

**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 1307849 B.C. LTD.**

Applicants

**MOTION RECORD**

October 12, 2021

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# TAB 1

**ONTARIO  
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**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
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**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
FIGR BRANDS, INC., FIGR NORFOLK INC.  
AND 1307849 B.C. LTD.**

Applicants

**NOTICE OF MOTION  
(Returnable October 19, 2021)  
(Stay Extension and Fee Approval Order)**

FIGR Brands, Inc. ("**FIGR Brands**"), FIGR Norfolk Inc. ("**FIGR Norfolk**") and 1307849 B.C. Ltd. ("**Residual Co**" and together with FIGR Brands and FIGR Norfolk, the "**Applicants**" or the "**FIGR Group**") will make a motion before a Judge of the Ontario Superior Court of Justice (Commercial List) on Tuesday, October 19, 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 "**Stay Extension and Fee Approval Order**") substantially in the form attached hereto at Tab 3 of this motion record, *inter alia*:
  - (a) abridging the time for service of the motion record returnable October 19, 2021 and dispensing with service on any person other than those served;
  - (b) extending the Stay Period (as defined below) until and including February 4, 2022 (the "**Stay Extension**");

- (c) approving the Seventh Report of the FTI Consulting Canada Inc. ("**FTI**") in its capacity as court-appointed monitor (in such capacity, the "**Monitor**"), to be filed (the "**Seventh Report**"), and the activities of the Monitor and its counsel 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 Seventh Report.
2. Such further and other relief as this Honourable Court deems just.

**THE GROUNDS FOR THIS APPLICATION ARE:**

***Background***<sup>1</sup>

3. The Applicants operated two (2) licensed cannabis facilities – one in Simcoe, Ontario and the other in Charlottetown, Prince Edward Island. Since operations commenced, both facilities were cash flow negative and the FIGR Group was dependant on certain of its affiliate companies for funding. The cannabis facility in Charlottetown, Prince Edward Island was sold as part of the CIG Transaction (as defined below).
4. Facing significant liquidity issues, potential enforcement action from certain of their creditors and the cessation of its business, the Applicants 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**").
5. 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**"),

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<sup>1</sup> Note that any reference herein to the FIGR Group or the Applicants prior to June 28, 2021, being the closing of the CIG Transaction (as defined below), includes CIG and not Residual Co (each as defined below).

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 (all as defined in the Amended and Restated Initial Order).

6. 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.

7. On January 29, 2021, the Court also granted an order which, among other things, approved a sale and investment solicitation process in respect of the FIGR Group.

8. 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.

9. On February 22, 2021, the Court also granted an Order which, among other things:

- (a) approved a key employee retention plan for certain management and operations staff of Canada's Island Garden Inc. ("**CIG**");
- (b) extended the Stay Period until April 30, 2021;
- (c) approved the Pre-Filing Report of the Monitor dated January 21, 2021, the First Report of the Monitor dated January 27, 2021 and the Second Report of the Monitor dated February 18, 2021 (the "**Second Report**") and the activities of the Monitor and its counsel described therein; and
- (d) approved the fees and expenses of the Monitor and its counsel as set out in the Second Report.

10. On March 31, 2021, the Court granted an Order which, among other things:
  - (a) authorized the execution of the first amendment to the DIP Commitment Letter which increased the maximum borrowings available under the DIP Loan up to \$13,000,000 (which was an increase of \$5,000,000) and a corresponding increase to the DIP Lender's Charge;
  - (b) approved the Third Report of the Monitor dated March 26, 2021 (the "**Third Report**") and the activities of the Monitor and its counsel described therein; and
  - (c) approved the fees and disbursements of the Monitor and its counsel as set out in the Third Report.
  
11. On April 30, 2021, the Court granted:
  - (a) an Order (the "**Employee Claims Procedure Order**") which, among other things, established a procedure 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 which, among other things, extended the Stay Period until and including June 30, 2021, approved the Fourth Report of the Monitor dated April 27, 2021 (the "**Fourth Report**") and the activities of the Monitor and its counsel described therein and approved the fees and disbursements of the Monitor and its counsel as set out in the Fourth Report.
  
12. On June 10, 2021, the Court granted an order (the "**CIG Approval and Vesting Order**") which, among other things:
  - (a) approved the sale transaction (the "**CIG Transaction**") contemplated by a subscription and share purchase agreement (the "**CIG Subscription and Share Purchase Agreement**") between FIGR Brands, as vendor, CIG, as the purchased entity (in such capacity, the "**Purchased Entity**") and 102604 P.E.I. Inc., as the purchaser (the "**CIG Purchaser**"), and vesting in the CIG Purchaser all of the CIG

Vendor's right, title and interest in and to all issued and outstanding shares in the Purchased Entity;

- (b) added a subsidiary of FIGR Brands, namely Residual Co, incorporated under the laws of British Columbia, as an Applicant in these CCAA Proceedings in order to effectuate the CIG Transaction;
- (c) removed CIG as an Applicant in these CCAA Proceedings upon closing of the CIG Transaction and deeming CIG to be released from the purview of the Initial Order and all other orders of the Court granted in these CCAA Proceedings; and
- (d) transferred and vested the Excluded Liabilities, the Excluded Assets and Excluded Contracts (each as defined in the CIG Subscription and Share Purchase Agreement) to Residual Co on or before closing such that the Excluded Liabilities became liabilities of Residual Co and not liabilities of CIG or the Purchased Entity.

13. On June 10, 2021, the Court also granted an order (the "**Norfolk Approval and Vesting Order**" and together with the CIG Approval and Vesting Order, the "**Approval and Vesting Orders**") which, among other things, approved the sale transaction (the "**Norfolk Transaction**" and together with the CIG Transaction, the "**Transactions**") contemplated by the asset purchase agreement between FIGR Norfolk, as vendor, and 11897985 Canada Inc. (dba) BEROXFOOD North America dated May 10, 2021 (the "**Norfolk Sale Agreement**"), and vested in Woodside Greens Business Association Inc., or its designee (the "**Norfolk Purchaser**") all of the FIGR Norfolk's right, title and interest in and to the property described in the Norfolk Sale Agreement.

14. On June 10, 2021, the Court granted a further order (the "**June Ancillary Order**") which, among other things:

- (a) extended the Stay Period until and including September 3, 2021;
- (b) authorized the execution by the Applicants of the second amendment to the DIP Commitment Letter, which, among other things, increased the maximum borrowing available under the DIP Loan up to \$16,000,000 (which was an increase of



\$3,000,000). The June Ancillary Order also authorized a corresponding increase to the DIP Lender's Charge;

- (c) authorized and empowered the Applicants to make, or cause to be made, distributions from time to time to the DIP Lender in repayment of the obligations secured by the DIP Lender's Charge;
- (d) approved the Pre-filing Intercompany Claims Resolution Process;
- (e) approved the Fifth Report of the Monitor dated June 4, 2021 (the "**Fifth Report**") and the activities of the Monitor described therein; and
- (f) approved the fees and disbursements of the Monitor and its counsel as set out in the Fifth Report.

15. The CIG Transaction closed on June 28, 2021, however, the Norfolk Transaction has not yet closed. Together, the CIG Transaction and the Norfolk Transaction encompass substantially all of the assets of the FIGR Group.

16. On August 24, 2021, the Court granted an Order (the "**Norfolk KERP and Stay Extension Order**") which, among other things:

- (a) extended the Stay Period until and including October 29, 2021;
- (b) approved a key employee retention plan for certain senior employees of FIGR Norfolk (the "**Norfolk KERP**") and sealed a summary of the Norfolk KERP;
- (c) approved the Sixth Report of the Monitor (the "**Sixth Report**") and the activities of the Monitor described therein; and
- (d) approved the fees and disbursements of the Monitor and its counsel as set out in the fee affidavits attached to the Sixth Report.

17. Since the granting of the Norfolk KERP and Stay Extension 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, follow up on post-closing matters regarding the CIG Transaction, work to

close the Norfolk Transaction and assist the Monitor with the Claims Procedure and the Employee Claims Procedure.

***The Claims Procedure and Employee Claims Procedure<sup>2</sup>***

18. The Monitor continues to carry out the Claims Procedure and the Employee Claims Procedure in accordance with the Claims Procedure Order and the Employee Claims Procedure Order, as applicable.

19. The Monitor continues to review, determine and adjudicate certain outstanding secured and unsecured Claims filed in accordance with the Claims Procedure Order and identify, determine and adjudicate Employee Claims in accordance with the Employee Claims Procedure Order.

***The Transactions***

20. As previously noted, on June 10, 2021, the Court granted the Approval and Vesting Orders approving the Transactions, and on June 28, 2021, the Applicants and the CIG Purchaser closed the CIG Transaction.

21. Following the closing of the CIG Transaction, and in accordance with the June Ancillary Order, on July 8, 2021, the Applicants caused a distribution to be made to the DIP Lender in full satisfaction of their obligations owing under the DIP Loan including, but not limited to, outstanding principal, accrued interest, fees and expenses up and until July 8, 2021. As a result, there are no amounts currently owing by the Applicants to the DIP Lender.

*(i) the Norfolk Transaction<sup>3</sup>*

22. As previously noted, on May 10, 2021, FIGR Norfolk entered into the Norfolk Sale Agreement with the Norfolk Purchaser.

23. On or about June 29, 2021, FIGR Norfolk and the Norfolk Purchaser, with the consent of the DIP Lender and the Monitor, entered into the first amendment to the Norfolk Sale Agreement which, among other things:

- (a) extended the Outside Date from June 30, 2021 to July 30, 2021; and

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<sup>2</sup> Capitalized terms not otherwise defined in this section have the meaning ascribed to them in the Claims Procedure Order or the Employee Claims Procedure Order, as the case may be.

<sup>3</sup> Terms in this section not otherwise defined herein have the meanings ascribed to them in the Norfolk Sale Agreement.

- (b) amended Section 4.3 of the Norfolk Purchase Agreement to extend the date upon which the Financing Covenant needed to be satisfied to July 16, 2021.

24. On or about August 9, 2021, FIGR Norfolk and the Norfolk Purchaser, with the consent of the DIP Lender and the Monitor, entered into the Second Amendment to the Norfolk Sale Agreement which, among other things, extended the Outside Date from July 30, 2021 to August 31, 2021.

25. The parties continue to work diligently to close the Norfolk Transaction.

***The Stay Extension and Fee Approval Order***

*(i) Stay Extension*

26. Pursuant to the Norfolk KERP and Stay Extension Order, the Court extended the Stay Period until and including October 29, 2021. Pursuant to the Stay Extension and Fee Approval Order, the Applicants are seeking an extension of the Stay Period until and including February 4, 2022.

27. It is necessary and in the best interests of the Applicants and their stakeholders that the Stay Period be extended until and including February 4, 2022, as it will allow the Applicants and/or the Monitor to:

- (a) continue to work to close the Norfolk Transaction;
- (b) advance and complete the Claims Procedure in accordance with the Claims Procedure Order;
- (c) advance and complete the Employee Claims Procedure in accordance with the Employee Claims Procedure Order; and
- (d) with the further approval of the Court, make distributions to the creditors of the Applicants and bring these CCAA Proceedings to an end.

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

(ii) *Approval of the Seventh Report and Fees*

29. The proposed Stay Extension and Fee Approval Order also seeks approval of the Seventh Report and the fees and activities of the Monitor and its counsel.

**OTHER GROUNDS:**

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

31. 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.

32. 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 October 12, 2021, and the exhibits attached thereto;
- (b) the Seventh Report of the Monitor, to be filed; and
- (c) such further and other evidence as counsel may advise and this Court may permit.

October 12, 2021

**BENNETT JONES LLP**

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## Schedule "A"

Join Zoom Meeting

<https://us02web.zoom.us/j/84632646541>

Meeting ID: 846 3264 6541

One tap mobile

+16699009128,,84632646541# US (San Jose)

+12532158782,,84632646541# US (Tacoma)

Dial by your location

+1 669 900 9128 US (San Jose)

+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)

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Meeting ID: 846 3264 6541

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**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 1307849 B.C. LTD.**

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

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

Proceedings Commenced in Toronto

**NOTICE OF MOTION**

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# TAB 2

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**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT  
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**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
FIGR BRANDS, INC., FIGR NORFOLK INC.  
AND 1307849 B.C. LTD.**

Applicants

**AFFIDAVIT OF MICHAEL DEVON  
(Sworn October 12, 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 1307849 B.C. Ltd. ("**Residual Co**", and together with FIGR Norfolk and FIGR Brands, 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 an order (the "**Stay Extension and Fee Approval Order**"), among other things:

- (a) abridging the time for service of the motion record returnable October 19, 2021 and dispensing with service on any person other than those served;



- (b) extending the Stay Period (as defined below) until and including February 4, 2022 (the "**Stay Extension**");
- (c) approving the Seventh Report of the Monitor, to be filed (the "**Seventh Report**"), and the activities of the Monitor and its counsel 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 Seventh Report (together, the "**Fee Affidavits**").

3. All terms not otherwise defined herein have the meaning ascribed to them in, as applicable:

(a) the Initial Order (as defined below) or (b) my affidavit sworn August 17, 2021 in support of the Norfolk KERP and Stay Extension 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<sup>1</sup>**

5. The FIGR Group operated two (2) licensed cannabis facilities – one in Simcoe, Ontario and the other in Charlottetown, Prince Edward Island. Since operations commenced, both facilities were cash flow negative and the FIGR Group was dependant on certain of its affiliate companies for funding. As discussed in further detail below, the cannabis facility in Charlottetown, Prince Edward Island was sold as part of the CIG Transaction (as defined below).

---

<sup>1</sup> Note that any reference in this Affidavit to the FIGR Group or the Applicants prior to June 28, 2021, being the closing of the CIG Transaction (as defined below), includes CIG (as defined below) and not Residual Co.

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 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**"). The Claims Procedure excluded Employee Claims (as defined in the Claims Procedure Order).
12. On February 22, 2021, the Court also granted an order which, among other things:
  - (a) approved a key employee retention plan for certain management and operations staff of Canada's Island Garden Inc. ("**CIG**");
  - (b) extended the Stay Period until April 30, 2021;
  - (c) approved the Pre-Filing Report of the Monitor dated January 21, 2021, the First Report of the Monitor Dated January 27, 2021 and the Second Report of the

Monitor dated February 18, 2021 (the "**Second Report**") and the activities of the Monitor set out therein; and

- (d) approved the fees and disbursements of the Monitor and its counsel as set out in the Second Report.

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, *inter alia*, 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:

- (a) authorized a corresponding increase to the DIP Lender's Charge;
- (b) approved the Third Report of the Monitor dated March 26, 2021 (the "**Third Report**") and the activities of the Monitor described therein; and
- (c) approved the fees and disbursements of the Monitor and its counsel as set out in the Third Report.

14. On April 30, 2021, the Court granted an order (the "**Employee Claims Procedure Order**") which, among other things, established a procedure (the "**Employee Claims Procedure**") for the identification, determination and adjudication of employee claims against the FIGR Group and their current and former Directors and Officers ("**Employee Claims**" and each an "**Employee Claim**").

15. On April 30, 2021, the Court also granted an order which, among other things:

- (a) extended the Stay Period until and including June 30, 2021;

- (b) approved the Fourth Report of the Monitor dated April 27, 2021 (the "**Fourth Report**") and the activities of the Monitor described therein; and
- (c) approved the fees and disbursements of the Monitor and its counsel as set out in the Fourth Report.

16. On June 10, 2021, the Court granted an order (the "**CIG Approval and Vesting Order**") which, among other things:

- (a) approved the sale transaction (the "**CIG Transaction**") contemplated by a subscription and share purchase agreement (the "**CIG Subscription and Share Purchase Agreement**") between FIGR Brands, as vendor, CIG, as the purchased entity and 102604 P.E.I. Inc., as the purchaser (the "**CIG Purchaser**"), and vesting in the CIG Purchaser all of FIGR Brands' right, title and interest in and to all issued and outstanding shares in CIG;
- (b) added a subsidiary of FIGR Brands, namely Residual Co, incorporated under the laws of British Columbia, as an Applicant in these CCAA Proceedings in order to effectuate the CIG Transaction;
- (c) removed CIG as an Applicant in these CCAA Proceedings upon closing of the CIG Transaction and deemed CIG to be released from the purview of the Initial Order and all other orders of the Court granted in these CCAA Proceedings; and
- (d) transferred and vested the Excluded Liabilities, the Excluded Assets and Excluded Contracts (each as defined in the CIG Subscription and Share Purchase Agreement)

to Residual Co on or before closing such that the Excluded Liabilities became liabilities of Residual Co and were no longer liabilities of CIG.

17. On June 10, 2021, the Court also granted an order (the "**Norfolk Approval and Vesting Order**", and together with the CIG Approval and Vesting Order, the "**Approval and Vesting Orders**") which, among other things, approved the sale transaction (the "**Norfolk Transaction**", and together with the CIG Transaction, the "**Transactions**") contemplated by the asset purchase agreement between FIGR Norfolk, as vendor, and 11897985 Canada Inc. (dba) BEROXFOOD North America dated May 10, 2021 (the "**Norfolk Sale Agreement**"), and vested in Woodside Greens Business Association Inc., or its designee (the "**Norfolk Purchaser**"), all of FIGR Norfolk's right, title and interest in and to the property described in the Norfolk Sale Agreement.

