

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

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

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

Applicants

**MOTION RECORD**

February 16, 2021

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# TAB 1

**ONTARIO  
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Applicants

**NOTICE OF MOTION**

**(Returnable February 22, 2021)  
(Claims Procedure Order and Ancillary Order)**

The Applicants will make a motion before the Honourable Justice Haaney of the Ontario Superior Court of Justice (Commercial List) on Monday, February 22, 2021 at 10:00 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 "**Claims Procedure Order**") substantially in the form attached hereto at Tab 3 of this motion record, *inter alia*:
  - (a) abridging the time for service and filing of this notice of motion and the motion record and dispensing with service on any person other than those served;
  - (b) establishing a process for the solicitation, identification, determination and adjudication of claims against the FIGR Group and their present and former Directors and Officers (as defined below) (the "**Claims Procedure**").
2. An order (the "**Ancillary Order**") substantially in the form attached hereto at Tab 4 of this motion record, *inter alia*:

- (a) approving an extension of the Stay Period to and including April 30, 2021 (the "**Stay Extension**");
- (b) approving a key employee retention plan ("**KERP**");
- (c) approving the pre-filing report of FTI Consulting Canada Inc. ("**FTI**") dated January 21, 2021, the first report of FTI in its capacity as monitor (in such capacity, the "**Monitor**") of the Applicants dated January 27, 2021, and the second report of the Monitor, to be filed (the "**Second Report**"); 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.

3. Such further and other relief as this Honourable Court deems just.

**THE GROUNDS FOR THIS APPLICATION ARE:**

***Background***

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

5. Facing significant liquidity issues, potential enforcement action from certain of its creditors and the cessation of its business, the FIGR Group sought protection under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 ("**CCAA**") pursuant to an order (the "**Initial Order**") on January 21, 2021 (the "**CCAA Proceedings**").

6. Among other things, the Initial Order:

- (a) appointed FTI as Monitor;
- (b) granted an initial 10-day stay of proceedings in favour of the Applicants and their Directors and Officers (the "**Stay Period**");
- (c) approved the Applicants' ability to borrow under a debtor-in-possession credit facility (the "**DIP Loan**") pursuant to a term sheet 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, 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 Initial Order).

7. 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.

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

9. Since granting of the Amended and Restated Initial Order and the SISP Approval Order, the Applicants have acted in good faith and with due diligence to, among other things, continue stabilizing their business, communicate, with the assistance of the Monitor, with Health Canada, employees, customers (including the provincial cannabis boards), suppliers and other key stakeholders in the CCAA Proceedings, develop the KERP, develop the Claims Procedure and assist the Monitor with the SISP.

### ***The Claims Procedure Order***<sup>1</sup>

10. The Applicants are seeking authorization to undertake the Claims Procedure to solicit, identify, determine and adjudicate Claims against the FIGR Group and their present and former Directors and Officers. Given that the Applicants do not have any funded secured debt (with the exception of the DIP Loan), the Applicants currently expect that there will be distributions available to unsecured creditors following the SISP, through a plan of arrangement or otherwise.

11. The proposed Claims Procedure Order establishes a comprehensive process for the solicitation, identification, determination and adjudication of Claims against the Applicants and the Directors and Officers. The Claims Procedure has been developed in consultation with the

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<sup>1</sup> Terms in this section not otherwise defined herein have the meanings ascribed to them in the Claims Procedure Order.

Monitor and its counsel, and the FIGR Group believes that the Claims Procedure Order prescribes an appropriate and effective process to solicit, identify, determine and adjudicate potential Claims.

12. The proposed Claims Procedure Order provides, among other things, as follows:

- (a) *Filing a Proof of Claim*: any Claimant who wishes to assert a Claim (including, for greater certainty Pre-Filing Intercompany Claims) against the FIGR Group or the Directors and/or Officers must deliver to the Monitor on or before the applicable Bar Date (as defined below), a Proof of Claim together with all supporting documentation in respect of such Claim.
- (b) *Notice to Claimants*: the Monitor shall, among other things, deliver a copy of the Claims Package to Known Claimants, not later than five (5) Business Days following the granting of the Claims Procedure Order. The Claims Package will include materials advising Claimants of the solicitation of claims, instructing Claimants on the process for submitting their claims, and advising Claimants of the relevant Claims Bar Dates (as defined below). The Monitor shall also take other steps to provide notice to persons who may have Claims against any of the Applicants, including causing the Notice to Claimants to be published in The Globe and Mail (National Edition) for at least one (1) business day.
- (c) *Claims Bar Date*: the proposed Claims Procedure Order specifies the following bar dates:
  - (i) in respect of Pre-Filing Claims, D&O Pre-Filing Claims and Pre-Filing Intercompany Claims, 5:00 p.m. (Eastern Time) on April 6, 2021 (the "**Pre-Filing Claims Bar Date**"); and
  - (ii) in respect of Restructuring Claims and D&O Restructuring Claims, 5:00 p.m. (Eastern Time) on the later of: (i) the Pre-Filing Claims Bar Date, and (ii) the date that is thirty (30) Calendar Days after the date on which the Monitor sends such person a Claims Package (the later of such dates being the "**Restructuring Claims Bar Date**" and together with the Pre-Filing Claims Bar Date, the "**Bar Dates**").

- (d) *Excluded Claims:* the Claims Procedure does not apply to: (a) any claim secured by any of the Charges granted pursuant to the Initial Order (as amended by the Amended and Restated Initial Order) or (b) any Employee Claim (collectively, the "**Excluded Claims**"). Accordingly, Persons holding an Excluded Claim are not required to file a Proof of Claim in the Claims Procedure.
- (e) *Review and Resolution of Disputed Claims:* the Claims Procedure Order also sets out the processes for: (i) reviewing Proofs of Claims filed in respect of Pre-Filing Claims, D&O Pre-Filing Claims, Restructuring Claims, D&O Restructuring Claims, and Pre-Filing Intercompany Claims and (ii) resolving Disputed Claims. Where a Notice of Dispute of Revision or Disallowance is delivered to the Monitor in respect of a Claim and such Claim cannot be resolved consensually within a period or in a manner satisfactory to the Monitor, in consultation with the Applicants and with the consent of the relevant Director or Officer, as applicable, it will constitute a Disputed Claim. Each Disputed Claim will be referred to the Court or the Claims Officer for resolution or to such alternative dispute resolution as may be ordered by the Court or agreed to by the Monitor, the Applicants, the Claimant and where applicable, the relevant Director or Officer. The Claims Procedure Order contemplates that the adjudication process in respect of Pre-Filing Claims and D&O Pre-Filing Claims shall not apply to Pre-Filing Intercompany Claims.
- (f) *Pre-Filing Intercompany Claims:* The Claims Procedure Order contemplates that the adjudication process in respect of Pre-Filing Claims and D&O Pre-Filing Claims shall not apply to Pre-Filing Intercompany Claims. Pursuant to the proposed Claims Procedure Order, the Monitor, with the assistance of the FIGR Group, shall review all Proofs of Claims received by the Pre-Filing Claims Bar Date in respect of Pre-Filing Intercompany Claims and shall thereafter serve on the Service List and file with the Court the Pre-Filing Intercompany Claims Report, which will set out the Proposed Pre-Filing Intercompany Claims Resolution Process. Should any interested party wish to object to the Proposed Pre-Filing Intercompany Claims Resolution Process, it must serve on the Service List a notice of objection ("**Notice of Objection**") within seven (7) days of the date upon which the Pre-Filing



Intercompany Claims Report is served by the Monitor. Any Notice of Objection may be consensually resolved between the Monitor and the objecting party, in consultation with the FIGR Group, or by further Order of the Court.

13. The Applicants believe that the proposed Claims Procedure is flexible, fair and appropriate in the circumstances.

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

### *The Stay Extension*

15. Under the Amended and Restated Initial Order, the Court extended the Stay Period until and including March 31, 2021. Pursuant to the Ancillary Order, the Applicants are seeking an extension of the Stay Period until and including April 30, 2021.

16. It is necessary and in the best interests of the Applicants and their stakeholders that the Stay Period be extended until and including April 30, 2021, as it will allow the Monitor, with the assistance of the Applicants, to advance the SISP and the Claims Procedure, which will ultimately preserve and maximize the value of the Applicants' business for their stakeholders. The Monitor is supportive of the proposed extension of the Stay Period and believes it will not materially prejudice any creditor.

### *The KERP*

17. The Applicants are seeking approval of the KERP, through which the Applicants propose to make retention payments to certain individuals employed at various levels by Canada's Island Garden Inc. ("**CIG**") (collectively, the "**Key Employees**"). The KERP was developed in consultation with the Monitor and the DIP Lender.

18. The Key Employees are entitled to two (2) payments under the proposed KERP, each of which is subject to the attainment of a milestone (the "**First Milestone**" and the "**Second Milestone**", respectively):

- (a) *The First Milestone*: the earliest of: (i) April 30, 2021; (ii) the date upon which the Court grants an order terminating the CCAA proceedings (the "**CCAA**

**Termination Date**"); and (iii) the date on which the relevant Key Employee is terminated without cause.

- (b) *The Second Milestone*: the earliest of: (i) the date upon which any transaction or transactions that together result in the sale of all or substantially all of the business and/or assets of CIG closes; (ii) July 31, 2021; (iii) the date on which the relevant Key Employee is terminated without cause; and (iv) the CCAA Termination Date.

19. The maximum aggregate amount payable under the KERP is approximately \$80,000, and a Key Employee must remain an employee at the time of the relevant milestone in order to receive the payment unless he or she is terminated without cause.

20. The FIGR Group believes the KERP will provide the necessary incentive to the Key Employees to remain as committed key members of CIG's management and operational teams during the CCAA Proceedings. The retention of Key Employees and their ongoing commitment to the FIGR Group is essential to current operations, the successful restructuring efforts of the FIGR Group, and the opportunity to maximize value for its stakeholders.

21. The Applicants are also seeking a sealing order with respect to the summary of the KERP (the "**KERP Summary**") and the proposed letter to employees with respect to the KERP (the "**KERP Letters**"), which are to be attached as a confidential appendix to the Second Report of the Monitor. This information contains confidential and sensitive information regarding the identity and compensation of the Key Employees. Accordingly, the Applicants request that the KERP Summary and the sample KERP Letters remain sealed subject to further order of the Court.

**OTHER GROUNDS:**

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

23. 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.

24. 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 February 16, 2021, and the exhibits attached thereto;
- (b) the Factum of the Applicants, to be filed;
- (c) the Second Report of the Monitor, to be filed; and
- (d) such further and other evidence as counsel may advise and this Court may permit.

February 16, 2021

**BENNETT JONES LLP**

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## Schedule "A"

Join Zoom Meeting

<https://us02web.zoom.us/j/88172454264>

Meeting ID: 881 7245 4264

One tap mobile

+12532158782,,88172454264# US (Tacoma)

+13017158592,,88172454264# US (Washington DC)

Dial by your location

+1 253 215 8782 US (Tacoma)

+1 301 715 8592 US (Washington DC)

+1 312 626 6799 US (Chicago)

+1 346 248 7799 US (Houston)

+1 646 558 8656 US (New York)

+1 669 900 9128 US (San Jose)

Meeting ID: 881 7245 4264

Find your local number: <https://us02web.zoom.us/u/kkggJ121V>

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

Court File No.: CV-21-00655-373-00CL

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

Proceedings Commenced in Toronto

**NOTICE OF MOTION**  
**(Claims Procedure Order and Ancillary  
Order)**

**BENNETT JONES LLP**

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Lawyers for the Applicants

# TAB 2

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
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**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*  
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FIGR BRANDS, INC., FIGR NORFOLK INC.  
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Applicants

**AFFIDAVIT OF MICHAEL DEVON  
(Sworn February 16, 2021)**

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

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

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

- (a) an order (the "**Claims Procedure Order**") establishing a process for the solicitation, identification, determination and adjudication of claims against the

FIGR Group and their present and former Directors and Officers (as defined below) (the "**Claims Procedure**"); and

- (b) an order (the "**Ancillary Order**"), among other things:
  - (i) approving an extension of the Stay Period to and including April 30, 2021 (the "**Stay Extension**");
  - (ii) approving a key employee retention plan ("**KERP**");
  - (iii) approving 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, to be filed (the "**Second Report**"); and
  - (iv) approving the fees and disbursements of the Monitor and its counsel as set out in the Affidavits of Jeffrey Rosenberg and Ryan Jacobs, respectively.

3. All terms not otherwise defined herein have the meaning ascribed to them in: (a) the Claims Procedure Order; (b) the Ancillary Order; or (c) my affidavit sworn January 25, 2021 in support of the Amended and Restated Initial Order (as defined below) (the "**January 25 Devon Affidavit**"), a copy of which is appended hereto (without exhibits) as Exhibit "A", as applicable.

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

## **I. INTRODUCTION AND BACKGROUND**

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



6. Facing significant liquidity issues, potential enforcement action from certain of its creditors and the cessation of its business, the FIGR Group sought protection under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 ("**CCAA**") pursuant to an Order (the "**Initial Order**") on January 21, 2021 (the "**CCAA Proceedings**"). The facts underlying the FIGR Group's financial circumstances and need for CCAA protection are set out in my affidavit sworn January 21, 2021, in support of the commencement of the CCAA Proceedings, a copy of which is appended hereto (without exhibits) as Exhibit "B", and the January 25 Devon Affidavit 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 term sheet 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, 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 Initial Order is attached hereto as Exhibit "C". A copy of the Amended and Restated Initial Order is attached hereto as Exhibit "D".

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

11. Since the granting of the Amended and Restated Initial Order and the SISP Approval Order, the Applicants have acted in good faith and with due diligence to, among other things, continue stabilizing their business, communicate, with the assistance of the Monitor, with Health Canada, employees, customers (including the provincial cannabis boards), suppliers and other key stakeholders in the CCAA Proceedings, develop the KERP, develop the Claims Procedure and assist the Monitor with the SISP.

## **II. UPDATE ON OPERATIONS**

12. Since the granting of the Amended and Restated Initial Order, the Applicants, with the oversight of the Monitor, have continued to manage their business with a view to increasing efficiency and eliminating redundancies and unnecessary costs.

13. In connection with such efforts, the employment of four (4) employees of FIGR Brands was terminated and 17 employees of FIGR Norfolk were placed on temporary layoff. The Applicants have made significant efforts to preserve the jobs of their employees where possible, including by temporarily laying off certain employees instead of terminating them until there is greater clarity regarding the outcome of the SISP and the future of the Applicants' operations.

