and/or Applicant, in consultation of the DIP Lender suggested in writing by a stakeholder as a potential bidder who may be interested in the Opportunity (collectively, the “**Known Potential Bidders**”);
 - (b) the Monitor will arrange for a notice of the SISP (and such other relevant information which the Monitor in consultation with the Applicants and the DIP Lender, consider appropriate) (the “**Notice**”) to be published as soon as reasonably practicable after the date hereof in *The Globe and Mail (National Edition)*, HortiDaily.com and any other newspaper or journal the Monitor considers appropriate, if any;
 - (c) the Applicants will issue a press release setting out the information contained in the Notice and such other relevant information which the Applicants and the Monitor,

in consultation with the DIP Lender, consider appropriate, for dissemination in Canada and major financial centres in the United States;

- (d) the Monitor, with the assistance of the Applicants and in consultation with the DIP Lender, will prepare a process summary (the “**Teaser Letter**”) describing the Opportunity, outlining the process under this SISP Procedure and inviting recipients of the Teaser Letter to express their interest pursuant to the SISP; and
 - (e) the Applicants will prepare a non-disclosure agreement in form and substance satisfactory to the Monitor (an “**NDA**”).
5. The Monitor will send the Teaser Letter and NDA to each Known Potential Bidder by no later than February 4, 2021 and to any other party who requests a copy of the Teaser Letter and NDA or who is identified to the Monitor or the Applicants as a potential bidder, if deemed a credible bidder by the Monitor and the Applicants as soon as reasonably practicable after such request or identification, as applicable.

PHASE 1: NON-BINDING LOIs

Qualified Bidders and Delivery of Confidential Information Package

6. Any party who wishes to participate in the SISP (a “**Potential Bidder**”) must provide to the Monitor and the Applicants, an NDA executed by it, which shall enure to the benefit of any purchaser of or investor in the Business or Property, or any portion thereof, and a letter setting forth the identity of the Potential Bidder, and the contact information for such Potential Bidder (each a “**Phase 1 Qualified Bidder**”).
7. The Monitor, in consultation with the Applicants, will prepare and send to each Phase 1 Qualified Bidder a confidential information package providing additional information considered relevant to the Opportunity (the “**Confidential Information Package**”).
8. The Applicants, with the consent of the Monitor, reserve the right to limit any Phase 1 Qualified Bidder’s access to any confidential information (including any information in the Confidential Information Package or a data room) and to customers and suppliers of the Applicants, where, in the Applicants' opinion after consultation with the Monitor, such access could negatively impact the SISP, the ability to maintain the confidentiality of the confidential information, the Business or the Property.

Due Diligence

9. The Monitor, in consultation with the Applicants, shall in its reasonable business judgment and subject to the Applicants' competitive and other business considerations, afford each Phase 1 Qualified Bidder such access to due diligence material and information relating to the Property and Business as they deem appropriate. Due diligence access may include access to electronic data rooms, on-site inspections, and other matters, which a Phase 1 Qualified Bidder may reasonably request and as to which the Applicants in consultation with the Monitor, may agree. The Monitor will designate a representative to coordinate all

reasonable requests for additional information and due diligence access from Phase 1 Qualified Bidders and the manner in which such requests must be communicated.

10. Potential Bidders must rely solely on their own independent review, investigation and/or inspection of all information and of the Property and Business in connection with their participation in the SISP and any transaction they may enter into with the Applicants.

Non-Binding Letters of Intent from Phase 1 Qualified Bidders

11. A Phase 1 Qualified Bidder that wishes to pursue the Opportunity further must deliver a non-binding letter of interest (an “**LOI**”) to the Monitor and the Applicants in accordance with this SISP Procedure at the addresses specified in Schedule “A” hereto (including by email) so as to be received by them no later than 5:00 PM (Eastern Time) on February 26, 2021, or such later date or time as may be agreed to by the Monitor, with the consent of the Applicants (the “**Phase 1 Bid Deadline**”).
12. Subject to paragraph 13, an LOI so submitted will be considered a qualified LOI (each a “**Qualified LOI**”) only if:
 - (a) in the case of a proposal to acquire all, substantially all or a portion of the Property (a “**Sale Proposal**”), it identifies or contains the following:
 - (i) the Qualified Phase 1 Bidder and representatives thereof who are authorized to appear and act on behalf of the Qualified Phase 1 Bidder for all purposes regarding the transaction;
 - (ii) the identity of each entity or person that will be sponsoring or participating in or benefiting from the transaction contemplated by the LOI;
 - (iii) the purchase price or price range in Canadian dollars, including details of any liabilities to be assumed by the Phase 1 Qualified Bidder and key assumptions supporting the valuation;
 - (iv) a description of the Property that is expected to be subject to the transaction and any of the Property expected to be excluded;
 - (v) evidence of the financial capability of the Phase 1 Qualified Bidder to consummate the transaction and the expected structure and financing of the transaction;
 - (vi) a description of the liabilities and obligations to be assumed by the Phase 1 Qualified Bidder along with information sufficient for the Monitor and the Applicants to determine that the Phase 1 Qualified Bidder has sufficient ability to satisfy and perform any liabilities or obligations to be assumed;
 - (vii) a description of the conditions and approvals required for the Phase 1 Qualified Bidder to be in a position to submit a final and binding offer,

- including any anticipated corporate, securityholder or other internal approvals and any anticipated impediments for obtaining such approvals;
- (viii) an outline of any additional due diligence required to be conducted in order to submit a final and binding offer;
 - (ix) a description of all conditions to closing that the Phase 1 Qualified Bidder expects to include in its final and binding offer, including without limitation any regulatory approvals and any form of agreement required from a government body, stakeholder or other third party (“**Third Party Agreement**”) and an outline of the principal terms thereof; and
 - (x) any other terms or conditions of the Sale Proposal that the Phase 1 Qualified Bidder believes are material to the transaction;
- (b) in the case of a proposal to make an investment in, restructure, recapitalize, reorganize or refinance the Business or the Applicants (each an “**Investment Proposal**”), it identifies or contains the following:
- (i) the Qualified Phase 1 Bidder and representatives thereof who are authorized to appear and act on behalf of the Qualified Phase 1 Bidder for all purposes regarding the transaction;
 - (ii) the identity of each entity or person that will be sponsoring or participating in or benefiting from the transaction contemplated by the LOI;
 - (iii) a description of how the Phase 1 Qualified Bidder proposes to structure the proposed investment, restructuring, recapitalization, refinancing or reorganization;
 - (iv) the aggregate amount of the equity and/or debt investment to be made in the Business and/or the Applicants in Canadian dollars;
 - (v) key assumptions supporting the Phase 1 Qualified Bidder’s valuation;
 - (vi) a description of the Phase 1 Qualified Bidder’s proposed treatment of any obligations or liabilities, including, without limitation, material contracts and employees;
 - (vii) information sufficient for the Monitor and the Applicants to determine that the Phase 1 Qualified Bidder has the ability to satisfy and perform any liabilities or obligations assumed pursuant to subparagraph (iv) above;
 - (viii) the underlying assumptions regarding the pro forma capital structure (including the form and amount of anticipated equity and/or debt levels, debt service fees, interests or dividend rates, amortization, voting rights or other protective provisions (as applicable), redemption, prepayment or repayment attributes and any other material attributes of the investment);

- (ix) a specific indication of the sources of capital for the Phase 1 Qualified Bidder and the structure and financing of the transaction;
 - (x) a description of the conditions and approvals required for the Phase 1 Qualified Bidder to be in a position to submit a final and binding offer, including any anticipated corporate, securityholder or other internal approvals and any anticipated impediments for obtaining such approvals;
 - (xi) an outline of any additional due diligence required to be conducted in order to submit a final and binding offer;
 - (xii) a description of all conditions to closing that the Phase 1 Qualified Bidder expects to include in its final and binding offer, including without limitation, any regulatory approvals and any Third Party Agreement required and an outline of the principal terms thereof; and
 - (xiii) any other terms or conditions of the Investment Proposal that the Phase 1 Qualified Bidder believes are material to the transaction; and
- (c) in the case of either a Sale Proposal or an Investment Proposal, it contains such other information as reasonably requested by the Monitor after consultation with the Applicants.
13. The Monitor, with the consent of the Applicants, and in consultation with the DIP Lender, may waive compliance with any one or more of the requirements specified above and deem such non-compliant bids to be a Qualified LOI.