18. On June 10, 2021, the Court granted a further order (the "**June Ancillary Order**") which, among other things:

- (a) extended the Stay Period until and including September 3, 2021;
- (b) authorized the execution by the Applicants of the Second Amendment to the DIP Commitment Letter, which, among other things, increased the maximum borrowing available under the DIP Loan up to \$16,000,000 (which was an increase of \$3,000,000). The June Ancillary Order also authorized a corresponding increase to the DIP Lender's Charge;
- (c) authorized and empowered to Applicants to make, or cause to be made, distributions from time to time to the DIP Lender in repayment of the obligations secured by the DIP Lender's Charge;

- (d) approved the Proposed Pre-filing Intercompany Claims Resolution Process (as defined in the Claims Procedure Order);
- (e) approved the Fifth Report of the Monitor dated June 4, 2021 (the "**Fifth Report**") and the activities of the Monitor described therein; and
- (f) approved the fees and disbursements of the Monitor and its counsel as set out in the Fifth Report.

19. The CIG Transaction closed on June 28, 2021 but, as described in further detail below, the Norfolk Transaction has not yet closed.

20. On August 24, 2021, the Court granted an order (the "**Norfolk KERP and Stay Extension Order**") which, among other things:

- (a) extended the Stay Period until and including October 29, 2021;
- (b) approved a key employee retention plan for certain senior employees of FIGR Norfolk and sealed a summary of same;
- (c) approved the Sixth Report of the Monitor dated August 19, 2021 (the "**Sixth Report**") and the activities of the Monitor described therein; and
- (d) approved the fees and disbursements of the Monitor and its counsel as set out in the Sixth Report.

21. Since the granting of the Norfolk KERP and Stay Extension 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, wind down head office operations, follow up on post-closing matters regarding the CIG Transaction, work to close the Norfolk Transaction and assist the Monitor with the Claims Procedure and the Employee Claims Procedure.

## **II. CLAIMS PROCEDURE AND THE EMPLOYEE CLAIMS PROCESS<sup>2</sup>**

22. I understand that the Monitor continues to carry out the Claims Procedure and the Employee Claims Procedure in accordance with the Claims Procedure Order and the Employee Claims Procedure Order, respectively. The Monitor continues to engage with various Claimants and Employee Claimants in an effort to resolve outstanding Claims and Employee Claims, as the case may be.

23. I understand that the Monitor will provide an update on the Claims Procedure and the Employee Claims Procedure in the Seventh Report.

## **III. THE TRANSACTIONS**

24. As previously noted, on June 10, 2021, the Court granted the Approval and Vesting Orders approving the Transactions, and on June 28, 2021, the Applicants and the CIG Purchaser closed the CIG Transaction.

25. Following the closing of the CIG Transaction, and in accordance with the June Ancillary Order, on July 8, 2021, the Applicants caused a distribution to be made to the DIP Lender in full satisfaction of their obligations owing under the DIP Loan including, but not limited to,

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<sup>2</sup> Terms in this section not otherwise defined herein have the meaning ascribed to them in the Claims Procedure Order or the Employee Claims Procedure Order, as applicable.



outstanding principal, accrued interest, fees and expenses up and until July 8, 2021. As a result, there are no amounts currently owing by the Applicants to the DIP Lender.

*The Norfolk Transaction*<sup>3</sup>

26. As noted above, on May 10, 2021, FIGR Norfolk entered into the Norfolk Sale Agreement with the Norfolk Purchaser. A copy of the redacted Norfolk Sale Agreement, which was approved by this Court pursuant to the Norfolk Approval and Vesting Order, is attached hereto as Exhibit "D".

27. On or about June 29, 2021, FIGR Norfolk and the Norfolk Purchaser, with the consent of the DIP Lender and the Monitor, entered into the First Amendment to the Norfolk Sale Agreement (the "**First Norfolk APA Amendment**") which, among other things:

- (a) extended the Outside Date from June 30, 2021 to July 30, 2021; and
- (b) amended Section 4.3 of the Norfolk Sale Agreement to extend the date upon which the Financing Covenant needed to be satisfied to July 16, 2021.

A copy of the First Norfolk APA Amendment is attached hereto as Exhibit "E".

28. On August 9, 2021, FIGR Norfolk and the Norfolk Purchaser, with the consent of the DIP Lender and the Monitor, entered into the Second Amendment to the Norfolk Sale Agreement (the "**Second Norfolk APA Amendment**") which, among other things, extended the Outside Date from July 30, 2021 to August 31, 2021. A copy of the Second Norfolk APA Amendment is attached hereto as Exhibit "F".

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<sup>3</sup> Terms in this section not otherwise defined herein have the meaning ascribed to them in the Norfolk Sale Agreement.

29. The parties continue to work diligently to close the Norfolk Transaction; however, I note that the Applicants and the Norfolk Purchaser are still awaiting the necessary regulatory approvals to allow the Norfolk Transaction to close. I understand that Health Canada is reviewing the Norfolk Transaction and that, although timing remains uncertain, the Applicants are hopeful that the necessary regulatory approvals will be received from Health Canada to allow the Norfolk Transaction to close.

#### **IV. THE NORFOLK KERP AND STAY EXTENSION ORDER**

##### ***(i) Stay Extension***

30. Under the Norfolk KERP and Stay Extension Order, the Court extended the Stay Period until and including October 29, 2021. Pursuant to the Stay Extension and Fee Approval Order, the Applicants are seeking an extension of the Stay Period until and including February 4, 2022.

31. It is necessary and in the best interests of the Applicants and their stakeholders that the Stay Period be extended until and including February 4, 2022, as it will allow the Applicants and/or the Monitor to:

- (a) continue to work to close the Norfolk Transaction;
- (b) advance and complete the Claims Procedure in accordance with the Claims Procedure Order;
- (c) advance and complete the Employee Claims Process in accordance with the Employee Claims Procedure Order; and

- (d) with the further approval of the Court, make distributions to the creditors of the Applicants and bring these CCAA Proceedings to an end.

32. As demonstrated in the Revised Cash Flow Forecast to be appended to the Seventh 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 proposed extended Stay Period.

33. 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 Seventh Report and Fees*

34. The proposed Stay Extension and Fee Approval Order seeks approval of the Seventh 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 Seventh Report.

**V. CONCLUSION**

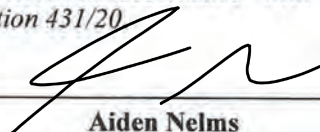
35. Since the granting of the Initial Order, the Applicants have acted and continue to act in good faith and with due diligence to, among other things, stabilize their business, close the CIG Transaction, work with the Norfolk Purchaser with a view to closing the Norfolk Transaction and assist with the SISP, the Claims Procedure and the Employee Claims Procedure, each in an effort to maximize value for their stakeholders.

36. I believe that the relief sought and described herein is in the best interests of the Applicants and their stakeholders. Further, I understand that the Monitor is supportive of the relief described

herein and that the Monitor does not believe that any creditor will be materially prejudiced by the granting of the Stay Extension and Fee Approval Order.

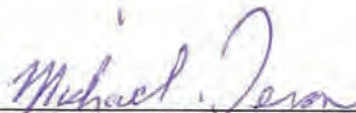
37. I swear this affidavit in support of the Applicants' motion for the Stay Extension and Fee Approval Order, and for no other or improper purpose.

SWORN BEFORE ME over )  
videoconference on this 12<sup>th</sup> day of October )  
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* ..... 12<sup>th</sup> .....

*day of* ..... October, 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**

**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 1307849 B.C. LTD.**

Applicants

**AFFIDAVIT OF MICHAEL DEVON  
(Sworn August 17, 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 together with FIGR Brands and Residual Co<sup>1</sup> (as defined below), 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 an order (the "**Norfolk KERP and Stay Extension Order**"), among other things:

- (a) abridging the time for service of the motion record returnable August 24, 2021 and dispensing with service on any person other than those served;

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<sup>1</sup> Residual Co is a wholly owned subsidiary of FIGR Brands.

- (b) extending the Stay Period (as defined below) until and including October 29, 2021 (the "**Stay Extension**");
- (c) approving a key employee retention plan for certain senior employees of FIGR Norfolk (the "**Norfolk KERF**") and sealing the Confidential Appendix (as defined below);
- (d) approving the Sixth Report of the FTI Consulting Canada Inc. ("**FTI**") in its capacity as court-appointed monitor (in such capacity, the "**Monitor**"), to be filed (the "**Sixth Report**"), and the activities of the Monitor described therein; and
- (e) 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 Sixth Report (together, the "**Fee Affidavits**").

3. All terms not otherwise defined herein have the meaning ascribed to them in, as applicable: (a) the Initial Order (as defined below) or (b) my affidavit sworn June 2, 2021 in support of the CIG Approval and Vesting Order, Norfolk Approval Vesting Order and the June Ancillary Order (each 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<sup>2</sup>**

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

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<sup>2</sup> Note that any reference in this Affidavit to the FIGR Group or the Applicants prior to June 28, 2021, being the closing of the CIG Transaction (as defined below), includes CIG (as defined below) and not Residual Co.

facilities were cash flow negative and the FIGR Group was dependant on certain of its affiliate companies for funding. As discussed in further detail below, the cannabis facility in Charlottetown, Prince Edward Island was sold as part of the CIG Transaction (as defined below).

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 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**"). The Claims Procedure excluded employee claims.
12. On February 22, 2021, the Court also granted an order (the "**February Ancillary Order**") which, among other things:
- (a) approved a key employee retention plan for certain management and operations staff of Canada's Island Garden Inc. ("**CIG**");
  - (b) extended the Stay Period until April 30, 2021;

- (c) approved the Pre-Filing Report of the Monitor dated January 21, 2021, the First Report of the Monitor Dated January 27, 2021 and the Second Report of the Monitor dated February 18, 2021 (the "**Second Report**") and the activities of the Monitor set out therein; and
- (d) approved the fees and disbursements of the Monitor and its counsel as set out in the Second Report.

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, *inter alia*, 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.

14. On April 30, 2021, the Court granted an order (the "**Employee Claims Procedure Order**") which, among other things, established a procedure for the identification, determination and adjudication of employee claims against the FIGR Group and their current and former Directors and Officers (the "**Employee Claims Procedure**").

15. On April 30, 2021, the Court also granted an order (the "**April Stay Extension and Fee Approval Order**") which, among other things:

- (a) extended the Stay Period until and including June 30, 2021;
- (b) approved the Fourth Report of the Monitor dated April 27, 2021 (the "**Fourth Report**") and the activities of the Monitor described therein; and

- (c) approved the fees and disbursements of the Monitor and its counsel as set out in the Fourth Report.

16. On June 10, 2021, the Court granted an order (the "**CIG Approval and Vesting Order**") which, among other things:

- (a) approved the sale transaction (the "**CIG Transaction**") contemplated by a subscription and share purchase agreement (the "**CIG Subscription and Share Purchase Agreement**") between FIGR Brands, as vendor, CIG, as the purchased entity (in such capacity, the "**Purchased Entity**") and 102604 P.E.I. Inc., as the purchaser (the "**CIG Purchaser**" or the "**PEI Group**"), and vesting in the CIG Purchaser all of FIGR Brands' right, title and interest in and to all issued and outstanding shares in the Purchased Entity;
- (b) added a subsidiary of the Vendor, namely 1307849 B.C. Ltd., incorporated under the laws of British Columbia ("**Residual Co**") as an Applicant in these CCAA Proceedings in order to effectuate the CIG Transaction;
- (c) removed CIG as an Applicant in these CCAA Proceedings upon the closing of the CIG Transaction and deeming CIG to be released from the purview of the Initial Order and all other orders of the Court granted in these CCAA Proceedings; and
- (d) transferred and vested the Excluded Liabilities, the Excluded Assets and Excluded Contracts (each as defined in the CIG Subscription and Share Purchase Agreement) to Residual Co on or before closing such that the Excluded Liabilities became liabilities of Residual Co and not liabilities of CIG or the Purchased Entity.

17. On June 10, 2021, the Court also granted an order (the "**Norfolk Approval and Vesting Order**", and together with the CIG Approval and Vesting Order, the "**Approval and Vesting Orders**") which, among other things, approved the sale transaction (the "**Norfolk Transaction**", and together with the CIG Transaction, the "**Transactions**") contemplated by the asset purchase agreement between FIGR Norfolk, as vendor, and 11897985 Canada Inc. (dba) BEROXFOOD North America, as purchaser (the "**Norfolk Purchaser**"), dated May 10, 2021 (the "**Norfolk Sale Agreement**"), and upon closing will vest in the Norfolk Purchaser, or as it may direct in accordance with the Norfolk Sale Agreement, all of FIGR Norfolk's right, title and interest in and to the property described in the Norfolk Sale Agreement (the "**Norfolk Purchased Assets**").

18. On June 10, 2021, the Court granted a further order (the "**June Ancillary Order**") which, among other things:

- (a) extended the Stay Period until and including September 3, 2021;
- (b) authorized the execution by the Applicants of the Second Amendment to the DIP Commitment Letter, which, among other things, increased the maximum borrowing available under the DIP Loan up to \$16,000,000 (which was an increase of \$3,000,000). The June Ancillary Order also authorized a corresponding increase to the DIP Lender's Charge;
- (c) authorized and empowered the Applicants to make, or cause to be made, distributions from time to time to the DIP Lender in repayment of the obligations secured by the DIP Lender's Charge;
- (d) approved the Pre-filing Intercompany Claims Resolution Process;

- (e) approved the Fifth Report of the Monitor dated June 4, 2021 (the "**Fifth Report**") and the activities of the Monitor described therein; and
- (f) approved the fees and disbursements of the Monitor and its counsel as set out in the Fifth Report.

19. The CIG Transaction closed on June 28, 2021 but as described in further detail below, the Norfolk Transaction has not yet closed. Together, the CIG Transaction and the Norfolk Transaction encompass substantially all of the assets of the FIGR Group.

20. Since the granting of the Approval and Vesting Orders and the June 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, close the CIG Transaction, wind down head office operations, disclaim certain agreements that are no longer necessary pursuant to section 32 of the CCAA and assist the Monitor with the Claims Procedure and the Employee Claims Procedure.

## **II. CLAIMS PROCEDURE AND THE EMPLOYEE CLAIMS PROCEDURE<sup>3</sup>**

21. I understand that the Monitor continues to carry out the Claims Procedure and the Employee Claims Procedure in accordance with the Claims Procedure Order and the Employee Claims Procedure Order, respectively.

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<sup>3</sup> Terms in this section not otherwise defined herein have the meaning ascribed to them in the Claims Procedure Order or the Employee Claims Procedure Order, as applicable.

22. I understand that the Monitor will provide an update on the Claims Procedure, the Pre-Filing Intercompany Claims Resolution Process, and the Employee Claims Procedure in the Sixth Report.

### **III. THE TRANSACTIONS**

23. As previously noted, on June 2, 2021, the Court granted the Approval and Vesting Orders approving the Transactions, and on June 28, 2021, the Applicants and the CIG Purchaser closed the CIG Transaction.

24. Following the closing of the CIG Transaction, and in accordance with the June Ancillary Order, on July 8, 2021, the Applicants caused a distribution to be made to the DIP Lender in full satisfaction of their obligations owing under the DIP Loan including, but not limited to, outstanding principal, accrued interest, fees and expenses up and until July 8, 2021. As a result, there are no amounts currently owing by the Applicants to the DIP Lender.

#### ***The Norfolk Transaction***<sup>4</sup>

25. As noted above, on May 10, 2021, FIGR Norfolk entered into the Norfolk Sale Agreement with the Norfolk Purchaser. A copy of the redacted Norfolk Sale Agreement, which was approved by this Court pursuant to the Norfolk Approval and Vesting Order, is attached hereto as Exhibit "D".

26. On or about June 29, 2021, FIGR Norfolk and the Norfolk Purchaser, with the consent of the DIP Lender and the Monitor, entered into the First Amendment to the Norfolk Sale Agreement (the "**First Norfolk Sale Agreement Amendment**") which, among other things:

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<sup>4</sup> Terms in this section not otherwise defined herein have the meaning ascribed to them in the Norfolk Sale Agreement.

- (a) extended the Outside Date from June 30, 2021 to July 30, 2021; and
- (b) amended Section 4.3 of the Norfolk Sale Agreement to extend the date upon which the Financing Covenant needed to be satisfied to July 16, 2021.

A copy of the First Norfolk Sale Agreement Amendment is attached hereto as Exhibit "E".

27. On August 9, 2021, FIGR Norfolk and the Norfolk Purchaser, with the consent of the DIP Lender and the Monitor, entered into the Second Amendment to the Norfolk Sale Agreement (the "**Second Norfolk Sale Agreement Amendment**") which, among other things, extended the Outside Date from July 30, 2021 to August 31, 2021. A copy of the Second Norfolk Sale Agreement Amendment is attached hereto as Exhibit "F".

28. The parties continue to work diligently to close the Norfolk Transaction. The Applicants are hopeful that the necessary regulatory approvals will be received from Health Canada to allow the Norfolk Transaction to close prior to the August 31, 2021 Outside Date.

