

**RICHTER**

Richter Advisory Group Inc.  
181 Bay Street, 33<sup>rd</sup> Floor  
Toronto, ON M5J 2T3  
[www.richter.ca](http://www.richter.ca)

**BOMBAY & CO. INC., BOWRING & CO. INC. AND BENIX & CO. INC.**

**THIRD REPORT OF RICHTER ADVISORY GROUP INC.,  
IN ITS CAPACITY AS MONITOR OF  
BOMBAY & CO. INC., BOWRING & CO. INC. AND BENIX & CO. INC.**

**JANUARY 5, 2015**

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**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  
BOMBAY & CO. INC., BOWRING & CO. INC. AND BENIX & CO. INC.**

**THIRD REPORT OF RICHTER ADVISORY GROUP INC.  
In its capacity as Monitor of Bombay & Co. Inc., Bowring & Co. Inc., and Benix & Co. Inc.**

**January 5, 2015**

**Introduction**

1. On August 6, 2014 (the "**Filing Date**"), the Ontario Superior Court of Justice (Commercial List) (the "**Court**") issued an order (the "**Initial Order**") granting Bombay & Co. Inc. ("**Bombay**"), Bowring & Co. Inc. ("**Bowring**") and Benix & Co. Inc., ("**Benix**", and together with Bombay and Bowring, the "**B+C Entities**") protection pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"). Richter Advisory Group Inc. was appointed as monitor (the "**Monitor**"). The Initial Order provided the B+C Entities with, *inter alia*, a stay of proceedings until September 5, 2014 (the "**Stay Period**"). The proceedings commenced by the B+C Entities under the CCAA are herein referred to as the "**CCAA Proceedings**". The Initial Order also granted the B+C Entities the authority to enter into an agreement (the "**DIP Forbearance Agreement**") with their first-ranking secured lender, Canadian Imperial Bank of Commerce ("**CIBC**" or the "**DIP Lender**"), pursuant to which the B+C Entities were able to secure interim financing and forbearance terms. A copy of the Initial Order is attached hereto as **Appendix "A"**.
2. On August 22, 2014, the Court issued an order (the "**August 22 Order**") which, among other things, authorized the B+C Entities to enter into an inventory liquidation consulting agreement (the "**Liquidation Consulting Agreement**") with Merchant Retail Solutions, ULC, an affiliate of Hilco Merchant Resources, LLC and Gordon Brothers Retail Partners, LLC (collectively, the "**Consultant**"), approved the sale and investment solicitation process proposed by the B+C Entities ("**SISP**"), and extended the Stay Period to November 28, 2014. A copy of the August 22 Order is attached hereto as **Appendix "B"**.

3. On November 27, 2014, the Court issued an order (the “**November 27 Order**”) which, among other things, extended the Stay Period to January 20, 2015. A copy of the November 27 Order is attached hereto as **Appendix “C”**.

#### **Purpose of this Report**

4. The purpose of this report, the Monitor’s third report (the “**Third Report**” ) is to provide information to the Court in respect of the following:
  - (i) the activities of the B+C Entities and the Monitor since November 21, 2014 (the date of the Monitor’s Second Report) to the date of this Third Report;
  - (ii) the B+C Entities’ actual receipts and disbursements for the period from August 2, 2014 to December 27, 2014, including a comparison of actual to forecast results;
  - (iii) the B+C Entities’ revised cash flow forecast for the period December 28, 2014 to March 28, 2015;
  - (iv) the results of the Court-approved SISF and the proposed sale, by the B+C Entities, of substantially all of its business and assets (the “**Sale Assets**”) to 2383029 Ontario Inc. (“**238**”) and 2437533 Ontario Inc. (“**243**” and together with 238, the “**Purchaser**”), subject to approval of this Court;
  - (v) the terms of an Offer to Purchase (the “**Purchase Agreement**”) dated December 31, 2014 between the B+C Entities and the Purchaser for the sale of the Sale Assets (the “**Transaction**”);
  - (vi) the reasons why the Monitor believes the Purchase Agreement and Transaction should be approved by this Court;
  - (vii) the B+C Entities’ request for an extension of the Stay Period to March 27, 2015; and

- (viii) the Monitor's recommendation that this Court make an Order(s):
- (a) approving the Purchase Agreement and the Transaction, and authorizing and directing the B+C Entities to complete the Transaction;
  - (b) vesting, upon the closing of the Transaction, all rights, titles and interests of Bombay in and to the Sale Assets to 238 and all rights, titles and interests of Bowring and Benix in and to the Sale Assets to 243 free and clear of all liens, charges, security interests and other encumbrances other than Permitted Encumbrances as defined in the Purchase Agreement (the "**Approval and Vesting Order**");
  - (c) authorizing and directing Bombay to file articles of reorganization in accordance with section 186 of the *Business Corporations Act* (Ontario) ("**OBCA**") to change the name of Bombay to 2151456 Ontario Inc.;
  - (d) authorizing and directing Bowring to file articles of reorganization in accordance with section 186 of the OBCA to change the name of Bowring to 1677711 Ontario Inc.;
  - (e) authorizing and directing Benix to file articles of reorganization in accordance with section 186 of the OBCA to change the name of Benix to 1115926 Ontario Inc.;
  - (f) sealing the Offer Summary (as hereinafter defined) and the unredacted version of the Purchase Agreement until the closing of the Transaction or upon further order of the Court;
  - (g) extending the Stay Period to March 27, 2015; and
  - (h) approving this Third Report, and the activities, actions and conduct of the Monitor set out therein.

## Terms of Reference

5. In preparing this Third Report, the Monitor has relied on unaudited financial information prepared by the representatives of the B+C Entities, the B+C Entities' books and records, discussions with the B+C Entities' management ("**Management**") and discussions with the B+C Entities' advisors. The Monitor has not conducted an audit or other verification of such information. Future oriented financial information reported or relied on in preparing this report is based on management's assumptions regarding future events; actual results may vary from forecast and such variations may be material.
6. Unless otherwise stated, all monetary amounts noted herein are expressed in Canadian dollars.

## The B+C Entities' Activities

7. The activities of the B+C Entities since the commencement of the CCAA Proceedings to November 21, 2014 are detailed in the Monitor's First Report (the "**First Report**") and the Monitor's Second Report (the "**Second Report**") dated August 19, 2014 and November 27, 2014, respectively. Subsequent to the filing of the Monitor's Second Report, the B+C Entities' activities have included:
  - (i) preparing weekly financial reports for the DIP Lender;
  - (ii) communicating with key suppliers to secure goods and services during the CCAA Proceedings and to address payment terms;
  - (iii) responding to calls and enquiries from creditors and other stakeholders regarding the CCAA Proceedings;
  - (iv) reporting receipts and disbursements;
  - (v) making payments to suppliers for goods and services received following the issuance of the Initial Order;
  - (vi) consulting with the Monitor in connection with the preparation of the December 28 Cash Flow Forecast (as hereinafter defined);
  - (vii) consulting with the Monitor regarding the B+C Entities' proposed disclaimer of certain retail leases for unprofitable stores for which no offers were received in the SISP and which the Purchaser does not want to assume;

- (viii) communicating with the landlords for certain of the Bombay and Bowring stores to attempt to negotiate the form and terms of an agreement to assign the B+C Entities' rights and obligations under its retail leases to the Purchaser; and
- (ix) consulting with the Monitor and its counsel on various matters in connection with the CCAA Proceedings.

### **The Monitor's Activities**

8. The activities of the Monitor from the commencement of the CCAA Proceedings to November 21, 2014 are detailed in the First Report and Second Report. Subsequent to the filing of the Second Report, the Monitor's activities have included:
- (i) monitoring the B+C Entities' cash flows, including the reporting of variances to the B+C Entities' cash flow forecast;
  - (ii) assisting the B+C Entities with the preparation of their weekly report to CIBC in accordance with the terms of the DIP Forbearance Agreement;
  - (iii) corresponding and communicating extensively with the B+C Entities, Isaac Bennet Sales Agencies, Inc. ("IBSA"), F.B.I. Inc. ("FBI") and their respective legal counsel;
  - (iv) corresponding and communicating with CIBC and its advisors;
  - (v) responding to calls and enquiries from creditors and other stakeholders regarding the CCAA Proceedings;
  - (vi) consulting with Management and, ultimately, approving the B+C Entities' disclaimer of certain retail leases;
  - (vii) assisting the B+C Entities with the preparation of the December 28 Cash Flow Forecast (as hereinafter defined);
  - (viii) working with the Purchaser to assist in its review and assessment of the conditions precedent to closing the Transaction, as set out in the Purchase Agreement; and
  - (ix) preparing this Third Report.

**Cash Flow for the Period from August 2, 2014 to December 27, 2014**

9. The B+C Entities' cash flow projection for the period November 9, 2014 to January 31, 2015 (the "November 9 Cash Flow Forecast") was filed with the Court in support of the B+C Entities' motion returnable November 27, 2014 seeking, *inter alia*, an extension of the Stay Period.
10. A comparison of the B+C Entities' budget to reported results for the period ending December 27, 2014, is summarized as follows:

<b>Bombay &amp; Co. Inc., Bowring &amp; Co. Inc. and Benix &amp; Co. Inc.</b>			
<b>Cash Flow Variance Analysis</b>			
<b>For the Period August 2, 2014 - December 27, 2014</b>	<b>Forecast</b>	<b>Reported</b>	<b>Variance</b>
<b>(\$000's)</b>	<b>Total</b>	<b>Total</b>	
<b>Gross Receipts</b>	<b>\$ 66,754</b>	<b>\$ 61,978</b>	<b>\$ (4,776)</b>
<b>Disbursements</b>			
Purchases	24,232	23,721	511
Rent	10,774	10,377	397
Store expenses & Other	9,602	5,134	4,468
Payroll	10,602	10,297	305
Sales Tax	1,748	3,332	(1,584)
Interest	665	365	300
Utilities	648	844	(197)
DIP Fee	175	175	-
Professional Fees	2,211	2,363	(152)
	<b>\$ 60,657</b>	<b>\$ 56,608</b>	<b>\$ 4,050</b>
<b>Net Cash Flow</b>	<b>\$ 6,096</b>	<b>\$ 5,370</b>	<b>\$ (726)</b>
Opening Bank Loan	\$ 14,767	\$ 14,783	\$ (16)
<b>Closing Bank Loan</b>	<b>\$ 8,671</b>	<b>\$ 9,413</b>	<b>(\$742)</b>

11. As reflected in the above summary table, the B+C Entities reported positive cash flow of approximately \$5.4 million and an outstanding operating loan balance of approximately \$9.4 million, as at December 27, 2014, which was approximately \$0.7 million higher than forecast.
12. The principal reasons for the unfavourable cash flow variance of approximately \$0.7 million are:
  - (i) the negative variance of approximately \$4.8 million in cash receipts is primarily a permanent variance due to lower than projected liquidation sales due to the liquidation/closure of fewer stores than forecast; and

- (ii) the positive variance of approximately \$4.1 million in disbursements is due, in part, to timing differences in the payment of certain expenses. However, approximately \$1.0 million of this positive variance is a permanent difference due to lower than projected rent expense and lower costs associated with the liquidation of inventory and other assets at certain Bombay and Bowring store locations, including liquidation fees and advertising expenses, as fewer Bombay and Bowring store locations were included in the liquidation than projected.
13. In connection with the above, the Monitor notes that included in the B+C Entities' disbursements for the period ended December 27, 2014 are two payments to Torkin Manes LLP ("Torkin"), in trust, in the aggregate amount of \$130,000. Torkin has advised that the fees were incurred in respect of negotiating and obtaining consents to the assignment of leases as contemplated by the Transaction, as Torkin (with the knowledge of IBSA, FBI, CIBC and the Monitor) was the primary counsel involved in discussions with the landlords in this respect. Torkin and the B+C Entities have advised the Monitor that, at the time the payments were made, they did not believe that the consent of the Monitor or IBSA was required. The Monitor further notes that IBSA has not consented to such payments by the B+C Entities and, as such, the Monitor and Torkin have confirmed that IBSA will not be prejudiced by not having sought to have such amounts repaid immediately, but instead waiting to see if the Transaction closes later in January, as scheduled, before seeking any relief in that regard. In addition, the B+C Entities have confirmed to the Monitor and Torkin that no further payments will be made by the B+C Entities to Torkin without the prior consent of IBSA or further Order of the Court.

**The B+C Entities' Request for an Extension of the Stay Period to March 27, 2015**

14. The current Stay Period expires on January 20, 2014. The B+C Entities are seeking an extension of the Stay Period to March 27, 2015.
15. As the November 9 Cash Flow Forecast only runs until January 31, 2015, the B+C Entities, with the assistance of the Monitor, have prepared a revised consolidated forecast of its receipts, disbursements and financing requirements for the period December 28, 2014 to March 28, 2015 (the "**December 28 Cash Flow Forecast**"). A copy of the December 28 Cash Flow Forecast is attached hereto as **Appendix "D"** and is summarized below:

Bombay & Co. Inc., Bowring & Co. Inc. and Benix & Co. Inc. Consolidated Cash Flow Forecast For the Period December 28, 2014 - March 28, 2015 (\$000's)	
<b>Gross Receipts</b>	\$ 12,732
Proposed Transactions Proceeds	1,930
	<b>14,662</b>
<b>Disbursements</b>	
Purchases	2,067
Rent	2,209
Store expenses & Other	1,631
Payroll	2,105
Sales Tax	1,608
Interest	76
Utilities	121
Professional Fees	600
	<b>10,416</b>
<b>Net Cash Flow</b>	<b>4,246</b>
Opening Bank Loan	\$9,413
Bank Loan Paydown	(5,167)
<b>Closing Bank Loan</b>	<b>\$ -</b>

16. The major changes in the underlying assumptions in the December 28 Cash Flow Forecast as compared to the November 9 Cash Flow Forecast are as follows:

- (i) the Transaction is projected to close the week ending January 24, 2015;
- (ii) the amounts owed by the B+C Entities to CIBC, as at the closing date, are projected to be assumed by the Purchaser; and
- (iii) the funds remaining in the possession of the B+C Entities post-closing represent the cash component of the Transaction required to satisfy any professional fees, sales taxes and other priority amounts incurred subsequent to the Filing Date.

17. As noted later in this Third Report, the Transaction is scheduled to close January 19, 2015. Should this Honourable Court approve the Sale Agreement and Transaction, and the Transaction closes on January 19, 2015, as contemplated in the Sale Agreement, it is the Monitor's intention to finalize its administration and seek its discharge prior to the expiration of the requested extension to the Stay Period.

18. The December 28 Cash Flow Forecast indicates that the B+C Entities will have sufficient liquidity to fund both operating costs and the costs of these CCAA Proceedings during the extension of the Stay Period, if granted.
19. The Monitor is of the view that the extension of the Stay Period is appropriate in the circumstances and supports the B+C Entities' request for an extension of the Stay Period for the following reasons:
  - (i) the B+C Entities have acted and are acting in good faith and with due diligence;
  - (ii) it will allow the Transaction, if approved, sufficient time to close. Alternatively, if for whatever reason the Transaction does not close (which is not anticipated), the extension will permit the B+C Entities, in consultation with other stakeholders, sufficient time to consider alternatives and report to this Court accordingly;
  - (iii) the granting of the extension should not prejudice any employee or creditor, as the B+C Entities are projected to have sufficient funds to pay post-filing services and supplies, as contemplated by the December 28 Cash Flow Forecast; and
  - (iv) CIBC supports the granting of the extension.

#### **The Sale and Investment Solicitation Process**

20. As noted in the First Report, the SISP (a copy of which is attached hereto as **Appendix "E"**) provided a means for testing the market, gauging interest in the B+C Entities' business and/or assets, and determining whether a transaction that would result in greater than forced liquidation value was available.
21. The purpose of the SISP was to identify one or more parties interested in acquiring and/or investing in the B+C Entities' business and/or assets. The key aspects of the SISP and its results are summarized as follows:
  - (i) the Monitor, in consultation with the B+C Entities, assembled a list of potential interested parties, which included strategic/financial purchasers and liquidators (collectively, the **"Prospective Interested Parties"**). The Prospective Interested Parties included persons who regularly liquidate merchandise in insolvency proceedings;

- (ii) commencing on August 27, 2014, the Monitor contacted approximately 105 Prospective Interested Parties to advise of the opportunity to acquire and/or invest in the B+C Entities' business and/or assets. The Prospective Interested Parties were also provided with a "teaser" letter outlining the opportunity;
- (iii) prospective Interested Parties interested in obtaining additional information regarding the B+C Entities' business and/or assets were required to execute a confidentiality agreement ("**CA**") in order to obtain access to an electronic data room. A total of 16 parties executed the CA and were provided with data room access (the "**Interested Parties**");
- (iv) the Monitor, with the assistance of the B+C Entities, assembled information in an electronic data room. The data room contained financial and other information relevant to the B+C Entities' business and assets to assist Interested Parties in completing their due diligence;
- (v) throughout the course of the SISP process, the Monitor facilitated due diligence by Interested Parties, including updating the data room with current financial and other information, as required;
- (vi) as per the SISP, Interested Parties were required to submit binding investment proposals and/or offers for the B+C Entities' business or assets on or before 12:00 p.m. (Eastern Standard Time) on September 26, 2014 (the "**Offer Deadline**"). As the Offer Deadline fell on a date that certain Interested Parties would be observing a religious holiday, the Offer Deadline was extended by the Monitor after consultation with the DIP Lender (in accordance with the terms of the SISP), to 12:00 p.m. (Eastern Standard Time) on September 29, 2014 (the "**Revised Offer Deadline**");
- (vii) two (2) conditional offers to purchase and/or liquidate the B+C Entities' assets were received by the Monitor prior to the Revised Offer Deadline. One (1) additional offer to purchase and/or liquidate the B+C Entities' assets was submitted to the Monitor shortly after the Revised Offer Deadline;
- (viii) one (1) of the Offers was submitted from a party owned by one of the shareholders of the B+C Entities. As per the terms of the SISP, following receipt of the Participation Notice (as defined in the SISP) on August 29, 2014, Management was excluded from any participation in the SISP that might create an unfair advantage or jeopardize the integrity of the SISP;

- (ix) based on the Offers submitted to the Monitor, no auction (as provided for in the SISP) was required. According to the SISP, in circumstances where no auction was required and Management has submitted a Participation Notice (as defined in the SISP), the Monitor, after consulting with the DIP Lender, had sole discretion to accept an offer or refuse all offers received;
- (x) following its review of the Offers, the Monitor contacted the Purchaser to address certain concerns with its offer and "firm up" the Transaction;
- (xi) as the SISP contemplated the Monitor filing a motion with the Court for approval of the accepted offer on or before October 8, 2014 (the "**Sale Approval Motion**") and certain aspects of the Transaction were still being negotiated as that deadline approached, the Monitor, after consultation with the DIP Lender, extended the date the Monitor was required to file the Sale Approval Motion;
- (xii) the Monitor discussed the Offers with CIBC; and
- (xiii) in accordance with the SISP, the Monitor is of the view, after consulting with CIBC and other interested parties, that the Transaction should be accepted and authorized the B+C Entities to enter into the Purchase Agreement, subject to Court approval. As a result, on December 31, 2014, the B+C Entities and the Purchaser executed the Purchase Agreement in respect of the Sale Assets.

