

**C A N A D A
PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL**

**SUPERIOR COURT
(Commercial Division)
« In Bankruptcy and Insolvency »**

Court No. : 500-11-
File No.:

**IN THE MATTER OF THE PROPOSAL AND OF THE
APPOINTMENT OF A RECEIVER TO:**

4021568 CANADA INC., a company duly incorporated under the *Canada Business Corporations Act* having its head office at 925-9600 Meilleur Street, Montreal, Province of Québec, H2N 2E3

Debtor

-and-

**CANADIAN IMPERIAL BANK OF
COMMERCE**, a bank governed by the *Bank Act* (Canada), having a place of business at 1155 René Lévesque Blvd. West, Montreal, Province of Québec, H3B 3Z4

Petitioner

-and-

**RSM RICHTER INC. (Gilles Robillard, CA,
CIRP, designated administrator)**, a legal person duly constituted, having a place of business at 2 Place Alexis Nihon, Suite 2200, Montreal, Province of Québec, H3Z 3C2

Proposed Receiver

**MOTION FOR THE APPOINTMENT OF A RECEIVER, FOR THE
AUTHORIZATION OF A SALE OF THE DEBTOR'S ASSETS
AND FOR A VESTING ORDER**

(Section 243 of the *Bankruptcy and Insolvency Act*)

**TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING
IN BANKRUPTCY AND INSOLVENCY MATTERS, IN AND FOR THE DISTRICT OF
MONTREAL, OR TO THE REGISTRAR THEREOF, THE PETITIONER
RESPECTFULLY SUBMITS AS FOLLOWS:**

I. INTRODUCTION

1. The Petitioner, Canadian Imperial Bank of Commerce (the "**Bank**"), hereby requests that this honourable Court (i) appoint RSM Richter Inc. (Gilles Robillard, CA, CIRP, designated administrator) (the "**Receiver**" or "**Richter**")

receiver of all of the property of 4021568 Canada Inc. (also carrying on business under the trade name Foxy) ("**Foxy**" or the "**Debtor**"), with all the powers enumerated in the conclusions of the present motion, and (ii) authorize and approve a transaction between the Receiver and an entity or entities (the "**Purchaser**") to be designated by Alen Brandman, president of Fame Jeans Inc., for the sale, free and clear of any security, charge or other restriction, of certain assets of Foxy referred to as the "**Purchased Assets**" (as defined hereunder), for the reasons set out below.

II. THE DEBTOR

2. Foxy is a corporation constituted under the *Canada Business Corporations Act* having its head office at 925 – 9600 Meilleur Street, Montreal, Province of Québec.
3. Foxy is a designer and wholesaler of denim clothing and of sportswear for men and women (the "**Wholesale Business**"), and the owner of a retail store in Fairview Pointe-Claire mall (the "**Fairview Retail Store**").
4. On April 4, 2012, Foxy signed a proposal pursuant to the *Bankruptcy and Insolvency Act* (which was filed with the Office of the Superintendent of Bankruptcy on April 5, 2012, prior to the filing of this Motion) (the "**Proposal**") and Richter was designated as trustee to the Proposal, as appears from a copy of the Proposal filed herewith as **Exhibit R-1**.
5. Foxy, prior to the filing of the Proposal, employed 9 employees working in the Wholesale Business, all of which were dismissed by Foxy prior to the filing of the Proposal and are intended to be offered employment by the Purchaser following closing of the Proposed Transaction.
6. Foxy also employs 10 employees in the Fairview Retail Store, all of which received a notice of termination prior to the filing of the Proposal as Foxy intends to wind down the Fairview Retail Store in the short term.
7. Foxy's assets consist primarily of its wholesale inventory, the Fairview Retail Store's inventory, its accounts receivable and its intellectual property. The intellectual property is comprised of a number of registered trademarks, trade names and copyrights, as well as rights as licensors of same (the "**Intellectual Property**").
8. Foxy's shareholders and directors, Mr. Franco Di Zazzo and Mr. Steven Lawee, are also the shareholders of six companies operating Foxy retail stores in the following locations: Eaton Center in Montreal (two stores), Champlain Mall in Brossard, Place Rosemère, Galeries de La Capitale in Quebec City, Laurier Quebec in Ste-Foy, and Place du Royaume in Chicoutimi (collectively, the "**Retail Stores Owners**").