#### **IV. THE NORFOLK KERP AND STAY EXTENSION ORDER**

##### **(i) Stay Extension**

29. Under the June Ancillary Order, the Court extended the Stay Period until and including September 3, 2021. Pursuant to the Norfolk KERP and Stay Extension Order, the Applicants are seeking an extension of the Stay Period until and including October 29, 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 October 29, 2021, as it will allow the Applicants and/or the Monitor to:

- (a) close the Norfolk Transaction;
- (b) advance and complete the Claims Procedure in accordance with the Claims Procedure Order;
- (c) advance and complete the Employee Claims Procedure in accordance with the Employee Claims Procedure Order;
- (d) advance matters relating to the Intercompany Charge including an allocation of the DIP Loan obligations as between the Applicants; and
- (e) continue to advance matters toward making distributions to the creditors of the Applicants and bringing these CCAA Proceedings to an end.

31. As demonstrated in the Revised Cash Flow Forecast to be appended to the Sixth 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 proposed 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) *The Norfolk KERP*<sup>5</sup>

33. The Applicants have developed the Norfolk KERP with the assistance of the Monitor.

34. Under the terms of the Norfolk KERP, the Applicants propose to make retention payments to certain individuals employed by FIGR Norfolk (collectively, the "**Norfolk Key Employees**").

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<sup>5</sup> Terms in this section not otherwise defined herein have the meanings ascribed to them in the Norfolk Sale Agreement.



The Norfolk Key Employees are all senior management level employees within FIGR Norfolk's organization and are essential to close the Norfolk Transaction. The Norfolk Key Employees and milestones under the Norfolk KERP are separate and distinct from the employees and milestones contemplated under the key employee retention plan approved by the Court pursuant to the February Ancillary Order.

35. Pursuant to the terms of the Norfolk KERP Agreement (each a "**KERP Agreement**" and together the "**KERP Agreements**") the Norfolk Key Employees are entitled to one (1) payment (the "**KERP Payment**") under the proposed Norfolk KERP within ten (10) days after the Norfolk Transaction closes only if the following conditions are met:

- (a) the Norfolk KERP and Stay Extension Order becomes a final order of the Court that is not subject to appeal;
- (b) the Norfolk Transaction Closing Date has occurred;
- (c) the relevant Norfolk Key Employees has remained an employee of FIGR Norfolk up to the Norfolk Transaction Closing Date and has not resigned (or provided notice of resignation) or been terminated for cause prior to Norfolk Transaction Closing Date; and
- (d) the relevant Norfolk Key Employees has not disclosed the terms of the Norfolk KERP or the underlying KERP Agreements to any person other than its personal financial advisor(s) and legal advisor(s), other than where required by law.

36. The retention of the Norfolk Key Employees and their ongoing commitment to FIGR Norfolk is essential to current operations, the Norfolk Transaction and, ultimately, the opportunity to maximize value for stakeholders. In particular, the Applicants believe:

- (a) the Norfolk Key Employees provide the critical leadership required to maintain FIGR Norfolk's cannabis licenses and which would be difficult and costly to replace. Maintaining such cannabis licenses is necessary for closing of the Norfolk Transaction;
- (b) none of the Norfolk Key Employees could be readily or easily replaced internally and the process to find appropriately qualified replacements for the Norfolk Key Employees externally would be lengthy, difficult, costly and an impediment to the Norfolk Transaction;
- (c) the Norfolk Key Employees have historical knowledge of, and familiarity with, FIGR Norfolk's business and operations, and significant experience and expertise;
- (d) without the benefit of the Norfolk KERP, the Norfolk Key Employees would likely consider other employment options;
- (e) the KERP Payment will facilitate the continued participation of the Norfolk Key Employees until the Norfolk Transaction closes;
- (f) the amounts payable under the Norfolk KERP are relatively modest; and

- (g) any replacements for the Norfolk Key Employees would face a steep learning curve given the nascency of the industry and may require additional security clearance screening by Health Canada.

37. The Applicants believe that the Norfolk KERP will provide the necessary incentive to the Norfolk Key Employees to remain committed key members of FIGR Norfolk's management and operational teams during the CCAA Proceedings.

38. I understand that the summary of the Norfolk KERP (the "**KERP Summary**") and the KERP Agreements will be attached as a confidential appendix to the Sixth Report (the "**Confidential Appendix**"). This information contains confidential and sensitive information regarding the identity and compensation of the Norfolk Key Employees and as such, the Applicants are seeking a sealing order with respect to the KERP Summary and the KERP Agreements. Such information is not normally made available to the public in the ordinary course, and I understand from Michael Shakra of Bennett Jones LLP, counsel to the Applicants, that such information is typically sealed in insolvency proceedings. In addition, disclosure of such information could cause significant harm or prejudice to the Norfolk Key Employees and/or the FIGR Group. Accordingly, the FIGR Group requests that the KERP Summary and the KERP Agreements remain sealed subject to further order of the Court.

39. The Applicants are not seeking approval of a charge with respect to the Norfolk KERP at this time.

*(iii) Sealing*

40. As noted above, the Applicants are seeking an order sealing from public record the Confidential Appendix because its release could have an adverse impact on the Norfolk Key Employees and/or the FIGR Group.

41. I am advised that the Monitor believes that the proposed sealing of the Confidential Appendix is appropriate in the circumstances as the salutary effects of sealing the Confidential Appendix outweigh the deleterious effects of its exclusion from the public record.

*(iv) Approval of the Sixth Report and Fees*

42. The proposed Norfolk KERP and Stay Extension Order seeks approval of the Sixth 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 Sixth Report.

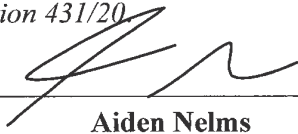
**V. CONCLUSION**

43. 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, close the CIG Transaction and assist with the SISP, the Claims Procedure and the Employee Claims Procedure, each with the view to maximize value for their stakeholders.

44. I believe that the relief sought and described herein is in the best interests of the Applicants and their stakeholders. Further, I understand that the Monitor and the DIP Lender are supportive of the relief described herein and that the Monitor does not believe that any creditor will be materially prejudiced by the granting of the Norfolk KERP and Stay Extension Order.

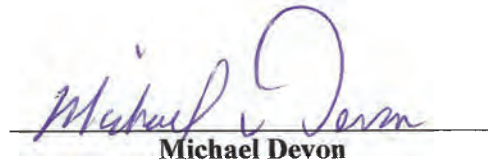
45. I swear this affidavit in support of the Applicants' motion for the Norfolk KERP and Stay Extension Order, and for no other or improper purpose.

**SWORN BEFORE ME** over )  
videoconference on this 17<sup>th</sup> day of August )  
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



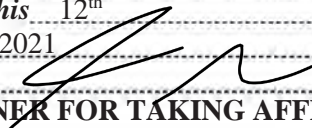
**Michael Devon**

*This is Exhibit* ..... "B" ..... *referred to in the*

*affidavit of* ..... Michael Devon .....

*sworn before me, this* ..... 12<sup>th</sup> .....

*day of* ..... October, 2021 .....

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

.....  
**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:

<b>Employee Designation</b>	<b>CIG</b>	<b>FIGR Norfolk</b>	<b>FIGR Brands</b>	<b>Total</b>
<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
<b>Total</b>	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
<b>Current Assets: \$27,869,914</b>	
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
<b>Non-Current Assets: \$125,296,504</b>	
Investment Tax Credits	\$468,240
Intangible Assets	\$33,214,283



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

**B. Liabilities**

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

<b>Liability Type</b>	<b>Value</b>
<b>Current Liabilities: \$4,624,163</b>	
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
<b>Non-Current Liabilities: \$198,738,377</b>	
Lease Obligations	\$336,497
Long-Term Debt	\$627,633
Related Party Payable	\$189,729,870
Deferred tax liability	\$8,044,377
<b>Total</b>	<b>\$203,362,540</b>

### 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 interrupted 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.

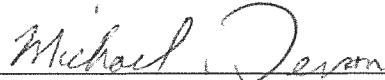
116. In the circumstances, I believe that the CCAA Proceedings are the only viable means of restructuring the Applicants' business for the benefit of their stakeholders and that the relief sought in the Initial Order is limited to what is reasonably necessary to stabilize the Applicants' business.

SWORN BEFORE ME over )  
videoconference on this 21<sup>st</sup> 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* ..... 12<sup>th</sup> .....

*day of* ..... October, 2021 .....

A handwritten signature in black ink, appearing to be 'A. M.', written over a horizontal dashed line.

.....  
**A COMMISSIONER FOR TAKING AFFIDAVITS**





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

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

THE HONOURABLE MR. )  
JUSTICE HAINEY )  
FRIDAY, THE 29<sup>th</sup>  
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.

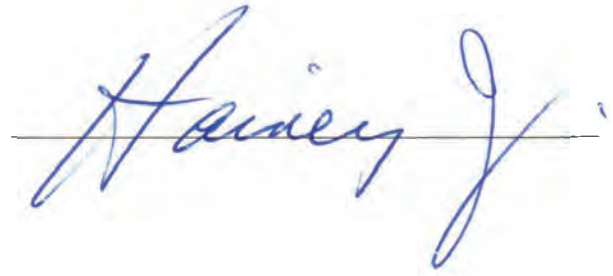
50. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of any of the Applicants, the Business or the Property.

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 stylized.

**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# 573071)**  
**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* ..... 12<sup>th</sup> .....

*day of* ..... October, 2021 .....

A handwritten signature in black ink, appearing to be 'A. R.', is written over the signature line.

.....  
**A COMMISSIONER FOR TAKING AFFIDAVITS**

**FIGR NORFOLK INC.**

as Vendor

and

**11897985 Canada Inc. (dba) BEROXFOOD North America**

as Purchaser

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**ASSET PURCHASE AGREEMENT**

**May 10, 2021**

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## ASSET PURCHASE AGREEMENT

This asset purchase agreement is made as of May 10, 2021, between FIGR Norfolk Inc., a corporation governed by the laws of the Province of Ontario (the "**Vendor**"), and **11897985 Canada Inc.** (dba) **BEROXFOOD North America**, a corporation governed by the laws of Ontario, Canada (the "**Purchaser**").

### RECITALS:

- (1) On January 21, 2021, pursuant to the Initial Order: (i) the CCAA Applicants obtained relief under the CCAA; and (ii) FTI Consulting Canada Inc. was appointed as Monitor in the CCAA Proceedings;
- (2) On January 29, 2021, pursuant to the SISP Approval Order, the Monitor, with the assistance of its affiliate, FTI Capital Advisors - Canada ULC, and the CCAA Applicants, were authorized and directed to carry out the SISP in accordance with its terms;
- (3) The Purchaser has been identified as a Successful Bidder in the SISP; and
- (4) The Vendor desires to sell the Purchased Assets, and the Purchaser has agreed to purchase the Purchased Assets, subject to the terms and conditions set forth in this Agreement, the SISP and the applicable provisions of the CCAA.

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Vendor and the Purchaser agree as follows:

## ARTICLE 1

### INTERPRETATION

#### 1.1 Definitions

In this Agreement and the recitals above, the following terms have the following meanings:

"**Affiliate**" has the meaning given to the term "affiliate" in the *Business Corporations Act* (Ontario).

"**Accounts Receivable**" means all accounts or notes receivable held by the Vendor, and any security, claim, remedy or other right related to any of the forgoing.

"**Agreement**" means this asset purchase agreement, as amended from time to time in accordance with the terms hereof.

"**Anticipated Transferred Employees**" means the Employees listed in Schedule "F".

"**Applicable Law**" means, in respect of any Person, property, transaction or event, any domestic or foreign statute, law (including the common law), ordinance, rule, regulation, treaty, restriction, regulatory policy, standard, code or guideline, by-law or order, in each case, having the force of law that applies in whole or in part to such Person, property, transaction or event.

**"Approval and Vesting Order"** means an order issued by the Court substantially in the form attached hereto as Schedule "D" and otherwise acceptable to the Purchaser, the Vendor and the Monitor authorizing the Transaction and vesting in the Purchaser (or as it may direct) all the right, title and interest of the Vendor in and to the Purchased Assets.

**"Assignment Order"** means an order or orders of the Court pursuant to section 11.3 of the CCAA and other applicable provisions of the CCAA, in form and substance satisfactory to the Purchaser, the Vendor and the Monitor, each acting reasonably, authorizing and approving (i) the assignment of any Consent Required Contract for which a consent, approval or waiver necessary for the assignment of such Consent Required Contract has not been obtained, (ii) the prevention of any counterparty to such Consent Required Contracts from exercising any right or remedy under such Consent Required Contracts by reason of any defaults arising from the CCAA Proceedings or the insolvency of the Vendor and (iii) the vesting in the Purchaser (or as it may direct) of all right, title and interest of the Vendor in such Consent Required Contracts.

**"Assumed Obligations"** has the meaning set out in Section 2.4.

**"Books and Records"** means all files, documents, instruments, papers, books and records (whether stored or maintained in hard copy, digital or electronic format or otherwise), used or intended for use by, and in the possession of the Vendor, in connection with the ownership, or operation of the Purchased Assets, including the Contracts, customer lists, customer information and account records, sales records, computer files, data processing records, employment and personnel records (but only as it relates to Transferred Employees), sales literature, advertising and marketing data and records, credit records, records relating only to suppliers and other data, in each case, relating to the Purchased Assets, and, for greater certainty, excluding the minute books and corporate records (including the financial and taxation related records) of the Vendor.

**"Business Day"** means a day on which banks are open for business in the Province of Ontario but does not include a Saturday, Sunday or statutory holiday in the Province of Ontario.

**"Cannabis Licences"** means all authorizations and letters related to cannabis and issued by a Governmental Authority to the Vendor, including authorizations to plant, grow, cultivate, extract, produce, process, store, destroy, sell, provide, ship, deliver, transport and/or distribute cannabis under Applicable Law.

**"Cash Balance"** has the meaning set out in Section 4.1(b).

**"CCAA"** means the *Companies' Creditors Arrangement Act* (Canada).

**"CCAA Applicants"** means collectively FIGR Brands, Inc., Canada's Island Garden Inc., and FIGR Norfolk Inc.

**"CCAA Proceedings"** means the proceedings commenced by the CCAA Applicants under the CCAA.

**"Claims"** means any claim of any nature or kind (including any cross-claim or counterclaim), demand, investigation, chose in or cause of action, action, suit, default, assessment or reassessment, litigation, third, party action, arbitral proceeding or, proceeding by or before any Person,

complaints, grievance, petition, application, charge, investigation, indictment, prosecution, judgement, debt, liability, damage, or loss, contingent or otherwise, whether liquidated or unliquidated, matured or unmatured, known or unknown, disputed or undisputed, contractual, legal or equitable.

"**Closing**" means the successful completion of the Transaction.

"**Closing Date**" means 2 Business Days after the date upon which the conditions set forth in Article 7 have been satisfied or waived, other than the conditions set forth in Article 7 that by their terms are to be satisfied or waived at the Closing (or such other date agreed to by the Parties in writing); provided that the Closing Date shall be no later than the Outside Date.

"**Closing Time**" means 10:00 a.m. (Toronto time) on the Closing Date or such other time on the Closing Date as the Parties agree in writing that the Closing Time shall take place.

"**Consent Required Contract**" has the meaning set out in Section 2.2(a).

"**Contracts**" means the contracts and other written agreements to which a Vendor is a party or under which a Vendor has, or shall have, any right or liability or contingent right or liability constituting part of the Purchased Assets and listed in Appendix I to Schedule "A" to this Agreement (and including as amended, restated, amended and restated or otherwise modified from time to time).

"**Court**" means the Ontario Superior Court of Justice (Commercial List).

"**Cure Costs**" means, in respect of any Consent Required Contract, all amounts required to be paid pursuant to section 11.3 of the CCAA to effect, pursuant to the CCAA, the assignment by a Vendor and assumption by the Purchaser of such Consent Required Contracts under the Assignment Order and to otherwise satisfy all requirements imposed by section 11.3 of the CCAA, but excluding for certainty, those monetary defaults arising by reason of such Vendor's insolvency, the commencement of the CCAA Proceedings, or the failure to perform a non-monetary obligation.

"**Deposit**" has the meaning set out in Section 4.2(a).

"**DIP Lender**" means Alliance One Tobacco Canada Inc.

"**Employee**" means an individual who is employed by a Vendor, whether on a full-time or a part-time basis, whether active or inactive as of the Closing Date, and includes an employee on short term or long-term disability leave.

"**Encumbrances**" means any security interest, lien, claim, charge, hypothec, reservation of ownership, pledge, encumbrance, mortgage, adverse claim or right of a third party of any nature or kind whatsoever and any agreement, option or privilege (whether by law, contract or otherwise) capable of becoming any of the foregoing (including any conditional sale or title retention agreement, or any capital or financing lease).

"**Excise Tax Act**" means the *Excise Tax Act* (Canada).

"**Excluded Assets**" means all of the Vendor's right, title and interest, in and to those assets that are not Purchased Assets, and for greater certainty, includes those assets set forth in Schedule "B".

"**Excluded Equipment**" means any equipment or machinery and any parts and components thereof, that are Excluded Assets.

"**Excluded Obligations**" has the meaning set out in Section 2.5.