14. The Applicants have also issued disclaimer notices in respect of motor vehicle leases for vehicles which were provided to sales employees who are no longer employed by the Applicants.

15. On January 31, 2021, the FIGR Group's insurance policies with Royal & Sun Alliance Insurance Company of Canada and Wynward Insurance Group Next Wave Insurance Canada (collectively, the "**Insurers**") came up for renewal. In order to reduce the upfront costs of paying for the entire yearly premiums at the commencement of the policy period and after reviewing several proposed options, the FIGR Group entered into a premium financing arrangement (the "**CAFO Financing Arrangement**") with CAFO Insurance Premium Finance ("**CAFO**").

16. In connection with the CAFO Financing Arrangement, the FIGR Group has agreed to provide the Insurers with an irrevocable direction to pay any and all unearned premiums which become payable to the FIGR Group to CAFO (the "**Direction**"). The Direction was required by CAFO in order to provide premium financing to the FIGR Group. In the absence of the Direction, the FIGR Group would have had to provide first-ranking security or a charge on its assets to CAFO (or another premium financier) in order to secure premium financing.

17. I understand that the terms of the CAFO Financing Arrangement were considered and approved by the DIP Lender and the Monitor prior to being finalized.

### III. THE CLAIMS PROCEDURE ORDER

18. Given that the Applicants do not have any funded secured debt (with the exception of the DIP Loan), the Applicants currently expect that there will be distributions available to unsecured creditors following the SISP, through a plan of arrangement or otherwise.

19. Accordingly, the FIGR Group is seeking authorization to undertake the Claims Procedure to solicit, identify, determine and adjudicate Claims against the FIGR Group and their present and former directors and officers (collectively, the "**Directors and Officers**" and each a "**Director**" or "**Officer**", as applicable).

20. The proposed Claims Procedure Order establishes a comprehensive process for the solicitation, identification, determination and adjudication of Claims against any of the Applicants and the Directors and Officers. The Claims Procedure has been developed in consultation with the Monitor and its counsel and the FIGR Group believes that the Claims Procedure Order prescribes an appropriate and effective process to solicit, identify, determine and adjudicate potential Claims against the FIGR Group.

21. As noted below, the Claims Procedure excludes Employee Claims (as defined below). Depending upon the results of the SISP, the Applicants may return to Court to seek a further order to address the Employee Claims.

22. The Claims Procedure proposes that any notice or communication required to be provided or delivered by a Claimant to the Applicants or the Monitor will be sufficient given only if delivered by email, or if a Claimant is unable to do so, by prepaid registered mail, courier, or personal delivery after notifying the Monitor of the method of delivery via the telephone hotline (416.649.8128 or 1.844.669.6345).

**(a) Filing a Proof of Claim**

23. The Claims Procedure Order provides that any Claimant who wishes to assert a Claim (including, for greater certainty Pre-Filing Intercompany Claims) against the FIGR Group or the Directors or Officers must deliver to the Monitor, on or before the applicable Bar Date (as defined below), a Proof of Claim in the form attached as Schedule "C" to the Claims Procedure Order, together with all supporting documentation in respect of such Claim.

24. The Claims Procedure does not apply to: (a) any claim secured by any of the Charges granted pursuant to the Initial Order (as amended by the Amended and Restated Initial Order) or (b) any Employee Claim<sup>1</sup> (collectively, the "**Excluded Claims**").

25. To the extent that any D&O Claim is filed in accordance with the Claims Procedure, a corresponding D&O Indemnity Claim shall be deemed to have been timely filed in respect of each D&O Claim. For the avoidance of doubt, Directors and Officers shall not be required take any action or to file a Proof of Claim in respect of such D&O Indemnity Claim.

**(b) Notice to Claimants**

26. The Claims Procedure Order provides for the delivery by the Monitor to each Known Claimant, within five (5) Business Days following receipt of the complete list of Known Claimants (which is to be delivered by the Applicants to the Monitor within two (2) Business Days following the issuance of the Claims Procedure Order), a Claims Package containing:

(a) the Instruction Letter in substantially the form attached as Schedule "A" to the Claims Procedure Order;

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<sup>1</sup> "**Employee Claim**" means the Claim of any Employee for vacation pay, termination pay, severance pay, wages, expenses, commissions, or other remuneration, arising as result of the termination of employment or a layoff of such Employee by any Applicant prior to the Filing Date or during the CCAA Proceedings.

- (b) the Notice to Claimants in substantially the form attached as Schedule "B" to the Claims Procedure Order;
- (c) a Proof of Claim in substantially the form attached as Schedule "C" to the Claims Procedure Order; and
- (d) such other materials that the FIGR Group and the Monitor consider appropriate or desirable.

27. The Claims Procedure Order also provides that the Monitor shall take the following actions to provide notice of the Claims Procedure to persons who may have Claims against any of the Applicants:

- (a) cause the Notice to Claimants to be published as soon as practicable and without delay following the issuance of the Claims Procedure Order in The Globe and Mail (National Edition) for at least one (1) Business Day;
- (b) post a copy of the Notice to Claimants, the Claims Package and the Claims Procedure Order on the Monitor's Website as soon as reasonably possible;
- (c) deliver a Claims Package to any person claiming to be a Claimant and requesting such material in writing; and
- (d) provide a Claims Package to any person upon becoming aware of any circumstance giving rise to a Restructuring Claim.

**(c) Claims Bar Date**

28. The proposed Claims Procedure Order specifies the following bar dates:

- (a) in respect of Pre-Filing Claims, D&O Pre-Filing Claims and Pre-Filing Intercompany Claims, 5:00 p.m. (Eastern Time) on April 6, 2021 (the "**Pre-Filing Claims Bar Date**"); and
- (b) in respect of Restructuring Claims and D&O Restructuring Claims, 5:00 p.m. (Eastern Time) on the later of: (i) the Pre-Filing Claims Bar Date, and (ii) the date that is thirty (30) Calendar Days after the date on which the Monitor sends such person a Claims Package (the later of such dates being the "**Restructuring Claims Bar Date**" and together with the Pre-Filing Claims Bar Date, the "**Bar Dates**").

29. Any person who does not deliver a Proof of Claim (except in respect of Excluded Claims) to the Monitor on or before the Pre-Filing Claims Bar Date or the Restructuring Claims Bar Date, as applicable, shall: (i) not be entitled to attend or vote at a meeting to vote on any CCAA plan in respect of such Claim; (ii) not be entitled to participate in any distribution in respect of such Claim pursuant to a plan or otherwise; (iii) not be entitled to any further notice in the CCAA Proceedings (unless such person is otherwise on the Service List); and (iv) be forever barred from making or enforcing such Claim against the FIGR Group or the Directors or Officers, and such Claim shall be extinguished.

**(d) Excluded Claims**

30. The Claims Procedure Order does not affect Excluded Claims. Accordingly, Persons holding an Excluded Claim are not required to file a Proof of Claim in respect of such Excluded Claim.

**(e) Review and Resolution of Disputed Claims**

31. The Claims Procedure Order sets out the processes for: (i) reviewing Proofs of Claims filed in respect of Pre-Filing Claims, D&O Pre-Filing Claims, Restructuring Claims, D&O Restructuring Claims, and Pre-Filing Intercompany Claims and (ii) resolving Disputed Claims.

*(i) Claims Against the Applicants*

32. The Claims Procedure Order provides that the Monitor, with the assistance of the FIGR Group, shall review all Proofs of Claim received by the applicable Bar Date, and accept, revise or disallow the classification, nature and/or amount of such Claims. Where a Claimant's Claim is revised or disallowed in whole or in part, the Monitor will send a Notice of Revision or Disallowance describing the basis for the revision or disallowance.

33. Any Claimant who wishes to dispute a Notice of Revision or Disallowance must deliver a Notice of Dispute of Revision or Disallowance by no later than 5:00 p.m. (Eastern Time) on the date that is fourteen (14) Calendar Days after the date the Monitor sends such notice. Where no such Notice of Dispute of Revision or Disallowance is received by the Monitor by the deadline, the classification, nature and amount of applicable Claim shall be deemed to be as set out in the Notice of Revision or Disallowance and any and all of the Claimant's rights to dispute the classification, amount and/or nature of the applicable Claim shall be forever extinguished and barred without further act or notification.

34. The Claims Procedure Order contemplates a consensual resolution process for any Notice of Dispute of Revision or Disallowance delivered to the Monitor. However, where such Claim cannot be resolved consensually within a period or in a manner satisfactory to the Monitor, in consultation with FIGR Group, it will constitute a Disputed Claim. Each Disputed Claim will be referred to (i) the Court or (ii) a Claims Officer or such alternative dispute resolution as may be



ordered by the Court or agreed to by the Monitor, the Applicants and the applicable Claimant. Thereafter, the Court, the Claims Officer or the Person or Persons conducting the alternative dispute resolution proceeding, as the case may be, shall resolve the dispute.

*(ii) Claims Against Directors and Officers of the Applicants*

35. The Claims Procedure Order provides that the Monitor shall forthwith provide the relevant Director or Officer (and his or her counsel, if known to the Applicants) with a copy of any Proof of Claim received in respect of D&O Claims. The Monitor, with the assistance of the FIGR Group and the consent of the relevant Director or Officer, shall review all Proofs of Claims received by the applicable Bar Date, and accept, revise or disallow the classification, nature and/or amount of such D&O Claim set out therein in whole or in part. Where a Claimant's D&O Claim is revised or disallowed in whole or in part, the Monitor will send a Notice of Revision or Disallowance describing the basis for the revision or disallowance. The Monitor shall provide a copy of such Notice of Revision or Disallowance to the Director or Officer (and his or her counsel, if known to the Monitor).

36. Any Claimant who, in respect of a D&O Claim, wishes to dispute a Notice of Revision or Disallowance, must deliver a Notice of Dispute of Revision or Disallowance by no later than 5:00 p.m. (Eastern Time) on the date that is fourteen (14) Calendar Days after the date the Monitor sends such notice. The Monitor shall provide a copy of such Notice of Dispute of Revision or Disallowance to the Director or Officer (and his or her counsel, if known to the Monitor). Where no such Notice of Dispute of Revision or Disallowance is delivered to the Monitor by the deadline, the classification, nature and amount of applicable Claim shall be deemed to be as set out in the Notice of Revision or Disallowance and any and all of the Claimant's rights to dispute the

classification, amount and/or nature of the applicable Claim shall be forever extinguished and barred without further act or notification.

37. The Claims Procedure Order contemplates a consensual resolution process for any Notice of Dispute of Revision or Disallowance delivered to the Monitor. However, where such Claim cannot be resolved consensually within a period or in a manner satisfactory to the Monitor, in consultation with FIGR Group and with the consent of the applicable Directors and Officers, it will constitute a Disputed Claim. Similar to the process outlined in paragraph 34 above, each Disputed Claim will be referred to (i) the Court or (ii) a Claims Officer or such alternative dispute resolution as may be ordered by the Court or agreed to by the Monitor, the Applicants, the relevant Director(s) and/or Officer(s) and the Claimant. Thereafter, the Court, the Claims Officer or the Person or Persons conducting the alternative dispute resolution proceeding, as the case may be, shall resolve the dispute.

*(iii) Pre-Filing Intercompany Claims*

38. The Claims Procedure Order contemplates that the adjudication process in respect of Pre-Filing Claims and D&O Pre-Filing Claims shall not apply to Pre-Filing Intercompany Claims.

39. Pursuant to the proposed Claims Procedure Order, the Monitor, with the assistance of the FIGR Group, shall review all Proofs of Claims received by the Pre-Filing Claims Bar Date in respect of Pre-Filing Intercompany Claims and shall thereafter serve on the Service List and file with the Court the Pre-Filing Intercompany Claims Report, which will set out the Proposed Pre-Filing Intercompany Claims Resolution Process. Should any interested party wish to object to the Proposed Pre-Filing Intercompany Claims Resolution Process, it must serve on the Service List a notice of objection ("**Notice of Objection**") within seven (7) days of the date upon which the Pre-

Filing Intercompany Claims Report is served by the Monitor. In the event that a Notice of Objection is served in accordance with the terms of the Claims Procedures Order, such objection may be resolved consensually between the Monitor and the objecting party, in consultation with the FIGR Group, or by further Order of the Court upon a Motion brought by the Monitor, in consultation with the Applicants. If no Notice of Objection is received, the Proposed Pre-Filing Intercompany Claims Resolution Process shall be implemented without further Order of the Court.

#### **IV. THE ANCILLARY ORDER**

##### **(a) Stay Extension**

40. Under the Amended and Restated Initial Order, the Court extended the Stay Period until and including March 31, 2021. Pursuant to the Ancillary Order, the Applicants are seeking an extension of the Stay Period until and including April 30, 2021.

41. It is necessary and in the best interests of the Applicants and their stakeholders that the Stay Period be extended until and including April 30, 2021, as it will allow the Monitor, with the assistance of the Applicants, to advance the SISP and the Claims Procedure, which will ultimately preserve and maximize the value of the Applicants' business for their stakeholders.

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

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

**(b) KERP**

44. The Applicants developed the KERP with the assistance of the Monitor and in consultation with the DIP Lender.

45. Under the terms of the KERP, the Applicants propose to make retention payments to certain individuals employed by CIG (collectively, the "**Key Employees**"). The Key Employees are at various levels throughout CIG's organization including, among others, operations.

46. The Key Employees are entitled to two (2) payments under the proposed KERP, each of which is subject to the attainment of a milestone. The first milestone (the "**First Milestone**") is the earliest of: (i) April 30, 2021; (ii) the date upon which the Court grants an order terminating the CCAA proceedings (the "**CCAA Termination Date**"); and (iii) the date on which the relevant Key Employee is terminated without cause. The second milestone (the "**Second Milestone**") is the earliest of: (i) the date upon which any transaction or transactions that together result in the sale of all or substantially all of the business and/or assets of CIG closes; (ii) July 31, 2021; (iii) the date on which the relevant Key Employee is terminated without cause; and (iv) the CCAA Termination Date.

47. Other significant terms and conditions of the proposed KERP include that:

- (a) the maximum aggregate amount payable under the KERP is \$80,000; and
- (b) a Key Employee must remain an employee at the time of the relevant milestone in order to receive the payment unless terminated without cause.