III. INDEBTEDNESS OF FOXY TOWARDS THE BANK

9. Foxy is indebted towards the Bank pursuant to a loan agreement dated December 29, 2011, the terms and conditions of which were accepted on December 30, 2011 (the "**Credit Agreement**"), the whole as appears from a copy of the Credit Agreement filed herewith *en liasse* as **Exhibit R-2**.
10. As at March 15, 2012, Foxy was indebted towards the Bank for a total amount of \$1,148,634.40 under the Credit Agreement, excluding the amounts owing under corporate guarantees entered into by Foxy to guarantee the obligations of the Retail Stores Owners towards the Bank, plus interest accrued and to accrue and costs and expenses incurred and to be incurred by the Bank (collectively, the "**Debt**"), as appears from a copy of statement of account filed herewith as **Exhibit R-3**.
11. In order to secure the Debt and all its obligations under the Credit Agreement, Foxy has granted the Bank a movable hypothec over its inventory and accounts receivable in the amount of \$3,000,000 dated December 10, 2008 and registered in the Register of Personal and Movable Real Rights (the "**RPMRR**") on December 22, 2008 under number 08-0726844-0001 (the "**Security**"), as appears from a copy of the Security and from relevant extracts of the RPMRR filed herewith *en liasse* as **Exhibit R-4**.
12. The Security is over the inventory and accounts receivable of Foxy, but not the Intellectual Property.
13. In order to secure the Debt, Mr. Franco Di Zazzo and Mr. Steven Lawee (collectively, the "**Personal Guarantors**"), entered into personal guarantees pursuant to which they guaranteed all of the obligations of Foxy towards the Bank, up to an amount of \$250,000 each (together with the other personal guarantees provided from time to time by the Personal Guarantors to secure Foxy's or the Retail Stores Owners' obligations towards the Bank, the "**Personal Guarantees**"), as appears from a copy of the Personal Guarantees filed herewith as **Exhibit R-5**.

IV. IMPLICATION OF RICHTER, DEFAULTS UNDER THE CREDIT AGREEMENT AND NOTICE OF INTENTION TO ENFORCE THE SECURITY UNDER SECTION 244 OF THE BANKRUPTCY AND INSOLVENCY ACT

14. On or around February 17, 2012, Richter was mandated by the Bank in order to, *inter alia*, review the financial situation of Foxy and assess the potential alternatives for Foxy.
15. Foxy collaborated with Richter in the course of its mandate, which mandate confirmed that Foxy was in default pursuant to the Credit Agreement.
16. Foxy is in default under the terms of the Credit Agreement, namely insofar as (i) it has failed to meet the margining requirements regarding the availability of the revolving line of credit set forth in the Credit Agreement and (ii) it is insolvent (collectively, the "**Defaults**").

17. On March 16, 2012, in light of the Defaults, the Bank sent Foxy a notice of intention to enforce the Security under section 244 of the *Bankruptcy and Insolvency Act* (the "**244 Notice**"), as appears from a copy of the 244 Notice filed herewith as **Exhibit R-6**.

V. THE PROPOSED TRANSACTION

18. In the course of Richter' mandate, Foxy was approached by the Purchaser, which expressed its interest to acquire the accounts receivable, the inventory, the Intellectual Property and certain contractual rights of Foxy.
19. On April 3, 2012, following extensive negotiations and multiple exchanges of drafts between Foxy, the Purchaser, Richter and the Bank, the Purchaser presented to Foxy an offer ("**the Offer**") to acquire the "**Purchased Assets**", namely the "Closing Date Accounts Receivable", the "Closing Date Inventory" (which excludes the Fairview Retail Store's inventory), all "Intellectual Property" and the "Contractual Rights" (as these terms are defined in the Offer), as appears from a copy of the Offer filed herewith under seal as **Exhibit R-7**.
20. On April 4, 2012, Foxy accepted the Offer. The Bank also confirmed its consent to the Offer (R-7).
21. In summary, the Offer contemplates a transaction pursuant to, *inter alia*, the following principal terms:
- (a) the Purchaser is acquiring the Purchased Assets through the Receiver;
 - (b) the Purchased Assets includes the "Closing Date Accounts Receivable", the "Closing Date Inventory" (which excludes the Fairview Retail Store's inventory), all "Intellectual Property" and the "Contractual Rights" (as these terms are defined in the Offer), and expressly excludes other assets of the Debtor;
 - (c) the Purchase Price for the Purchased Assets is a total sum of \$1,125,155 (subject to certain adjustments), of which a sum of \$100,000 is allocated to the Intellectual Property, payable at closing (net of the deposit of \$100,000 already paid to McCarthy Tétrault LLP *in trust*);
 - (d) the Purchased Assets are to be sold free and clear of all encumbrances, hypothecs, security, retention of title rights or other charges which may be affecting the Purchased Assets, other than the "Warehouse Lien" (as defined the Offer);
 - (e) the contemplated transaction must be approved by this Court on April 5, 2012, or at such later date that the Purchaser may agree to in writing;
- (the "**Proposed Transaction**").
22. The Closing of the Proposed Transaction is also to be made concurrently with a settlement of the Personal Guarantees between the Personal Guarantors and