"**Financing Covenant**" has the meaning set out in Section 4.3

"**Governmental Authority**" means any domestic or foreign government, whether federal, provincial, state, territorial or municipal; and any governmental agency, ministry, department, court (including the Court), tribunal, commission, stock exchange, bureau, board or other instrumentality exercising or purporting to exercise legislative, judicial, regulatory or administrative functions of, or pertaining to, government or securities market regulation.

"**HST**" means the goods and services tax and harmonized sales tax levied under Part IX of the *Excise Tax Act*.

"**Income Tax Act**" means the *Income Tax Act* (Canada).

"**Initial Order**" means the order of the Court dated January 21, 2021 as amended and restated pursuant to a subsequent Court order dated January 29, 2021, and as may be further amended and/or restated from time to time.

"**Key Individuals**" has the meaning set out in Section 3.4(1).

"**Material Loss Event**" has the meaning set out in Section 8.4(2).

"**Monitor**" means FTI Consulting Canada Inc. in its capacity as the monitor in the CCAA Proceedings.

"**Monitor's Certificate**" means the certificate of the Monitor contemplated by the Approval and Vesting Order certifying that the Monitor has received written confirmation in form and substance satisfactory to the Monitor from the Parties that all conditions of Closing have been satisfied or waived by the applicable Parties and that the Vendor has received the Purchase Price.

"**NDA**" means the non-disclosure agreement entered into between the CCAA Applicants and the Purchaser dated February 22, 2021

"**Non-Assignable Interests**" means any Purchased Assets, which, by their nature, cannot be legally or practically sold and assigned by the Vendor to the Purchaser hereunder, including without limitation any Consent Required Contracts and licenses for which an Assignment Order or counterparty consent has not been obtained or which by their nature are not assignable.

"**Outside Date**" means June 30, 2021 or such later date as the Vendor (with the consent of the Monitor and the DIP Lender) may designate, in its sole discretion, on not less than 5 Business Days' notice to the Purchaser, or in any event as otherwise ordered by the Court.

"**Party**" means each of the Purchaser and the Vendor, which are referred to herein collectively as the "Parties".

"**Permitted Encumbrances**" means those Encumbrances set forth in Schedule "C".

"**Person**" means any individual, partnership, limited partnership, limited liability company, joint venture, syndicate, sole proprietorship, company or corporation with or without share capital, unincorporated association, trust, trustee, executor, administrator or other legal personal representative, Governmental Authority or other entity however designated or constituted.

"**Purchase Price**" means [REDACTED]

"**Purchased Assets**" means all of the Vendor's right, title and interest in and to those assets set forth in Schedule "A", and for greater certainty shall exclude all Excluded Assets.

"**Purchaser**" has the meaning set out in the recitals hereto.

"**Purchaser Cannabis Licences**" has the meaning set out in Section 3.4(1).

"**Purchaser Cannabis Licensees**" has the meaning set out in Section 3.4(1).

"**Representative**" means, in respect of a Party, each director, officer, employee, agent, Affiliate, manager, lender, solicitor, accountant, professional advisor, consultant, contractor and other representative of such Party or such Party's Affiliates.

"**SISP**" means the Court-approved sale and investment solicitation process conducted further to and approved by the SISP Approval Order (including Schedule "A" thereto).

"**SISP Approval Order**" means the order of the Court dated January 29, 2021, among other things, approving the SISP.

"**Successful Bidder**" has the meaning given to it in the SISP.

"**Transaction**" means the transaction of purchase and sale contemplated by this Agreement.

"**Transfer Taxes**" means all present and future transfer taxes, sales taxes, excise taxes, use taxes, production taxes, value-added taxes, goods and services taxes, land transfer taxes, registration and recording fees, and any other similar or like taxes and charges imposed by a Governmental Authority in connection with the sale, transfer or registration of the transfer of the Purchased Assets, including HST but excluding any taxes imposed or payable under the Income Tax Act and any other applicable income tax legislation.

"**Transferred Employee**" means any employee who receives and accepts an offer of employment from the Purchaser in accordance with Section 6.3(1).

"**Vendor**" has the meaning set out in the recitals hereto.

## **1.2 Interpretation Not Affected by Headings, etc.**

The division of this Agreement into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

## **1.3 General Construction**

The terms "this Agreement", "hereof", "herein" and "hereunder" and similar expressions refer to this Agreement and not to any particular section hereof. The expression "Section" or reference to another subdivision followed by a number mean and refer to the specified Section or other subdivision of this Agreement. The language used in this Agreement is the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against any Party.

## **1.4 Extended Meanings**

Words importing the singular include the plural and vice versa and words importing gender include all genders. The term "including" means "including, without limitation," and such terms as "includes" have similar meanings.

## **1.5 Currency**

All references in this Agreement to dollars, monetary amounts or to \$ are expressed in Canadian currency unless otherwise specifically indicated.

## **1.6 Statutes**

Except as otherwise provided in this Agreement, any reference in this Agreement to a statute refers to such statute and all rules, regulations and interpretations made under it, as it or they may have been or may from time to time be modified, amended or re-enacted.

## **1.7 Schedules**

The following Schedules are incorporated in, and form part of, this Agreement:

Schedule "A" - Purchased Assets

Schedule "B" - Excluded Assets

Schedule "C" - Permitted Encumbrances

Schedule "D" - Form of Approval and Vesting Order

Schedule "E" - Purchase Price Allocation

Schedule "F" - Transferred Employees

## **ARTICLE 2 SALE AND PURCHASE AND ASSIGNMENT**

### **2.1 Sale and Purchase of Assets**

Subject to the terms and conditions hereof, at the Closing Time, the Vendor hereby agrees to sell, assign and transfer to the Purchaser, and the Purchaser hereby agrees to purchase from the Vendor, all of the Vendor's right, title and interest in, to and under the Purchased Assets, excluding any Non-Assignable

Interests, free and clear of all Encumbrances (other than Permitted Encumbrances) pursuant to the Approval and Vesting Order.

## 2.2 Assignment of Contracts

- (1) In the event that there are any Contracts which are not assignable in whole or in part without the consent, approval or waiver of another party or parties to them and such consents, approvals or waivers have not yet been obtained as of the Closing Date, then:
  - (a) nothing in this Agreement will be construed as an assignment of any such Contract (each a "**Consent Required Contract**");
  - (b) until the Approval and Vesting Order is granted, the Vendor shall use its commercially reasonable efforts to obtain any such consent, approval or waiver, and the Purchaser shall provide its reasonable cooperation to assist the Vendor in obtaining any such consent, approval or waiver;
  - (c) if any consent, approval or waiver is not obtained for any Consent Required Contract prior to the service of the motion for the Approval and Vesting Order, the Purchaser may request that the Vendor bring a motion to the Court for issuance of an Assignment Order with respect to such Consent Required Contracts together with the motion for the Approval and Vesting Order; and
  - (d) once the consent, approval or waiver to the assignment of a Consent Required Contract is obtained, or the assignment of such Contract has been ordered by the Court, such Consent Required Contract shall be deemed to be assigned to the Purchaser on Closing; and
  - (e) if any consent, approval or waiver or Assignment Order required to assign a Consent Required Contract has not yet been obtained as of the Closing Date, then: (i) nothing in this Agreement will be construed as an assignment of any such Contract; (ii) the Purchaser shall have no liability or obligation whatsoever in respect of any such Consent Required Contract; (iii) all such Consent Required Contracts shall be deemed to be excluded from the Purchased Assets; and (iv) the fact that such consent, approval or waiver or Assignment Order has not been obtained shall not result in an adjustment to the Purchase Price or otherwise entitle the Purchaser to terminate this Agreement.
- (2) With respect to each Consent Required Contract, subject to Closing and to either (i) the consent of the other parties thereto to the assignment thereof, or (ii) in the absence of such consent, the obtaining of an Assignment Order, in addition to its other obligations under this Agreement, the Purchaser shall pay the applicable Cure Costs related to such Consent Required Contract on Closing.

## 2.3 "As is, Where is"

The Purchaser acknowledges that the Vendor is selling the Purchased Assets on an "as is, where is" basis as they shall exist as at the Closing Time, subject to the terms of the Approval and Vesting Order, as applicable. The Purchaser further acknowledges that it has entered into this Agreement on the basis that the Vendor does not guarantee title to the Purchased Assets. No representation, warranty or condition is

expressed or can be implied as to title, Encumbrances, description, fitness for purpose, merchantability, condition, quantity or quality or in respect of any other matter or thing whatsoever concerning the Purchased Assets or the right of the Vendor to sell or assign same save and except as expressly represented or warranted herein. Without limiting the generality of the foregoing, any and all conditions, warranties or representations expressed or implied pursuant to the *Sale of Goods Act* (Ontario) or similar legislation do not apply hereto and have been waived by the Purchaser. The description of the Purchased Assets contained in the Schedules is for purpose of identification only. Except as otherwise provided in Section 5.2, no representation, warranty or condition has or will be given by the Vendor concerning completeness or accuracy of such descriptions. Notwithstanding the generality of the foregoing, the Purchaser acknowledges that neither the Vendor, nor any other Person (including any Representative of the Vendor, whether in any individual, corporate or any other capacity or the Monitor) is making, and the Purchaser is not relying on, any representations, warranties or other statements of any kind whatsoever, whether oral or written, express or implied, statutory or otherwise, as to any matter concerning the Vendor, the business of the Vendor, the Purchased Assets, the Assumed Obligations, the Excluded Assets, the Excluded Obligations, this Agreement or the Transaction, or the accuracy or completeness of any information provided to (or otherwise acquired by) the Purchaser or any of its respective Representatives.

#### **2.4 Assumed Obligations**

The Purchaser shall assume as of the Closing Time, and shall from and after the Closing Time, perform, discharge and pay when due, as the case may be, the following obligations and liabilities of the Vendor (the "**Assumed Obligations**"):

- (a) all debts, liabilities, obligations under the Contracts (to the extent assigned or transferred to the Purchaser on Closing) for the period from and after the Closing Time;
- (b) the obligation and liability of the Vendor to pay Cure Costs in respect of any Consent Required Contract;
- (c) all debts, liabilities and obligations arising from and after the Closing Date with respect to Transferred Employees;
- (d) all debts, liabilities and obligations arising from ownership and use of the Purchased Assets for the period from and after the Closing Time; and
- (e) any other liability which the Purchaser agrees in writing to assume on or before the Closing Date.

#### **2.5 Excluded Obligations**

Other than the Assumed Obligations, the Purchaser shall not assume and shall not be liable, directly or indirectly, or otherwise responsible for any debts, liabilities or other obligations of the Vendor (collectively, the "**Excluded Obligations**"), including, without limiting the generality of the foregoing:

- (a) or Claims related to any Excluded Asset;



- (b) subject to Section 2.2 and section 2.4(b), all debts, liabilities and obligations related to any Purchased Asset or the business of the Vendor arising out of or related to the period prior to the Closing Time;
- (c) all taxes imposed on or relating to the Purchased Assets that are attributable to any pre-Closing tax period whether or not any such period ends on or before the Closing Date (other than any Transfer Taxes payable by the Purchaser in accordance with Section 4.2); and
- (d) all debts, liabilities and obligations of the Vendor arising under this Agreement.

### **ARTICLE 3 ACTIONS PRIOR TO THE CLOSING DATE**

#### **3.1 Investigation by Purchaser**

Until the Closing Date, the Vendor shall make reasonable efforts to furnish or make available to the Purchaser such information concerning and access to the Purchased Assets as shall be reasonably requested, including information as shall be necessary to enable the Purchaser to verify that the covenants of the Vendor contained in this Agreement have been complied with. Notwithstanding anything herein to the contrary, no such investigation or examination shall be permitted to the extent that it would require the Vendor to disclose (i) due diligence questions, lists or investigations conducted by others, names, bids, letters of intent, expressions of interest, or other proposals received from others in connection with the transactions contemplated hereby or other information and analyses relating to such communications or (ii) information (A) subject to privilege, (B) which would conflict with any confidentiality obligations to which the Vendor is bound or (C) in violation of Applicable Law. The Purchaser and its agents agree to abide by any safety rules or rules of conduct reasonably imposed by the Vendor with respect to such access and any information furnished to it or its Representatives pursuant thereto.

#### **3.2 Investigation by Vendor**

Subject to the confidentiality provisions set forth in Section 3.3 until the Closing Date, the Purchaser shall furnish to the Vendor such information concerning the Purchaser as shall be reasonably requested, including all such information as shall be necessary to enable the Vendor to: (i) verify that the representations and warranties and covenants of the Purchaser contained in this Agreement have been complied with; (ii) obtain any requested Assignment Order or affect the assignment of a Consent Required Contract; and (iii) obtain information regarding the Purchaser's progress obtaining the Purchaser Cannabis Licences and the security clearance of any of the Purchaser Cannabis Licensees.

#### **3.3 Confidentiality**

Notwithstanding anything to the contrary set forth herein, in the NDA or in any other agreement to which the Parties are parties or by which they are bound, the Parties acknowledge and understand that this Agreement (together with the exhibits and schedules attached hereto) will be made available to, and disclosures relating to the transactions contemplated hereby will be made to, the Monitor and the DIP Lender, and their respective affiliates, agents, consultants, counsel and other representatives, subject to the terms of the SISP. The Parties agree that such disclosure will not be deemed to violate any confidentiality obligations owing to any Party under this Agreement, whether pursuant to this Agreement or otherwise. This Section 3.3 shall not in any way limit the disclosure of information by the Vendor in connection with

the administration of the CCAA Proceedings, pursuant to any provision of Applicable Law or any order of the Court. For greater certainty and without limitation, the Vendor shall be entitled to disclose this Agreement to the Court and in the CCAA Proceedings, and this Agreement may be posted on the Monitor's website maintained in connection with the CCAA Proceedings. The Vendor and/or the Monitor are also permitted to issue a press release or other public statement or public communication with respect to this Agreement at any time after Closing.

### **3.4 Regulatory Approvals and Consents**

- (1) Each of the Parties shall use its commercially reasonable efforts to (i) take, or cause to be taken, all appropriate action, and do, or cause to be done, all things necessary, proper or advisable under any law or otherwise to consummate and make effective the transactions contemplated by this Agreement, (ii) obtain any consents, approvals or orders required to be obtained or made in connection with the authorization, execution and delivery of this Agreement and the consummation of the transactions contemplated hereby, and (iii) make all filings and give any notice, and thereafter make any other submissions either required or reasonably deemed appropriate by each of the Parties, with respect to this Agreement and the transactions contemplated hereby required under any Applicable Law. Without limiting the generality of the foregoing, before the Closing Date, the Purchaser shall take all steps necessary or required by any Governmental Authority to be eligible for any consents, approvals, orders, licenses, permits, authorizations, or clearances required to effect the transactions contemplated by this Agreement, including but not limited to new cannabis licences from Health Canada (the "**Purchaser Cannabis Licences**") in the names of the eligible persons to be nominated by the Purchaser (the "**Purchaser Cannabis Licensees**"). The Purchaser shall ensure that before the Closing Date, the individuals that will assume the following roles at the Purchaser Cannabis Licensees (1) have obtained security clearance, or (2) have been identified in writing by Health Canada as not requiring security clearance in order for the Purchaser Cannabis Licences to be approved:
  - (a) All directors and officers and directors and officers of any direct or indirect parent corporation of the Purchaser Cannabis Licensees;
  - (b) Any individual who exercises, will exercise or will be in a position to exercise, control over the Purchaser Cannabis Licensees;
  - (c) the Responsible Person in Charge and any designated alternates;
  - (d) the Head of Security and any designated alternates;
  - (e) the Master Grower and any designated alternates, if the Purchaser Cannabis Licensees obtain a cultivation licence under the *Cannabis Act*; and
  - (f) the Quality Assurance Person and any designated alternates, if the Purchaser Cannabis Licensees obtain a processing licence under the *Cannabis Act*.(together, the "**Key Individuals**")
- (2) The Parties shall work closely and cooperatively and consult with each other in connection with the making of all such filings and notices, including providing copies of all such documents to the non-filing Party and its advisors within a reasonable period of time prior to filing or the giving of

notice. Each Party shall pay for its own filing fees and other charges arising out of the actions taken under this Section 3.4.

- (3) The Cannabis Licences should be maintained during and at the time of Closing.

## **ARTICLE 4 PURCHASE PRICE AND FINANCING**

### **4.1 Satisfaction of Purchase Price**

The Purchase Price shall be satisfied by the Purchaser as follows:

- (a) As to the Deposit, by wire transfer of immediately available funds to the Monitor concurrently with the execution and delivery of this Agreement; and
- (b) As to the amount equal to the Purchase Price less the Deposit (the "**Cash Balance**"), by wire transfer of immediately available funds on the Closing Date to such bank account to be designated by the Monitor in writing at least two (2) Business Days prior to the Closing Date.

The Purchase Price shall be allocated on Closing amongst the Purchased Assets in accordance with Schedule "E". The Purchaser and Vendor agree that they will make all relevant tax and other filings in accordance with such Purchase Price allocation. For greater certainty, the value of the Assumed Obligations has been taken into account with respect to the determination of the aggregate Purchase Price payable pursuant to this Article 4 and the assumption of such Assumed Obligations by the Purchaser does not constitute separate or additional consideration hereunder in respect of the Purchased Assets. Except as provided in Section 8.4(2), the Purchase Price shall not be subject to any claim for set off, reduction or adjustment or any similar claim or mechanism of any kind whatsoever.