Preliminary Assessment of Phase 1 Bids and Subsequent Process

14. Following the Phase 1 Bid Deadline, the Monitor in consultation with the Applicants and the DIP Lender will assess the Qualified LOIs. If it is determined by the Monitor, in consultation with the Applicants and the DIP Lender, that a Phase 1 Qualified Bidder that has submitted a Qualified LOI: (i) has a bona fide interest in completing a Sale Proposal or Investment Proposal (as the case may be); and (ii) has the financial capability (based on availability of financing, experience and other considerations) to consummate such a transaction based on the financial information provided, then such Phase 1 Qualified Bidder will be deemed a “**Phase 2 Qualified Bidder**”, provided that the Monitor may, in its reasonable business judgment and with the consent of the Applicants, limit the number of Phase 2 Qualified Bidders (and thereby eliminate any bidders from the process) taking into account the factors identified in paragraph 15 below and any material adverse impact on the operations and performance of the Applicants. Only Phase 2 Qualified Bidders shall be permitted to proceed to Phase 2 of the SISF. No Phase 1 Qualified Bidder that has submitted a Qualified LOI shall be deemed not to be a Phase 2 Qualified Bidder without the approval of the Monitor.
15. As part of the assessment of Qualified LOIs and the determination of the process subsequent thereto, the Monitor and the Applicants, in consultation with the DIP Lender, shall determine the process and timing to be followed in pursuing Qualified LOIs based on

such factors and circumstances as they consider appropriate in the circumstances including, but not limited to: (i) the number of Qualified LOIs received; (ii) the extent to which the Qualified LOIs relate to the same Property or Business or involve Investment Proposals predicated on certain Property or Business; (iii) the scope of the Property or Business to which any Qualified LOIs may relate; (iv) the conditions to closing contained in the Qualified LOIs; and (v) whether to proceed by way of sealed bid or auction (with or without a stalking horse bidder) with respect to some or all of the Property.

16. Upon the determination by the Monitor and the Applicants, in consultation with the DIP Lender, of the manner in which to proceed to Phase 2 of the SISP, the Monitor and the Applicants, in consultation the DIP Lender, will prepare a bid process letter for Phase 2 (the “**Bid Process Letter**”), and the Bid Process Letter will be: (i) sent by the Monitor to all Phase 2 Qualified Bidders as soon as practically possible following the Phase 1 Bid Deadline; and (ii) posted by the Monitor on the Monitor’s Website.
17. Notwithstanding the process and deadlines outlined above with respect to Phase 1 of the SISP and the process to supplement Phase 2 by way of the Bid Process Letter,
 - (a) the Monitor may, with the consent of the Applicants and in consultation with the DIP Lender, at any time:
 - (i) in accordance with paragraph 39 herein, pause, terminate, amend or modify the SISP or this SISP Procedure;
 - (ii) remove any portion of the Business and the Property from the SISP;
 - (iii) establish further or other procedures for Phase 1;
 - (b) the Applicants may, with the consent of the Monitor and in consultation with the DIP Lender, at any time bring a motion to the Court to seek approval of:
 - (i) a sale of, or investment in, all or part of the Property or the Business whether or not such sale or investment is in accordance with the terms or timelines set out in this SISP Procedure or the Bid Process Letter; or
 - (ii) a stalking horse agreement in respect of some or all of the Property or Business and related bid procedures in respect of such Property.

PHASE 2: FORMAL OFFERS AND SELECTION OF SUCCESSFUL BIDDER

18. Paragraphs 19 to 34 below and the conduct of Phase 2 are subject to paragraphs 14 to 17, above, any adjustments made to Phase 2 in accordance with the Bid Process Letter and any further Court order regarding the SISP.

Formal Binding Offers

19. Phase 2 Qualified Bidders that wish to make a formal offer to purchase or make an investment in the Applicants or their Property or Business shall submit a binding offer (a

“**Phase 2 Bid**”) that complies with all of the following requirements to the Monitor and the Applicants at the addresses specified in Schedule “A” hereto (including by email), so as to be received by them no later than the date set out in the Bid Process Letter (the “**Phase 2 Bid Deadline**”):

- (a) the bid shall comply with all of the requirements set forth in paragraph 12 above in respect of Phase 1 Qualified LOIs;
- (b) the bid (either individually or in combination with other bids that make up one bid) is an offer to purchase or make an investment in some or all of the Applicants or their Property or Business and is consistent with any necessary terms and conditions established by the Applicants and the Monitor and communicated to Phase 2 Qualified Bidders;
- (c) the bid includes a letter stating that the Phase 2 Qualified Bidder’s offer is irrevocable until the selection of the Successful Bidder (as defined below), provided that if such Phase 2 Qualified Bidder is selected as the Successful Bidder, its offer shall remain irrevocable until the closing of the transaction with the Successful Bidder;
- (d) the bid includes duly authorized and executed transaction agreements, including the purchase price (in an exact figure and not expressed as a range), investment amount and any other key economic terms expressed in Canadian dollars (the “**Purchase Price**”), together with all exhibits and schedules thereto (or term sheets that describe the material terms and provisions of such agreements), and proposed order to approve the transaction by the Court;
- (e) the bid include a blackline comparison between the transaction agreements submitted and the template provided to Phase 2 Qualified Bidder in the data room;
- (f) the bid includes written evidence of a firm, irrevocable commitment for financing or other evidence of ability to consummate the proposed transaction, that will allow the Applicants and the Monitor to make a determination as to the Phase 2 Qualified Bidder’s financial and other capabilities to consummate the proposed transaction;
- (g) the bid is not conditioned on: (i) the outcome of unperformed due diligence by the Phase 2 Qualified Bidder, apart from, to the extent applicable, the disclosure of due diligence materials that represent proprietary or sensitive competitive information which was withheld in Phase 1 from the Phase 2 Qualified Bidder; or (ii) obtaining financing, but may be conditioned upon the Applicants receiving the required approvals or amendments relating to the licenses required to operate its business, if necessary;
- (h) the bid fully discloses the identity of each entity that will be (directly or indirectly) entering into the transaction or the financing (including through the issuance of debt in connection with such bid), or that is participating or benefiting from such bid, and such disclosure shall include, without limitation: (i) in the case of a Phase 2 Qualified Bidder formed for the purposes of entering into the proposed transaction,

the identity of each of the actual or proposed direct or indirect equity holders of such Phase 2 Qualified Bidder and the terms and participation percentage of such equity holder's interest in such bid; and (ii) the identity of each entity that has or will receive a benefit from such bid from or through the Phase 2 Qualified Bidder or any of its equity holders and the terms of such benefit;

- (i) for a Sale Proposal, the bid includes a commitment by the Phase 2 Qualified Bidder to provide a deposit in the amount of not less than 10% of the Purchase Price offered upon the Phase 2 Qualified Bidder being selected as the Successful Bidder;
 - (j) for an Investment Proposal, the bid includes a commitment by the Phase 2 Qualified Bidder to provide a deposit in the amount of not less than 10% of the total new investment contemplated in the bid upon the Phase 2 Qualified Bidder being selected as the Successful Bidder;
 - (k) the bid includes acknowledgements and representations of the Phase 2 Qualified Bidder that the Phase 2 Qualified Bidder: (i) confirms that the transaction is on an "as is, where is" basis; (ii) has had an opportunity to conduct any and all due diligence regarding the Property, the Business and the Applicants prior to making its offer (apart from, to the extent applicable, the disclosure of due diligence materials that represent proprietary or sensitive competitive information which were withheld in Phase 1 from the Phase 2 Qualified Bidder); (iii) it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Property in making its bid; and (iv) it did not rely upon any written or oral statements, representations, warranties, or guarantees whatsoever, whether express, implied, statutory or otherwise, regarding the Business, the Property, or the Applicants or the completeness of any information provided in connection therewith, except as expressly stated in the definitive transaction agreement(s) signed by the applicable Applicants;
 - (l) the bid contains other information required by the Monitor in consultation with the Applicants including, without limitation, such additional information as may be required in the event Phase 2 is supplemented in accordance with paragraph 16 to contemplate that an auction of certain Property be conducted; and
 - (m) the bid is received by the Phase 2 Bid Deadline.
20. Following the Phase 2 Bid Deadline, the Monitor and the Applicants will assess the Phase 2 Bids received. The Monitor, in consultation with the Applicants and the DIP Lender, will designate the most competitive bids that comply with the foregoing requirements to be "**Qualified Bids**". Only Phase 2 Qualified Bidders whose bids have been designed as Qualified Bids are eligible to become the Successful Bidder(s).
21. The Monitor, with the consent of the Applicants and in consultation with the DIP Lender, may waive strict compliance with any one or more of the requirements specified above and deem such non-compliant Phase 2 Bids to be a Qualified Bid.