the Bank pursuant to which, *inter alia*, the Personal Guarantors will pay the Bank a lump sum of \$106,500 in full and final settlement of the Personal Guarantees (the "**Personal Guarantees' Settlement**").

VI. APPOINTMENT OF A RECEIVER AND AUTHORIZATION OF THE PROPOSED TRANSACTION

23. In light of the Defaults and of the fact (i) that the realizable value of the Debtor's secured assets is inferior to the value of its secured debts, (ii) the Debtor's operations are unprofitable and its financial situation is rapidly deteriorating as time passes, (iii) the expiry of the 10-day delay following the 244 Notice, and (iv) the consent of the Debtor to the present Motion, it is justified that a receiver pursuant to section 243 of the *Bankruptcy and Insolvency Act* be appointed with the powers described in the conclusions of the present motion, without delay.
24. The appointment of the Receiver and the authorization of the Proposed Transaction will permit, *inter alia*, to complete the Proposed Transaction in the best interests of Foxy's stakeholders.
25. It is the intention of the Purchaser to continue the Wholesale Business as a going concern, and the Proposed Transaction is thus in the best interests of Foxy's stakeholders, including its suppliers and customers.
26. It is also the intention of the Purchaser to offer employment to all nine (9) former employees of Foxy working in the Wholesale Business, as well as to the Personal Guarantors.
27. Foxy will use the sum of \$100,000 allocated to the Intellectual Property, which is the only substantial asset of the Debtor not hypothecated in favour of the Bank, to finance the Proposal providing for the distribution of said sum of \$100,000. Outside of a going concern sale of the Debtor's business, it is doubtful that the Intellectual Property would have any value and, as such, the Proposed Transaction is in the interests of Foxy's unsecured creditors.
28. Foxy's indebtedness towards its unsecured creditors, excluding the shortfall of the Bank following the distribution of the proceeds of the Proposed Transaction, adds to approximately \$4.2M, as appears from Foxy's list of creditors prepared upon the filing of the Proposal filed herewith as **Exhibit R-8**.
29. Foxy notified its main creditors of the terms of the Proposed Transaction and of the contemplated Proposal. Between March 29, 2012 and April 3, 2012, six (6) creditors representing claims of approximately \$3.3M out of the total \$4.2M, namely more than 75% of the unsecured creditors in value, confirmed to Foxy their satisfaction with the terms of the Proposed Transaction and their intention to vote in favour of the contemplated Proposal, as appears from copies of unsecured creditors' letters received by Foxy filed herewith *en liasse* as **Exhibit R-9**.
30. The Proposed Transaction, along with the Personal Guarantees' Settlement, results in an estimated shortfall of approximately \$155,000 for the Bank, the

first ranking creditor on Foxy's accounts receivable and inventory. This shortfall excludes the Bank's loss relating to Foxy's corporate guarantee of the Retail Stores Owners' obligations towards the Bank.

31. After receipt of two (2) evaluations of independent appraisers of the value of Foxy's inventory (excluding the Fairview Retail Store inventory) in a liquidation scenario, filed herewith under seal as **Exhibit R-10**, and consideration of the estimated value of the accounts receivable, the Bank concluded that the Proposed Transaction, despite resulting in a shortfall, is in its best interest.
32. In these circumstances, the Purchaser's Offer appears to be in the best interest of the Debtor's creditors, whether or not such creditors in due course decide to accept the Proposal or not.
33. Foxy supports the Proposed Transaction.
34. In these circumstances, the Petitioner respectfully submits that Richter should be appointed as Receiver with the powers further described below and that the Proposed Transaction should be approved by this Court.
35. Gilles Robillard, CA, CIRP, from Richter, is a trustee having the capacity to act as receiver pursuant to section 243 of the *Bankruptcy and Insolvency Act* and has agreed to act in such capacity.