48. The retention of Key Employees and their ongoing commitment to the FIGR Group is essential to current operations, the successful restructuring efforts of the FIGR Group, and the opportunity to maximize value for their stakeholders. In particular, the FIGR Group believes:

- (a) the Key Employees provide the critical leadership and execution required to maintain operations and other work necessary to maintain the FIGR Group's cannabis licences;
- (b) none of the Key Employees could be readily or easily replaced internally and the process to find appropriately qualified replacements for the Key Employees externally would be lengthy, difficult and costly;
- (c) the Key Employees have historical knowledge of, and familiarity with, CIG's business and operations, and significant experience and expertise;
- (d) without the benefit of the KERP, the Key Employees would likely consider other employment options;
- (e) the First Milestone and Second Milestone will facilitate the continued participation of the Key Employees through to the end of the FIGR Group's restructuring; and
- (f) any replacements for the Key Employees would face a steep learning curve given the nascency of the industry and may require additional security clearance screening by Health Canada.

49. The FIGR Group believes the KERP will provide the necessary incentive to the Key Employees to remain as committed key members of CIG's management and operational teams during the CCAA Proceedings.

50. I understand that the summary of the KERP (the "**KERP Summary**") and the proposed letter to employees with respect to the KERP (the "**KERP Letters**") will be attached as a confidential appendix to the Second Report. This information contains confidential and sensitive

information regarding the identity and compensation of the Key Employees and as such, the FIGR Group is seeking a sealing order with respect to the KERP Summary and the KERP Letters. Such information is not normally made available to the public and disclosure by the FIGR Group could cause significant harm or prejudice to the Key Employees and/or the FIGR Group. Accordingly, the FIGR Group requests that the KERP Summary and the sample KERP Letters remain sealed subject to further order of the Court.

51. The FIGR Group is not seeking approval of a charge with respect to the KERP at this time.

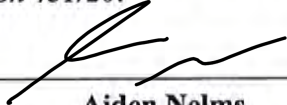
## **V. CONCLUSION**

52. Since the granting of the Amended and Restated Initial Order, the Applicants have acted in good faith and with due diligence to, among other things, stabilize their business, apprise their stakeholders of the CCAA Proceedings, liaise with their third party vendors, assist the Monitor in connection with the SISF, develop the KERP and develop the Claims Procedure, all with the assistance and oversight of the Monitor.

53. The Applicants have maintained their ordinary course operations and will continue to do so with the oversight and assistance of the Monitor. 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 the Monitor does not believe that any creditor will be materially prejudiced by the granting of the Claims Procedure Order or the Ancillary Order.

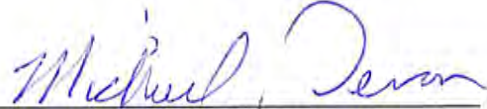
54. I swear this affidavit in support of the Applicants' motion for the Claims Procedure Order and the Ancillary Order and for no other or improper purpose.

SWORN BEFORE ME over )  
videoconference on this 16<sup>th</sup> day of February )  
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* ..... “A” ..... *referred to in the*

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

*sworn before me, this* ..... 16<sup>th</sup> .....

*day of* ..... February, 2021 .....

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



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

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

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

Applicants

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

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

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

2. All terms not otherwise defined herein have the meaning ascribed to them in: (a) the Initial Order of the Honourable Justice Hainey dated January 21, 2021 (the "**Initial Order**") in the Applicants' proceedings under the CCAA (the "**CCAA Proceedings**"), a copy of which is appended hereto as Exhibit "A"; (b) my previous affidavit sworn January 21, 2021, in the support

of the commencement of the CCAA Proceedings (the "**January 21 Devon Affidavit**"), a copy of which is appended hereto (without exhibits) as Exhibit "B"; or (c) the SISP (as defined below), a copy of which is appended to the proposed SISP Approval Order (as defined below) as Schedule "A", as applicable.

3. I swear this Affidavit in support of a motion by the Applicants for: (i) an amended and restated Initial Order (the "**Amended and Restated Initial Order**"); and (ii) an order (the "**SISP Approval Order**") approving a sale and investment solicitation process for the purpose of soliciting interest in, and opportunities for the sale of, or investment in, the assets and business operations of the FIGR Group (the "**SISP**").

4. The proposed Amended and Restated Initial Order, among other things:

(a) increases the Directors' Charge and the DIP Lender's Charge to \$2,700,000 and \$8,000,000 (plus interests and costs), respectively; and

(b) extends the Stay Period to and including March 31, 2021 (the "**Stay Extension**").

5. The proposed SISP Approval Order contemplated the Monitor, with the assistance of the Applicants, conducting the SISP with a view to selling all or part of the Applicants' business as a going concern and maximizing recovery for the Applicants' stakeholders.

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

## **I. INTRODUCTION AND BACKGROUND**

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

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

8. 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 CCAA pursuant to the Initial Order on January 21, 2021. The facts underlying the FIGR Group's financial circumstances and need for CCAA protection are set out in the January 21 Devon Affidavit and are not repeated herein.

9. 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;
- (c) approved the Applicants' ability to borrow under a debtor-in-possession credit facility (the “**DIP Loan**”) pursuant to a term sheet dated January 20, 2021 with Alliance One Tobacco Canada, Inc. (the “**DIP Lender**”), whereby the DIP Lender agreed to provide the DIP Loan in the maximum principal amount of \$8,000,000, 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.

10. Since the granting of the Initial Order, the Applicants have acted in good faith and with due diligence to, among other things, stabilize their business, develop the SISF, and with the

assistance of the Monitor, deploy a communications plan notifying Health Canada, employees, customers (including the provincial cannabis boards), suppliers and other key stakeholders of the CCAA Proceedings.

## **II. THE AMENDED AND RESTATED INITIAL ORDER**

### **(a) The Directors' Charge**

11. As is customary in CCAA proceedings, the Initial Order granted a Directors' Charge in favour of the Directors and Officers up to a maximum of \$2,000,000, which reflected an estimation of potential liabilities the Directors and Officers could incur up to the date of the Comeback Hearing. While the Directors and Officers do have certain coverage under insurance policies maintained by New Pyxus International (an affiliate of the Applicants), those policies have various exceptions, exclusions and carve-outs and may not provide sufficient coverage against the potential liability that the Directors and Officers could incur in connection with the CCAA Proceedings. The Amended and Restated Order contemplates increasing the quantum of the Directors' Charge to a maximum of \$2,700,000.

12. The Applicants believe that the increased quantum of the Directors' Charge is reasonable in the circumstances. It is calculated based on an estimation of the maximum potential liability the Directors and Officers could have during the CCAA Proceedings. I understand that the Monitor and the DIP Lender are supportive of the Directors' Charge and its increased quantum.

### **(b) The DIP Lender's Charge**

13. Under the terms of the Initial Order, the amount of the DIP Loan to be funded prior to the Comeback Hearing was limited to the amount necessary to continue ordinary course operations

during the Stay Period. As such, the DIP Lender's Charge sought in connection with the Initial Order was limited to \$2,500,000.

14. In light of the go-forward funding needs of the Applicants, the Applicants are now seeking to increase the quantum of the DIP Lender's Charge to a maximum of \$8,000,000 (plus interest and costs), the maximum amount available to the Applicants under the DIP Loan.

15. Additional draws under the DIP Loan are conditional on the increase to the DIP Lender's Charge being granted. Should the Amended and Restated Initial Order not be granted and the DIP Lender's Charge not increased, the Applicants, and their stakeholders, stand to suffer material prejudice including, but not limited to, the cessation of the Applicants' business.

**(c) Priority of the Charges**

16. The Initial Order provides that the beneficiaries of the Charges, including the DIP Lender, are entitled to seek priority for their respective Charge over any Encumbrance in favour of any person that was not previously served with notice of the hearing in respect of the Initial Order.

17. I am advised that the DIP Lender requires that the Amended and Restated Initial Order provide that the DIP Lender's Charge rank in priority to all Encumbrances, including Encumbrances in favour of any person that was not previously provided with notice of the hearing in respect of the Initial Order. Accordingly, pursuant to the Amended and Restated Initial Order, the Applicants' are seeking to have the Charges rank in priority to all Encumbrances.

18. I am advised that the parties holding such Encumbrances will be given notice of the motion in respect of the Amended and Restated Initial Order and the SISP Approval Order.

19. In the January 21 Devon Affidavit, I advised that there were two parties with registered security against the Applicants: (i) Compaction Credit Ltd ("**Compaction**") against CGI for an extraction machine; and (ii) Jim Pattison Industries Ltd. ("**Jim Pattison**") against FIGR Inc. (now FIGR Brands) for certain leased motor vehicles. I also advised that the CIG Mechanic's Lien is registered on title to the CIG facility. The CIG Mechanic's Lien 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 that had performed work on CIG Facility.

20. Since the swearing of the January 21 Devon Affidavit, I have learned that all amounts owing to Compaction have been paid in full, and that the secured registration in favour of Compaction should have been discharged. Accordingly, Compaction no longer has a secured claim against the CIG. As a result, I understand that the only beneficiaries of Encumbrances over which the beneficiaries of the Charges will have priority are Jim Pattison and the party that filed the CIG Mechanic's Lien. However, I am advised that Compaction will be served with the motion out of an abundance of caution.

**(d) Stay Extension**

21. Under the Initial Order, the Court granted the initial Stay Period until and including January 31, 2021. Pursuant to the Amended and Restated Initial Order, the Applicants are seeking an extension of the Stay Period until and including March 31, 2021.

22. It is necessary and in the best interests of the Applicants and their stakeholders that the Stay Period be extended until March 31, 2021, as it will allow the Monitor, with the assistance of the Applicants, to complete Phase 1 of the SISP, which will ultimately preserve and maximize the value of the Applicants' business for their stakeholders.

23. As is demonstrated in the Cash Flow Forecast appended to the Monitor's Pre-Filing Report, the Applicants are forecast to have sufficient liquidity to fund their obligations and the costs of the CCAA Proceedings through the end of the extended Stay Period.

24. The Applicants expect to return to Court in advance of the expiry of the Stay Extension to seek, among other things, approval of a claims process.

### **III. THE SISP**

#### **A. Overview**

25. The SISP provides that the Monitor, together with its affiliate FTI Capital Advisors – Canada ULC, with the assistance of the Applicants and in consultation with the DIP Lender, will solicit interest in, and opportunities for, a sale or investment in the FIGR Group's assets and business, in whole or in part. The SISP was designed to be broad and flexible. Accordingly, the SISP contemplates one or more of a restructuring, recapitalization or other form of reorganization of the business and affairs of the Applicants as a going concern or a sale of all, substantially all or one or more components of the Property and the FIGR Group's business operations (the "**Business**") (each an "**Opportunity**"). Ultimately, the SISP will permit the Applicants and their stakeholders to determine the avenues of restructuring available for the Business. A copy of the SISP is attached as Schedule "A" to the SISP Approval Order.

26. The SISP contains three milestones which are described below in the following table:

Milestone	Description	Deadline
Solicitation of Interest	The Monitor will commence solicitation of interest from parties, including delivering an NDA and Teaser Letter to Known Potential Bidders (each as defined below), and upon execution of an NDA, Known Potential Bidders will be provided with the CIM and access to the Phase 1 data room.	Preliminary solicitation efforts commenced on January 22, 2021.  The Monitor will send the Teaser Letter and the NDA to each Known Potential Bidder by no later than February 4, 2021
Phase 1 Bid Deadline	Any party who wishes to participate in the SISP (a " <b>Potential Bidder</b> ") and pursue an Opportunity therein will be invited to provide a non-binding letter of interest (an " <b>LOI</b> ").	February 26, 2021 at 5:00 PM (Eastern Time)
Phase 2 Bid Deadline	Formal binding offers will be submitted and evaluated by a date to be specified in the Phase 2 Bid Process Letter, with a view to identifying the highest or otherwise best bid (the " <b>Successful Bid</b> ")	To be Specified in Phase 2 Bid Process Letter

27. The milestones referred to in the above table are described in detail below. Capitalized terms used in this section and not otherwise defined have the meaning ascribed to them in the SISP.

28. I understand that the milestones – and in particular the Phase 1 Bid Deadline – are supported by the Monitor and the DIP Lender. Specifically, the Monitor has advised and agrees that interested parties will have sufficient time to formulate and submit LOIs.



**B. Notification Process**

29. The SISP requires the Monitor, with the assistance of the Applicants and in consultation with the DIP Lender, to prepare a list of known potential bidders ("**Known Potential Bidders**"). These include:

- (a) parties that have approached the Monitor or the Applicants indicating an interest in the Opportunity;
- (b) local and international strategic and financial parties who the Monitor and the Applicants, in consultation with the DIP Lender, believe may be interested in purchasing all or part of the Business and Property or investing in the Applicants pursuant to the SISP; and
- (c) any other credible parties as determined by the Monitor and/or the Applicants, in consultation with the DIP Lender, suggested in writing by a stakeholder as a potential bidder who may be interested in the Opportunity.

30. The Monitor will apprise the market of the SISP by arranging for notice of the SISP (the "**Notice**") to be published in The Globe and Mail (National Edition), HortiDaily.com, and any other newspaper or journal the Monitor considers appropriate. Additionally, the Applicants will issue a press release setting out the information contained in the Notice and such other relevant information that the Applicants and the Monitor, in consultation with the DIP Lender, consider appropriate for dissemination in Canada and major financial centres in the United States.

28. The Monitor with the assistance of the Applicants, and in consultation with the DIP Lender, will prepare a process summary (the “**Teaser Letter**”), describing the Opportunity and the SISP, and inviting recipients of the Teaser Letter to express their interest.

29. The Applicants will prepare a non-disclosure agreement (the “**NDA**”) in form and substance satisfactory to the Monitor. The Monitor will then send the Teaser Letter and the NDA to each Known Potential Bidder by no later than February 4, 2021. The Teaser Letter and the NDA will also be sent by the Monitor to any other party who requests a copy of the Teaser Letter and the NDA or who is identified to the Monitor or the Applicants as a potential bidder as soon as reasonably practicable.

30. If any member of the Applicants’ management team or any employee of any of the Applicants (“**Management**”) receives any inbound communications with respect to the SISP from any person, Management will not engage in discussions with such persons and shall instead refer all such persons to the Monitor. Under no circumstances shall any participant or prospective participant in the SISP contact or engage directly or indirectly with Management without the prior consent of the Monitor during any phase of the SISP. All discussions with participants or prospective participants with respect to the SISP shall involve the Monitor unless the Monitor agrees otherwise. Any unauthorized contact or communication that is not in compliance with the SISP could result in the exclusion of the interested party from the SISP process.

