

**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

**FACTUM OF THE APPLICANTS
(CIG Approval and Vesting Order, Norfolk Approval and Vesting Order
& Ancillary Order)**

June 7, 2021

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FACTUM OF THE APPLICANT

PART I: OVERVIEW

1. FIGR Brands, Inc. ("**FIGR Brands**"), 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**") are seeking, under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"):

- (a) an order (the "**CIG Approval and Vesting Order**"), among other things:
 - (i) approving the sale transaction (the "**CIG Transaction**") contemplated by a subscription and share purchase agreement (the "**CIG Subscription and Share Purchase Agreement**") between FIGR Brands, as vendor (in such capacity, the "**CIG Vendor**"), CIG, as the purchased entity (in such capacity, the "**Purchased Entity**") and 102604 P.E.I. Inc., as the purchaser (the "**CIG Purchaser**" or the "**PEI Group**"), and vesting in the CIG Purchaser all of the CIG Vendor's right, title and interest in and to all issued and outstanding shares in the Purchased Entity (the "**Purchased Shares**") along with the Transferred Assets (as defined in the CIG Subscriptions and Share Purchase Agreement, and together with the Purchased Shares, the "**CIG Purchased Goods**");
 - (ii) adding a subsidiary of the CIG Vendor, namely 1307849 B.C. Ltd., incorporated under the laws of British Columbia ("**Residual Co**") as an Applicant in these CCAA Proceedings (as defined below) in order to effectuate the CIG Transaction;
 - (iii) removing CIG as an Applicant in these CCAA Proceedings and deeming it to be released from the purview of the Initial Order and all other orders of the Court granted in these CCAA Proceedings;
 - (iv) transferring and vesting the Excluded Liabilities, the Excluded Assets and Excluded Contracts (each as defined in the CIG Subscription and Share Purchase Agreement) in and to Residual Co on or before closing such that the Excluded Liabilities shall become liabilities of Residual Co and not liabilities of the Vendor or the Purchased Entity.

- (b) an order (the "**Norfolk Approval and Vesting Order**", and together with the CIG Approval and Vesting Order, the "**Approval and Vesting Orders**"), among other things, approving the sale transaction (the "**Norfolk Transaction**", and together with the CIG Transaction, the "**Transactions**") contemplated by the asset purchase agreement between FIGR Norfolk, as vendor (in such capacity, the "**Norfolk Vendor**"), and 11897985 Canada Inc. (dba) BEROXFOOD North America, as purchaser (the "**Norfolk Purchaser**"), dated May 10, 2021 (the "**Norfolk Sale Agreement**" and together with the CIG Subscription and Share Purchase Agreement, the "**Sale Agreements**"), and vesting in the Norfolk Purchaser, or as it may direct in accordance with the Norfolk Sale Agreement, all of the Norfolk Vendor's right, title and interest in and to the property described in the Norfolk Sale Agreement (the "**Norfolk Purchased Assets**"); and
- (c) an order (the "**Ancillary Order**"), among other things:
 - (i) abridging the time for service of the motion record returnable June 9, 2021 and dispensing with service on any person other than those served;
 - (ii) extending the Stay Period (as defined in the Amended and Restated Initial Order (as defined below)) until and including September 3, 2021;
 - (iii) authorizing the execution by the Applicants of the second amendment to the DIP Commitment Letter (as defined in the Amended and Restated Initial Order) dated May 31, 2021 (the "**Second DIP Amendment**"), which will, among other things, increase the maximum borrowing available under the DIP Loan up to \$16,000,000 (which is an increase of \$3,000,000);
 - (iv) authorizing an increase to the DIP Lender's Charge (as defined in the Amended and Restated Initial Order) up to a maximum amount of \$16,000,000 (plus interest and costs);
 - (v) authorizing and empowering the Applicants (or the Monitor on behalf of the Applicants) to make, or to cause to be made, distributions from time to time from available funds or proceeds at the time, or in the future, held or received by the

Applicants (or the Monitor on behalf of the Applicants) to the DIP Lender (as defined below) in repayment of the obligations secured by the DIP Lender's Charge;

- (vi) approving the Proposed Pre-Filing Intercompany Claims Resolution Process (as defined below);
- (vii) sealing the Confidential Exhibits and the Confidential Appendix (each as defined below);
- (viii) approving the Fifth Report of the Monitor, to be filed (the "**Fifth Report**"), and the activities of the Monitor described therein; and
- (ix) approving the fees and disbursements of the Monitor and its counsel as set out in the affidavits of Jeffrey Rosenberg and Ryan Jacobs, respectively attached to the Fifth Report.

PART II: FACTS

2. The facts underlying this motion are more fully set out in the affidavit of Michael Devon sworn June 2, 2021 (the "**June 2 Affidavit**") and the Fifth Report.¹ All capitalized terms used but not defined herein have the meanings ascribed to them in the June 2 Affidavit.

A. Background to the Need for CCAA Protection and the Granting of the Initial Order

3. Since commencing operations, the Norfolk Facility and the CIG Facility have been cash flow negative. Both facilities are dependent on the indirect subsidiaries of New Pyxus International for direct and indirect funding.²

4. As a result, the Applicants urgently required the breathing space and stability afforded by the CCAA to run a sale process while maintaining business operations in the ordinary course and in compliance with the cannabis regulatory regime, with a view to maximizing stakeholder value. To that end, on January 21, 2021, the Applicants sought and obtained an initial order (the "**Initial Order**").

¹ Affidavit of Michael Devon sworn June 2, 2021 [**June 2 Affidavit**]; Fifth Report of the Monitor dated June 4, 2021 [**Fifth Report**].

² June 2 Affidavit, *ibid* at para 2.