22. The Monitor has prepared a schedule summarizing/comparing the Offers (the "**Offer Summary**"). In the event that this Court grants the Approval and Vesting Order, but the Transaction does not close, the Monitor is of the view that efforts to remarket the Sale Assets may be impaired if the Offer Summary and the unredacted Purchase Agreement, which are filed separately with the Court as **Confidential Appendices "1" and "2"**, respectively, are made public at this time. In the circumstances, the Monitor believes that it is appropriate for the Offer Summary and the unredacted Purchase Agreement to be filed with the Court on a confidential basis and sealed until the closing of the Transaction or upon further order of this Court.

## The Transaction

23. Following its review of the Offers and consulting with CIBC, on or about October 3, 2014, the Monitor contacted the Purchaser to advise that the Monitor wished to proceed with the Purchaser's offer for the purchase of the Sale Assets and commenced discussions with the Purchaser (and other parties with an economic interest in the Transaction) to negotiate a definitive sale agreement. Subsequent to notifying the Purchaser of the desire to proceed with its offer, the Monitor and its counsel have been working with the Purchaser and its counsel to finalize the Purchase Agreement and to address certain conditions to closing. On December 31, 2014, the B+C Entities and the Purchaser executed the Purchase Agreement in respect of the Sale Assets. A redacted copy of the Purchase Agreement is attached hereto as **Appendix "F"**.
24. The Purchaser is a strategic purchaser that is owned by one of the shareholders of the B+C Entities (and is therefore technically related to both of the shareholders of the B+C Entities); however, IBSA indicates that its only interest in the Purchaser is as a creditor.
25. Key elements of the Transaction are as follows:
  - (i) the Purchaser is acquiring, as a going concern, on an "as is, where is" basis, substantially all of the B+C Entities' business and assets;
  - (ii) the consideration for the Transaction includes the assumption, by the Purchaser, of certain secured amounts owed by the B+C Entities to CIBC, IBSA, FBI and certain other obligations of the B+C Entities, including liabilities related to the period subsequent to the Filing Date, as well as a cash payment to satisfy certain other liabilities of the B+C Entities, including professional fees, sales taxes and other priority amounts;
  - (iii) Fluid Brands Inc. ("**Fluid**"), a party owned by one of the shareholders of the B+C Entities, is an additional signatory to the Purchase Agreement for the purpose of consenting to the provisions thereof in its capacity as the sole shareholder of 238 and 243 and as obligor of the obligations of Fluid and each Purchaser to CIBC, IBSA and FBI;

- (iv) the Monitor understands that the Purchaser will offer employment to the majority of the B+C Entities' employees. The Purchaser has provided an initial list of the employees not to be offered employment by the Purchaser (the “**Non-Retained Employees**”) and will provide an updated list twenty-four (24) hours prior to closing of the Transaction, which list will be updated to include those employees who did not accept offers of employment made to them by the Purchaser. Included in the cash payment referred to in paragraph 24(ii), is an amount equal to the amounts owing to the Non-Retained Employees on account of wages, unpaid expenses and vacation pay;
- (v) the Transaction is conditional on a number of factors, including:
  - (a) the execution of assignment and assumption agreements between the Purchaser and each of CIBC, IBSA and FBI;
  - (b) the confirmation by each of CIBC, IBSA and FBI that all conditions required to be satisfied by the relevant operative documents between any or each of the foregoing parties and any or each of the Purchasers and Fluid have been satisfied, including the payment by any of the Purchasers or Fluid of the fees and expenses of the legal counsel to each of CIBC, IBSA and FBI;
  - (c) the confirmation from IBSA that notwithstanding that a portion of the secured indebtedness owed by the B+C Entities to IBSA will not be assumed by the Purchaser, IBSA will have no recourse against the B+C Entities with respect to the amounts owed by the B+C Entities to IBSA not assumed by the Purchaser;
  - (d) the B+C Entities and the Purchaser entering into an agreement whereby the Purchaser shall be assigned and shall assume both the Assumed Agreements (as defined the Purchase Agreement) and Assumed Liabilities (as defined in the Purchase Agreement); and
  - (e) the companies that comprise the B+C Entities shall have each changed their names to a name that does not include the words “Bombay”, “Bowring” or “Benix”.

- (vi) the Transaction is also conditional on the Court issuing an order approving the Purchase Agreement and the Transaction and, upon closing, vesting free and clear title in and to the Sale Assets in favour of the Purchaser subject only to the permitted encumbrances, as identified in the Purchase Agreement;
  - (vii) the Purchaser shall be responsible for the payment of any required cure costs for any of the Assumed Agreements, including real property leases. The Purchase Agreement contemplates that the B+C Entities and the Purchaser shall use all reasonable commercial efforts to obtain any required consents of landlords and other counterparties to the assignment to the Purchaser of the Assumed Agreements, including real property leases.
  - (viii) the B+C Entities and the Purchaser have advised the Monitor that substantial progress has been made in obtaining landlords' consent to the assignment of the retail store leases to be assigned as part of the Purchase Agreement. In the event that consent to the assignment to the Purchaser of any such agreements cannot be obtained, upon terms satisfactory to the parties acting reasonably, the B+C Entities may apply to the Court for an order assigning the B+C Entities' rights and obligations under such agreements to the Purchaser, pursuant to section 11.3 of the CCAA. Should the B+C Entities be required to bring such a motion, the Monitor will address such request at that time;
  - (ix) closing is scheduled for January 19, 2015 or such other time as the B+C Entities and the Purchaser may otherwise agree.
26. As noted above, although the SISP contemplated that the Monitor would bring a motion for approval of the accepted offer in October 2014, the Sale Approval Motion was deferred, as the Monitor was not prepared to seek approval of the Sale Agreement and Transaction without the support of all parties with an economic interest in the Transaction, which support was only recently confirmed to the Monitor, as the parties conducted extensive discussions/negotiations regarding certain aspects of the Transaction.
27. Upon the waiver or satisfaction of the conditions precedent, the Monitor shall file a certificate with the Court attesting that the Transaction has been completed to the satisfaction of the Monitor and confirming the closing of the sale for the Sale Assets.

28. The Monitor is of the opinion that the Transaction represents the best recovery for the Sale Assets in the circumstances and satisfies the factors to be considered pursuant to sections 36(3) and (4) of the CCAA. In particular, the Monitor is of the view that:
- (i) the SISP was reasonable in the circumstances and approved by the Court and represents good faith efforts to market the assets of the B+C Entities for sale to persons not related to the B+C Entities;
  - (ii) the Transaction would be substantially more beneficial to the Company's creditors as compared to the alternatives, which would likely result in the liquidation of the B+C Entities' assets;
  - (iii) the Transaction provides for continued operation of the remaining Bombay and Bowring stores;
  - (iv) the B+C Entities limited liquidity substantially eliminates the opportunity to further market the Sale Assets for sale without putting the Transaction at risk and impairing recoveries. Prior to the Filing Date, the B+C Entities continuing losses virtually eliminated the B+C Entities cash balances and availability under its operating line with CIBC. Other than the limited DIP funding provided by CIBC for the purposes of the CCAA Proceedings, which funding is to be repaid on January 20, 2015 as per the terms of the DIP Forbearance Agreement, the B+C Entities are unlikely to source additional funding from a third party and, even if they could, in the Monitor's view, such funding would likely be very limited and expensive;
  - (v) the further marketing of the B+C Entities' assets would not likely result in greater realizations, as the market has been fully canvassed and all likely bidders have already been provided with an opportunity to bid on the assets;
  - (vi) the Transaction represents the best and highest offer received by the B+C Entities for the Sale Assets and the short time-frame to closing will eliminate ongoing operating costs;
  - (vii) CIBC, IBSA and FBI, the only parties with an economic interest in the Transaction, were consulted in connection with the Transaction and the Monitor understands that each of them generally supports the Transaction. However, the Monitor also notes that, as at the date of this Third Report, certain agreements are still to be finalized between these parties regarding, among other things, the assumption of certain secured indebtedness as a condition to closing

of the Transaction. In connection with the foregoing, the Monitor has obtained an independent, written legal opinion (the “**Security Opinion**”) from its counsel, Cassels Brock & Blackwell LLP, confirming that, subject to the qualifications and assumptions included in the Security Opinion, the security granted by the B+C Entities in favour of each of CIBC, IBSA and FBI is valid and enforceable; and

- (viii) the Transaction represents the best opportunity to maximize recoveries for creditors of the B+C Entities and provides the greatest benefit to all stakeholders (including employees, customers, suppliers, etc.), as it results in continuity of the B+C Entities' business.

### **Monitor's Conclusions and Recommendations**

29. Based on the foregoing, the Monitor respectfully recommends that this Honourable Court issue an Order(s):
- (i) approving the Purchase Agreement and the Transaction, and authorizing and directing the B+C Entities to complete the Transaction;
  - (ii) vesting, upon the closing of the Transaction, all rights, titles and interests of Bombay in and to the Sale Assets to 238 and all rights, titles and interests of Bowring and Benix in and to the Sale Assets to 243 free and clear of all liens, charges, security interests and other encumbrances other than Permitted Encumbrances as defined in the Purchase Agreement;
  - (iii) authorizing and directing Bombay to file articles of reorganization in accordance with section 186 of the OBCA to change the name of Bombay to 2151456 Ontario Inc.;
  - (iv) authorizing and directing Bowring to file articles of reorganization in accordance with section 186 of the OBCA to change the name of Bowring to 1677711 Ontario Inc.;
  - (v) authorizing and directing Benix to file articles of reorganization in accordance with section 186 of the OBCA to change the name of Benix to 1115926 Ontario Inc.;
  - (vi) sealing the Offer Summary and the unredacted version of the Purchase Agreement until the closing of the Transaction or upon further order of the Court;

- (vii) extending the Stay Period to March 27, 2015; and
- (viii) approving this Third Report, and the activities, actions and conduct of the Monitor set out therein.

All of which is respectfully submitted this 5<sup>th</sup> day of January, 2015.

**Richter Advisory Group Inc.**  
**in its capacity as Monitor of**  
**Bombay & Co. Inc., Bowring & Co. Inc. and Benix & Co. Inc.**

Per:



Gilles Benchaya, CPA, CA, CIRP



Adam Sherman, MBA, CIRP

# Tab A

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

THE HONOURABLE

)

WEDNESDAY, THE 6<sup>TH</sup>

JUSTICE PENNY

)

DAY OF AUGUST, 2014

)

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 BOMBAY & CO. INC., BOWRING &  
CO. INC. AND BENIX & CO. INC. (the "Applicants")

INITIAL ORDER

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

ON READING the affidavit of Freddy Benitah sworn August 6, 2014 and the Exhibits thereto (the "Benitah Affidavit"), and the Pre-filing Report of the proposed Monitor, Richter Advisory Group Inc. ("Richter") dated August 6, 2014 (the "Pre-filing Report") and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for the Applicants, Canadian Imperial Bank of Commerce ("CIBC") and Richter, and on reading the consent of Richter to act as the Monitor,

## **SERVICE**

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

## **APPLICATION**

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

## **PLAN OF ARRANGEMENT**

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

## **POSSESSION OF PROPERTY AND OPERATIONS**

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

5. THIS COURT ORDERS that the Applicant shall be entitled to continue to utilize the central cash management system currently in place as described in the Benitah Affidavit and replace it with the blocked account and central cash management system contemplated in the Facility Agreement (as defined below) and the Definitive Documents (as defined below) (the "Cash Management System") and that any present or future bank providing the Cash

Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicant of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicant, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

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

- (a) all outstanding and future wages, salaries, employee benefits, vacation pay and expenses (including expenses incurred by employees on behalf of the Applicants on company or employee credit cards for which the employee is personally liable) payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements including any and all cheques for such employee obligations which have been issued, but not cleared prior to the date of this Order;
- (b) the fees and disbursements of any Assistants retained or employed by the Applicants in respect of these proceedings, at their standard rates and charges;
- (c) amounts owing to vendors (including, without limitation, foreign sales agents, suppliers, transportation providers and customs brokers) determined by the Applicants to be necessary in order to ensure an uninterrupted supply of goods and services to the Applicants and material to the continued operation of the Business, provided that such payments are approved in advance by the Monitor or by further Order of the Court; and
- (d) amounts payable in respect of customs and duties;

and to continue to honour or comply with existing warranty and return policies, customer deposits, customer layaways and pre-payments, gift cards and similar programs offered by the Applicant.

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

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

8. THIS COURT ORDERS that each Applicant shall remit, in accordance with legal requirements, or pay:

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

creditors and which are attributable to or in respect of the carrying on of the Business by Applicant.

9. THIS COURT ORDERS that until a real property lease is disclaimed or resiliated in accordance with the CCAA, each Applicant shall pay all amounts constituting rent or payable by it as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the Applicant and the landlord from time to time ("Rent"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

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

## **RESTRUCTURING**

11. THIS COURT ORDERS that the Applicant shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents (as hereinafter defined), have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of their business or operations,
- (b) terminate the employment of such of their employees or temporarily lay off such of their employees as they deem appropriate; and
- (c) pursue all avenues of refinancing of their Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing,

all of the foregoing to permit the Applicants to proceed with an orderly restructuring of the Business (the "Restructuring").

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

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

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

14. THIS COURT ORDERS that until and including September 5, 2014, or such later date as this Court may order (the "Stay Period"), no proceeding or enforcement process in any court or tribunal (each, a "Proceeding") shall be commenced or continued against or in respect any of the Applicants or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicants and the Monitor, or with leave of this Court, and any and all

Proceedings currently under way against or in respect of any of the Applicants or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

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

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

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

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

#### **CONTINUATION OF SERVICES**

17. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with any of the Applicants or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or any of the Applicants, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the relevant Applicants, and that the Applicants shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by

the relevant Applicant in accordance with normal payment practices of such Applicant or such other practices as may be agreed upon by the supplier or service provider and each of the relevant Applicants and the Monitor, or as may be ordered by this Court.

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

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

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

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

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

20. THIS COURT ORDERS that each Applicant shall indemnify its directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicant after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

21. THIS COURT ORDERS that the directors and officers of the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "Directors' Charge") on the Property, which charge shall be allocated such that the Property of each Applicant shall stand as security

for the indemnity of such Applicant in favour of its officers and directors, and shall not exceed an aggregate amount of \$1 million in respect of the Property of Bombay & Co. Inc., \$600,000 in respect of the Property of Bowring & Co. Inc., and \$100,000 in respect of the Property of Benix & Co. Inc., as security for the indemnities provided in paragraph 20 of this Order. The Directors' Charge shall have the priority set out in paragraphs 39 and 41 herein.

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

#### **APPOINTMENT OF MONITOR**

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

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

- (a) monitor the Applicants' receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) assist the Applicants, to the extent required by the Applicants, in its dissemination, to the DIP Lender and its counsel on a weekly basis of financial and other information

as agreed to between the Applicants and the DIP Lender which may be used in these proceedings including reporting on a basis to be agreed with the DIP Lender;

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

25. THIS COURT ORDERS that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

26. THIS COURT ORDERS that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release

or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

27. THIS COURT ORDERS that that the Monitor shall provide any creditor of the Applicants and the DIP Lender with information provided by the Applicants in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicants is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicants may agree.

28. THIS COURT ORDERS that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

29. THIS COURT ORDERS that the Monitor, counsel to the Monitor and counsel to the Applicants shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicants on a bi-weekly basis and, in addition, the Applicants are hereby authorized to pay to the Monitor, counsel to the Monitor, and counsel to the Applicants, retainers

in the amounts of \$75,000, \$35,000 and \$35,000, respectively, to be held by them as security for payment of their respective fees and disbursements outstanding from time to time

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

31. THIS COURT ORDERS that the Monitor, counsel to the Monitor, if any, and the Applicants' counsel shall be entitled to the benefit of and are hereby granted a charge (the "Administration Charge") on the Property, which charge shall not exceed an aggregate amount of \$750,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 39 and 41 hereof.

#### **DIP FINANCING**

32. THIS COURT ORDERS that the Applicants are hereby authorized and empowered to obtain and borrow under their existing credit facilities from CIBC (the "DIP Lender") in order to finance the Applicants' working capital requirements and other general corporate purposes and capital expenditures, provided that aggregate borrowings under such credit facilities shall not exceed \$20 million unless permitted by further Order of this Court.

33. THIS COURT ORDERS THAT such credit facilities shall be on the terms and subject to the conditions set forth in the Amended, Restated and Consolidated Credit Agreement between CIBC and the Applicants dated as of December 13, 2010 (as amended, the "Existing Credit Agreement"), as amended by the First Amended and Restated Forbearance Agreement between CIBC and the Applicants dated as of August 5, 2014 (the "DIP Forbearance Agreement") (the Existing Credit Agreement and the DIP Forbearance Agreement, being together the "Facility Agreement"), filed.

34. THIS COURT ORDERS that the Applicants are hereby authorized and empowered to execute and deliver such additional credit agreements, mortgages, charges, hypothecs and security documents, guarantees, blocked account and other control agreements and other definitive documents (together with all such definitive documents previously executed and

delivered by the Applicants and presently in force and effect, the "Definitive Documents"), as are contemplated by the Facility Agreement or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Applicants are hereby authorized and directed to pay and perform all indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the Facility Agreement and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

35. THIS COURT ORDERS that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the "DIP Lender's Charge") on the Property, which DIP Lender's Charge shall not secure an obligation that exists before this Order is made. The DIP Lender's Charge shall have the priority set out in paragraphs 39 and 41 hereof.

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

- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under the Facility Agreement, the Definitive Documents or the DIP Lender's Charge, a Terminating Event (as defined in the Facility Agreement), or following the Termination Date (as defined in the Facility Agreement), the DIP Lender may exercise any of its rights and remedies against the Applicants or the Property under or pursuant to the Facility Agreement, Definitive Documents and the DIP Lender's Charge, subject to the following:
  - (i) the DIP Lender shall give the Applicants and the Monitor not less than three (3) business days' notice of its intention to enforce its rights and remedies against the Applicants and the Property (other than rights and remedies under the DIP Charge or other security) under the Facility Agreement and the Definitive Documents, including to cease making advances to the Applicants, to set off and/or consolidate any amounts owing by the DIP Lender to the Applicants against the obligations of the Applicants to the DIP Lender under the Facility Agreement, the Definitive Documents and the DIP Lender's Charge, to accelerate payments and give other notices;
  - (ii) any exercise by the DIP Lender of its rights and remedies against the Applicants or the Property under the DIP Charge or other security shall be

by application to the Court for the appointment of a receiver made on at least three (3) business days' notice to the Applicants and the Monitor; and

(iii) during the notice periods referred to in subparagraphs (i) and (ii) above, which notice periods may run concurrently, the DIP Lender shall continue to fund only the payment by the Applicants of employee wages, Priority Payables (as defined in the Facility Agreement) and, provided there is sufficient availability, such expenditures as are contemplated in the then current Approved CCAA Cash Flows (as defined in the Facility Agreement) and reasonably requested by the Applicants and as agreed by the Lender acting in its sole and unfettered discretion;

(c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicants or the Property.

