

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.

Debtors

- and -

DELOITTE RESTRUCTURING INC.

Trustee

AMENDED PROPOSAL
(Subsection 50(2) of the *Bankruptcy and Insolvency Act*)

BOUCLAIR INC. AND BOUCLAIR INTERNATIONAL INC. hereby submit to their creditors the following amended proposal pursuant to the *Bankruptcy and Insolvency Act*.

ARTICLE 1
INTERPRETATION

1.1 Definitions

For all purposes relating to the present Proposal, the following terms shall have the following meanings:

- a.1) **"Alston"** means Alston Investments Inc., the purchaser of the majority of the assets of the Companies pursuant to the *Asset Purchase Agreement* entered into on May 21, 2020, between Alston Investments Inc., as purchaser, and the Companies, as vendors, and subsequently approved by the Court on May 22, 2020.
- a) **"Basket Amount"** has the meaning ascribed to it in **Section 2.1** hereof.
- b) **"BIA"** means the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended.
- c) **"Bouclair"** means Bouclair Inc.
- d) **"Bouclair International"** means Bouclair International Inc.

- e) "**Business Day**" means any day except Saturday, Sunday or any day on which banks are generally not open for business in the City of Montreal, Quebec.
- f) "**Claim**" means any right of any Person against the Companies in connection with any indebtedness, liability or obligation, including claims that are liquidated, unliquidated, fixed, contingent, matured, unmatured, legal, equitable, present, future, known, unknown, disputed, undisputed or whether by guarantee, by surety, by subrogation or otherwise incurred and whether or not such a right is executory in nature.
- g) "**Companies**" means Bouclair Inc. and Bouclair International Inc., collectively.
- h) "**Court**" means the Superior Court of Quebec (Commercial Division).
- i) "**Creditors' Meeting**" means the meeting of creditors to be held for the purpose of considering and voting upon this Proposal, and any adjournment of such meeting.
- j) "**Crown Claims**" means all Claims of Her Majesty in right of Canada or a province described in section 60(1.1) of the BIA, that were outstanding on the Filing Date, as accepted by the Trustee or approved by the Court.
- k) "**Disputed Claim**" means any Claim which has been received by the Trustee in accordance with the terms of this Proposal and the BIA but has not been accepted as proven or which is being disputed in whole or in part by the Companies, the Trustee, or any other person entitled to do so and has not been resolved by agreement or by Order of the Court.
- l) "**Disputed Creditor**" means a Person holding a Disputed Claim to the extent of its Disputed Claim.
- m) "**D&O Claims**" means any Claim against the directors and officers of the Companies which they may have incurred in their capacity as directors or officers of the Companies after the Filing Date, except where such Claims have arisen as a result of the Companies' directors or officers' gross negligence or willful misconduct.
- n) "**Effective Date**" has the meaning ascribed to it in **Section 5.3** hereof.
- o) "**Filing Date**" means the date of the filing of the Notices of Intention to Make a Proposal by the Companies, namely November 11, 2019.
- p) "**Landlord Claims**" means any Claim of any of the landlords of Bouclair arising from a disclaimer of the landlord's lease by Bouclair, which shall be calculated in accordance with **Section 3.5** hereof.
- q) "**Landlord**" means a landlord to any real property lease to which Bouclair is or was a party to.
- r) "**Official Receiver**" means the officer appointed pursuant to Section 12(2) of the BIA.