5. Among other things, the Initial Order:
 - (a) granted a stay of proceedings until January 31, 2021 (the "**Stay Period**");
 - (b) appointed FTI Consulting Canada Inc. as monitor of the Applicants (in such capacity, the "**Monitor**");
 - (c) approved the Applicants' ability to borrow under a debtor-in-possession credit facility (the "**DIP Loan**"); and
 - (d) granted the following charges (collectively, the "**Charges**") over the Applicants' Property:
 - (i) the Administration Charge up to a maximum amount of \$600,000; (ii) the Directors' Charge up to a maximum amount of \$2,000,000; (iii) the DIP Lender's Charge up to a maximum amount of \$2,500,000; and (iv) the Intercompany Charge.³
6. On January 29, 2021, the Applicants obtained an amended and restated initial order (the "**Amended and Restated Initial Order**") which, among other things: (i) elevated the priority of the Charges ahead of all Encumbrances; (ii) increased the Directors' Charge and the DIP Lender's Charge to the maximum amounts of \$2,700,000 and \$8,000,000 (plus interest and costs), respectively; and (iii) extended the Stay Period to and including March 31, 2021.⁴
7. On January 29, 2021, the Applicants also sought and obtained the SISP Approval Order approving a sale and investor solicitation process (the "**SISP**").⁵
8. On February 22, 2021, the Court granted an order (the "**Claims Procedure Order**") which, among other things, approved a process for the solicitation, identification, determination and adjudication of claims against the FIGR Group and their present and former Directors and Officers (the "**Claims Procedure**"). The Claims Procedure explicitly excluded Employee Claims.⁶
9. On February 22, 2021, the Court also granted an Ancillary Order which, among other things, approved a key employee retention plan, extended the Stay Period until April 30, 2021 and approved the fees and expenses of the Monitor and its counsel, Cassels Brock & Blackwell LLP

³ June 2 Affidavit, *ibid* at para 9; Fifth Report, *supra* note 1 at para 2.

⁴ June 2 Affidavit, *ibid* at para 10; Fifth Report, *ibid* at para 3(a).

⁵ June 2 Affidavit, *ibid* at para 12; Fifth Report, *ibid* at para 3(b).

⁶ June 2 Affidavit, *ibid* at para 13; Fifth Report, *ibid* at para 4(a).

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

10. On March 31, 2021, the Court granted an order (the "**DIP Amendment Order**") which, among other things, authorized the execution by the Applicants of the first amendment to the DIP Commitment Letter. Among other things, the DIP Commitment Letter increased the maximum borrowing available under the DIP Loan up to \$13,000,000 (which was an increase of \$5,000,000). The DIP Amendment Order also authorized a corresponding increase to the DIP Lender's Charge and approved the fees and expenses of the Monitor and Cassels for the periods from February 7, 2021 to March 14, 2021 and February 13, 2021 to March 14, 2021, respectively.⁸

11. On April 30, 2021, the Court granted an order (the "**Employee Claims Procedure Order**") which, among other things, established a process (the "**Employee Claims Process**") for the identification, determination and adjudication of Employee Claims against the FIGR Group and their current and former Directors and Officers.⁹

12. On April 30, 2021, the Court also granted an order (the "**April Stay Extension and Fee Approval Order**") which, among other things: (i) extended the Stay Period until and including June 30, 2021; (ii) approved the Fourth Report and the activities of the Monitor described therein; and (iii) approved the fees and disbursements of the Monitor and its counsel as set out in the Fourth Report.¹⁰

B. The SISP

13. The Monitor, together with its affiliate FTI Capital Advisors – Canada ULC, and the Applicants have taken steps to advance the SISP in accordance with the timelines set out in the SISP. The SISP is now complete and has culminated in the Applicants entering into the Sale Agreements.¹¹

⁷ June 2 Affidavit, *ibid* at para 14; Fifth Report, *ibid* at para 4(b).

⁸ June 2 Affidavit, *ibid* at para 15; Fifth Report, *ibid* at para 5.

⁹ June 2 Affidavit, *ibid* at para 16; Fifth Report, *ibid* at para 6(a).

¹⁰ June 2 Affidavit, *ibid* at para 17; Fifth Report, *ibid* at para 6(b).

¹¹ June 2 Affidavit, *ibid* at para 23; Fifth Report, *ibid* at para 15.

14. The Monitor solicited interest in the SISP from in excess of 250 Known Potential Bidders by sending each a copy of the Teaser Letter and NDA. Of the approximately 250 Known Potential Bidders provided with a copy of the Teaser Letter, 32 executed an NDA to engage in additional due diligence as Phase 1 Qualified Bidders.¹²

15. Following the Phase 1 Bid Deadline, the Monitor, in consultation with the Applicants, assessed the Qualified LOIs to determine whether each Phase 1 Qualified Bidder constituted a Phase 2 Qualified Bidder. Following determination by the Monitor, in consultation with the Applicants and the DIP Lender, a number of Phase 1 Qualified Bidders who submitted a Qualified LOI became Phase 2 Qualified Bidders.¹³

16. The Monitor and the Applicants then: (a) reviewed and evaluated each Qualified Bid, (b) negotiated certain Qualified Bids amongst the Applicants, the Monitor and the applicable Phase 2 Qualified Bidder; and (c) ultimately identified the Qualified Bids submitted by the PEI Group and the Norfolk Purchaser as the highest and best bids that would maximize value for the FIGR Group's stakeholders, and provided the highest likelihood to proceed to a successful Closing for certain of the Property and the Business related to FIGR Brands, CIG and FIGR Norfolk, respectively.¹⁴

C. The CIG Subscription and Share Purchase Agreement

17. The CIG Subscription and Share Purchase Agreement is the product of the Monitor and the FIGR Group's extensive efforts to solicit interest in the Business and Property in accordance with the SISP, with a view to maximizing value for the FIGR Group's stakeholders. The SISP was designed to be flexible and inclusive of creditor consultation. The CIG Subscription and Share Purchase Agreement is part of the culmination of these decisions and efforts as well as fulsome consultation with creditors.¹⁵

18. Proceeding by way of reverse vesting structure as contemplated by the CIG Subscription and Share Purchase Agreement and the CIG Approval and Vesting Order has the benefit of facilitating the continuation of the valuable Cannabis Licences, which the Purchased Entity would

¹² June 2 Affidavit, *ibid* at para 26.

¹³ June 2 Affidavit, *ibid* at para 30; Fifth Report, *supra* note 1 at para 16.

¹⁴ June 2 Affidavit, *ibid* at para 35; Fifth Report, *ibid* at para 19.

¹⁵ June 2 Affidavit, *ibid* at para 44; Fifth Report, *ibid* at para 22.

not otherwise have the ability to transfer in the ordinary course. The reverse vesting structure contemplated by the CIG Transaction has been effectively implemented in other similar transactions for licensed cannabis companies and has the effect of minimizing regulatory hurdles and significantly decreasing closing uncertainty.¹⁶

19. The CIG Subscription and Share Purchase Agreement provides the best possible outcome for creditors of the Applicants in the circumstances given that, among other things:

- (a) the CIG Subscription and Share Purchase Agreement is the product of a broad, transparent and fair Court-approved SISP, the efforts of the FIGR Group and the Monitor to consummate value-maximizing transactions, and consultation with the DIP Lender;
- (b) the CIG Subscription and Share Purchase Agreement is the highest and best offer obtained for the CIG Purchased Goods in the SISP to maximize value for FIGR Group's stakeholders;
- (c) the consideration to be paid under the CIG Subscription and Share Purchase Agreement is entirely composed of cash;
- (d) the CIG Subscription and Share Purchase Agreement provides the greatest certainty to successfully close of the offers obtained for the CIG Purchased Goods;
- (e) the FIGR Group's entrance into the CIG Subscription and Share Purchase Agreement is supported by the Monitor and the DIP Lender;
- (f) in addition to the granting of the CIG Approval and Vesting Order, closing of the CIG Transaction is based on customary conditions and requisite approvals and is not predicated on onerous closing obligations; and

¹⁶ June 2 Affidavit, *ibid* at para 45; Fifth Report, *ibid* at para 31(l).