**C. Phase 1 Non-Binding Letters of Interest**

30. Each Potential Bidder must provide the Monitor and the Applicants with an NDA executed by it, and a letter setting forth the identity of, and contact information for, such Potential Bidder. Parties who do so will constitute “Phase 1 Qualified Bidders”.

31. The Monitor, in consultation with the Applicants, will prepare and send to each Phase 1 Qualified Bidder a confidential information package providing additional information considered relevant to the Opportunity. Further, each Phase 1 Qualified Bidder will be provided with due diligence information relating to the Property and the Business, which the Monitor, in consultation with the Applicants, deems appropriate in its reasonable business judgment.

32. A Phase 1 Qualified Bidder that wishes to pursue the Opportunity must deliver a non-binding LOI to the Monitor and the Applicants in accordance with the SISP by no later than 5:00 PM (Eastern Time) on February 26, 2021, or such later time as may be agreed to by the Monitor, in consultation with the Applicants (the "**Phase 1 Bid Deadline**"). To be considered a qualified LOI (a "**Qualified LOI**"), the LOI must:

- (a) in the case of a Sale Proposal, contain, among other things, (i) the purchase price or price range in Canadian dollars, (ii) a description of the Property that is expected to be subject to the Opportunity and of any of the Property expected to be excluded, (iii) evidence of the financial capability of the Phase 1 Qualified Bidder to consummate the transaction and the expected structure and financing of the transaction, and (iv) any other terms or conditions of the Sale Proposal that the Phase 1 Qualified Bidder believes are material to the transaction; and
- (b) in the case of an Investment Proposal, contain, among other things, (i) a description of how the Phase 1 Qualified Bidder proposes to structure the proposed investment, restructuring, recapitalization, refinancing or reorganization, (ii) the aggregate amount of the equity and/or debt investment to be made, (iii) key assumptions supporting the Phase 1 Bidder's valuation, (iv) the underlying assumptions

regarding the pro forma capital structure, (v) an indication of the sources of capital for the Phase 1 Qualified Bidder and the structure and financing of the transaction, and (vi) any other terms or conditions of the Investment Proposal that the Phase 1 Qualified Bidder believes are material to the transaction.

33. The Monitor, with the consent of the Applicants, and in consultation with the DIP Lender, may waive compliance with any one or more of the requirements specified above and deem any such non-compliant bids to be a Qualified LOI.

**D. Preliminary Assessment of Phase 1 Bids and Determination of Phase 2 Bid Process**

34. Following the Phase 1 Bid Deadline, the Monitor, in consultation with the Applicants and the DIP Lender, will assess the Qualified LOIs to determine whether each Phase 1 Qualified Bidder constitutes a Phase 2 Qualified Bidder. A Phase 1 Qualified Bidder who has submitted a Qualified LOI may become a Phase 2 Qualified Bidder if it is determined by the Monitor, in consultation with the Applicants and the DIP Lender, that such bidder (i) has a bona fide interest in completing a Sale Proposal or Investment Proposal, as applicable; and (ii) has the financial capability to consummate such a transaction based on the financial information provided.

35. No Phase 1 Qualified Bidder that has submitted a Qualified LOI shall be deemed not to be a Phase 2 Qualified Bidder without the approval of the Monitor. The Monitor may, in its reasonable business judgment and with the consent of the Applicants, limit the number of Phase 2 Qualified Bidders.

36. As part of the assessment of Qualified LOIs and the determination of the process subsequent thereto, the Applicants and the Monitor, in consultation with the DIP Lender, shall

determine the process and timing to be followed in pursuing Qualified LOIs. Once the Applicants and the Monitor, in consultation with the DIP Lender, determine the manner in which to proceed to Phase 2 of the SISP, the Applicants and the Monitor, in consultation with the DIP Lender, will prepare a bid process letter for Phase 2 (the "**Bid Process Letter**"). The Bid Process Letter will be: (i) sent by the Monitor to all Phase 2 Qualified Bidders as soon as practically possible following the Phase 1 Bid Deadline, and (ii) posted by the Monitor on the Monitor's Website.

37. To ensure that the Applicants have the latitude and flexibility to explore all possible restructuring options, the SISP provides that:

- (a) the Monitor may, with the consent of the Applicants and in consultation with the DIP Lender, at any time:
  - (i) in accordance with the SISP, pause, terminate, amend or modify the SISP;
  - (ii) remove any portion of the Business and the Property from the SISP;
  - (iii) establish further or other procedures for Phase 1;
  
- (b) the Applicants may, with the consent of the Monitor and in consultation with the DIP Lender, at any time bring a motion to the Court to seek approval of:
  - (i) a sale of, or investment in, all or part of the Property or the Business whether or not such sale or investment is in accordance with the terms or timelines set out in the SISP; or

- (ii) a stalking horse agreement in respect of some or all of the Property or Business and related bid procedures in respect of such Property.

**E. Formal Offers and Identification of Qualified Bids**

38. Phase 2 Qualified Bidders that wish to make a formal offer to purchase or make an investment in the Applicants or their Property or Business shall submit a binding offer (a "**Phase 2 Bid**") to the Monitor and the Applicants by no later than the date set out in the Bid Process Letter (the "**Phase 2 Bid Deadline**").

39. Following the Phase 2 Bid Deadline, the Applicants and the Monitor will assess the Phase 2 Bids received. The Monitor, in consultation with the Applicants and the DIP Lender, will designate the most competitive bids that comply with the following requirements, among others (the "**Qualified Bids**"):

- (a) the bid is an offer to purchase or make an investment in some or all of the Applicants or their Property or Business and is consistent with any necessary terms and conditions established by the Applicants and the Monitor and communicated to Phase 2 Qualified Bidders;
- (b) the bid includes a letter stating that the Phase 2 Qualified Bidder's offer is irrevocable until the selection of the Successful Bidder, provided that if such Phase 2 Qualified Bidder is selected as the Successful Bidder, its offer shall remain irrevocable until the closing of the transaction with the Successful Bidder;

- (c) the bid includes duly authorized and executed transaction agreements, including the purchase price, investment amount and any other key economic terms expressed in Canadian dollars (the "**Purchase Price**");
- (d) the bid includes a blackline comparison between the transaction agreements submitted and the template provided to the Phase 2 Qualified Bidder, if any;
- (e) the bid includes written evidence of a firm, irrevocable commitment for financing or other evidence of ability to consummate the proposed transaction, that will allow the Applicants and the Monitor to make a determination as to the Phase 2 Qualified Bidder's financial and other capabilities to consummate the proposed transaction;
- (f) for a Sale Proposal, the bid includes a commitment by the Phase 2 Qualified Bidder to provide a deposit in the amount of not less than 10% of the Purchase Price offered upon the Phase 2 Qualified Bidder being selected as the Successful Bidder; and
- (g) for an Investment Proposal, the bid includes a commitment by the Phase 2 Qualified Bidder to provide a deposit in the amount of not less than 10% of the total new investment contemplated in the bid upon the Phase 2 Qualified Bidder being selected as the Successful Bidder.

40. The Monitor, with the consent of the Applicants and in consultation with the DIP Lender, may waive strict compliance with any one or more of the above requirements and deem any such non-compliant Phase 2 Bid to be a Qualified Bid.

41. The Monitor shall notify each Phase 2 Qualified Bidder in writing as to whether its Phase 2 Bid constitutes a Qualified Bid within ten (10) business days of the Phase 2 Bid Deadline, or at such later time as it deems appropriate.

42. If the Applicants, in consultation with the Monitor and the DIP Lender, are not satisfied with the number or terms of the Qualified Bids, the Applicants may, in consultation with the DIP Lender and with the approval of the Monitor, extend the Phase 2 Bid Deadline, or the Applicants may amend the SISIP in accordance with the terms set out therein.

**F. Selection of a Successful Bid**

43. The Monitor and the Applicants, in consultation with the DIP Lender, will: (a) review and evaluate each Qualified Bid, provided that each Qualified Bid may be negotiated between the Applicants, the Monitor and the applicable Phase 2 Qualified Bidder, and may be amended, modified or varied to improve such Phase 2 Qualified Bid as a result of such negotiations; and (b) identify the Successful Bid and the Phase 2 Qualified Bidder, for any particular Property or the Business in whole or part. Each Qualified Bid will be evaluated based on the following factors, among others:

- (a) the Purchase Price and the net value provided by such bid;
- (b) the identity, circumstances and ability of the Phase 2 Qualified Bidder to successfully complete the proposed transaction(s);
- (c) the proposed transaction documents;
- (d) factors affecting the speed, certainty and value of the transaction;



- (e) the assets included or excluded from the bid;
- (f) any related restructuring costs; and
- (g) the likelihood and timing of consummating the proposed transaction.

44. The determination of any Successful Bid by the Applicants, with the assistance and approval of the Monitor, and in consultation with the DIP Lender, shall be subject to approval by the Court. Under the SISP, the Applicants are not obligated to enter into a Successful Bid, and reserve the right, in consultation with the Monitor and the DIP Lender, to reject any or all Phase 2 Qualified Bids.

#### **G. SISP Approval**

45. The Applicants and the Monitor, in consultation with the DIP Lender, developed the SISP. As previously mentioned, the SISP is intended to provide a flexible, fair and efficient structure for canvassing the market for the Property and/or Business.

46. The flexibility afforded to the Monitor and the Applicants will ensure that the FIGR Group's restructuring proceeds in a way that maximizes stakeholder value. This flexibility is critical to the Applicants' ability to maximize stakeholder recovery given, among other things, the Cannabis industry's trend toward reducing production capacity, the FIGR Group's liquidity constraints and the related cost of continuing production, and the market uncertainty created by the COVID-19 pandemic.

47. I am advised that while the DIP Lender is supportive of the SISP, it does not intend to participate in the SISP as a Potential Bidder and has notified the Monitor accordingly. As such,

the SISP provides for additional consultation and information sharing with the DIP Lender, including access to copies of all reasonably requested bidder information, LOIs, Phase 2 Bids, Qualified Bids and Successful Bids, among other things. To provide greater flexibility, nothing precludes the DIP Lender from participating in a transaction involving the Applicants should the SISP terminate or as otherwise may be permitted by the Bid Process Letter or further order of the Court.

48. In light of the foregoing, I believe that the proposed SISP is appropriate and reasonable in the circumstances and provides a fair and efficient means of canvassing the market for the Property and/or Business. Further, I believe that it provides the appropriate degree of oversight and consultation to ensure that the SISP proceeds fairly and in the best interests of the Applicants and their stakeholders without unduly tempering its efficiency.

49. I am advised that the Monitor is supportive of the SISP and believes that it is the best option available to the Applicants at this time and is in the best interests of Applicants and their stakeholders.

50. It is a requirement of the DIP Loan that a SISP acceptable to the DIP Lender be approved by the Court. The date by which this requirement must be satisfied is February 1, 2021. As previously discussed, I understand that the DIP Lender is supportive of the proposed SISP.

## **CONCLUSION**

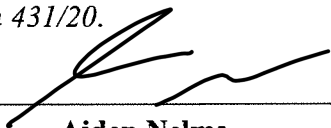
51. Since the granting of the Initial Order, the Applicants have acted in good faith and with due diligence to, among other things, stabilize their business, apprise their stakeholders of the

CCAA Proceedings, liaise with its third party vendors, and prepare the SISP, all with the assistance and oversight of the Monitor.

52. The Applicants have maintained their ordinary course operations and will continue to do so with the oversight and assistance of the Monitor though the commencement of the SISP. 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 the Monitor does not believe that any creditor will be materially prejudiced by the granting of the Second Amended and Restated Initial Order or the SISP Approval Order.

53. I swear this affidavit in support of the of the Applicants' motion for the Second Amended and Restated Initial Order and the SISP Approval Order and for no other or improper purpose.

SWORN BEFORE ME over )  
videoconference on this 25<sup>th</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* ..... **“B”** ..... *referred to in the*

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

*sworn before me, this* ..... 16<sup>th</sup> .....

*day of* ..... February, 2021 .....

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

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

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

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

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

Applicants

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

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

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

**I. RELIEF REQUESTED**

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

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

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

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

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

## **II. OVERVIEW**

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

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

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

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

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



### III. CORPORATE STRUCTURE OF THE FIGR GROUP

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

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

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

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

**A. FIGR Brands**

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

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

**B. FIGR Norfolk**

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

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

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

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

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

### **C. CIG**

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

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

#### **IV. BUSINESS OF THE APPLICANTS**

##### **A. The Cannabis Industry in Canada**

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

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

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

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

##### **B. Business**

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

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

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

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

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

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

**1. *The Facilities and Production***

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

**(i) *The CIG Facility***

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

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

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

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

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

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

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

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

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

**C. Cannabis Licenses**

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

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

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



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

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

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

## **D. Employees**

### **1. General Overview**

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

<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.

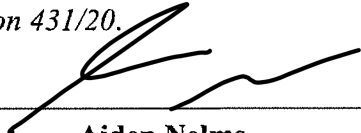
114. The Cash Flow Forecast indicates that the Applicants urgently require DIP financing to ensure that they have the liquidity required to meet their obligations and continue their business operations during the Stay of Proceedings.

## **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**

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

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

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

Proceedings Commenced in Toronto

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

**BENNETT JONES LLP**  
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**Aiden Nelms** (LSO# 74170S)

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

Lawyers for the Applicants

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

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

*sworn before me, this* ..... 16<sup>th</sup> .....

*day of* ..... February, 2021 .....

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR.	)	THURSDAY, THE 21 <sup>ST</sup>
	)	
JUSTICE HAINEY	)	DAY OF JANUARY, 2021

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF FIGR  
BRANDS, INC., FIGR NORFOLK INC. AND CANADA'S ISLAND GARDEN INC.  
(collectively, the "**Applicants**")

**INITIAL ORDER**

**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**") and the Pre-Filing Report of FTI Consulting Canada Inc. ("**FTI**") dated January 21, 2021, and on hearing the submissions of counsel for the Applicants, counsel for FTI, 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 21, 2021 and on reading the consent of FTI to act as Monitor (the "**Monitor**"),



## 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 January 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 \$2,000,000, 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 \$2,500,000 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 \$2,000,000);

Third - DIP Lender's Charge (to the maximum amount of \$2,500,000); 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; provided that the Charges shall rank behind Encumbrances in favor of any Persons that have not been served with notice of this application. The Applicants and the beneficiaries of the Charges shall be entitled to seek priority ahead of such Encumbrances on notice to those parties.