### **4.2 Deposit**

- (a) The Vendor confirms receipt by the Monitor of a deposit paid by the Purchaser in the amount of [REDACTED] (the "**Deposit**").
- (b) The Deposit, together with all interest accrued thereon, if any, will be applied on Closing in satisfaction of an equivalent amount of the Purchase Price in accordance with Section 4.1(a) and delivered to the bank account designated by the Monitor in accordance with Section 4.1(b).
- (c) If the Closing does not occur for any reason other than the Agreement having been terminated by the Vendor pursuant to Section 8.6(3), the full amount of the Deposit together with all accrued interest accrued thereon, if any, shall be forthwith returned by the Monitor to the Purchaser.
- (d) If the Agreement is terminated by the Vendor pursuant to Section 4.3 or 8.6(3), the full amount of the Deposit, together with all interest accrued thereon, if any, shall become the property of, and shall be paid to and may be retained by, the Vendor as liquidated damages

(and not as a penalty) to compensate it for the expenses incurred and opportunities foregone as a result of the failure of the Transaction to close.

#### **4.3 Financing Covenant**

The Purchaser shall provide the Vendor and the Monitor with written evidence, satisfactory to the Monitor and the Vendor acting reasonably, confirming that the Vendor has sufficient financing to pay the Cash Balance on or before the Closing Date (the "**Financing Covenant**"). If the Financing Covenant is not satisfied or performed by the Purchaser on or prior to the date that is five (5) Business Days following the execution of this Agreement or such later date as the Vendor and the Monitor may agree, the Vendor may elect to terminate this Agreement with immediate effect.

#### **4.4 Transfer Taxes**

- (1) The Parties agree that:
  - (a) the Purchase Price is exclusive of all Transfer Taxes and the Purchaser shall be liable for and shall pay any and all applicable Transfer Taxes pertaining to the Purchaser's acquisition of the Purchased Assets;
  - (b) the Purchaser shall pay any applicable Transfer Taxes on the Purchaser's acquisition of the Purchased Assets in addition to the Purchase Price, either to the Monitor on behalf of the Vendor or directly to the appropriate Governmental Authority, as required by Applicable Law;
  - (c) if applicable, the Vendor and the Purchaser shall jointly elect under section 167 of the Excise Tax Act that no HST will be payable pursuant to the Excise Tax Act with respect to the purchase and sale of the Purchased Assets under this Agreement, and the Purchaser shall file such election(s) no later than the due date for the Purchaser's HST return for the first reporting period in which HST would, in the absence of filing such election, become payable in connection with the purchase and sale of the Purchased Assets under this Agreement. Notwithstanding this election(s), in the event it is determined by a Governmental Authority that there is a liability of the Purchaser to pay, or of the Vendor to collect and remit, HST in respect of the purchase and sale of the Purchased Assets hereunder, the Purchaser shall forthwith pay such HST to the applicable Governmental Authority, or to the Vendor for remittance to the appropriate Governmental Authority, as the case may be, and shall indemnify and save harmless the Vendor from any penalties and interest which may be payable by or assessed against the Vendor (or its Representatives, agents, Employees, directors or officers) under the Excise Tax Act in respect thereof.
- (2) If requested by the Purchaser, the Vendor shall make a joint election(s) to have the rules in section 22 of the Income Tax Act, and any equivalent or corresponding provision under applicable provincial or territorial tax legislation, apply in respect of the Accounts Receivable.
- (3) If requested by the Purchaser, the Vendor shall make a joint election(s) to have the rules in subsection 20(24) of the Income Tax Act, and any equivalent or corresponding provision under applicable provincial or territorial tax legislation, apply to the obligations of the Vendor in respect

of undertakings which arise from the operation of the business to which the Purchased Assets related and to which paragraph 12(1)(a) of the Income Tax Act applies.

## **ARTICLE 5 REPRESENTATIONS AND WARRANTIES**

### **5.1 Purchaser's Representations**

The Purchaser represents and warrants to the Vendor as of the date hereof and as of the Closing Time, and acknowledges that the Vendor is relying on such representations and warranties in connection with entering into this Agreement and performing their obligations hereunder:

- (a) the Purchaser is a corporation duly incorporated, organized and subsisting under the laws of its jurisdiction of incorporation and has the requisite power and authority to enter into this Agreement and to complete the transactions contemplated hereunder;
- (b) neither the execution of this Agreement nor the performance by the Purchaser of the Transaction will violate the Purchaser's constating documents, any agreement to which the Purchaser is bound, any judgment or order of a court of competent jurisdiction or any Governmental Authority, or any Applicable Law. The execution and delivery of this Agreement and the consummation of the Transaction have been duly authorized by all necessary corporate action on the part of the Purchaser. This Agreement is a valid and binding obligation of the Purchaser enforceable in accordance with its terms;
- (c) the Purchaser is not a non-resident of Canada for purposes of the Income Tax Act or the Excise Tax Act, as applicable;
- (d) the Purchaser is a registrant for purposes of the HST, and its registration number is 747208536 RT0001;
- (e) the Purchaser has not committed an act of bankruptcy, is not insolvent, has not proposed a compromise or arrangement to its creditors generally, has not had any application for a bankruptcy order filed against it, has not taken any proceeding and no proceeding has been taken to have a receiver appointed over any of its assets, has not had an encumbrancer take possession of any of its property and has not had any execution or distress become enforceable or levied against any of its property;
- (f) except for (a) the issuance of the Approval and Vesting Order, (b) any regulatory approvals required to be obtained pursuant to Section 3.4 , and (c) any consent that may be required in connection with the assignment of a Purchased Asset, no authorization, consent or approval of, or filing with or notice to, any Governmental Authority, court or other Person is required in connection with the execution, delivery or performance of this Agreement by the Purchaser, and each of the agreements to be executed and delivered by the Purchaser hereunder or the purchase of any of the Purchased Assets hereunder, except for any authorizations, consents, approvals, filings or notices of any Governmental Authority, court or Person that would not have a material effect on or materially delay or impair the ability of the Purchaser to consummate the transactions hereunder;

- (g) there are no Claims, investigations or other proceedings, including appeals and applications for review, in progress or, to the actual knowledge of the Purchaser after reasonable due diligence, pending or threatened against or relating to the Purchaser which, if determined adversely to the Purchaser, would (i) prevent the Purchaser from paying the Purchase Price to the Vendor; (ii) enjoin, restrict or prohibit the transfer of all or any part of the Purchased Assets as contemplated by this Agreement; or (iii) prevent the Purchaser from or delay the Purchaser in fulfilling any of its obligations set out in this Agreement or arising from this Agreement;
- (h) there are no claims for brokerage commissions, finders' fees or similar compensation in connection with the transactions contemplated by this Agreement based on any arrangement or agreement;
- (i) the Key Individuals, and any other individuals who will have roles that must be fulfilled under Applicable Laws to obtain and maintain the Purchaser Cannabis Licences, either a) are among the Anticipated Transferred Employees or b) will be employed by the Purchaser on the date of this Agreement;
- (j) the Key Individuals have obtained security clearances as required to obtain and maintain the Purchaser Cannabis Licences under Applicable Law; and
- (k) the Purchaser is a "Canadian" within the meaning of the Investment Canada Act, and the regulations thereunder.

## **5.2 Vendor's Representations**

The Vendor represents and warrants to the Purchaser as of the date hereof and as of the Closing Time as follows and acknowledge that the Purchaser is relying on such representations and warranties in connection with entering into this Agreement and performing its obligations hereunder:

- (a) the Vendor is a corporation duly incorporated, organized and subsisting under the laws of their respective jurisdiction of incorporation;
- (b) the Vendor is not a non-resident of Canada for purposes of the Income Tax Act;
- (c) the Vendor is a registrant for purposes of the HST, and its registration number is \_\_\_\_\_;
- (d) there are no claims for brokerage commissions, finders' fees or similar compensation in connection with the transactions contemplated by this Agreement based on any arrangement or agreement; and
- (e) subject to obtaining the Approval and Vesting Order and, if applicable, the Assignment Order, the Vendor has the requisite power and authority to enter into this Agreement and to complete the Transaction contemplated hereunder.

### **5.3 Limitations**

With the exception of the Vendor's representations and warranties in Section 5.2 and the Purchaser's representations and warranties in Section 5.1, neither the Vendor nor the Purchaser, or their respective Representatives, nor any of their respective officers, directors or employees make, have made or shall be deemed to have made any other representation or warranty, express or implied, at law or in equity, in respect of the Vendor, the Purchaser, or the Purchased Assets or the sale and purchase of the Purchased Assets pursuant to this Agreement.

## **ARTICLE 6 COVENANTS**

### **6.1 Conduct of Business Until Closing Time**

- (1) During the period commencing on the date of this Agreement and ended at the Closing Time, except: (1) as contemplated or permitted by this Agreement; (2) as necessary in connection with the CCAA Proceedings; (3) as otherwise provided in the Initial Order and any other court orders, prior to the Closing Time; (4) as required by Applicable Law, to the extent reasonably practicable having regard to the CCAA Proceedings; or (5) as consented to by the Purchaser, such consent not to be unreasonably withheld, conditioned or delayed, the Vendor shall:
  - (a) Subject to subsection (c), remain in possession of the Purchased Assets until Closing, use the Purchased Assets only in the ordinary course of business and maintain, preserve and protect the Purchased Assets in the condition in which they exist on the date hereof, other than ordinary wear and tear and other than replacements, dispositions, modifications or maintenance in the ordinary course of business;
  - (b) maintain the Cannabis Licences in good standing with Health Canada and/or any other relevant government authority or work with Health Canada to replace the Health Canada Licences immediately post-closing;
  - (c) not dispose of any of the Purchased Assets, other than in the ordinary course of business;
  - (d) not disclaim any Contract that is materially applicable to the Purchased Assets; and
  - (e) not enter into any material contract or other material written agreement in respect of any of the Purchased Assets other than in the ordinary course of business. The consent of the Purchaser shall be deemed to have been given with respect to any request for such a consent to which the Purchaser fails to respond within two (2) Business Days after such request is made.

### **6.2 Actions to Satisfy Closing Conditions**

- (1) The Vendor agrees to take all commercially reasonable actions so as to ensure compliance with all of the conditions set forth in Section 7.1 and Section 7.3; and
- (2) The Purchaser agrees to take all commercially reasonable actions so as to ensure compliance with the conditions set forth in Section 7.2 and Section 7.3.

### **6.3 Employees**

- (1) At least five (5) days in advance of the Closing Date, the Purchaser shall make a written offer of employment, which will be conditional upon Closing, to those Employees listed on Schedule "F". The Purchaser may provide to the Vendor the names of additional Employees to whom the Purchaser shall make a written offer of employment up to five (5) days in advance of the Closing Date.
- (2) Immediately following the Closing, the Purchaser shall provide each Transferred Employee with terms and conditions of employment that are substantially the same in all material respects as the terms and conditions of employment provided by the Vendor immediately prior to the Closing. For clarity, (i) for purposes of the Purchaser's obligation pursuant to this paragraph, each Transferred Employee's status as active or inactive and compensation and benefits as of immediately following the Closing shall reflect such Transferred Employee's status as active or inactive and such Transferred Employee's compensation and benefits in effect as of immediately prior to the Closing (inclusive of any temporary reduction or cessation of such compensation and benefits); (ii) the Purchaser shall have no obligation to (A) offer to employ any Employee or (B) other than as contemplated by this Section 6.3, provide any Transferred Employee with any specific term or condition of employment, including any specific amount or type of compensation or benefits, for any period following the Closing; and (iii) each offer of employment will recognize the Transferred Employee's past service with the applicable Vendor for all purposes.
- (3) Nothing in this Section 6.3, whether express or implied, (i) is intended to or shall confer upon any Person, including any Employee, other than the Parties and their respective successors and assigns, any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement, (ii) shall establish or constitute an amendment, termination or modification of, or an undertaking to establish, amend, terminate or modify, any benefit plan, program, agreement or arrangement or (iii) shall create any obligation on the part of the Purchaser to employ any Employee for any period following the Closing Date.
- (4) Without limiting the Purchaser's obligations in respect of the Transferred Employees, the Purchaser shall be responsible for:
  - (a) All liabilities for salary, wages, bonuses, commissions, vacation pay, and other compensation relating to employment of the Transferred Employees in accordance with the offer made to such Transferred Employees by the Purchaser for the period on or after the Closing Date; and
  - (b) All statutory notices of termination or payment in lieu of notice obligations and statutory severance obligations in respect of the termination by the Purchaser of the employment of any Transferred Employee taking place on or after the Closing Date.

### **6.4 Use of Business Name.**

The Purchaser agrees that immediately after the Closing Date, the Purchaser shall not use the name "FIGR" or any variation thereof in connection with the Purchased Assets, except as may be required for the purpose of the CCAA Proceedings and where legally required to advise of the historical fact that such name was previously associated with the Purchased Assets.



**ARTICLE 7**  
**CONDITIONS PRECEDENT**

**7.1 Conditions Precedent in favour of the Purchaser**

- (1) The obligation of the Purchaser to complete the Transaction is subject to the following conditions being fulfilled or performed:
  - (a) all representations and warranties of the Vendor contained in this Agreement shall be true in all material respects as of the Closing Time with the same effect as though made on and as of that time; and
  - (b) the Vendor shall maintain the Cannabis Licences up to the date of Closing and shall use commercially reasonable efforts to cooperate with the Purchaser or the Purchaser Cannabis Licensees in the process of obtaining the Purchaser Cannabis Licences from Health Canada;
  - (c) the Vendor shall have performed in all material respects each of their obligations under this Agreement to the extent required to be performed at or before the Closing Time, including the delivery of each of the items required pursuant to Section 8.3.
- (2) The foregoing conditions are for the exclusive benefit of the Purchaser. Any condition in this Section 7.1 may be waived by the Purchaser in whole or in part, without prejudice to any of its rights of termination in the event of non-fulfillment of any other condition in whole or in part. Any such waiver shall be binding on the Purchaser only if made in writing. If any condition set out in Section 7.1 is not satisfied or performed on or prior to the Outside Date, the Purchaser may elect on written notice to the Vendor to terminate this Agreement.

**7.2 Conditions Precedent in favour of the Vendor**

- (1) The obligation of the Vendor to complete the Transaction is subject to the following conditions being fulfilled or performed:
  - (a) all representations and warranties of the Purchaser contained in this Agreement shall be true in all material respects as of the Closing Time with the same effect as though made on and as of that date;
  - (b) the Purchaser shall have obtained the Purchaser Cannabis Licences; and
  - (c) the Purchaser shall have performed in all material respects each of its obligations under this Agreement to the extent required to be performed at or before the Closing Time, including the delivery of each of the items required pursuant to Section 8.2.
- (2) The foregoing conditions are for the exclusive benefit of the Vendor. Any condition in this Section 7.2 may be waived by the Vendor in whole or in part, without prejudice to any of its rights of termination in the event of non-fulfilment of any other condition in whole or in part. Any such waiver shall be binding on the Vendor only if made in writing. If any condition set forth in Section

7.2 is not satisfied or performed on or prior to the Outside Date, the Vendor may elect on written notice to the Purchaser to terminate the Agreement.

### **7.3 Conditions Precedent in favour of both the Purchaser and the Vendor**

- (1) The obligations of the Vendor and the Purchaser to complete the Transaction are subject to the following conditions being fulfilled or performed:
  - (a) the Approval and Vesting Order shall have been obtained and shall not have been reversed, stayed, varied, or vacated;
  - (b) no provision of and Applicable Law shall be in effect and/or no order shall have been issued by a Governmental Authority, which restrains or prohibits the completion of the Transaction. For clarity, the Purchaser's failure to take the steps necessary to obtain the Purchaser Cannabis Licences shall not constitute a condition for the benefit of the Purchaser and the Purchaser shall not be entitled to terminate this Agreement on this basis; and
  - (c) no motion, action or proceedings shall be pending by or before a Governmental Authority to restrain or prohibit the completion of the Transaction contemplated by this Agreement.
- (2) The Parties hereto acknowledge that the foregoing conditions are for the mutual benefit of the Vendor and the Purchaser. If the conditions set out in this Section 7.3 are not satisfied performed or mutually waived on or before the Outside Date, either Party shall have the option to terminate this Agreement upon written notice to the other Parties.

## **ARTICLE 8 CLOSING**

### **8.1 Closing**

Subject to the conditions set out in this Agreement, the completion of the Transaction shall take place at the Closing Time by electronic means due to the COVID-19 pandemic, or as otherwise determined by mutual agreement of the Parties in writing, and the Parties shall exercise commercially reasonable efforts to cause Closing to occur at the Closing Time, and, in any event, prior to the Outside Date.

### **8.2 Purchaser's Deliveries on Closing**

At or before the Closing Time, the Purchaser shall execute and deliver, or arrange for the delivery, as the case may be, to the Vendor the following, each of which shall be in form and substance satisfactory to the Vendor, acting reasonably:

- (a) the Cash Balance in accordance with Section 4.1;
- (b) payment of any Transfer Taxes required by Applicable Law to be collected by the Vendor, and, if applicable, the elections referred to in Section 4.3 executed by the Purchaser;
- (c) an executed assignment and assumption agreement evidencing the assumption by the Purchaser of the Assumed Obligations;

- (d) a certificate dated as of the Closing Date and executed by an executive officer of the Purchaser confirming that all of the representations and warranties of the Purchaser contained in this Agreement are true in all material respects as of the Closing Time, with the same effect as though made at and as of the Closing Time, and that the Purchaser has performed in all material respects the covenants to be performed by it prior to the Closing Time;
- (e) a copy of the Purchaser Cannabis Licences; and
- (f) such further and other documentation as is referred to in this Agreement or as the Vendor may reasonably require to give effect to this Agreement.