22. The Monitor shall notify each Phase 2 Qualified Bidder in writing as to whether its Phase 2 Bid constituted a Qualified Bid within ten (10) business days of the Phase 2 Bid Deadline, or at such later time as the Monitor deems appropriate.
23. If the Applicants, in consultation with the Monitor and the DIP Lender, are not satisfied with the number or terms of the Qualified Bids, the Applicants may, in consultation with the DIP Lender and with the approval of the Monitor, extend the Phase 2 Bid Deadline, or the Applicants may amend the SISP or this SISP Procedure in accordance with the terms set out herein.
24. The Monitor and the Applicants may, in consultation with the DIP Lender, aggregate separate Phase 2 Bids from unaffiliated Phase 2 Qualified Bidders to create one Qualified Bid.

Evaluation of Competing Bids

25. A Qualified Bid will be evaluated based upon several factors including, without limitation: (i) the Purchase Price and the value provided by such bid; (ii) the identity, circumstances and ability of the Phase 2 Qualified Bidder to successfully complete such transactions; (iii) the proposed transaction documents; (iv) factors affecting the speed, certainty and value of the transaction; (v) the assets or liabilities included or excluded from the bid; (vi) any related restructuring costs; and (vii) the likelihood and timing of consummating such transaction, each as determined by the Monitor and the Applicants, in consultation with the DIP Lender.

Selection of Successful Bid

26. The Monitor and the Applicants, in consultation with the DIP Lender, will: (a) review and evaluate each Qualified Bid, provided that each Qualified Bid may be negotiated between the Applicants, the Monitor and the applicable Phase 2 Qualified Bidder, and may be amended, modified or varied to improve such Phase 2 Qualified Bid as a result of such negotiations; and (b) identify the highest or otherwise best bid (the “**Successful Bid**”, and the Phase 2 Qualified Bidder making such Successful Bid, the “**Successful Bidder**”) for any particular Property or the Business in whole or part. The determination of any Successful Bid by the Applicants, with the assistance and approval of the Monitor, and in consultation with the DIP Lender, shall be subject to approval by the Court.
27. The Applicants shall have no obligation to enter into a Successful Bid, and they reserve the right, in consultation with the Monitor and the DIP Lender, to reject any or all Phase 2 Qualified Bids.
28. Notwithstanding the process and deadlines outlined above with respect to Phase 2 of the SISP and the process to supplement Phase 2 by way of the Bid Process Letter
 - (a) the Monitor may, in consultation with the DIP Lender and with the consent of the Applicants, at any time:

- (i) in accordance with paragraph 39 herein, pause, terminate, amend or modify the SISP or this SISP Procedure;
 - (ii) remove any portion of the Business and the Property from the SISP;
 - (iii) establish further or other procedures for Phase 2;
- (b) the Applicants may, in consultation with the DIP Lender and with the consent of the Monitor, at any time bring a motion to the Court to seek approval of:
- (i) a sale of, or investment in, all or part of the Property or the Business whether or not such sale or investment is in accordance with the timelines set out in this SISP Procedure or the Bid Process Letter; or
 - (ii) a stalking horse agreement in respect of some or all of the Property or Business and related bid procedures in respect of such Property.

Sale Approval Motion Hearing

29. At the hearing of any motion to approve any transaction with a Successful Bidder (the “**Sale Approval Motion**”), the Applicants shall seek, among other things, approval from the Court to consummate such Successful Bid. To the extent other Phase 2 Qualified Bids other than the Successful Bid are in respect of the same Property as such Successful Bid, such other Phase 2 Qualified Bids shall be deemed to be rejected on and as of the date of approval of the Successful Bid by the Court.
30. For the avoidance of doubt, the completion of any Sale Proposal or Investment Proposal shall be subject to the approval of the Court and the requirement of approval of the Court may not be waived.

Confidentiality and Access to Information

31. The Monitor and the Applicants and their respective advisors make no representation or warranty as to the information contained in the Confidential Information Package, data room or otherwise made available pursuant to the SISP, except in respect of the Applicants to the extent expressly contemplated in any definitive agreement with a Successful Bidder ultimately executed and delivered by the Applicants.
32. Participants and prospective participants in the SISP shall not be permitted to receive any information that is not made generally available to all participants relating to the number or identity of Potential Bidders, Phase 1 Qualified Bidders, Phase 2 Qualified Bidders, Phase 2 Qualified Bids, the details of any bids submitted or the details of any confidential discussions or correspondence between the Applicants, the Monitor and such other bidders or Potential Bidders in connection with the SISP, except to the extent the Applicants, with the approval of the Monitor and consent of the applicable participants, are seeking to combine separate bids from Phase 1 Qualified Bidders or Phase 2 Qualified Bidders.

33. Notwithstanding anything contained herein, forthwith following the Phase 1 Bid Deadline, the DIP Lender shall be entitled to receive all LOIs from the Applicants on a confidential basis pursuant to the DIP Term Sheet regardless of any confidentiality restrictions that may appear in any LOI. Further, the DIP Lender, having provided written notice to the Monitor that it will not participate in the SISP as a Potential Bidder, will be entitled to be consulted throughout the SISP and, will have access to copies of all bidder information including but not limited to, bidder solicitation materials, LOIs, Phase 2 Bids, Qualified Bids, Successful Bids and any definitive agreements in connection therewith, together with weekly updates from the Monitor on the SISP, provided that the DIP Lender has entered into confidentiality arrangements satisfactory to the Applicants and the Monitor. For greater certainty, nothing herein prevents the DIP Lender from participating in any transaction involving the Applicants should the SISP terminate or as permitted by the Bid Process Letter.
34. In addition to the consultation rights granted to the Monitor and the DIP Lender, herein, the Applicants and the Monitor may consult with any other parties with a material interest in the CCAA Proceedings regarding the status of and material information and developments relating to the SISP to the extent considered appropriate by such party (subject to paragraph 32 and taking into account, among other things, whether any particular party or any of its affiliates is a Potential Bidder, Phase 1 Qualified Bidder, Phase 2 Qualified Bidder or other participant or prospective participant in the SISP or involved in a bid), provided that such parties shall have entered into confidentiality arrangements satisfactory to the Applicants and the Monitor.

Supervision of the SISP

35. The Monitor shall oversee, in all respects, the conduct of the SISP and, without limitation to that role, the Monitor will participate in the SISP in the manner set out in this SISP Procedure, the SISP Approval Order, the Initial Order and any other orders of the Court, and is entitled to receive all information in relation to the SISP.
36. This SISP does not, and will not be interpreted to, create any contractual or other legal relationship between the Applicants or the Monitor and any Phase 1 Qualified Bidder, any Phase 2 Qualified Bidder or any other party, other than as specifically set forth in a definitive agreement that may be entered into with the Applicants.
37. Without limiting the preceding paragraph, the Monitor shall not have any liability whatsoever to any person or party, including without limitation any Potential Bidder, Phase 1 Qualified Bidder, Phase 2 Qualified Bidder, the Successful Bidder, the Applicants, the DIP Lender or any other creditor or other stakeholder of the Applicants, for any act or omission related to the process contemplated by this SISP Procedure, except to the extent such act or omission is the result from its gross negligence or wilful misconduct. By submitting a bid, each Phase 1 Qualified Bidder, Phase 2 Qualified Bidder, or Successful Bidder shall be deemed to have agreed that it has no claim against the Monitor for any reason whatsoever, except to the extent that such claim is the result of gross negligence or wilful misconduct of the Monitor.

