

Court File No.

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

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

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

**APPLICATION RECORD
(returnable August 6, 2014)
(Volume 1 of 2)**

Date: August 6, 2014

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Lawyers for the Applicants

TO THE ATTACHED SERVICE LIST:

SERVICE LIST
(August 5, 2014)

| | |
|---------|---|
| TO: | <p>Richter Advisory Group Inc. 2345 Yonge Street, Suite 300 Toronto, ON M4P 2E5</p> <p>Attention: Gilles Benchaya/ Warren Levine/ Paul van Eyk Phone: 416.488.2345 Fax: 416.488.3765 Email: GBenchaya@richterconsulting.com/ wlevine@richterconsulting.com/ PvanEyke@Richter.ca</p> <p><i>Proposed Monitor of Bombay & Co. Inc., Bowring & Co. Inc. and Benix & Co. Inc.</i></p> |
| AND TO: | <p>Cassels Brock & Blackwell LLP</p> <p>40 King Street West Suite 2100, Scotia Plaza Toronto, ON M5H 3C2</p> <p>Attention: Shayne Kukulowicz/ Jane Dietrich/ Larry Ellis Phone: 416.860.6463 Fax: 416.640.3176 Email: skukulowicz@casselsbrock.com/ jdietrich@casselsbrock.com/ lellis@casselsbrock.com</p> <p><i>Counsel to Richter Advisory Group Inc., in its capacity as Proposed Monitor of Bombay & Co. Inc., Bowring & Co. Inc. and Benix & Co. Inc.</i></p> |
| AND TO: | <p>Gowling Lafleur Henderson LLP</p> <p>100 King Street West Suite 1600, First Canadian Place Toronto, ON M5X 1G5</p> <p>Attention: David F.W. Cohen/ Alex MacFarlane Phone: 416.369.6667 Fax: 416.862.7661 Email: david.cohen@gowlings.com/ alex.macfarlane@gowlings.com</p> <p><i>Counsel to Canadian Imperial Bank of Commerce</i></p> |

INDEX

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**APPLICATION RECORD
INDEX**

TAB

VOLUME 1 of 2

1. Notice of Application
2. Affidavit of Fred Benitah, affirmed August 6, 2014
 - A. Schedule of store locations (Bombay)
 - B. Schedule of store locations (Bowring)
 - C. Amended, Restated and Consolidated Credit Agreement

VOLUME 2 of 2

- D. PPSA search results
- E. Draft 2014 Annual Audited Financial Statements (Bombay)
- F. Unaudited Internally Prepared Financial Statements as of June 23, 2014 (Bombay)
- G. Draft 2014 Annual Audited Financial Statements (Bowring)

- H. Unaudited Internally Prepared Financial Statements as of June 23, 2014
(Bowring)
- I. Draft 2014 Annual Audited Financial Statements (Benix)
- J. Unaudited Internally Prepared Financial Statements as of June 23, 2014
(Benix)
- K. Cash-Flow Statement
- L. DIP Forbearance Agreement
- 3 Consent of the Monitor

TAB 1

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Applicants

NOTICE OF APPLICATION

TO THE RESPONDENTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following pages.

THIS APPLICATION will come on for a hearing on August 6, 2014, at 2:00 p.m. at the Court House at 330 University Avenue, Toronto, Ontario.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: August 6, 2014

Issued by: _____

Local Registrar
330 University Ave
7th Floor
Toronto, Ontario
M5G 1R7

TO:

The Attached Service List

SERVICE LIST
(August 5, 2014)

| | |
|---------|---|
| TO: | <p>Richter Advisory Group Inc. 2345 Yonge Street, Suite 300 Toronto, ON M4P 2E5</p> <p>Attention: Gilles Benchaya/ Warren Levine/ Paul van Eyk Phone: 416.488.2345 Fax: 416.488.3765 Email: GBenchaya@richterconsulting.com/ wlevine@richterconsulting.com/ PvanEyke@Richter.ca</p> <p><i>Proposed Monitor of Bombay & Co. Inc., Bowring & Co. Inc. and Benix & Co. Inc.</i></p> |
| AND TO: | <p>Cassels Brock & Blackwell LLP</p> <p>40 King Street West Suite 2100, Scotia Plaza Toronto, ON M5H 3C2</p> <p>Attention: Shayne Kukulowicz/ Jane Dietrich/ Larry Ellis Phone: 416.860.6463 Fax: 416.640.3176 Email: skukulowicz@casselsbrock.com/ jdietrich@casselsbrock.com/ lellis@casselsbrock.com</p> <p><i>Counsel to Richter Advisory Group Inc., in its capacity as Proposed Monitor of Bombay & Co. Inc., Bowring & Co. Inc. and Benix & Co. Inc.</i></p> |
| AND TO: | <p>Gowling Lafleur Henderson LLP 100 King Street West Suite 1600, First Canadian Place Toronto, ON M5X 1G5</p> <p>Attention: David F.W. Cohen/ Alex MacFarlane Phone: 416.369.6667 Fax: 416.862.7661 Email: david.cohen@gowlings.com/ alex.macfarlane@gowlings.com</p> <p><i>Counsel to Canadian Imperial Bank of Commerce</i></p> |

APPLICATION

1. THE APPLICANTS MAKE AN APPLICATION FOR:

- (a) an Order, *inter alia*:
 - (i) abridging the time for service of the Notice of Application and the Application Record herein, if necessary, and validating service thereof;
 - (ii) declaring that Bombay & Co. Inc. ("Bombay"), Bowring & Co. Inc. ("Bowring") and Benix & Co. Inc. ("Benix", and together with Bombay and Bowring, the "B&C Entities" or the "Applicants") are each a party to which the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") applies;
 - (iii) staying all proceedings taken, or that might be taken, in respect of the Applicants, their directors and officers and the Monitor;
 - (iv) declaring that the Applicants are permitted to pay certain pre-filing amounts;
 - (v) approving the DIP Forbearance Agreement (as defined below) and granting a first priority court-ordered charge on all the assets, rights, undertakings and properties of the B&C Entities (the "Property") as security for amounts advanced under the DIP Forbearance Agreement (the "DIP Charge");

- (vi) granting a charge in favour of the Monitor, counsel to the Monitor and counsel to the Applicants, in priority to all other charges, including the DIP Charge, in the maximum amount of \$750,000 on the Property (the "Administration Charge");
 - (vii) declaring that the director and officers of the B&C Entities shall be indemnified against obligations and liabilities that they may incur as a director or officer after the commencement of these proceedings, and granting a charge on the Property in favour of the director and officers in the maximum amount of \$1 million in respect of Bombay, \$600,000 in respect of Bowring, and \$100,000 in respect of Benix, as security for such indemnity, which charge shall rank subordinate to the Administration Charge but in priority to the DIP Charge (the "D&O Charge");
 - (viii) providing a mechanism for secured creditors who have not been served with these materials to receive a notice from the Monitor directing them to the Initial Order and the supporting materials and providing them with a period of time to oppose the priority of the DIP Charge, Administration Charge and D&O Charge over their security by delivering responding materials to the Court (the "Priority Mechanism"); and
 - (ix) appointing Richter as an officer of this Court to monitor the business and financial affairs of the Applicants (in such capacity, the "Monitor").
- (b) such further and other relief as counsel may advise and this Honourable Court may deem just.