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 "Haley 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

**INITIAL ORDER**

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

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

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

Lawyers for the Applicants

*This is Exhibit* ..... “D” ..... *referred to in the*  
*affidavit of* ..... Michael Devon .....  
*sworn before me, this* ..... 16<sup>th</sup> .....  
*day of* ..... February, 2021 .....  
.....  
**A COMMISSIONER FOR TAKING AFFIDAVITS**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR.	)	FRIDAY, THE 29 <sup>th</sup>
	)	
JUSTICE HAINEY	)	DAY OF JANUARY, 2021

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF FIGR  
BRANDS, INC., FIGR NORFOLK INC. AND CANADA'S ISLAND GARDEN INC.  
(collectively, the "**Applicants**")

**AMENDED AND RESTATED INITIAL ORDER**

(amending Initial Order dated January 21, 2021)

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

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

## SERVICE

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

## APPLICATION

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

## PLAN OF ARRANGEMENT

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

## POSSESSION OF PROPERTY AND OPERATIONS

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

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

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

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

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

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

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

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

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

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

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



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

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

## **RESTRUCTURING**

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

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

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

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

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

#### **NO PROCEEDINGS AGAINST THE APPLICANTS OR THE PROPERTY**

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

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

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

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

#### **NO INTERFERENCE WITH RIGHTS**

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

#### **CONTINUATION OF SERVICES**

17. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Applicants or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, security services, payroll services, insurance, transportation services, utility or other services to the Business or the Applicants, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply

of such goods or services as may be required by the Applicants, and that the Applicants shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicants in accordance with normal payment practices of the Applicants or such other practices as may be agreed upon by the supplier or service provider and each of the Applicants and the Monitor, or as may be ordered by this Court.

### **NON-DEROGATION OF RIGHTS**

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

### **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

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

### **DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE**

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

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

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

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

#### **APPOINTMENT OF MONITOR**

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

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

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

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

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

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

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

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

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

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

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



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

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

#### **DIP FINANCING**

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

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

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

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

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

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

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

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

## INTERCOMPANY LENDING

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

## VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

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

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

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

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

Fourth - Intercompany Charge.

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

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

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

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

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

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

### **SERVICE AND NOTICE**

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

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

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

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

## **GENERAL**

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

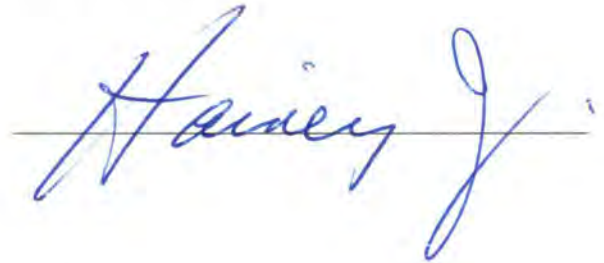
50. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of any of the Applicants, the Business or the Property.

51. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

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

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

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

A handwritten signature in blue ink is written over a horizontal line. The signature is cursive and appears to read "Hainey J.". The line extends across the width of the signature.

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

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

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

Proceedings Commenced in Toronto

**AMENDED AND RESTATED INITIAL  
ORDER**

**BENNETT JONES LLP**

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

**Sean Zweig** (LSO# 57307I)  
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Tel: 416-863-1200  
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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  
INC. AND CANADA'S ISLAND GARDEN INC.**

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

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

Proceedings Commenced in Toronto

**AFFIDAVIT OF MICHAEL DEVON**  
**(Sworn February 16, 2021)**

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

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

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

Lawyers for the Applicants

# TAB 3

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR. ) MONDAY, THE 22<sup>nd</sup>  
 )  
JUSTICE HAINEY ) DAY OF FEBRUARY, 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**")

**CLAIMS PROCEDURE ORDER**

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

**ON READING** the Notice of Motion of the Applicants, the affidavit of Michael Devon sworn February 16, 2021, the Second Report of FTI Consulting Canada Inc. (the "**Second Report**"), in its capacity as monitor of the Applicants (the "**Monitor**"), filed, and on hearing the submissions of counsel for the Applicants, counsel for the Monitor, counsel for Alliance One Tobacco Canada Inc., 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 February 16, 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.

## DEFINITIONS

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

- (a) **"Assessments"** means Claims of Her Majesty the Queen in Right of Canada or of any Province or Territory or Municipality or any other taxation authority in any Canadian or foreign jurisdiction, including, without limitation, amounts which may arise or have arisen under any notice of assessment, notice of objection, notice of reassessment, notice of appeal, audit, investigation, demand or similar request from any taxation authority;
- (b) **"Business Day"** means a day, other than a Saturday, Sunday or a statutory holiday, on which banks are generally open for business in Toronto, Ontario;
- (c) **"Calendar Day"** means a day, including Saturday, Sunday or any statutory holiday in the Province of Ontario, Canada;
- (d) **"CCAA Proceedings"** means the within proceedings in respect of the Applicants under the CCAA;
- (e) **"Charges"** has the meaning given to that term in the Initial Order;
- (f) **"Claim"** means:
  - (i) any right or claim of any Person against any of the Applicants, whether or not asserted or made, in connection with any indebtedness, liability or obligation of any kind whatsoever in existence at the time of the Initial Order, and any interest accrued thereon or costs payable in respect thereof, including by reason of the commission of a tort (intentional or

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

- (ii) any right or claim of any Person against the Applicants in connection with any indebtedness, liability or obligation of any kind whatsoever owed by the Applicants to such Person arising out of the restructuring, disclaimer, repudiation, resiliation, termination or breach by the Applicants on or after the Filing Date of any contract, lease, other agreement or obligation whether written or oral, including for greater certainty any claim against the Applicants for indemnification by any Directors or Officers in respect of a D&O Restructuring Claim (but excluding any such claim for indemnification that is covered by the Directors' Charge) (each, a "**Restructuring Claim**"); and
- (iii) any right or claim of any Person against one or more of the Directors or Officers of the Applicants, howsoever arising whether or not such right or claim is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, perfected, unperfected, present, future, known, or unknown, by guarantee, surety or otherwise, and whether or not such right is executory or anticipatory in nature, including any Assessments and any right or ability of any Person to advance a claim for contribution, indemnity or otherwise against any of the Directors and/or Officers with respect to any matter, action, cause or chose in action, however arising and whether:

- (1) (A) based in whole or in part on facts that existed prior to the Filing Date, (B) relating to a time period prior to the Filing Date, or (C) it is a right or claim of any kind that would be a claim provable in bankruptcy within the meaning of the BIA had the Applicants become bankrupt on the Filing Date (a "**D&O Pre-Filing Claim**"); or
- (2) based on facts that arose in connection with the restructuring disclaimer, resiliation, termination or breach by the Applicants on or after the Filing Date of any contract, lease, other agreement or obligation, whether written or oral (a "**D&O Restructuring Claim**"),

in each case for which the Directors or Officers are alleged to be, by statute or otherwise by law or equity, liable to pay in their capacity as Directors or Officers (each, a "**D&O Claim**");

provided, however, that in any case "Claim" shall not include an Excluded Claim and "Pre-Filing Claim" shall include a Pre-Filing Intercompany Claim,

- (g) "**Claimant**" means any Person asserting a Claim and includes the transferee or assignee of a Claim recognized in accordance with paragraphs 28 and 29 herein or a trustee, executor, liquidator, receiver, receiver and manager, or other Person acting on behalf of or through such Person;
- (h) "**Claims Officer**" means one or more individuals selected or appointed in accordance with this Claims Procedure Order to act as a claims officer for the purposes of this Claims Procedure Order;
- (i) "**Claims Package**" means a document package that contains a copy of the Instruction Letter, the Notice to Claimants, a Proof of Claim and such other materials as the Applicants and the Monitor may consider appropriate or desirable;
- (j) "**Claims Procedure**" means the procedures outlined in this Claims Procedure Order in connection with the identification, quantification, adjudication and resolution of Claims, as amended or supplemented by further order of the Court;
- (k) "**Court**" means the Ontario Superior Court of Justice (Commercial List);

- (l) **"D&O Indemnity Claim"** means any existing or future right of any Director or Officer against the Applicants which arose or arises as a result of any Person filing a Proof of Claim in respect of such Director or Officer for which such Director or Officer is entitled to be indemnified by the Applicants;
- (m) **"Directors"** means the directors and former directors of any Applicant or any Person who is or was or may be deemed to be or have been, whether by statute, operation of law or otherwise, a director or de facto director of any Applicant, in such capacity, and "Director" means any one of them;
- (n) **"Disputed Claim"** means a Claim that is validly disputed in accordance with this Claims Procedure Order and which remains subject to adjudication in accordance with this Claims Procedure Order;
- (o) **"Employee"** means anyone who is or was a current or former employee of any of the Applicants, whether on a full-time, part-time or temporary basis, including any individuals on disability leave, parental leave or other absence;
- (p) **"Employee Claim"** means the Claim of any Employee for vacation pay, termination pay, severance pay, wages, expenses, commissions, or other remuneration, arising as result of the termination of employment or a layoff of such Employee by any Applicant prior to the Filing Date or during the CCAA Proceedings;
- (q) **"Excluded Claim"** means any claim secured by any of the Charges and any Employee Claim;
- (r) **"Filing Date"** means January 21, 2021;
- (s) **"Initial Order"** means the Initial Order of the Honourable Justice Hainey as amended and restated on January 29, 2021 in these CCAA Proceedings, as may be further amended, restated or varied from time to time;
- (t) **"Instruction Letter"** means the instruction letter to Claimants, substantially in the form attached as Schedule "A" hereto;

- (u) **"Meeting"** means a meeting of the creditors of any Applicant called for the purpose of considering and voting in respect of a Plan, if any;
- (v) **"Monitor"** has the meaning set out in the recital hereto;
- (w) **"Monitor's Website"** means: [cfcanada.fticonsulting.com/figr](http://cfcanada.fticonsulting.com/figr);
- (x) **"Notice of Dispute of Revision or Disallowance"** means a notice in substantially the form attached hereto as Schedule "E", which may be delivered by a Claimant who received a Notice of Revision or Disallowance for disputing such Notice of Revision or Disallowance;
- (y) **"Notice of Revision or Disallowance"** means the notice, substantially in the form attached hereto as Schedule "D", which may be delivered by the Applicants or the Monitor, as applicable, to a Claimant revising or disallowing, in part or in whole, a Claim submitted by such Claimant for voting and/or distribution purposes;
- (z) **"Notice to Claimants"** means the notice for publication by the Monitor as described in paragraph 17 hereof, in the form attached as Schedule "B";
- (aa) **"Officers"** means the officers and former officers of any Applicant or any Person who is or was or may be deemed to be or have been, whether by statute, operation of law or otherwise, an officer or de facto officer of any Applicant, in such capacity, and "Officer" means any one of them;
- (bb) **"Orders"** means any and all orders issued by the Court within the CCAA Proceedings, including the Initial Order;
- (cc) **"Person"** means any individual, corporation, firm, limited or unlimited liability company, general or limited partnership, association (incorporated or unincorporated), trust, unincorporated organization, joint venture, trade union, government authority or any agency, regulatory body or officer thereof or any other entity, wherever situate or domiciled, and whether or not having legal status, and whether acting on its own or in a representative capacity;



- (dd) **"Plan"** means a plan of compromise or arrangement contemplated by the Initial Order;
- (ee) **"Pre-Filing Claims Bar Date"** means 5:00 p.m. (Eastern Time) on April 6, 2021;
- (ff) **"Pre-Filing Intercompany Claim"** means any Claim by any of the Applicants, or any of their affiliated companies, partnerships, or other corporate entities, including any direct or indirect parent or subsidiary companies or other corporate entities that:
  - (i) is based in whole or in part on facts that existed prior to the Filing Date, (ii) relates to a time period prior to the Filing Date, or (iii) is a right or claim of any kind that would be a claim provable in bankruptcy within the meaning of the BIA had the Applicants become bankrupt on the Filing Date;
- (gg) **"Pre-Filing Intercompany Claims Report"** means a report or supplemental report of the Monitor referred to in paragraph 41 of this Order providing, *inter alia*, the Monitor's recommendation and the Proposed Pre-Filing Intercompany Claims Resolution Process;
- (hh) **"Proof of Claim"** means the Proof of Claim referred to in paragraphs 21 to 25 hereof to be filed by Claimants, substantially in the form attached hereto as Schedule "C";
- (ii) **"Proposed Pre-Filing Intercompany Claims Resolution Process"** means the process to resolve Pre-Filing Intercompany Claims set out in the Pre-Filing Intercompany Claims Report;
- (jj) **"Restructuring Claims Bar Date"** means the later of:
  - (i) the Pre-Filing Claims Bar Date; and
  - (ii) 5:00 p.m. (Eastern Time) on the day which is thirty (30) Calendar Days after the Monitor sends a Claims Package with respect to a Restructuring Claim in accordance with paragraph 20 of this Claims Procedure Order; and
- (kk) **"Service List"** means the service list maintained by the Monitor in respect of these CCAA Proceedings at the applicable time.

## INTERPRETATION

3. **THIS COURT ORDERS** that all references as to time herein shall mean local time in Toronto, Ontario, Canada, and any reference to an event occurring on a Business Day shall mean prior to 5:00 p.m. (Eastern Time) on such Business Day unless otherwise indicated herein.

4. **THIS COURT ORDERS** that all references to the word "including" shall mean "including without limitation".

5. **THIS COURT ORDERS** that all references to the singular herein include the plural, the plural include the singular, and any gender includes the other gender.

## GENERAL PROVISIONS

6. **THIS COURT ORDERS** that the Claims Procedure and the forms attached as schedules to this Claims Procedure Order are hereby approved. Notwithstanding the foregoing, the Monitor, in consultation with the Applicants, may, from time to time, make non-substantive changes to the forms as the Monitor may consider necessary or desirable, including the Instruction Letter, Notice to Claimants, Notice of Revision or Disallowance, Proof of Claim and Notice of Dispute of Revision or Disallowance.

7. **THIS COURT ORDERS** that the Applicants and the Monitor are hereby authorized to use reasonable discretion as to the adequacy of compliance with respect to the manner in which forms delivered hereunder are completed and executed, and may waive strict compliance with the requirements of this Claims Procedure Order as to completion, execution and submission of such forms and to request any further documentation from a Claimant that the Applicants or the Monitor may require.

8. **THIS COURT ORDERS** that all Claims shall be denominated in Canadian dollars. Any Claims denominated in a foreign currency shall be converted to Canadian dollars at the Bank of Canada daily average exchange rate on the Filing Date, which for United States dollars is USD 1: CAD 1.2627.