- s) **"Person"** is to be broadly interpreted and includes an individual, a corporation, a partnership, a trust, an unincorporated organization, the government of a country or any political subdivision thereof, or any agency or department of any such government, and the executors, administrators or other legal representatives of an individual in such capacity.
- t) **"Post-Filing Claims"** means any Claim arising in respect of services rendered, goods supplied or other consideration given to the Companies after the Filing Date, except for Restructuring Claims and Unpaid COVID-19 Rent.
- u) **"Preferred Claims"** means any Claim as described in Section 136(1)(a) through 136(1)(j) of the BIA, being such Claim directed by the BIA to be paid in priority to all other Claims in the distribution of the property of a bankrupt.
- v) **"Preferred Creditor"** means a Person holding a Preferred Claim, to the extent of its Preferred Claim.
- w) **"Professional Fees"** means all fees, expenses, liabilities and obligations of the Trustee and the Companies' legal advisors on and incidental to the proceedings arising out of the Notices of Intention to Make a Proposal of the Companies or the Proposal, including advice to the Companies in connection with the Notices of Intention to Make a Proposal and the Proposal.
- x) **"Proof of Claim"** means the form delivered by the Trustee to creditors of the Companies in accordance with the BIA.
- y) **"Proposal"** means this Amended Proposal, as varied, amended, modified or supplemented in accordance with the provisions hereof and the BIA.
- z) **"Proposal Approval Order"** means an order from the Court, in form and substance satisfactory to the Companies and the Trustee approving and sanctioning this Proposal in accordance with the provisions hereof and of the BIA.
- aa) **"Proven Unsecured Claim"** means the amount or any portion of the amount of the Unsecured Claim of an Unsecured Creditor as agreed by the Trustee or finally determined for distribution purposes in accordance with the provisions of the BIA or any applicable orders from the Court.
- bb) **"Related Persons"** has the meaning ascribed thereto in the BIA. For greater certainty, the Related Persons shall include, *inter alia*, Mr. Peter Goldberg, both in his personal capacity and in his capacity as director and officer of the Companies, as well as Aljusa Investments Inc.
- cc) **"Required Majority"** means a majority in number and two-thirds in value of the Unsecured Claims of all Unsecured Creditors entitled to vote who are present and voting at the Creditors' Meeting (whether in person, by proxy or by voting letter) in accordance with the voting procedures established by this Proposal and the BIA.

- dd) **"Restructuring Claims"** means any Claim resulting from the disclaimer or repudiation of any contract by the Companies, including the Landlord Claims.
- ee) **"Secured Claims"** means the Claims of the Secured Creditors, to the extent of the value of the security held by the Secured Creditors, as accepted by the Trustee or approved by the Court.
- ff) **"Secured Creditors"** has the meaning ascribed to it in Section 2 of the BIA, inasmuch as the security would be opposable to a bankruptcy trustee if the Companies had become bankrupt at the Filing Date, and includes, for greater certainty, the National Bank of Canada.
- gg) **"Substantive Consolidation"** has the meaning ascribed to it in **Section 1.6** hereof.
- hh) **"Trustee"** means Deloitte Restructuring Inc., in its capacity as trustee to the (...) Proposal of the Companies and not in its personal capacity.
- ii) **"Trustee's Certificate"** has the meaning ascribed to it in **Section 5.3** hereof.
- jj) **"Unpaid COVID-19 Rent"** means any unpaid gross rent normally owed by Bouclair to a Landlord for the period beginning April 1, 2020, and ending on the day (i) on which the various COVID-19 government decreed shutdowns are effectively lifted and (ii) on which Bouclair is authorized by government authorities to reopen its retail locations, but in all cases, only to the extent such rent is found to be owing by the Court or subject to a negotiated settlement between Alston, Bouclair and a Landlord, it being understood that nothing in the present Proposal shall be construed as an admission, by the Companies, that the unpaid gross rent for the period described above is owed and payable.
- kk) **"Unsecured Claims"** means all Claims other than Secured Claims, Post-Filing Claims, Crown Claims, and Preferred Claims. For greater certainty, but without limiting the generality of the foregoing, the Unsecured Claims shall include Claims of every nature and kind whatsoever, whether due or not due for payment as of the Filing Date, including any contingent and unliquidated Claims (once quantified) against the Companies and all Restructuring Claims.
- ll) **"Unsecured Creditor"** means a Person holding an Unsecured Claim, to the extent of its Unsecured Claim.
- mm) **"Unsecured Creditors Class"** means all Unsecured Creditors, who are grouped together for the purposes of considering and voting on this Proposal in accordance with the provisions of this Proposal and the BIA.

1.2 Date of Any Action

In the event that any date on which any action is required to be taken under this Proposal by any of the parties is not a Business Day, the action shall be required to be taken on the next proceeding day which is a Business Day.

1.3 Time

All times expressed in this Proposal are local time Montreal, Quebec, Canada, unless stipulated otherwise. Time is of the essence in this Proposal.

1.4 Statutory References

Any reference in this Proposal to a statute includes all regulations made thereunder and all amendments to such statutes or regulations in force from time to time.