38. Participants in the SISP are responsible for all costs, expenses and liabilities incurred by them in connection with the submission of any LOI, Phase 2 Bid, due diligence activities, and any further negotiations or other actions whether or not they lead to the consummation of a transaction.
39. The Monitor shall have the right to modify the SISP and this SISP Procedure (including, without limitation, pursuant to the Bid Process Letter) in consultation with the DIP Lender and with the prior approval of the Applicants, if, in its reasonable business judgment, such modification will enhance the process or better achieve the objectives of the SISP; provided that the Service List in the CCAA Proceedings shall be advised of any substantive modification to the procedures set forth herein.

SCHEDULE “A”

The Monitor:

FTI Consulting Canada Inc.

TD Waterhouse Tower
79 Wellington Street West
Suite 2010, P.O. Box 104
Toronto, ON M5K 1G8

Attention: Jeff Rosenberg and Jodi Porepa

Email: Jeffrey.Rosenberg@fticonsulting.com / Jodi.Porepa@fticonsulting.com

with copies to:

Cassels Brock & Blackwell LLP

Suite 2100, Scotia Plaza
40 King Street West
Toronto, ON, M5H 3C2

Attention: Ryan Jacobs and Jane Dietrich

Email: rjacobs@cassels.com / jdietrich@cassels.com

The Applicants:

The FIGR Group

C/O Bennett Jones LLP

100 King Street West, Suite 3400
Toronto, ON M5X 1A5

Attention: Sean Zweig and Mike Shakra

Email: zweigs@bennettjones.com
shakram@bennettjones.com

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36*, AS AMENDED AND IN
THE MATTER OF FIGR BRANDS, INC., FIGR NORFOLK INC. AND CANADA'S ISLAND GARDEN INC.**

Court File No.: CV-21-00655373-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings Commenced in Toronto

SISP APPROVAL ORDER

BENNETT JONES LLP
One First Canadian Place
Suite 3400, P.O. Box 130
Toronto, Ontario
M5X 1A4

Sean Zweig (LSO# 57307I)
Mike Shakra (LSO# 64604K)
Aiden Nelms (LSO# 74170S)

Tel: 416-863-1200
Fax: 416-863-1716

Lawyers for the Applicants

**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 FIGR BRANDS, INC., FIGR NORFOLK
INC. AND CANADA'S ISLAND GARDEN INC.**

Court File No.: CV-21-00655373-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings Commenced in Toronto

AFFIDAVIT OF MICHAEL DEVON
(Sworn April 23, 2021)

BENNETT JONES LLP
One First Canadian Place
Suite 3400, P.O. Box 130
Toronto, Ontario
M5X 1A4

Sean Zweig (LSO# 57307I)
Mike Shakra (LSO# 64604K)
Aiden Nelms (LSO# 74170S)

Tel: 416-863-1200
Fax: 416-863-1716

Lawyers for the Applicants

TAB 3

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.) FRIDAY, THE 30th
)
JUSTICE HAINEY) DAY OF APRIL, 2021
)

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 FIGR
BRANDS, INC., FIGR NORFOLK INC. AND CANADA'S ISLAND GARDEN INC.
(collectively, the "**Applicants**")

EMPLOYEE CLAIMS PROCEDURE ORDER

THIS MOTION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), for an order, *inter alia*, approving the Employee Claims Procedure (as defined below) and certain related relief, was heard this day by Zoom videoconference as a result of the COVID-19 pandemic.

ON READING the Notice of Motion of the Applicants, the affidavit of Michael Devon sworn April 23, 2021, the Fourth Report of FTI Consulting Canada Inc., in its capacity as monitor of the Applicants (in such capacity, the "**Monitor**"), filed, and on hearing the submissions of counsel for the Applicants, counsel for the Monitor, counsel for Alliance One Tobacco Canada Inc., and such other counsel as were present, no one else appearing although duly served as appears from the affidavit of service of Aiden Nelms sworn and filed;

SERVICE

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

DEFINITIONS

2. **THIS COURT ORDERS** that, for the purposes of this Order (the "**Employee Claims Procedure Order**"), in addition to terms defined elsewhere herein, the following terms shall have the following meanings:

- (a) "**Business Day**" means a day, other than a Saturday, Sunday or a statutory holiday, on which banks are generally open for business in Toronto, Ontario;
- (b) "**Calendar Day**" means a day, including Saturday, Sunday or any statutory holiday in the Province of Ontario, Canada;
- (c) "**CCAA Claims Procedure**" means the claims procedure approved pursuant to the Claims Procedure Order;
- (d) "**CCAA Proceedings**" means the within proceedings in respect of the Applicants under the CCAA;
- (e) "**Charges**" has the meaning given to that term in the Initial Order;
- (f) "**Claim**" means:
 - (i) any right or claim of any Person against any of the Applicants, whether or not asserted or made, in connection with any indebtedness, liability or obligation of any kind whatsoever in existence at the time of the Initial Order, and any interest accrued thereon or costs payable in respect thereof, including by reason of the commission of a tort (intentional or unintentional), by reason of any breach of contract or other agreement (oral or written), by reason of any breach of duty (including any legal, statutory, equitable or fiduciary duty) or by reason of any right of ownership of or title to property or assets or right to a trust or deemed trust (statutory, express, implied, resulting, constructive, or otherwise), and whether or not such indebtedness, liability or obligation is reduced to judgment, liquidated,

unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, perfected, unperfected, present, future, known, or unknown, by guarantee, surety or otherwise, and whether or not such right is executory or anticipatory in nature, including any right or ability of any Person to advance a claim for contribution or indemnity or otherwise against the Applicants with respect to any matter, action, cause or chose in action, but subject to any counterclaim, set-off or right of compensation in favour of the Applicants which may exist, whether existing at present or commenced in the future, which indebtedness, liability or obligation (A) is based in whole or in part on facts that existed prior to the Filing Date, (B) relates to a time period prior to the Filing Date, or (C) is a right or claim of any kind that would be a claim provable in bankruptcy within the meaning of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the "**BIA**") had the Applicants become bankrupt on the Filing Date, including for greater certainty any claim against the Applicants for indemnification by any Directors or Officers in respect of a D&O Pre-Filing Claim (but excluding any such claim for indemnification that is covered by the Directors' Charge (as defined in the Initial Order));

- (ii) any right or claim of any Person against the Applicants in connection with any indebtedness, liability or obligation of any kind whatsoever owed by the Applicants to such Person arising out of the restructuring, disclaimer, repudiation, resiliation, termination or breach by the Applicants on or after the Filing Date of any contract, lease, other agreement or obligation whether written or oral, including for greater certainty any claim against the Applicants for indemnification by any Directors or Officers in respect of a D&O Restructuring Claim (but excluding any such claim for indemnification that is covered by the Directors' Charge); and
- (iii) any right or claim of any Person against one or more of the Directors or Officers of the Applicants, howsoever arising whether or not such right or claim is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, perfected, unperfected, present, future, known, or unknown, by guarantee, surety or otherwise, and whether or not such right is executory or anticipatory in nature, including any Assessments (as defined in the Claims Procedure Order) and any right or ability of any Person to advance a claim for contribution, indemnity or otherwise against any of the Directors and/or Officers with respect to any matter, action, cause or chose in action, however arising and whether:
 - (1) (A) based in whole or in part on facts that existed prior to the Filing Date, (B) relating to a time period prior to the Filing Date, or (C) it is a right or claim of any kind that would be a claim provable in bankruptcy within the meaning of the BIA had the Applicants become bankrupt on the Filing Date (a "**D&O Pre-Filing Claim**"); or