- (g) the CIG Transaction is notably also not conditioned on any financing being obtained or diligence being performed by the PEI Group, or any specific treatment of the Minority Shareholders.¹⁷

D. The Norfolk Sale Agreement

20. The Norfolk Sale Agreement is the product of the Monitor and the FIGR Group's extensive efforts to solicit interest in the Business and Property in accordance with the SISP, with a view to maximizing value for the FIGR Group's stakeholders.¹⁸

21. The Norfolk Sale Agreement provides the best possible outcome for their creditors in the circumstances given that, among other things:

- (a) the Norfolk Sale Agreement is the product of a broad, transparent and fair Court-approved SISP, the efforts of the FIGR Group and the Monitor to consummate value-maximizing transactions, and consultation with the DIP Lender;
- (b) the Norfolk Sale Agreement is the highest and best offer obtained for the Norfolk Purchased Assets in the SISP;
- (c) the FIGR Group's entrance into the Norfolk Sale Agreement is supported by the Monitor and the DIP Lender;
- (d) in addition to the granting of the Norfolk Approval and Vesting Order, closing of the Norfolk Transaction is based on customary conditions and requisite approvals and, subject to Norfolk Purchaser obtaining the Purchaser Cannabis Licenses, is not predicated on onerous closing obligation; and
- (e) the Norfolk Transaction is notably also not conditioned on any financing being obtained or diligence being performed by the Norfolk Purchaser.¹⁹

¹⁷ June 2 Affidavit, *ibid* at para 46; Fifth Report, *ibid* at para 31.

¹⁸ June 2 Affidavit, *ibid* at para 52; Fifth Report, *ibid* at para 33.

¹⁹ June 2 Affidavit, *ibid* at para 53; Fifth Report, *ibid* at paras 34 and 38.

E. The Second DIP Amendment and Distribution to the DIP Lender

22. The Initial Order authorized the Applicants to borrow under the DIP Loan provided pursuant to the Commitment Letter.²⁰ The DIP Amendment Order, among other things, authorized the execution by the Applicants of the first amendment to the DIP Commitment Letter, which increased the maximum borrowing available under the DIP Loan up to \$13,000,000 (which was an increase of \$5,000,000). The DIP Amendment Order also authorized a corresponding increase to the DIP Lender's Charge.²¹

23. The Second DIP Amendment increases the maximum borrowing available under the DIP Loan up to \$16,000,000 (which is an increase of \$3,000,000). The proposed Ancillary Order provides for a corresponding increase to the DIP Lender's Charge to secure the additional advances contemplated by the Second DIP Amendment. It is a condition of the DIP Loan that all advances thereunder be secured by the DIP Lender's Charge.²²

24. The proposed Ancillary Order also seeks to authorize or empower the Applicants (or the Monitor on behalf of the Applicants) to make, or to cause to be made, distributions from funds or proceeds held now or received in the future by the Applicants (or the Monitor on behalf of the Applicants) to the DIP Lender in repayment of the obligations secured by the DIP Lender's Charge.²³

F. Proposed Pre-Filing Intercompany Claims Resolution Process

25. The Monitor is required to serve on the Service List and file with the Court a Pre-Filing Intercompany Claims Report setting out the Proposed Pre-Filing Intercompany Claims Resolution Process. The Claims Procedure Order provides that, *inter alia*, any interested party has seven (7) days from the date the Monitor serves the Pre-Filing Intercompany Claims Report to file a notice of objection to the Monitor's Proposed Pre-Filing Intercompany Resolution Process, failing which

²⁰ June 2 Affidavit, *ibid* at para 60; Fifth Report, *ibid* at para 2(d).

²¹ June 2 Affidavit, *ibid* at para 61; Fifth Report, *ibid* at para 5(i).

²² June 2 Affidavit, *ibid* at para 65; Fifth Report, *ibid* at paras 61 and 62.

²³ June 2 Affidavit, *ibid* at para 72; Fifth Report, *ibid* at paras 65.

the Proposed Pre-Filing Intercompany Claims Resolution Process shall be implemented without the need of a further Court order.²⁴

26. Given the timing of the applicable motion, the Applicants are seeking approval of the Proposed Pre-Filing Intercompany Claims Resolution Process. A determination of the validity and quantum of the Pre-Filing Intercompany Claims is required before any distribution can be made to creditors of the Applicants.²⁵

27. The Monitor proposes the following Proposed Pre-Filing Intercompany Claims Resolution Process:

- (a) the Monitor has summarized and provided its views on the Pre-Filing Intercompany Claims in the Fifth Report;
- (b) any Person that wishes to object to the validity or quantum of any of the Pre-Filing Intercompany Claims as set out in the Fifth Report must serve an objection by no later than 5:00 p.m. (Toronto time) on the date that is thirty (30) days after the Monitor serves the Pre-Filing Intercompany Claims Notice (as defined below) (the "**Pre-Filing Intercompany Claims Objection Date**");
- (c) the Monitor will provide a notice of the Pre-Filing Intercompany Claims (the "**Pre-Filing Intercompany Claims Notice**") set out in the Fifth Report by email to the Service List, as well as to each Claimant that has submitted a Proof of Claim or Employee Claimant who has received an Employee Claim Statement, by email to the email address indicated on such Proof of Claim or Employee Claim Statement;
- (d) Pre-Filing Intercompany Claims Objections must be in writing, must particularize the grounds for objection and be provided to the Monitor, with a copy to the Service List, on or before the Pre-Filing Intercompany Claims Objection Date;
- (e) in the event that a Pre-Filing Intercompany Claims Objection cannot be resolved, the Monitor may seek a scheduling appointment before the Court, on notice to the Service List,

²⁴ June 2 Affidavit, *ibid* at para 21; Fifth Report, *ibid* at paras 52 and 52.

