

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT
Commercial Division

Court No: 500-11-057470-193
Court No: 500-11-057469-195

IN THE MATTER OF THE PROPOSAL OF:

BOUCLAIR INC.

- and -

BOUCLAIR INTERNATIONAL INC.

Petitioners

- and -

DELOITTE RESTRUCTURING INC.

Proposal Trustee

- and -

NATIONAL BANK OF CANADA

Principal Secured Creditor

- and -

ALJUSA INVESTMENTS INC.

Subordinated Secured Creditor

- and -

AST TRUST COMPANY (CANADA)

**In its Capacity as Agent for certain
Subordinated Secured Creditors**

- and -

**THE AFFECTED PARTIES LISTED ON
Schedule A**

- and -

**THE REGISTRAR OF THE REGISTER OF
PERSONAL AND MOVABLE REAL RIGHTS
(QUÉBEC)**

Mis-en-cause

**RE-AMENDED MOTION FOR THE ISSUANCE OF AN APPROVAL AND VESTING
ORDER AND A CONTRACT ASSIGNMENT ORDER
(Sections 65.13, 66 (1) and 84.1 of the *Bankruptcy and Insolvency Act*)**

TO THE HONOURABLE JUSTICE CORRIVEAU OR TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN COMMERCIAL DIVISION, IN AND FOR THE JUDICIAL DISTRICT OF MONTRÉAL, THE PETITIONERS HEREBY RESPECTFULLY SUBMIT THE FOLLOWING:

I. ORDER SOUGHT

1. For the reasons further described herein, the Petitioners, Bouclair Inc. (“**Bouclair**”) and Bouclair International Inc. (“**Bouclair International**”, and collectively with Bouclair, the “**Petitioners**”) hereby seek the issuance by this Court of an order (the “**Order Sought**”), the whole substantially in the form of the draft *Approval and Vesting Order and Contract Assignment Order* communicated herewith as **Exhibit P-1.2**:
 - (a) approving the sale transaction (the “**Transaction**”) contemplated by the agreement entitled *Asset Purchase Agreement* to be entered into immediately prior to the hearing on this Motion (the “**Purchase Agreement**”) between the Petitioners, as vendors, and Alston Investments Inc., as purchaser (the “**Purchaser**”), a redacted version of which shall be communicated prior to the hearing on this Motion as Exhibit P-2.1, and an unredacted version of which shall be communicated prior to the hearing on this Motion, under seal, as **Exhibit P-3.1**;
 - (b) vesting in the Purchaser all of the Petitioners’ rights, title and interest in and to the assets described in Schedule 2.1 of the Purchase Agreement (the “**Purchased Assets**”), free and clear of any and all security, hypothecs, charges, encumbrances or other restrictions, other than as set forth in the Purchase Agreement; and
 - (c) assigning to the Purchaser certain purchased contracts designated under the Purchase Agreement to be assigned by Court order and listed in **Schedule B** and **Schedule C** attached hereto (the “**Purchased Contracts**”).

II. PROCEDURAL BACKGROUND

2. On November 11, 2019, the Petitioners concurrently filed Notices of Intention to Make a Proposal (“NOIs”) pursuant to section 50.4 of the *Bankruptcy and Insolvency Act* (the “**BIA**”), as appears from the Court record.
3. Deloitte Restructuring Inc. has been appointed as the Petitioners’ proposal trustee in the present proceedings (the “**Proposal Trustee**”).
4. The factual background which led to the filing of the present proceedings is described in the Petitioners’ *Motion for the Issuance of an Order (i) Creating Super-Priority Charges, (ii) Approving a Consulting Agreement and (iii) Approving Related Relief* (the “**Initial Motion**”), as well as in the *First Report to the Court submitted by Deloitte Restructuring Inc. in its Capacity as Trustee to the Notice of Intention to Make a Proposal*, both in the Court record.

5. In accordance with section 69(1) of the BIA, the filing of the NOIs resulted in all actions, executions or other proceedings against the Petitioners and their property being automatically stayed for a period of thirty (30) days, until December 11, 2019 (the “**Stay Period**”).
6. On November 12, 2019, following the presentation of the Petitioners’ Initial Motion, the Honourable Chantal Corriveau rendered an Order in the present proceedings (the “**First Day Order**”):
 - (a) operating a procedural consolidation of the court files of Bouclair and Bouclair International;
 - (b) granting priority Charges over all Affected Assets (as these terms are defined in the First Day Order);
 - (c) approving and ratifying, retroactively, the CRO Engagement Letter (as defined in the First Day Order);
 - (d) authorizing the payment, to certain suppliers situated outside of the jurisdiction of this Court, of certain pre-filing obligations; and
 - (e) approving other related relief;the whole as appears from the Court record.
7. Prior to the filing of the present proceedings, the Petitioners initiated a restructuring process (the “**Restructuring Process**”), the implementation of which originally included two (2) main components:
 - (a) a transaction with the Purchaser, which, once approved by this Court, would result in the Purchaser acquiring the majority of the assets and assuming certain of the liabilities of the Petitioners, with a view to maintaining approximately sixty (60) Bouclair retail store locations, its head office in Pointe-Claire (Québec) and approximately 80% of Bouclair’s national employee base; and
 - (b) the liquidation of thirty-one (31) Bouclair retail stores (with an additional four (4) option stores which could be liquidated following consultation between the Petitioners and their landlords) (the “**Liquidation Stores**”) out of the retail locations then operated by the Petitioners, with a view to remitting the net proceeds of the liquidation to the secured creditors that held security over said liquidated assets (the “**Liquidation**”).
8. To implement the second component of the Restructuring Process (i.e. the Liquidation), on November 11, 2019, Gordon Brothers Canada ULC (the “**Liquidator**”) and Bouclair finalized the terms of a Consulting Agreement (the “**Consulting Agreement**”) pursuant to which the Liquidator would act as the exclusive consultant to Bouclair to conduct the Liquidation.
9. On November 15, 2019, the Honourable Chantal Corriveau rendered an Order in these proceedings approving the Consulting Agreement and the Liquidation, as appears from the Court record.

10. Beginning on November 15, 2019, Bouclair, with the assistance of the Liquidator, conducted the Liquidation in the Liquidation Stores.
11. The Liquidation is now completed, and the results have exceeded the expectations of the parties, as appears from the *Third Report to the Court submitted by Deloitte Restructuring Inc. in its capacity as Trustee to the Notice of Intention to make a Proposal*, in the Court record.
12. On December 10, 2019, the Honourable Chantal Corriveau rendered an Order in these proceedings:
 - (a) extending the Stay Period until January 24, 2020; and
 - (b) declaring that the scope of the Charges (as defined in the First Day Order rendered in these proceedings on November 12, 2019) shall be extended to cover all the assets of Bouclair, with no exception;the whole as appears from the Court record.
13. On January 23, 2020, March 2, 2020, March 27, 2020, and May 7, 2020, the Court rendered four (4) orders in these proceedings, most recently extending the Stay Period until May 11, 2020, as appears from the Court record.
- 13.1 On May 11, 2020, the Petitioners, with the assistance of the Proposal Trustee, filed a proposal to their creditors (the “Proposal”) with the Office of the Superintendent of Bankruptcy Canada (the “Superintendent”) pursuant to section 62 of the BIA, which Proposal remains conditional on, *inter alia*, the closing of the Transaction, the whole as appears from:
 - (a) a copy of the executed Proposal communicated herewith as **Exhibit P-6**;
 - (b) a copy of the Certificate of Filing of a Proposal of Bouclair issued by the Superintendent and communicated herewith as **Exhibit P-7**; and
 - (c) a copy of the Certificate of Filing of a Proposal of Bouclair International issued by the Superintendent and communicated herewith as **Exhibit P-8**.

III. PRE-COVID-19 RESTRUCTURING EFFORTS

A. Pre-Filing Efforts

14. In the months prior to the filing of the NOIs, the Petitioners faced a liquidity shortage and increasing pressure from their suppliers. The Petitioners were concerned they would not be able to meet their obligations as they became due starting on the first week of November 2019.
15. The implementation of a restructuring of the Petitioners' affairs became urgently required to prevent a liquidation of the Petitioners' assets that would erase their going concern value, to the detriment of all stakeholders.

16. In these circumstances, the Petitioners initiated the Restructuring Process to identify potential investors, lenders and/or other partners that would enable the Petitioners to prevent a liquidation of the Petitioners' assets.
17. In connection with their Restructuring Process, on or around October 1, 2019, the Petitioners created a restructuring steering committee of Bouclair (the "**Restructuring Steering Committee**"), comprised of Mr. Frédéric Vitre, an independent director of Bouclair, and a newly-appointed Chief Restructuring Officer (the "**CRO**"), to, among other things, oversee the Restructuring Process and review any offer, proposal, transaction or other alternative that may become available in relation to the Restructuring Process.
18. In order to seek all available options for the realization of the Petitioners' assets and the maximization of their value, a sale and investment solicitation process (the "**SISP**") was conducted by the Petitioners with the assistance of the CRO and Ernst & Young Orenda Corporate Finance Inc. ("**EYI**").