37. **THIS COURT ORDERS AND DECLARES** that the DIP Lender, with respect to the Facility Agreement and the Definitive Documents shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicants under the CCAA, or any proposal filed by the Applicants under the *Bankruptcy and Insolvency Act* of Canada (the "BIA"), or any plan of arrangement filed under the *Canada Business Corporations Act* or equivalent provincial legislation, with respect to any advances made under the Facility Agreement or the Definitive Documents and in furtherance thereof the DIP Lender, in its capacity as pre-filing lender and DIP Lender under the Facility Agreement shall be unaffected by the stay of proceedings provided for in paragraphs 14 through 17 hereof, but subject to the conditions as set out in paragraph 36(b) (i) through (iii).

38. **THIS COURT ORDERS** that the Applicants are hereby authorized to pay to the DIP Lender, in accordance with the terms of the Facility Agreement and the Definitive Documents, from funds on hand, or from funds generated by post-filing sales of inventory or otherwise, any and all amounts owing by the Applicants on account of their pre-filing indebtedness.

#### **VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

39. **THIS COURT ORDERS** that the priorities of the Directors' Charge, the Administration Charge and the DIP Lender's Charge, as among them, shall be as follows:

First – Administration Charge;

Second – Directors' Charge; and

Third – DIP Lender's Charge.

40. THIS COURT ORDERS that the filing, registration or perfection of the Directors' Charge, the Administration Charge or the DIP Lender's Charge (collectively, the "Charges") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

41. THIS COURT ORDERS that each of the Directors' Charge, the Administration Charge and the DIP Lender's Charge (all as constituted and defined herein) shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "Encumbrances") in favour of any Person, with the exception, pending further Order of this Court, of:

- (a) subject to paragraph 45 hereof, those secured creditors with validly perfected security against the Property who have not been served with the materials filed in support of this Order, and
- (b) validly perfected purchase money security interests and statutory claims for sales taxes or employment related liabilities that have priority over the Existing Security (as defined in the Facility Agreement).

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

43. THIS COURT ORDERS that the Directors' Charge, the Administration Charge, the Facility Agreement, the Definitive Documents and the DIP Lender's Charge shall not be

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

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

44. THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicants' interest in such real property leases.

45. THIS COURT ORDERS that the Monitor shall send by courier or registered mail a copy of this Order, with a cover letter referencing this paragraph and directing the recipient to the materials filed in support of this motion as posted on the Monitor's website, to all parties who have registered financing statements in accordance with the Personal Property Security Act

(Ontario) or similar provincial statutes in Canada (other than those described in paragraph 41(b) hereof) (each a "Secured Party" and collectively the "Secured Parties") to the addresses noted for such party noted therein within 2 business days of the date of this Order. Any Secured Party who wishes to oppose or challenge the terms of this Order including the priority of the Charges granted herein must do so by delivering responding material to the Applicants, the Monitor, and the DIP Lender no later than August 19, 2014 and a motion to hear such objection will be scheduled no later than August 22, 2014. The security interest of all Secured Creditors who do not deliver responding materials as aforesaid will be subordinate to the Charges effective August 19, 2014.

### **SERVICE AND NOTICE**

46. THIS COURT ORDERS that the Monitor shall (i) without delay, publish in the Globe and Mail a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicants of more than \$1000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

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

48. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Applicants and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Applicants' creditors or other interested parties at their respective addresses as last shown on the records of the Applicants and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

### **GENERAL**

49. THIS COURT ORDERS that the Applicants or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

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

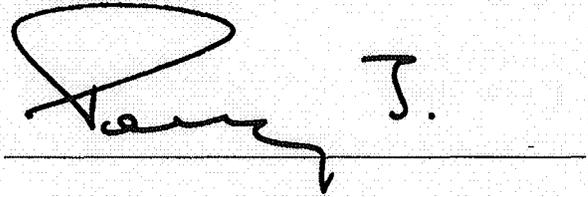
51. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this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

52. THIS COURT ORDERS that each of the Applicants and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative

in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

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

53A. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.



ENTERED AT / INSCRIT A TORONTO  
CN / BOOK NO:  
LE / DANS LE REGISTRE NO.:

AUG - 6 2014



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 AND ARRANGEMENT INVOLVING BOMBAY & CO. INC.,  
BOWRING & CO. INC. AND BENIX & CO. INC.

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
[COMMERCIAL LIST]**

**Proceedings commenced in Toronto**

**INITIAL ORDER**

**FASKEN MARTINEAU DU MOULIN LLP**  
Barristers & Solicitors  
333 Bay Street, Suite 2400  
Bay Adelaide Centre, Box 20  
Toronto, Ontario M5H 2T6

**Stuart Brotman (LSUC#43430D)**  
Tel: 416 865 5419  
Fax: 416 364 7813  
sbrotman@fasken.com

**Dylan Chochla (LSUC#62137D)**  
Tel: 416 868 3425  
Fax: 416 364 7813  
dchochla@fasken.com

Lawyers for the Applicants

# Tab B

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
[COMMERCIAL LIST]**

THE HONOURABLE MR. )  
JUSTICE HAINES )

FRIDAY, THE 22<sup>nd</sup>  
DAY OF AUGUST, 2014

**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 AND ARRANGEMENT  
INVOLVING BOMBAY & CO. INC., BOWRING & CO INC. AND BENIX & CO. INC.**

**APPROVAL AND STAY EXTENSION ORDER  
(Re Approval of Inventory Liquidation Consulting Agreement, SISP and stay extension)**

THIS MOTION, made by Bombay & Co. Inc. ("Bombay"), Bowring & Co. Inc. ("Bowring") and Benix & Co. Inc. ("Benix", and together with Bombay and Bowring, the "B&C Entities"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Freddy Benitah affirmed August 15, 2014 and the Exhibits thereto (the "Benitah Affidavit"), and the first report of the monitor, Richter Advisory Group Inc. (the "Monitor") dated August 19, 2014 (the "First Report") and on hearing the submissions of counsel for the B&C Entities, counsel for the Canadian Imperial Bank of Commerce (the "DIP Lender"), counsel for the Monitor, and such other parties as were present, no one else appearing although duly served as appears from the affidavits of service of Tasha Boyd sworn August 18, 2014 and August 20, 2014,

## **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.

## **APPROVAL OF INVENTORY LIQUIDATION CONSULTING AGREEMENT**

2. THIS COURT ORDERS AND DECLARES that the inventory liquidation consulting agreement dated August 15, 2014 (the "Inventory Liquidation Consulting Agreement") described in the affidavit of Freddy Benitah affirmed on August 15, 2014 (the "Benitah Affidavit") and attached thereto as Exhibit "C" (subject to such non-material amendments as may be agreed to by the B&C Entities and approved by the Monitor, after consultation with the DIP Lender) among the B&C Entities and a joint venture comprised of Merchant Retail Solutions, ULC, an affiliate of Hilco Merchant Resources, LLC, and Gordon Brothers Canada ULC, an affiliate of Gordon Brothers Retail Partners LLP (collectively, the "Consultant") be and is hereby approved and the B&C Entities and the Monitor, after consultation with the DIP Lender, are hereby authorized and directed to take such steps as they deem necessary or advisable to carry out the Inventory Liquidation Consulting Agreement.

3. THIS COURT ORDERS that the Sale Guidelines attached hereto as Schedule "A" be and are hereby approved and that the liquidation of the inventory and FF&E in the Stores (as defined in the Inventory Liquidation Consulting Agreement) shall be conducted in accordance with such Sale Guidelines. In the event of a conflict as between the terms of the Inventory Liquidation Consulting Agreement and the terms of the Sale Guidelines, the terms of the Sale Guidelines shall prevail.

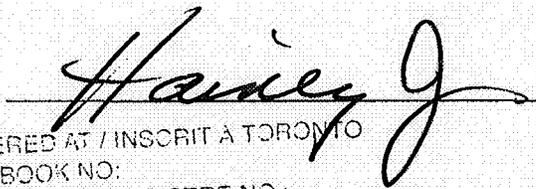
## **SALE AND INVESTMENT SOLICITATION PROCESS**

4. THIS COURT ORDERS that the sale and investment solicitation process (the "SISP") attached hereto as Schedule "B" (subject to such non-material amendments as may be agreed to by the B&C Entities and approved by the Monitor, after consultation with the DIP Lender) is hereby approved and the B&C Entities and the Monitor, after consultation with the DIP Lender, are hereby authorized and directed to take such steps as they deem necessary or advisable to

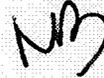
carry out the SISP, subject to prior approval of this Court being obtained before completion of any such sale or financing under the SISP.

**STAY EXTENSION**

5. THIS COURT ORDERS that the Stay Period (as defined in paragraph 14 of the Initial Order be and is hereby extended until and including November 28, 2014.

  
ENTERED AT / INSCRIT A TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO.:

AUG 22 2014



**Schedule "A"**

## SALE GUIDELINES

The following procedures shall apply to any sale of inventory ordinarily sold in the Stores (as defined below) and located in the Stores, warehouse or distribution centres, and assets or other property owned by the B&C Entities (as defined by the Order to which these Sale Guidelines are appended – the "**Order**" which B&C Entities are referred to as the "Merchant" herein), other than real property leases, (collectively, the "**Merchandise**") and any fixtures, furniture and equipment (collectively, the "**FF&E**") owned by the Merchant in connection with a sale (the "**Sale**") to be held by the Merchant with the assistance of the Consultants (as such term is defined in the Order) in the Merchant's retail stores (individually a "**Store**" and, collectively, the "**Stores**"), such Sale to end by no later than November 24, 2014:

1. Except as otherwise expressly set out herein, and subject to: (i) an Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") approving the Inventory Liquidation Consulting Agreement; or (ii) any written agreement between the Merchant and the applicable landlord(s) (individually, a "**Landlord**" and, collectively, the "**Landlords**"), or (iii) as otherwise set forth herein, the Sale shall be conducted in accordance with the terms of the applicable leases/or other occupancy agreements for each of the affected Stores (individually, a "**Lease**" and, collectively, the "**Leases**").
2. The Sale shall be conducted so that the Stores remain open during the normal hours of operation provided for in the respective Leases for the Stores. Rent payable under the respective Leases shall be paid as provided in the Initial CCAA Order dated August 6, 2014.
3. The Sale shall be conducted in accordance with applicable federal, provincial and municipal laws, unless otherwise ordered by the Court.
4. All display and hanging signs used by the Merchant in consultation with the Consultant in connection with the Sale shall be professionally produced and all hanging signs shall be hung in a professional manner. The Merchant may advertise the Sale at the Stores as a "sale on everything", "store closing" or similar theme sale at the Stores (save that no signs shall advertise the Sale as "bankruptcy", "a liquidation" or a "going out of business sale"). Forthwith upon request, the Merchant shall provide the proposed signage packages by e-mail or facsimile to the applicable Landlords or to their counsel of record and the applicable Landlord shall notify the Merchant of any requirement for such signage to otherwise comply with the terms of the Lease and/or the Sale Guidelines and where the provisions of the Lease conflicts with these Sale Guidelines, these Sale Guidelines shall govern. The Merchant shall not use neon or day-glo or handwritten signage, other than "you pay" and "topper" signs. If a Landlord is concerned with "Store Closing" signs being placed in the front window of a Store or with the number or size of the signs in the front window, the Merchant and the Landlord will discuss the Landlord's concerns and work to resolve the dispute. Furthermore, with respect to enclosed mall Store locations without a separate entrance from the exterior of the enclosed mall, no exterior signs or signs in common areas of a mall shall be used unless permitted by the applicable Lease. Nothing contained herein shall be construed to create or impose upon the Merchant any additional restrictions not contained in the applicable Leases. In

addition, the Merchant shall be permitted to utilize exterior banners/signs only at stand alone or strip mall Stores or enclosed mall Stores with a separate entrance from the exterior of the enclosed mall; provided, however, that where such banners are not permitted by the applicable Lease and the Landlord requests in writing that the banners are not to be used, no banners shall be used. Any banners permitted to be used shall be located or hung so as to make clear that the Sale is being conducted only at the affected Store and shall not be wider than the premises occupied by the affected Store. All exterior banners shall be professionally hung and to the extent that there is any damage to the façade of the premises of a Store as a result of the hanging or removal of the exterior banner, such damage shall be professionally repaired at the expense of the Merchant.

5. The Merchant shall be permitted to utilize sign walkers and street signage; provided, however, such sign walkers and street signage shall not be located on the shopping centre or mall premises.
6. Conspicuous signs shall be posted in the cash register areas of each Store to the effect that all sales are "final" and that customers with any questions or complaints subsequent to the conclusion of the Sale may contact a named representative of the Merchant or the Consultant at a specified telephone number.
7. The Merchant shall not distribute handbills, leaflets or other written materials to customers outside of any of the Stores, unless permitted by the applicable Lease or, if distribution is customary in the shopping centre in which the Store is located. Otherwise, the Merchant may solicit customers in the Stores themselves. The Merchant shall not use any giant balloons, flashing lights or amplified sound to advertise the Sale or solicit customers, except as permitted under the applicable Lease or agreed to by the Landlord.
8. At the conclusion of the Sale, the Merchant shall arrange that the premises for each Store are in "broom-swept" and clean condition, and shall otherwise leave the Stores in the same condition as on the commencement of the Sale, ordinary wear and tear excepted. No fixtures may be removed without complying with the provisions of the Initial Order of the Court, dated August 6, 2014. In any event, no property of any landlord of a Store shall be removed or sold during the Sale.
9. Subject to paragraph 8 above, the Merchant in consultation with the Consultant may sell furniture, fixtures and equipment ("FF&E") owned by the Merchant and located in the Stores during the Sale. The Merchant may advertise the sale of FF&E consistent with the guidelines provided in paragraphs 4 and 6 hereof on the understanding that the Landlord may require such signs to be placed in discreet locations within the Store reasonably acceptable to the Landlord. Additionally, the purchasers of any FF&E sold during the Sale shall only be permitted to remove the FF&E either through the back shipping areas designated by the Landlord or through other areas after regular store business hours or through the front door of the Store during Store business hours if the FF&E can fit in a shopping bag with Landlord's supervision as required by the Landlord. The Merchant shall repair any damage to the Stores resulting from the removal of any FF&E.
10. The Merchant shall not make any alterations to interior or exterior Store lighting. No property of any landlord of a Store shall be removed or sold during the Sale. The hanging of exterior banners or other signage shall not constitute an alteration to a Store.

11. The Consultant and its representatives shall have the same access rights to the Stores as the Merchant under the terms of the applicable leases, and the landlords shall have the rights of access to the Stores during the Sale provided for in the applicable leases (subject, for greater certainty, to the stay of proceedings set out in the Initial Order of the Court, dated August 6, 2014).
12. The Merchant shall not conduct any auctions of Merchandise or FF&E at any of the Stores. Subject to an agreement between the Merchant and the Landlords, the Merchant shall not augment the Merchandise included in the Sale except that they shall be entitled to include in the Sale, Merchandise to be located in the Merchant's distribution centre provided that it had been ordered by the Merchant prior to August 6, 2014 but has not yet been delivered.
13. Except with respect to FF&E that can fit in a shopping bag, removal of other furniture, movable fixtures and equipment shall take place before or after the regular hours of the Store or shopping center and through service of the exits and corridors designated by the landlord. The Merchant may abandon any of the FF&E not sold in the Sale at the Store premises at the conclusion of the Sale; provided however the landlord for the subject Store shall have the right to remove and dispose of such property without liability to the Merchant.
14. The Consultant shall designate a party to be contacted by landlords should a dispute arise concerning the conduct of the Sale. The initial contact person for Consultant shall be Ian Fredericks who may be reached by phone at (847) 418-2075 or email at ifredericks@hilcoglobal.com. If the parties are unable to resolve the dispute between themselves, the Landlord or Merchant shall have the right to schedule a "status hearing" before the Court on no less than **two (2) days** written notice to the other party or parties, during which time the Merchant shall cease all activity in dispute other than activity expressly permitted herein, pending the determination of the matter by the Court.
15. Nothing herein or in the Inventory Liquidation Consulting Agreement is, or shall be deemed to be a consent by any landlord to the sale, assignment or transfer of any leases or grant to the landlord any greater rights than already exist under the terms of any applicable leases.
16. For greater certainty, the Consultant is acting as the Merchant's consultant in accordance with the terms of the Inventory Liquidation Consulting Agreement. The Consultant shall have no different rights than the Merchant in the conduct of the liquidation shall and shall be bound by the same terms as the Merchant with respect thereto.
17. These Guidelines can be amended by written agreement between the Merchant and the applicable Landlord.

## Schedule "B"

## SALE AND INVESTOR SOLICITATION PROCESS ("SISP")

### Overview

1. Benix & Co. Inc., Bombay & Co. Inc. and Bowring & Co. Inc. (collectively the "**Applicants**") are three (3) separate legal entities:
  - (i) Bombay & Co. Ltd., which currently operates fifty-five (55) stores across Canada and offers large furniture, small occasional furniture, wall décor and home accessories;
  - (ii) Bowring & Co. Ltd., which currently operates fifty-seven (57) stores across Canada and offers giftware, fashion tableware, and decorative home accessories; and
  - (iii) Benix & Co. Ltd., which closed its final store in June, 2014, and prior to closing operated a chain of stores specializing in housewares, with a focus on cooking, home entertaining and giftware.
2. As a result of sustained losses and insufficient liquidity to finance operations, the Applicants, on August 6, 2014, obtained an order (the "**Initial Order**") for protection, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c.C-36, as amended ("**CCAA**"). Richter Advisory Group Inc. was appointed as the monitor of the Applicants (the "**Monitor**").
3. The Applicants and the Monitor believe that prospective buyers and/or investors will be interested in purchasing or investing in the Applicants' business for the following reasons:
  - (i) the Applicants have developed a restructuring plan, which includes the closure of underperforming store locations, significant cost cutting measures including headcount reductions and rent reductions, and an overall focus on profitable stores;
  - (ii) the Applicants have strong, established brand names, which are considered to be a staple in the home furniture and housewares industry in Canada;
  - (iii) the Applicants have a widespread national retail presence, including desirable store locations across Canada;
  - (iv) the Applicants have well established distribution channels; and
  - (v) the Applicants have an experienced management team capable of delivering on the Applicants' restructuring plan.

4. The Applicants, with the assistance of the Monitor, will be conducting a liquidation process concurrent with the SISP. The purpose of the concurrent process will be to effect the closure of those stores that are cash negative stores or otherwise have a net negative effect on the Applicants' overall business. References made to the "Applicants business" in this SISP refer only to those stores and operations that the Applicants, in consultation with the Monitor, intend to continue operating and exclude those stores that will be closed.

### **Objectives**

5. The Objective of the SISP are to:
  - (i) solicit offers from the market from those parties that are interested in refinancing the Applicants' business in an amount at least sufficient to repay all indebtedness owing to secured creditors of the Applicants and to provide sufficient working capital for the Applicants' ongoing business (the "**Investment Proposal**");
  - (ii) solicit offers from the market from those parties that are interested in purchasing the Applicants' business or a portion thereof (the "**Sale Proposal**");
  - (iii) ensure that the SISP is fair and effective for all parties, and is undertaken in a cost-effective manner;
  - (iv) preserve the continuity of the Applicants' operations during the SISP; and
  - (v) maximize value for the Applicants' stakeholders.