²⁵ June 2 Affidavit, *ibid* at para 70; Fifth Report, *ibid* at para 7(a)(iii)(E).

to seek a schedule for the hearing of a motion to determine the validity and quantum of one or more of the Pre-filing Intercompany Claims. Prior to such motion, the Monitor shall prepare an Objections and Recommendations Report summarizing all Pre-Filing Intercompany Claims Objections received and the Monitor's view and recommendation to the Court with respect to the Pre-Filing Intercompany Claims Objections; and

- (f) in the event that no Person serves a Pre-Filing Intercompany Claims Objection by the Pre-Filing Intercompany Claims Objection Date, the Monitor shall advise the Service List in writing that no Pre-Filing Intercompany Claims Objections were received, and that the Pre-Filing Intercompany Claims as set out in the Fifth Report are deemed to be accepted as valid claims without further order of the Court.²⁶

G. Stay Period

28. The Stay Period is currently set to expire on June 30, 2021. The Applicants are seeking an extension of the Stay Period until and including September 3, 2021.²⁷

PART III: ISSUES

29. The issues to be considered on this motion are whether:
- (a) this Court should grant the CIG Approval and Vesting Order;
 - (b) this Court should grant the Norfolk Approval and Vesting Order;
 - (c) this Court should authorize the Applicants execution of the Second DIP Amendment, increase the DIP Lender's Charge and approve repayment to the DIP Lender of the obligations secured by the DIP Lender's Charge;
 - (d) this Court should extend the Stay Period; and
 - (e) this Court should seal the Confidential Exhibits and the Confidential Appendix.

²⁶ June 2 Affidavit, *ibid* at para 22; Fifth Report, *ibid* at para 54.

²⁷ June 2 Affidavit, *ibid* at para 56; Fifth Report, *ibid* at paras 7(a)(iii)(A) and 58.

A. The CIG Approval and Vesting Order Should be Granted

30. Section 36 of the CCAA authorizes this Court to approve a sale of a debtor company's assets outside of the ordinary course of business.²⁸ Pursuant to subsection 36(6), any such sale may be authorized "free and clear of any security, charge or other restriction".²⁹ In deciding whether to authorize such a sale, subsection 36(3) of the CCAA requires courts to consider the following non-exhaustive factors:

- (a) whether the process leading to the proposed sale was reasonable in the circumstances;
- (b) whether the monitor approved the process leading to the proposed sale;
- (c) whether the monitor filed a report stating that in its opinion the proposed sale would be more beneficial to creditors than a sale or disposition under a bankruptcy;
- (d) the effects of the proposed sale on the creditors and other interested parties;
- (e) the extent to which creditors were consulted; and
- (f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.³⁰

31. These factors are frequently considered concurrently with those articulated in *Royal Bank v Soundair* ("**Soundair**"):

- (a) whether sufficient effort has been made to obtain the best price and that the debtor has not acted improvidently;
- (b) the efficacy and integrity of the process by which offers have been obtained;
- (c) whether the interests of all parties have been considered; and

²⁸ [Companies' Creditors Arrangement Act, RSC 1985, c. C-36 s 36\(1\) \[CCAA\]](#).

²⁹ [Ibid](#) s 36(6).

³⁰ [CCAA s 36\(3\)](#); [Nelson Education Ltd, Re, 2015 ONSC 5557](#) at para 38 [*Nelson*]; [Target Canada Co, Re, 2015 ONSC 1487](#) at paras 14-15 [*Target Canada*]; [Canwest Publishing Inc/Publications Canwest Inc, Re, 2010 ONSC 2870](#) at para 13 [*Canwest*].

(d) whether there has been unfairness in the working out of the process.³¹

32. Applied here, the factors enumerated in subsection 36(3) of the CCAA and *Soundair* support the CIG Subscription and Share Purchase Agreement's approval and the granting of the CIG Approval and Vesting Order:

- (a) ***The SISP was Extensive, Reasonable, Fair and Transparent*** – the CIG Subscription and Share Purchase Agreement is the culmination of a comprehensive, fair and transparent court-approved SISP conducted by the Monitor with the assistance of the Applicants. In preparing the SISP that was ultimately approved by this Court, the Applicants consulted with the Monitor and the DIP Lender.³²
- (b) ***The Monitor Supported and conducted the SISP*** – the Monitor was actively engaged in the development of the SISP and supported its approval. Further, the Monitor conducted the SISP.³³
- (c) ***The Proposed Sale Provides Greater Recovery than any other Bids Received*** – the Monitor has expressed its view that the proposed CIG Transaction provides stakeholders greater recovery than any other Phase 2 Bid.³⁴
- (d) ***The CIG Subscription and Share Purchase Agreement is in the Best Interests of the Applicants' Creditors*** – no Phase 2 Bid provided consideration equal to or greater than that offered under the CIG Subscription and Share Purchase Agreement for the CIG Purchased Goods. Thus, the CIG Subscription and Share Purchase Agreement is in the best interests of the Applicants' creditors in the circumstances.³⁵
- (e) ***The SISP Provided for Meaningful Creditor Consultation*** – in addition to the Monitor's consultation and oversight, the SISP provided consultation rights to the DIP Lender, provided that it would not participate as a potential bidder in the SISP.³⁶

³¹ *Royal Bank v Soundair Corp.*, 1991 46 OAC 321 at para 16 [*Soundair*]; *Nelson*, *ibid* at paras 37-38; *Target Canada*, *ibid* at para 17; *Canwest*, *ibid* at para 13.

³² June 2 Affidavit, *supra* note 1 at para 46(a); Fifth Report, *supra* note 1 at paras 15 and 31(a).

³³ June 2 Affidavit, *ibid* at paras 23-35; Fifth Report, *ibid* at paras 16-21.

³⁴ Fifth Report, *ibid* at para 31(i).

³⁵ June 2 Affidavit, *supra* note 1 at para 48; Fifth Report, *ibid* at para 31(i).

³⁶ June 2 Affidavit, *ibid* at para 28, 31 and 34; Fifth Report, *ibid* at paras 15-21.

(f) ***The Consideration Received is Fair and Reasonable*** – the CIG Subscription and Share Purchase Agreement provides the highest cash consideration offered in the SISP and the Applicants and the Monitor believe that, based on the results of the SISP, it is commensurate with the market value of the CIG Purchased Goods in the circumstances.³⁷

33. The CIG Transaction is to be implemented by way of what is known as a "reverse vesting order". Instead of this Court vesting all right, title and interest in assets to a third party, the Applicants are requesting, among other things, the vesting and channel of all Excluded Liabilities, the Excluded Assets and Excluded Contracts in Residual Co, allowing the CIG Purchaser to acquire the Purchased Shares free and clear.