B. The SISP

19. On or around August 19, 2019, the Petitioners and EYI began to actively engage in conducting the SISP. As appears from EYI's "Go-to-Market Summary", in the Court record, EYI, *inter alia*:
 - (a) performed analyses based on properly defined search criteria to develop a list of potential purchasers to present the Petitioners;
 - (b) approached and successfully contacted thirty-six (36) potential purchasers across Canada, the United States of America and Europe;
 - (c) provided teasers to seventeen (17) different parties as well as confidentiality agreements to five (5) potentially interested parties; and
 - (d) provided confidential information memorandums and access to an electronic data room to three (3) potentially interest parties.
20. Mr. Peter Goldberg, President of Bouclair and Bouclair International, indicated to the Petitioners at the beginning of the Restructuring Process that he would most likely present, together with a group of other investors, an offer to restructure the business and assets of the Petitioners (the "**Indication of Interest**") which would include, among other things:
 - (a) the creation, by a group of investors comprised of Peter Goldberg and other prominent Canadian and Québec-based businessmen, of a new entity (i.e. the Purchaser) that would capitalize on the Petitioners' ongoing growth of the e-commerce platform and new store format, without carrying forward certain of the Petitioners' legacy liabilities and unprofitable leases, the whole in consultation with the Petitioners' principal secured lender, the National Bank of Canada (the "**NBC**");
 - (b) the closure and liquidation of the Liquidation Stores, with a view to remitting the net proceeds of the liquidation to the secured creditors that hold security over said liquidated assets;

- (c) the acquisition by the new entity (i.e. the Purchaser) of all or substantially all of the Petitioners' assets and property related to the head office, the warehouse and retail stores other than the Liquidation Stores; and
 - (d) the assumption of certain liabilities related to the NBC Loan, the AST Subordinated Loan, the Aljusa Subordinated Loan (as these terms are defined in the Initial Motion) and certain other liabilities to be identified.
21. Interested parties participating in the SISF were informed that all offers would need to be submitted to EYI by no later than October 18, 2019. The three (3) parties which had initially indicated their interest to participate in the SISF declined to submit an offer by the bid deadline. As such, except for the Indication of Interest, EYI did not receive any indications of interest or offers in connection with the SISF.
22. Despite a thorough review of their alternatives, the Indication of Interest thus represented the only viable option to restructure the affairs of the Petitioners in order to maximize and preserve the value of their business and assets.

C. Restructuring Efforts during the NOI Proceedings

23. In the course of the NOI proceedings, the Petitioners continued their discussions with their principal secured lender, the NBC, as well as with third party lenders who may be willing to refinance the NBC Loan (as such term is defined in the Initial Motion), in order to implement a transaction pursuant to the Indication of Interest (i.e. the Transaction).
24. These discussions lead the Petitioners to explore various options whereby another lender would grant financing to the Purchaser which would serve to reduce the exposure of the NBC under its term loan, thus reducing the portion to be assumed by the Purchaser under the Transaction.
25. The financing of the Transaction (the "**Financing**") as contemplated originally rested on three interrelated prongs, namely:
- (a) an injection of new funds in the Purchaser by certain equity investors;
 - (b) a refinancing with the Purchaser of the secured indebtedness of the Petitioners' principal secured lender, the NBC; and
 - (c) a new loan from a third-party source, which loan would be secured but subordinated to the indebtedness of the NBC.
26. Regarding the first prong, binding agreements conditional on closing of the Transaction have been executed in the course of the NOI proceedings by the proposed equity investors and proposed lenders to certain equity investors.
27. The completion of the second and third prongs of the Transaction were subject to numerous delays, as a result of the fact that the new loan from a third-party source (the "**Third-Party Lender**") required specific approvals, the obtention of which was initially scheduled to take place on March 11, 2020.

28. However, on March 10, 2020, the Third-Party Lender advised the Petitioners that the obtention of the requisite approvals would require additional delays. Although the Petitioners were still in communications with the Third-Party Lender, it was unclear, given the circumstances at the time, when the requisite approvals would be obtained.
29. Shortly after, as a result of the growing COVID-19 pandemic, several provincial governments ordered the temporary closure of shopping malls and of a number of businesses deemed to be non-essential, as well as other COVID-19 related measures, which significantly impacted the Petitioners' restructuring efforts, further delayed the closing of the Transaction, and forced the parties to renegotiate the terms and conditions of the proposed Transaction, as described in greater detail below.

IV. POST-COVID-19 RESTRUCTURING EFFORTS AND MEASURES

A. Context

30. Over the past several weeks, as a result of the growing COVID-19 pandemic, industries and governments, both nationally and regionally, have been making decisions and pronouncements which dramatically affect the Petitioners, their customers and their daily working environment, as well as management's operating assumptions and decisions.
31. These pronouncements also affect the Petitioners' operating plan for survival on a short-term basis, and its financial need in planning an exit to the Restructuring Process in order to be able to move forward on a long-term basis.
32. The Petitioners have been monitoring on a daily basis the events in relation to the COVID-19 pandemic and assessing the impact and required measures to be implemented based on the changing and constantly evolving information available on the matter.
33. The Petitioners were able to move very quickly to respond to these new challenges given that the Petitioners have been operating in a short-term mode for some time and were able to triage operating and cash flow decisions rapidly. The assistance of the Proposal Trustee has also been helpful in order to provide extra resources and oversight on financial matters.

B. Measures Taken and Impacts on the Petitioners' Affairs

34. The Petitioners' priority since the beginning of the COVID-19 pandemic outbreak has been in dealing with health and safety matters relating to employees and customers. The COVID-19 virus raises issues and concerns at all levels of the organization and at store level. These needed to be addressed first and foremost, in order to deal with the real human needs of the workforce.
35. Up until March 11, 2020, the Petitioners' sales showed significant growth, demonstrating that the new regional strategy, after closing the Liquidation Stores, was producing the anticipated results.

36. During the course of March 2020, however, due to the growing global COVID-19 pandemic, several provincial governments ordered the temporary closure of shopping malls and of a number of businesses, including retail stores, deemed to be non-essential.
37. As at May 4, 2020, the latest sale results demonstrated that the COVID-19 global pandemic and the government ordered measures were having a profound impact on the Petitioners' top line, with sales since mid-March having reduced by approximately 65% compared to last year.
38. As a result, the Petitioners had no choice but to temporarily close their retail stores and cease their regular operations (...), which resulted in having to temporarily lay off most of their employees working therein. The Petitioners also had no alternative but to implement cost cutting measures as a result in the decline in sales, and accordingly proceeded to temporarily lay off some head office personnel and reduce salaries at 80% for the staying employees.
39. However, as permitted by the Government of Québec, the Petitioners have continued to operate their e-commerce business since the beginning of the pandemic despite the closing of their retail locations and have retained the employees required to ensure continuation of these operations.
40. The majority of retained employees are now working from home, while strict safety measures have been implemented to ensure the health and well-being of the warehouse and logistics employees retained to operate the e-commerce business.
41. As soon as it became clear that the global COVID-19 pandemic would have a direct impact on the Petitioners' operations and revenues, steps were quickly implemented to conserve liquidity and actively manage immediate cash needs.
42. With the assistance of the Proposal Trustee, the Petitioners prepared a short-term cash flows seeking to forecast the impact of these measures on the Petitioners' financial position.
43. Their short-term needs now assessed, the Petitioners are currently evaluating and seeking the support which may be made available to retailers and businesses through Government means.
44. Although dependent on the changing and constantly evolving information available on the matter, the Petitioners are also currently implementing a step-by-step plan to progressively reopen their business and retail locations, the whole in strict conformity with COVID-19 Government related instructions. The Petitioners or, upon closing of the Transaction, if approved, the Purchaser, will continue to implement their gradual reopening plan in a timely manner and in conformity with the various Governments' authorizations to do so.
- 44.1 On or around May 4, 2020, the Government of Québec authorized the reopening of certain non-essential businesses, including retail stores, in certain regions of the province. As a result, the Petitioners were able to reopen eighteen (18) retail locations across the province of Québec as of May 11, 2020 (the "Open Locations").

44.2 Accordingly, the Petitioners have re-hired the temporarily laid off employees who were working in the Open Locations prior to their temporary closing.

44.3 As of the date hereof, the sale results of the Open Locations have been very positive, with an increase of 85% compared to last year's results.