### **8.3 Vendor's Deliveries on Closing**

At or before the Closing Time, the Vendor shall execute and deliver, or arrange for the delivery, as the case may be, to the Purchaser the following, each of which shall be in form and substance satisfactory to the Purchaser, acting reasonably:

- (a) the Purchased Assets, excluding any Non-Assignable Interests, which shall be delivered *in situ* wherever located as of the Closing;
- (b) the Approval and Vesting Order entered by the Court;
- (c) an executed assignment and assumption agreement evidencing the assignment by the Vendor of the Assumed Obligations to the Purchaser;
- (d) an executed bill of sale evidencing the assignment, conveyance, transfer and delivery of the Purchased Assets to the Purchaser;
- (e) all documents of title and instruments of conveyance executed by the applicable Vendor necessary to transfer registered title and/or beneficial ownership to the Purchaser of the real property included in the Purchased Assets;
- (f) all Assignment Orders, if any, entered by the Court;
- (g) a certificate dated as of the Closing Date and executed by an executive officer the Vendor confirming that all of the representations and warranties of the Vendor contained in this Agreement are true in all material respects as of the Closing Time, with the same effect as though made at and as of the Closing Time, and that the Vendor has performed in all material respects the covenants to be performed by them prior to the Closing Time;
- (h) if applicable, the elections referred to in Section 4.3 executed by the Vendor;
- (i) the executed Monitor's Certificate; and
- (j) such further and other documentation as is referred to in this Agreement or as the Purchaser may reasonably require to give effect to this Agreement.

#### **8.4 Possession of Assets**

- (1) On Closing, the Purchaser shall take possession of the Purchased Assets where situated at Closing. The Purchaser acknowledges that the Vendor has no obligation to deliver physical possession of the Purchased Assets to the Purchaser. In no event shall the Purchased Assets be sold, assigned, transferred or sent over to the Purchaser until the conditions set out in this Agreement have been satisfied or waived by the Purchaser or Vendor, as applicable, and the Purchaser has satisfied all delivery requirements outlined in Section 8.2. The Purchaser shall promptly notify the Vendor of any Excluded Assets which may come into the possession or control of the Purchaser, whether before or after Closing, and thereupon shall promptly release such Excluded Assets to the Vendor, or to such other Person as the Vendor may direct in writing and, for greater certainty, title shall not be deemed to vest to the Purchaser in respect of any Excluded Assets. The Vendor shall have no obligation to remove any Excluded Equipment from any premises that constitute part of the Purchased Assets.
- (2) The Purchased Assets shall be and remain until Closing at the risk of the Vendor. In the event of material damage by fire or other hazard to the Purchased Assets or any part thereof occurring before the Closing Date (a "**Material Loss Event**"), the Vendor shall immediately advise the Purchaser thereof by notice in writing. In the event of a Material Loss Event, the Parties shall consummate the Transaction in accordance with the terms and conditions of this Agreement and, at the Closing Time, the Vendor shall deliver possession of the Purchased Assets to the Purchaser in such physical condition as the same may then exist; provided that, in such event, the Vendor will assign to the Purchaser the right to receive any net insurance proceeds received for the property loss or damage to the Purchased Assets as a result of the Material Loss Event (up to a maximum of the Purchase Price) and reduce the cash portion of the Purchase Price by an amount equal to any deductible in connection therewith.

#### **8.5 Dispute Resolution**

If any dispute arises with respect to any matter related to the Transaction or the interpretation or enforcement of this Agreement such dispute will be determined by the Court, or by such other Person or in such other manner as the Court may direct.

#### **8.6 Termination**

- (1) This Agreement shall terminate at any time prior to the Closing Time by mutual written agreement of the Vendor (with the written consent of the Monitor) and the Purchaser.
- (2) This Agreement may be terminated at any time prior to the Closing Time should Closing not have occurred on or prior to 11:59 pm (Eastern Time) on the Outside Date in accordance with Section 7.3 and either of the Parties shall have delivered written notice of termination to the other Party terminating this Agreement as a result thereof (provided that the terminating Party has not failed to satisfy a closing condition under this Agreement).
- (3) This Agreement may be terminated by the Vendor, if there has been a material violation or breach by the Purchaser of any agreement, covenant, representation or warranty of the Purchaser in this Agreement which would prevent the satisfaction of, or compliance with, any condition set forth in Section 7.2 or Section 7.3, as applicable, by the Outside Date or, if any event has occurred as a

result of which any of the conditions in Sections 7.1-7.3 (inclusive) are not capable of being satisfied by the Outside Date, and such violation or breach has not been waived by the Vendor or cured within five (5) Business Days of the Vendor providing written notice to the Purchaser of such breach, unless the Vendor is in material breach of its obligations under this Agreement.

- (4) This Agreement may be terminated by the Purchaser, if there has been a material violation or breach by the Vendor of any agreement, covenant, representation or warranty which would prevent the satisfaction of, or compliance with, any condition set forth in Section 7.1 or Section 7.3, as applicable by the Outside Date and such violation or breach has not been waived by the Purchaser or cured within five (5) Business Days of the Purchaser providing notice to the Vendor of such breach, unless the Purchaser is in material breach of its obligations under this agreement.
- (5) Prior to the Vendor agreeing to or electing to any termination pursuant to this Section 8.6, the Vendor shall first obtain the written consent of the Monitor and DIP Lender.

### **8.7 Effects of Termination and Closing**

- (1) If this Agreement is terminated pursuant to Section 8.6, all further obligations of the Parties under or pursuant to this Agreement shall terminate without further liability of any Party to the other except for the provisions of this Section 8.7 (Effects of Termination and Closing), Section 4.2 (Deposit) and Section 8.5 (Dispute Resolution), each of which will survive termination.
- (2) Under no circumstance shall any of the Parties, their Representatives or their respective directors, officers, employees or agents be liable for any special, punitive, exemplary, consequential or indirect damages (including loss of profits) that may be alleged to result, in connection with, arising out of, or relating to this Agreement or the transactions contemplated herein.

## **ARTICLE 9 GENERAL**

### **9.1 Access to Books and Records**

For a period of two (2) years from the Closing Date or for such longer period as may be reasonably required for the Vendor (or any trustee in bankruptcy of the estate of the Vendor) to comply with Applicable Law, the Purchaser will retain all original Books and Records that are transferred to the Purchaser under this Agreement. So long as any such Books and Records are retained by the Purchaser pursuant to this Agreement, the Vendor (and any representative, agent, former director or officer or trustee in bankruptcy of the estate of the Vendor, including the Monitor) has the right to inspect and to make copies (at its own expense) of them at any time upon reasonable request during normal business hours and upon reasonable notice for any proper purpose and without undue interference to the business operations of the Purchaser.

## 9.2 Notice

(1) Any notice or other communication under this Agreement shall be in writing and may be delivered by read-receipted email, addressed:

(a) in the case of the Purchaser, as follows:

Attention: Volodymyr Burko  
Email: vlad@vbgroup.ca

with a copy to:

Ryan Atkinson  
Atkinson Law Professional Corporation  
100 King Street West,  
Suite 5700  
Toronto, ON M5X 1C9

Email: ryan@atkinsonlaw.ca

(b) in the case of the Vendor, as follows:

The FIGR Group  
C/O Bennett Jones LLP  
100 King Street West, Suite 3400  
Toronto, ON M5X 1G5

Attention: Sean Zweig / Michael Shakra  
Email: ZweigS@bennettjones.com / shakram@bennettjones.com

(c) with a further copy to the Monitor and its counsel, as follows:

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

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

Attention: Ryan Jacobs / Jane Dietrich  
Email: rjacobs@cassels.com / jdietrich@cassels.com

- (2) Any such notice or other communication, if transmitted by email before 5:00 p.m. (Toronto time) on a Business Day, will be deemed to have been given on such Business Day, and if transmitted by email after 5:00 p.m. (Toronto time) on a Business Day, will be deemed to have been given on the Business Day after the date of the transmission.
- (3) Sending a copy of a notice or other communication to a Party's legal counsel as contemplated above is for information purposes only and does not constitute delivery of the notice or other communication to that Party. The failure to send a copy of a notice or other communication to legal counsel does not invalidate delivery of that notice or other communication to a Party.

### **9.3 Time**

Time shall, in all respects, be of the essence hereof, provided that the time for doing or completing any matter provided for herein may be extended or abridged by an agreement in writing signed by the Vendor and the Purchaser.

### **9.4 Survival**

The representations and warranties of the Parties contained in this Agreement shall merge on Closing and the covenants of the Parties contained herein to be performed after the Closing shall survive Closing and remain in full force and effect.

### **9.5 Personal Information**

The Purchaser hereby acknowledges that it is aware, and that it will advise its Representatives, that privacy legislation, including the *Personal Information Protection and Electronic Documents Act* (Canada), applies to certain information that may be disclosed to the Purchaser and its Representatives pursuant to this Agreement and/or the Transaction. The Purchaser agrees to comply, and cause its Representatives to comply, with such privacy legislation in connection with any such information disclosed to it or any of them.

### **9.6 Benefit of Agreement**

This Agreement shall enure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns. The Purchaser cannot assign any of the rights or obligations under this Agreement without the prior written consent of the Vendor and the Monitor.

### **9.7 Entire Agreement**

This Agreement and the Schedules attached hereto, the NDA and the agreements and other documents delivered in connection with the Transaction, constitute the entire agreement between the Parties with respect to the subject matter hereof and supersede all prior negotiations, understandings, and agreements. This Agreement may not be amended or modified in any respect except by written instrument executed by the Parties. There are no covenants, promises, warranties, representations, conditions, understandings or other agreements, whether oral or written, pre-contractual or otherwise, express, implied or collateral among the Parties in connection with the subject matter of this Agreement, except as specifically set forth in this Agreement and any document required to be delivered pursuant to this Agreement.

## **9.8 Paramountcy**

In the event of any conflict or inconsistency between the provisions of this Agreement, and any other agreement, document or instrument executed or delivered in connection with this Transaction or this Agreement, the provisions of this Agreement shall prevail to the extent of such conflict or inconsistency.

## **9.9 Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein and each of the Parties irrevocably attorns to the exclusive jurisdiction of the Court.

## **9.10 Further Assurances**

Each of the Parties shall, at the request and expense of the requesting Party, take or cause to be taken such action and execute and deliver or cause to be executed and delivered to the other such conveyances, transfers, documents and further assurances as may be reasonably necessary or desirable to give effect to this Agreement.

## **9.11 Counterparts**

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which shall constitute one and the same agreement. Transmission by e-mail of an executed counterpart of this Agreement shall be deemed to constitute due and sufficient delivery of such counterpart.

## **9.12 Severability**

Notwithstanding any provision herein, if a condition to complete the Transaction, or a covenant or an agreement herein is prohibited or unenforceable pursuant to Applicable Law, then such condition, covenant or agreement shall be ineffective to the extent of such prohibition or unenforceability without invalidating the other provisions hereof.

## **9.13 Monitor's Certificate**

The Parties acknowledge and agree that the Monitor shall be entitled to deliver to the Purchaser, and file with the Court, the executed Monitor's Certificate without independent investigation, upon receiving written confirmation from all Parties (or the applicable Party's counsel) that all conditions of Closing in favour of such Party have been satisfied or waived, and the Monitor shall have no liability to the Parties in connection therewith. The Parties further acknowledge and agree that (i) upon written confirmation from all Parties that all conditions of Closing in favour of such Party have been satisfied or waived (other than the payments contemplated in Section 4.1(b) and the delivery of the executed Monitor's Certificate), the Monitor may deliver the executed Monitor's Certificate to the Purchaser's counsel in escrow, with the sole condition of its release from escrow being the Monitor's written confirmation that all such funds have been received, the Monitor's Certificate will be released from escrow to the Purchaser, and the Closing shall be deemed to have occurred.



**9.14 No Liability**

The Vendor and the Purchaser acknowledge and agree that the Monitor, acting in its capacity as Monitor of the Vendor, and FTI Capital Advisors - Canada ULC in connection with its role in the SISP, shall have no liability in their personal capacity or otherwise, in connection with this Agreement.

**9.15 Expenses**

Except as otherwise specifically provided herein, the Vendor, on the one hand, and the Purchaser, on the other hand, shall be responsible for the expenses (including fees and expenses of legal advisers, accountants and other professional advisers) incurred by each of them, respectively, in connection with the negotiation and settlement of this Agreement, and the completion of the transactions contemplated hereby.

**9.16 Waiver and Amendment**

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement shall be binding unless: (1) executed in writing by the Vendor and Purchaser; and (2) the Monitor shall have provided its prior written consent. No waiver of any provision of this Agreement shall constitute a waiver of any other provision nor shall any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided.

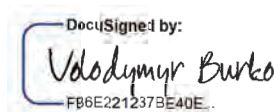
*[The remainder of this page has been left intentionally blank]*

**IN WITNESS WHEREOF**, the Parties have executed this Agreement.

PURCHASER

**BEROXFOOD North America**

By:

A DocuSign signature block for Volodymyr Burko. It features a blue border with the text "DocuSigned by:" at the top, the handwritten name "Volodymyr Burko" in the center, and the alphanumeric string "FB6E221237BE40E" at the bottom.

\_\_\_\_\_  
Name: Volodymyr Burko

Title: President

VENDOR

**FIGR NORFOLK INC.**

By:

\_\_\_\_\_  
Name: •

Title: •

IN WITNESS WHEREOF, the Parties have executed this Agreement.

PURCHASER

**BEROXFOOD North America**

By:

\_\_\_\_\_  
Name: Volodymyr Burko  
Title: President

VENDOR

**FIGR NORFOLK INC.**

By:

  
\_\_\_\_\_  
Name: Michael Devon  
Title: SVP & Chief Financial Officer

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

***The FIGR Norfolk Facility***

FIGR Norfolk's facility is located in Simcoe, Ontario and is licensed for cultivation by Health Canada (the "FIGR Norfolk Facility").

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

**MUNICIPAL ADDRESS:** Multiple – 11 Grigg Drive, 54, 56, 58, 60, 66 – 72 Park Road and other lands, Simcoe, Ontario

**LEGAL DESCRIPTION:** PT LT 4 CON 14 WINDHAM PT 1 37R7969, S/T RIGHT IN NR540051; PT LT 3-4 CON 14 WINDHAM PT 2 37R3029 EXCEPT PT 4, 6 37R9427 EXCEPT PT 1 37R11096; NORFOLK COUNTY

ITEM DESCRIPTION	ACQUISITION DATE	RECORDS BALANCE	ADDITIONS	DEPRECIATION	RESIDUAL BALANCE	DEPRECIATION	RESIDUAL BALANCE	DEPRECIATION	RESIDUAL BALANCE	DEPRECIATION	RESIDUAL BALANCE	DEPRECIATION	RESIDUAL BALANCE	DEPRECIATION	RESIDUAL BALANCE	DEPRECIATION	RESIDUAL BALANCE	DEPRECIATION	RESIDUAL BALANCE
72 Park Road (part)	July 25/18																		
54 Park Road	March 29/19																		
56 Park Road	March 29/19																		
58 Park Road	March 29/19																		
60 Park Road	March 29/19																		
72 Park Road (part)	March 29/19																		
Norfolk Parcel	August 29/19																		
<b>TOTAL PRPOSE LAND - SMCQE</b>																			
11 0988 Oval Land - SMCQE	June 18/19																		
Security Fencing	Nov 13/18																		
Office Furniture & Equipment																			
Boardroom Table	1/26/2018																		
Double Pedestal Steel Desk	3/23/2018																		
Rolling - document storage room	8/1/2018																		
Cabinets, Countertops in staff kitchen	Jan 1/19																		
<b>TOTAL OFFICE FURNITURE &amp; EQUIPMENT</b>																			
Equipment																			
One Ton Rooftop Furnace	Nov 13/18																		
Weighting Tables	Nov 13/18																		
Irrigation System	Nov 13/18																		
4000W Volvo Diesel Genset Generator	Nov 13/18																		
Fridge & Dishwasher & microwaves	Nov 13/18																		
2000VA voltage oil-filled transformer Generator	Nov 13/18																		
Desktop Telephones	Nov 13/18																		
Stainless Steel Sinks	Nov 13/18																		
Stainless Steel Work Tables	Nov 13/18																		
Vertical Lift	Nov 13/18																		
Wireless internet Tower	Nov 13/18																		
Pressure Washer	Nov 13/18																		
Floor Scrubber	Nov 13/18																		
Sweeper	Nov 13/18																		
Ductwork Thermal Insulation	Nov 13/18																		
Metrolite XPRessure Unit Portable Radio	Jan 1/19																		
Facility Surge Protector	July 12/19																		
Canon Image Runner C5530 Printer	Jan 24/20																		
3 ton US Ductless Split System (HVAC) - Irrigation room	July 2/20																		
3 ton US Ductless Split System (HVAC) - Packaging room	July 5/20																		
2 ton Ductless Split System (HVAC) - Vault	Nov 13/18																		
3 ton Ductless Split System (HVAC) - Server Room	Nov 13/18																		
3 ton US Ductless Split System (HVAC) - Production area corridor	July 8/20																		
Intermetal Furnace (100,000 BTU) - Attc area	Nov 13/18																		
<b>TOTAL EQUIPMENT</b>																			