34. This type of transaction has been previously approved by numerous CCAA courts under similar circumstances,³⁸ including in particular, where the proposed transaction involved the transfer of licences for the production and sale of cannabis.³⁹ In Plasco, for example, the Court approved the transfer of substantially all of the debtors' assets into an acquisition corporation and its liabilities into a "newco" via a settlement agreement. Justice Wilton-Siegel held that:

[t]he Global Settlement contemplates the implementation of a corporate reorganization by which the shares of Plasco will be transferred to an acquisition corporation owned by [the purchasers] and the remaining assets of the applicants will be held by a new corporation, referred to as "New Plasco", which will assume all of the liabilities and obligations of Plasco. I am satisfied that the Court has authority under section 11 of the CCAA to authorize such transactions notwithstanding that the applicants are not proceeding under section 6(2) of the CCAA insofar as it is not contemplated that the applicants will propose a plan of arrangement or compromise.⁴⁰

³⁷ June 2 Affidavit, *ibid* at para 46(c); Fifth Report, *ibid* at para 31(e), (f) and (i).

³⁸ Endorsement of Justice Wilton-Siegel in the matter of [Plasco Energy et al. dated July 16, 2015, Toronto, Court File No. CV-15-10869-00C \(ONSC\)](#) [**Plasco Endorsement**]; Approval and Vesting Order in the matter of [Sironoway Diamonds Inc. et al. dated October 7, 2019, District of Montreal, Court File No: 500-11-057094-191 \(QCSC\)](#); Approval and Vesting Order and CCAA Termination Order in the matter of [CoMark Holdings Inc. et al. dated July 13, 2020, Toronto, Court File No. CV-20-00642013-00CL \(ONSC\)](#); Reverse Vesting Order in the matter of [JMB Crushing Systems Inc. et al. dated October 16, 2020, Calgary, Court File No. 2001-05482 \(ABCQA\)](#); Reverse Vesting Order in the matter of [Redrock Camps Inc. et al. dated February 18, 2021, Calgary, Court File No. 2001-06194 \(ABCQA\)](#); Sanction Order in the matter of [Tribalscale Inc. dated January 11, 2021, Toronto, Court File No. CV-20-00645116-00CL \(ONSC\)](#); Approval and Vesting Order in the matter of [Cirque Du Soleil Canada Inc. et al. dated October 26, 2020, District of Montreal, Court File No. 500-11-058415-205 \(QCSC\)](#); Reverse Vesting Order in the matter of [Nemaska Lithium Inc. et al. dated October 15, 2020, District of Montreal, Court File No. 500-11-057716-199 \(QCSC\)](#); and Approval and Vesting Order in the matter of [Quest University Canada dated November 16, 2020, Vancouver, Court File No. S-200586 \(BCSC\)](#).

³⁹ Approval and Vesting Order and Endorsement of Justice Hainey in the matter of [Wayland Group Corp. et al. dated April 21, 2020, Toronto, Court File No. CV-19-006632079-00CL \(ONSC\)](#); Approval and Vesting Order in the matter of [Beleave Cannabis Corp. et al. dated September 18, 2020, Toronto, Court File No. CV-20-00642097-00CL \(ONSC\)](#); and Approval and Vesting Order in the matter of [Green Relief Inc. dated November 9, 2020, Toronto, Court File No. CV-20-00639217-00CL \(ONSC\)](#).

⁴⁰ *Plasco Endorsement*.

35. Justice Conway approved a reverse vesting order in the CCAA proceedings of Beleave Inc. As in the CCAA proceedings of *Wayland Group Corp. et al.* and *Green Relief*, the preservation of valuable cannabis licenses were at stake. Justice Conway stated in her brief endorsement:

The structure of the transaction is partly by share sale and partly by asset sale. The reason for the structure is to accommodate the licensing requirements of Health Canada. The order is structured as a reverse vesting order, in which excluded liabilities and assets will be transferred to "Residualco", which will then become one of the Applicants in the CCAA proceedings. Reverse vesting orders have been approved by the courts in other cases: see *Re Stornoway Diamond Corporation . . .* and *Re Wayland Group Corp....*

The transaction is the culmination of a stalking horse sales process approved by the court. The motion is unopposed. The Monitor recommends and supports the transaction in its Fourth Report. In particular, the Monitor states that the proposed transaction is economically superior to the estimated liquidation value of the Beleave Group's assets and operations, will allow the Purchaser to maintain operations and use of the Cannabis licenses and will provide for continued employment for a majority of the existing employees. In my view, the transaction satisfies s. 36(3) of the CCAA and the Soundair test and should be approved.⁴¹

36. More recently, in *Quest University Canada*, with respect to reverse vesting orders (RVOs), Justice Fitzpatrick noted:

There is no dispute between the parties that this Court has authority to grant the RVO under its general statutory jurisdiction found in s. 11 of the CCAA.⁴²

There is no provision in the CCAA that prohibits an RVO structure. As is usually the case in CCAA matters, the court must ensure that any relief is "appropriate" in the circumstances and that all stakeholders are treated as fairly and reasonably "as the circumstances permit": *Century Services* at para. 70....

As with the sales considered in most of the above RVO cases, including *Nemaska Lithium*, this is the only transaction that has emerged to resolve the financial affairs of *Quest*. No other options are before the stakeholders and the Court that would suggest another path forward. As was noted by Gouin J. in *Nemaska Lithium* (at para. 12), it is not up to the Court to dictate the terms and conditions that are included in an offer.

Many of the RVO cases cited above involve a sale of an ongoing business with a purchaser. The RVO structure was crafted to allow those businesses to continue through the debtor company, since it was that corporate vehicle who owned the valuable "assets" that could be not transferred.⁴³

37. The debtor companies in substantially all of the cases where reverse vesting orders have been granted faced significant funding challenges, requiring an expeditious and cost-effective

⁴¹ Endorsement of Justice Conway in the matter of *Beleave Cannabis Corp. et al.* dated September 18, 2020, Toronto, Court File No. CV-20-00642097-00CL (ONSC).

⁴² *Quest University Canada*, 2020 BCSC 1883 at para 127.

⁴³ *Ibid* at para 157-160.

transaction to maximize value for stakeholders. In each case, the proposed transaction represented the sole available option to preserve the going concern value of the business while maximizing value for creditors, who would otherwise have received lesser recoveries in the context of liquidation.

38. Moreover, in cases where reverse vesting orders have been used in the cannabis context, the proposed transactions have had the effect of minimizing regulatory hurdles in respect of licensing matters and significantly decreasing closing uncertainty.