1.5 Monetary References

All references to currency and to "\$" are to Canadian dollars, unless otherwise indicated.

1.6 Consolidation of Estates

For the purposes of this Proposal, the estates of Bouclair and Bouclair International shall be substantively consolidated (the "**Substantive Consolidation**"). As a result of the Substantive Consolidation, the creditors of Bouclair and Bouclair International shall be grouped together and treated on a *pari passu* basis pursuant to the terms of this Proposal.

1.7 Waiver

Bouclair and Bouclair International hereby waive all monetary obligations which are or will be owing between them as at the Effective Date.

1.8 Consent of Trustee

The Trustee hereby consents to the filing of this Proposal, as amended by the Companies.

1.9 Undertaking of Alston regarding Unpaid COVID-19 Rent

In accordance with the *Asset Purchase Agreement* entered into on May 21, 2020, between Alston, as purchaser, and the Companies, as vendors, and the *Approval and Vesting Order and Contract Assignment Order* rendered by the Court in these proceedings on May 22, 2020, Alston hereby undertakes to assume any and all Unpaid COVID-19 Rent, only to the extent such Unpaid COVID-19 Rent is found to be owing by the Court or subject to a negotiated settlement between Alston, Bouclair and a Landlord.

ARTICLE 2 PROPOSAL

2.1 Proposed Payments

Subject to the terms and conditions set forth in this Proposal, the Companies propose to pay the following amounts:

- a) Professional Fees: The Professional Fees will be paid in full by the Companies as they become due in priority to all Preferred Claims and Unsecured Claims.
- b) Post-Filing Claims: Post-Filing Claims will be paid in full by the Companies in the ordinary course of business, and on regular trade terms.

- c) Crown Claims: Any Crown Claims, without interest, will be paid in full within six (6) months after issuance of the Proposal Approval Order, or as may otherwise be arranged with the Crown.
- d) Preferred Claims: Any Preferred Claims, without interest, will be paid in full within six (6) months after issuance of the Proposal Approval Order, or as may otherwise be arranged with individual Preferred Creditors.
- e) D&O Claims: The D&O Claims will be paid in full within thirty (30) days after issuance of the Proposal Approval Order, or as may otherwise be arranged with holders of such Claims.
- f) Secured Claims: Secured Claims will be paid in accordance with existing or future agreements between the Companies and such Secured Creditors.
- g) Unsecured Claims: The Companies shall remit to the Trustee, within five (5) Business Days following the Proposal Approval Order, an amount of \$1,325,000 (the "**Basket Amount**") which will be distributed to the holders of Proven Unsecured Claims, other than Related Persons, within forty-five (45) days of the issuance of the Proposal Approval Order. The holders of Proven Unsecured Claims will receive, from the Basket Amount:
 - (i) the lesser of (i) 100% of their Proven Unsecured Claims, without interest, and (ii) \$1,500; and
 - (ii) a pro rata and pari passu share of the balance of their Proven Unsecured Claims out of the balance of the Basket Amount after payment of the amounts provided by sub-paragraph 2.1(g)(i) above.
- h) The Superintendent's Levy: The levy payable to the Superintendent of Bankruptcy under the BIA shall be deducted and paid from all amounts payable from the Basket Amount.

For greater certainty, the payments outlined in this **Section 2.1** do not include any Unpaid COVID-19 Rent, which shall be assumed by Alston as set forth in **Section 1.9** of this Proposal. The Companies and the Trustee, as applicable, shall be authorized to distribute the Basket Amount and all other amounts contemplated in this **Section 2.1** irrespective of whether any Unpaid COVID-19 Rent is payable or remains unpaid.

ARTICLE 3 CLASSIFICATION OF CREDITORS, VALUATION OF CLAIMS AND RELATED MATTERS

3.1 Proof of Claims

In order to vote at the Creditors' Meeting and receive any distribution in accordance with this Proposal, a Creditor must file a Proof of Claim in accordance with the provisions of the BIA.

3.2 Class of Creditors

For the purpose of considering and voting upon this Proposal, there shall be one class of creditors, being the Unsecured Creditors Class.

3.2.1 Deemed Approval

Each of the (i) Preferred Creditors and (ii) Unsecured Creditors with a Proven Unsecured Claim equal to or less than \$1,500 shall be deemed to have voted in favour of the Proposal. Notwithstanding the foregoing, any Unsecured Creditor may choose to vote against the Proposal in the context of a vote on the Proposal.