- (2) based on facts that arose in connection with the restructuring disclaimer, resiliation, termination or breach by the Applicants on or after the Filing Date of any contract, lease, other agreement or obligation, whether written or oral (a "**D&O Restructuring Claim**"),

in each case for which the Directors or Officers are alleged to be, by statute or otherwise by law or equity, liable to pay in their capacity as Directors or Officers;

- (g) "**Claims Procedure Order**" means the Claims Procedure Order granted by the Honourable Justice Hainey on February 22, 2021 in these CCAA Proceedings, as may be amended from time to time;
- (h) "**Claims Officer**" means one or more individuals selected or appointed in accordance with this Employee Claims Procedure Order to act as a claims officer for the purposes of this Employee Claims Procedure Order;
- (i) "**Court**" means the Ontario Superior Court of Justice (Commercial List);
- (j) "**D&O Indemnity Claim**" means any existing or future right of any Director or Officer against the Applicants which arose or arises as a result of any Employee Claim against such Director or Officer for which such Director or Officer is entitled to be indemnified by the Applicants;
- (k) "**Directors**" means the directors and former directors of any Applicant or any Person who is or was or may be deemed to be or have been, whether by statute, operation of law or otherwise, a director or de facto director of any Applicant, in such capacity, and "Director" means any one of them;
- (l) "**Employee**" means anyone who is or was a current or former employee of any of the Applicants, whether on a full-time, part-time or temporary basis, including any individuals on disability leave, parental leave or other absence;
- (m) "**Employee Claim**" means the Claim of any Employee for vacation pay, termination pay, severance pay, wages, expenses, commissions, or other remuneration, arising as

result of the termination of employment or a layoff of such Employee by any Applicant prior to the Filing Date or during the CCAA Proceedings;

- (n) **"Employee Claimant"** means any Person asserting or holding an Employee Claim and includes the transferee or assignee of an Employee Claim recognized in accordance with paragraphs 20 and 21 herein or a trustee, executor, liquidator, receiver, receiver and manager, or other Person acting on behalf of or through such Person;
- (o) **"Employee Claims Bar Date"** means 5:00 p.m. (Eastern Time) on the day which is thirty (30) Calendar Days after the Monitor sends an Employee Claims Package with respect to an Employee Claim in accordance with paragraph 14 of this Employee Claims Procedure Order;
- (p) **"Employee Claims Package"** means the document package which shall be disseminated by the Monitor to any Employee with a potential Employee Claim in accordance with the terms of this Order and shall consist of a copy of this Employee Claims Procedure Order (without schedules), the Employee Claim Statement, the Notice of Dispute of Employee Claim Statement and such other materials as the Monitor, in consultation with the Applicants, may consider appropriate;
- (q) **"Employee Claims Procedure"** means the procedures outlined in this Employee Claims Procedure Order in connection with the identification, quantification, adjudication and resolution of Employee Claims, as may be amended or supplemented by further order of the Court;
- (r) **"Employee Claim Statement"** means the notice prepared by the FIGR Group, in consultation with the Monitor, to be disseminated by the Monitor to all Employees advising as to certain of their rights and obligations which notice shall include an assessment of the quantum of such Employee's Claim based on the books and records of the FIGR Group and shall be substantially in the form attached as Schedule "A";
- (s) **"Filing Date"** means January 21, 2021;

- (t) **"Initial Order"** means the Initial Order of Honourable Justice Hainey as amended and restated on January 29, 2021 in these CCAA Proceedings, as may be further amended, restated or varied from time to time;
- (u) **"Meeting"** means a meeting of the creditors of any Applicant called for the purpose of considering and voting in respect of a Plan, if any;
- (v) **"Monitor"** has the meaning set out in the recital hereto;
- (w) **"Monitor's Website"** means: <http://cfcanada.fticonsulting.com/figr/>;
- (x) **"Notice of Dispute of Employee Claim Statement"** means the form substantially in the form attached as Schedule "B";
- (y) **"Officers"** means the officers and former officers of any Applicant or any Person who is or was or may be deemed to be or have been, whether by statute, operation of law or otherwise, an officer or de facto officer of any Applicant, in such capacity, and "Officer" means any one of them;
- (z) **"Orders"** means any and all orders issued by the Court within the CCAA Proceedings, including the Initial Order;
- (aa) **"Person"** means any individual, corporation, firm, limited or unlimited liability company, general or limited partnership, association (incorporated or unincorporated), trust, unincorporated organization, joint venture, trade union, government authority or any agency, regulatory body or officer thereof or any other entity, wherever situate or domiciled, and whether or not having legal status, and whether acting on its own or in a representative capacity;
- (bb) **"Plan"** means a plan of compromise or arrangement contemplated by the Initial Order;
and
- (cc) **"Service List"** means the service list maintained by the Monitor in respect of these CCAA Proceedings at the applicable time.

INTERPRETATION

3. **THIS COURT ORDERS** that all references as to time herein shall mean local time in Toronto, Ontario, Canada, and any reference to an event occurring on a Business Day shall mean prior to 5:00 p.m. (Eastern Time) on such Business Day unless otherwise indicated herein.
4. **THIS COURT ORDERS** that all references to the word "including" shall mean "including without limitation".
5. **THIS COURT ORDERS** that all references to the singular herein include the plural, the plural include the singular, and any gender includes the other gender.

GENERAL PROVISIONS

6. **THIS COURT ORDERS** that the Employee Claims Procedure and the forms attached as schedules to this Employee Claims Procedure Order are hereby approved. Notwithstanding the foregoing, the Monitor, in consultation with the Applicants, may, from time to time, make non-substantive changes to the forms as the Monitor may consider necessary or desirable, including the Employee Claim Statement and the Notice of Dispute of Employee Claim Statement.
7. **THIS COURT ORDERS** that the Applicants and the Monitor are hereby authorized to use reasonable discretion as to the adequacy of compliance with respect to the manner in which forms delivered hereunder are completed and executed, and may waive strict compliance with the requirements of this Employee Claims Procedure Order as to completion, execution and submission of such forms and to request any further documentation from an Employee Claimant that the Applicants or the Monitor may require.
8. **THIS COURT ORDERS** that all Employee Claims shall be denominated in Canadian dollars. Any Employee Claims denominated in a foreign currency shall be converted to Canadian dollars at the Bank of Canada daily average exchange rate on the Filing Date, which for United States dollars is USD 1: CAD 1.2627.
9. **THIS COURT ORDERS** that, notwithstanding any other provisions of this Order, the issuance of an Employee Claim Statement and the filing of a Notice of Dispute of Employee Claim Statement shall not, for that reason only, grant any Employee Claimant any rights, including

without limitation, in respect of their Employee Claim or their standing in the CCAA Proceedings, except as specifically set out in this Employee Claims Procedure Order.

10. **THIS COURT ORDERS** that copies of all forms delivered hereunder, as applicable, shall be maintained by the Monitor. The Monitor shall promptly provide copies of all Employee Claim Statements and all Notice of Dispute of Employee Claim Statement received by them to the Applicants and their counsel in connection with the Employee Claims Procedure.

ROLE OF THE MONITOR

11. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights, duties, responsibilities and obligations under the CCAA and any other Orders of the Court in the CCAA Proceedings, is hereby authorized, directed and empowered to implement the Employee Claims Procedure provided for herein and to take such other actions and fulfill such other roles as are contemplated by the Employee Claims Procedure Order or incidental thereto.

12. **THIS COURT ORDERS** that the Monitor shall: (i) have all protections afforded to it by the CCAA, this Employee Claims Procedure Order, the Initial Order, any other Orders of the Court in the CCAA Proceedings and other applicable law in connection with its activities in respect of this Employee Claims Procedure Order, including the stay of proceedings in its favour provided pursuant to the Initial Order; (ii) incur no liability or obligation as a result of carrying out the provisions of this Employee Claims Procedure Order, including in respect of its exercise of discretion as to the completion, execution or time of delivery of any documents to be delivered hereunder, other than in respect of gross negligence or wilful misconduct; (iii) shall be entitled to rely on the books and records of the Applicants and any information provided by the Applicants, all without independent investigation; and (iv) shall not be liable for any claims or damages resulting from any errors or omissions in such books, records or information or in any information provided by any Employee, except to the extent that the Monitor has acted with gross negligence or wilful misconduct.