39. The Applicants face the same funding challenges and regulatory concerns with respect to CIG, and the reverse vesting structure provides the most expeditious, cost-effective and only available solution to transition the Cannabis Licenses, which will ultimately assist in the maximization of value for the stakeholders of the Applicants.

40. Moreover, the use of the reverse vesting order is not prejudicial to any stakeholder, and mirrors the economics of a conventional vesting order. Indeed, the CIG Transaction is even more consistent with the economics of a traditional asset sale than typical reverse vesting order structures because virtually all of the consideration for the sale is paid directly to Residual Co. by virtue of the Excluded Liability Promissory Note, such that the creditors whose claims are vested in Residual Co. have a direct claim against the proceeds (rather than a deemed claim in the conventional reverse vesting order structure).

41. In light of the foregoing, the Applicants respectfully submits that the Court should approve the CIG Transaction and grant the CIG Approval and Vesting Order.

B. The Norfolk Approval and Vesting Order Should be Granted

42. As noted above, section 36 of the CCAA authorizes this Court to approve a sale of a debtor company's assets outside of the ordinary course of business.⁴⁴ In deciding whether to authorize such a sale, subsection 36(3) of the CCAA requires courts to consider the non-exhaustive factors cited in paragraph 30 herein.⁴⁵

⁴⁴ *CAA*, *supra* note 28 s 36(1).

⁴⁵ *Ibid* s 36(3).

43. These factors are considered concurrently with those articulated in *Soundair* cited in paragraph 31 herein.⁴⁶

44. Applied here, the factors enumerated in subsection 36(3) of the CCAA and *Soundair* support the Norfolk Sale Agreement's approval and the granting of the Norfolk Approval and Vesting Order:

- (a) ***The SISP was Extensive, Reasonable, Fair and Transparent*** – the Norfolk Sale Agreement is the culmination of a comprehensive, fair and transparent court-approved SISP conducted by the Monitor with the assistance of the Applicants. In preparing the SISP that was ultimately approved by this Court, the Applicants consulted with the Monitor and the DIP Lender.⁴⁷
- (b) ***The Monitor Supported and conducted the SISP*** – the Monitor was actively engaged in the development of the SISP and supported its approval. Further, the Monitor conducted the SISP.⁴⁸
- (c) ***The Proposed Sale Provides Greater Recovery than any other Bids Received*** – the Monitor has expressed its view that the proposed Norfolk Transaction provides stakeholders greater recovery than any other Phase 2 Bid.⁴⁹
- (d) ***The Norfolk Sale Agreement is in the Best Interests of the Applicants' Creditors*** – no Phase 2 Bid provided consideration equal to or greater than that offered under the Norfolk Sale Agreement for the Norfolk Purchased Assets. Thus, the Norfolk Sale Agreement is in the best interests of the Applicants' creditors in the circumstances.⁵⁰
- (e) ***The SISP Provided for Meaningful Creditor Consultation*** – in addition to the Monitor's consultation and oversight, the SISP provided consultation rights to the DIP Lender, provided that it would not participate as a potential bidder in the SISP.⁵¹

⁴⁶ *Soundair*, *supra* note 31 at para 16.

⁴⁷ June 2 Affidavit, *supra* note 1 at para 53(a); Fifth Report, *supra* note 1 at para 15 and 38(a).

⁴⁸ June 2 Affidavit, *ibid* at para 23-35; Fifth Report, *ibid* at paras 15-21.

⁴⁹ Fifth Report, *ibid* at para 38(b).

⁵⁰ June 2 Affidavit, *supra* note 1 at para 55; Fifth Report, *ibid* at para 38(b).

⁵¹ June 2 Affidavit, *ibid* at para 28, 31 and 34; Fifth Report, *ibid* at paras 15-21.

(f) ***The Consideration Received is Fair and Reasonable*** – the Norfolk Sale Agreement provides the highest cash consideration offered in the SISP and the Applicants and the Monitor believe that, based on the results of the SISP, it is commensurate with the market value of the Norfolk Purchased Assets in the circumstances.⁵²

C. Approval of the Second DIP Amendment, an increase the DIP Lender's Charge repayment to the DIP Lender of the obligations secured by the DIP Lender's Charge Should be Granted

45. The court's jurisdiction under section 11.2 of the CCAA to approve DIP financing and grant a corresponding charge also authorizes it to "approve amendments to a DIP agreement and secure all obligations arising from the amended DIP loans with an increased DIP charge."⁵³

46. When doing so, a court must be satisfied that the requirements of subsection 11.2(1) have been met and that the considerations enumerated in subsection 11.2(4) of the CCAA support the relief sought.⁵⁴ These requirements were satisfied when this Court granted the DIP Loan and the DIP Lender's Charge under the Initial Order and a subsequent increase to the DIP Lender's Charge Pursuant to the DIP Amendment Order. They continue to be satisfied here.

1. The Requirements of Subsection 11.2(1) are Satisfied

47. Pursuant to subsection 11.2(1) of the CCAA, this Court may grant an order approving a charge in respect of DIP financing "on notice to the secured creditors who are likely to be affected by the security or charge" in an amount it considers appropriate having regard to the Applicants' cash-flow statement.⁵⁵ Any such "security or charge may not secure an obligation that exists before the order is made."⁵⁶

⁵² June 2 Affidavit, *ibid* at para 53(b); Fifth Report, *ibid* at para 38(b).

⁵³ [Lydian International Limited \(Re\)](#), 2020 ONSC 4006 at para 66.

⁵⁴ *ibid*; [PCAS Patient Care Automation Services Inc. Re](#), 2012 ONSC 2423 at para 9; [U.S. Steel Canada Inc \(Re\)](#), 2016 ONSC 4838 at paras 16-19.

⁵⁵ *CCAA*, *supra* note 28 s 11.2(1).

⁵⁶ *ibid*.

48. In accordance with the requirements of subsection 11.2(1) of the CCAA, notice has been provided to the Applicants' secured creditors and the proposed increase to the DIP Lender's Charge does not secure an obligation arising prior to the Initial Order.