3.3 Creditors' Meeting, Proxies and Voting Letters

Proxies as provided for in the BIA indicating a Person authorized to act on behalf of an Unsecured Creditor may be submitted to the Trustee (who, subject to the consent of the Official Receiver, will chair the Creditors' Meeting) at, or any time prior to, the commencement of the Creditors' Meeting. Voting letters as provided for in the BIA submitted to the Trustee prior to the Creditors' Meeting must indicate whether the Unsecured Creditor wishes to cast their vote in favour of or against the Proposal. Voting letters that do not indicate either preference will be deemed to indicate a vote in favour of the Proposal. Persons in attendance at the Creditors' Meeting shall cast their vote in the manner prescribed by the Trustee and the BIA. All votes will be recorded and tabulated by the Trustee, who may seek the assistance of the Court with respect to any dispute arising from or out of the tabulation of votes. A quorum shall be constituted for the Creditors' Meeting or any adjournment thereof if there is one Unsecured Creditor, entitled to vote, present in person or by proxy or if one Unsecured Creditor, entitled to vote, has submitted a voting letter in accordance with the provisions of the BIA and this Proposal. If the requisite quorum is not present at the Creditors' Meeting or if the Creditors' Meeting has to be postponed for any reason, then the Creditors' Meeting shall be adjourned by the Trustee to such date, time and place as determined by the Trustee.

3.4 Repudiation of Contracts

The Claims of each Person resulting from or arising from the repudiation of any contract, arrangement, agreement or lease (other than leases of real property) to which the Companies are a party to shall be Unsecured Claims in this Proposal.

3.5 Landlord Claims

A Landlord will be entitled to file a Proof of Claim for: (i) any unpaid amounts owing as at the Filing Date; and (ii) the actual loss resulting from the disclaimer or repudiation of any leases of real property. With the exception of any Unpaid Covid-19 Rent, to the extent any such rent is payable, all Landlord Claims will be Unsecured Claims under this Proposal.

3.6 Claims for Voting Purposes

Each Unsecured Creditor shall be entitled to a single vote valued at the amount of its Unsecured Claim. If the amount of the Unsecured Claim of a Disputed Creditor is not finally determined prior to the date of the Creditors' Meeting, the Disputed Creditor shall be entitled to vote at the Creditors' Meeting on the portion of its Unsecured Claim, if any, that has been accepted by the Trustee for voting purposes without prejudice to the rights of the Companies,

the Trustee and the Disputed Creditor to have the quantum of the Disputed Creditor's Unsecured Claim finally determined for the purposes of receiving its share of the Basket Amount.

3.7 Approval of the Proposal

In order to be approved, the Proposal must receive the affirmative vote of the Required Majority.

3.8 Modification of the Proposal

Subject to the consent of the Trustee, at any time prior to the Creditors' Meeting, the Companies reserve the right at any time to file any modification, amendment or supplement of and to the Proposal, by way of supplementary proposal, and file such amended or supplementary proposal with the Official Receiver as soon as practical, in which case any such supplementary proposal or proposals shall, for all purposes, be and be deemed to be part of and incorporated into the Proposal. At the Creditors' Meeting, the Trustee shall provide all Unsecured Creditors in attendance with details of any modifications or amendments of and to the Proposal prior to the vote being taken to approve the Proposal. After the Creditors' Meeting (and both prior to and subsequent to the Proposal Approval Order) and subject to the consent of the Trustee, the Companies may at any time and from time to time vary, amend, modify or supplement the Proposal if the Court determines that such variation, amendment, modification or supplement is of a minor, immaterial or technical nature or would not be materially prejudicial to the interest of any of the Unsecured Creditors under the Proposal and is necessary in order to give effect to the substance of the Proposal or the Proposal Approval Order.

ARTICLE 4 RELEASE

4.1 Release in Favour of the Companies

On the Effective Date, all Unsecured Claims shall, as against the Companies, be deemed to be fully and finally satisfied, settled and discharged and no Person shall have any further right, remedy or Unsecured Claim against the Companies in respect of all or any portion of an Unsecured Claim.