13. **THIS COURT ORDERS** that the Applicants, the Officers, the Directors and their respective employees, agents and representatives and any other Person given notice of this Employee Claims Procedure Order shall fully cooperate with the Monitor in the exercise of its

powers and the discharge of its duties and obligations under this Employee Claims Procedure Order.

NOTICE TO EMPLOYEES

14. **THIS COURT ORDERS** that the Monitor shall send an Employee Claims Package to each former Employee, by ordinary mail or electronic mail to the last known address or email address of the Employee, as applicable, within: (i) ten (10) Business Days following the date of this Employee Claims Procedure Order if such Employee's employment with the Applicants was terminated prior to or on the date of this Employee Claims Procedure Order; or (ii) ten (10) Business Days following the date on which an Employee's employment with the Applicants is terminated or an Employee's temporary layoff ceases to be temporary under the *Employment Standards Act, 2000*, S.O. 2000, c. 41, as amended (or similar applicable provincial statute), if this occurs following the date of this Employee Claims Procedure Order.

15. **THIS COURT ORDERS** that the Monitor shall cause a template form of Employee Claims Package and the Employee Claims Procedure Order to be posted to the Monitor's Website as soon as reasonably possible and cause it to remain posted thereon until its discharge as Monitor of the Applicants.

16. **THIS COURT ORDERS** that upon request by an Employee Claimant to the Monitor or the Applicants for an Employee Claims Package or documents or information relating to the Employee Claims Procedure, the Monitor shall forthwith send an Employee Claims Package, direct such Employee to the documents posted on the Monitor's Website, or otherwise respond to the request for information or documents as the Monitor considers appropriate in the circumstances.

CLAIMS PROCEDURE FOR EMPLOYEE CLAIMS

17. **THIS COURT ORDERS** that in the event that an Employee receives an Employee Claim Statement and the Employee:

- (a) wishes to dispute the quantum of his or her Employee Claim as set-out in his or her Employee Claim Statement, such Employee shall file a Notice of Dispute of Employee Claim Statement with the Monitor on or before the Employee Claims Bar Date; or
- (b) agrees with the assessment of the quantum of his or her Employee Claim as set out therein, such Employee need not take any further action and such Employee Claim shall be deemed to be as set out in such Employee's Employee Claim Statement.

18. **THIS COURT ORDERS** that the Monitor shall review all Notices of Dispute of Employee Claim Statement received on or before the Employee Claims Bar Date, in consultation with the Applicants, and if the Monitor disagrees with the amount of the Claim as set out in the Notice of Dispute of Employee Claim Statement, shall, in consultation with the Applicants, attempt to resolve such dispute and settle the purported Employee Claim, and in the event that a dispute is not settled within a time period or in a manner that is satisfactory to the Monitor, the Monitor shall, in consultation with the Applicants, refer such dispute raised to a Claims Officer or the Court for adjudication at its election and shall forthwith send written notice to the Employee notifying the Employee of the Monitor's election.

19. **THIS COURT ORDERS** that if an Employee Claimant does not file a Notice of Dispute of Employee Claim Statement, in accordance with paragraph 17, as applicable, so that such Notice of Dispute of Employee Claim Statement is actually received by the Monitor on or before the Employee Claims Bar Date, or such later date as the Court may otherwise direct:

- (a) such Employee Claimant's Employee Claim shall be deemed to be as set out in the applicable Employee Claim Statement; and
- (b) such Employee Claimant shall be and is hereby forever barred, estopped and enjoined from challenging, disputing, objecting to or appealing its Employee Claim as set out in the applicable Employee Claim Statement.

TRANSFER OF EMPLOYEE CLAIMS

20. **THIS COURT ORDERS** that if an Employee transfers an Employee Claim or assigns the whole of such Employee Claim to another Person, neither the Applicants nor the Monitor shall be

obligated to give notice or otherwise deal with the transferee or assignee of such Employee Claim in respect thereof unless and until written notice of such transfer or assignment, together with evidence satisfactory to the Applicants and the Monitor, in their sole discretion, of such transfer or assignment, has been received by the Monitor and the Monitor has provided written confirmation acknowledging the transfer or assignment of such Employee Claim, and thereafter such transferee or assignee shall for the purposes hereof constitute the claimant in respect of such Employee Claim. Any such transferee or assignee of an Employee Claim shall be bound by any notices given or steps taken in respect of such Employee Claim in accordance with this Employee Claims Procedure Order prior to receiving written confirmation by the Monitor acknowledging such assignment or transfer. After the Monitor has delivered a written confirmation acknowledging the notice of the transfer or assignment of an Employee Claim, the Applicants and the Monitor shall thereafter be required only to deal with the transferee or assignee and not the original holder of the Employee Claim. A transferee or assignee of an Employee Claim takes the Employee Claim subject to any defences and rights of set-off to which the Applicants, Directors or Officers may be entitled with respect to such Employee Claim. For greater certainty, a transferee or assignee of an Employee Claim is not entitled to set-off, apply, merge, consolidate or combine any Employee Claims assigned or transferred to it against or on account or in reduction of any amounts owing by such Person to the Applicants. Reference to transfer in this Employee Claims Procedure Order includes a transfer or assignment whether absolute or intended as security.

21. **THIS COURT ORDERS** that if an Employee or any subsequent holder of an Employee Claim, who in any such case has previously been acknowledged by the Applicants and the Monitor as the holder of the Employee Claim, transfers or assigns the whole of such Employee Claim to more than one Person or part of such Employee Claim to another Person, such transfers or assignments shall not create separate Employee Claims and such Employee Claims shall continue to constitute and be dealt with as a single Employee Claim notwithstanding such transfers or assignments. The Applicants and the Monitor shall not, in each case, be required to recognize or acknowledge any such transfers or assignments and shall be entitled to give notices to and to otherwise deal with such Employee Claim only as a whole and then only to and with the Person last holding such Employee Claim, provided such holder of an Employee Claim may, by notice in writing delivered to the Applicants and the Monitor, direct that subsequent dealings in respect of such Employee Claim, but only as a whole, shall be dealt with by a specified Person and in such

event, such Person shall be bound by any notices given or steps taken in respect of such Employee Claim with such holder of the Employee Claim or in accordance with the provisions of this Employee Claims Procedure Order.

CLAIMS OFFICER

22. **THIS COURT ORDERS** that Applicants shall pay the reasonable professional fees and disbursements of any Claims Officer appointed to adjudicate a disputed Employee Claim on presentation and acceptance of invoices from time to time. Any Claims Officer shall be entitled to a reasonable retainer against his or her fees and disbursements which shall be paid upon request by the Applicants, with the consent of the Monitor.

23. **THIS COURT ORDERS** that, subject to further order of the Court, the Claims Officer shall determine the status and/or amount of each Employee Claim in respect of which a dispute has been referred to such Claims Officer.

24. **THIS COURT ORDERS** that, in consultation with the Monitor and the Applicants, the Claims Officer shall be empowered to determine the process in which evidence may be brought before him or her as well as any other procedural matters which may arise in respect of the determination of any disputed Employee Claim. In addition, the Claims Officer shall have the discretion to determine by whom and to what extent the costs of any hearing before the Claims Officer shall be paid.

25. **THIS COURT ORDERS** that the Monitor or any Employee Claimant with an Employee Claim that has been referred to the Claims Officer may appeal the Claims Officer's determination to the Court by serving upon the other (with a copy to the Applicants) and filing with the Court, within ten (10) Calendar Days of notification of the Claims Officer's determination of such Employee Claim, a notice of motion returnable on a date to be fixed by the Court. If a notice of motion is not filed within such period, then the Claims Officer's determination shall be deemed to be final and binding with respect to such Employee Claim.