2. The Factors in Subsection 11.2(4) of the CCAA Support the Increase to the DIP Lender's Charge

49. In deciding whether to grant a charge in respect of DIP financing, subsection 11.2(4) of the CCAA provides that courts may consider the following non-exhaustive factors:

- (a) the period during which the company is expected to be subject to proceedings under this Act;
- (b) how the company's business and financial affairs are to be managed during the proceedings;
- (c) whether the company's management has the confidence of its major creditors;
- (d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;
- (e) the nature and value of the company's property;
- (f) whether any creditor would be materially prejudiced as a result of the security or charge; and
- (g) the monitor's report, if any.⁵⁷

50. No one factor is determinative. Rather, courts are to balance the interests of the debtor and its stakeholders with a view to ensuring that the financing "will assist the debtor company to obtain the 'breathing room' said to be needed to hopefully achieve a restructuring acceptable to the creditors and the court".⁵⁸

⁵⁷ *CCAA*, *ibid* s 11.2(4).

⁵⁸ [1057863 B.C. Ltd \(Re\)](#), 2020 BCSC 1359 at para 35.

51. Having regard to the factors enumerated in subsection 11.2(4) of the CCAA, the proposed Second DIP Amendment and related increase to the DIP Lender's Charge are necessary and appropriate given, among other things, that:

- (a) the funding to be advanced pursuant to the Second DIP Amendment is required to ensure the Applicants have the liquidity necessary to complete the Transactions;
- (b) absent the Second DIP Amendment, an Event of Default (as defined in the Commitment Letter) will occur, which will permit the DIP Lender to, among other things, terminate its commitment and declare the obligations of the Applicants in respect of the Commitment Letter to be immediately due and payable;
- (c) it is a condition of the DIP Loan that all advances thereunder, including those made pursuant to the Second DIP Amendment, be secured by the DIP Lender's Charge;
- (d) no creditor will be materially prejudiced by the Second DIP Amendment or the proposed increase to the DIP Lender's Charge; and
- (e) the Monitor is supportive of the Second DIP Amendment and the proposed increase to the DIP Lender's Charge.⁵⁹

3. A Distribution to the DIP Lender is Appropriate in the Circumstances

52. If the upon closing of the CIG Transaction, the Ancillary Order authorizes and empowers the Applicants (or the Monitor on behalf of the Applicants) to make, or to cause to be made, distributions from time to time from available funds or proceeds at the time, or in the future, held or received by the Applicants (or the Monitor on behalf of the Applicants) to the DIP Lender in repayment of the obligations secured by the DIP Lender's Charge (as defined below).

53. Section 11 of the CCAA confers jurisdiction on this Court to authorize interim or final distributions to creditors absent a plan of compromise and arrangement.⁶⁰

⁵⁹ June 2 Affidavit, *ibid* at paras 65-67; Fifth Report, *ibid* at para 68.

⁶⁰ [Nortel Networks Corp. Re. 2014 ONSC 5274](#) at paras 54-58, citing [AbitibiBowater Inc. Re. 2009 QCCS 6461](#).

54. The Applicants submit that any such proposed distribution is appropriate in the circumstances. The Monitor is supportive of such distributions.⁶¹

D. The Stay Period Should be Extended

55. The Stay Period currently expires on June 30, 2021. Section 11.02(2) of the CCAA gives this Court the authority to grant an extension of the Stay Period for any period it "considers necessary".⁶² To do so, this Court must be satisfied that circumstances exist that make the order appropriate and that the Applicants have acted, and are acting, in good faith and with due diligence.⁶³

56. A stay of proceedings is appropriate where it provides the debtors with breathing room while they seek to restore their solvency and emerge from their restructuring on a going concern basis.⁶⁴ Further, a stay of proceedings will be appropriate where it advances the purposes of the CCAA – including avoiding the social and economic effects of bankruptcy.⁶⁵

57. As detailed in the June 2 Affidavit and the Fifth Report, the Applicants require the Stay Period to, among other things:

- (a) allow the Applicants to close the Transactions, should the Approval and Vesting Orders be granted;
- (b) advance and complete the Claims Procedure in accordance with the Claims Procedure Order;
- (c) advance and complete the Employee Claims Process in accordance with the Employee Claims Procedure Order; and
- (d) continue to advance matters toward making distributions of sale proceeds to the DIP Lender and other creditors.⁶⁶

⁶¹ Fifth Report, *supra* note 1 at paras 65 and 76.

⁶² *CCAA*, *supra* note 28 s 11.02(2).

⁶³ *Ibid.*

⁶⁴ *Century Services Inc v Attorney General (Canada)*, 2010 SCC 60 at para 14 [*Century Services*]; *Target Canada Co*, 2015 ONSC 303 at para 8.

⁶⁵ *Century Services*, *ibid* at para 70.

⁶⁶ June 2 Affidavit, *supra* note 1 at para 57; Fifth Report, *supra* note 1 at para 59.

58. Since the granting of the Employee Claims Procedure Order and the April Stay Extension and Fee Approval Order, the Applicants have continued to act in good faith and with due diligence to, among other things, stabilize their business, communicate, with the assistance of the Monitor, with Health Canada, employees, customers (including the provincial cannabis boards), suppliers and other key stakeholders in the CCAA Proceedings, assist the Monitor with the SISP, the Claims Procedure and the Employee Claims Procedure and, with the assistance of the Monitor, negotiate the Sale Agreements and begin taking steps to be in a position to consummate the Transactions should the Court approve them.⁶⁷

59. The Monitor supports the requested extension to the Stay Period, and the Applicants are forecast to have sufficient liquidity to fund their obligations and the costs of the CCAA Proceedings through the end of the proposed extension.⁶⁸

E. Sealing of the CIG Subscription and Share Purchase Agreement, the Norfolk Sale Agreement and the Confidential Summary of the Phase 2 Bids

60. Pursuant to subsection 137(2) of the *Courts of Justice Act*, R.S.O. c. C.43, as amended, the Applicants are also requesting that this Court seal the unredacted versions of the CIG Subscription and Share Purchase Agreement and the Norfolk Sale Agreement (which form the Confidential Exhibit) and the Monitor's Confidential Summary of the Phase 2 Bids (which forms the Confidential Appendix).⁶⁹

61. In *Sierra Club of Canada v Canada (Minister of Finance)*, the Supreme Court of Canada clarified that courts should exercise their discretion to grant sealing orders where the order is necessary to prevent a serious risk to an important interest, including a commercial interest; and the salutary effects of the order outweigh its deleterious effects.⁷⁰

62. The Confidential Exhibits and the Confidential Appendix contain commercially sensitive information that, if disclosed, could be detrimental to the Applicants' ability to market the assets sold pursuant to the Transactions in the event the one or both of the Transactions does not close.

⁶⁷ June 2 Affidavit, *ibid* at para 18.

⁶⁸ June 2 Affidavit, *ibid* at paras 58 and 59; Fifth Report, *supra* note 1 at paras 64 and 67.