2. **THE GROUNDS FOR THIS APPLICATION ARE:**

- (a) Bombay, Bowring and Benix are each private companies incorporated under the *Business Corporations Act* (Ontario) operating out of shared head office space located at 98 Orfus Road, Toronto, Ontario;
- (b) Bombay and Bowring offer high quality home accessories and furnishings for sale through retail stores throughout Canada. Benix formerly sold houseware products with a focus on cooking, home entertaining and giftware. As of June 30, 2014 Benix has closed its remaining stores and has liquidated its inventory and terminated all employees;
- (c) Bombay, Bowring and Benix are distinct legal entities that operate separate businesses, own separate assets and record separate liabilities. Notwithstanding their separate existence and operations, the B&C Entities share common head office space, utilize a shared distribution centre, and are jointly liable for amounts owing under a secured consolidated credit agreement dated December 13, 2010 (as amended, the "Credit Agreement") with the Canadian Imperial Bank of Commerce ("CIBC");
- (d) Bombay, Bowring and Benix are each facing a severe liquidity crisis as a result of, among other things, underperforming retail stores and liquidity constraints. As a result, the B&C Entities are in default of various financial and other covenants under the Credit Agreement. On March 6, 2014 CIBC and the B&C Entities entered into a formal forbearance agreement (the "Forbearance Agreement"). The

forbearance period as set out in the Forbearance Agreement expired on June 30, 2014;

- (e) the objective of a single CCAA proceeding for Bombay, Bowring and Benix is to allow Bombay, Bowring and Benix, who are jointly liable under the Credit Agreement, to obtain interim financing by way of a DIP Forbearance Agreement under the B&C Entities' existing operating loan facilities. In addition, it is expected that prospective purchasers may be interested in acquiring all three banners, or at a minimum leased locations held by multiple banners. It is therefore intended that Bombay, Bowring and Benix be marketed together pursuant to a sale and investment solicitation process to be developed with the assistance of the Monitor;
- (f) the Applicants are each an insolvent debtor company which has total claims against it in excess of \$5 million;
- (g) the Applicants require a stay of proceedings and other relief sought herein in order to maintain the Bombay and Bowring operations and the status quo while giving the B&C Entities the necessary time to consider the restructuring alternatives available to them;
- (h) Bombay and Bowring require the ability to make payments to certain critical suppliers and other creditors on account of pre-filing amounts that have accrued during the pre-filing period;
- (i) CIBC has agreed to provide interim financing to the B&C Entities (the "DIP Loan") in the initial maximum amount of \$5 million in the form of additional

availability under the existing loan arrangements during the CCAA proceedings (the "DIP Forbearance Agreement"). CIBC is not prepared to advance the proposed DIP facility if the DIP Charge is not granted;

- (j) the Applicants will require the participation of their legal counsel, the Monitor and the Monitor's legal counsel to assist in these CCAA proceedings and they propose the Administration Charge in their favour;
- (k) similarly, the Applicants will require the participation of their director and officers to effect a successful restructuring and propose to indemnify their director and officers and to secure such indemnity by way of the D&O Charge;
- (l) those further grounds as set out in the affidavit of Fred Benitah affirmed August 6, 2014 (the "Benitah Affidavit") and the Exhibits thereto;
- (m) the provisions of the CCAA and the inherent and equitable jurisdiction of this Court;
- (n) Rules 1.04, 1.05, 2.01, 2.03, 3.02, 14.04(2) 16 and 38 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and
- (o) such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- (a) the Benitah Affidavit, and the Exhibits thereto;
- (b) the Consent of Richter to act as Monitor dated August 5, 2014;

- (c) the Pre-Filing Report; and
- (d) such other material as counsel may advise and this Honourable Court may permit.

August 6, 2014

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Lawyers for the Applicants

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

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

Proceedings commenced in Toronto

NOTICE OF APPLICATION

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Lawyers for the Applicants

TAB 2

Court File No.

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SUPERIOR COURT OF JUSTICE
[COMMERCIAL LIST]**

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

Applicants

**AFFIDAVIT OF FREDDY BENITAH
(AFFIRMED AUGUST 6, 2014)**

I, Freddy Benitah, of the City of Vaughan, in the Province of Ontario, **AFFIRM**
AS FOLLOWS:

1. I am the Chief Executive Officer of each of Bombay & Co. Inc. ("**Bombay**"), Bowring & Co. Inc. ("**Bowring**") and Benix & Co. Inc. ("**Benix**", and together with Bombay and Bowring, the "**B&C Entities**") and as such, I have knowledge of the matters set out herein. Where information has been received from others, I have stated the source of the information and believe it to be true.

I. INTRODUCTION

2. I am swearing this affidavit in support of an application by Bombay, Bowring and Benix for an order (the “**Initial Order**”) pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”):

- (a) declaring that each of Bombay, Bowring and Benix is a company to which the CCAA applies;
- (b) granting a CCAA stay of proceedings;
- (c) declaring that the B&C Entities are permitted to pay certain pre-filing amounts;
- (d) approving the DIP Forbearance Agreement (as defined below) and granting the DIP Charge (as defined below);
- (e) establishing the Administration Charge (as defined below);
- (f) declaring that the directors and officers of the B&C Entities shall be indemnified against obligations and liabilities that they may incur in their capacity as directors or officers of the B&C Entities after the commencement of these proceedings, and granting a D&O Charge (as defined below); and
- (g) appointing Richter Advisory Group Inc. to act as the monitor (the “**Monitor**”) of the B&C Entities in these CCAA proceedings.

3. Bombay and Bowring offer high quality home accessories and furnishings for sale through retail stores throughout Canada.

4. Benix formerly sold houseware products with a focus on cooking, home entertaining and giftware. As of June 30, 2014 Benix has closed its remaining stores and has liquidated its inventory and terminated all employees.

5. As described in detail below, Bombay, Bowring and Benix are each facing a severe liquidity crisis as a result of, among other things, underperforming retail stores and liquidity constraints. As a result, the B&C Entities are in default of various financial and other covenants with their primary secured lender.

6. Bombay, Bowring and Benix have not been able to successfully restructure their affairs outside of formal insolvency proceedings. Each of Bombay, Bowring and Benix are insolvent and unable to meet their liabilities as they become due. Bombay, Bowring and Benix require the protection of the CCAA to provide each entity with an opportunity to solicit offers for a sale or investment and/or develop a comprehensive restructuring plan to address underperforming stores, right size its overhead and address liquidity constraints.

II. SINGLE CCAA PROCEEDING

7. The objective of a single CCAA proceeding for Bombay, Bowring and Benix is to allow Bombay, Bowring and Benix, who are jointly liable under the Amended, Restated and Consolidated Credit Agreement (as defined below), to obtain a DIP Loan (as defined below) from their current secured lender, the Canadian Imperial Bank of Commerce (“CIBC”). In addition, it is expected that prospective purchasers may be interested in acquiring all three banners, or at a minimum leased locations held by multiple banners. It is therefore intended that Bombay, Bowring and Benix be marketed together pursuant to a sale and investment solicitation process to be developed with the assistance of the Monitor. For these reasons a single,

procedurally consolidated, CCAA proceeding will facilitate the restructuring or potential sale of all or part of the B&C Entities' business as a going concern.

8. Bombay, Bowring and Benix are distinct legal entities that operate separate businesses, own separate assets and record separate liabilities.