C. Dealings with Landlords

(i) COVID-19 Related Rent Payments

45. As a result of the forced closing of the Petitioners' retail locations and, consequently, the Petitioners' inability to enjoy peaceful use and occupancy of their leased premises, the Petitioners did not pay the rent normally owed to their landlords (the "**Landlords**") for such retail locations for the period beginning April 1, 2020 and ending on the date on which such retail locations are or will be authorized by the various Governments to reopen in the normal course, as the case may be (the "**Unpaid COVID-19 Rent**"). The Petitioners advised their Landlords of same in letters sent on or around April 1, 2020.
46. Following their decision, the Petitioners received several communications from a number of their landlords requesting that rent payments be made without further delay. The Proposal Trustee has been copied on some of these communications.
47. On April 9, 2020, the Petitioners' counsel sent a letter to the Proposal Trustee's counsel (the "**April 9, 2020, Letter**") in which the former explained that the Petitioners' decision to hold back payments for rent during the month of April stemmed from the various government decreed shutdowns and measures ordered in the context of the global COVID-19 pandemic (the "**COVID-19 Government Measures**"), effectively preventing the Petitioners from operating their regular retail business operations in the normal course. A copy of the April 9, 2020, Letter is communicated herewith as **Exhibit P-4**.
48. As detailed in the April 9, 2020, Letter, the Petitioners' position is that while the COVID-19 Government Measures last, they cannot legally be held to pay rent for retail premises in respect of which they do not have the peaceful use and enjoyment, and from which they are prevented from operating in the normal course. In most instances, the current situation is creating an inability for the Landlords to deliver on their own obligations under their respective leases. For a Landlord to insist on the payment of its entire rent in the present circumstances would, in the Petitioners' view, be unreasonable.
49. The Petitioners informed the Proposal Trustee that they nevertheless wished to reach a negotiated solution to these issues, with a view to implementing a mutually beneficial solution for all parties involved. In that regard, the Petitioners' representatives reached out to the Landlords to discuss the terms of their business relationship going forward.
50. On April 13, 2020, counsel to the Proposal Trustee sent a letter to the Honourable Justice Chantal Corriveau (the "**April 13, 2020, Letter**") informing the Court that it had received the April 9, 2020, Letter from the Petitioners' counsel and that, as such, the Proposal Trustee was of the view that given:

- (a) the current highly exceptional circumstances related to the COVID-19 pandemic, including the inability for any retailer to predict with certainty when its store locations would reopen for customers; and
- (b) the Petitioners' efforts to reach a consensual arrangement with their Landlords;

any immediate action by the Court would be more prejudicial to the Petitioners' stakeholders than the *status quo*. A copy of the April 13, 2020, Letter is communicated herewith as **Exhibit P-5**.

- 51. Over the past several weeks, the Petitioners have negotiated extensively with their Landlords in order to arrive at a mutually satisfactory solution to the above.
- 52. Following good faith negotiations, pursuant to which all parties involved, including the Landlords, made significant concessions to allow the implementation of the Transaction given the current unprecedented circumstances, the Petitioners and several of their Landlords came to a consensual agreement in order to resolve their issues, whereby, *inter alia*:
 - (a) these Landlords consented to the assignment by the Petitioners of their existing leases to the Purchaser (the "**Consensually Assigned Leases**"); and
 - (b) these Landlords agreed, among other things, that the cure costs with respect to the Consensually Assigned Leases would not include the payment of all or part of the Unpaid COVID-19 Rent.
- 53. With respect to those Landlords with whom the Petitioners have not been able to settle, this has resulted in two (2) outcomes:
 - (a) the Petitioners' initial decision to close an additional twelve (12) retail locations, in addition to the Liquidation Stores. The leases associated with these retail locations were initially all disclaimed by the Petitioners (the "**Store Closure Leases**"). However, as of the date hereof, following further good faith negotiations with certain of the Petitioners' Landlords, agreements were reached between the parties to consensually assign to the Purchaser five (5) of the twelve (12) Store Closure Leases, conditional on the closing of the Transaction. Accordingly, the Petitioners have rescinded their disclaimers sent in connection with these five (5) consensually assigned leases, conditional on, *inter alia*, the closing of the Transaction; and
 - (b) the inclusion of the remaining leases which are not Consensually Assigned Leases nor Store Closure Leases on **Schedule C** attached hereto, in order for such leases to be assigned by Court order (the "**Assigned Leases**"). With respect to the Assigned Leases, the Purchaser undertakes to pay cure costs that do not include the Unpaid COVID-19 Rent, given the Petitioners' position described above and in further detail below (the "**Assigned Leases Cure Costs**").

53.1 The Petitioners are aware that certain of their Landlords (the “Contesting Landlords”) contest either:

- (c) the exclusion of the Unpaid COVID-19 Rent from the Assigned Leases Cure Costs; or
- (d) the non-payment of the Unpaid COVID-19 Rent for leases which have been disclaimed or resiliated by the Petitioners during the course of the NOI proceedings;

and argue that the Unpaid COVID-19 Rent is due and payable in full.

53.2 With a goal of seeking approval of the proposed Transaction by the Court within the shortest time possible, the Petitioners propose a “carve out” in the Order Sought, pursuant to which the Court would determine, at a later date and following a hearing held on the matter, whether the Unpaid Covid-19 Rent is legally owed by the Petitioners to the Contesting Landlords. Should the Court determine that the Unpaid Covid-19 Rent is legally owed by the Petitioners to the Contesting Landlords, the Purchaser would assume such amounts found to be owing to the Contesting Landlords.

54. The Petitioners are or will be current on their post-filing payments to their Landlords other than the Unpaid COVID-19 Rent.

55. All outstanding post-filing obligations which will or have accumulated during the NOI proceedings until the closing of the Transaction will be assumed by the Purchaser.

56. Overall, a large majority of the Petitioners’ Landlords have agreed to consensually assign their existing leases to the Purchaser following good faith negotiations.

(ii) Lease-End Claims

56.1 As mentioned above, during the course of the NOI proceedings, the Petitioners have disclaimed or resiliated a number of real property leases as part of the Restructuring Process.

56.2 Following the disclaimer or resiliation of such leases, certain Landlords (the “Lease-End Claims Landlords”) have claimed from the Petitioners costs incurred in relation to the condition of the applicable premises, such as clean-up and removal costs (the “Lease-End Claims”). The Lease-End Claims Landlords assert that the Lease-End Claims constitute post-filing obligations which should be payable immediately and in full by the Petitioners.

56.3 The Petitioners disagree with the Lease-End Claims Landlords’ position.

56.4 On May 1, 2020, counsel to the Petitioners sent a letter to counsel of the Lease-End Claims Landlords contesting the latter’s position (the “May 1, 2020, Letter”), and stating that the Lease-End Claims do not constitute post-filing claims, but rather provable claims under the relevant provisions of the BIA. A copy of the May 1, 2020, Letter is communicated herewith as **Exhibit P-9**.

56.5 Also with a goal of seeking approval of the proposed Transaction by the Court within the shortest time possible, the Petitioners propose a “carve out” in the Order Sought, pursuant to which the Court would determine, at a later date and following a hearing held on the matter, whether the Lease-End Claims constitute pre-filing, restructuring or post-filing claims under the BIA. Should the Court determine that the Lease-End Claims constitute post-filing claims owed by the Petitioners to the Lease-End Claims Landlords, the Purchaser would assume such amounts found to be owing to the Lease-End Claims Landlords.

D. First Renegotiation of the Financing and Postponement of Hearing

57. As a result of the impact of the COVID-19 Government Measures on the implementation of the closing of the Transaction, the parties were forced to renegotiate the terms and conditions of the Financing of the Transaction.

58. Among other changes:

- (a) the NBC had agreed to increase the amount of the revolving credit facility it would make available to the Purchaser in order to fulfill its short-term liquidity needs as a result of the COVID-19 Government Measures; and
- (b) Mr. Peter Goldberg, in his personal capacity, and the Third-Party Lender, had both agreed to provide loan guarantees to the NBC for the indebtedness of the Purchaser, which guarantees would have become effective upon closing of the proposed Transaction.

59. Following these negotiated amendments, the completion of the second and third prongs of the Transaction (i.e. a refinancing with the Purchaser of the secured indebtedness of the Petitioners’ principal secured lender, the NBC, and a new loan from a third-party source) remained the final outstanding steps in order to finalize the Transaction.

60. On or around May 1, 2020, it was anticipated that the Third-Party Lender would obtain all required specific approvals. As such, the Petitioners believed in good faith that they could move forward and seek the approval of the proposed Transaction from the Court.