(collectively the "**SISP Objectives**")

### **Role of the Monitor**

6. The Monitor, will be responsible for managing all aspects of the SISP, while consulting with the Applicants' management ("**Management**") on how best to achieve the SISP Objectives. The Monitor's primary responsibilities will include:
  - (i) preparing a list of potential buyers and investors;
  - (ii) drafting of an initial offering summary ("**Teaser Letter**");
  - (iii) assisting legal counsel with the preparation of a confidentiality agreement ("**CA**");
  - (iv) populating and managing an electronic data room ("**Data Room**");

- (v) assisting legal counsel with the preparation of a template offer;
  - (vi) managing all communications with prospective buyers or investors and negotiating transactional documentation; and
  - (vii) consulting with the Canadian Imperial Bank of Commerce, in its capacity as "**DIP Lender**", throughout the process as the Monitor determines is appropriate and in accordance with the First Amended and Restated Forbearance Agreement among the Applicants, as borrowers and guarantors, and the DIP Lender, as lender, dated as of August 5, 2014 (as amended, revised, restated and/or replaced, from time to time to time, referred to as the "**FARFA**") and the Credit Agreement (as the term "**Credit Agreement**" is defined in the FARFA).
7. The Monitor, in consultation with Management, will have responsibility for managing all communications with prospective purchasers prior to and after receipt of binding offers. These communications include, but are not limited to, facilitating the delivery of all communications, contacting prospective purchasers/investors and providing them with the Teaser Letter, coordinating the execution of CAs, soliciting and tracking all expressions of interest, facilitating any requests for tours of the Applicants' facilities, managing the process of answering all inquiries from purchasers/investors, coordinating any presentations that may be requested by purchasers/investors, soliciting and tracking all offers and reviewing and negotiating transactional documentation.

#### **Role of Management**

8. Management shall assist the Monitor with the preparation of all of the material listed above and generally cooperate with the Monitor with all actions necessary to achieve the SISP Objectives.
9. Management has advised the Monitor that it, or a related party or parties, may submit a bid for the purchase of the Applicants' business. Any such party or parties who is/are interested to do so must advise the Monitor in writing of such intention on or before August 29, 2014 (the "**Participation Notice**"). Upon receipt of a Participation Notice, Management will be excluded from any participation in the SISP that might create an unfair advantage or jeopardize the integrity of the SISP. For greater certainty any such party or parties delivering a Participation Notice will be subject to the SISP procedures as an Interested Party.

#### **identification of Potential Interested Parties**

10. The Monitor, after consultation with Management and the DIP Lender, will develop a list of strategic and financial parties who may be interested in

investing in the Applicants and/or acquiring the Applicants' business (the "**Potential Bidders**").

11. The Applicants will obtain a Court order approving, *inter alia*, the SISP on or before August 22, 2014 (the "**SISP Approval Order**").

#### **Sale and Investor Solicitation Process**

12. The Monitor will, on or before August 27, 2014, distribute the Teaser Letter to all Potential Bidders and any other party who requests same.
13. Potential Bidders who wish to commence due diligence will be required to sign a CA, in a form acceptable to the Monitor.
14. Upon execution of a CA, the Monitor will provide each Potential Bidder (now an "**Interested Party**") with:
  - (i) a copy of the SISP; and
  - (ii) access to the Data Room, where information in connection with the Applicants' business will be available.

(collectively the "**Data Room Information**")

15. The Monitor will work with Management to complete the population of the Data Room with the Data Room Information on or before August 29, 2014. The Applicants, in consultation with the Monitor, reserve the right to limit any Interested Party's access to the Data Room Information where, in the Applicants' discretion, to do so could negatively impact the Applicants' business operations.
16. The Monitor will provide each Interested Party with the form of template offer ("**Template Offer**") on or before August 29, 2014. Each Interested Party who wishes to advance an Investment Proposal may do so in any form provided it meets the requirements set out in Section 18(ii) hereof.
17. Requests from Interested Parties for additional information will be made to the Monitor. Subject to Section 9 of the SISP, the Monitor, where necessary, will coordinate its responses to requests for additional information with Management.
18. Each Interested Party will be required to submit an irrevocable offer to the Monitor on or before 12:00 noon (EST) on September 26, 2014 (the "**Offer Deadline**"), which offer, shall set out to the extent applicable, among other things:
  - (i) in the case of a Sale Proposal, an executed offer containing the following terms and information: (i) the purchase price (including

the liabilities to be assumed by the Interested Party); (ii) any of the Applicants' assets and liabilities to be excluded; (iii) the structure and financing of the transaction (including, but not limited to, the sources of financing for the purchase price, evidence of the availability of such financing and the steps necessary and associated timing to obtain the financing and consummate the transaction and any related contingencies, as applicable); (iv) the treatment of employees of the Applicants; and; (vi) any regulatory approvals required to close the transaction and the anticipated time frame and any anticipated impediments for obtaining such approvals; (vii) an allocation of the purchase price between the Applicants' assets; and a blackline of the Template Offer to the offer; or

- (ii) in the case of an Investment Proposal, an executed Investment Proposal containing the following terms and information: (i) the aggregate amount of the equity and debt financing with an allocation between each Applicant (including, the sources of such financing, evidence of the availability of such financing and the steps necessary and associated timing to obtain the financing and consummate the transaction and any related contingencies, as applicable); (ii) the underlying assumptions regarding the anticipated debt levels, debt service fees, interest and amortization); (iii) any amount to be allocated to the Applicants' unsecured creditors and employees; (iv) confirmation that any anticipated corporate, shareholder or internal approvals required to close the transaction have been obtained; (v) any anticipated regulatory approvals required to close the transaction and the anticipated time frame and any anticipated impediments for obtaining such approvals; and
- (iii) such other information reasonably requested by the Monitor.

### **Offer Recommendation, Acceptance and Negotiation Process**

- 19. The Monitor, after consultation with the Applicants and the DIP Lender, may seek clarifications with respect to the offers and may, after consultation with the DIP Lender, negotiate any and all aspects of the offers or bids at any time prior to the completion of the Auction or No Auction process. The Monitor is not obligated to consult the Applicants in circumstances where a Participation Notice pursuant to paragraph 9 hereof has been delivered.
- 20. All offers must be capable of acceptance and must be irrevocable until 11:59 pm EST on November 6, 2014. All Offers must be accompanied by a deposit in the form of a wire transfer (to a bank account specified by the Monitor), or such other form of immediately available funds acceptable to

the Monitor, payable to the order of the Monitor, in trust, in an amount equal to 10% of the total financing or purchase consideration to be held and dealt with in accordance with the terms of the offer (the "**Deposits**").

21. Deposits received from Interested Parties shall be held in an interest bearing account. Deposits, other than the Deposit of the Successful Bidder, shall be returned to such Interested Parties two business days after the selection of the Successful Bidder as set out in paragraph 27(v) or paragraph 30. The Deposit received from the Successful Bidder shall be applied to the purchase price of such transaction at closing or otherwise dealt with in accordance with the definitive documentation entered into with the Applicants.

#### Auction Trigger

22. Immediately after the Offer Deadline, the Monitor shall, where necessary, and after consulting with the DIP Lender, take such steps as are required to clarify values and information set out in any offer and/or negotiate the terms of any offer. Once all offers are clarified the Monitor shall:
  - (i) summarize the values set out in each offer;
  - (ii) after consulting with the DIP Lender, determine which offers provide for the indefeasible cash payment in full by the bidder to the DIP Lender, of all amounts owing to the DIP Lender under the FARFA, the Credit Agreement and the other Loan Documents (as defined in the FARFA) including, without limitation, all of the Outstanding Obligations (defined in the Credit Agreement) upon the successful closing thereof which closing is completed prior to the expiry or termination of the Forbearance Period (as defined in the FARFA), (such payment within such timeframes being referred to as "**Lender Payment in Full**"); and
  - (iii) determine which offer provides the greatest value to the Applicants' stakeholders.

The Monitor shall provide a copy of such summary to the DIP Lender as soon as practicable. If such an offer is an Investment Proposal, the Applicants and/or the Monitor may return to Court for directions, as appropriate. If such an offer is a Sale Proposal for the purposes of this Auction section the Interested Party that the Monitor has determined, submitted the greatest value bid and provided for Lender Payment in Full shall be referred to as the "**Threshold Bidder**". The determination of greatest value bid shall be made by the Monitor considering the following factors (a) the amount and nature of the consideration, including the ability to pay the Lender Payment in Full; (b) the proposed assumption of any liabilities, if any; (c) the ability of the bidder to close the transaction, within

the time period contemplated for a Lender Payment in Full; (d) the impact of the contemplated transaction on any actual or potential litigation; (e) any purchase price adjustments; (f) the proposed closing date and the likelihood, extent and impact of any potential delays in closing; (g) the net economic effect of any changes from the Template Offer; (h) the net after-tax consideration to be received by the Applicants; and (i) such other considerations as the Monitor deems relevant in their reasonable business judgment, after consulting with the DIP Lender, (collectively the "**Bid Assessment Criteria**").

23. The Monitor shall identify any other offers that are within CDN \$5 million of the Threshold Bidder's offer. For the purposes of this Auction section any Interested Party that submits an offer that is within CDN \$5 million of the Threshold Bidder's offer and satisfied the Bid Assessment Criteria shall be referred to as a "**Qualified Bidder**".
24. In the event the Monitor, after consulting with the DIP Lender, identifies Qualified Bidders the Monitor shall send written notice to any Qualified Bidders, on or before noon on October 3, 2014, advising the Qualified Bidders that they are Qualified Bidders (the "**Auction Notice**"). The Auction Notice shall also include:
  - (i) the date, time and location of the proposed auction;
  - (ii) the terms of the Opening Bid (as defined below);
  - (iii) the minimum first bid required in order to exceed the Threshold Bidder's offer; and
  - (iv) the procedures pursuant to which the auction will be conducted.
25. Qualified Bidders must notify the Monitor, in writing, by no later than noon on October 6, 2014, of their intention to participate in the auction (the "**Auction Notice Response**"). Where the Monitor does not receive an Auction Notice Response it shall be deemed that the applicable Interested Parties declined to participate.
26. In circumstances where no Qualified Bidder elects to participate in the auction process the Applicants and the Monitor, after consultation with the DIP Lender, shall proceed to consummate the sale transaction in accordance with the "No Auction" section of the SISF. If the only Qualified Bidder electing to participate in the Auction process is the Threshold Bidder, the Threshold Bidder shall be deemed to be the Successful Bidder, subject to court approval.
27. In circumstances where a Qualified Bidder elects to participate an auction shall be conducted on or before October 8, 2014, according to the following procedures:

- (i) Participation at the Auction. Only the Threshold Bidder and Qualified Bidders (collectively the "**Auction Participants**") are eligible to participate at the auction. Only the authorized representatives (including counsel and other advisors) of each Auction Participant and the DIP Lender shall be permitted to attend the auction. The bidding shall begin with the Threshold Bidder's offer (the "**Opening Bid**") and each subsequent round of bidding shall continue in minimum increments of at least the Minimum Overbid Increment (as defined below).
  
- (ii) Monitor Shall Conduct the Auction. The Monitor shall direct and preside over the auction. At the start of the auction the Monitor shall confirm the terms of the Opening Bid to all Auction Participants. All bids made after the Opening Bid shall be Overbids (as defined below), and shall be made and received on an open basis, and all material terms of each Overbid shall be fully disclosed to all other Auction Participants. The Monitor shall maintain a transcript of the Opening Bid and all Overbids made and announced at the auction.
  
- (iii) Terms of Overbids. An "Overbid" is any bid made at the auction subsequent to the announcement of the Opening Bid. To submit an Overbid, in any round of the auction, an Auction Participant must comply with the following requirements:
  - a. Minimum Overbid Increment  
Any Overbid shall be made in increments of at least \$150,000.
  
  - b. Announcing Overbids  
At the end of each round of bidding, the Monitor shall announce the material terms of the then highest and/or best Overbid, the basis for the calculating the total consideration offered in such Overbid, and the resulting benefit to the Applicants based on, among other things, the Bid Assessment Criteria.
  
  - c. Failure to Bid  
If at the end of any round of bidding an Auction Participant fails to submit an Overbid, then such Auction Participant shall not be entitled to continue to participate in the next round of the Auction.
  
- (iv) Additional Procedures. The Monitor may, after consultation with the Auction Participants and its advisors and the DIP Lender and its advisors, adopt rules for the auction at or prior to the auction that will better promote the goals of the auction and that are not inconsistent with any of the provisions of these bidding procedures, provided that no such rules may change the requirement that all

Overbids shall be made and received in one room, within a defined period, on an open basis, and all other Auction Participants shall be entitled to be present for all bidding with the understanding that the true identity of each Auction Participant submitting a bid shall be fully disclosed to all other Auction Participants and that all material terms of the then highest and/or best Overbid at the end of each round of bidding will be fully disclosed to all other Auction Participants.

- (v) Closing the Auction. Upon conclusion of the bidding, the auction shall be closed, and the Monitor shall immediately review the final Overbid of each Auction Participant on the basis of the Bid Assessment Criteria and after consultation with the DIP Lender, notify the Auction Participants as to the winner of the auction process subject to Court Approval (the "**Successful Bidder**" and the Successful Bid being the "**Successful Bid**").

The bidders shall bid in inverse order according to the ranking of their offers or previous bids, as determined by the Monitor; the terms and conditions of all bids shall be open to all other Qualified Bidders at such time as they are made; and the Auction process shall continue until there are only two Qualified Bidders, each of which has submitted its final bid or the lowest ranking of which does not wish to make a further bid.

28. The Applicants shall complete the sale transaction or transactions with the Successful Bidder following approval of the Successful Bid by the Court. The Applicants will be deemed to have accepted the Successful Bid only when this bid is approved by the Court.
29. The Applicants shall file a motion with the Court to approve the Successful Bid by no later than October 15, 2014 (the "**Auction Approval Hearing**"). The Applicants and the Successful Bidder will make best efforts to have the Auction Approval Hearing scheduled prior to October 31, 2014.

#### No Auction

30. In circumstances where no auction is required and Management has not delivered a Participation Notice, the Monitor will summarize the terms of all offers received from Interested Parties and provide its recommendation to Management and the DIP Lender, as with respect to selecting the offer to consummate the transactions (the "**Accepted Offer**"). The Monitor's recommendation shall be subject to the same criteria as enumerated in paragraph 22. Any proposed Accepted Offer that does not provide for Lender Payment in Full shall be subject to the consent of the DIP Lender prior to being designated as the Accepted Offer. If, under these circumstances, Management selects the Accepted Offer, the Monitor, after consulting with the DIP Lender, shall promptly notify the Successful

Bidder that its offer has been accepted (the "**Acceptance Notice**"), subject to the terms of the SISP and subject to the approval by the *Ontario Superior Court of Justice* (Commercial List) (the "**Court**"). The Applicants shall file a motion with the Court for the approval of the Accepted Offer on or before October 8, 2014. Management shall however, have the discretion to accept the Monitor's recommendation, select an alternative to the Monitor's suggestion or to refuse all offers received and if Management chooses to do the latter, the Applicants shall immediately bring a motion to the Court for directions regarding same. Nothing whatsoever in this SISP precludes the DIP Lender from objecting to and opposing the approval of the Accepted Offer where the DIP Lender has not consented to the Accepted Offer whether or not such offer provides for Lender Payment in Full.

31. Subject to paragraph 26 and to the prior consent of the DIP Lender where the Accepted Offer does not provide for Lender Payment in Full, in circumstances where no auction is required and where Management has submitted a Participation Notice, the Monitor shall have the sole discretion to accept an offer or to refuse all offers received. If, under these circumstances, the Monitor, after consulting with the DIP Lender, selects an offer, the Monitor shall promptly provide the Successful Bidder with the Acceptance Notice, which shall be subject to the terms of the SISP and subject to the Court's approval. The Monitor shall file a motion with the Court for the approval of the Accepted Offer on or before October 8, 2014.
32. If the Applicants in the first instance or the Monitor in the second instance, after consulting with the DIP Lender, determine that no offer should be accepted, the SISP process shall be terminated and the Applicants shall immediately bring a motion seeking directions from the Court.

#### **Court Approval and Closing**

33. The Accepted Offer or the Successful Bid, as the case may be, shall be subject to approval by the DIP Lender where such Accepted Offer or Successful Bid does not provide for the Lender Payment in Full and shall be subject only to the conditions contained in the Accepted Offer or Successful Bid.
34. Any Accepted Offer or Successful Bid shall be conditional upon the Applicants obtaining Court approval of the Accepted Offer or Successful Bid.
35. Following the selection of the Accepted Offer or the Successful Bid and after receipt of the foregoing approvals, the Monitor shall take such steps as may be necessary to facilitate a closing of each transaction by no later than November 6, 2014.

**Other**

36. The Monitor, after consulting with the Applicants and the DIP Lender, may amend the SISP, including as it relates to any time limits as may be necessary to achieve the above objectives, or as may be amended by further Order of the Court.
37. Neither the Applicants nor the Monitor shall be liable for any claim for a brokerage commission, finder's fee or like payment in respect of the consummation of any of the transactions contemplated under the SISP Procedures arising out of any agreement or arrangement entered into by the party that submitted the Accepted Offer or Successful Bid. Any such claim shall be the sole liability of the party that submitted such Accepted Offer or Successful Bid.

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IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED  
AND IN THE MATTER OF A PLAN OF COMPROMISE AND ARRANGEMENT INVOLVING BOMBAY & CO. INC.,  
BOWRING & CO. INC. AND BENIX & CO. INC.

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**[COMMERCIAL LIST]**

Proceedings commenced in Toronto

**APPROVAL AND STAY EXTENSION ORDER**

**FASKEN MARTINEAU DuMOULIN LLP**

Barristers & Solicitors

333 Bay Street, Suite 2400

Bay Adelaide Centre, Box 20

Toronto, Ontario M5H 2T6

**Stuart Brotman (LSUC#43430D)**

**Aubrey Kauffman (LSUC#18829N)**

**Dylan Chochla (LSUC#62137I)**

[sbrotman@fasken.com](mailto:sbrotman@fasken.com)

[akauffman@fasken.com](mailto:akauffman@fasken.com)

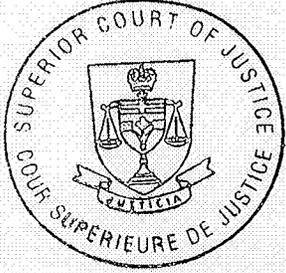
[dchochla@fasken.com](mailto:dchochla@fasken.com)

Tel: 416 366 8381

Fax: 416 364 7813

Lawyers for the Applicants

# Tab C



Court File No. CV-14-10659-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
[COMMERCIAL LIST]**

THE HONOURABLE

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THURSDAY, THE 27<sup>th</sup>

JUSTICE **NEWBOULD**

)

DAY OF NOVEMBER, 2014

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE AND ARRANGEMENT  
INVOLVING BOMBAY & CO. INC. , BOWRING & CO INC. AND BENIX & CO. INC.**

**Applicants**

**STAY EXTENSION ORDER**

THIS MOTION, made by Bombay & Co. Inc. ("**Bombay**"), Bowring & Co. Inc. ("**Bowring**") and Benix & Co. Inc. ("**Benix**", and together with Bombay and Bowring, the "**B+C Entities**"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Freddy Benitah affirmed November 20, 2014 and the Exhibits thereto, the pre-filing report of Richter Advisory Group Inc. (the "**Monitor**"), in its capacity as proposed monitor of the B+C Entities, dated August 6, 2014 (the "**Pre-Filing Report**"), the first report of the Monitor dated August 19, 2014 (the "**First Report**") and the second report of the Monitor dated November 21, 2014 (the "**Second Report**", and together with the Pre-Filing Report and the First Report, the "**Monitor's Reports**"), and on hearing the submissions of counsel for the B+C Entities, counsel for the Canadian Imperial Bank of Commerce, counsel for the Monitor, and such other parties as were present, no one else appearing although duly served as appears from the affidavit of service of Julie Alexander sworn November 20, 2014, filed:

**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.

**STAY EXTENSION**

2. THIS COURT ORDERS that the Stay Period (as defined in paragraph 14 of the Initial Order) be and is hereby extended until and including January 20, 2015.