4.2 Release in Favour of the Directors, Officers and Chief Restructuring Officer

(...) The acceptance of the Proposal by the creditors affected by this Proposal shall, on the Effective Date, release definitively, as at the Filing Date, the Companies' directors in accordance with Section 50(13) of the BIA, as well as their officers in office and the chief restructuring officer duly appointed by the Companies, from any and all liability or obligation for which they may be liable by law in their capacity as directors, officers and chief restructuring officer, in respect of any debt of the Companies which arose before the Filing Date. It is understood however that nothing herein shall be interpreted as an acknowledgment of any liability or obligation on the part of the directors, officers and chief restructuring officer in office as at the Filing Date, any such liability or obligation being specifically denied.

ARTICLE 5 CONDITIONS AND EFFECTIVE DATE

5.1 (...) Funding

This Proposal is conditional on (...) the funding by the Companies of the Basket Amount.

5.2 Conditions Precedent to the Implementation of the Proposal

The implementation of the Proposal and distribution thereunder is subject to the satisfaction of the following conditions precedents:

- a) The Proposal is approved by the Required Majority;
- b) The Proposal Approval Order has been issued and (i) has not been stayed and there is no outstanding appeal therefrom, or (ii) it is executory notwithstanding appeal; and
- c) All other actions, documents and agreements necessary to implement the Proposal as required herein shall have been effected and executed.

With respect to the Proposal Approval Order, the Companies shall file an application for the Proposal Approval Order no later than five (5) Business Days following the Creditors' Meeting or such other date as the Court may order, which application shall be heard as soon as possible according to the procedure set out in Section 58 of the BIA.

5.3 Trustee's Certificate and Effective Date

Upon the satisfaction or waiver of the conditions precedent set out in **Section 5.2** hereof, the Proposal Trustee will file with the Court a certificate which states that all conditions precedent set out in **Section 5.2** have been satisfied or waived and that distribution in accordance with the Proposal has been made (the "**Trustee's Certificate**"). The date of filing of the Trustee's Certificate shall be deemed to be the "**Effective Date**".

ARTICLE 6 BINDING EFFECT

6.1 Binding Effect

This Proposal will become effective and binding on and enure to the benefit of the Companies and all creditors affected by this Proposal and all other Persons named or referred to in, or subject to, this Proposal, and their respective heirs, executors, administrators and other legal representatives, successors and assigns.

ARTICLE 7 GENERAL

7.1 Capacity of the Trustee

Deloitte Restructuring Inc. is acting in its capacity as Trustee under this Proposal and not in its personal capacity, and shall not incur any liabilities or obligations in connection with this Proposal or in respect of the business or obligations of the Companies, whether existing as at

the Date of Proposal or incurred subsequent thereto and no Person shall have any Claim against Deloitte Restructuring Inc. in respect thereof.

7.2 Settlements and Preferences

The provisions of Section 95 to 101, inclusively, of the BIA and any similar provision of any federal or provincial statute shall not apply to this Proposal.

7.3 Further Assurances

Each of the Persons named or referred to in, or subject to, this Proposal will execute and deliver all such documents and instruments and do all such acts and things as may be necessary or desirable to carry out the full intent and meaning of this Proposal and to give effect to the transactions contemplated herein.

7.4 Governing Law

This Proposal will be governed by and construed in accordance with the laws of the Province of Quebec and the laws of Canada applicable therein.

[Signature Page Follows]

DATED AT MONTREAL, this 7th day of July, 2020

BOUCLAIR INC.

Per: 

Peter Goldberg
President and Chief Executive Officer

BOUCLAIR INTERNATIONAL INC.

Per: 

Peter Goldberg
President and Chief Executive Officer

The filing of this Proposal, as amended by the Companies, is consented to by Deloitte Restructuring Inc., in its capacity as trustee to the Proposal of the Companies and not in its personal capacity:

DELOITTE RESTRUCTURING INC., its capacity as trustee to the Proposal of the Companies and not in its personal capacity

Per: 

Martin Franco, CPA, CA, CIRP, LIT
Senior Vice President

Alston Investments Inc. hereby intervenes in this Proposal for the sole purpose of agreeing to the undertaking made in Section 1.9 herein:

ALSTON INVESTMENTS INC.

Per: 

Peter Goldberg
President and Chief Executive Officer