61. Accordingly, on May 1, 2020, the Petitioners served upon the Service List a *Motion for the Issuance of an Approval and Vesting Order and a Contract Assignment Order*, including the exhibits in support thereof, seeking, *inter alia*, the approval of the Transaction contemplated under the Purchase Agreement (the “**Transaction Approval Motion**”).

61.1 On May 4, 2020, an amended Transaction Approval Motion was served by the Petitioners upon the Service List, at which point a hearing on the Transaction Approval Motion was scheduled by the Court to take place on May 7, 2020.

61.2 On May 6, 2020, counsel to the Petitioners advised the Court and the Service List that the Third-Party Lender had not obtained the required specific approvals and that, as a result, the projected Transaction could not be approved in the proposed form.

61.3 The Petitioners and the other parties involved in the Transaction were taken aback by this material setback, after months of negotiations and re-negotiations with this key lender.

61.4 Given that the projected Transaction could not be approved as it had been contemplated, the Petitioners were left with no alternative but to seek from the Court during the May 7, 2020, hearing:

- (a) a postponement in part of the Transaction Approval Motion; and
- (b) an extension of the Stay period set to expire on May 8, 2020, until May 11, 2020, which date coincided with the end of the six (6) month statutory delay to file a proposal under the BIA.

61.5 On May 7, 2020, the Court granted the postponement of the Transaction Approval Motion and the extension of the Stay Period sought by the Petitioners, as appears from the Court record.

61.6 Despite the material setback resulting from the withdrawal of the Third-Party Lender's subordinated loan, the Petitioners, the Purchaser, the NBC and the Third-Party Lender continued to negotiate extensively in order to come to terms on a revised Financing satisfactory to all.

E. Second Renegotiation of the Financing

61.7 On or around May 15, 2020, after several days of extensive negotiations, the Petitioners, the NBC, the Purchaser and the Third-Party Lender agreed in principle on the terms of a revised Financing of the Transaction, which terms are, *inter alia*, as follows:

- (a) the NBC agreed to provide an additional term loan to the Purchaser (the "**New Term Loan**"). However, no moratorium will be granted to the Purchaser on the Petitioners' existing term loan, including the capital repayment that was due and payable on April 30, 2020 (the "**Existing Term Loan**");
- (b) the NBC agreed to increase the Petitioners' existing revolving line of credit in favour of the Purchaser, subject to the calculation of the Purchaser's borrowing power (the "**Revolving Loan**");
- (c) any net loss on the Existing Term Loan, the New Term Loan and the Revolving Loan will be guaranteed up to a certain amount by the Third-Party Lender and Mr. Peter Goldberg, in his personal capacity; and
- (d) the equity investors agreed to increase their equity investment in the Purchaser.

61.8 Now that the Financing of the Transaction has been finalized, the Petitioners are finally able to move forward and seek the approval of the revised Transaction by the Court.

V. THE PROPOSED TRANSACTION

62. The principal terms and conditions of the Transaction contemplated under the Purchase Agreement are described in further detail below. The material terms and conditions of the Transaction correspond to those initially described in the Transaction Approval Motion.

A. The Purchase Agreement

63. The Petitioners and the Purchaser will enter, immediately prior to the hearing on this Motion, into the Purchase Agreement, pursuant to which the Purchaser will, *inter alia*:

- (a) agree to purchase the majority of the Petitioners' assets related to their business as further described in Schedule 2.1 of the Purchase Agreement, free and clear of any and all security, hypothecs, charges, encumbrances or other restrictions, except as set forth in the Purchase Agreement;
- (b) agree to assume, among other things and subject to the conditions set forth in the Purchase Agreement:
 - (i) all debts, liabilities and obligations with respect to the Purchased Assets arising or accruing after the time of closing of the Transaction and not related to any default existing at, prior to or as a consequence of closing of the Transaction;
 - (ii) all monetary obligations of the Petitioners under the NBC Loan (as such term is defined in the Initial Motion) which will be refinanced in its entirety concurrent with the closing of the Transaction;
 - (iii) all liabilities of the Petitioners in respect of indebtedness and guarantees under the AST Subordinated Loan (as such term is defined in the Initial Motion);
 - (iv) all liabilities of the Petitioners in respect of indebtedness and guarantees under the Aljusa Subordinated Loan (as such term is defined in the Initial Motion), on which the outstanding principal, immediately following the, and contemporaneously with, closing of the Transaction, will be converted into equity of the Purchaser;
 - (v) the Petitioners' outstanding post-filing obligations which will or have accumulated until closing of the Transaction;
- (c) agree to:
 - (i) continue the employment of Accepting Employees (as defined in the Purchased Agreement) on terms and conditions which, in the aggregate for each such employee, are comparable to the terms and conditions of their employment immediately prior to the closing of the Transaction;

- (ii) recognize such Accepting Employees' respective continuous years of service with the Petitioners to the extent required by applicable law; and
- (iii) otherwise assume the various obligations that may be owing to them as set forth under the Purchase Agreement.

64. In addition to the above, the Purchaser and Bouclair will enter into, upon closing of the Transaction, a customary Transitional Services Agreement pursuant to which the parties will agree to provide certain transitional services to each other for an interim period.

65. (...)

B. The Assignment of Contracts

66. Pursuant to the Purchase Agreement, the Petitioners undertook to assign to the Purchaser the Purchased Contracts.

67. The Purchased Contracts can essentially be divided into two (2) categories:

- (a) the commercial contracts listed in Schedule B attached hereto (the "**Assigned Commercial Contracts**"); and
- (b) the Assigned Leases listed in Schedule C attached hereto.

68. The Petitioners served the present Motion by e-mail (as permitted given the current COVID-19 pandemic) to their counterparties under the Purchased Contracts, as appears from the bailiffs' reports communicated herewith, en liasse, as Exhibit P-10.

69. The Purchaser will cure to all monetary defaults in relation to the Assigned Commercial Contracts — other than those arising by reason only of the Petitioners' bankruptcy, insolvency or failure to perform a non-monetary obligation — within thirty (30) days following the closing of the Transaction (the "**Assigned Commercial Contracts Cure Costs**").

70. As for the monetary defaults in relation to the Assigned Leases, the Petitioners request that the amounts of such monetary defaults be declared to be the Assigned Leases Cure Costs listed in Schedule C attached hereto, which amounts include:

- (a) any and all pre-filing outstanding claims; and
- (b) any and all outstanding post-filing claims, excluding any Unpaid COVID-19 Rent, for the reasons mentioned above and further described below;

the whole, subject to the rights of any Landlord to contest the quantification of the Assigned Leases Cure Costs on the basis that such costs ought to include the Unpaid COVID-19 Rent, with the rights of all parties being reserved until a fulsome debate has taken place on this issue.

71. The Purchaser will cure to the Assigned Leases Cure Costs within thirty (30) days following the closing of the Transaction.

VI. GROUNDS FOR THIS MOTION

A. Approval of the Transaction contemplated under the Purchase Agreement

72. The proposed Transaction being presented to the Court represents a meaningful effort by the Petitioners and their most significant lenders, shareholders and other stakeholders to keep the Bouclair brand alive despite some highly adverse consequences arising from the situation in the retail market and the COVID-19 pandemic.
73. The proposed Transaction constitutes the only offer which the Petitioners were able to secure in respect of their business and/or assets following the conduct of the SISP, during which the Petitioners, with the assistance of the CRO and EYI, thoroughly canvassed the market for potential purchasers and/or investors.
74. As such, the proposed Transaction effectively represents the Petitioners' only lifeline to salvage their business and prevent a liquidation of their assets.
75. The Petitioners submit that the proposed Transaction to be effected by and under, *inter alia*, the Purchase Agreement not only constitutes a reasonable offer under the circumstances, taking into account the fair market value of the Petitioners' assets, but it also constitutes an advantageous offer for a large number of the Petitioners' stakeholders.
76. The proposed Transaction, if approved, will allow the possibility to pursue the Petitioners' business by keeping approximately 56 Bouclair retail locations opened, which in turn will benefit not only the Petitioners' current suppliers, but also its various counterparties, including their landlords.
77. More importantly, the Purchase Agreement, if approved, will also allow the preservation of the employment of up to approximately 800 employees of the Petitioners.
78. In addition to the foregoing, the Petitioners believe that the Transaction contemplated by and under the Purchase Agreement will be, overall, more beneficial to all of its stakeholders than a sale or a disposition under a bankruptcy considering, *inter alia*, that under such scenario, not only the value of its assets (which mainly consists in home décor products) would likely be substantially reduced, especially considering the current impact of the COVID-19 pandemic on the retail market, but all the Petitioners' stores would shut down, and all of its employees would be terminated, which would in the end result in additional material claims against the Petitioners.
79. Although the Purchaser cannot be considered as a party dealing at-arms' length with the Petitioners, good faith efforts were made during the SISP to sell or otherwise dispose of the assets to persons who are not related to the Petitioners. However, as previously mentioned, no offer was received in the context of the SISP.