D&O INDEMNITY CLAIMS

26. **THIS COURT ORDERS** that to the extent that any Employee Claim is made against a Director or Officer in accordance with this Employee Claims Procedure, a corresponding D&O Indemnity Claim shall be deemed to have been timely filed in the CCAA Claims Procedure in respect of such Employee Claim. For the avoidance of doubt, Directors and Officers shall not be required to take any action or to file a Proof of Claim (as defined in Claims Procedure Order) in respect of such D&O Indemnity Claim.

SERVICE AND NOTICE

27. **THIS COURT ORDERS** that the Monitor may, unless otherwise specified by this Employee Claims Procedure Order, serve and deliver or cause to be served and delivered the Employee Claims Package, any letters, notices or other documents to Employees or any other interested Person by forwarding true copies thereof by email, prepaid ordinary mail, courier, personal delivery, facsimile transmission or email to such Employees or any other interested Persons or their counsel (including counsel of record in any ongoing litigation) at the physical or electronic address, as applicable, last shown on the books and records of the Applicants or set out in an Employee's Notice of Dispute of Employee Claim Statement if one has been filed. Any such service and delivery shall be deemed to have been received: (i) if sent by ordinary mail, on the third Business Day after mailing within Canada, and the fifth Business Day after mailing internationally; (ii) if sent by courier or personal delivery, on the next Business Day following dispatch; and (iii) if delivered by facsimile transmission or email by 5:00 p.m. (Eastern Time) on a Business Day, on such Business Day and if delivered after 5:00 p.m. (Eastern Time) or other than on a Business Day, on the following Business Day.

28. **THIS COURT ORDERS** that any notice or communication required to be provided or delivered to the Applicants or the Monitor under this Employee Claims Procedure Order shall be in writing in substantially the form, if any, provided for in this Employee Claims Procedure Order and will be sufficiently given only if delivered by email, or if an Employee is unable to do so, and after notifying the Monitor of the method of delivery via the telephone hotline available on the Monitor's Website, by prepaid registered mail, courier, or personal delivery, addressed to:

If to the Applicants:

Bennett Jones LLP
100 King St, W Suite 3400
Toronto, ON M5X 1A4

Attention: Mike Shakra / Aiden Nelms

Email: shakram@bennettjones.com / nelmsa@bennettjones.com

If to the Monitor:

FTI Consulting Canada Inc.
TD Waterhouse Tower
79 Wellington Street West
Suite 2010, P.O. Box 104
Toronto, ON M5K 1G8

Attention: Jeff Rosenberg / Jodi Porepa

Email: figr@fticonsulting.com

with copies to:

Cassels Brock & Blackwell LLP
Suite 2100, Scotia Plaza
40 King Street West
Toronto, ON M5H 3C2

Attention: Kieran May

Email: kmay@cassels.com

Any such notice or communication shall be deemed to be received upon actual receipt thereof before 5:00 p.m. (Eastern Time) on a Business Day or if delivered outside of normal business hours, the next Business Day.

29. **THIS COURT ORDERS** that the posting of materials on the Monitor's Website pursuant to paragraph 15 herein and the mailing of Employee Claims Packages as set out in this Employee Claims Procedure Order shall constitute good and sufficient notice to Employee of the Employee Claims Bar Date and the other deadlines and procedures set forth herein, and that no other form of

notice or service need be given or made on any Person, and no other document or material need be served on any Person in respect of the Employee Claims Procedure described herein.

30. **THIS COURT ORDERS** that in the event that this Employee Claims Procedure Order is subsequently amended by further Order of the Court, the Applicants shall serve notice of such amendment on the Service List in these proceedings and the Monitor shall post such further Order on the Monitor's Website and such posting shall constitute adequate notice to all Employees of such amendment.

31. **THIS COURT ORDERS** that if during any period during which notices or other communications are being given pursuant to this Employee Claims Procedure Order, a postal strike or postal work stoppage of general application should occur, such notices, notifications or other communications sent by ordinary or registered mail and then not received shall not, absent further Order of this Court, be effective and notices and other communications given hereunder during the course of any such postal strike or work stoppage of general application shall only be effective if given by courier, personal delivery, facsimile transmission or email in accordance with this Employee Claims Procedure Order.

DIRECTIONS

32. **THIS COURT ORDERS** that notwithstanding the terms of this Employee Claims Procedure Order, the Applicants or the Monitor may apply to this Court from time to time for directions from this Court with respect to this Employee Claims Procedure Order, or for such further Order or Orders as any of them may consider necessary or desirable to amend, supplement or clarify the terms of this Employee Claims Procedure Order.

GENERAL

33. **THIS COURT ORDERS** that nothing in this Employee Claims Procedure Order shall prejudice the rights and remedies of any Directors or Officers to the Charges or any applicable insurance policy or prevent or bar any Person from seeking recourse against or payment from the Applicants' insurance or any Director's or Officer's liability insurance policy or policies that exist to protect or indemnify the Directors or Officers whether such recourse or payment is sought directly by an Employee Claimant asserting an Employee Claim from the insurer or derivatively

through the Directors or Officers or the Applicants; provided, however, that nothing in this Employee Claims Procedure Order shall create any rights in favour of such Employee under any policies of insurance nor shall anything in this Claims Procedure Order limit, remove, modify or alter any defence to such Employee Claim available to the insurer pursuant to the provisions of any insurance policy or at law; and further provided that any Employee Claim or portion thereof for which the Employee receives payment directly from, or confirmation that he or she is covered by, the Applicants' insurance or any Directors' or Officers' liability insurance or other liability insurance policy or policies that exist to protect or indemnify the Directors or Officers shall not be recoverable as against the Applicants or the Directors or Officers, as applicable.

34. **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 Employee Claims Procedure Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Employee Claims Procedure Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Employee Claims Procedure Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Employee Claims Procedure Order.

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

36. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. on the date of this Employee Claims Procedure Order.

SCHEDULE "A"
EMPLOYEE CLAIM STATEMENT

(Letterhead of the Monitor)

[DATE], 2021

[●]

Dear:

Re: Employee Claims in the CCAA Proceedings of FIGR Brands, Inc. et al (Court File: CV-21-00655373-00CL)

As you know, FIGR Brands, Inc., FIGR Norfolk Inc. and Canada's Island Garden Inc. (together, the "**Applicants**") filed for and were granted creditor protection under the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA**"), pursuant to an order (as amended, the "**Initial Order**") of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") (the "**CCAA Proceedings**"). Pursuant to the Initial Order, the Court appointed FTI Consulting Canada Inc. as monitor of the Applicants (in such capacity, the "**Monitor**") to, among other things, oversee the CCAA Proceedings. Terms not otherwise defined herein have the meaning ascribed to them in the Employee Claims Procedure Order dated April 30, 2021 (the "**Employee Claims Procedure Order**"). Copies of the Initial Order, the Employee Claims Procedure Order and other information

relating to the CCAA Proceedings has been posted to:

<http://cfcanada.fticonsulting.com/figr/> (the "**Monitor's Website**").

The purpose of this notice is to inform you about the employee claims process (the "**Employee Claims Process**") that was approved by the Court pursuant to the Employee Claims Procedure Order. The Employee Claims Process governs employee claims to be asserted against the Applicants and their Directors and Officers in the CCAA Proceedings (collectively, the "**Employees**" and each an "**Employee**"). The Employee Claims Process, as it relates to Employee claims (each an "**Employee Claim**"), is described below.

Employee Claims Process

- Under the Employee Claims Process, the Monitor is required to send a notice prepared by the Applicants, in consultation with the Monitor, to each Employee outlining the quantum of their Employee Claim against the Applicants and the Directors and Officers that the Monitor is prepared to allow (each a "**Employee Claim Statement**").
- This notice is your Employee Claim Statement, and your total Employee Claim has been assessed by the Monitor, in consultation with the Applicants. Please refer to Appendix [●] for a copy of your Employee Claim Statement as of [●], 2021.

If you agree with the Employee Claim Statement, you need take no further action.