**APPROVAL OF THE MONITOR'S REPORTS**

3. THIS COURT ORDERS that the Monitor's Reports and the activities of the Monitor referred to therein be and are hereby approved.

4. THIS COURT ORDERS that the fees and disbursements of the Monitor for the period June 27, 2014 to October 31, 2014, as described in the affidavit of Gilles Benchaya sworn November 21, 2014, be and are hereby approved.

5. THIS COURT ORDERS that the fees and disbursements of the Monitor's legal counsel for the period July 4, 2014 to November 14, 2014, as described in the affidavit of Larry Ellis sworn November 20, 2014, be and are hereby approved.



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

AND IN THE MATTER OF A PLAN OF COMPROMISE AND ARRANGEMENT INVOLVING BOMBAY & CO. INC.,  
BOWRING & CO. INC. AND BENIX & CO. INC.

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**[COMMERCIAL LIST]**

Proceedings commenced in Toronto

**STAY EXTENSION ORDER**

**FASKEN MARTINEAU DuMOULIN LLP**

Barristers & Solicitors

333 Bay Street, Suite 2400

Bay Adelaide Centre, Box 20

Toronto, Ontario M5H 2T6

**Stuart Brotman (LSUC#43430D)**

sbrotman@fasken.com

**Dylan Chochla (LSUC#62137D)**

akauffman@fasken.com

dchochla@fasken.com

Tel: 416 366 8381

Fax: 416 364 7813

Lawyers for the Applicants

# Tab D

**Bombay & Co. Inc., Bowring & Co. Inc. and Benix & Co. Inc.  
Consolidated Cash Flow for the Period December 28, 2014 - March 28, 2015**

(\$000's)	Jan 03	Jan 10	Jan 17	Jan 24	Jan 31	Feb 07	Feb 14	Feb 21	Feb 28	Mar 07	Mar 14	Mar 21	Mar 28	Total
Gross Receipts	\$ 4,779	\$ 2,651	\$ 2,651	\$ 2,651	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 12,732
<b>Disbursements</b>														
Purchases	511	422	665	469	-	-	-	-	-	-	-	-	-	2,067
Rent	1,104	-	1,104	-	-	-	-	-	-	-	-	-	-	2,209
Store expenses & Other	617	431	67	416	-	-	-	-	-	-	-	-	-	1,531
Payroll	476	476	476	676	-	-	-	-	-	-	-	-	-	2,105
Sales Tax	378	-	-	-	-	-	-	-	-	-	-	-	-	378
Interest	76	-	-	-	-	-	-	-	-	-	-	-	-	76
Utilities	30	30	30	30	-	-	-	-	-	-	-	-	-	121
Professional Fees	-	-	-	-	-	-	-	-	-	-	-	-	-	-
	3,193	1,360	2,343	1,591	-	-	-	-	-	-	-	-	-	8,486
<b>Net Cash Flow</b>	<b>1,586</b>	<b>1,291</b>	<b>308</b>	<b>1,060</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>4,246</b>
Opening Bank Loan	\$9,413	\$7,929	\$6,688	\$6,479	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$9,413
Bank Loan Paydown	-	-	-	(5,419)	-	-	-	-	-	-	-	-	-	(5,419)
<b>Closing Bank Loan</b>	<b>\$7,827</b>	<b>\$6,638</b>	<b>\$6,379</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>
<b>Opening Cash</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 400</b>	<b>\$ 200</b>	<b>\$ 100</b>	<b>\$ 60</b>	<b>\$ 50</b>	<b>\$ 40</b>	<b>\$ 30</b>	<b>\$ 20</b>	<b>\$ 10</b>	<b>\$ -</b>
Proposed Transaction Proceeds	-	-	-	1,930	-	-	-	-	-	-	-	-	-	1,930
Sales Tax	-	-	-	(1,230)	-	-	-	-	-	-	-	-	-	(1,230)
Professional Fees	-	-	-	(300)	(100)	(100)	(40)	(10)	(10)	(10)	(10)	(10)	(10)	(600)
Other	-	-	-	-	(100)	-	-	-	-	-	-	-	-	(100)
<b>Closing Cash</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 400</b>	<b>\$ 200</b>	<b>\$ 100</b>	<b>\$ 60</b>	<b>\$ 50</b>	<b>\$ 40</b>	<b>\$ 30</b>	<b>\$ 20</b>	<b>\$ 10</b>	<b>\$ -</b>	<b>\$ -</b>

# Tab E

## SALE AND INVESTOR SOLICITATION PROCESS ("SISP")

### Overview

1. Benix & Co. Inc., Bombay & Co. Inc. and Bowring & Co. Inc. (collectively the "**Applicants**") are three (3) separate legal entities:
  - (i) Bombay & Co. Ltd., which currently operates fifty-five (55) stores across Canada and offers large furniture, small occasional furniture, wall décor and home accessories;
  - (ii) Bowring & Co. Ltd., which currently operates fifty-seven (57) stores across Canada and offers giftware, fashion tableware, and decorative home accessories; and
  - (iii) Benix & Co. Ltd., which closed its final store in June, 2014, and prior to closing operated a chain of stores specializing in housewares, with a focus on cooking, home entertaining and giftware.
2. As a result of sustained losses and insufficient liquidity to finance operations, the Applicants, on August 6, 2014, obtained an order (the "**Initial Order**") for protection, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c.C-36, as amended ("**CCAA**"). Richter Advisory Group Inc. was appointed as the monitor of the Applicants (the "**Monitor**").
3. The Applicants and the Monitor believe that prospective buyers and/or investors will be interested in purchasing or investing in the Applicants' business for the following reasons:
  - (i) the Applicants have developed a restructuring plan, which includes the closure of underperforming store locations, significant cost cutting measures including headcount reductions and rent reductions, and an overall focus on profitable stores;
  - (ii) the Applicants have strong, established brand names, which are considered to be a staple in the home furniture and housewares industry in Canada;
  - (iii) the Applicants have a widespread national retail presence, including desirable store locations across Canada;
  - (iv) the Applicants have well established distribution channels; and
  - (v) the Applicants have an experienced management team capable of delivering on the Applicants' restructuring plan.
4. The Applicants, with the assistance of the Monitor, will be conducting a liquidation process concurrent with the SISP. The purpose of the concurrent process will be to effect the closure of those stores that are cash negative stores or otherwise have a net negative effect on the Applicants' overall business. References made to the "Applicants business" in

this SISP refer only to those stores and operations that the Applicants, in consultation with the Monitor, intend to continue operating and exclude those stores that will be closed.

## Objectives

5. The Objective of the SISP are to:
- (i) solicit offers from the market from those parties that are interested in refinancing the Applicants' business in an amount at least sufficient to repay all indebtedness owing to secured creditors of the Applicants and to provide sufficient working capital for the Applicants' ongoing business (the "**Investment Proposal**");
  - (ii) solicit offers from the market from those parties that are interested in purchasing the Applicants' business or a portion thereof (the "**Sale Proposal**");
  - (iii) ensure that the SISP is fair and effective for all parties, and is undertaken in a cost-effective manner;
  - (iv) preserve the continuity of the Applicants' operations during the SISP; and
  - (v) maximize value for the Applicants' stakeholders.

(collectively the "**SISP Objectives**")

## Role of the Monitor

6. The Monitor, will be responsible for managing all aspects of the SISP, while consulting with the Applicants' management ("**Management**") on how best to achieve the SISP Objectives. The Monitor's primary responsibilities will include:
- (i) preparing a list of potential buyers and investors;
  - (ii) drafting of an initial offering summary ("**Teaser Letter**");
  - (iii) assisting legal counsel with the preparation of a confidentiality agreement ("**CA**");
  - (iv) populating and managing an electronic data room ("**Data Room**");
  - (v) assisting legal counsel with the preparation of a template offer;
  - (vi) managing all communications with prospective buyers or investors and negotiating transactional documentation; and
  - (vii) consulting with the Canadian Imperial Bank of Commerce, in its capacity as "**DIP Lender**", throughout the process as the Monitor determines is appropriate.
7. The Monitor, in consultation with Management, will have responsibility for managing all communications with prospective purchasers prior to and after receipt of binding offers. These communications include, but are not limited to, facilitating the delivery of all

communications, contacting prospective purchasers/investors and providing them with the Teaser Letter, coordinating the execution of CAs, soliciting and tracking all expressions of interest, facilitating any requests for tours of the Applicants' facilities, managing the process of answering all inquiries from purchasers/investors, coordinating any presentations that may be requested by purchasers/investors, soliciting and tracking all offers and reviewing and negotiating transactional documentation.

### **Role of Management**

8. Management shall assist the Monitor with the preparation of all of the material listed above and generally cooperate with the Monitor with all actions necessary to achieve the SISP Objectives.
9. Management has advised the Monitor that it, or a related party or parties, may submit a bid for the purchase of the Applicants' business. Any such party or parties who is/are interested to do so must advise the Monitor in writing of such intention on or before August 29, 2014 (the "**Participation Notice**"). Upon receipt of a Participation Notice, Management will be excluded from any participation in the SISP that might create an unfair advantage or jeopardize the integrity of the SISP. For greater certainty any such party or parties delivering a Participation Notice will be subject to the SISP procedures as an Interested Party.

### **Identification of Potential Interested Parties**

10. The Monitor, after consultation with Management, will develop a list of strategic and financial parties who may be interested in investing in the Applicants and/or acquiring the Applicants' business (the "**Potential Bidders**").
11. The Applicants will obtain a Court order approving, *inter alia*, the SISP on or before August 22, 2014 (the "**SISP Approval Order**").

### **Sale and Investor Solicitation Process**

12. The Monitor will, on or before August 27, 2014, distribute the Teaser Letter to all Potential Bidders and any other party who requests same.
13. Potential Bidders who wish to commence due diligence will be required to sign a CA, in a form acceptable to the Monitor.
14. Upon execution of a CA, the Monitor will provide each Potential Bidder (now an "**Interested Party**") with:
  - (i) a copy of the SISP; and
  - (ii) access to the Data Room, where information in connection with the Applicants' business will be available.

(collectively the "**Data Room Information**")

15. The Monitor will work with Management to complete the population of the Data Room with the Data Room Information on or before August 29, 2014. The Applicants, in consultation with the Monitor, reserve the right to limit any Interested Party's access to the Data Room Information where, in the Applicants' discretion, to do so could negatively impact the Applicants' business operations.
16. The Monitor will provide each Interested Party with the form of template offer ("**Template Offer**") on or before August 29, 2014. Each Interested Party who wishes to advance an Investment Proposal may do so in any form provided it meets the requirements set out in Section 18(ii) hereof.
17. Requests from Interested Parties for additional information will be made to the Monitor. Subject to Section 9 of the SISP, the Monitor, where necessary, will coordinate its responses to requests for additional information with Management.
18. Each Interested Party will be required to submit an irrevocable offer to the Monitor on or before 12:00 noon (EST) on September 26, 2014 (the "**Offer Deadline**"), which offer, shall set out to the extent applicable, among other things:
  - (i) in the case of a Sale Proposal, an executed offer containing the following terms and information: (i) the purchase price (including the liabilities to be assumed by the Interested Party); (ii) any of the Applicants' assets and liabilities to be excluded; (iii) the structure and financing of the transaction (including, but not limited to, the sources of financing for the purchase price, evidence of the availability of such financing and the steps necessary and associated timing to obtain the financing and consummate the transaction and any related contingencies, as applicable); (iv) the treatment of employees of the Applicants; and; (v) any regulatory approvals required to close the transaction and the anticipated time frame and any anticipated impediments for obtaining such approvals; (vi) an allocation of the purchase price between the Applicants' assets; and a blackline of the Template Offer to the offer; or
  - (ii) in the case of an Investment Proposal, an executed Investment Proposal containing the following terms and information: (i) the aggregate amount of the equity and debt financing with an allocation between each Applicant (including, the sources of such financing, evidence of the availability of such financing and the steps necessary and associated timing to obtain the financing and consummate the transaction and any related contingencies, as applicable); (ii) the underlying assumptions regarding the anticipated debt levels, debt service fees, interest and amortization); (iii) any amount to be allocated to the Applicants' unsecured creditors and employees; (iv) confirmation that any anticipated corporate, shareholder or internal approvals required to close the transaction have been obtained; (v) any anticipated regulatory approvals required to close the transaction and the anticipated time frame and any anticipated impediments for obtaining such approvals; and
  - (iii) such other information reasonably requested by the Monitor.

## Offer Recommendation, Acceptance and Negotiation Process

19. The Monitor, in consultation with the Applicants, may seek clarifications with respect to the offers and may negotiate any and all aspects of the offers or bids at any time prior to the completion of the Auction or No Auction process. The Monitor is not obligated to consult the Applicants in circumstances where a Participation Notice pursuant to paragraph 9 hereof has been delivered.
20. All offers must be capable of acceptance and must be irrevocable until 11:59 pm EST on November 6, 2014. All Offers must be accompanied by a deposit in the form of a wire transfer (to a bank account specified by the Monitor), or such other form of immediately available funds acceptable to the Monitor, payable to the order of the Monitor, in trust, in an amount equal to 10% of the total financing or purchase consideration to be held and dealt with in accordance with the terms of the offer (the "**Deposits**").
21. Deposits received from Interested Parties shall be held in an interest bearing account. Deposits, other than the Deposit of the Successful Bidder, shall be returned to such Interested Parties two business days after the selection of the Successful Bidder as set out in paragraph 27(v) or paragraph 30. The Deposit received from the Successful Bidder shall be applied to the purchase price of such transaction at closing or otherwise dealt with in accordance with the definitive documentation entered into with the Applicants.

## Auction Trigger

22. Immediately after the Offer Deadline, the Monitor shall, where necessary, take such steps as are required to clarify values and information set out in any offer and/or negotiate the terms of any offer. Once all offers are clarified the Monitor shall summarize the values set out in each offer and determine which offer provides the greatest value to the Applicants' stakeholders. If such an offer is an Investment Proposal, the Applicants and/or the Monitor may return to Court for directions as appropriate. If such an offer is a Sale Proposal for the purposes of this Auction section the Interested Party that the Monitor has determined submitted the greatest value bid shall be referred to as the "**Threshold Bidder**". The determination of greatest value bid shall be made by the Monitor considering the following factors (i) the amount and nature of the consideration; (ii) the proposed assumption of any liabilities, if any; (iii) the ability of the bidder to close the transaction; (iv) the impact of the contemplated transaction on any actual or potential litigation; (v) any purchase price adjustments; (vi) the proposed closing date and the likelihood, extent and impact of any potential delays in closing; (vii) the net economic effect of any changes from the Template Offer; (viii) the net after-tax consideration to be received by the Applicants; and (ix) such other considerations as the Monitor deems relevant in their reasonable business judgment (collectively the "**Bid Assessment Criteria**").
23. The Monitor shall identify any other offers that are within CDN \$5 million of the Threshold Bidder's offer. For the purposes of this Auction section any Interested Party that submits an offer that is within CDN \$5 million of the Threshold Bidder's offer and satisfied the Bid Assessment Criteria shall be referred to as a "**Qualified Bidder**".

24. In the event the Monitor identifies Qualified Bidders the Monitor shall send written notice to any Qualified Bidders, on or before noon on October 3, 2014, advising the Qualified Bidders that they are Qualified Bidders (the "**Auction Notice**"). The Auction Notice shall also include:
- (i) the date, time and location of the proposed auction;
  - (ii) the terms of the Opening Bid (as defined below);
  - (iii) the minimum first bid required in order to exceed the Threshold Bidder's offer; and
  - (iv) the procedures pursuant to which the auction will be conducted.
25. Qualified Bidders must notify the Monitor, in writing, by no later than noon on October 6, 2014, of their intention to participate in the auction (the "**Auction Notice Response**"). Where the Monitor does not receive an Auction Notice Response it shall be deemed that the applicable Interested Parties declined to participate.
26. In circumstances where no Qualified Bidder, other than the Threshold Bidder elects to participate in the auction process the Applicants and the Monitor shall proceed to consummate the sale transaction in accordance with the "No Auction" section of the SISF. If the only Qualified Bidder electing to participate in the Auction process is the Threshold Bidder, the Threshold Bidder shall be deemed to be the Successful Bidder, subject to court approval.
27. In circumstances where a Qualified Bidder elects to participate an auction shall be conducted on or before October 8, 2014, according to the following procedures:
- (i) Participation at the Auction. Only the Threshold Bidder and Qualified Bidders (collectively the "**Auction Participants**") are eligible to participate at the auction. Only the authorized representatives (including counsel and other advisors) of each Auction Participant shall be permitted to attend the auction. The bidding shall begin with the Threshold Bidder's offer (the "**Opening Bid**") and each subsequent round of bidding shall continue in minimum increments of at least the Minimum Overbid Increment (as defined below).
  - (ii) Monitor Shall Conduct the Auction. The Monitor shall direct and preside over the auction. At the start of the auction the Monitor shall confirm the terms of the Opening Bid to all Auction Participants. All bids made after the Opening Bid shall be Overbids (as defined below), and shall be made and received on an open basis, and all material terms of each Overbid shall be fully disclosed to all other Auction Participants. The Monitor shall maintain a transcript of the Opening Bid and all Overbids made and announced at the auction.
  - (iii) Terms of Overbids. An "Overbid" is any bid made at the auction subsequent to the announcement of the Opening Bid. To submit an Overbid, in any round of the auction, an Auction Participant must comply with the following requirements:

a. Minimum Overbid Increment

Any Overbid shall be made in increments of at least \$150,000.

b. Announcing Overbids

At the end of each round of bidding, the Monitor shall announce the material terms of the then highest and/or best Overbid, the basis for the calculating the total consideration offered in such Overbid, and the resulting benefit to the Applicants based on, among other things, the Bid Assessment Criteria.

c. Failure to Bid

If at the end of any round of bidding an Auction Participant fails to submit an Overbid, then such Auction Participant shall not be entitled to continue to participate in the next round of the Auction.

- (iv) Additional Procedures. The Monitor may, with consultation of the Auction Participants and its advisors, adopt rules for the auction at or prior to the auction that will better promote the goals of the auction and that are not inconsistent with any of the provisions of these bidding procedures, provided that no such rules may change the requirement that all Overbids shall be made and received in one room, within a defined period, on an open basis, and all other Auction Participants shall be entitled to be present for all bidding with the understanding that the true identity of each Auction Participant submitting a bid shall be fully disclosed to all other Auction Participants and that all material terms of the then highest and/or best Overbid at the end of each round of bidding will be fully disclosed to all other Auction Participants.
- (v) Closing the Auction. Upon conclusion of the bidding, the auction shall be closed, and the Monitor shall immediately review the final Overbid of each Auction Participant on the basis of the Bid Assessment Criteria and notify the Auction Participants as to the winner of the auction process subject to Court Approval (the "**Successful Bidder**" and the Successful Bid being the "**Successful Bid**").