80. In addition, the Petitioners have made good faith efforts to conduct an independent Restructuring Process by creating the Restructuring Steering Committee and appointing the CRO.
81. The Proposal Trustee and the NBC, the Petitioners' principal secured lender, have both indicated that they support the proposed Transaction.
82. In light of the foregoing, the Petitioners submit that the proposed Transaction contemplated by and under the Purchase Agreement should be approved.

B. Assignment of the Purchased Contracts

83. The Purchase Agreement provides for the assignment by Court order of the Purchased Contracts to the Purchaser.
84. With respect to the Assigned Commercial Contracts, the Purchaser will cure to the Assigned Commercial Contracts Cure Costs.
85. As for the Assigned Leases, the Petitioners respectfully request that the cure costs in connection thereto, which the Purchaser undertakes to pay, be declared to be the Assigned Leases Cure Costs listed in **Schedule C**. As mentioned, the Assigned Leases Cure Costs exclude any Unpaid COVID-19 Rent.
86. The Petitioners' position in support of such request is that, given the current circumstances and the impacts of the COVID-19 Government Measures on the Petitioners' operations, they cannot legally be held to pay rent for retail premises in respect of which they do not have the peaceful use and enjoyment, and from which they are prevented from operating in the normal course. In most instances, this situation is creating an inability for the Landlords to deliver on their own obligations under their respective leases.
87. For a Landlord to insist on the payment of its entire rent while the COVID-19 Government Measures are in force would, in the Petitioners' view, be unreasonable.
- 87.1 However, as mentioned, in order to allow the Petitioners to seek the approval of the proposed Transaction by the Court within the shortest time possible, the Petitioners propose a "carve out" in the Order Sought, pursuant to which the Court would determine, at a later date and following a hearing held on the matter, whether the Unpaid Covid-19 Rent is legally owed by the Petitioners to the Contesting Landlords. Should the Court determine that the Unpaid Covid-19 Rent is legally owed by the Petitioners to the Contesting Landlords, the Purchaser would assume such amounts found to be owing to the Contesting Landlords.
88. As such, the Petitioners respectfully submit that the assignment of the Purchased Contracts should be approved by this Court, for the following reasons:
 - (a) the closing of the Transaction is conditional on the Petitioners obtaining the assignment by Court order of the Purchased Contracts;
 - (b) the Purchaser will be able to perform the obligations under the Purchased Contracts;

- (c) the Assigned Commercial Contracts Cure Costs will be remedied by the Purchaser;
 - (d) the Assigned Leases Cure Costs will be remedied by the Purchaser;
 - (e) the Petitioners' counterparties under the Purchased Contracts received proper notice of this Motion; and
 - (f) the Proposal Trustee approves the assignment of the Purchased Contracts.
89. In light of the above, the assignment of the Purchased Contracts is reasonable in the circumstances.

C. Lease-End Claims

90. As detailed above, in order to allow the Petitioners to seek the approval of the proposed Transaction by the Court within the shortest time possible, the Petitioners propose a "carve out" in the Order Sought, pursuant to which the Court would determine, at a later date and following a hearing held on the matter, whether the Lease-End Claims constitute pre-filing, restructuring or post-filing claims under the BIA. Should the Court determine that the Lease-End Claims constitute post-filing claims owed by the Petitioners to the Lease-End Claims Landlords, the Purchaser would assume such amounts found to be owing to the Lease-End Claims Landlords

91. (...)

92. (...)

93. (...)

94. The present Motion is well founded in fact and in law.

WHEREFORE, MAY THIS COURT:

GRANT the present *Re-Amended Motion for the Issuance of an Approval and Vesting Order and a Contract Assignment Order* (the "**Motion**");

DECLARE that the notices given for the presentation of the Motion are proper and sufficient;

ISSUE an order in the form of the draft order filed as **Exhibit P-1.2** (the "**Order**");

ORDER the provisional execution of the Order to be rendered notwithstanding any appeal and without the necessity of furnishing any security.

WITHOUT COSTS, save and except in case of contestation.

MONTRÉAL, May 20, 2020

Stikeman Elliott

STIKEMAN ELLIOTT LLP

Attorneys for the Petitioners

Bouclair Inc. and Bouclair International Inc.

**SCHEDULE A
AFFECTED PARTIES**

PARTIES WITH SECURITY INTERESTS REGISTERED ON SPECIFIC STORES

1. Business Development Bank of Canada (Anjou Store)
2. Riotrin Properties (Kirkland) Inc. (Kirkland Store)
3. Riocan Holdings (Québec) Inc. (Lévis Store)
4. Place du Royaume Inc. (Chicoutimi Store)
5. Riocan Holdings (Brossard) Inc. (Brossard Store)
6. 9224-1892 Québec Inc. (Brossard Store)
7. 9171-9922 Québec Inc. (Brossard Store)
8. Vaudreuil Shopping Centres Limited (Vaudreuil Store)
9. Desjardins Sécurité Financière, Compagnie d'assurance-vie et Fonds Immobilier Cogir 1, Société en commandite (Neufchatel Store)
10. Peterborough Retail Portfolio LP (Peterborough Store)

CLOSING STORES LANDLORDS

1. 9045-4737 Quebec Inc. (Rosemère Store)
2. 9230-1860 Quebec Inc. (Jonquière Store)
3. Société de gestion Cogir, s.e.n.c. (Arthabaska Store)
4. Calloway REIT (Sarnia) Inc. (Sarnia Store)
5. Calloway REIT (Stouffville) Inc. (Stouffville Store)
6. Fonds immobilier Cogir I, société en commandite (Neufchatel Store)
7. Quartier KS Laval Inc. (Quartier Laval Store)
8. Riotrin Properties (Kirkland) Inc. (Kirkland Store)
9. Calloway REIT (Chatham) Inc. (Chatham Store)
10. First Capital (Peterborough) Corporation (Peterborough Store)
11. Sudbury South Shopping Centres Limited (Sudbury South Store)
12. Calloway REIT (Woodside) Inc. (Markham Store)
13. First Capital Holdings (Quebec) Corporation Inc. (Vanier Store)
14. Lacewoods Developments Limited (Bayer's Lake Store)
15. Dartmouth Crossing 2 Limited (Dartmouth Store)
16. Riocan (Clarkson) Inc. (South Mississauga Store)
17. Riotrin Properties (Weston) Inc. (Weston St-Clair Store)
18. Calloway Reit Harmony Inc. (Oshawa Store)
19. Harvard Developments Inc. (Regina Store)
20. Riotrin Properties (Fredericton) Inc. (Fredericton Store)
21. 1651051 Alberta Ltd. (Grande Prairie Store)
22. Riocan Property Services Trust (Calgary Beacon Hill Store)
23. Riotrin Properties Inc. (Calgary Signal Hill Store)
24. 1451945 Ontario Limited (Edmonton Mayfield Common Store)
25. First Capital (Southpark) Corporation (Edmonton South Park Centre Store)
26. Anthem Heritage Hill Ltd. (Calgary Heritage Hill Store)
27. 1445006 Alberta Ltd. (Edmonton Sherwood Park Store)
28. 1090 Lougheed Highway Limited Partnership (Vancouver Coquitlam Store)
29. First Capital (Anjou) Corporation Inc. (Anjou Store)
30. Ivanhoé Cambridge Inc. (Jean-Talon Store)
31. Calloway REIT (Westridge) Inc. (Vaughan Store)

OPTION STORES LANDLORDS

1. Cominar Real Estate Investment Trust (Shawinigan Store)
2. MCM Real Estate Trust (Marché Central Store)
3. Ivanhoé Cambridge Inc. (Laurier Store)
4. Iberville Developments Leasing Ltd. (Candiac Store)

SCHEDULE B
ASSIGNED COMMERCIAL AGREEMENTS

- 1 Agreements entered into between Bouclair Inc. and Stingray (undated) entitled:
 - (a) Bouclair #00092 regarding Bouclair Store #92 Fragrance Service
 - (b) Bouclair #00089 regarding Bouclair Store #89 Fragrance Service
 - (c) Bouclair #00087 regarding Bouclair Store #87 Fragrance Service
 - (d) Bouclair #00099 regarding Bouclair Store #99 Fragrance Service
 - (e) Bouclair #00017 regarding Bouclair Store #17 Fragrance Service

- 2 Agreements entered into between Bouclair Inc. and NewVoiceMedia US Inc. entitled:
 - (a) Order Form (CLD540492) / Master Services Terms and Conditions regarding Telephone service for customers, dated September 29, 2017
 - (b) Order Form (CLD546406) / Master Services Terms and Conditions regarding Telephone service for customers, dated July 17, 2019