9. The B&C Entities maintain cash management arrangements with CIBC. Under those arrangements CIBC maintains a separate concentration account for each of the entities. The B&C Entities' retail locations maintain bank accounts at proximate bank branches, some of which are with CIBC and some are with other institutions. The cash management arrangements operate to sweep the balances in those accounts to the concentration account maintained by CIBC for each B&C Entity on a daily basis. As discussed in more detail below, these arrangements will change to a blocked account arrangement in accordance with the DIP Forbearance Agreement.

10. Notwithstanding their separate existence and operations, the B&C Entities are under ultimate common ownership, share common head office space, utilize a shared distribution centre, and are jointly liable for amounts owing under the Amended, Restated and Consolidated Credit Agreement. Interim financing during these CCAA proceedings is to be provided by way of a DIP Forbearance Agreement under the B&C Entities' existing operating loan facilities, for which the B&C Entities will continue to be jointly liable.

III. BACKGROUND

A) Bombay

Corporate History and Structure of Bombay

11. Bombay was incorporated under the *Business Corporations Act* (Ontario) on October 17, 2007. Bombay's head office is located at 98 Orfus Road, Toronto, Ontario.

12. Bombay is owned as to 50% of the common shares by each of Bombay FB Holding Corp. and Bombay IB Holding Corp.

Operations of Bombay

13. Bombay operates 55 stores across Canada that sell large furniture, small occasional furniture, wall décor and home accessories. Bombay has store locations in Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland, Nova Scotia, Ontario and Quebec. All store locations are operated out of leased premises. Now produced and shown to me and annexed hereto as Exhibit "A" to my affidavit is a schedule of Bombay store locations.

14. As of August 5, 2014, Bombay has 625 employees, of which 153 are salaried and 472 are paid on an hourly basis. Bombay's employees are not represented by a union and are not subject to a collective bargaining agreement.

Assets of Bombay

15. Bombay's assets, as reflected in the internal unaudited financial statements for the quarter ended June 23, 2014, had a net book value of approximately \$32,199,271, as follows:

| |
|--------|
| ASSETS |
|--------|

| | |
|-----------------------------|-------------------|
| Cash | \$366,876 |
| Accounts Receivable | 861,642 |
| Intercompany | 1,963,017 |
| Inventory | 19,956,940 |
| Prepaid Expenses | 296,681 |
| Deposits | 146,576 |
| Income Taxes Recoverable | 1,990,163 |
| Total Current Assets | 25,581,895 |
| Tangible assets | 5,816,480 |
| Finance Costs | 93,225 |
| Total Capital Assets | 5,909,705 |
| Future Income Tax | 707,671 |
| TOTAL ASSETS | 32,199,271 |

Liabilities of Bombay

16. As of June 23, 2104, the said financial statements reflect liabilities totalling \$35,316,331, as follows:

| | |
|------------------------------------|-------------------|
| LIABILITIES | |
| Bank Advance | 8,998,496 |
| Accounts Payable | 7,730,659 |
| Accrued Liabilities | 2,028,424 |
| Income Tax Payable | |
| Sales Tax Payable | 186,298 |
| Wages Payable | 218,528 |
| Credit Notes/Gift Cert/Layaways | 2,013,964 |
| Term Loan-Current | |
| Total Current Liabilities | 21,176,368 |
| Advances from Shareholders | 2,000,000 |
| Loan from Related Parties | 8,000,000 |
| Deferred Lease Inducements | 4,139,963 |
| Total Long-term Liabilities | 14,139,963 |
| TOTAL LIABILITIES | 35,316,331 |

17. The "Bank Advance" line item above includes only the amounts notionally allocated to Bombay in respect of indebtedness to CIBC as of the relevant date. As discussed in more detail below, the B&C Entities are jointly and severally liable for the outstanding indebtedness to CIBC which, as of June 23, 2014, was approximately \$14.5 million.

Employee Liabilities of Bombay

18. As at August 2, 2014 Bombay owes its current and former employees the following approximate aggregate amounts for unpaid wages and vacation pay:

- (a) ordinary course wage arrears: \$249,066; and
- (b) accrued and unused vacation pay: \$279,959.

19. It is contemplated (and reflected in the projected cash flow statements discussed below) that the wage arrears and accrued and unused vacation pay amounts for existing employees will be paid from the DIP Loan.

20. Bombay does not maintain a pension for its employees. Bombay is current on deductions from employee wages at source.

21. Bombay is current on its HST remittances. As HST is remitted in arrears, it is intended that certain HST amounts collected before the date of this Application will be remitted in the ordinary course post-filing. These HST remittances are reflected in the projected cash-flow statements discussed below.

Other Unsecured Creditors of Bombay

22. In addition to the foregoing, as at June 23, 2014, Bombay has approximately \$12,158,223 in accrued and unpaid liabilities (excluding inter-company and related party indebtedness, if any), including:

- (a) Trade payables: \$7,730,659;
- (b) Customer layaways: \$1,312,941;
- (c) Outstanding gift cards: \$701,023;
- (d) Accrued audit and sales taxes: \$479,342 (as of July 26, 2014); and
- (e) Arrears owing to landlords: \$1,934,258.

Litigation Claims of Bombay

23. Bombay has been named as a defendant in a number of law suits which are at various stages. The actions deal predominantly with employee and landlord claims.

Secured Indebtedness of Bombay

24. As discussed in detail below, Bombay is liable to CIBC pursuant to the terms of the Amended, Restated and Consolidated Credit Agreement in the amount of \$14.5 million on a joint and several basis. Bombay is also indebted, on a secured basis, to Isaac Bennet Sales Agencies, Inc (“**IBSA**”) in the amount of \$10,000,000.

B) Bowring

Corporate History and Structure of Bowring

25. Bowring was incorporated under the *Business Corporations Act* (Ontario) on October 28, 2005. Bowring’s head office is located at 98 Orfus Road, Toronto, Ontario.

26. Bowring is owned as to 50% of the common shares by each of Bowring FB Holding Corp. and Bowring IB Holding Corp.

Operations of Bowring

27. Bowring operates 57 locations across Canada that sell home accents such as mirrors, prints, lamps, linens, garden collections, giftware and furniture. Bowring has store locations in Alberta, British Columbia, Saskatchewan, Manitoba, New Brunswick, Newfoundland, Nova Scotia, Ontario and Quebec. All store locations are operated out of leased premises. Now produced and shown to me and annexed hereto as Exhibit "B" to my affidavit is a schedule of Bowring store locations.

28. As of August 5, 2014, Bowring has 617 employees, of which 116 are salaried and 501 are paid on an hourly basis. Bowring's employees are not represented by a union and are not subject to a collective bargaining agreement.