The bidders shall bid in inverse order according to the ranking of their offers or previous bids, as determined by the Monitor; the terms and conditions of all bids shall be open to all other Qualified Bidders at such time as they are made; and the Auction process shall continue until there are only two Qualified Bidders, each of which has submitted its final bid or the lowest ranking of which does not wish to make a further bid.

28. The Applicants shall complete the sale transaction or transactions with the Successful Bidder following approval of the Successful Bid by the Court. The Applicants will be deemed to have accepted the Successful Bid only when this bid is approved by the Court.
29. The Applicants shall file a motion with the Court to approve the Successful Bid by no later than October 15, 2014 (the "**Auction Approval Hearing**"). The Applicants and the

Successful Bidder will make best efforts to have the Auction Approval Hearing scheduled prior to October 31, 2014.

#### No Auction

30. In circumstances where no auction is required and Management has not delivered a Participation Notice, the Monitor will summarize the terms of all offers received from Interested Parties and provide its recommendation to Management with respect to selecting the offer to consummate the transactions (the "**Accepted Offer**"). If, under these circumstances, Management selects an offer, the Monitor shall promptly notify the Successful Bidder that its offer has been accepted (the "**Acceptance Notice**"), subject to the terms of the SISP and subject to the approval by the *Ontario Superior Court of Justice* (Commercial List) (the "**Court**"). The Applicants shall file a motion with the Court for the approval of the Accepted Offer on or before October 8, 2014. Management shall however, have the discretion to accept the Monitor's recommendation, select an alternative to the Monitor's suggestion, or to refuse all offers received and if Management chooses to do so, the Applicants shall return to Court for directions regarding same.
31. Subject to paragraph 26 in circumstances where no auction is required and where Management has submitted a Participation Notice the Monitor shall have the sole discretion to accept an offer or to refuse all offers received. If, under these circumstances, the Monitor selects an offer, the Monitor shall promptly provide the Successful Bidder with the Acceptance Notice, which shall be subject to the terms of the SISP and subject to the Court's approval. The Monitor shall file a motion with the Court for the approval of the Accepted Offer on or before October 8, 2014.
32. If the Applicants in the first instance or the Monitor in the second instance determine that no offer should be accepted, the SISP process shall be terminated and the Applicants shall seek direction from the Court.

#### Court Approval and Closing

33. The Accepted Offer or the Successful Bid shall be subject to approval by the DIP Lender if the cash proceeds payable on the closing of the Accepted Offer or Successful Bid are not sufficient to repay all amounts owing to the DIP Lender in full, and shall be subject only to the conditions contained in the Accepted Offer or Successful Bid.
34. Any Accepted Offer or Successful Bid shall be conditional upon the Applicants obtaining Court approval of the Accepted Offer or Successful Bid.
35. Following the selection of the Accepted Offer or the Successful Bid and after receipt of the foregoing approvals, the Monitor shall take such steps as may be necessary to facilitate a closing of each transaction by no later than November 6, 2014.

**Other**

36. The Monitor, after consulting with the Applicants, may amend the SISP, including as it relates to any time limits as may be necessary to achieve the above objectives, or as may be amended by further Order of the Court.
37. Neither the Applicants nor the Monitor shall be liable for any claim for a brokerage commission, finder's fee or like payment in respect of the consummation of any of the transactions contemplated under the SISP Procedures arising out of any agreement or arrangement entered into by the party that submitted the Accepted Offer or Successful Bid. Any such claim shall be the sole liability of the party that submitted such Accepted Offer or Successful Bid.

# Tab F

## OFFER TO PURCHASE

To: BOMBAY & CO. INC. ("**Bombay**"), BOWRING & CO. INC. ("**Bowring**") AND BENIX & CO. INC. ("**Benix**") (collectively, the "**Sellers**")

- A. WHEREAS Sellers have commenced proceedings (the "**CCAA Proceeding**") under the Companies' Creditors Arrangement Act (the "**CCAA**") in the Ontario Superior Court of Justice (the "**Court**"); and
- B. WHEREAS 2383029 Ontario Inc. and 2437533 Ontario Inc. (collectively or individually, the "**Offeror**" or "**Buyer**") wish to acquire from Sellers in accordance with the CCAA Approval and Vesting Order (as hereinafter defined), all of the Sale Assets (as hereinafter defined) upon and subject to the terms and conditions of this offer ("**this Offer**", and if accepted, "**this Agreement**").
- C. AND WHEREAS Fluid Brands Inc. ("**Fluid**") has agreed to sign this Offer for the purpose of consenting to the provisions hereof in its capacity as the sole shareholder of each Buyer and as obligor of the obligations of Fluid and each Buyer to Canadian Imperial Bank of Commerce ("**CIBC**"), F.B.I. Inc. ("**FBI**") and Isaac Bennet Sales Agencies, Inc. ("**IBSA**").

The Offeror hereby offers to purchase from the Sellers the Sale Assets (as hereinafter defined), upon and subject to the following terms and conditions, such offer to be irrevocable until 11:59 p.m. (Toronto time) on December 31, 2014.

### ARTICLE 1 PURCHASE AND SALE OF ASSETS

- 1.1 **Purchase and Sale.** At Closing, the Sellers shall sell, transfer, convey and assign to each Buyer, as set forth in Section 2.4 hereof, free and clear of all Liens, and the Buyer shall purchase and acquire from the Sellers, all of the Sellers' right, title and interest in and to all assets of the Sellers other than the Excluded Assets (the "**Sale Assets**"). For greater certainty, the Sale Assets, shall include, without limitation, the Business and the goodwill associated therewith, all real or personal, tangible or intangible, used or held for use by the Sellers in the Business at Closing including the following:
  - (1) all rights and benefits of the Sellers from and after Closing under the Assumed Agreements
  - (2) the Inventory;
  - (3) the FF&E;
  - (4) the Intellectual Property;
  - (5) all Cash and Cash Equivalents;

- (6) the proceeds of all sales of Inventory by the Sellers made prior to the Closing Date;
- (7) to the extent assignable, all insurance policies of the Sellers and all claims to proceeds or refunds thereunder;
- (8) to the extent assignable, all refunds, credits and claims relating to Taxes and all other Accounts Receivable;
- (9) the Prepaids;
- (10) any websites or other internet-based branding or marketing owned by the Sellers that are related to the Stores in any way;
- (11) all personal information, within the meaning of applicable privacy legislation, to the extent such information can be transferred to the Buyer without the consent of any individual which has not been obtained (it being agreed that the Sellers have no obligation to seek such consent)
- (12) all customer lists of the Business and a copy of other Business Records; and
- (13) to the extent assignable, the Licenses and all rights to use existing telephone numbers at the Stores.

1.2 **Excluded Assets.** Notwithstanding any other provision of this Agreement, the following assets (collectively, the "Excluded Assets") are expressly excluded from the Sale Assets:

- (1) all of the Sellers' rights under this Agreement, the Ancillary Agreements or any other instruments delivered in connection herewith or therewith;
- (2) all claims, rights or causes of action that the Sellers or their Affiliates may have from or against any person or entity relating to any of the Excluded Assets or arising in the CCAA Proceeding; and
- (3) originals of all Business Records and minute books, stock ledgers, stock certificates and capital stock of the Sellers.

## ARTICLE 2 PURCHASE PRICE AND PAYMENT

2.1 **Total Consideration.** The total consideration (the "**Total Consideration**") for the Sale Assets shall be the approximate aggregate amount, as of the date hereof, of \_\_\_\_\_, subject to adjustment as of the date of Closing to reflect such adjustments as may be agreed between the secured creditors of the Sellers (or any of them), each Buyer and Fluid, paid in the following manner:

- (a) the assumption by Fluid of all amounts owed by the Sellers (or any of them) to Canadian Imperial Bank of Commerce (including, without

limitation, the secured indebtedness, interest, fees and expenses, including legal and professional fees with respect to the Amended, Restated and Consolidated Credit Agreement dated December 13, 2010, as amended, the First Amended and Restated Forbearance Agreement dated as of August 5, 2014, and any Loan Documents, including letter of credit facilities as referred to therein, the Commitment Letter dated October 15, 2014 as agreed between Canadian Imperial Bank of Commerce, Fluid and the Sellers, as such may be amended, supplemented, extended or otherwise modified, and the credit agreement and other loan documents with Canadian Imperial Bank of Commerce in connection therewith) at the time of closing;

- (b) the assumption by the Buyers of the secured indebtedness owed by Bowring and Bombay in favour of IBSA in the amount of \_\_\_\_\_ in aggregate;
- (c) the assumption by the Buyers of the secured indebtedness owed by Bowring and Bombay in favour of FBI estimated as of the date hereof to be \_\_\_\_\_ in aggregate or other evidence, satisfactory to the Seller acting reasonably that FBI will not look to Bowring or Bombay for repayment of such amounts;
- (d) a cash payment by Fluid to the Monitor, payable by certified funds, bank draft or electronic transfer, on Closing, in an amount estimated, as of the date hereof, to be \_\_\_\_\_, equal to the total of:
  - (A) all pre- and post-filing sales taxes collected by the Sellers or any of them, but not remitted to the appropriate governmental authority, whether federal, provincial or harmonized;
  - (B) secured arrears of rental payments in respect of Sellers' locations located in the Province of Quebec, if any;
  - (C) all amounts owing to the Non-Retained Employees on account of wages, unpaid expenses and vacation pay, if any (for greater certainty, the foregoing amounts do not include severance or termination payments);
  - (D) Professional Fees; and
  - (E) any other Liens over the assets of the Sellers, or any one or more having priority over the liens in favour of FBI and IBSA;

To the extent that the amount of the above-noted cash payment exceeds the total amount required to satisfy items (A) through (E) above, such excess will be returned to the Buyer forthwith after closing;

- (e) the assumption of the Assumed Agreements; and
  - (f) the assumption of the Assumed Liabilities;
- 2.2 Each Buyer and Fluid each confirms that it has received a financing commitment from CIBC in the form of a signed commitment letter dated October 15, 2014 as extended by way of a commitment letter extension agreement dated December 31, 2014 (copies of which have been provided to the Sellers separately on a confidential basis) (collectively, the "**Financing Commitment**") and that Fluid may assume all indebtedness owing by the Sellers to CIBC in accordance with this offer to purchase on the condition that such indebtedness is repaid in full immediately upon such assumption using the proceeds of a loan drawn down by the Buyer or its subsidiaries pursuant to the terms and conditions of a new credit agreement to be entered into in accordance with the requirements set forth in the Financing Commitment. Closing of the transactions contemplated by this Agreement will occur only once all documents, agreements and other instruments as may be required by CIBC in respect of the Financing Commitment have been finalized, executed and delivered in escrow on escrow terms agreed between Fluid, the Buyer and CIBC.
- 2.3 **Allocation of Purchase Price.** The Purchase Price shall be allocated between assets as set out on Schedule 2.3 hereto.
- 2.4 **Title to Purchased Assets.** All rights, title and interests of Bombay in and to the Sale Assets shall be conveyed directly to 2383029 Ontario Inc. (the "**Bombay Purchaser**"). All rights, title and interests of Bowring and Benix in and to the Sale Assets shall be conveyed directly to 2437533 Ontario Inc. (the "**Bowring Purchaser**").
- 2.5 **Excluded Liabilities.** Except as otherwise expressly provided in this Agreement, neither Fluid nor any Buyer shall assume or be liable for, any liabilities or obligations, absolute, contingent, accrued, known or unknown, of the Sellers.
- 2.6 **Allocation of Transfer Taxes and Fees; Tax Returns.** Fluid and each Buyer shall pay to the Sellers or as otherwise required by Applicable Law all HST, GST, sales and transfer Taxes and all filing fees and documentary fees or Taxes related to the recording of all lease assignments or payable in connection with the purchase and sale of the Sale Assets to the Buyer pursuant to this Agreement. Fluid, each Buyer and the Sellers shall use commercially reasonable efforts to minimize the amount of the foregoing Taxes and for this purpose shall reasonably cooperate in making available elections or providing any available resale exemption certificate or other similar documentation. Notwithstanding Fluid's or the Buyers' liability therefor, the party that is required by Applicable Law to make the filings, reports or returns and to handle any audits or controversies with respect to any of the foregoing Taxes shall do so, and the other party shall reasonably cooperate with respect thereto as necessary.
- 2.7 **Assumption and Assignment of Contracts; Adjustments**
  - (1) The Sellers and each Buyer shall use all reasonable commercial efforts to obtain any required consent of landlords and other counterparties to the assignment to the Buyer of the Assumed Agreements, including the Real Property Leases, and

including a provision that the Sellers are released from all obligations thereunder relating to any period or matter following Closing. In the event that consent to the assignment to the Buyer of any such agreement cannot be obtained, upon terms satisfactory to the parties acting reasonably, the Sellers shall apply in the CCAA Proceeding for an order of the Court assigning the Sellers' rights and obligations under such agreement to the Buyer as of Closing notwithstanding such lack of consent, upon terms satisfactory to the Sellers and Buyer acting reasonably. Fluid and each Buyer shall be responsible for the payment of any required cure costs of any Assumed Agreement, including the Real Property Leases.

- (2) For greater certainty, all adjustments referred to in Articles 3.2(1)(e) and 3.3(2) shall be adjusted in cash based on the period to which they relate. Accordingly, all amounts, other than cash amounts payable referred to in Article 2.1, which relate to any period prior to the Closing Date shall be payable by the Sellers to the Fluid or any Buyer and all amounts, other than Prepaids, which relate to any period from and after the Closing Date shall be payable by Fluid or any Buyer to the Sellers.
- (3) Nothing in this Agreement shall prevent the Buyer from negotiating such terms of assignment with any landlords of the Stores required in its sole determination to secure the consent of any such landlords to the assignment of any Real Property Leases, including, without limitation, extended payment terms over time relating to rental arrears owed by the Sellers as of the date of Closing.

### **ARTICLE 3 CLOSING**

- 3.1 **Closing.** Consummation of the transactions contemplated by this Agreement shall occur at 11:59 p.m. on or before January 19, 2015 (the "**Closing Date**"), at the offices of Torkin Manes LLP in Toronto, Ontario, or at such time and place as the Buyer and the Sellers may otherwise agree.
- 3.2 **Deliveries by the Sellers at Closing.** At Closing, the Sellers shall:
  - (1) execute, acknowledge, make and deliver to Fluid and each Buyer, as applicable, the following:
    - (a) a Bill of Sale in form and in substance satisfactory to the parties acting reasonably (the "**Bill of Sale**");
    - (b) an Assignment and Assumption Agreement pursuant to which the Buyer shall be assigned and shall assume the Assumed Agreements and Fluid or the Buyer (as applicable) shall assume the Assumed Liabilities, in form and in substance satisfactory to the Sellers, Fluid and each Buyer (as applicable) acting reasonably (the "**Assignment and Assumption Agreement**");
    - (c) a copy of the CCAA Approval and Vesting Order;

- (d) evidence of termination of the employment of the Non-Retained Employees pursuant to Article 7.2 hereof;
  - (e) an undertaking to make the usual adjustments after Closing; and
  - (f) such certificates, statutory declarations, consents, acknowledgements and other documents as are required to give effect to the Sellers' obligations hereunder and under the Ancillary Agreements and Sellers' irrevocable consent to each Buyer or its assigns sourcing from any third party products embodying the designs included in the Intellectual Property;
- (2) deliver possession of the Stores to the extent that the applicable Real Property Lease has been assumed by each applicable Buyer and tangible Sale Assets at the respective locations thereof; and
  - (3) deliver to the Monitor a certificate acknowledging that all conditions to closing have been satisfied or waived and the Total Consideration has been received.
- 3.3 **Deliveries by each Buyer at Closing.** At Closing, each Buyer and Fluid (to the extent applicable) shall execute, acknowledge, make and deliver to the Sellers the following:
- (1) duly executed Assignment and Assumption Agreements (the "**Assignment and Assumption Agreements**") between Fluid, each Buyer and each of CIBC, IBSA and FBI in form and substance reasonably acceptable to the Monitor;
  - (2) an undertaking to make the usual adjustments after Closing;
  - (3) the certificate required under Article 8.1(1);
  - (4) such certificates, statutory declarations, consents, acknowledgments and other documents as are required to give effect to Fluid's and each Buyer's obligations hereunder and under the Ancillary Agreements; and
  - (5) deliver to the Monitor a certificate acknowledging that all of Fluid's and each Buyer's conditions to closing have been satisfied or waived and the Total Consideration has been paid or otherwise satisfied.

#### **ARTICLE 4 REPRESENTATIONS AND WARRANTIES OF THE SELLERS**

The Sellers represents and warrants to Fluid and each Buyer as follows:

- 4.1 **Organization and Power.** The Sellers are validly existing corporations under the laws of its jurisdiction of organization.
- 4.2 **Authority.** Subject to the entry of the CCAA Approval and Vesting Order, the Sellers have the authority to enter into and consummate this Agreement and the Ancillary Agreements, and to complete the transactions contemplated hereby and thereby.

- 4.3 **Execution and Delivery.** The execution and delivery of this Agreement and the completion of the transactions contemplated hereby by the Sellers have been duly authorized by all necessary corporate action, and the execution, delivery and performance of the Ancillary Agreements by the Sellers have been or will be authorized by all necessary corporate action prior to the Closing Date. Subject to the entry of the CCAA Approval and Vesting Order, this Agreement constitutes, and upon execution and delivery of each of the Ancillary Agreements such agreements will constitute, valid and binding obligations of the Sellers, enforceable against the Sellers in accordance with their respective terms.
- 4.4 **“As Is”, “Where Is”.** Notwithstanding anything in this Agreement to the contrary, all Sale Assets used in the operation of the Business, whether owned, leased or licensed, are being transferred to each applicable Buyer “as is”, “where is” without representation, warranty or condition.
- 4.5 **Disclaimer of Representations and Warranties.** NEITHER THE MONITOR, THE SELLERS NOR ANY EMPLOYEES, DIRECTORS, OFFICERS, SHAREHOLDERS OR REPRESENTATIVES OF THE MONITOR OR SELLERS HAVE MADE ANY, AND THERE ARE NO, REPRESENTATIONS, WARRANTIES OR CONDITIONS, WHETHER EXPRESS OR IMPLIED, AT LAW OR IN EQUITY, RELATING TO THE SALE ASSETS OR THE BUSINESS OR ITS PROSPECTS, INCLUDING, WITHOUT LIMITATION, WITH RESPECT TO TITLE, DESCRIPTION, QUANTITY, CONDITION, QUALITY, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, AND ANY AND ALL CONDITIONS AND WARRANTIES EXPRESSED OR IMPLIED BY ANY SALE OF GOODS LEGISLATION DO NOT APPLY TO THE SALE OF THE SALE ASSETS AND ARE HEREBY WAIVED BY THE BUYER. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, NEITHER THE MONITOR, THE SELLERS NOR ANY EMPLOYEES, DIRECTORS, OFFICERS, SHAREHOLDERS OR REPRESENTATIVES OF THE MONITOR OR THE SELLERS HAVE MADE, OR SHALL BE DEEMED TO HAVE MADE, ANY REPRESENTATIONS OR WARRANTIES IN ANY PRESENTATION RESPECTING THE BUSINESS IN CONNECTION WITH THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT, AND NO STATEMENT MADE IN ANY SUCH PRESENTATION SHALL BE DEEMED A REPRESENTATION OR WARRANTY HEREUNDER OR OTHERWISE. IT IS EXPRESSLY UNDERSTOOD THAT ANY ESTIMATES, PROJECTIONS, PREDICTIONS OR FORWARD-LOOKING STATEMENTS CONTAINED IN ANY DATA, FINANCIAL INFORMATION, MEMORANDA OR OFFERING MATERIALS OR PRESENTATIONS ARE NOT AND SHALL NOT BE DEEMED TO BE OR INCLUDE REPRESENTATIONS OR WARRANTIES OF THE SELLERS OR OF ANY EMPLOYEE, DIRECTOR, OFFICER, SHAREHOLDER OR REPRESENTATIVE OF THE SELLERS.
- 4.6 **Termination of Representations and Warranties Upon Closing.** The representations and warranties of the Sellers in this Agreement and each Ancillary Agreement, and the Sellers’ covenants in Articles 6.2 and 6.3, shall terminate at Closing and thereafter shall be of no further force or effect. The sole remedy that shall be available to Fluid and the

Buyer as a result of a material breach by the Sellers of such representations, warranties or covenants shall be termination pursuant to Article 10.1(2).