- 3 Agreement entered into between Bouclair Inc. and Ainsworth Inc., dated August 20, 2009 entitled Preventative Maintenance Agreement regarding HVAC services

- 4 Agreement entered into between Bouclair Inc. and Complete HVAC, dated August 28, 2019 entitled Inspection Contract no 10809

- 5 Agreements entered into between Bouclair Inc. and 3116093 Canada Inc. (Copidata) entitled:
 - (a) Lease Agreement regarding Photocopiers, dated April 9, 2019
 - (b) Full Coverage Maintenance Agreement regarding Photocopiers, dated April 9 2019
 - (c) Lease Agreement regarding Photocopiers, dated October 18, 2019
 - (d) Full Coverage Maintenance Agreement regarding Photocopiers, dated October 18, 2019
 - (e) Lease Agreement regarding Photocopiers, dated September 30, 2019
 - (f) Full Coverage Maintenance Agreement regarding Photocopiers, dated September 26, 2019
 - (g) Full Coverage Maintenance Agreement regarding Photocopiers, dated February 1, 2016

- 6 Agreement entered into between Bouclair Inc. and Daytona Door Products Ltd., dated April 8, 2014 entitled Annual Preventative Maintenance Contract

- 7 Agreement entered into between Bouclair Inc. and Honeywell Limited, dated August 1, 2018 entitled Service Agreement regarding HVAC services

- 8 Agreement entered into between Bouclair Inc. and Huguette Blanchette, dated June 18, 2019 entitled Contrat de nettoyage du magasin Bouclair Inc. Boucherville #89 regarding Cleaning Services

- 9 Agreement entered into between Bouclair Inc. and Johnson Controls, dated July 1, 2019 entitled Contrat 80798035 regarding Fire alarm & sprinkler inspection
- 10 Agreement entered into between Bouclair Inc. and Kenwil Services Limited, dated April 28, 2016 entitled Quotation # 3576 regarding HVAC services
- 11 Agreement entered into between Bouclair Inc. and Mauvalin Inc., dated November 1, 2019 entitled Contrat d'entretien préventif regarding HVAC services
- 12 Agreement entered into between Bouclair Inc. and Micro Irrigation Inc., dated May 8, 2019 entitled Contrat de service regarding Lawn irrigation
- 13 Agreement entered into between Bouclair Inc. and Pitney Bowes of Canada Ltd., dated January 31, 2008 entitled Lease Agreement (8580095) regarding Postage machine
- 14 Agreement entered into between Bouclair Inc. and Régie de gestion des matières résiduelles de la Mauricie, dated March 31, 2010 entitled Entente pour la fourniture et la levée d'un conteneur de recyclage pour les industries, les commerces et les institutions (LC-01953) regarding Recyclables
- 15 Agreement entered into between Bouclair Inc. and Roberts Fire Protection, dated January 10, 2019 entitled Quote # 2100-20542REV#3 regarding Fire alarm & sprinkler inspection
- 16 Agreement entered into between Bouclair Inc. and En-Pro International Inc., dated October 31, 2016 entitled Natural Gas and Electricity Management Agreement regarding Utility Analysis
- 17 Agreement entered into between Bouclair Inc. and Iron Mountain Canada (undated) entitled Annexe A – Renouvellement regarding Paper Record Storage
- 18 Agreements entered into between Bouclair Inc. and Davies Ward Phillips & Vineberg LLP entitled:
 - (a) Client 113817 / Invoice 650200 regarding Professional Services - Project Barcarolle (undated)
 - (b) Client 113817 / Invoice 650202 regarding Professional Services – General (undated)
 - (c) Client 113817 / Invoice 650564 regarding Corporate Services - Bouclair Inc. (undated)
 - (d) Client 113817 / Invoice 650565 regarding Corporate Services - Bouclair Intl. Inc. (undated)
 - (e) Client 113817 / Invoice 650566 regarding Corporate Services - 10705888 Canada Inc. (undated)
- 19 Agreement entered into between Bouclair Inc. and Fusion Analytics (undated) entitled Invoice 20010014 regarding Finance analytics
- 20 Agreement entered into between Bouclair Inc. and Acceo Solutions Inc., dated May 11, 2017 entitled Customer Number 292747 regarding Retail-1 POS Licensing & Maintenance Agreement

- 21 Agreement entered into between Bouclair Inc. and CDW (undated) entitled Order KWXX448 and KXGQ468 regarding Hardware equipment purchase
- 22 Agreement entered into between Bouclair Inc. and De Lage Landon Financial (DLL) (undated) entitled Contract No. 001-0227033-000 regarding Microsoft financing partner
- 23 Agreement entered into between Bouclair Inc. and IBM (undated) entitled Contract No. DGG8KC, Project No. P719S regarding Cisco Identity service engine
- 24 Agreement entered into between Bouclair Inc. and Microsoft, dated March 1, 2018 entitled Microsoft Agreement No. 60921877 regarding Microsoft program licensing
- 25 Agreement entered into between Bouclair Inc. and Lucernex, Inc., dated December 28, 2016 entitled Customer Agreement regarding Lucernex
- 26 Agreement entered into between Bouclair Inc. and InRiver AB, dated July 7, 2017 entitled Order Form: inRiver Product Marketing Cloud regarding Cloud Subscription
- 27 Agreement entered into between Bouclair Inc. and CyberSource Corporation, dated September 28, 2017 entitled Quotation (Q-00004089) / CyberSource Payment Solutions Agreement regarding Ecom credit card payments system
- 28 Agreement entered into between Bouclair Inc. and Sologlobe Logistique Inc. / Generix Group North America, dated September 30, 2018 entitled Proposal: Solochain WMS - V.8 regarding SoloChain (WMS)
- 29 Agreement entered into between Bouclair Inc. and Linoma Software, Inc., executed by Bouclair August 31, 2017 entitled License Agreement and Limited Warranty regarding GoAnywhere Advances Workflows/SFTP Server
- 30 Agreement entered into between Bouclair Inc. and Interactive Validated Solutions 88 Inc., dated April 1, 2016 entitled Pivot88 Agreement regarding Merchandise qa solution
- 31 Agreements entered into between Bouclair Inc. and Salesforce.com Canada Corporation entitled:
 - (a) Master Subscription Agreement dated March 31, 2016, regarding Salesforce Commerce Cloud
 - (b) Quote Q-02342617 dated January 28, 2019, regarding Salesforce Marketing Cloud
- 32 Agreement entered into between Bouclair Inc. and ExactTarget, Inc. (Subcontractor for Salesforce), dated January 4, 2016 entitled Quote Q-0270817 regarding Salesforce Service Cloud

- 33 Agreement entered into between Bouclair Inc. and ShipStation, dated November 26, 2018 entitled Enterprise Subscription Agreement regarding Expedition label service
- 34 Agreement entered into between Bouclair Inc. and Allstream (undated) entitled 123E 0713 regarding Corporate office phone lines
- 35 Agreement entered into between Bouclair Inc. and Axper (undated) entitled Invoice No. 8431 regarding People Counter Analysis
- 36 Agreement entered into between Bouclair Inc. and Cisco Systems Capital Canada Co., dated June 28, 2018 entitled Equipment Leasing Agreement #640347 regarding Rogers Communications Equipment Lease
- 37 Agreement entered into between Bouclair Inc. and CWB National Leasing (undated) entitled Client No. 50226010 regarding Financing of Adobe Licenses
- 38 Agreement entered into between Bouclair Inc. and Fibrenoire Inc. (undated) entitled 9204 BOUC02-001 regarding HO Telecom
- 39 Agreements entered into between Bouclair Inc. and Honeywell entitled:
 - (a) Service Contract 120185518 regarding Honeywell printers maintenance services, dated November 7, 2017
 - (b) Service Contract 120335233 regarding Honeywell printers maintenance services, dated July 18, 2017
 - (c) Service Contract 120327244 regarding Honeywell printers maintenance services (undated)
 - (d) Contract No. 40175713 regarding Honeywell printers maintenance services (undated)
- 40 Agreement entered into between Bouclair Inc. and Societe IBM Financement Mondial Canada entitled CACL-AGLUGK-6 / SUPP 1601, Contrat 246291 regarding AS400
- 41 Agreement entered into between Bouclair Inc. and IBM Canada (undated) entitled Contract No. P0382889, Invoice 162444 regarding Cisco NTSC
- 42 Agreement entered into between Bouclair Inc. and IBM Global Financing Canada Corporation, dated July 26, 2019 entitled Rapid Finance Agreement 023723 regarding Anti-virus software subscription
- 43 Agreement entered into between Bouclair Inc. and Iron Mountain Canada (undated) entitled Annexe A – Renouvellement regarding Cloud Storage
- 44 Agreement entered into between Bouclair Inc. and Les Laboratoires Laust (undated) entitled Invoice Bouclair0010 regarding In-store iPads
- 45 Agreement entered into between Bouclair Inc. and ZOHO Corporation (undated) entitled Invoice 2249891 regarding ManageEngine Service Desk