ITEM DESCRIPTION	IMPLEMENTATION DATE	REMARKS BALANCE	ADDITIONS DURING YEAR	DELETIONS DURING YEAR	PRORATA BALANCE	ACCUM AMOUNT BEGINNING	DELETIONS DURING YEAR	ACCUM AMOUNT END BAL	NET BOOK VALUE

ITEM DESCRIPTION	MANUFACTURING EQUIPMENT	INVENTORY DATE	REMOVED BALANCE	ACQUIRED BALANCE	REMOVED BALANCE	ACQUIRED BALANCE	REMOVED BALANCE	ACQUIRED BALANCE	REMOVED BALANCE	ACQUIRED BALANCE	REMOVED BALANCE	ACQUIRED BALANCE
Grow Ground Nutrient Tanks		Nov 13/18										
Environmental Control System		Nov 13/18										
Grow Lights & Cart		Nov 13/18										
Grow Benches & Rails		Nov 13/18										
Grow Room Fans & Controls		Nov 13/18										
Irrigation System		Nov 13/18										
Cannabis Destruction Cage		Nov 13/18										
Light Sensors		Nov 13/18										
Herivelman Martin 52-6TL Vacuum Sealer		Nov 13/18										
Cannabis Waste Shredder		Nov 13/18										
Mobius M108 Cannabis Trimmer		Nov 13/18										
Hot Water Heating System		Nov 13/18										
Surma Pump System - Water Room		Dec 3/18										
Grundfos Magna 3 305 230w Circulating Pumps (2)		Dec 3/18										
Molture Content Meter		Dec 27/18										
Grow Lights		Jan 3/19										
Perforated Pans, Drying Pans & Tray Racks		Jan 23/19										
Industrial Dehumidifiers		Nov 22/18										
Drying Trays, pans & racks		Nov 13/18										
Hot Water Heater #1 (w thermostat valve)		Nov 13/18										
Hot Water Heater #2 (w thermostat valve)		Nov 13/18										
Stainless Steel Wine Shaking Units		Feb 12/19										
60 Liter/Carroll Oil Extractor System		July 1/20										
Sprayer Pkg 100H Gum 20 gal Tank & Cart		March 31/19										
Impaction Heat Exchanger		March 31/19										
Aqua Balance Trays & Spare Pans Kits		March 31/19										
Boiler/Chilled Water Holding Tank		June 1/19										
Convergence Chromatography Analysis System (LPC2-Ecom 1)		July 1/20										
Grow Room #2 Grow Lights		July 1/19										
Surbelan C730 Semi-Automatic Cap Tightener		August 19/19										
Freemont Super 500 3" Induction Sealer		August 19/19										
Universal R317 Semi-Automatic Labeler		August 19/19										
GAW Scale Table		August 19/19										
Chaut Cannabis Scale EX4302N		August 19/19										
High Tech Shredder		August 6/19										
EC Furne Hood 4' Wide		July 1/20										
EC Furne Hood 8' Wide		July 1/20										
Stem Stripper		Sept 1/19										
Conveyor: Infeed (5' x 7')		Sept 1/19										
Conveyor: Dumbbed (15' x 12')		Sept 1/19										
Grow Room Fan Tilt Zoom camera system		Nov 29/19										
EC/pH Grow Room Monitoring system		Dec 1/19										
Hidoloh HBK SL Blotchlog Rotary Evaporator		July 1/20										
Cascade CVO 3 Vacuum Oven		July 1/20										
Milermip 105 - 105C Vacuum Cold Trap		July 1/20										
Hogendoom Environmental Enhancements		March 1/20										
ECA Solution Injection System		March 1/20										
Chlorine Injection System		March 1/20										
LED lights in Propagation Room		March 1/20										
Mobius M108S Cannabis Trimmer		Sept 15/20										
Drying Room Moist Humidifier		July 15/19										
Drying Room Agronomic IQ Dehumidifier (1)		May 24/19										
Drying Room Agronomic IQ Dehumidifier (2)		May 24/19										
(10) All Manufacturing Equipment												

ITEM DESCRIPTION	INVENTORY DATE	ACQUISITION DATE	MONTH	YEAR	DEPARTMENT	FUND	PROJECT	DESCRIPTION	AMOUNT	BALANCE	FISCAL YEAR
<b>Security Equipment</b>											
Security System	Nov 13/18										
IBM Network Video Recorder, 157TB	Jan 31/19										
Additional Security Cameras (8)	Jan 31/19										
Additional Security Camera & Camera Channel License	Mar 1/19										
<b>TOTAL SECURITY EQUIPMENT</b>											
<b>Computer Equipment</b>											
HP ProBook & MS Office 2016 (2)	Oct 31/17										
Apple Computer Equipment	Nov 13/18										
Desktop Computers (4)	March 7/18										
Lenovo ThinkSystem S350 Network Server	March 7/18										
Printers (8)	March 7/18										
Monitors (8)	March 14/18										
HP Laser Jet Pro colour printer (3)	March 16/18										
HP Laser Jet Pro colour printer & paper tray (2)	March 16/18										
HP DesignJet T120 24" Large Format Printer	March 16/18										
Asus Core i5 Desktop & Acer 23.5" LED Monitor (2)	June 15/18										
Lenovo ThinkPad E560 Notebook, MS Office 2016 (2)	June 27/18										
Computer Network Data Cables	July 9/18										
IT Infrastructure	July 9/18										
DLI Extractor Computer Workstation	July 12/18										
Mercal MX130 Firewall (SAP System)	Feb 7/20										
Mercal M2120 Ethernet Switches (SAP System)	Feb 7/20										
Zebra MC9300 Data Collectors (6) (SAP System)	Feb 17/20										
SAP Data Drive	March 1/20										
HP DL360 Gen10 Rackmount Server	April 16/20										
<b>TOTAL COMPUTER EQUIPMENT</b>											
<b>Computer Software</b>											
Analytics Inventory Software	Nov 13/18										
Microsoft Project 2016 Standard (2)	March 5/18										
MS Office 2016 Home Business (4)	March 7/18										
MS Office 2016 Home Business (3)	March 7/18										
MS Windows Server	March 7/18										
DLI Extractor EmPOWER 3 Program Software	July 1/20										
<b>TOTAL COMPUTER SOFTWARE</b>											
<b>Other Leased Assets</b>											
ATCO Tractor	August 27/19										
<b>TOTAL POA LEASED ASSETS</b>											
<b>Building</b>											
Building Modifications	Nov 13/18										
11 67th Drive (Wal Trc Facility)	June 19/19										





**Appendix I to Schedule "A"**  
**Assumed Contracts**

**Material Contracts Subject to further review**

*All contracts listed below are included in the corresponding sub-folders within the Material Contracts section of the dataroom.*

FIGR NORFOLK - LIST OF MATERIAL CONTRACTS	
VDR File Ref. No.	DOCUMENT
<b>COMMERCIAL AGREEMENTS</b>	
D 1.4	Daikin Care Maintenance Agreement with Daikin Applied dated August 22, 2018
D 1.5	Daikin Care Maintenance Agreement with Daikin Applied dated August 27, 2018
D 1.6	ADP Canada - Amendment to Services Agreement dated September 21, 2018
D 1.7	ADP Canada - Amendment to Services Agreement dated December 11, 2018
D 1.8	ADP Canada - Services Form Summary
D 1.9	Praxair Canada Inc. - Product Supply and Service Agreement
D 1.30	Silo Wireless Inc - Internet Provider Contract dated February 28, 2020
D 1.31	Silo Wireless Inc - Business Community Internet Provider Contract dated June 2, 2020
D 1.32	C1-5 (Cannabis OneFive Inc.) - Master Subscription Agreement
D.1.33	C1-5 (Cannabis OneFive Inc.) - Order Form

**SCHEDULE "B"**  
**EXCLUDED ASSETS**

- 1. All Vendor assets that are not Purchased Assets, including all Cannabis Licences.**

**SCHEDULE "C"**  
**PERMITTED ENCUMBRANCES**

**SPECIFIC PERMITTED ENCUMBRANCES**

**PIN 50190-0069 (LT):**

1. Instrument No. 37R1811 registered March 18, 1980 being a Reference Plan;
2. Instrument No. 37R3901 registered February 5, 1988 being a Reference Plan;
3. Instrument No. 37R3933 registered March 1, 1988 being a Reference Plan;

**PIN 50190-0090 (LT):**

4. NIL;

**PIN 50190-0092 (LT):**

5. NIL;

**PIN 50190-0093 (LT):**

6. Instrument No. 37R951 registered May 4, 1977 being a Reference Plan;

**PIN 50190-0142 (LT):**

7. Instrument No. 37R11219 registered July 3, 2019 being a Reference Plan;
8. Instrument No. NK122931 registered August 29, 2019 being a Transfer of land from The Corporation of Norfolk County to FIGR Norfolk Inc. wherein the Corporation reserves a right/easement in gross over parts 4 & 6, 37R11219;
9. Instrument No. NK122932 registered August 29, 2019 being a Notice of a Development Agreement between FIGR Norfolk Inc. and The Corporation of Norfolk County;

**PIN 50190-0155 (LT):**

10. Instrument No. 37R1811 registered March 18, 1980 being a Reference Plan;
11. Instrument No. 37R3029 registered October 18, 1985 being a Reference Plan;
12. Instrument No. 37R6250 registered July 13, 1992 being a Reference Plan;
13. Instrument No. 37R7969 registered May 14, 1999 being a Reference Plan;
14. Instrument No. NR540051Z registered June 21, 1999 being Restrictive Covenants;
15. Instrument No. 37R11175 registered March 5, 2019 being a Reference Plan;

16. Instrument No. NK124881 registered October 25, 2019 being an Application to Change Name – Owner;

17. Instrument No. NK124882 registered October 25, 2019 being an Application to Consolidate;

**50190-0157 (LT):**

18. Instrument No. 37R11096 registered June 8, 2018 being a Reference Plan.

**SCHEDULE "D"**  
**FORM OF APPROVAL AND VESTING ORDER**

[See attached]

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

THE HONOURABLE [●] ) [●], THE [●]  
JUSTICE [●] ) DAY OF [●], 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.**

(each an "**Applicant**" and collectively, the "**Applicants**")

**APPROVAL AND VESTING ORDER**

**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 approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale (the "**Sale Agreement**") between FIGR Norfolk Inc. (the "**Vendor**") and 11897985 Canada Inc. (dba) BEROXFOOD North America (the "**Purchaser**") May 10, 2021, attached as Exhibit "●" to the Affidavit of Michael Devon sworn May [●], 2021 (the "**Devon Affidavit**"), and vesting in the Purchaser, all of the Vendor's right, title and interest in and to the assets described in the Sale Agreement (the "**Purchased Assets**"), was heard this day via videoconference due to the COVID-19 pandemic.

**ON READING** the Motion Record of the Applicants and the [●] Report of FTI Consulting Canada Inc. in its capacity as Monitor of the Applicants (the "**Monitor**") and on hearing the submissions of counsel for the Applicants, the Monitor, the Purchaser, Alliance One Tobacco Canada Inc. (the "**DIP Lender**") and for those other parties appearing as indicated by the counsel slip, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Aiden Nelms sworn May [●], 2021:

## **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.

## **DEFINED TERMS**

2. **THIS COURT ORDERS** that capitalized terms used in this Order and not otherwise defined herein have the meaning ascribed to them in the Devon Affidavit or the Sale Agreement, as applicable.

## **APPROVAL AND VESTING**

3. **THIS COURT ORDERS AND DECLARES** that the Sale Agreement and the Transaction are hereby approved, and the execution of the Sale Agreement by the Vendor is hereby authorized and approved, with such minor amendments as the Vendor, with the approval of the Monitor and the DIP Lender, may deem necessary. The Vendor is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

4. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Monitor's certificate to the Purchaser substantially in the form attached as Schedule "A" hereto (the "**Monitor's Certificate**"), all of the Vendor's right, title and interest in and to the Purchased Assets described in the Sale Agreement shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Hainey dated January 21, 2021, as amended and restated by the Order of the Honourable Justice Hainey dated January 29, 2021; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii)



those Claims listed on Schedule "B" hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule "C" hereto) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

5. **THIS COURT ORDERS** that upon the registration in the Land Registry Office #37 for the Land Titles Division of Norfolk of an application for Vesting Order in the form prescribed by the *Land Titles Act* (Ontario) or the *Land Registration Reform Act* (Ontario) the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified in Schedule "D.1" hereto (the "**Norfolk Real Property**") in fee simple, and is hereby directed to delete and expunge from title to the Norfolk Real Property all of the Claims listed in Schedule "B" hereto.

6. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Monitor's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

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

8. **THIS COURT ORDERS** that the Monitor may rely on written notice from the Vendor and the Purchaser regarding the fulfillment of conditions to closing under the Sale Agreement and shall have no liability with respect to delivery of the Monitor's Certificate.

9. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Monitor is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Vendor's records pertaining to the Vendor's past and current employees. The Purchaser shall

maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Vendor.

10. **THIS COURT ORDERS** that, notwithstanding:

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

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

## **GENERAL**

11. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Vendor and 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 Vendor and the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Vendor and the Monitor and their respective agents in carrying out the terms of this Order.

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

---

**Schedule "A" – Form of Monitor's Certificate**

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.**

(each an "**Applicant**" and collectively, the "**Applicants**")

**MONITOR'S CERTIFICATE**

**RECITALS**

- A. The Applicants commenced these proceedings under the *Companies' Creditors Arrangement Act* on January 21, 2021 (the "**CCAA Proceedings**").
- B. Pursuant to an Order of the Honourable Justice Hailey of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated January 21, 2020, FTI Consulting Canada Inc. was appointed as monitor (the "**Monitor**") of the Applicants in the CCAA Proceedings.
- C. Pursuant to an Approval and Vesting Order of the Court dated [●], 2021, the Court approved the Asset Purchase Agreement made as of May 10, 2021 (the "**Sale Agreement**") between FIGR Norfolk Inc. (the "**Vendor**") and 11897985 Canada Inc. (dba) BEROXFOOD North America (the "**Purchaser**") and provided for the vesting in the Purchaser of the Vendor's right, title and interest in and to the Purchased Assets, which vesting is to be effective upon the delivery by the Monitor to the Purchaser of a certificate confirming that the Monitor has received written confirmation in the form and substance satisfactory to the Monitor from the Purchaser and the Vendor that all conditions to closing have been satisfied or waived by the parties to the Sale Agreement.

D. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

**THE MONITOR CERTIFIES** the following:

1. The Monitor has received written confirmation from the Vendor and the Purchaser, in form and substance satisfactory to the Monitor, that all conditions to closing have been satisfied or waived by the parties to the Sale Agreement.

2. The Monitor has received written confirmation from the Vendor that it has received the Purchase Price.

3. This Monitor's Certificate was delivered by the Monitor at \_\_\_\_\_ [TIME] on \_\_\_\_\_ [DATE].

**FTI Consulting Canada Inc., in its capacity as  
Monitor of FIGR Brands, Inc. FIGR Norfolk  
Inc. and Canada's Island Garden Inc., and  
not in its personal capacity**

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

Name:

Title:

**Schedule "B" – Claims to be deleted and expunged from title to Real Property**

1. Instrument No. NK137786 registered on February 1, 2021 is a Construction Lien in favour of the Ventin Group Ltd.
  - Certificate of Action registered as Instrument No. NK139917 registered on April 8, 2021 by The Ventin Group Ltd.