## **ARTICLE 5 REPRESENTATIONS AND WARRANTIES OF THE BUYER**

Each Buyer and Fluid represents and warrants to the Sellers as follows:

- 5.1 **Organization and Power.** Each Buyer and Fluid: (i) is a corporation validly existing under the laws of its jurisdiction of incorporation, and (ii) has the requisite power and authority to acquire, own, lease, operate or hold the Sale Assets.
- 5.2 **Authority.** Each Buyer and Fluid has the requisite power and authority to execute this Agreement and the Ancillary Agreements and to complete the transactions contemplated hereby and thereby.
- 5.3 **Execution and Delivery.** The execution and delivery of this Agreement and the completion of the transactions contemplated hereby by the Buyer and Fluid, as applicable, has been duly authorized by all necessary corporate action, and the execution, delivery and performance of the Ancillary Agreements by the Buyer and Fluid has been or will be authorized by all necessary corporate action prior to the Closing Date. This Agreement constitutes, and upon execution and delivery of each of the Ancillary Agreements such agreements will constitute, valid and binding obligations of the Buyer and Fluid, enforceable against the Buyer and Fluid in accordance with their respective terms.
- 5.4 **Sale Procedures.** The Buyer and Fluid shall perform their obligations hereunder in accordance with the terms and conditions of the sale procedures for the sale of the Sale Assets approved by the Court and any other order of the Court.
- 5.5 **Termination of Representations and Warranties Upon Closing.** The representations and warranties of the Buyer and Fluid in this Agreement and each Ancillary Agreement shall terminate at Closing and thereafter shall be of no further force or effect. The sole remedy that shall be available to the Sellers as a result of a material breach by the Buyer or Fluid of such representations and warranties shall be termination pursuant to Article 10.1(3).

## **ARTICLE 6 COVENANTS OF THE SELLERS**

The Sellers covenant and agree with each Buyer and Fluid that:

- 6.1 **Commercially Reasonable Efforts.** The Sellers shall use their commercially reasonable efforts to cause, to the extent within the Sellers' reasonable control, the conditions set forth in Article 8 to be satisfied and to facilitate and cause the consummation of the transactions contemplated hereby.

- 6.2 **New Commitments.** Without the prior written consent of each Buyer and Fluid, the Sellers shall not prior to the Closing (i) enter into any new agreement or commitment outside of the Sellers' ordinary course of business with respect to the Sale Assets, (ii) modify or terminate any existing agreements relating to the Sale Assets outside of the Sellers' ordinary course of business, or (iii) encumber, sell or otherwise dispose of any of the Sale Assets other than personal property that is sold or consumed in the ordinary course operation of the Business subject to the CCAA proceedings and the Liquidation.
- 6.3 **Maintenance of Business.** Subject to the CCAA Proceeding and the Liquidation, the Sellers will prior to Closing use commercially reasonable efforts to maintain and operate the Business in a reasonable and prudent manner, in material compliance with Applicable Laws, to maintain insurance now in force with respect to the Sale Assets, and to pay when due all costs and expenses not stayed by the CCAA Proceeding coming due and payable in connection with the normal maintenance and operation of the Business. Risk of loss of or damage to the Sale Assets shall remain with Sellers until Closing.
- 6.4 **Business Records.** The Sellers shall afford each Buyer and Fluid with reasonable access prior to Closing to all Business Records (and copies of sufficient information to permit the Buyer and Fluid to order merchandise in time for its takeover of the Stores and to operate the Business from and after Closing in the ordinary course of Business), and reasonable access prior to Closing to employees, directors and officers of the Sellers for the same purposes, in each case subject to the supervision of the Monitor.

#### ARTICLE 7 COVENANTS OF THE BUYER

Each Buyer and Fluid covenants and agrees with the Sellers that:

- 7.1 **Commercially Reasonable Efforts.** Each Buyer and Fluid shall use its commercially reasonable efforts (i) to cause, to the extent within such Buyer's or Fluid's reasonable control, the conditions set forth in Article 8 to be satisfied, (ii) to facilitate and cause the consummation of the transactions contemplated hereby, and (iii) to assist and cooperate with the Sellers in obtaining any consents or approvals required in connection with the transactions contemplated hereby, including the approval of the Court.
- 7.2 **Employees.** Each Buyer shall offer employment on such terms as such Buyer may determine to all employees of the Sellers other than the Non-Retained Employees as of the date of Closing. For greater certainty, unless an employee of the Sellers accepts an offer of Employment from each Buyer, such Buyer is not assuming any liability in respect of that employee. Twenty-four hours prior to closing, each Buyer shall provide a final list of Non-Retained Employees and a list of any Employees of the Sellers who have not accepted an offer of employment from such Buyer.

#### ARTICLE 8 CONDITIONS TO CLOSING

- 8.1 **Sellers' Conditions to Closing.** The obligations of the Sellers at Closing are subject to the satisfaction at Closing of the following conditions, which may be waived, except for

subsection (4) below, in whole or in part by the Sellers by written notice to Fluid and the Buyer prior to Closing:

- (1) all representations and warranties of each Buyer and Fluid contained in this Agreement shall be true in all material respects at and as of Closing and each Buyer and Fluid shall have performed and satisfied in all material respects (other than payment of any amount payable at Closing and satisfaction of the Total Consideration, which shall be paid in full) all material obligations required by this Agreement to be performed and satisfied by the Buyer and Fluid at or prior to Closing. Each Buyer and Fluid shall have provided the Sellers with a certificate executed by a responsible officer of each Buyer and Fluid to such effect;
- (2) no material suit or other material proceeding initiated by any Person other than the Sellers or a person acting as the Sellers' agent shall be pending before any court or governmental authority seeking to restrain or prohibit or declare illegal, or seeking damages from the Sellers in connection with, the purchase and sale contemplated by this Agreement;
- (3) the entry by the Court of the CCAA Approval and Vesting Order and the CCAA Approval and Vesting Order has not been set aside, varied, stayed, and no appeal of the Approval and Vesting Order has been commenced;
- (4) execution and delivery of the Assignment and Assumption Agreements; and
- (5) the Monitor shall have delivered to the Sellers the Monitor's Certificate;
- (6) the assignment to each Buyer of each applicable Assumed Agreement shall not require any consent at Closing which has not been obtained upon terms satisfactory to the Sellers acting reasonably or ordered by the Court in accordance with Article 2.4(1); and
- (7) satisfactory confirmation from IBSA that, notwithstanding that \_\_\_\_\_ of the secured indebtedness owing by Bowring and Bombay to IBSA will not be assumed by either Buyer or Fluid, effective prior to the assumption by the Buyer of \_\_\_\_\_ of the secured indebtedness owing by Bowring and Bombay to IBSA, IBSA will have no recourse against the Sellers with respect to the remaining \_\_\_\_\_ of the secured indebtedness owing by Bowring and Bombay to IBSA.

8.2 **Each Buyer's and Fluid Conditions to Closing.** The obligations of each Buyer and Fluid at Closing are subject to the satisfaction at Closing of the following conditions, which may be waived in whole or in part by the Buyer and Fluid by written notice to the Sellers prior to Closing:

- (1) all representations and warranties of the Sellers contained in this Agreement shall be true in all material respects at and as of Closing and the Sellers shall have performed and satisfied in all material respects (other than payment of any amount payable at Closing, which shall be paid in full) all material obligations

required by this Agreement to be performed and satisfied by the Sellers at or prior to Closing;

- (2) no material suit or other material proceeding initiated by any Person other than the Buyer or Fluid or a person acting as the Buyers' or Fluid's agent shall be pending before any court or governmental authority seeking to restrain or prohibit or declare illegal the purchase and sale contemplated by this Agreement;
- (3) the entry by the Court of the CCAA Approval and Vesting Order and the CCAA Approval and Vesting Order has not been set aside, varied or stayed, and no appeal of the CCAA Approval and Vesting Order has been commenced;
- (4) the Monitor shall have delivered to each Buyer and Fluid the Monitor's Certificate;
- (5) each of the Sellers shall have changed their names to a name which does not include the words "Bombay", "Benix" or "Bowring".

#### **ARTICLE 9 OBLIGATIONS AFTER CLOSING**

The parties shall have the following obligations after Closing:

- 9.1 **Execution and Delivery of Instruments.** The Sellers, each Buyer and Fluid shall each execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such instruments and take such other actions as may be necessary or advisable to carry out their obligations under this Agreement, the Ancillary Agreements or any document, certificate or other instrument delivered pursuant hereto or thereto or required by Applicable Law.

#### **ARTICLE 10 TERMINATION**

- 10.1 **Termination.** This Agreement may be terminated as follows:

- (1) jointly by the Buyer and Fluid or the Sellers, at its option, if Closing shall not have occurred on or prior to 11:59pm on January 19, 2015 unless Closing is extended by mutual agreement of the parties and consent of the Monitor, or with the approval of the Court; *provided*, that the Buyer and Fluid or the Sellers, as the case may be, shall not be entitled to terminate this Agreement pursuant to this Article 10.1(1) if the failure of the Closing to occur on or prior to such date results primarily from such party itself breaching any representation, warranty or covenant contained in this Agreement;
- (2) by the Buyer and Fluid, jointly, by written notice given to the Sellers at or before Closing, if there has been (i) a material breach by any of the Sellers of any of their representations and warranties herein or (ii) a material failure on the part of any of the Sellers to comply with their obligations herein; provided, that in each case

such breach or failure to comply is not cured within ten (10) days after written notice thereof and, in any event, prior to Closing;

- (3) by the Sellers, by written notice given to the Buyer and Fluid at or before Closing, if there has been (i) a material breach by the Buyer or Fluid of any of their representations and warranties herein or (ii) a material failure on the part of the Buyer or Fluid to comply with their obligations herein; provided, that in each case such breach or failure to comply is not cured within ten (10) days after written notice thereof and, in any event, prior to Closing;
  - (4) by either the Sellers, or Buyer and Fluid if there shall be in effect a final order restraining, enjoining or otherwise prohibiting the consummation of the transactions contemplated hereby; or
  - (5) by the Buyer and Fluid, pursuant to and in accordance with Article 11.4.
- 10.2 **Effect of Termination.** Upon the termination of this Agreement in accordance with Article 10.1 or Article 11.4, the Parties shall be relieved of any further obligations or liability under this Agreement other than (i) any obligations for breaches of this Agreement occurring prior to such termination, and (ii) any other obligations which by their terms survive or are to be performed after such termination. If this Agreement is terminated by the Sellers pursuant to Article 10.1(3), the Deposit and all interest earned thereon shall be paid to the Sellers as liquidated damages and not as a penalty. If this Agreement is terminated pursuant to any other provision of this Agreement, the Deposit shall be repaid to the Buyer and Fluid, as directed by them, together with all interest earned thereon.

## ARTICLE 11 CCAA PROCEEDINGS

- 11.1 **CCAA Approval and Vesting Order.** Upon the execution of this Agreement, the Sellers shall use all reasonable efforts to obtain a final order or orders of the Court in a form and substance reasonably acceptable to counsel for the Buyer (the “**CCAA Approval and Vesting Order**”) including without limitation the following: (i) approving this Agreement and the transactions contemplated by this Agreement; (ii) exempting the transactions contemplated by this Agreement from the application of the *Bulk Sales Act* (Ontario); and (iii) vesting in the Buyer all right, title and interest of the Sellers in and to the Sale Assets free and clear of all Liens or claims of any nature against the Sellers including actions and causes of action existing at the time of Closing or arising in the future, except, for greater certainty liens in favour of Canadian Imperial Bank of Commerce, IBSA or FBI, such vesting to occur upon the delivery to the Buyer of a certificate of the Monitor confirming that all conditions required for Closing have been satisfied or waived (the “**Monitor’s Certificate**”).
- 11.2 The Buyer and Fluid shall cooperate with the Sellers in its efforts to obtain the CCAA Approval and Vesting Order and shall use reasonable commercial efforts to provide or cause to be provided to the Sellers at the Sellers’ request and cost all certificates, affidavits or other documents and instruments reasonably required by the Sellers to obtain the CCAA Approval and Vesting Order.
- 11.3 The Sellers shall promptly deliver to the Buyer and Fluid a copy of any objections filed to this Agreement, the transfer of any or all of the Sale Assets as provided for herein or the relief sought in the motion for the CCAA Approval and Vesting Order.

## CASUALTY LOSS

- 11.4 If, prior to Closing, any or all of the Sale Assets or Stores are damaged, lost, or taken or threatened to be taken by any lawful authority, and such damage, loss or taking would substantially impair the ability of the Buyer to operate the Business after Closing in the ordinary course, the Buyer and Fluid may elect by written notice given to the Sellers at or before Closing to (i) terminate this Agreement, or (ii) to complete the purchase of the Sale Assets (without adjustment to the Purchase Price), in which case the Sellers shall, at Closing, pay to the Buyer and Fluid all sums paid to the Sellers, and shall assign, transfer and set over unto the Buyer and Fluid all right, title and interest of the Sellers in and to all unpaid awards or other amounts payable, by reason of such damage, loss or taking of such Sale Assets. The Sellers shall not voluntarily compromise, settle or adjust any such amounts payable without first obtaining the written consent of the Buyer and Fluid.

## ARTICLE 12 GENERAL PROVISIONS

- 12.1 **Notice.** All notices hereunder shall be in writing, dated and signed by the party giving the same. Each notice shall be either (i) delivered in person to the address of the party for whom it is intended at the address of such party as shown below, or (ii) sent by e-mail or fax. The effective date of such notice shall be the date of delivery thereof, or if such date

is not a business day, on the next business day following. The addresses of the Parties, until changed by notice in accordance with the foregoing, are:

- (1) Sellers:  
Bombay & Co. Inc., Bowring & Co. Inc. & Benix & Co. Inc.  
98 Orfus Road  
Toronto, ON M6A 1L9  
Phone: (416) 784-0732  
Fax: (416) 781-1084  
Attention: Margaret Morrison

With a copy to:  
Fasken Martineau DuMoulin LLP  
333 Bay Street, Suite 2300  
Bay Adelaide Centre, Box 20  
Toronto, ON M5H 2T6  
Fax: (416) 364-7813  
Attention: Stuart Brotman

- (2) in the case of any notice given at or before Closing, with a copy to the Monitor:

Richter Advisory Group Inc.  
181 Bay Street, Suite 3320  
Toronto, ON M5J 2T3  
Attention: Gilles Benchaya & Paul van Eyk  
Fax: (416) 488-3765

With a copy to:  
Cassels Brock & Blackwell LLP  
40 King Street West  
Suite 2100, Scotia Plaza  
Toronto, ON M5H 3C2  
Attention: Shayne Kukulowicz & Jane Dietrich

- (3) Buyer and Fluid:  
c/o Fluid Brands Inc.  
98 Orfus Road  
Toronto, ON M6A 1L9  
Attention: Fred Benitah

With a copy to:  
Torkin Manes LLP  
151 Yonge Street, Suite 1500  
Toronto, ON M5C 2W7

Attention: S. Fay Sulley & Jeffrey J. Simpson  
Fax: 416-863-0305

- 12.2 **Amendment.** No amendment of this Agreement shall be effective unless in writing executed by the parties, and no waiver of this Agreement shall be effective unless in writing executed by the parties.
- 12.3 **Payment of Costs.** Each party shall pay its own costs incurred in negotiating this Agreement and in consummating the transactions contemplated hereby, including any fees or commission payable to any third party pursuant to any agreement or arrangement relating to this Agreement or the transactions contemplated hereby.
- 12.4 **Headings.** The headings of the Articles of this Agreement are for convenience of reference only and shall not affect the interpretation of any of the provisions of this Agreement.
- 12.5 **References.** References made in this Agreement, including use of a pronoun, shall be deemed to include, where applicable, masculine, feminine, singular or plural, individuals, partnerships or corporations.
- 12.6 **Applicable Law.** This Agreement and the transactions contemplated hereby shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein, without giving effect to rules of conflict of laws. The parties agree and attorn to the non-exclusive jurisdiction of the courts in the Province of Ontario with respect to any matter arising out of or in respect of this Agreement or the transactions contemplated hereby.
- 12.7 **Entire Agreement.** This Agreement and any other agreements referred to herein constitute the entire agreement and understanding of the parties, and supersede any and all prior agreements, arrangements and understandings, whether oral or written, between the parties, with respect to the subject matter hereof or thereof.
- 12.8 **Binding Effect.** This Agreement shall enure to the benefit of and be binding upon the respective successors and permitted assigns of the parties. Nothing contained in this Agreement, or implied herefrom, is intended to confer upon any other Person any benefits, rights, or remedies.
- 12.9 **Assignment.** Neither the Buyer nor Fluid nor the Sellers may assign this Agreement or any rights hereunder without (i) the approval of the Court and (ii) the written consent of the other party.
- 12.10 **Severability.** If a court of competent jurisdiction determines that any provision of this Agreement is void, illegal or unenforceable, the other provisions of this Agreement shall remain in full force and effect.
- 12.11 **Execution.** It is understood and agreed that this Agreement may be executed by the parties in separate counterparts, which together shall constitute one and the same agreement. Delivery of an executed counterpart by facsimile or in PDF format shall have

the same effect as delivery of an original.

- 12.12 **French Language.** The parties have expressly required that this Agreement and all documents and notices relating thereto be drafted in English. *Les parties aux présentes ont expressément exigé que la présente convention et tous les documents et avis qui y sont afférents soient rédigés en anglais.*

### ARTICLE 13 DEFINITIONS

13.1 In this Agreement, the following terms have the following meanings:

“**Accounts Receivable**” means all accounts and other amounts receivable of the Sellers.

“**Affiliate**” of any Person means any affiliate within the present meaning of the *Business Corporations Act* (Ontario).