VII. URGENCY

36. The Petitioner respectfully submits that the appointment of the Receiver and the approval of the Proposed Transaction are urgent and necessary.
37. Actually, it is essential that the Proposed Transaction be approved without delay in order to (i) allow the Purchaser to make orders for its required inventory procurement for the spring season and take in goods which were already on order by the Debtor, but which the Debtor would be unable to take in, and (ii) permit the closing of the Proposed Transaction and preserve and maximize the value of Foxy's assets and, to the extent possible, minimize additional losses incurred by Foxy and its creditors as time passes.
38. The order sought hereby should be subject to provisional execution notwithstanding appeal as it will permit the closing of the Proposed Transaction and consequently allow (i) the continuance of the Wholesale Business as a going-concern and (ii) the meeting by Foxy of its obligations under the Proposal, the whole in the interest of Foxy's stakeholders, including its creditors.
39. This motion is well founded in fact and in law.

WHEREFORE MAY IT PLEASE THE COURT TO:

1. **GRANT** the present motion (the "**Motion**");

I. **SERVICE**

2. **EXEMPT** the Petitioner, Canadian Imperial Bank of Commerce (the "**Petitioner**"), from having to serve the Motion and from any notice of presentation and **ABRIDGE** any delay of service, production or presentation;

II. **APPOINTMENT**

3. **APPOINT** RSM Richter Inc. (Gilles Robillard, CA, CIRP, designated administrator) as Receiver to the property of the Debtor (also carrying on business under the trade name Foxy) ("**Foxy**" or the "**Debtor**"), pursuant to section 243 of the *Bankruptcy and Insolvency Act*;

III. **RECEIVER'S POWERS**

4. **AUTHORIZE** the Receiver to take possession of the "**Purchased Assets**", namely the Closing Date Accounts Receivable", the "Closing Date Inventory", all "Intellectual Property" and the "Contractual Rights" (as these terms are defined in the offer presented by the Purchaser (as defined hereunder) for purchase of same filed as Exhibit R-7 in support of the Motion (the "**Offer**")) for the purpose of completing the Proposed Transaction (as defined hereunder) and to exercise the following powers listed hereinafter:
5. **AUTHORIZE** the Receiver to retain the services of any lawyer, or of any person or business in order to appropriately fulfil its functions;
6. **DECLARE** that the Receiver may provide creditors and other relevant stakeholders with information in response to requests made by them in writing. A copy of such requests must be sent to the Petitioner's attorney. Where the Receiver has been advised by the Petitioner that information is confidential, proprietary or competitive, the Receiver shall not provide such information to any person without the consent of the Petitioner unless otherwise directed by this Court.

IV. **AUTHORIZATION OF THE SALE OF THE PURCHASED ASSETS**

7. **ORDER AND DECLARE** that the sale of the Purchased Assets to an entity or entities (the "**Purchaser**") to be designated by Alen Brandman, president of Fame Jeans Inc., and all other transactions contemplated by the Offer (R-7) (collectively, the "**Proposed Transaction**") are hereby approved, and that the execution of an Asset Purchase Agreement under the terms of the Offer by the Receiver is hereby authorized and approved subject to such non material amendments and modifications as the parties may agree, and the Receiver 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 Proposed Transaction and for the conveyance of the Purchased Assets to the Purchaser;
8. **ORDER AND DECLARE** that upon the filing of a Receiver's certificate in this Court record, which delivery shall take place upon payment of the full purchase

price contemplated by the Proposed Transaction, substantially in the form attached as Schedule A hereto (the "**Receiver's Certificate**"), all of the Debtor's rights, title and interests in and to the Purchased Assets 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 (including without limitation the "Administration Charge", as defined hereunder), or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise including, without limiting the generality of the foregoing, all charges, security interests or claims evidenced by registrations pursuant to the *Civil Code of Québec* or any other personal property registry system (all of which are collectively referred to as "**Encumbrances**") 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. Notwithstanding the generality of the foregoing, this Court further orders that the term "Encumbrances" shall not include any claims and rights in respect of the "Warehouse Lien" as defined in the Offer (R-7).