Assets of Bowring

29. Bowring's assets, as reflected in the internal unaudited financial statements for the quarter ended June 23, 2014, had a net book value of a \$24,313,035, as follows:

| ASSETS | |
|-----------------------------|-------------------|
| Cash | \$392,692 |
| Accounts Receivable | -138,441 |
| Intercompany | 278,380 |
| Inventory | 17,697,591 |
| Prepaid Expenses | 408,254 |
| Deposits | 39,916 |
| Income Taxes Recoverable | 2,572,140 |
| Total Current Assets | 21,250,532 |
| Tangible assets | 2,747,268 |

| | |
|-----------------------------|-------------------|
| Goodwill | 74,013 |
| Finance Costs | 17,350 |
| Total Capital Assets | 2,838,631 |
| Future Income Tax | 223,872 |
| TOTAL ASSETS | 24,313,035 |

Liabilities of Bowring

30. Bowring's liabilities as reflected in the said financial statements as at June 23, 2014 were \$29,700,382 as follows:

| | |
|------------------------------------|-------------------|
| LIABILITIES | |
| Bank Advance | 2,578,367 |
| Accounts Payable | 8,963,674 |
| Accrued Liabilities | 2,097,412 |
| Sales Tax Payable | 156,397 |
| Wages Payable | 429,009 |
| Credit Notes/Gift Cert/Layaways | 1,314,271 |
| Total Current Liabilities | 15,539,131 |
| Advances from Shareholders | 6,100,000 |
| Loan from Related Parties | 6,154,000 |
| Deferred Lease Inducements | 1,907,251 |
| Total Long-term Liabilities | 14,161,251 |
| TOTAL LIABILITIES | 29,700,382 |

31. The "Bank Advance" line item above includes only the amounts notionally allocated to Bowring in respect of indebtedness to CIBC as of the relevant date. As discussed in more detail below, the B&C Entities are jointly and severally liable for the outstanding indebtedness to CIBC which, as of June 23, 2014, was approximately \$14.5 million.

Employee Liabilities of Bowring

32. As at August 2, 2014 Bowring owes its current and former employees the following approximate aggregate amounts for unpaid wages and vacation pay:

- (a) ordinary course wage arrears: \$420,521; and
- (b) accrued and unused vacation pay: \$294,030.

33. It is contemplated (and reflected in the projected cash flow statements discussed below) that the wage arrears and accrued and unused vacation pay amounts for existing employees will be paid from the DIP Loan.

34. Bowring does not maintain a pension for its employees. Bowring is current on deductions from employee wages at source.

35. Bowring is current on its HST remittances. As HST is remitted in arrears, it is intended that certain HST amounts collected before the date of this Application will be remitted in the ordinary course post-filing. These HST remittances are reflected in the projected cash-flow statements discussed below.

Other Unsecured Creditors of Bowring

36. In addition to the foregoing, as at June 23, 2014, Bowring has approximately \$11,630,122 in accrued and unpaid liabilities (excluding inter-company and related party indebtedness, if any), including:

- (a) Trade payables: \$8,963,674;
- (b) Customer layaways: \$304,246;
- (c) Outstanding gift cards: \$1,010,025;
- (d) Accrued audit and sales taxes: \$372,194 (as of July 26, 2014); and
- (e) Arrears owing to landlords: \$979,983.

Litigation Claims of Bowring

37. Bowring has been named as a defendant in a number of law suits which are at various stages. The actions deal predominantly with employee and landlord claims.

Secured Indebtedness of Bowring

As discussed in detail below, Bowring is liable to CIBC pursuant to the terms of the Amended, Restated and Consolidated Credit Agreement in the amount of \$14.5 million on a joint and several basis. Bowring is also indebted, on a secured basis, to IBSA in the amount of \$16,500,000 and to F.B.I. Inc. ("FBI") in the amount of \$8,600,000.

C) Benix***Corporate History and Structure of Benix***

38. Benix's head office is located at 98 Orfus Road, Toronto, Ontario. Benix is owned as to 50% of the common shares by each of Benix FB Holding Corp. and Benix IB Holding Corp.

Former Operations of Benix

39. Benix formerly sold houseware products with a focus on cooking, home entertaining and giftware. As of June 30, 2014, Benix has ceased its retail operations, has liquidated its inventory and terminated all employees. All of its former store locations are now closed.

40. Benix's employees were not represented by a union and were not subject to a collective bargaining agreement.

Assets of Benix

41. Benix's assets, as reflected in the internal unaudited financial statements for the quarter ended June 23, 2014, had a net book value of \$5,923,067, as follows:

| ASSETS | |
|-----------------------------|------------------|
| Cash | \$6,382 |
| Accounts Receivable | 156,801 |
| Intercompany | -2,241,397 |
| Inventory | 279,460 |
| Prepaid Expenses | 34,094 |
| Deposits | 3,858 |
| Income Taxes Recoverable | 3,038,399 |
| Total Current Assets | 1,277,597 |
| Investment in Benix US | 1,900 |
| Tangible assets | 261,738 |
| Finance Costs | 27,807 |
| Total Capital Assets | 291,445 |
| Future Income Tax | 4,354,025 |
| TOTAL ASSETS | 5,923,067 |

42. Benix has tax attributes that may have some value in a restructuring of the B&C Entities.

Liabilities of Benix

43. Benix's liabilities, as reflected in the internal unaudited financial statements for the quarter ended June 23, 2014, were \$21,559,704, as follows:

| LIABILITIES | |
|---------------------------------|-----------|
| Bank Advance | 2,915,190 |
| Accounts Payable | 673,560 |
| Accrued Liabilities | 268,957 |
| Sales Tax Payable | 30,466 |
| Wages Payable | 17,194 |
| Credit Notes/Gift Cert/Layaways | 33,164 |
| Term Loan-Current | |
| Capital Lease | |

| | |
|------------------------------------|-------------------|
| Total Current Liabilities | 3,938,532 |
| Term Loan-Long term | |
| Loan from Related Parties | 17,204,510 |
| Deferred Lease Inducements | 416,661 |
| Total Long-term Liabilities | 17,621,172 |
| TOTAL LIABILITIES | 21,559,704 |

44. The "Bank Advance" line item above includes only the amounts notionally allocated to Benix in respect of indebtedness to CIBC as of the relevant date. As discussed in more detail below, the B&C Entities are jointly and severally liable for the outstanding indebtedness to CIBC which, as of June 23, 2014, was approximately \$14.5 million.

Employee Liabilities of Benix

45. As at August 2, 2014 Benix owes its former employees approximately \$19,300 on account of accrued and unused vacation pay. Benix does not owe its former employees any amount on account of wage arrears.

46. Benix did not maintain a pension for its employees. Benix does not owe any amount on account of deductions from employee wages at source.

47. Benix is current on its HST remittances. As HST is remitted in arrears, it is intended that certain HST amounts collected before the date of this Application will be remitted in the ordinary course post-filing. These HST remittances are reflected in the projected cash-flow statements discussed below.

Other Unsecured Creditors of Benix

48. In addition to the foregoing, as at June 23, 2014, Benix has approximately \$785,484 in accrued and unpaid liabilities (excluding inter-company and related party indebtedness, if any), including:

- (a) Trade payables: \$673,560;
- (b) Customer layaways: \$54;
- (c) Outstanding gift cards: \$2,365;
- (d) Accrued audit and sales taxes: \$89,480 (as of July 26, 2014); and
- (e) Arrears owing to landlords: \$20,025.

Litigation Claims of Benix

49. Benix has been named as a defendant in a number of law suits which are at various stages. The actions deal predominantly with employee and landlord claims.

Secured Indebtedness of Benix

50. As discussed in detail below, Benix is liable to CIBC pursuant to the terms of the Amended, Restated and Consolidated Credit Agreement in the amount of \$14.5 million on a joint and several basis. Benix has also received loans from certain related parties. Benix is indebted to IBSA, FBI, Isaac Benitah, Freddy Benitah and Maxstan Imperial Limited ("**Maxstan**") in the aggregate amount of \$5,175,383, some of which I believe to be secured.

