

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

THE HONOURABLE MR.) THURSDAY, THE 10th
)
JUSTICE MCEWEN) DAY OF JUNE, 2021

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

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

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



APPROVAL AND VESTING ORDER

THIS MOTION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, for an Order approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale (the "**Sale Agreement**") between FIGR Norfolk Inc. (the "**Vendor**") and 11897985 Canada Inc. (dba) BEROXFOOD North America dated May 10, 2021, attached as Exhibit "F" to the Affidavit of Michael Devon sworn June 2, 2021 (the "**Devon Affidavit**"), and vesting in Woodside Greens Business Association Inc., or its designee (the "**Purchaser**"), all of the Vendor's right, title and interest in and to the assets described in the Sale Agreement (the "**Purchased Assets**"), was heard this day via videoconference due to the COVID-19 pandemic.

ON READING the Motion Record of the Applicants and the Fifth Report of FTI Consulting Canada Inc. in its capacity as Monitor of the Applicants (the "**Monitor**") and on hearing the submissions of counsel for the Applicants, the Monitor, the Purchaser, Alliance One Tobacco Canada Inc. (the "**DIP Lender**") and for those other parties appearing as indicated by

the counsel slip, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Aiden Nelms sworn;

SERVICE

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

DEFINED TERMS

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

APPROVAL AND VESTING

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

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

21, 2021, as amended and restated by the Order of the Honourable Justice Hailey dated January 29, 2021; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on Schedule "B" hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule "C" hereto) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

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

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

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

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

9. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Monitor is authorized and permitted

to disclose and transfer to the Purchaser all human resources and payroll information in the Vendor's records pertaining to the Vendor's past and current employees. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Vendor.

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

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

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

GENERAL

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

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

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



Schedule "A" – Form of Monitor's Certificate

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

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

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

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

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

MONITOR'S CERTIFICATE

RECITALS

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

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

THE MONITOR CERTIFIES the following:

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

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

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

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

Per: _____

Name:

Title:

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

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

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

(unaffected by the Vesting Order)

IN 50190-0069 (LT):

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

PIN 50190-0090 (LT):

4. NIL;

PIN 50190-0092 (LT):

5. NIL;

PIN 50190-0093 (LT):

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

PIN 50190-0142 (LT):

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

PIN 50190-0155 (LT):

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

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

50190-0157 (LT):

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

Schedule "D" – Legal Description of the Real Property

PROPERTY DESCRIPTION:

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

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

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

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

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

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

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

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

10 June 21

The Order shall go as per the draft filed and signed.
The Monitor supports the relief sought and no one opposes.
The Soundair principles have been met. The terms of the sale are fair and reasonable.



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

Proceedings Commenced in Toronto

NORFOLK APPROVAL AND VESTING 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