9. **THIS COURT ORDERS** that there shall be no presumption of validity or deeming of the amount due in respect of amounts claimed in any Assessments.

10. **THIS COURT ORDERS** that, notwithstanding any other provisions of this Order, the solicitation of Proofs of Claim and the filing by any Claimant of a Proof of Claim shall not, for that reason only, grant any Person any rights, including without limitation, in respect of its Claims or its standing in the CCAA Proceedings, except as specifically set out in this Claims Procedure Order.

11. **THIS COURT ORDERS** that copies of all forms delivered hereunder, as applicable, shall be maintained by the Monitor. The Monitor shall promptly provide copies of all Proofs of Claim and Notices of Dispute of Revision or Disallowance received by them to the Applicants and their counsel in connection with the Claims Procedure.

#### **ROLE OF THE MONITOR**

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

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

omissions in such books, records or information or in any information provided by any Claimant, except to the extent that the Monitor has acted with gross negligence or wilful misconduct.

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

#### **NOTICE TO CLAIMANTS**

15. **THIS COURT ORDERS** that the Applicants shall within two (2) Business Days following the issuance of the Claims Procedure Order provide to the Monitor a complete list of known potential Claimants listed in the books and records of the Applicants (the "**Known Claimants**" and each a "**Known Claimant**") as at the date of this Claims Procedure Order, showing for each Known Claimant, its name, electronic address, or mailing address in the absence of an electronic address, and amount owed in accordance with the Applicants' books and records.

16. **THIS COURT ORDERS** that the Monitor shall send a Claims Package to each Known Claimant, each party that appears on the Service List, and any other Person that has requested a Claims Package, by ordinary mail or electronic mail to the last known address of the Known Claimant or the address as listed on the Service List, as applicable, within five (5) Business Days following receipt of the complete list of Known Claimants in accordance with paragraph 15 of this Claims Procedure Order.

17. **THIS COURT ORDERS** that as soon as practicable and without delay following the issuance of this Claims Procedure Order, the Monitor shall cause the Notice to Claimants to be published, for at least one (1) Business Day, in the Globe and Mail, National Edition.

18. **THIS COURT ORDERS** that the Monitor shall cause the Notice to Claimants, the Claims Package and the Claims Procedure Order to be posted to the Monitor's Website as soon as reasonably possible and cause it to remain posted thereon until its discharge as Monitor of the Applicants.

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

20. **THIS COURT ORDERS** that with respect to Restructuring Claims arising from the restructuring, disclaimer, resiliation, termination or breach of any lease, contract, or other agreement or obligation, on or after the date of the Initial Order, the Monitor shall send to the counterparty(ies) to such lease, contract or other agreement or obligation a Claims Package:

- (a) within five (5) Business Days following the issuance of this Claims Procedure Order if such Restructuring Claim arose prior to the date of the Claims Procedure Order; or
- (b) no later than five (5) Business Days following the time the Monitor actually becomes aware of the effective date of such Restructuring Claim if such Restructuring Claim arises following the date of the Claims Procedure Order.

## **CLAIMS PROCEDURE FOR CLAIMANTS**

### **A. Proofs of Claim**

21. **THIS COURT ORDERS** that any Person that wishes to assert a Pre-Filing Claim (including a Pre-Filing Intercompany Claim) must deliver to the Monitor on or before the Pre-Filing Claims Bar Date a completed Proof of Claim, including all relevant supporting documentation in respect of such Claim, in the manner set out in this Claims Procedure Order.

22. **THIS COURT ORDERS** that any Person that wishes to assert a Restructuring Claim must deliver to the Monitor on or before the Restructuring Claims Bar Date a completed Proof of Claim, including all relevant supporting documentation in respect of such Claim, in the manner set out in this Claims Procedure Order.

23. **THIS COURT ORDERS** that any Person that wishes to assert a D&O Claim (including, for greater certainty a D&O Pre-Filing Claim or a D&O Restructuring Claim) must deliver to the Monitor on or before the Pre-Filing Claims Bar Date or the Restructuring Claims Bar Date, as

applicable, a completed Proof of Claim form, together with all relevant supporting documentation in respect of such D&O Claim, in the manner set out in this Claims Procedure Order.

24. **THIS COURT ORDERS** that any Person wishing to assert a Claim shall include any and all Claims it asserts against any Applicant or a Director or Officer in a single Proof of Claim.

25. **THIS COURT ORDERS** that except in respect of Excluded Claims, any Person who does not file a Proof of Claim such that it is received by the Monitor in accordance with this Claims Procedure Order by the Pre-Filing Claims Bar Date or Restructuring Claims Bar Date, as applicable, shall:

- (a) not be entitled to receive further notice with respect to, and shall not be entitled to participate as a Claimant or creditor in, the Claims Procedure or the CCAA Proceedings in respect of such Claim;
- (b) with respect to a Pre-Filing Claim or a Restructuring Claim, be forever barred, estopped and enjoined from asserting or enforcing such Claim against the Applicants and the Applicants shall not have any liability whatsoever in respect of such Claim and such Claim shall be extinguished without any further act or notification by the Applicants or the Monitor;
- (c) with respect to a D&O Claim, be forever barred, estopped and enjoined from asserting or enforcing such Claim against any of the Directors and Officers and the Directors and Officers shall not have any liability whatsoever in respect of such Claim and such Claim shall be extinguished without any further act or notification by the Applicants, the Monitor or the Directors or Officers;
- (d) not be permitted to vote at any Meeting on account of such Claim; and
- (e) not be permitted to participate in any distribution under any Plan related to such Claim or under these CCAA Proceedings.

**B. D&O Indemnity Claims**

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

**C. Set-Off**

27. **THIS COURT ORDERS** that nothing in this Claims Procedure Order shall affect any right of set-off that any Applicant, a Director or an Officer may have against any Person.

**D. Transfer of Claims**

28. **THIS COURT ORDERS** that if the holder of a Claim transfers or assigns the whole of such Claim to another Person, neither the Applicants nor the Monitor shall be obligated to give notice or otherwise deal with the transferee or assignee of such Claim in respect thereof unless and until written notice of such transfer or assignment, together with evidence satisfactory to the Applicants and the Monitor, in their sole discretion, of such transfer or assignment, has been received by the Monitor and the Monitor has provided written confirmation acknowledging the transfer or assignment of such Claim, and thereafter such transferee or assignee shall for the purposes hereof constitute the "Claimant" in respect of such Claim. Any such transferee or assignee of a Claim shall be bound by any notices given or steps taken in respect of such Claim in accordance with this Claims Procedure Order prior to receiving written confirmation by the Monitor acknowledging such assignment or transfer. After the Monitor has delivered a written confirmation acknowledging the notice of the transfer or assignment of a Claim, the Applicants and the Monitor shall thereafter be required only to deal with the transferee or assignee and not the original holder of the Claim. A transferee or assignee of a Claim takes the Claim subject to any defences and rights of set-off to which the Applicants, Directors or Officers may be entitled with respect to such Claim. For greater certainty, a transferee or assignee of a Claim is not entitled to set-off, apply, merge, consolidate or combine any Claims assigned or transferred to it against or on account or in reduction of any amounts owing by such Person to the Applicants. Reference to transfer in this Claims Procedure Order includes a transfer or assignment whether absolute or intended as security.

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

**E. Adjudication of Claims Against the Applicants**

30. **THIS COURT ORDERS** that subject to paragraphs to 34 to 38 and 40 to 43 of this Claims Procedure Order, the Monitor, with the assistance of the Applicants, shall review all Proofs of Claims received by the Pre-Filing Claims Bar Date or the Restructuring Claims Bar Date, as applicable, and shall accept, revise or disallow the classification, nature and/or amount of each Claim against the Applicants therein. The Monitor shall notify each Claimant who has delivered a Proof of Claim by the Pre-Filing Claims Bar Date or the Restructuring Claims Bar Date, as applicable, as to whether such Claimant's Claim against the Applicant(s) as set out therein has been revised or disallowed, in whole or in part, by sending a Notice of Revision or Disallowance. The reasons for any revision or disallowance of a Claim, whether in whole or in part, shall be included in such Notice of Revision or Disallowance.

31. **THIS COURT ORDERS** that any Claimant who wishes to dispute a Notice of Revision or Disallowance sent pursuant to paragraph 30 of this Claims Procedure Order shall deliver a Notice of Dispute of Revision or Disallowance by no later than 5:00 p.m. (Eastern Time) on the date that is fourteen (14) Calendar Days after the date the Monitor sends a Notice of Revision or Disallowance to the applicable Claimant.



32. **THIS COURT ORDERS** that where a Claimant that receives a Notice of Revision or Disallowance pursuant to paragraph 30 of this Claims Procedure Order does not file a Notice of Dispute of Revision or Disallowance by the time set out in paragraph 31 herein, the classification, nature and amount of such Claimant's Claim shall be deemed to be as set out in the Notice of Revision or Disallowance and any and all of the Claimant's rights to dispute the classification, amount and/or nature of the Claim(s) set out in the Notice of Revision or Disallowance or to otherwise assert or pursue the Claim(s) in an amount that exceeds the amount set forth in the Notice of Revision or Disallowance shall be forever extinguished and barred without further act or notification.

**F. Resolution of Claims Against the Applicants**

33. **THIS COURT ORDERS** that the Monitor, with the assistance of the Applicants, shall review all Notices of Dispute of Revision or Disallowance received in accordance with paragraph 31 herein. In the event that the Monitor, with the assistance of the Applicants, are unable to resolve a dispute regarding any Disputed Claim (other than in respect of a D&O Claim) with a Claimant within a period or in a manner satisfactory to the Monitor, in consultation with the Applicants, the Monitor shall so notify the Claimant. Thereafter, the Monitor shall refer the Disputed Claim to: (i) the Court; or (ii) a Claims Officer or such alternative dispute resolution as may be ordered by the Court or agreed to by the Applicants, the Monitor and the applicable Claimant. The Court, the Claims Officer or the Person or Persons conducting the alternative dispute resolution proceeding, as the case may be, shall resolve the dispute.

**G. Adjudication of D&O Claims**

34. **THIS COURT ORDERS** that, for greater certainty, the procedures in paragraphs 30 to 33 of this Claims Procedure Order shall not apply to the adjudication or the resolution of D&O Claims.

35. **THIS COURT ORDERS** that the Monitor shall forthwith provide the relevant Director or Officer (and his or her counsel, if known to the Monitor) with a copy of any Proofs of Claim received in respect of D&O Claims.

36. **THIS COURT ORDERS** that the Monitor, with the assistance of the Applicants, and the relevant Director or Officer, shall review all Proofs of Claim received by the Pre-Filing Claims Bar Date or the Restructuring Claims Bar Date, as applicable, in respect of D&O Claims and shall accept, revise or disallow the classification, nature and/or amount of each D&O Claim set out therein in whole or in part (which acceptance, revision or disallowance shall require the consent of the applicable Director or Officer). The Monitor, with the consent of the Applicants, shall notify each Claimant who has delivered a Proof of Claim by the Pre-Filing Claims Bar Date or the Restructuring Claims Bar Date, as applicable, in respect of D&O Claims as to whether such Person's Claim as set out therein has been revised or disallowed and the reasons therefor by sending a Notice of Revision or Disallowance to such Claimant. The Monitor shall provide a copy of such Notice of Revision or Disallowance to the Director or Officer (and his or her counsel, if known to the Monitor) subject to D&O Claims.

37. **THIS COURT ORDERS** that any Claimant who wishes to dispute a Notice of Revision or Disallowance sent pursuant to paragraph 36 of this Claims Procedure Order shall deliver a Notice of Dispute of Revision or Disallowance to the Monitor such that it is received by the Monitor by no later than 5:00 p.m. (Eastern Time) on the date that is fourteen (14) Calendar Days after the date the Monitor sent the applicable Claimant the Notice of Revision or Disallowance. The Monitor shall provide a copy of such Notice of Dispute of Revision or Disallowance to the Director or Officer (and his or her counsel, if known to the Monitor) subject to the applicable D&O Claim upon the receipt of such Notice of Dispute of Revision or Disallowance.

38. **THIS COURT ORDERS** that if a Claimant who receives a Notice of Revision or Disallowance pursuant to paragraph 36 of this Claims Procedure Order does not file a Notice of Dispute of Revision or Disallowance by the deadline set out in paragraph 37 herein, the classification, nature and amount of such Claimant's D&O Claim shall be deemed to be as set out in the Notice of Revision or Disallowance and any and all of such Claimant's rights to dispute the D&O Claim(s) as classified and valued in the Notice of Revision or Disallowance or to otherwise assert or pursue such D&O Claim(s) in an amount that exceeds the amount set forth in the Notice of Revision or Disallowance shall be forever extinguished and barred without further act or notification.

## **H. Resolution of D&O Claims**

39. **THIS COURT ORDERS** that in the event that the Monitor, in consultation with the Applicants, determines that it is necessary to finally determine the amount of a D&O Claim and the Monitor, in consultation with the Applicants and with the consent of the applicable Directors and Officers, is unable to resolve a dispute regarding such D&O Claim with the Claimant asserting such D&O Claim within a period or in a manner satisfactory to the Monitor, in consultation with the Applicants and with the consent of the applicable Directors and Officers, the Monitor shall notify the Applicants, the applicable Directors and Officers and such Claimant. Thereafter, the Monitor shall refer the Disputed Claim to: (i) the Court; or (ii) a Claims Officer or to such alternative dispute resolution as may be ordered by the Court or agreed to by the Applicants, the Monitor, the relevant Director(s) and/or Officer(s) and the applicable Claimant. The Court, the Claims Officer or the Person or Persons conducting the alternative dispute resolution proceeding, as the case may be, shall resolve the dispute.

## **I. Resolution of Pre-Filing Intercompany Claims**

40. **THIS COURT ORDERS** that, for greater certainty, the procedures in paragraphs 30 to 39 of this Claims Procedure Order shall not apply to the adjudication or the resolution of Pre-Filing Intercompany Claims.

41. **THIS COURT ORDERS** that the Monitor, with the assistance of the Applicants, shall review all Proofs of Claim received by the Pre-Filing Claims Bar Date in respect of Pre-Filing Intercompany Claims and shall thereafter serve on the Service List and file with the Court the Pre-Filing Intercompany Claims Report setting out the Proposed Pre-Filing Intercompany Claims Resolution Process. If any interested party wishes to object to the Proposed Pre-Filing Intercompany Claims Resolution Process, such interested party must serve on the Service List a notice of objection within seven (7) days of the date upon which the Monitor serves the Pre-Filing Intercompany Claims Report. If a notice of objection is received in accordance with the terms hereof, such objection may be resolved consensually between the Monitor and the

objecting party, in consultation with the Applicants, or by further Order of this Court upon a motion to be brought by the Monitor, in consultation with the Applicants. If no notice of objection is received in accordance with the terms hereof, the Proposed Pre-Filing Intercompany Claims Resolution Process shall be implemented without any need for a further Order of the Court.