D) Common Premises

51. The B&C Entities operate from shared leased head office premises located at 98 Orfus Road, Toronto, Ontario.

52. The B&C Entities also share a leased distribution centre where each of the three entities have historically received, stored and shipped inventory to their various store locations. The distribution centre is located at 3389 Steeles Avenue East, Brampton, Ontario. Bombay holds the lease for the distribution centre and is responsible for payment of rent owing to the landlord. Bombay has historically charged Bowring and Benix on an intercompany basis for their proportionate share of the rent and certain operating costs, which is split between the entities based on the volume of inventory that is being held at the distribution centre on each of their behalf and goods processed on a monthly basis. There is little Benix inventory remaining in the distribution centre. These arrangements continue with respect to Bombay and Bowring.

E) Critical Suppliers

53. The B&C Entities do not manufacture any of their products. All inventory is purchased from foreign and domestic third party suppliers and is resold to customers through the B&C Entities' store locations.

54. Bombay and Bowring are dependent upon the continued supply of products from a number of furniture and homeware manufacturers to ensure that they have sufficient inventory to meet their customers' needs. In addition, Bombay and Bowring are highly dependent on other service providers, including overseas buying agents, freight forwarders, shipping agents, custom brokers and overseas and overland transport carriers, to ensure adequate and timely supply of inventory for their stores. The continued supply of goods and services by these parties is critical to Bombay and Bowring's ongoing operations.

55. Disruption to the services provided by some of these parties could severely interrupt the supply of inventory to Bombay and Bowring.

56. The B&C Entities are therefore requesting that they be permitted to pay pre-filing amounts owing to those suppliers that they consider critical to their business, in each case, subject to the express approval of the Monitor or further Order of the Court.

IV. SECURED CREDITORS

A) CIBC Consolidated Secured Credit Agreement

57. The B&C Entities are parties to an Amended and Restated and Consolidated Credit Agreement dated December 13, 2010 under which CIBC agreed to make available to the B&C Entities the following credit facilities:

- (a) a demand revolving operating credit facility (the “**Operating Facility**”) available to the B&C Entities in an initial maximum principal amount of \$21,500,000, with availability calculated in accordance with a borrowing base formula,
- (b) a non-revolving reducing demand instalment credit facility available to Benix up to a maximum of \$350,000;
- (c) a non-revolving reducing demand instalment credit facility available to Bombay up to a maximum of \$2,499,999;
- (d) a demand letter of credit facility (the “**L/C Facility**”) available to the B&C Entities in the initial maximum amount of \$10,000,000, provided that aggregate amounts outstanding under the Operating Facility and the L/C Facility and certain outstanding letters of credit were not to exceed \$29,500,000; and
- (e) a corporate visa demand facility available to Benix.

58. Pursuant to the terms of the Amended, Restated and Consolidated Credit Agreement, the B&C Entities are jointly and severally liable for all covenants, agreements and obligations of the B&C Entities relating to the Operating Facility and the L/C Facility. The Amended, Restated and Consolidated Credit Agreement was amended on July 30, 2011, December 21, 2012 and July 23, 2013 (the Amended, Restated and Consolidated Credit Agreement, as amended, is hereinafter referred to as the "**Credit Agreement**"). Now produced and shown to me and annexed hereto as Exhibit "C" to my affidavit is a copy of the Credit Agreement.

59. In addition to the joint and several liability referred to above, each of the B&C Entities has guaranteed the obligations of the other B&C Entities under the Credit Agreement. Further, the obligations under the Credit Agreement and the said guarantees are secured by, among other security, a general security agreement executed and a movable hypothec executed by each of Bombay, Bowring and Benix in favour of CIBC.

60. As a result of certain covenant defaults (not payment defaults) by the B&C Entities under the Credit Agreement, the B&C Entities and CIBC entered into a forbearance agreement dated as of March 6, 2014. (the "**Forbearance Agreement**") by which CIBC agreed to forbear from exercising its rights and remedies under the Credit Agreement until the earlier of June 30, 2014 and the occurrence or existence of a Terminating Event (as defined in the Forbearance Agreement) in consideration of certain representations, covenants and amendments to the Credit Agreement. Among those amendments to the Credit Agreement was an effective reduction in the maximum amount of the Operating Facility to \$11 million (later increased by agreement of CIBC and the B&C Entities to \$15 million). CIBC also required, as a condition to the effectiveness of the Forbearance Agreement that FBI and IBSA make subordinate secured

loans to the B&C Entities in the aggregate amount of \$8,100,000, which amounts were to be directed to repay existing indebtedness owing to CIBC.

B) Related Party Loans

61. From time to time certain related parties have made loans to the B&C Entities to fund working capital requirements. Below is a summary of the outstanding indebtedness of the B&C Entities to these related parties.

Bombay

62. Bombay is indebted to IBSA, on a secured basis, in the principal amount of \$10,000,000 (which amount includes \$2 million advanced by IBSA to Bombay in satisfaction of the funding condition in the Forbearance Agreement).

Bowring

63. Bowring is indebted to FBI, on a secured basis, in the principal amount of \$8,600,000 (which amount includes \$3.1 million advanced to Bowring in satisfaction of the funding condition in the Forbearance Agreement).

64. Bowring is indebted to IBSA, on a secured basis, in the principal amount of \$16,500,000 (which amount includes \$3 million advanced to Bowring in satisfaction of the funding condition in the Forbearance Agreement).

Benix

65. Benix is indebted to IBSA, FBI, Isaac Benitah, Freddy Benitah and Maxstan in the aggregate amount of \$5,175,383, some of which I believe to be secured.

C) PPSA Searches

66. Fasken Martineau DuMoulin LLP, counsel to the B&C Entities (“**Fasken**”) has conducted a search of registrations made against the B&C Entities pursuant to the (Ontario) *Personal Property Security Act* (“**PPSA**”) and similar registration systems in each of the provinces and territories of Canada as of July 24, 2014. Now produced and shown to me and annexed hereto as Exhibit “D” to my affidavit is a true copy of the PPSA search results.

67. Other than registrations in favour of CIBC, Isaac Benitah, Fred Benitah, IBSA, and FBI, all registrations appear to be in favour of equipment financiers with an interest in specific collateral, and real property lessors in Quebec.

V. FINANCIAL DIFFICULTIES & THE NEED FOR CCAA PROTECTION***A) Financial Difficulties***

68. The housewares industry in Canada has become increasingly competitive, particularly with the recent entry of large scale retail chains into the sector. This increased competitiveness had a significant impact on the profitability of the Benix store locations. Between 2012 and 2014, the B&C Entities closed a number of underperforming Benix stores, some of which were assigned and rebranded under either the Bombay or Bowring banner. This strategy was undertaken by the B&C Entities in an attempt to boost declining sales at the Benix locations by converting these stores to a more recognizable and profitable brand. The converted Benix locations have continued to underperform under the Bombay or Bowring banners and this has contributed to declining profitability of the B&C Entities as a whole.

69. In addition, as described above, the B&C Entities were in breach of certain financial (not payment related) covenants under the Credit Agreement. As a result, the B&C Entities have had to deal with reduced borrowing limits on the Operating Facility and the L/C Facility, imposed as a term of the Forbearance Agreement. These liquidity constraints have prevented the B&C Entities from achieving desired stock positions at certain Bombay and Bowring store locations, which has negatively impacted sales.

70. The B&C Entities are also facing challenges with respect to their high overhead structure and underutilized distribution centre. The urgent need to address these challenges was accentuated by the significant losses incurred by the B&C Entities in fiscal 2014, as a result of, among other things, the difficult retail environment in Canada and poor 2013 Christmas sales due to an unusually harsh Canadian winter.