9. **ORDER** that 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 Receiver's Certificate all Encumbrances, except for the "Warehouse Lien" as defined in the Offer (R-7), 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;
10. **ORDER AND DIRECT** the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof;

V. DISTRIBUTION OF THE PROCEEDS FROM THE PROPOSED TRANSACTION

11. **ORDER** that (i) the amount of \$100,000 allocated to the Intellectual Property in the Proposed Transaction be kept *in trust* by the Receiver in order to, in the event the Proposal (R-1) of the Debtor is accepted by the Debtor's affected creditors and approved by the Court, finance the obligations of the Debtor under said Proposal (R-1) or, in the negative, be remitted to the trustee to the bankruptcy; and (ii) the balance of the proceeds from the Proposed Transaction shall be distributed by the Receiver pursuant to the distribution order of the *Bankruptcy and Insolvency Act*;

VI. DEBTOR'S DUTIES

12. **ORDER** the Debtor, its directors, officers, employees, agents and representatives to forthwith provide the Receiver with access to the Purchased Assets;

13. **ORDER** the Debtor, its directors, officers, employees, agents and representatives to cooperate with the Receiver in the exercise of the powers that are granted pursuant to the terms of the Order;
14. **ORDER** the Debtor not to dispose, alienate, encumber or otherwise transact, in any manner whatsoever, with regard to the Purchased Assets, other than as contemplated by the Proposed Transaction or with the authorization of the Receiver;

VII. LIMITATION OF LIABILITY

15. **DECLARES** that subject to the powers granted to the Receiver pursuant to the terms of paragraph 4 of the Order, nothing herein contained shall require the Receiver to occupy or to take control, or to otherwise manage all or any part of the Purchased Assets. The Receiver shall not, as a result of this Order, be deemed to be in possession of any of the Property within the meaning of environmental legislation, the whole pursuant to the terms of the *BIA*;
16. **DECLARE** that the powers of the Receiver shall be exercised pursuant to its sole discretion and judgment;
17. **DECLARE** that section 215 of the *BIA* applies *mutatis mutandis*, and hence that no action lies against the Receiver by reason of its appointment or the execution of the powers granted by the Court, except by leave of the Court. The entities related to the Receiver or belonging to the same group as the Receiver shall benefit from the protection arising under the present paragraph;


VIII. FEES

18. **DECLARE** that as security for the professional fees and disbursements incurred in relation to these proceedings, both before and after the date of the Order, a charge and security over the Purchased Assets other than the "Intellectual Property" and the "Contractual Rights" (the "**Secured Assets**") is hereby constituted in favour of the Receiver, of the Receiver's attorneys and other advisors, to the extent of the aggregate amount of \$ 100,000 (the "**Administration Charge**");
19. **DECLARE** that the Administration Charge shall rank in priority to any and all other Encumbrances affecting the Secured Assets charged by such Encumbrances;
20. **DECLARE** that the Administration Charge is effective and shall charge, as of 12:01 a.m. (Montreal time) the day of this Order (the "**Effective Time**"), all the Secured Assets present and future;
21. **AUTHORIZE** the Receiver to collect the payment of its fees and disbursements and those of its attorneys, with the consent of the Petitioner, the whole subject to taxation in conformity with the *BIA*, if applicable;

IX. GENERAL

22. **DECLARE** that notwithstanding: (i) these proceedings and any declaration of insolvency made herein, (ii) any petition for a receiving order filed pursuant to the *BIA* in respect of the Debtor and any receiving order granting such petition or any assignment in bankruptcy made or deemed to be made in respect of the Debtor and (iii) the provisions of any federal or provincial statute, the sale of the Purchased Assets under the Proposed Transaction and the granting of the Administration Charges do not and will not constitute transactions at undervalue, settlements, fraudulent preferences, fraudulent conveyances or other challengeable or reviewable transactions or conduct meriting a recourse for abuse under any applicable law, and shall be valid and enforceable as against any person, including any trustee in bankruptcy;
23. **DECLARE** that the Receiver is at liberty to serve any notice, circular or any other document in connection with these proceedings by forwarding copies by prepaid ordinary mail, courier, personal delivery or electronic transmission to persons or other appropriate parties at their respective given address as last shown in the Records; the documents served in this manner shall be deemed to be received on the date of delivery if by personal delivery or electronic transmission, on the following business day if delivered by courier, or three (3) business days after mailing if delivered by ordinary mail;
24. **ORDER** that Exhibits R-7 and R-10 be kept under seal until further order of this Court;
25. **ORDER** the provisional execution of the present Order notwithstanding any appeal and without the requirement to provide any security or provision for costs whatsoever;
26. **THE WHOLE** without costs save and except in case of contestation.