- 46 Agreement entered into between Bouclair Inc. and PolicyPak (undated) entitled Software License regarding Desktop system solutions
- 47 Agreement entered into between Bouclair Inc. and Softchoice LP (undated) entitled Installment Payment Agreement No. 2945910 regarding Adobe licenses
- 48 Agreement entered into between Bouclair Inc. and Yaffy Groper Isenberg Insurance Services Inc., (undated) entitled:
 - (a) L2365028 regarding Life Insurance
 - (b) L11136820 regarding Life Insurance
- 49 Agreement entered into between Bouclair Inc. and Sherman Brown Barristers and Solicitors, dated December 3, 2018 entitled Retainer Agreement regarding Legal services (as required)
- 50 Agreement entered into between Bouclair Inc. and 2830515 Canada Inc., dated June 15, 1992 entitled Agreement regarding Warehouse Employee Services
- 51 Agreements entered into between Bouclair Inc. and Thomson Tremblay Inc. entitled:
 - (a) Agreement regarding Warehouse Employee Services, dated June 17, 1992
 - (b) Agreement regarding Warehouse Employee Services, dated June 2, 1997
- 52 Agreement entered into between Bouclair Inc. and Équipement G.N. Johnston Ltée (undated) entitled Façture Crédit-Bail 6714654 regarding Forklift leases
- 53 Agreement entered into between Bouclair Inc. and Synerion North America Inc., dated January 12, 2018 entitled Agile Cloud Software License Agreement regarding Warehouse punch clock system
- 54 Agreement entered into between Bouclair Inc. and Purolator, dated March 27, 2020 entitled Services Pricing Agreement BOUCLNEDH032620201608 - SPA-NEW-BOUCLAIR ECOMM-20200327 regarding parcels delivery
- 55 Agreement entered into between Bouclair Inc. and Analytics Ninja, dated October 9, 2019 entitled Consulting Agreement regarding Data analytics and web optimization services
- 56 Agreement entered into between Bouclair Inc. and Rakuten Linkshare (undated) entitled Agreement regarding Affiliate Program
- 57 Agreement entered into between Bouclair Inc. and Canadian Automobile Association, British Columbia Automobile Association, CAA Atlantic, CAA North & East Ontario, CAA, dated May 7, 2018 entitled Agreement regarding CAA Rewards
- 58 Agreement entered into between Bouclair Inc. and Joey Horvath (undated) entitled Service Agreement regarding Studio Handyman

- 59 Agreement entered into between Bouclair Inc. and Maxime Desbiens, Photographe Inc. (undated) entitled Service Agreement regarding Studio Photographer
- 60 Agreement entered into between Bouclair Inc. and Nicola C.E. Marc (Decorator-Stylist) entitled Service Agreement regarding Studio Stylist
- 61 Agreement entered into between Bouclair Inc. and EMedia Networks Incorporated, dated August 1, 2009 entitled Commercial Service Agreement regarding Music (all-stores)
- 62 Agreements entered into between Bouclair Inc. and Groupe Stingray Digital Inc. entitled:
- (a) Proposition MR-20190219-02 / Convention d'achat d'équipement regarding Digital screens - Boucherville Store, dated March 26, 2019
 - (b) Proposition MR-20190603-02 / Convention d'achat d'équipement regarding Digital screens - Boisbriand Store, dated October 15, 2019
- 63 Agreement entered into between Bouclair Inc. and Return Path, Inc., dated July 11, 2016 entitled Master Subscription and Services Agreement / Insertion Order No. 1 regarding Return Path
- 64 Agreement entered into between Bouclair Inc. and Burlington Hydro, dated March 1, 2017 entitled 103210-003 regarding Bouclair Store #85 Electricity Account
- 65 Assigned agreement entered into between Bouclair Inc. and Energie NB Power (undated) entitled 5709594-3 regarding Bouclair Store #160 Electricity Account
- 66 Agreements entered into between Bouclair Inc. and Enbridge / Union Gas (undated) entitled:
- (a) 7639587-1293858 regarding Bouclair Store #46 Gas Account
 - (b) 7639587-2437162 regarding Bouclair Store #81 Gas Account
 - (c) 7639587-2451611 regarding Bouclair Store #85 Gas Account
 - (d) 7639587-2543425 regarding Bouclair Store #91 Gas Account
 - (e) 7639587-2635629 regarding Bouclair Store #101 Gas Account
 - (f) 7639587-2678274 regarding Bouclair Store #127 Gas Account
 - (g) 7639587-2709753 regarding Bouclair Store #131 Gas Account
 - (h) 7639587-2732247 regarding Bouclair Store #162 Gas Account
- 67 Agreements entered into between Bouclair Inc. and Enbridge Gas NB (undated) entitled:
- (a) 002-0003707-001 regarding Bouclair Store #160 Gas Account
- 68 Agreement entered into between Bouclair Inc. and Enersource (undated) entitled 3889749412 - Conditions of Service regarding Bouclair Store #118 Electricity Account
- 69 Agreement entered into between Bouclair Inc. and Énergir (undated) entitled:

- (a) Conditions of Service and Tariff regarding Bouclair Store #17 Gas Account
- (b) Conditions of Service and Tariff regarding Bouclair Store #19 Gas Account
- (c) Conditions of Service and Tariff regarding Bouclair Store #20 Gas Account
- (d) Conditions of Service and Tariff regarding Bouclair Store #40 Gas Account
- (e) Conditions of Service and Tariff regarding Bouclair Store #53 Gas Account
- (f) Conditions of Service and Tariff regarding Bouclair Store #66 Gas Account
- (g) Conditions of Service and Tariff regarding Bouclair Store #68 Gas Account
- (h) Conditions of Service and Tariff regarding Bouclair Store #87 Gas Account
- (i) Conditions of Service and Tariff regarding Bouclair Store #89 Gas Account
- (j) Conditions of Service and Tariff regarding Bouclair Store #90 Gas Account
- (k) Conditions of Service and Tariff regarding Bouclair Store #92 Gas Account
- (l) Conditions of Service and Tariff regarding Bouclair Store #94 Gas Account
- (m) Conditions of Service and Tariff regarding Bouclair Store #96 Gas Account
- (n) Conditions of Service and Tariff regarding Bouclair Store #99 Gas Account
- (o) Conditions of Service and Tariff regarding Bouclair Store #102 Gas Account
- (p) Conditions of Service and Tariff regarding Bouclair Store #113 Gas Account
- (q) Conditions of Service and Tariff regarding Bouclair Store #123 Gas Account
- (r) Conditions of Service and Tariff regarding Bouclair Store #124 Gas Account
- (s) Conditions of Service and Tariff regarding Bouclair Store #147 Gas Account
- (t) Conditions of Service and Tariff regarding Bouclair Store #14 Gas Account
- (u) Conditions of Service and Tariff regarding Bouclair Store #148 Gas Account
- (v) Conditions of Service and Tariff regarding Bouclair Store #88 Gas Account

70 Agreement entered into between Bouclair Inc. and Guelph Hydro (undated) entitled 34745-00 regarding Bouclair Store #162 Electricity Account

71 Agreement entered into between Bouclair Inc. and Enwin Utilities, dated September 4, 2018 entitled 34745-00 regarding Bouclair Store #101 Electricity Account