71. The B&C Entities continue to face severe strains on their cash flows. They are in breach of the financial covenants under the Credit Agreement and are dependent on the continued forbearance and financial support of CIBC.

B) Financial Position

Bombay

72. The most recent year-to-date ("YTD") summary financial statements for Bombay are presented as at June 23, 2014 (unaudited). For the six months ended June 23, 2014, Bombay recorded a net loss of \$2,241,454.

73. Bombay has also reported recurring losses over the past two fiscal years, recording a net loss of \$1,170,338 in fiscal 2014 and \$659,870 in fiscal 2013.

74. At the same time, Bombay has seen its earnings before interest, taxes, depreciation and amortization (“EBITDA”) decline from \$2,273,187 in fiscal 2012, to \$1,462,176 in fiscal 2013, to 479,123 in fiscal 2014.

75. Now produced and shown to me and annexed hereto to my affidavit are, to the best of my knowledge, copies of all financial statements, audited or unaudited, prepared during the past year for Bombay, which are marked as the following Exhibits:

Exhibit “E” Draft 2014 Annual Audited Financial Statements

Exhibit “F” Unaudited Internally Prepared Financial Statements as of June 23, 2014

Bowring

76. The most recent YTD summary financial statements for Bowring are presented as at June 23, 2014 (unaudited). For the six months ended June 23, 2014, Bowring recorded a net loss of \$1,978,227.

77. Bowring has also reported recurring losses over the past two fiscal years, recording a net loss of \$2,604,467 in fiscal 2014 and \$335,257 in fiscal 2013.

78. At the same time, Bowring has seen its EBITDA decline from \$2,197,458 in fiscal 2012, to \$1,824,936 in fiscal 2013, to negative \$1,920,770 in fiscal 2014.

79. Now produced and shown to me and annexed hereto to my affidavit are, to the best of my knowledge, copies of all financial statements, audited or unaudited, prepared during the past year for Bowring, which are marked as the following Exhibits:

Exhibit “G” Draft 2014 Annual Audited Financial Statements

Exhibit "H" Unaudited Internally Prepared Financial Statements as of June 23, 2014

Benix

80. The most recent YTD summary financial statements for Benix are presented as at June 23, 2014 (unaudited). For the six months ended June 23, 2014, Benix recorded a net loss of \$2,364,737.

81. Benix has also reported recurring losses over the past two fiscal years, recording a net loss of \$3,106,108 in fiscal 2014 and \$2,207,122 in fiscal 2013.

82. Benix's EBITDA in fiscal 2012 was negative \$4,710,185, in fiscal 2013 it was negative \$937,097, and in fiscal 2014 it was negative \$1,680,437.

83. Now produced and shown to me and annexed hereto to my affidavit are, to the best of my knowledge, copies of all financial statements, audited or unaudited, prepared during the past year for Benix, which are marked as the following Exhibits:

Exhibit "I" Draft 2014 Annual Audited Financial Statements

Exhibit "J" Unaudited Internally Prepared Financial Statements as of June 23, 2014

C) Responses to Financial Difficulties

84. In response to the financial difficulties set out above, the B&C Entities have sought various going-concern solutions for their businesses.

85. Over the course of the past three years the B&C Entities have undertaken a comprehensive review of store performance with a view of identifying underperforming stores and product lines. As discussed above, this review culminated in the closure of a number of

Benix locations, certain of which were assigned and rebranded to the more profitable Bombay or Bowring banners. As of the date of swearing this affidavit, Benix has closed all remaining retail locations.

86. In conjunction with the performance review, the B&C Entities have taken steps to lower their overhead by reducing staff at their shared head office premises and distribution centre. Certain management personnel have also accepted wage reductions in an effort to lower costs generally.

87. The B&C Entities have also been actively seeking to refinance the CIBC loan facilities with the CIBC asset-based lending group or a third-party lender.

D) Each of Bombay, Bowring and Benix are Insolvent

88. The forbearance period contemplated in the Forbearance Agreement expired on June 30, 2014 and has not been extended. The B&C Entities have been negotiating a further forbearance since that time, without any binding assurance that CIBC will continue to forbear. Bombay, Bowring and Benix, either individually or collectively, do not have sufficient liquidity to repay the outstanding indebtedness if CIBC should make a demand for repayment. As of the date of swearing this affidavit there is approximately \$14.5 million outstanding under the Credit Agreement.

89. In addition, on August 1, 2014 rent totaling approximately \$2,500,000 became due (broken down as \$1,523,000 (Bombay) and \$976,000 (Bowring)). Without further financing, the B&C Entities do not have sufficient cash flow or funding available to meet their ongoing operating expenses, including payments of such rent.

90. Accordingly, and as set out elsewhere in this affidavit, each of Bombay, Bowring and Benix are insolvent. They cannot meet their liabilities as they come due and, without the protection of the CCAA and the benefit of the DIP facility hereinafter described, the ongoing viability of the B&C Entities is seriously impaired. If Bombay and Bowring were to cease operations it would negatively impact their employees (numbering more than 1,200 in aggregate), suppliers, customers, and other stakeholders, and would seriously jeopardize the ability of the B&C Entities to implement a sale or restructuring solution that could see them continue, in whole or in part, as a going concern.

91. The protection of the CCAA, including the stay of proceedings and interim financing which are available thereunder, will enable Bombay and Bowring to maintain operations while allowing the B&C Entities sufficient time to consider the restructuring alternatives available to them. While under CCAA protection, Bombay and Bowring will seek to close underperforming stores, liquidate inventory at those stores and reduce their operating costs, while at the same time pursuing a sale or restructuring of the B&C Entities as a going concern. The B&C Entities are in discussions with a professional liquidation firm with respect to its plans for liquidating inventory at underperforming stores and intends to return to Court in the near future for approval of same. The B&C Entities are also working with the Monitor to develop a sale and investment solicitation process, and intend on returning to Court in the near future for approval of same.

92. Benix requires protection under the CCAA to allow it to deal with ongoing lease and employee obligations and other outstanding liabilities in an orderly fashion. In addition, Benix has certain assets and tax attributes that may be attractive to a potential purchaser or

investor in the sale or investment solicitation process that is contemplated as part of these CCAA proceedings.

V. CASH-FLOW FORECASTS

93. Now produced and shown to me and annexed hereto as Exhibit “K” to my affidavit is a true copy of a projected consolidated cash flow statement with respect to the B&C Entities for the 13 week period August 9, 2014 to November 1, 2014 (the “**Cash Flow Statement**”).

94. The Cash Flow Statement demonstrates the cash needs of the B&C Entities during the forecast period and demonstrates that, assuming the DIP Loan (defined below) is approved and advanced to the B&C Entities (among other assumptions outlined in the Cash Flow Statement and the Monitor’s Report), the B&C Entities will have sufficient liquidity to fund their post-filing obligations and restructuring efforts during the cash flow period.

VI. THE AMENDED AND RESTATED FORBEARANCE AGREEMENT/DIP FINANCING

95. The Forbearance Agreement expired on its terms on June 30, 2014. On August 5, 2014 the B&C Entities and CIBC entered into a First Amended and Restated Forbearance Agreement (the “**DIP Forbearance Agreement**”) pursuant to which CIBC has agreed, in the context of CCAA proceedings in respect of the B&C Entities, to (a) forbear from enforcing its rights under the Credit Agreement until the earlier of January 20, 2015 and certain terminating events, and (b) providing for additional borrowings with increased aggregate availability under the Operating Facility and the L/C Facility of up to \$5 million (subject to a refined borrowing

base formula and certain availability step downs). Now produced and shown to me and annexed hereto as Exhibit "L" to my affidavit is a copy of the DIP Forbearance Agreement.