**Schedule "C" – Permitted Encumbrances, Easements and Restrictive Covenants  
related to the Real Property**

**(unaffected by the Vesting Order)**

**IN 50190-0069 (LT):**

1. Instrument No. 37R1811 registered March 18, 1980 being a Reference Plan;
2. Instrument No. 37R3901 registered February 5, 1988 being a Reference Plan;
3. Instrument No. 37R3933 registered March 1, 1988 being a Reference Plan;

**PIN 50190-0090 (LT):**

4. NIL;

**PIN 50190-0092 (LT):**

5. NIL;

**PIN 50190-0093 (LT):**

6. Instrument No. 37R951 registered May 4, 1977 being a Reference Plan;

**PIN 50190-0142 (LT):**

7. Instrument No. 37R11219 registered July 3, 2019 being a Reference Plan;
8. Instrument No. NK122931 registered August 29, 2019 being a Transfer of land from The Corporation of Norfolk County to FIGR Norfolk Inc. wherein the Corporation reserves a right/easement in gross over parts 4 & 6, 37R11219;
9. Instrument No. NK122932 registered August 29, 2019 being a Notice of a Development Agreement between FIGR Norfolk Inc. and The Corporation of Norfolk County;

**PIN 50190-0155 (LT):**

10. Instrument No. 37R1811 registered March 18, 1980 being a Reference Plan;
11. Instrument No. 37R3029 registered October 18, 1985 being a Reference Plan;
12. Instrument No. 37R6250 registered July 13, 1992 being a Reference Plan;
13. Instrument No. 37R7969 registered May 14, 1999 being a Reference Plan;
14. Instrument No. NR540051Z registered June 21, 1999 being Restrictive Covenants;

15. Instrument No. 37R11175 registered March 5, 2019 being a Reference Plan;
16. Instrument No. NK124881 registered October 25, 2019 being an Application to Change Name – Owner;
17. Instrument No. NK124882 registered October 25, 2019 being an Application to Consolidate;

**50190-0157 (LT):**

18. Instrument No. 37R11096 registered June 8, 2018 being a Reference Plan.



**Schedule "D" – Legal Description of the Real Property**

## PROPERTY DESCRIPTION:

PIN 50190-0155 (LT): PT LT 4 CON 14 WINDHAM PT 1 37R7969, S/T RIGHT IN NR540051; PT LT 3-4 CON 14 WINDHAM PT 2 37R3029 EXCEPT PT 4, 6 37R9427 EXCEPT PT 1, 37R11096; NORFOLK COUNTY

PIN 50190-0157 (LT): PART LOTS 3-4 CONCESSION 14 WINDHAM PART 1, PLAN 37R11096, SAVE AND EXCEPT PART 1, PLAN 37R11258; NORFOLK COUNTY

PIN 50190-0090 (LT): PT LT 3 CON 14 WINDHAM AS IN NR398041; NORFOLK COUNTY

PIN 50190-0069(LT): PT LT 3-4 CON 14 WINDHAM PT 2, 3 37R3933, AS IN NR263351, EXCEPT NR354886, NR398041; NORFOLK COUNTY

PIN 50190-0092(LT): PT LT 3 CON 14 WINDHAM AS IN NR354886; NORFOLK COUNTY

PIN 50190-0093(LT): PT LT 3 CON 14 WINDHAM PT 1, 2 37R951; NORFOLK COUNTY

PIN 50190-0142 (LT): PART OF LOT 4 CON 14 WINDHAM, BEING PARTS 3, 4 & 6 ON 37R-11219; SUBJECT TO AN EASEMENT IN GROSS OVER PARTS 4 & 6 ON 37R-11219 AS IN NK122931; NORFOLK COUNTY

**SCHEDULE "E"**  
**PURCHASE PRICE ALLOCATION**

- (a) [REDACTED] in respect of the real property municipally known as multiple-11 Grigg Drive, 54,56,58,60,66-72 Park Road and other lands, Simcoe, ON; and
- (b) [REDACTED] in respect of the remainder of the Purchased Assets not comprising (a) above.

**SCHEDULE "F"**  
**TRANSFERRED EMPLOYEES**

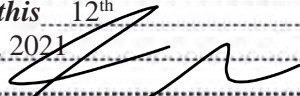
<b>SCHEDULE F - TRANSFERRED EMPLOYEES</b>	
<b>First Name</b>	<b>Last Name</b>
Larry	Huszczo
Cathy	Armstrong
Andrew	Graham
George	Schmidt
Shaun	Purcell
Abigail	Fess
Trina	Lammens
Elana	Baxter
Catherine	Glynn
Shanna	Macpherson
Brian	Pynaert
Ashleigh	Knoll
Mary Jane	Armstrong
Stephanie	Bowen
Nate	Geiser
Carmen	Bodner
Denise	Carter

*This is Exhibit* ..... "E" ..... *referred to in the*

*affidavit of* ..... Michael Devon .....

*sworn before me, this* ..... 12<sup>th</sup> .....

*day of* ..... October, 2021 .....

A handwritten signature in black ink, appearing to be a stylized name, is written over the signature line of the affidavit text.

.....  
**A COMMISSIONER FOR TAKING AFFIDAVITS**

## First Amendment to the Asset Purchase Agreement

This First Amendment to the Asset Purchase Agreement dated June 28, 2021 (the "**Amendment**"), is by and between FIGR Norfolk Inc., an Ontario corporation (the "**Vendor**"), and 11897985 Canada Inc. (dba) BEROXFOOD North America, an Ontario corporation (the "**Purchaser**"), and FTI Consulting Canada Inc. in its capacity as the Monitor of the CCAA Applicants (the "**Monitor**", collectively with the Vendor and the Purchaser, the "**Parties**" and each a "**Party**") and consented to by Alliance One Tobacco Canada Inc. (the "**DIP Lender**").

**WHEREAS**, the Vendor and the Purchaser, entered into a certain Asset Purchase Agreement, dated May 10, 2021 (the "**Purchase Agreement**"), under which, among other things, the Vendor agreed to sell, assign and transfer to the Purchaser, and the Purchaser agreed to purchase from the Vendor, all of the Vendor's right, title and interest in, to and under the Purchased Assets, excluding any Non-Assignable Interests, free and clear of all Encumbrances (other than Permitted Encumbrances) pursuant to the Approval and Vesting Order (the "**Transaction**").

**AND WHEREAS**, the Purchase Agreement, with such minor amendments as the Vendor and the Purchaser may deem necessary (with approval of the Monitor and DIP Lender), and the Transaction were approved by the Court pursuant to the Approval and Vesting Order granted on June 10, 2021.

**AND WHEREAS**, the Outside Date to close the Transaction is currently June 30, 2021 and the Vendor may designate as the Outside Date a later date in its sole discretion (with the consent of the Monitor and the DIP Lender) upon providing at least 5 Business Days' notice to the Purchaser.

**AND WHEREAS**, the Parties have mutually agreed that the Outside Date be extended until July 30, 2021.

**AND WHEREAS**, the Parties have mutually agreed to an extension of the time for the Purchaser to satisfy the Financing Covenant to July 16, 2021.

**NOW, THEREFORE**, in consideration of the mutual covenants, terms and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Definitions. All capitalized terms used in this Agreement but not otherwise defined herein are given the meanings set forth in the Purchase Agreement.

2. Amendment.

(a) The reference in the definition of "Outside Date" to "June 30, 2021" is hereby amended to "July 30, 2021".

(b) The second sentence of Section 4.3 of the Purchase Agreement is hereby amended and restated as follows:

"If the Financing Covenant is not satisfied or performed by the Purchaser on or prior to July 16, 2021, or such later date as the Vendor and the Monitor may agree, the Vendor may elect to terminate this Agreement with immediate effect."

3. Terms of the Purchase Agreement. Except as expressly stated in this Agreement, the terms of the Purchase Agreement remain unamended and in full force and effect. Nothing in this Amendment shall constitute a waiver of any provision of the Purchase Agreement.

4. Governing Law and Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein and each of the Parties irrevocably attorns to the exclusive jurisdiction of the Court.

5. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which shall constitute one and the same agreement. Transmission by e-mail of an executed counterpart of this Agreement shall be deemed to constitute due and sufficient delivery of such counterpart.

6. Further Assurances. Each of the Parties shall, at the request and expense of the requesting Party, take or cause to be taken such action and execute and deliver or cause to be executed and delivered to the other such conveyances, transfers, documents and further assurances as may be reasonably necessary or desirable to give effect to this Agreement.

[SIGNATURE PAGE FOLLOWS]



IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective as of the date first written above.


**BEROXFOOD NORTH AMERICA**

By 

Name: Volodymyr Burko

Title: President

**FIGR NORFOLK INC.**

By 

Name: Michael Devon

Title: SVP & Chief Financial Officer

The undersigned hereby agree and consent to the provisions of this Amendment as of the date first written above:

**FTI CONSULTING  
CANADA INC.,  
in its capacity as Monitor  
of the CCAA Applicants**

By \_\_\_\_\_

Name: Jeffrey Rosenberg

Title: Senior Managing Director

**ALLIANCE ONE TOBACCO  
CANADA, INC.**

By \_\_\_\_\_

Name: Rick DeCoutere

Title: Director

IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective as of the date first written above.

**BEROXFOOD NORTH AMERICA**

By  \_\_\_\_\_

Name: Volodymyr Burko

Title: President

**FIGR NORFOLK INC.**

By \_\_\_\_\_

Name: Michael Devon

Title: SVP & Chief Financial Officer

The undersigned hereby agree and consent to the provisions of this Amendment as of the date first written above:

**FTI CONSULTING  
CANADA INC.,  
in its capacity as Monitor  
of the CCAA Applicants**

By  \_\_\_\_\_

Name: Jeffrey Rosenberg

Title: Senior Managing Director

**ALLIANCE ONE TOBACCO  
CANADA, INC.**

By \_\_\_\_\_

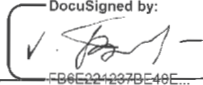
Name: Rick DeCoutere

Title: Director



IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective as of the date first written above

**BEROXFOOD NORTH AMERICA**

DocuSigned by:  
  
By \_\_\_\_\_  
Name: Volodymyr Burko  
Title: President

**FIGR NORFOLK INC.**

By \_\_\_\_\_  
Name: Michael Devon  
Title: SVP & Chief Financial Officer

The undersigned hereby agree and consent to the provisions of this Amendment as of the date first written above:

**FTI CONSULTING  
CANADA INC.,  
in its capacity as Monitor  
of the CCAA Applicants**

By \_\_\_\_\_  
Name: Jeffrey Rosenberg  
Title: Senior Managing Director

**ALLIANCE ONE TOBACCO  
CANADA, INC.**

By   
Name: Rick DeCoutere  
Title: Director

*This is Exhibit* ..... "F" ..... *referred to in the*

*affidavit of* Michael Devon .....

*sworn before me, this* 12<sup>th</sup> .....

*day of* October, 2021 .....

  
A COMMISSIONER FOR TAKING AFFIDAVITS

## Second Amendment to the Asset Purchase Agreement

This Second Amendment to the Asset Purchase Agreement dated August 9, 2021 (the "**Second Amendment**"), is by and between FIGR Norfolk Inc., an Ontario corporation (the "**Vendor**"), and 11897985 Canada Inc. (dba) BEROXFOOD North America, an Ontario corporation (the "**Purchaser**"), and FTI Consulting Canada Inc. in its capacity as the Monitor of the CCAA Applicants (the "**Monitor**", collectively with the Vendor and the Purchaser, the "**Parties**" and each a "**Party**") and consented to by Alliance One Tobacco Canada Inc. (the "**DIP Lender**").

**WHEREAS**, the Vendor and the Purchaser entered into a certain Asset Purchase Agreement, dated May 10, 2021 (the "**Purchase Agreement**"), under which, among other things, the Vendor agreed to sell, assign and transfer to the Purchaser, and the Purchaser agreed to purchase from the Vendor, all of the Vendor's right, title and interest in, to and under the Purchased Assets, excluding any Non-Assignable Interests, free and clear of all Encumbrances (other than Permitted Encumbrances) pursuant to the Approval and Vesting Order (as defined below) (the "**Transaction**").

**AND WHEREAS**, the Purchase Agreement, with such minor amendments as the Vendor and the Purchaser may deem necessary (with approval of the Monitor and DIP Lender), and the Transaction were approved by the Court pursuant to the Approval and Vesting Order granted on June 10, 2021 (the "**Approval and Vesting Order**").

**AND WHEREAS**, the Vendor and the Purchaser entered into a First Amendment to the Asset Purchase Agreement dated June 28, 2021 (the "**First Amendment**"), under which, among other things, the Parties mutually agreed that: (i) the Outside Date be extended to July 30, 2021; and (ii) the time for the Purchaser to satisfy the Financing Covenant be extended to July 16, 2021.

**AND WHEREAS**, the Purchaser provided the Monitor with certain financing documents in connection with the Financing Covenant via email on July 16, 2021 (the "**Purchaser Financing Documents**").

**AND WHEREAS**, on July 20, 2021, the Vendor issued a letter to the Purchaser in respect of the Purchaser Financing Documents and reserved all of its rights in connection with the Financing Covenant.

**AND WHEREAS**, the Outside Date to close the Transaction is currently July 30, 2021 and the Vendor may designate as the Outside Date a later date in its sole discretion (with the consent of the Monitor and the DIP Lender) upon providing at least 5 Business Days' notice to the Purchaser.

**AND WHEREAS**, the Parties have mutually agreed that the Outside Date be extended until August 31, 2021.

**NOW, THEREFORE**, in consideration of the mutual covenants, terms and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Definitions. All capitalized terms used in this Second Amendment but not otherwise defined herein are given the meanings set forth in the Purchase Agreement.

2. Amendment.

(a) The reference in the definition of "Outside Date" to "July 30, 2021" is hereby amended to "August 31, 2021".

3. Terms of the Purchase Agreement. Except as expressly stated in this Second Amendment, the terms of the Purchase Agreement, as amended by the First Amendment, remain unamended and in full force and effect. Nothing in this Second Amendment shall constitute a waiver of any provision of the Purchase Agreement, as amended by the First Amendment.

4. Governing Law and Jurisdiction. This Second Amendment shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein and each of the Parties irrevocably attorns to the exclusive jurisdiction of the Court.

5. Counterparts. This Second Amendment may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which shall constitute one and the same agreement. Transmission by e-mail of an executed counterpart of this Second Amendment shall be deemed to constitute due and sufficient delivery of such counterpart.

6. No Waiver / Reservation of Rights in respect of Financing Covenant. Nothing in this Second Amendment shall constitute or be deemed to be a waiver by the Vendor of any breach or default of the Purchase Agreement or the Financing Covenant that has occurred as of the date of this Second Amendment, including the Purchaser's failure to satisfy the Financing Covenant, and the Vendor continues to reserve all of its rights and remedies at law and under the Purchase Agreement and the First Amendment. No failure on the part of the Vendor to exercise, and no delay in exercising, any right or remedy at law, under the Purchase Agreement and the First Amendment or in respect of the Financing Covenant shall operate as a waiver thereof.

7. Further Assurances. Each of the Parties shall, at the request and expense of the requesting Party, take or cause to be taken such action and execute and deliver or cause to be executed and delivered to the other such conveyances, transfers, documents and further assurances as may be reasonably necessary or desirable to give effect to this Second Amendment.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have executed this Second Amendment to be effective as of the date first written above.

**BEROXFOOD NORTH AMERICA**

DocuSigned by:  
By Volodymyr Burko  
F86E2212378E40E  
Name: Volodymyr Burko  
Title: President

**FIGR NORFOLK INC.**

By \_\_\_\_\_  
Name: Michael Devon  
Title: SVP & Chief Financial Officer

The undersigned hereby agree and consent to the provisions of this Second Amendment as of the date first written above:

**FTI CONSULTING  
CANADA INC.,  
in its capacity as Monitor  
of the CCAA Applicants**

By \_\_\_\_\_  
Name: Jeffrey Rosenberg  
Title: Senior Managing Director

**ALLIANCE ONE TOBACCO  
CANADA, INC.**

By Rick DeCoutere  
Name: Rick DeCoutere  
Title: Director

IN WITNESS WHEREOF, the Parties have executed this Second Amendment to be effective as of the date first written above.

**BEROXFOOD NORTH AMERICA**

DocuSigned by:  
By Volodymyr Burko  
Name: Volodymyr Burko  
Title: President

**FIGR NORFOLK INC.**

By \_\_\_\_\_  
Name: Michael Devon  
Title: SVP & Chief Financial Officer

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Title: Senior Managing Director

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CANADA, INC.**

By \_\_\_\_\_  
Name: Rick DeCoutere  
Title: Director

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**BEROXFOOD NORTH AMERICA**

By \_\_\_\_\_

Name: Volodymyr Burko

Title: President

**FIGR NORFOLK INC.**

By 

Name: Michael Devon

Title: SVP & Chief Financial Officer

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CANADA INC.,  
in its capacity as Monitor  
of the CCAA Applicants**

By \_\_\_\_\_

Name: Jeffrey Rosenberg

Title: Senior Managing Director

**ALLIANCE ONE TOBACCO  
CANADA, INC.**

By \_\_\_\_\_

Name: Rick DeCoutere

Title: Director

**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 1307849 B.C. LTD.**

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

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

Proceedings Commenced in Toronto

**AFFIDAVIT OF MICHAEL DEVON  
(Sworn October 12, 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)

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Fax: 416-863-1716

Lawyers for the Applicants



# TAB 3

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE ) TUESDAY, THE 19<sup>th</sup>  
 )  
JUSTICE [●] ) DAY OF OCTOBER, 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 1307849 B.C. LTD.

(collectively, the "**Applicants**")

**ORDER  
(Stay Extension and Fee Approval)**

**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*: (i) approving an extension of the Stay Period; and (ii) approving the Seventh Report (as defined below) and the Monitor's activities and fees described therein, 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 October 12, 2021 (the "**October 12 Devon Affidavit**"), the Seventh Report of FTI Consulting Canada Inc. dated October [●], 2021 (the "**Seventh Report**"), 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 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 October 12 Devon Affidavit, as applicable.

## **EXTENSION OF THE STAY PERIOD**

3. **THIS COURT ORDERS** that the Stay Period be and is hereby extended until and including February 4, 2022.

## **APPROVAL OF THE SEVENTH REPORT AND THE MONITOR'S ACTIVITIES AND FEES**

4. **THIS COURT ORDERS** that the Seventh 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 Seventh 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 are each 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.

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**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 1307849 B.C. LTD.**

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

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

Proceedings Commenced in Toronto

**ORDER**  
**(Stay Extension and Fee Approval)**

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

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

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**MOTION RECORD**

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