⁶⁹ *Courts of Justice Act*, RSO 1990, c. C. 43, s 137(2).

⁷⁰ *Sierra Club of Canada v Canada (Minister of Finance)*, 2002 SCC 41 at para 53.

The Monitor is supportive of the sealing of the Confidential Exhibits and the Confidential Appendix.⁷¹

PART IV: RELIEF REQUESTED

63. The Applicants submit that they meet all of the qualifications required to obtain the requested relief and request that this Court grant the proposed form of CIG Approval and Vesting Order, the Norfolk Approval and Vesting Order and the Ancillary Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Bennett Jones LLP

June 7, 2021

⁷¹ June 2 Affidavit, *supra* note 1 at paras 68 and 69; Fifth Report, *supra* note 1 at paras 20, 32, 39 and 76.

SCHEDULE A – LIST OF AUTHORITIES

Cases Cited

1. [*AbitibiBowater Inc, Re*, 2009 QCCS 6461.](#)
2. [*Canwest Publishing Inc/Publications Canwest Inc, Re*, 2010 ONSC 2870.](#)
3. [*Century Services Inc v Attorney General \(Canada\)*, 2010 SCC 60.](#)
4. [*Lydian International Limited \(Re\)*, 2020 ONSC 4006.](#)
5. [*Nelson Education Ltd, Re*, 2015 ONSC 5557.](#)
6. [*Nortel Networks Corp, Re*, 2014 ONSC 5274.](#)
7. [*PCAS Patient Care Automation Services Inc, Re*, 2012 ONSC 2423.](#)
8. [*Quest University Canada*, 2020 BCSC 1883.](#)
9. [*Royal Bank v Soundair Corp*, 1991 46 OAC 321.](#)
10. [*Sierra Club of Canada v Canada \(Minister of Finance\)*, 2002 SCC 41.](#)
11. [*Target Canada Co, Re*, 2015 ONSC 1487.](#)
12. [*Target Canada Co*, 2015 ONSC 303.](#)
13. [*U.S. Steel Canada Inc \(Re\)*, 2016 ONSC 4838.](#)
14. [*1057863 B.C. Ltd \(Re\)*, 2020 BCSC 1359.](#)

Motion Materials and Court Orders

1. Endorsement of Justice Wilton-Siegel in the matter of [*Plasco Energy et al.* dated July 16, 2015, Toronto, Court File No. CV-15-10869-00C \(ONSC\).](#)
2. Approval and Vesting Order in the matter of [*Stronoway Diamonds Inc. et al.* dated October 7, 2019, District of Montreal, Court File No: 500-11-057094-191 \(QCSC\).](#)
3. Approval and Vesting Order and CCAA Termination Order in the matter of [*CoMark Holdings Inc. et al.* dated July 13, 2020, Toronto, Court File No. CV-20-00642013-00CL \(ONSC\).](#)
4. Reverse Vesting Order in the matter of [*JMB Crushing Systems Inc. et al.* dated October 16, 2020, Calgary, Court File No. 2001-05482 \(ABCQA\).](#)

5. [Reverse Vesting Order in the matter of *Redrock Camps Inc. et al.* dated February 18, 2021, Calgary, Court File No. 2001-06194 \(ABCQA\).](#)
6. [Sanction Order in the matter of *Tribalscale Inc.* dated January 11, 2021, Toronto, Court File No. CV-20-00645116-00CL \(ONSC\).](#)
7. [Approval and Vesting Order in the matter of *Cirque Du Soleil Canada Inc. et al.* dated October 26, 2020, District of Montreal, Court File No. 500-11-058415-205 \(QCSC\).](#)
8. [Reverse Vesting Order in the matter of *Nemaska Lithium Inc. et al.* dated October 15, 2020, District of Montreal, Court File No. 500-11-057716-199 \(QCSC\).](#)
9. [Approval and Vesting Order in the matter of *Quest University Canada* dated November 16, 2020, Vancouver, Court File No. S-200586 \(BCSC\).](#)
10. [Approval and Vesting Order and Endorsement of Justice Hainey in the matter of *Wayland Group Corp. et al.* dated April 21, 2020, Toronto, Court File No. CV-19-006632079-00CL \(ONSC\).](#)
11. [Approval and Vesting Order in the matter of *Beleave Kannabis Corp. et al.* dated September 18, 2020, Toronto, Court File No. CV-20-00642097-00CL \(ONSC\).](#)
12. [Approval and Vesting Order in the matter of *Green Relief Inc.* dated November 9, 2020, Toronto, Court File No. CV-20-00639217-00CL \(ONSC\).](#)

SCHEDULE B – STATUTES RELIED ON

Companies' Creditors Arrangement Act, R.S.C. 1985, c C-36

Section 36

Restriction on disposition of business assets

(1) A debtor company in respect of which an order has been made under this Act may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder approval, including one under federal or provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained.

Factors to be considered

(3) In deciding whether to grant the authorization, the court is to consider, among other things,

(a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;

(b) whether the monitor approved the process leading to the proposed sale or disposition;

(c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;

(d) the extent to which the creditors were consulted;

(e) the effects of the proposed sale or disposition on the creditors and other interested parties; and

(f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

Assets may be disposed of free and clear

(6) The court may authorize a sale or disposition free and clear of any security, charge or other restriction and, if it does, it shall also order that other assets of the company or the proceeds of the sale or disposition be subject to a security, charge or other restriction in favour of the creditor whose security, charge or other restriction is to be affected by the order.

Section 11.2

Interim financing

(1) On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the company's property is subject to a security or charge — in an amount that the court considers appropriate — in favour of a person specified in the order who agrees to lend to the company an

amount approved by the court as being required by the company, having regard to its cash-flow statement. The security or charge may not secure an obligation that exists before the order is made.

Factors to be considered

- (4) In deciding whether to make an order, the court is to consider, among other things,
- (a) the period during which the company is expected to be subject to proceedings under this Act;
 - (b) how the company's business and financial affairs are to be managed during the proceedings;
 - (c) whether the company's management has the confidence of its major creditors;
 - (d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;
 - (e) the nature and value of the company's property;
 - (f) whether any creditor would be materially prejudiced as a result of the security or charge; and
 - (g) the monitor's report referred to in paragraph 23(1)(b), if any.

Section 11.02

Stays, etc. — other than initial application

- (2) A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,
- (a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);
 - (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
 - (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Courts of Justice Act, R.S.O. 1990, c. C.43

Section 137

Sealing documents

(2) A court may order that any document filed in a civil proceeding before it be treated as confidential, sealed and not form part of the public record.

**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

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