96. Among other terms, the DIP Forbearance Agreement is conditional upon (a) the payment of forbearance fees in the aggregate amount of \$175,000, (b) approval by CIBC of the B&C Entities projected CCAA cash flow statements, and (c) an Initial Order in the CCAA proceedings that, among other terms, (i) grants to CIBC a first priority charge on the assets of the B&C Entities in respect of all advances made on or after the time of granting the Initial Order, (ii) provides that CIBC shall be treated as an "unaffected creditor" in the CCAA proceedings, and (iii) directs that at no time on or after the date of the Initial Order will the property of the B&C Entities be subject to a court ordered security or charge of any person ranking in priority to the CIBC security and charge, without CIBC's consent.

97. Further, the DIP Forbearance Agreement requires that the B&C Entities implement and operate under a blocked account arrangement which requires them to convert each of their accounts that receive proceeds of inventory or other property subject to CIBC's security into a blocked account subject to a blocked account agreement. Those blocked account arrangements (provided for in section 4.1.14 and Schedule 7 of the DIP Forbearance Agreement) require that all cash receipts of the B&C Entities be deposited into designated accounts subject to CIBC's security interest and blocked account agreements, and swept on a daily basis into a further account held by CIBC. As I understand it, once the blocked account arrangements are set up all receipts of the B&C Entities will, by operation of the blocked account arrangements, be swept to CIBC on a daily basis and applied against the indebtedness of the B&C Entities to CIBC and, as a result, all expenditures of the B&C Entities will be advances under the CIBC Facilities.

VII. RELIEF SOUGHT

A) Payment of Pre-Filing Amounts

98. The B&C Entities anticipate paying certain pre-filing amounts which must be paid following the date of the Initial Order to prevent significant impairment of Bombay and Bowring's business.

Critical Supplier

99. As described above, the continued engagement of certain of Bombay and Bowring's furniture and housewares manufacturers, overseas buying agents, freight forwarders, shipping agents, custom brokers and overseas and overland transport carriers, is critical to their ongoing operations. Disruption to the services provided by certain of these parties may interrupt the supply of inventory to Bombay and Bowring. The B&C Entities are therefore requesting that they be permitted to pay certain pre-filing amounts owing to certain of those suppliers that they consider critical to their business. It is contemplated that any pre-filing payments will be subject to the express prior approval of the Monitor or Order of the Court.

Employee Credit Card and Wages, etc.

100. The B&C Entities' employees often incur expenses on behalf of the B&C Entities for such costs as travel expenses. The B&C Entities have a system whereby they reimburse their employees for any disbursements or costs incurred on behalf of the companies. Employees of Bombay and Bowring have continued to incur such costs to the date of this affidavit. It is intended that Bombay and Bowring (and Benix, to the extent that any of these amounts owing to its former employees remain unpaid) will continue to reimburse employees for these amounts, including any disbursements and costs that may have been incurred prior to the making of the

Initial Order. The B&C Entities also intend to pay certain wages and accrued vacation pay and employee benefit amounts, other than amounts claimed in contested lawsuits by former employees. Failure to pay any of these amounts would severely disrupt the employee base of Bombay and Bowring.

Gift Cards and Layaway Program, etc.

101. Bombay and Bowring offer gift cards to its customers. It is critical to maintain the confidence of the customer base that gift cards continue to be honoured. Bombay and Bowring also maintain a layaway program for its customers through which Bombay and Bowring order an item to a specific store, upon pre-payment of a customer, and hold the item until the customer picks it up at the store. In the interest of maintaining customer loyalty, Bombay and Bowring are seeking permission to honour these sorts of pre-filing commitments to their customers, and to honour existing warranty and return policies.

B) Approval of the DIP Forbearance Agreement & DIP Charge

102. As set out above under the heading “The Amended and Restated Forbearance Agreement/ DIP Financing”, the B&C Entities and CIBC have executed the DIP Forbearance Agreement pursuant to which CIBC has agreed, in the context of CCAA proceedings in respect of the B&C Entities, to (i) forbear from enforcing its rights under the Credit Agreement until the earlier of January 20, 2015 and certain terminating events, and (ii) providing for additional borrowings with increased aggregate availability under the Operating Facility and the L/C Facility of up to \$5 million (subject to a refined borrowing base formula and certain availability step downs).

103. As reflected in the Cash-Flow Statement, the DIP Forbearance Agreement is intended to provide the B&C Entities with sufficient capital to (i) maintain the ongoing operations of Bombay and Bowring during the course of these CCAA proceedings including payment of employees, critical suppliers and post-filing suppliers; (ii) fund the costs of these proceedings; (iii) undertake the liquidation of underperforming stores; and (iv) pursue a potential sale or restructuring of the B&C Entities.

104. It is a condition of the DIP Forbearance Agreement that in addition to its existing contractual security, CIBC be granted a first priority court-ordered charge on all the assets, rights, undertakings and properties of each of the B&C Entities as security for amounts advanced under the DIP Forbearance Agreement (the "**DIP Charge**"). CIBC has advised the B&C Entities that it will not advance any funds under the DIP Forbearance Agreement unless the court approves the DIP Charge.

105. Owing to the urgency of this Application, there is not sufficient time to serve all of the registered secured creditors with notice of the Application. To give effect to the requirement of CIBC that it obtain a priority charge, at the request of CIBC, the B&C Entities are seeking an Order that provides a mechanism for secured creditors who have not been served with these materials to receive a notice from the Monitor directing them to the Initial Order and the supporting materials and providing them with a period of time to oppose the priority of the DIP Charge over their security by delivering responding materials to the Court. Until such time period lapses, the DIP Charge will not have priority over those secured creditors. If those secured creditors do not deliver responding materials within the prescribed time, the DIP Charge will have priority over them without further Order of the Court. This mechanism will not apply to holders of validly perfected purchase money security interests or to statutory claims for sales

taxes or employment related liabilities that would otherwise have priority over CIBC's existing contractual security (the "**Priority Mechanism**").

106. The Cash Flow Statement demonstrates that, without DIP financing, they are unable to fund their operations and restructuring efforts. If the court approves the DIP Forbearance Agreement and funds are made available thereunder, the Cash Flow Statement projects that the B&C Entities will have sufficient funding to continue their operations and restructuring efforts during the projected cash-flow period.

107. The B&C Entities have considered, among other things, the following factors:

- (a) the Cash-Flow Statement indicates that the DIP Loan will provide the B&C Entities with sufficient liquidity to fund their ongoing operations and restructuring efforts throughout the projected cash-flow period;
- (b) it is expected that Bombay and Bowring will continue to operate while management of the B&C Entities implement a comprehensive plan to liquidate underperforming store locations and to reduce their overhead costs while pursuing a sale or restructuring of the B&C Entities;
- (c) the B&C Entities have the support of their primary secured creditor CIBC who has agreed to advance the DIP Loan;
- (d) the DIP Loan is necessary to permit Bombay and Bowring to maintain their operations and facilitate a restructuring of their business with a view to preserving the going concern; and

- (e) the Monitor has indicated that it is supportive of the DIP Forbearance Agreement and the financing contemplated therein.