### **CLAIMS OFFICER**

42. **THIS COURT ORDERS** that the selection of any Claims Officer to adjudicate a Disputed Claim shall be subject to mutual agreement between the affected Claimant, the Applicants, and the Monitor, and if such agreement is not possible, Court approval. If mutual agreement cannot be reached between the affected Claimant, the Applicants and the Monitor, the Applicants or the Monitor are hereby authorized to bring a motion to seek an order of the Court appointing a Claims Officer in respect of any and all Disputed Claims. The Applicants shall pay the reasonable professional fees and disbursements of each Claims Officer on presentation and acceptance of invoices from time to time. Each Claims Officer shall be entitled to a reasonable retainer against his or her fees and disbursements which shall be paid upon request by the Applicants, with the consent of the Monitor.

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

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

45. **THIS COURT ORDERS** that the Applicants or the Claimant may appeal the Claims Officer's determination to the Court by serving upon the other (with a copy to the Monitor) and filing with the Court, within ten (10) calendar days of notification of the Claims Officer's

determination of such Claimant's Claim, a notice of motion returnable on a date to be fixed by the Court. If a notice of motion is not filed within such period, then the Claims Officer's determination shall be deemed to be final and binding and shall be such Claimant's Claim.

### **EXCLUDED CLAIMS**

46. **THIS COURT ORDERS** that, for greater certainty, no Person holding an Excluded Claim shall be required to file a Proof of Claim in respect of such Excluded Claim, and such Person shall be unaffected by this Claims Procedure Order in respect of such Excluded Claim.

### **SERVICE AND NOTICE**

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

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

**If to the Applicants:**

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

Attention: Mike Shakra / Aiden Nelms

Email: [shakram@bennettjones.com](mailto:shakram@bennettjones.com) / [nelmsa@bennettjones.com](mailto:nelmsa@bennettjones.com)

**If to the Monitor:**

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

Attention: Jeff Rosenberg / Jodi Porepa

Email: [figr@fticonsulting.com](mailto:figr@fticonsulting.com)

**with copies to:**

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

Attention: Kieran May

Email: [kmay@cassels.com](mailto:kmay@cassels.com)

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

49. **THIS COURT ORDERS** that the posting of materials on the Monitor's Website pursuant to paragraph 18 herein, the publication of the Notice to Claimants and the mailing of the Claims Packages as set out in this Claims Procedure Order shall constitute good and sufficient notice to Claimants of the Pre-Filing Claims Bar Date, the Restructuring Claims Bar

Date and the other deadlines and procedures set forth herein, and that no other form of notice or service need be given or made on any Person, and no other document or material need be served on any Person in respect of the claims procedure described herein.

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

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

## **DIRECTIONS**

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

## **GENERAL**

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

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

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

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

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

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## SCHEDULE “A”

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**”)

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### INSTRUCTION LETTER FOR THE CLAIMS PROCEDURE

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#### I. CLAIMS PROCEDURE

By Order of the Ontario Superior Court of Justice (Commercial List) dated February 22, 2021 (the “**Claims Procedure Order**”), FTI Consulting Canada Inc., in its capacity as the Court-appointed monitor (in such capacity, the “**Monitor**”) of the Applicants has been authorized, with the assistance of the Applicants, to conduct a claims procedure (the “**Claims Procedure**”) with respect to Claims against the Applicants and their present or former Directors and Officers. The Claims Procedure Order governs the filing and determination of all Claims against the Applicants.

Unless otherwise defined, all capitalized terms used herein shall have the meanings ascribed to them in the Claims Procedure Order.

The Claims Procedure Order, the Claims Package, a Proof of Claim form and related materials may be accessed from the Monitor’s Website at <http://cfcanada.fticonsulting.com/figr/>.

This letter provides instructions for responding to or completing the Proof of Claim. Reference should be made to the Claims Procedure Order for a complete description of the Claims Procedure.

The Claims Procedure is intended for any Person with any Claims, other than Excluded Claims, of any kind or nature whatsoever against the Applicants, the Directors or Officers or any of them, whether liquidated, unliquidated, contingent or otherwise. Please review the enclosed material for the complete definitions of “**Claim**”, “**Pre-Filing Claim**”, “**Restructuring Claim**”, “**D&O Claim**”, “**D&O Pre-Filing Claim**”, “**D&O Restructuring Claim**”, and “**Pre-Filing Intercompany Claim**” to which the Claims Procedure applies.

All enquiries with respect to the Claims Procedure should be addressed to the Monitor at: Email: [figr@fticonsulting.com](mailto:figr@fticonsulting.com) or via the telephone hotline (416.649.8128 or 1.844.669.6345), provided however, that formal notices to the Monitor must be delivered as set out below.

## II. FOR CLAIMANTS SUBMITTING A PROOF OF CLAIM

If you believe that you have a Claim (other than an Excluded Claim) that you wish to assert against the Applicants, the Directors or Officers or any of them, you **MUST** file a Proof of Claim with the Monitor.

All Proofs of Claim for (i) Pre-Filing Claims, which for greater certainty are Claims against the Applicants arising prior to the Filing Date of January 21, 2021, (ii) D&O Pre-Filing Claims; and (iii) Pre-Filing Intercompany Claims must be received by the Monitor **before 5:00 p.m. (Eastern Time) on April 6, 2021** (the “**Pre-Filing Claims Bar Date**”).

All Proofs of Claim for (i) Restructuring Claims, which for greater certainty are Claims arising out of the restructuring, disclaimer, resiliation, termination or breach by the Applicants on or after the Filing Date of January 21, 2021 of any contract, lease or other agreement or arrangement whether written or oral, and (ii) D&O Restructuring Claims, must be received by the Monitor **by the later of (i) the Pre-Filing Claims Bar Date and (ii) 5:00 p.m. (Eastern Time) on the date that is thirty (30) days after the date on which the Monitor sends a Claims Package with respect to a Restructuring Claim to a Claimant** (the “**Restructuring Claims Bar Date**”).

Any notice or communication required to be provided or delivered, including for greater certainty any Proof of Claim, shall be in writing in substantially the form, if any, provided for in the Claims Procedure Order and ***will be sufficiently given only if delivered by email***, or if a Claimant is unable to do so, and after notifying the Monitor of the method of delivery via the telephone hotline (416.649.8128 or 1.844.669.6345), by prepaid registered mail, courier, or personal delivery, addressed to:

### **If to the Applicants:**

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

Attention: Mike Shakra / Aiden Nelms

Email: [shakram@bennettjones.com](mailto:shakram@bennettjones.com) / [nelmsa@bennettjones.com](mailto:nelmsa@bennettjones.com)

### **If to the Monitor:**

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

Attention: Jeff Rosenberg / Jodi Porepa

Email: [figr@fticonsulting.com](mailto:figr@fticonsulting.com)

**with copies to:**

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

Attention: Kieran May

Email: [kmay@cassels.com](mailto:kmay@cassels.com)

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

**PROOFS OF CLAIM MUST BE RECEIVED BY THE PRE-FILING CLAIMS BAR DATE OR THE RESTRUCTURING CLAIMS BAR DATE, AS APPLICABLE, OR THE APPLICABLE CLAIM WILL BE FOREVER BARRED AND EXTINGUISHED.** If you are required to file a Proof of Claim pursuant to the Claims Procedure but do not file a Proof of Claim in respect of a Claim by the Pre-Filing Claims Bar Date or the Restructuring Claims Bar Date, as applicable, you shall not be entitled to vote at any Meeting regarding a Plan or participate in any distribution under a Plan or otherwise in respect of such Claims.

All Claims denominated in foreign currency shall be converted to Canadian dollars at the Bank of Canada daily average exchange rate in effect on the Filing Date of January 21, 2021 (USD 1 : CAD 1.2627).

Additional Proof of Claim forms can be obtained by contacting the Monitor at the telephone number and address indicated above and providing particulars as to your name, address and facsimile number or email mail address. In addition, Proofs of Claim and related materials may be accessed from the Monitor's Website at <http://cfcanada.fticonsulting.com/figr/>.

DATED at Toronto, Ontario this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

FTI Consulting Canada Inc.,  
solely in its capacity as Monitor of  
the Applicants and not  
in its personal capacity.

## SCHEDULE “B”

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”)

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### NOTICE LETTER FOR THE CLAIMS PROCEDURE

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#### RE: NOTICE OF CLAIMS PROCEDURE, PRE-FILING CLAIMS BAR DATE & RESTRUCTURING CLAIMS BAR DATE

This notice is being published pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) dated February 22, 2021 (the “**Claims Procedure Order**”), in the Applicants’ proceedings under the *Companies’ Creditors Arrangement Act*, R.S.C., 1985, c. C-36, as amended. Pursuant to the Initial Order dated January 21, 2021, FTI Consulting Canada Inc. was appointed as monitor of the Applicants (in such capacity, the “**Monitor**”), and pursuant to the Claims Procedure Order will, with the assistance of the Applicants, conduct a claims procedure (the “**Claims Procedure**”) with respect to Claims against the Applicants and their present and former Directors and Officers. Additionally, the Monitor is required to send Claims Packages to, among others, the Applicants’ Known Claimants. All capitalized terms not defined herein shall have the meanings ascribed to them in the Claims Procedure Order.

The Claims Procedure Order, the Claims Package, a Proof of Claim and related materials may be accessed from the Monitor’s Website at <http://cfcanada.fticonsulting.com/figr/>.

#### I. SUBMISSION OF A PROOF OF CLAIM

All persons wishing to assert a Claim (other than an Excluded Claim) against the Applicants or their Directors or Officers **MUST** file a Proof of Claim with the Monitor.

**The Pre-Filing Claims Bar Date is 5:00 p.m. (Eastern Time) on April 6, 2021** (the “**Pre-Filing Claims Bar Date**”). Proofs of Claim in respect of Pre-Filing Claims, including Pre-Filing Intercompany Claims and D&O Pre-Filing Claims must be completed and filed with the Monitor on or before the Pre-Filing Claims Bar Date.

**The Restructuring Claims Bar Date is the later of (i) the Pre-Filing Claims Bar Date and (ii) 5:00 p.m. (Eastern Time) on the date that is thirty (30) days after the date on which the Monitor sends a Claims Package with respect to a Restructuring Claim** (the “**Restructuring Claims Bar Date**”). Proofs of Claim in respect of Restructuring Claims and D&O Restructuring

Claims must be completed and filed with the Monitor on or before the Restructuring Claims Bar Date.

Any notice or communication required to be provided or delivered, including for greater certainty any Proof of Claim, shall be in writing in the substantially the form, if any, provided for in the Claims Procedure Order and *will be sufficiently given only if delivered by email*, or if a Claimant is unable to do so, and after notifying the Monitor of the method of delivery via the telephone hotline (416.649.8128 or 1.844.669.6345), by prepaid registered mail, courier, or personal delivery, addressed to:

**If to the Applicants:**

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

Attention: Mike Shakra / Aiden Nelms

Email: [shakram@bennettjones.com](mailto:shakram@bennettjones.com) / [nelmsa@bennettjones.com](mailto:nelmsa@bennettjones.com)

**If to the Monitor:**

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

Attention: Jeff Rosenberg / Jodi Porepa

Email: [figr@fticonsulting.com](mailto:figr@fticonsulting.com)

**with copies to:**

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

Attention: Kieran May

Email: [kmay@cassels.com](mailto:kmay@cassels.com)

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

**PROOFS OF CLAIM MUST BE RECEIVED BY THE MONITOR BY THE PRE-FILING CLAIMS BAR DATE OR RESTRUCTURING CLAIMS BAR DATE, AS APPLICABLE, OR THE CLAIM WILL BE FOREVER BARRED AND EXTINGUISHED.** If you are required to file a Proof of Claim pursuant to the Claims Procedure but do not file a Proof of Claim in respect of a Claim by the Pre-Filing Claims Bar Date or the Restructuring Claims Bar Date, as applicable, you shall not be entitled to vote at any Meeting regarding a Plan or participate in any distribution under a Plan, if any, or otherwise in respect of such Claims.

Reference should be made to the enclosed material for the complete definitions of “**Claim**”, “**Pre-Filing Claim**”, “**Restructuring Claim**”, “**D&O Claim**”, “**D&O Pre-Filing Claim**”, “**D&O Restructuring Claim**”, and “**Pre-Filing Intercompany Claim**” to which the Claims Procedure applies.

### **III. MONITOR CONTACT INFORMATION**

All enquiries with respect to the Claims Procedure should be addressed to the Monitor at: Email: [figr@fticonsulting.com](mailto:figr@fticonsulting.com) or via the telephone hotline (416.649.8128 or 1.844.669.6345), provided however, that formal notices to the Monitor must be delivered as set out above.

DATED at Toronto, Ontario this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

FTI Consulting Canada Inc.,  
solely in its capacity as Monitor of  
the Applicants and not  
in its personal capacity.

**SCHEDULE “C”**

**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”)

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**PROOF OF CLAIM**

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Please read carefully the enclosed Instruction Letter for completing this Proof of Claim. All capitalized terms not defined herein have the meaning ascribed to them in the Claims Procedure Order dated February 22, 2021.

**I. PARTICULARS OF CLAIMANT:**

1. Full Legal Name of Claimant:

\_\_\_\_\_ (the “Claimant”)

2. Full Mailing Address of the Claimant:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. Telephone Number: \_\_\_\_\_

4. E-Mail Address: \_\_\_\_\_

5. Facsimile Number: \_\_\_\_\_

6. Attention (Contact Person): \_\_\_\_\_

7. Have you acquired this Claim by assignment?

Yes:  No:  (if yes, attach documents evidencing assignment)

If Yes, Full Legal Name of Original Claimant(s):

**II. PROOF OF CLAIM:**

1. I, \_\_\_\_\_  
(name of Claimant or Representative of the Claimant), of \_\_\_\_\_

\_\_\_\_\_ do hereby certify:  
(city and province)

(a) that I [check (✓) one]

am the Claimant; OR

am \_\_\_\_\_ (state position or title) of  
\_\_\_\_\_  
(name of Claimant)

(b) that I have knowledge of all the circumstances connected with the Claim referred to below;

(c) that complete documentation in support of the Claim referred to below is attached; and

(d) that the Applicants and/or one or more of the Directors or Officers of the Applicants were and still are indebted to the Claimant as follows:<sup>1</sup>

**III. SUBMISSION OF A PRE-FILING CLAIM PROOF OF CLAIM**

<b>Debtor</b>	<b>Pre-Filing<sup>2</sup> Claim Amount</b>	<b>Whether Claim is Secured, Priority Unsecured, or Unsecured</b>	<b>Value of Security Held, if any:</b>
FIGR Brands, Inc.			
Directors and Officers of FIGR Brands, Inc.			
_____ (insert names above)			

<sup>1</sup> Claims in a foreign currency are to be converted to Canadian Dollars at the Bank of Canada daily average exchange rate in effect on January 21, 2021.