IF YOU WISH TO DISPUTE THE ASSESSMENT OF YOUR EMPLOYEE CLAIM, YOU MUST TAKE THE STEPS OUTLINED BELOW.

Disagreement with Assessment:

If you disagree with the assessment of your Employee Claim set out in this Employee Claim Statement, you must complete and return to the Monitor a completed Notice of Dispute of Employee Claim Statement asserting a claim in a different amount supported by the appropriate documentation. A blank Notice of Dispute of Employee Claim Statement form is enclosed. The Notice of Dispute of Employee Claim Statement with supporting documentation disputing the within assessment of your claim **must be received by the Monitor no later than 5:00 p.m. (Toronto Time) on the day which is thirty (30) Calendar Days after the Monitor sends the Employee Claims Package (the "Employee Claims Bar Date")**.

If no such Notice of Dispute of Employee Claim Statement is received by the Monitor by that date, the amount of your claim will be, subject to further order of the Court, conclusively deemed to be as shown in this Employee Claim Statement.

The Notice of Dispute of Employee Claim Statement ***will be sufficiently received only if delivered by email***, or if an Employee is unable to do so, and after notifying the Monitor of the method of delivery via the telephone hotline (416.649.8128 or 1.844.669.6345), by prepaid registered mail, courier, or personal delivery addressed to:

FTI Consulting Canada Inc.
TD Waterhouse Tower
79 Wellington Street West
Suite 2010, P.O. Box 104
Toronto, ON M5K 1G8

Attention: Jeff Rosenberg / Jodi Porepa

Email: figr@fticonsulting.com

with copies to:
Cassels Brock & Blackwell LLP
Suite 2100, Scotia Plaza
40 King Street West
Toronto, ON M5H 3C2
Attention: Kieran May

Email: kmay@cassels.com

Important Deadline:

If you do not file a Notice of Dispute of Employee Claim Statement by the Employee Claims Bar Date, you will have no further right to dispute your Employee Claim against any of the Applicants or the Directors and Officers, as assessed by Monitor, in consultation with the Applicants, and you will be barred from filing any such dispute in the future.

More Information:

If you have questions regarding the foregoing, you may contact the Monitor at figr@fticonsulting.com or via the telephone hotline (416.649.8128 or 1.844.669.6345).

Yours truly,

SCHEDULE "B"

NOTICE OF DISPUTE OF EMPLOYEE CLAIM STATEMENT

With respect to the Applicants¹ and their Directors and Officers

Claims Reference Number: _____

1. Particulars of Claimant:

Full Legal Name of Employee Claimant (include trade name, if applicable)

(the "Employee Claimant")

Full Mailing Address of the Employee Claimant:

Other Contact Information of the Claimant:

Telephone Number: _____

Email Address: _____

Facsimile Number: _____

Attention (Contact Person): _____

2. Particulars of original Employee from whom you acquired the Employee Claim (if applicable):

Have you acquired this purported Employee Claim from an Employee by assignment?

Yes: No:

If yes and if not already provided, attach documents evidencing assignment.

¹ FIGR Brands, Inc., FIGR Norfolk Inc. and Canada's Island Garden Inc. (collectively, the "Applicants").

Full Legal Name of original Employee Claimant: _____

3. Dispute of Employee Claim Statement:

The Employee Claimant hereby disagrees with the value of its Employee Claim as set out in the Employee Claim Statement and asserts a Claim as follows:²

| | Amount in Employee Claim Statement | Amounts Claimed by Employee Claimant | Entity or Director(s) and/or Officers Against which Employee Claim is Asserted |
|-------------|---|---|---|
| Total Claim | \$ | \$ | |

4. Reasons for Dispute:

Please describe the reasons and basis for your dispute of the amount set out in your Employee Claim Statement. You may attach a separate schedule if more space is required.

² All Employee Claims shall be denominated in Canadian dollars. Any Employee Claims denominated in a foreign currency shall be converted to Canadian dollars at the Bank of Canada daily average exchange rate on the Filing Date, which for United States dollars is USD 1: CAD 1.2627.

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36*, AS AMENDED AND IN
THE MATTER OF FIGR BRANDS, INC., FIGR NORFOLK INC. AND CANADA'S ISLAND GARDEN INC.**

Court File No.: CV-21-00655373-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings Commenced in Toronto

EMPLOYEE CLAIMS
PROCEDURE ORDER

BENNETT JONES LLP
One First Canadian Place
Suite 3400, P.O. Box 130
Toronto, Ontario
M5X 1A4

Sean Zweig (LSO# 57307I)
Mike Shakra (LSO# 64604K)
Aiden Nelms (LSO# 74170S)

Tel: 416-863-1200
Fax: 416-863-1716

Lawyers for the Applicants

TAB 4

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.) FRIDAY, THE 30th
)
JUSTICE HAINEY) DAY OF APRIL, 2021
)

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 FIGR
BRANDS, INC., FIGR NORFOLK INC. AND CANADA'S ISLAND GARDEN INC.
(collectively, the "**Applicants**")

ORDER
(Stay Extension and Monitor's Activities and Fees)

THIS MOTION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, for an order, *inter alia*, approving: (i) an extension to the Stay Period and (ii) the Fourth Report (as defined below), and the Monitor's activities and fees described therein, was heard this day by Zoom videoconference as a result of the COVID-19 pandemic.

ON READING the Notice of Motion of the Applicants, the affidavit of Michael Devon sworn April 23, 2021 (the "**April 23 Affidavit**"), the Fourth Report of FTI Consulting Canada Inc. dated April [●], 2021 (the "**Fourth Report**"), in its capacity as Monitor of the Applicants (in such capacity, the "**Monitor**"), and on hearing the submissions of counsel for the Applicants, counsel for the Monitor, counsel for Alliance One Tobacco Canada, Inc., and such other counsel as were present, no one else appearing although duly served as appears from the affidavit of service of Aiden Nelms sworn and filed;

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS AND DECLARES** that all terms not otherwise defined herein shall have the meaning ascribed to them in the Amended and Restated Initial Order dated January 29, 2021 or the April 23 Affidavit, as applicable.

EXTENSION OF THE STAY PERIOD

3. **THIS COURT ORDERS** that the Stay Period be and is hereby extended until and including June 30, 2021.

APPROVAL OF THE FOURTH REPORT AND THE MONITOR'S ACTIVITIES AND FEES

4. **THIS COURT ORDERS** that the Fourth Report, and the activities of the Monitor and its counsel referred to therein be and are hereby approved; provided, however, that only the Monitor, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.
5. **THIS COURT ORDERS** that the fees and disbursements of the Monitor and its counsel, as set out in the Fourth Report, be and are hereby approved.

GENERAL

6. **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 Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this

Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

7. **THIS COURT ORDERS** that the Applicants and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

8. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Toronto time on the date of this Order.

**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 FIGR BRANDS, INC., FIGR NORFOLK
INC. AND CANADA'S ISLAND GARDEN INC.**

Court File No.: CV-21-00655373-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings Commenced in Toronto

**STAY EXTENSION AND FEE
APPROVAL ORDER**

BENNETT JONES LLP
One First Canadian Place
Suite 3400, P.O. Box 130
Toronto, Ontario
M5X 1A4

Sean Zweig (LSO# 57307I)
Mike Shakra (LSO# 64604K)
Aiden Nelms (LSO# 74170S)

Tel: 416-863-1200
Fax: 416-863-1716

Lawyers for the Applicants

**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 FIGR BRANDS, INC., FIGR NORFOLK
INC. AND CANADA'S ISLAND GARDEN INC.**

Court File No.: CV-21-00655373-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings Commenced in Toronto

MOTION RECORD

BENNETT JONES LLP

One First Canadian Place
Suite 3400, P.O. Box 130
Toronto, Ontario
M5X 1A4

Sean Zweig (LSO# 57307I)

Mike Shakra (LSO# 64604K)

Aiden Nelms (LSO# 74170S)

Tel: 416-863-1200

Fax: 416-863-1716

Lawyers for the Applicants