MONTREAL, April 5, 2012



McCARTHY TÉTRAULT LLP
Attorneys for the Petitioner,
Canadian Imperial Bank of Commerce

**C A N A D A
PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL**

**SUPERIOR COURT
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« In Bankruptcy and Insolvency »**

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-and-

CANADIAN IMPERIAL BANK OF COMMERCE,

Petitioner

-and-

**RSM RICHTER INC. (Gilles Robillard, CA, CIRP,
designated administrator),**

Proposed Receiver

AFFIDAVIT

I, the undersigned, Jean Arseneault, having a place of business at 1155 René Lévesque Blvd. West, 14th Floor, Montreal, Province of Québec, H3B 3Z4, solemnly declare the following:

1. I am a duly authorized representative of Canadian Imperial Bank of Commerce;
2. All the facts alleged in this Motion are true.

AND I HAVE SIGNED

Jean Arseneault

Solemnly declared before me in
Montreal, on this 5th day of April, 2012

Commissioner of oaths for the
Province of Québec

**C A N A D A
PROVINCE OF QUÉBEC
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**RSM RICHTER INC. (Gilles Robillard, CA,
CIRP, designated administrator),**

Proposed Receiver

NOTICE OF PRESENTATION

**TO: Me Aubie Joël Herscovitch
Phillips Friedman Kotler s.e.n.c.r.l.
Place du Canada
1010 De La Gauchetière St. West
Suite 900
Montreal, Qc H3B 2P8**

Attorneys of 4021568 Canada Inc. (Foxy)

**TO: RSM RICHTER INC. (Gilles Robillard, CA, CIRP, designated administrator)
2 Place Alexis Nihon
suite 2200
Montreal, Qc
H3Z 3C2**

Proposed Receiver

TO: **Me Maxwell W. Mendelsohn , Ad. E.
McMillan, S.E.N.C.R.L., s.r.l.**
1000 Sherbrooke St. West, Suite 2700
Montreal, QC H3A 3G4

Attorneys of the Purchaser

TO: **SUPERINTENDANT OF BANKRUPTCY**
5, Place Ville-Marie, suite 800
Montreal, QC H3B 2G2

TAKE NOTICE that the *Motion for the appointment of a Receiver, for the authorization of a sale of the Debtor's assets and for a vesting order* will be presented before Registrar Chantal Flamand, of the Superior Court for the District of Montreal sitting in bankruptcy and insolvency matters, in room 5.130 of the Montreal Court House, located at 1 Notre-Dame St. East, Montreal, Quebec, H2Y 1B6, on **April 5, 2012** at a time to be determined.

DO GOVERN YOURSELVES ACCORDINGLY.

MONTREAL, April 5, 2012

McCARTHY TÉTRAULT LLP

McCARTHY TÉTRAULT LLP
Attorneys for the Petitioner,
Canadian Imperial Bank of Commerce

**C A N A D A
PROVINCE OF QUÉBEC
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designated administrator),**

Proposed Receiver

LIST OF EXHIBITS

(Motion for the appointment of a receiver, for the authorization of a sale of the debtor's assets
and for a vesting order)

-
- Exhibit R-1 :** Copy of the Proposal;
- Exhibit R-2 :** Copy of the Credit Agreement dated December 20, 2011;
- Exhibit R-3 :** Copy of statement of account;
- Exhibit R-4:** *En liasse*, copy of the Movable Hypothec dated December 10, 2008
and from relevant extracts of the Register of Personal and Movable
Real Rights under number 08-0726844-0001;
- Exhibit R-5:** Copy of the personal Guarantees of Franco Di Zazzo and Steven
Lawee;
- Exhibit R-6:** Copy of the Demand for payment and Notice of Intention to enforce
security pursuant to Section 244 of the *Bankruptcy and Insolvency Act*
dated March 16, 2012;
- Exhibit R-7:** *Under seal*, copy of the Purchaser's offer to purchase dated April 3,
2012;

- Exhibit R-8:** Copy from Foxy's list of creditors prepared upon the filing of the Notice of intention;
- Exhibit R-9:** *En liasse*, copies of unsecured creditors' consent letters received by Foxy;
- Exhibit R-10:** *Under seal*, *en liasse*, copies of estimated value of Foxy's inventory in a liquidation scenario;

MONTREAL, April 5, 2012

MCCARTHY TETRAULT LLP

McCARTHY TETRAULT LLP
Attorneys for the Petitioner,
Canadian Imperial Bank of Commerce

N° 500-11-
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(Section 243 of the *Bankruptcy and Insolvency Act*)

ORIGINAL

Me Jocelyn T. Perreault
Tel: (514) 397-7092
Our file: 704272-441462

BC 0847

McCarthy Tétraut LLP

Avocats • Agents de brevets et marques de commerce
Barristers & Solicitors • Patent & Trademark Agents

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