<sup>2</sup> Pre-Filing Claims including Pre-Filing Intercompany Claims



<b>Debtor</b>	<b>Pre-Filing<sup>2</sup> Claim Amount</b>	<b>Whether Claim is Secured, Priority Unsecured, or Unsecured</b>	<b>Value of Security Held, if any:</b>
FIGR Norfolk Inc.			
Directors and Officers of FIGR Norfolk Inc.  _____ (insert names above)			
Canada's Island Garden Inc.			
Directors and Officers of Canada's Island Garden Inc.  _____ (insert names above)			

**IV. SUBMISSION OF A RESTRUCTURING CLAIM PROOF OF CLAIM**

<b>Debtor</b>	<b>Restructuring Claim Amount</b>	<b>Whether Claim is Secured, Priority Unsecured, or Unsecured</b>	<b>Value of Security Held, if any:</b>
FIGR Brands, Inc.			
Directors and Officers of FIGR Brands, Inc.  _____ (insert names above)			
FIGR Norfolk Inc.			

Directors and Officers of FIGR Norfolk Inc.  <hr/> (insert names above)			
Canada's Island Garden Inc.			
Directors and Officers of Canada's Island Garden Inc.  <hr/> (insert names above)			

**V. PARTICULARS OF CLAIM**

The particulars of the undersigned’s total Claim (including Pre-Filing Claims, Restructuring Claims and D&O Claims) are attached.

*(Provide full particulars of the Claim and supporting documentation, including amount, description of transaction(s) or agreement(s) or legal breach(es) giving rise to the Claim, name of any guarantor(s) which has guaranteed the Claim, particulars and copies of any security and amount of Claim allocated thereto, date and number of all invoices, particulars of all credits, discounts, etc. claimed. If a Claim is made against any Directors or Officers, specify the applicable Directors or Officers and the legal basis for the Claim against each of them.)*

**VI. FILING OF CLAIM**

For Pre-Filing Claims (including Pre-Filing Intercompany Claims and D&O Pre-Filing Claims), this Proof of Claim **MUST** be received by the Monitor **before 5:00 p.m. (Eastern Time) on April 6, 2021** (the “**Pre-Filing Claims Bar Date**”).

For Restructuring Claims (including D&O Restructuring Claims), this Proof of Claim **MUST** be received by the Monitor **before the later of: (i) the Pre-Filing Claims Bar Date and (ii) 5:00 p.m. (Eastern Time) on the date that is thirty 30 days after the date on which the Monitor sends a Claims Package with respect to a Restructuring Claim** (the “**Restructuring Claims Bar Date**”).

In either case, this Proof of Claim shall be delivered in writing and ***will be sufficiently given only if delivered by email***, or you unable to do so, and after notifying the Monitor of the method of delivery via the telephone hotline (416.649.8128 or 1.844.669.6345), by prepaid registered mail, courier, or personal delivery, addressed to:

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

Attention: Jeff Rosenberg / Jodi Porepa

Email: [figr@fticonsulting.com](mailto:figr@fticonsulting.com)

**with copies to:**

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

Attention: Kieran May

Email: [kmay@cassels.com](mailto:kmay@cassels.com)

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

**Failure to file your Proof of Claim as directed by the Pre-Filing Claims Bar Date or Restructuring Claims Bar Date, as applicable, will result in your Claim being extinguished and forever barred and in you being prevented from making or enforcing a Claim against the Applicants or any of its present or former Directors and Officers.**

DATED at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Signature of Claimant

**SCHEDULE “D”**

**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”)

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**NOTICE OF REVISION OR DISALLOWANCE**

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**TO: [name and address of Claimant]**

**PLEASE TAKE NOTICE** that this Notice of Revision or Disallowance is being sent pursuant to an order of the Ontario Superior Court of Justice (Commercial List) dated February 22, 2021 (the “**Claims Procedure Order**”). All capitalized terms not otherwise defined in this Notice of Revision or Disallowance shall have the meaning ascribed to them in the Claims Procedure Order, which is available on the Monitor’s Website at <http://cfcanada.fticonsulting.com/figr/>.

The Monitor has reviewed your Proof of Claim dated \_\_\_\_\_ 2021, and has revised or disallowed your Claim for the following reasons:

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Subject to further dispute by you in accordance with the provisions of the Claims Procedure Order, your Claim will be as follows:

<b>Claim Against</b>	<b>Type of Claim per Proof of Claim</b>	<b>Amount of Claim per Proof of Claim</b>	<b>Type of Claim per this Notice of Revision or Disallowance</b>	<b>Amount of Claim per this Notice of Revision or Disallowance</b>
[Insert name of appropriate party]	[Pre-Filing Claim/ Restructuring Claim/D&O Claim]  [Unsecured Claim/ Unsecured Priority Claim/ Secured Claim]	CA\$	[Pre-Filing Claim/ Restructuring Claim/D&O Claim]  [Unsecured Claim/ Unsecured Priority Claim / Secured Claim]	CA\$

**If you intend to dispute this Notice of Revision or Disallowance, you must by no later than 5:00 p.m. (Eastern Time) on the day that is fourteen (14) Calendar Days after the date the Monitor sends this Notice of Revision or Disallowance, deliver a Notice of Dispute of Revision or Disallowance, a form of which may be accessed from the Monitor's Website at <http://cfcanada.fticonsulting.com/figr/>, in writing which *will be sufficiently given only if delivered by email*, or if you are unable to do so, and after notifying the Monitor of the method of delivery via the telephone hotline (416.649.8128 or 1.844.669.6345), by prepaid registered mail, courier, or personal delivery, addressed to:**

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

Attention: Jeff Rosenberg / Jodi Porepa  
Email: [figr@fticonsulting.com](mailto:figr@fticonsulting.com)

**with copies to:**

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

Email: [kmay@cassels.com](mailto:kmay@cassels.com)

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

Any Claimant who fails to deliver a Notice of Dispute of Revision or Disallowance by the date and time set out above shall be deemed to accept the classification, nature and the amount of its Claim as set out in this Notice of Revision or Disallowance and the Claimant will have those rights set out in the Claims Procedure Order with respect to such Claim.

If you do not deliver a Notice of Dispute of Revision or Disallowance by the deadline stated above, the classification, amount and/or nature of your Claim(s) shall be deemed to be as set out herein and all further rights to dispute the same shall be forever extinguished and barred.

**If you agree with this Notice of Revision or Disallowance**, there is no need to file anything further with the Monitor.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

FTI Consulting Canada Inc.,  
solely in its capacity as Monitor of  
the Applicants and not  
in its personal capacity.

**SCHEDULE “E”**

**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”)

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**NOTICE OF DISPUTE OF REVISION OR DISALLOWANCE**

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Capitalized terms not defined herein have the meaning ascribed to them in the Order of the Ontario Superior Court of Justice (Commercial List) dated February 22, 2021 (the “**Claims Procedure Order**”).

**I. PARTICULARS OF CLAIMANT**

Full Legal Name of Claimant:

\_\_\_\_\_

Full Mailing Address of Claimant:

\_\_\_\_\_

Telephone Number:

\_\_\_\_\_

Email Address:

\_\_\_\_\_

Attention (Contact Person):

\_\_\_\_\_

Have you acquired this Claim by assignment?

Yes:       No:       (if yes, attach documents evidencing assignment)

If Yes, Full Legal Name of Original Claimant(s): \_\_\_\_\_

**II. DISPUTE OF CLAIM SET OUT IN NOTICE OF REVISION OR DISALLOWANCE**

The Claimant has received a Notice of Revision or Disallowance and hereby disputes the classification, amount and/or nature of the Claim set out in the Notice of Revision or Disallowance and asserts the Claim(s) as set out in the following table:

<b>Claim Against</b>	<b>Classification of Claim</b>	<b>Nature of Claim in Notice of Revision or Disallowance</b>	<b>Amount of Claim in Notice of Revision or Disallowance</b>	<b>Nature of Claim as per this Notice of Dispute</b>	<b>Amount of Claim as per this Notice of Dispute</b>
<b>FIGR Brands, Inc. or [the Name(s) of the Director(s) or Officer(s)]</b>	[Pre-Filing Claim / Restructuring Claim/D&O Claim]	[Unsecured Claim / Unsecured Priority Claim / Secured Claim]	[Insert amount of Claim]	[Unsecured Claim / Unsecured Priority Claim / Secured Claim]	[Insert amount of Claim]
<b>FIGR Norfolk Inc. or [the Name(s) of the Director(s) or Officer(s)]</b>	[Pre-Filing Claim / Restructuring Claim/D&O Claim]	[Unsecured Claim / Unsecured Priority Claim / Secured Claim]	[Insert amount of Claim]	[Unsecured Claim / Unsecured Priority Claim / Secured Claim]	[Insert amount of Claim]
<b>Canada's Island Garden Inc. or [the Name(s) of the Director(s) or Officer(s)]</b>	[Pre-Filing Claim / Restructuring Claim/D&O Claim]	[Unsecured Claim / Unsecured Priority Claim / Secured Claim]	[Insert amount of Claim]	[Unsecured Claim / Unsecured Priority Claim / Secured Claim]	[Insert amount of Claim]

**III. REASONS FOR DISPUTE**

Provide full particulars below as to the basis for the Claimant’s dispute of the Notice of Revision or Disallowance and provide supporting documentation. This includes, without limitation, amounts, description of transaction(s) or agreement(s) giving rise to the Claim, the date and number of all invoices and supporting documentation, and particulars of all credits, discounts, rebates and similar items claimed. The particulars provided must support the value of the Claim as stated by the Claimant in the table above.

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DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Signature of Claimant or its Authorized Signatory

**If in response to a Notice of Revision or Disallowance**, this Notice of Dispute of Revision or Disallowance **MUST** be delivered to the Monitor at the below address such that it is received by the Monitor by no later than **5:00 p.m. (Eastern Time) on the day that is fourteen (14) Calendar Days after the date the Monitor sends the Notice of Revision or Disallowance.**

This Notice of Dispute of Revision or Disallowance must be delivered in writing and *will be sufficiently given only if delivered by email*, or if you are unable to do so, and after notifying the Monitor of the method of delivery via the telephone hotline (416.649.8128 or 1.844.669.6345), by prepaid registered mail, courier, or personal delivery, addressed to:

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

Attention: Jeff Rosenberg / Jodi Porepa  
Email: [figr@fticonsulting.com](mailto:figr@fticonsulting.com)

**with copies to:**

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

Email: [kmay@cassels.com](mailto:kmay@cassels.com)

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

If a completed Notice of Dispute of Revision or Disallowance in respect of the Notice of Revision or Disallowance is not received by the Monitor by the dates set out in the Claims Procedure Order and described herein, the Claimant shall be forever barred from disputing the classification, amount or nature of the Claim and any Claim of a different classification or nature or in excess of the amount specified in the Notice of Revision or Disallowance shall be forever barred and extinguished. **IF A NOTICE OF DISPUTE OF REVISION OR DISALLOWANCE IS NOT RECEIVED BY THE MONITOR WITHIN THE PRESCRIBED TIME PERIOD, THE CLAIM AS SET OUT IN THE NOTICE OF REVISION OR DISALLOWANCE SENT TO YOU WILL BE DEEMED TO BE YOUR CLAIM AND WILL BE FINAL AND BINDING.**

**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

**CLAIMS PROCEDURE ORDER**

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

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

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

Lawyers for the Applicants

# TAB 4

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR. ) MONDAY, THE 22<sup>nd</sup>  
 )  
JUSTICE HAINEY ) DAY OF FEBRUARY, 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**")

**ANCILLARY ORDER  
(KERP, Stay Extension & Monitor 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*, approving: (i) the KERP (as defined below); (ii) an extension of the Stay Period; and (iii) the Monitor's reports, activities and fees 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 February 16, 2021 (the "**February 16 Devon Affidavit**"), the Second Report of FTI Consulting Canada Inc. (the "**Second Report**"), in its capacity as Monitor of the Applicants (the "**Monitor**"), filed, and on hearing the submissions of counsel for the Applicants, counsel for the Monitor, counsel for Alliance One Tobacco Canada Inc. ("**Alliance**"), 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 February 16, 2021;

**SERVICE AND DEFINITIONS**

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS 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 February 16 Devon Affidavit, as applicable.

**KERP**

3. **THIS COURT ORDERS** that the key employee retention plan (the "**KERP**") described in the February 16 Devon Affidavit, the details of which are contained in Confidential Appendix [●] to the Second Report (the "**Confidential Appendix**"), is hereby approved and the Applicants are authorized and directed to make payments in accordance with the terms thereof.
4. **THIS COURT ORDERS** that payments made by the Applicants pursuant to this Order in respect of the KERP do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

**SEALING**

5. **THIS COURT ORDERS** that the Confidential Appendix is hereby sealed and shall not form part of the public record until further order of the Court.

**EXTENSION OF THE STAY PERIOD**

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

**APPROVAL OF THE MONITOR'S REPORTS, ACTIVITIES AND FEES**

7. **THIS COURT ORDERS** that the Pre-Filing Report of the Monitor dated January 21, 2021, the First Report, the Second Report and the activities of the Monitor 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.

8. **THIS COURT ORDERS** that the fees and disbursements of the Monitor and its counsel, as set out in the Second Report, be and are hereby approved.

**GENERAL**

9. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the 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.

10. **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.

11. **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 CANADA'S ISLAND GARDEN INC.**

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

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

Proceedings Commenced in Toronto

**ANCILLARY ORDER**

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

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

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

Lawyers for the Applicants



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

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

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

Proceedings Commenced in Toronto

**MOTION RECORD**

**BENNETT JONES LLP**

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

**Sean Zweig** (LSO# 57307I)

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