- 72 Agreement entered into between Bouclair Inc. and Epcor, dated April 15, 2019 entitled 24853780 regarding Bouclair Store #159 Water Account
- 73 Agreements entered into between Bouclair Inc. and Gazifere dated January 1, 2020 entitled:
- (a) 0005184650-0001756678 regarding Bouclair Store #71 Gas Account
 - (b) 5133655-0002208198 regarding Bouclair Store #125 Gas Account
- 74 Agreement entered into between Bouclair Inc. and Greater Sudbury, dated April 17, 2003 entitled 83532-00 regarding Bouclair Store #46 Electricity Account
- 75 Agreement entered into between Bouclair Inc. and Hydro One Brampton (undated) entitled 7151714450 regarding Bouclair Store #45 Electricity Account
- 76 Agreement entered into between Bouclair Inc. and Horizon Utilities (undated) entitled:
- (a) 4955291300 regarding Bouclair Store #131 Electricity Account
 - (b) 3955291300 regarding Bouclair Store #108 Electricity Account
- 77 Agreement entered into between Bouclair Inc. and London Hydro, dated August 2019 entitled 50023838 regarding Bouclair Store #127 Electricity Account
- 78 Agreement entered into between Bouclair Inc. and Manitoba Hydro, dated November 20, 2018 entitled 8459047 6717977 regarding Bouclair Store #155 Electricity Account
- 79 Agreement entered into between Bouclair Inc. and Milton Hydro, August 1, 2013 entitled 122651-02 regarding Bouclair Store #91 Electricity Account
- 80 Agreement entered into between Bouclair Inc. and Newmarket Hydro, dated May 2008 entitled 00465431-06 regarding Bouclair Store #128 Electricity Account
- 81 Agreement entered into between Bouclair Inc. and Power Stream Energy Services, dated February 5, 2019 entitled 1752900 regarding Bouclair Store #128 Water Account
- 82 Agreement entered into between Bouclair Inc. and Ville de Sherbrooke, dated September 18, 2019 entitled 600765359020441 regarding Bouclair Store #113 Electricity Account
- 83 Agreement entered into between Bouclair Inc. and Waterloo North Hydro, dated March 16, 2015 entitled 454163-2004074 regarding Bouclair Store #81 Electricity Account
- 84 Agreement entered into between Bouclair Inc. and Whitby Hydro, dated May 17, 2019 entitled 23400474-01 regarding Bouclair Store #135 Electricity Account

**SCHEDULE C
ASSIGNED LEASES**

1. (...)
2. Lease Amending and Extending Agreement, dated as of September 3, 2002, between The Cadillac Fairview Corp. Limited, as landlord, and Bouclair Inc., as tenant, regarding the lease of the premises located at 2585 Boul. Daniel Johnson, Laval, Quebec, Canada, under which **\$17,524.11** is owed by Bouclair Inc. as cure costs;
3. Lease Extending and Amending Agreement, dated as of May 9, 1995, between Societe De Gestion Cogir, as landlord, and Bouclair Inc., as tenant, regarding the lease of the premises located at 4200 Boul. des Recollets, Trois-Rivière Ouest, Quebec, Canada, under which **\$7,789.06** is owed by Bouclair Inc. as cure costs;
4. Lease Agreement, dated as of August 6, 2004, between Oxford Properties Group, as landlord, and Bouclair Inc., as tenant, regarding the lease of the premises located at 1480 Boul. Lebourgneuf, Quebec, Quebec, Canada, under which **\$14,696.36** is owed by Bouclair Inc. as cure costs;
5. Third Lease Amending Agreement, dated as of October 31, 2013, between Centre D'Achat Boulevard, Societe En Commandite, as landlord, and Bouclair Inc., as tenant, regarding the lease of the premises located at 400 Boul. St-Joseph, Drummondville, Quebec, Canada, under which **\$12,091.88** is owed by Bouclair Inc. as cure costs;
6. Lease Extension Agreement, dated as of August 18, 1994, between Ontrea Inc., as landlord, and Bouclair Inc., as tenant, regarding the lease of the premises located at 503 Boul. des Promenades, St-Bruno, Quebec, Canada, under which **\$18,320.15** is owed by Bouclair Inc. as cure costs;
7. Fourth Lease Extension Agreement, dated as of December 4, 2001, between Qrpg Lp Ltd. Marche Central, as landlord, and Bouclair Inc., as tenant, regarding the lease of the premises located at 1001 rue du Marché Central, Montreal, Quebec, Canada, under which no amount of money is owed by Bouclair Inc. as cure costs;
8. (...)
9. Extension of Lease Agreement, dated as of June 12, 2002, between Crombie Property Holdings Limited, as landlord, and Bouclair Inc., as tenant, regarding the lease of the premises located at 3230 Fairview Street, Burlington, Ontario, Canada, under which **\$9,808.19** is owed by Bouclair Inc. as cure costs;
10. (...)
11. (...)

12. Lease Agreement, dated as of October 19, 2006, between Quartier Dix30 Management L.P., as landlord, and Bouclair Inc., as tenant, regarding the lease of the premises located at 9550 Boul. Leduc, Brossard, Quebec, Canada, under which **\$12,064.46** is owed by Bouclair Inc. as cure costs;
13. (...)
14. (...)
15. (...)
16. Lease Extending Agreement, dated as of June 13, 2007, between Skyline Commercial Management Inc., as landlord, and Bouclair Inc., as tenant, regarding the lease of the premises located at 4115 Walker Road, Windsor, Ontario, Canada, under which **\$8,807.84** is owed by Bouclair Inc. as cure costs;
17. (...)
18. (...)
19. Lease Amending Agreement, dated as of April 29, 2010, between Societe De Gestion Cogir, as landlord, and Bouclair Inc., as tenant, regarding the lease of the premises located at 82 Route du President Kennedy, Levis, Quebec, Canada, under which **\$7,481.80** is owed by Bouclair Inc. as cure costs;
20. (...)
21. (...)
22. Lease Agreement, dated as of August 26, 2009, between Westwood Power Centre Inc. C/O Southside Group, as landlord, and Bouclair Inc., as tenant, regarding the lease of the premises located at 3075 Wonderland Road South, London, Ontario, Canada, under which **\$11,157.26** is owed by Bouclair Inc. as cure costs;
23. (...)
24. (...)
25. (...)
26. (...)
27. (...)
28. Lease, dated as of February 21, 2020, between Devimco, as landlord, and Bouclair Inc., as tenant, regarding the lease of the premises located at 1040 Wellington Street, Montreal, Quebec, Canada, under which no amount of money is owed by Bouclair Inc. as cure costs;
29. (...)

30. Extension Agreement, dated as of December 1, 2011, between Cameron Corporation, as landlord, and Bouclair Inc., as tenant, regarding the lease of the premises located at 10191 – 13 Avenue N.W., Edmonton, Alberta, Canada, under which **\$11,728.28** is owed by Bouclair Inc. as cure costs; and
31. Lease Agreement, dated as of March 2, 2012, between 6914888 Canada, Inc., as landlord, and Bouclair Inc., as tenant, regarding the lease of the premises located at 8180 11th Street S.E., Calgary, Alberta, Canada, under which **\$14,990.48** is owed by Bouclair Inc. as cure costs.

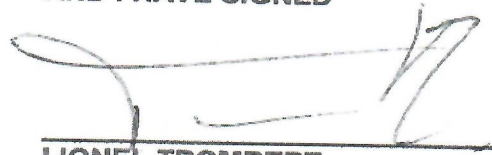
each as amended, restated, amended and restated, assigned, supplemented or otherwise modified or extended from time to time.

AFFIDAVIT

I, the undersigned, Lionel Trombert, having my principal place of business at 152 av. Alston, in the city of Pointe-Claire, Province of Québec, H9R 6B4, solemnly declare the following:


1. I am the Senior Director, Finance of Bouclair Inc.;
2. All the facts alleged in the *Re-Amended Motion for the Issuance of an Approval and Vesting Order and a Contract Assignment Order* are true.

AND I HAVE SIGNED



LIONEL TROMBERT

Solemnly declared before me at Montreal,
on the 20 day of May, 2020



Commissioner of oath
for the Province of Quebec

NOTICE OF PRESENTATION

TO: the Service List

TAKE NOTICE that the *Re-Amended Motion for the Issuance of an Approval and Vesting Order and a Contract Assignment Order* will be presented for adjudication before the Honourable Chantal Corriveau of the Superior Court, sitting in practice in and for the District of Montréal, at the Montréal Courthouse, 1 Notre-Dame Street East, Montréal, Québec, this **Friday May 22nd, 2020**, at **9:30 AM**, by video-conference in accordance with further instructions from the Court, which instructions shall be communicated to this Service List.

DO GOVERN YOURSELVES ACCORDINGLY.

MONTRÉAL, May 20, 2020

Stikeman Elliott

STIKEMAN ELLIOTT LLP
Attorneys for the Petitioners

**SUPERIOR COURT
(Commercial Division)**

Court No: 500-11-057470-193

Court No: 500-11-057469-195

**CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL**

IN THE MATTER OF THE PROPOSAL OF:

BOUCLAIR INC.;

- and -

BOUCLAIR INTERNATIONAL INC.

Petitioners

- and -

DELOITTE RESTRUCTURING INC.

Proposal Trustee

- and -

NATIONAL BANK OF CANADA

Principal Secured Creditor

- and – *et al.*

BS0350

Our file: 041315-1033

**RE-AMENDED MOTION FOR THE ISSUANCE OF AN
APPROVAL AND VESTING ORDER AND A
CONTRACT ASSIGNMENT ORDER
(Sections 65.13, 66 (1) and 84.1 of the
Bankruptcy and Insolvency Act)
SCHEDULES "A", "B" & "C"
AFFIDAVIT OF LIONEL TROMBERT
AND NOTICE OF PRESENTATION**

ORIGINAL

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