“**Ancillary Agreements**” means any agreements between the parties required by this Agreement to be entered into at Closing.

“**Applicable Law**” means, with respect to any Person, any federal, provincial or local law, statute, code, ordinance, rule, regulation, or other lawful requirement applicable to such Person or its business, properties or assets, and includes any requirement at common law.

“**Assumed Agreements**” means: all agreements and contracts to which any of the Sellers is a party, including, without limitation, (a) all Real Property Leases; (b) any equipment leases, software licenses and other executory contracts listed on Schedule 14A; (c) all domain name registration agreements, websites, and all domain names and internet-based branding owned by the Sellers; and (d) all orders and other purchase and sale commitments of the Sellers, and the Sellers’ liabilities and obligations in respect of letters of credit outstanding in respect of such orders, but specifically does not include any lease agreements relating to any stores operated by any of the Sellers, whether appearing on schedule 14D or not, for which a Notice of Disclaimer has been delivered by Seller, but for which the effective date of the Notice of Disclaimer has not yet occurred.

“**Assumed Liabilities**” means (a) all obligations of the Sellers to honour gift certificates, gift cards and retail credits issued by the Sellers prior to Closing; (b) all obligations of the Sellers in respect of lay-away sales made prior to Closing; and (c) all other liabilities of the Sellers incurred, but not satisfied, between the date of the initial filing of the CCAA Proceeding and the date of Closing.

“**Artwork**” means any product construction design blueprints and blueprints for the Stores, in each case in the possession or control of the Sellers.

“**Business**” means the Sellers’ business in Canada as currently conducted under the name and brand “Bombay” and “Bowring”.

“**Business Records**” means documents that are reasonable and necessary for the Buyers’ operation of the Stores, including profit and loss history for each Store for the past two years,

merchandise SKUs for each Store, the Sellers' files regarding the leases for the Stores and similar information, in the possession or control of the Sellers.

**"Cash and Cash Equivalents"** means the following assets of the Sellers: (a) cash, cash on hand, and cash equivalents, including accounts at any bank or financial institution, (b) securities (whether stock or debt) of or held by the Sellers; (c) retainers paid by the Sellers for legal, accounting or other professional services other than for the Professional Fees; and (d) any letters of credit or similar financial accommodations issued to any third party(ies) for the account of the Sellers except to the extent included in Assumed Agreements, but for greater certainty shall not include the cash portion of the Total Consideration .

**"Closing"** means the time for completion of the transactions completed by this Agreement to be completed at Closing, or the completion of such transactions, as the context requires.

**"FF&E"** means the furniture, fixtures and equipment owned by the Sellers and located in the Stores, head office and distribution centres or warehouses of the Sellers at Closing, including: tables; bookshelves; marketing materials; packaging materials; signage; racking; forklifts; any equipment or machines used in connection with the Sellers' retail operations and the head office, warehousing and distribution operations of the Sellers in connection therewith; supplies; shelving and armoires used for the purpose of display; tables and chairs; cash registers; computer equipment; printers; display cases; artwork; removable trade fixtures; and Sellers' right title and interest, to the extent assignable, in and to leasehold improvements at the Stores.

**"Intellectual Property"** shall mean all intellectual property or other intangible property of any nature whatsoever owned by the Sellers or any of them, including, without limitation, all trademarks, trade names, service marks, trade dress, designs, Artwork and copyrights and applications for registration of any of the foregoing, and to the extent assignable, the databases, data collections and source code, and the URL's and domain names, and all goodwill associated with any of the foregoing and includes, without limitation, the Intellectual Property listed or described in Schedule 14B.

**"Inventory"** shall mean the Sellers' inventory of finished goods, packaging and consumables at Closing held in the Stores or any of the Sellers' distribution centers, including any goods in transit to the Stores, head office, distribution or warehouse centres of the Sellers on the date of Closing.

**"Licenses"** shall mean all licenses, permits, certifications or other authorizations issued by any governmental authority held by the Sellers at Closing related to the Business, to the extent assignable.

**"Liens"** shall mean any liens, executions, hypothecs, mortgages, security interests, trusts or deemed trusts, levies, charges or other financial charges or claims of any nature, other than in respect of Permitted Encumbrances.

**"Liquidation"** means the sale, whether or not in the ordinary course of the Business, of Sellers' inventory at retail locations other than the Stores, and the closure of such locations, as contemplated in the CCAA Proceeding.

**“Monitor”** means Richter Advisory Group Inc. in its capacity as court-appointed Monitor of the Sellers in the CCAA Proceedings.

**“Non-Retained Employees”** means the employees of the Sellers listed on Schedule 14C and any other employees of the Sellers who do not accept offers of employment made by the Buyer. For greater certainty, in accordance with section 7.2 hereof, a final list of Non-Retained Employees will be provided by the Buyer to Seller, which shall include any additional employees who have not accepted employment with the Buyer.

**“Professional Fees”** shall mean all professional fees incurred by the Sellers in respect of the CCAA proceedings, including the legal fees of the Sellers and the fees and disbursements of the Monitor and its counsel and shall include any necessary and/or reasonably-incurred disbursements in connection with same, that are outstanding as of the date of Closing, together the amount estimated by the Monitor to complete the CCAA Proceeding and obtain its discharge, for a total estimate of \$900,000 less any amounts paid between the date of this agreement and the date of Closing. Provided however if the amount paid hereunder exceeds the Professional Fees, the balance of the amount paid, if any, shall be returned to the Buyer and if the amount paid hereunder is not sufficient to fully satisfy the Professional Fees the Buyer will pay such additional required amount to the Sellers.

**“Permitted Encumbrances”** means all encumbrances, charges or security interests held by any of Canadian Imperial Bank of Commerce, FBI or IBSA and any other encumbrances, charges, liens or leases agreed to by the Buyer and CIBC prior to Closing.

**“Person”** shall mean any individual, corporation, partnership, joint venture, trust, limited liability company, business association, governmental entity or other entity.

**“Prepays”** means all prepaid rentals, deposits, advances and prepaid expenses of the Sellers relating to other Sale Assets (other than Prepays).

**“Real Property Leases”** shall mean all leases and other agreements relating to the Sellers’ use and occupancy of the Stores.

**“Stores”** means all of the Sellers’ retail stores listed in Schedule 14D.

**“Tax”** or **“Taxes”** shall mean all taxes, charges, fees, levies, penalties or other assessments of any kind whatsoever imposed by an federal, provincial, local or foreign taxing authority, including, but not limited to, income, excise, property, sales, transfer, franchise, payroll, withholding, social security or other taxes, including any interest, penalties or additions relating thereto.

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Dated December 31, 2014.

**2383029 ONTARIO INC.**

Per: 

Name: FRED BENITAH

Title: Chief Executive Officer and Secretary

I have the authority to bind the corporation

**2437533 ONTARIO INC.**

Per: 

Name: FRED BENITAH

Title: Chief Executive Officer and Secretary

I have the authority to bind the corporation

**FLUID BRANDS INC.**

Per: 

Name: FRED BENITAH

Title: Chief Executive Officer and Secretary

I have the authority to bind the corporation

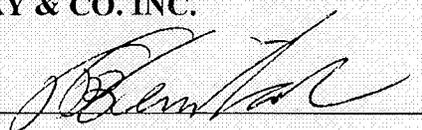
***Buyer / Fluid Signature Page to Offer and Acceptance***

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The undersigned hereby accepts the foregoing Offer.

Dated December 31, 2014.

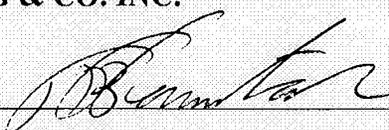
**BOMBAY & CO. INC.**

Per: 

Name: FRED BENITAH

Title: Chief Executive Officer and Secretary

**BOWRING & CO. INC.**

Per: 

Name: FRED BENITAH

Title: Chief Executive Officer and Secretary

**BENIX & CO. INC.**

Per: 

Name: FRED BENITAH

Title: Chief Executive Officer and Secretary

*Sellers Signature Page to Offer and Acceptance*

**Schedule 2.3**

**Allocation of Purchase Price**

	<b>Bombay</b>	<b>Bowring</b>	<b>Benix</b>
Inventory including layaway inventory			
Cash/Credit Card/Receivables			
Capital Assets			
Intellectual Property			

**Schedule 14A**

**Assumed Executory Contracts for each Buyer**

1. TD Bank Merchant Services Credit Agreement.
2. TD Bank Merchant Services Private Label Credit Card Agreement.
3. All existing contracts of the Sellers utilized in connection with the business of the Sellers with the following parties:
  - (a) Bell Canada;
  - (b) Rogers Wireless;
  - (c) Wincor;
  - (d) CMA; and
  - (e) Hyundai.
4. All utility, shipping and transportation contracts used in connection with the Sellers' business.

**Schedule 14B**  
**Intellectual Property**

**A. Benix & Co. Inc.**

1 Registered trade-marks

	Registration number
WARES & WARES	TMA628,528
BENIX & CO.	TMA640,416
Joshua Maxwell Studio	TMA621,993
TABLE Essentials	TMA646,728
Lynns	TMA506,956
LYNNS	TMA506,955
TOPCERAM	TMA475,241
CUISINE INTERNATIONAL	TMA487,197
BARNES & CASTLE	TMA448360

2 Unregistered trade-marks

Benix  
Basil & Cook  
B&C  
B&C Imports  
GO & Design

Domain Names

Domain Name	Expiration
Bcimports.ca	19-Apr-13
Benixandco.com	27-Sep-15
thebcgroup.ca	17-Mar-11
Benixinc.com	21-May-15
Bandcgroup.ca	17-Mar-15
Bcgroupinc.ca	04-Apr-15
Bcgroupltd.ca	15-Apr-15
Benix.ca	26-Sep-13

**B. Bombay & Co. Inc.**

<u>No.</u>	<u>Trade-marks</u>	<u>Application number</u>	<u>Registration number</u>
1	BOMBAY	782,065	TMA470,982
2	BOMBAY & PALM TREE DESIGN	870,209	TMA520,885
3	BOMBAY KIDS	1,110,283	TMA597,623
4	BOMBAY KIDS & Design	1,110,284	TMA597,698
5	BOMBAY MANNEQUIN COLLECTION COQUILLE REIGNE	792,025	TMA469,764
6	ANNE	796,911	TMA474,659
7	KEDDLESTON HALL	843,853	TMA501,868
8	LA COLLECTION METROPOLE LA COMPAGNIE BOMBAY & DESIGN	796,906	TMA474,537
9	LA COMPAGNIE BOMBAY & DESIGN	657,826	TMA426,813
10	DESIGN	658,576	TMA425,951
11	LA COMPAGNIE BOMBAYE LA COMPAGNIE BOMBAY & DESIGN (SHIELD)	752,297	TMA442,385
12	DESIGN (SHIELD)	755,825	TMA456,250
13	LA SERIE ENTERPRISE	773,962	TMA457,095
14	LA SERIE TRELIS DORE	773,964	TMA456,668
15	LE COFFRET A SOUVENIRS	774,094	TMA456,670
16	LA COLLECTION VIGNOBLE	805,731	TMA482,002
17	LE MANNEQUIN BOMBAY	796,907	TMA470,073
18	LOGGIA	840,419	TMA530,952
19	ORANGERIE	796,909	TMA501,871
20	PALM TREE DESIGN	660,102	TMA442,429
21	PEMBROKE	843,281	TMA502,663
22	QUEEN ANNE SHELL COLLECTION	796,908	TMA474,302
23	SAVOYE	840,709	TMA489,699
24	STATE ROOM	843,280	TMA542,278
25	THE BOMBAY COMPANY & DESIGN	451,370	TMA264,811
26	THE BOMBAY COMPANY THE BOMBAY COMPANY & DESIGN (SHIELD)	651,471	TMA402,190
27	(SHIELD)	754,654	TMA456,976
28	THE ENTERPRISE	774,095	TMA470,398
29	THE GILDED TRELIS SERIES	773,963	TMA475,528
30	THE MEMORY BOX	760,835	TMA445,455
31	THE VINEYARD COLLECTION WHAT PART OF YOU LIVES IN	800,841	TMA477,220
32	BOMBAY	1,193,210	TMA623,365
33	BOMBAYBATH and Design	1,255,758	Pending
34	BOMBAYBATH and Design	1,256,041	Pending
35	VALMONT	1,298,858	Pending
36	BOMBAY CLASSICS	1,503,644	Pending

Domain Names

Domain Name	Expiration
bombay.ca	01-Dec-14
bombayco.ca	01-Dec-14
bombaycompany.ca	01-Dec-14
thebombaycompany.ca	01-Dec-14
bombaycanada.ca	19-Oct-14
Bombaykids.ca	02-Jul-14
Bombayoutlet.ca	02-Jul-14
bombaycompany.com	02-Jan-12
bombayco.com	26-Apr-11
thebombaycompany.com	30-Sep-13

**C. Bowring & Co. Inc.**

1 Registered trade-marks

Bowring	TMA311,800
Bowring	TMA320,211
Bowring Brothers	TMA319,908
Bowring Borthers of Newfoundland	TMA316,706
Bowrings	TMA311,801
Bowrings	TMA319,907
Bowrings of Newfoundland	TMA316,890
Bowrings of Newfoundland	TMA325,467
"Ship" Design	TMA311,690
"Ship" Design	TMA311,691
"Ship" Design	TMA152,951

2 Unregistered trade-marks

B&C Imports

Domain Names

Domain Name	Expiration
Bowring.com	29-Apr-12
Bowring.ca	06-Jun-14
bowringflowers.com	26-Oct-15
bowringhome.com	27-Oct-15

**Schedule 14C**

**Non-Retained Employees**





## Schedule 14D

### Stores

		<b>BOMBAY</b>
	<b>Store #</b>	<b>Location</b>
1	135	78 WYSE STREET, UNIT 100, MONCTON,
2	170	56B ABERDEEN AVENUE, ST. JOHN'S,
3	199	212-C CHAIN LAKE DRIVE, HALIFAX,
4	231	9500 LEDUC, BROSSARD,
5	232	Faubourg Boisbriand, 3320 Ave. Des Grand Tourelles,, BOISBRIAND,
6	280	7325 - 7337 DECARIE BLVD., MONTREAL,
7	297	3268 RUE JEAN YVES, KIRKLAND,
8	311	100 BAYSHORE DRIVE, NEPEAN,
9	317	1965 HYDE PARK ROAD, LONDON,
10	319	101 IRA NEEDLES BLVD., WATERLOO,
11	320	18126 YONGE STREET, NEWMARKET,
12	362	100 TRAIN YARDS DRIVE, OTTAWA,
13	371	509 BAYFIELD ST., BARRIE,
14	373	4331 WALKER ROAD, WINDSOR,
15	375	221 GLENDALE AVENUE, HWY 406, ST CATHARINES,
16	376	3100 HOWARD AVENUE, WINDSOR,
17	398	616 GARDNER ROAD, KINGSTON,
18	551	170TH STREET, EDMONTON,
19	561	5979 SIGNAL HILL, CALGARY,
20	583	99TH STREET N. W., EDMONTON,
21	596	1585 KENASTON BLVD., WINNIPEG,
22	652	78-1644 HILLSIDE AVENUE, VICTORIA,
23	662	6551-3 ROAD, RICHMOND,
24	677	2526 & 2536 GRANVILLE ST., VANCOUVER,
25	687	3122 Mt. Lehman Road, Abbotsford, ABBOTSFORD,
26	695	20070 LANGLEY, BY-PASS, LANGLEY,
27	920	20 KINGSTON ROAD WEST, AJAX,
28	921	5000 HIGHWAY 7, MARKHAM,
29	922	5100 ERIN MILLS PARKWAY, MISSISSAUGA,
30	928	2501 HYDE PARK GATE BLVD., OAKVILLE,
31	929	295 HIGH TECH ROAD, RICHMOND HILL,
32	930	419 KING ST. WEST, OSHAWA,
33	936	171 NORTH QUEEN ST., ETOBICOKE,
34	956	3487 WYECROFT ROAD, OAKVILLE,
35	957	Vaughan Mills, 1 Bass Pros Mills Drive,, CONCORD,
36	959	1397 Harmony Rd North, OSHAWA,
37	976	410 PROGRESS AVENUE, SCARBOROUGH,
38	990	70 GREAT LAKES DRIVE, BRAMPTON,
39	991	16 FAMOUS AVENUE, WOODBRIDGE,
40	992	6075 MAVIS ROAD, MISSISSAUGA,
41	325	Limeridge Mall, HAMILTON,
42	913	95 Orfus Road , Toronto
43	926	Mapleview Mall, Burlington

<b>BOMBAY</b>		
	<b>Store #</b>	<b>Location</b>
44	560	Market Mall, Calgary
45	285	Galeries D'Anjou, Montreal
46	286	Le Carrefour Laval, Laval
47	288	Place Ste Foy, Quebec

<b>BOWRING</b>		
	<b>Store #</b>	<b>Location</b>
1	308	Toronto Dominion Centre, TORONTO,
2	322	Erin Mills Town Centre, MISSISSAUGA,
3	325	Mississauga Home & Design, MISSISSAUGA,
4	326	Heartland Town Centre, MISSISSAUGA,
5	327	Trinity Common, BRAMPTON,
6	328	Rio Can Centre Durham, AJAX,
7	329	Colossus Centre, WOODBRIDGE,
8	330	First Markham Place, MARKHAM,
9	335	Oshawa Power Centre, OSHAWA,
10	336	Green Lane, NEWMARKET,
11	337	Queensway Toronto, ETOBICOKE,
12	338	Bowring Outlet, NORTH YORK,
13	339	Village at Vaughan Mills, CONCORD,
14	351	Aurora North, AURORA,
15	368	1800 Sheppard Avenue East, NORTH YORK,
16	369	900 Dufferin Street, TORONTO,
17	602	Burlington Mall, BURLINGTON,
18	603	Devonshire Mall, WINDSOR,
19	605	Limeridge Mall, HAMILTON,
20	625	Windsor Crossing, WINDSOR,
21	627	Pen Glendale, ST CATHARINES,
22	628	1965 HYDE PARK, UNIT #104, LONDON,
23	630	Sunrise Centre, KITCHENER,
24	636	Burloak, OAKVILLE,
25	681	Ancaster, 821 Golf Links Rd, ANCASTER,
26	703	Signal Hill Centre, CALGARY,
27	705	South Edmonton Common, EDMONTON,
28	719	Lindenwoods, WINNIPEG,
29	730	Regina East, REGINA,
30	803	3122 Mt. Lehman Road, Abbotsford, ABBOTSFORD, BC, ABBOTSFORD,
31	817	Langley Power Centre, LANGLEY,
32	818	Schoolhouse Street, COQUITLAM,
33	917	Stavenger, St. John's, ST. JOHN'S,
34	920	RioCan Centre Kirkland, KIRKLAND,
35	923	South Keys, GLOUCESTER,
36	925	Quartier Dix-30, BROSSARD,
37	926	Ottawa Trainyards, OTTAWA,
38	718	Polo Park, Winnipeg
39	802	Metrotown, Burnaby

40	820	Central Park, Kelowna
41	939	Complex Desjardin, Montreal
42	616	Bramalea City Centre, Brampton
43	619	Stone Road Mall, Guelph