C) Approval of the Administration Charge

108. The B&C Entities are seeking a charge on the assets, rights, undertakings and properties of the B&C Entities, in priority to all other charges, including the DIP Charge, in the maximum amount of \$750,000 (the “Administration Charge”) to secure the fees and disbursements of the Monitor, counsel to the Monitor and counsel to the B&C Entities incurred in connection with services rendered to the B&C Entities both before and after the commencement of these CCAA proceedings. I understand that CIBC is amenable to the Administration Charge, subject to the above maximum amount.

109. I believe that it is critical to the success of a restructuring and/ or any potential sale of the B&C Entities to have the Administration Charge in place to ensure the continued involvement of these insolvency professionals. The professionals that are the beneficiaries of the Administration Charge have contributed, and continue to contribute, to the restructuring of the B&C Entities.

110. The B&C Entities have worked with the Monitor and the other insolvency professionals to estimate the proposed quantum of the Administration Charge. I believe it to be reasonable and appropriate in view the services to be provided by the beneficiaries of the Administration Charge.

D) Approval of the D&O Indemnity and Charge

111. To ensure the ongoing stability of the B&C Entities during these CCAA proceedings and to maximize the potential of a successful sale or restructuring of its business, the B&C Entities require the continued participation of the director and officers of each of Bombay, Bowring and Benix.

112. The B&C Entities are seeking typical provisions staying all proceedings with respect to all claims against the director or officers that relate to any obligations and liabilities that they may incur as director or officers of the B&C Entities whereby the director or officers are alleged under any law to be liable in their capacity as director or officers of the B&C Entities.

113. The director and officers of the B&C Entities have specialized expertise and relationships with suppliers, employees and other stakeholders that cannot be replicated or replaced.

114. I am advised by Fasken that in certain circumstances director and officers can be held liable for certain obligations and liabilities that they may incur as a director or officer after the commencement of CCAA proceedings.

115. The director and officers of the B&C Entities do not benefit from any directors and officers' indemnification insurance. As a result of the financial position of the B&C Entities, I consider it highly unlikely that the director and officers will be able to procure such insurance for a reasonable cost and without a substantial deductible.

116. The B&C Entities have a large number of employees and significant sales tax accruals which arise from time to time. Given the lack of directors and officers indemnification insurance the director and officers of the B&C Entities have indicated that they require that the

Initial Order to: (i) indemnify them for obligations and liabilities that they may incur in their capacity as director or officers of the B&C Entities after commencement of these proceedings, and (ii) create a charge on the assets of each of the entities comprising the B&C Entities in the maximum amount of \$1 million in respect of Bombay, \$600,000 in respect of Bowring, and \$100,000 in respect of Benix (the “D&O Charge”), as security for the aforesaid indemnity. The D&O Charge is proposed to rank behind the Administration Charge and ahead of the DIP Charge.

117. The amount of the caps on the D&O Charge has been estimated in consultation with management and the Monitor. By ensuring the continued participation of the B&C Entities’ directors and officers the D&O Charge will allow it to continue to benefit from their expertise and knowledge. I believe the D&O Charge is fair and reasonable in the circumstances. The D&O Charge and quantum is supported by the Monitor and CIBC.

118. In order to give effect to the priority of the Administration Charge and the D&O Charge relative to the DIP Charge and other security, the B&C Entities request that the Priority Mechanism apply to the Administration Charge and the D&O Charge as well.

E) Stay of Proceedings

119. The B&C Entities are seeking the standard stay of proceedings provisions contained in the model Initial CCAA Order. The stay is required to enable Bombay and Bowring to maintain operations while allowing the B&C Entities sufficient time to consider the restructuring alternatives available to them, including (i) the liquidation and closure of underperforming stores; (ii) the reduction of operating costs; and (iii) the pursuit of a potential sale of the B&C Entities.

F) The Monitor

120. Richter Advisory Group has consented to act as Monitor of the B&C Entities, subject to court approval.

121. Richter Advisory Group is a trustee within the meaning of section 2 of the BIA and is not subject to any of the restrictions on who may be appointed as monitor set out in section 11.7(2) of the CCAA.

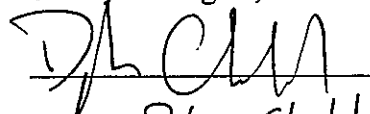
Urgency

122. The B&C Entities have hit the liquidity wall. A significant amount of rents were not paid when due on August 1, 2014 and, among other threats, the B&C Entities face the prospect of landlords taking action on the leases if the Initial Order is not made. The B&C Entities require immediate access to the DIP facility to normalize their operations, secure ongoing supply of goods and services and proceed with their restructuring plans.

VIII. PURPOSE OF AFFIDAVIT

123. I swear this Affidavit in support of the B&C Entities' Application in these proceedings and for no other or improper purpose.

AFFIRMED BEFORE ME at the
City of Toronto, in the
Province of Ontario, this
6th day of August, 2014


Dylan Chacka


FREDDY BENITAH

EXHIBIT "A"

This is Exhibit... Areferred to in the
affidavit of Fred Benish
sworn before me, this 6th
day of August 20 19
D. L. Allen
A COMMISSIONER FOR TAKING AFFIDAVITS

BOMBAY & CO. INC.
Fiscal Year 2015

| Store # | Store Name | Address | City | State | Postal Code |
|---------|-----------------------------|---|---------------------|-------|-------------|
| 135 | Moncton | 78 Wyse Street | Unit 100 | NB | E1G 0Z5 |
| 138 | Dartmouth Crossing | 174 Hector Gate Unit 3K-1 | Darmouth | NS | B3B 0E6 |
| 170 | Stavanger & Torbay | 56B Aberden Ave. | St. Johns | NF | A1A 5N6 |
| 199 | Bayers Lake Power Centre | 212-C Chain Lake Drive | Halifax | NS | B3S 1C5 |
| 231 | Brossard | 9500 Leduc- Ste. 5 | Brossard | QC | J4Y 0B3 |
| 232 | Faubourg Boisbriand | 3220 Avenue Des | Boisbriand | QC | J7H 0A2 |
| 280 | Decarie | 7325 Decarie | Montreal | QC | H4P 2G8 |
| 282 | Rockland Centre | 2305 Rockland Rd. | Mount Royal | QC | H3P 3E9 |
| 283 | Carrefour Champetre Bromont | 575 Place Champetre | Bromont | QC | J2L 0A2 |
| 285 | Les Galeries d'Anjou | 7999 Blvd Les Galeries D'Anjou Unit K-003 | Ville d'Anjou | QC | H1M 1W6 |
| 286 | Le Carrefour Laval | 3003 Boul. Le Carrefour Unit# A004B | Laval | QC | H7T 1C7 |
| 288 | Place St - Foy | 2450 Blvd. Laurier Unit G24B | Ste-Foy | QC | G1V 2L1 |
| 297 | Kirkland Centre | 3252 Rue Jean Yves | Kirkland | QC | H9J 2R6 |
| 298 | Sources | 3131, boul. des Sources Unit #47A | Dollard des Ormeaux | QC | H1S 2V4 |
| 311 | Bayshore Shopping Ctr | 100 Bayshore Drive | Ottawa | ON | K2B 8C1 |
| 317 | London North | 1965 Hyde Park Road (Unit D12) | London | ON | N3E 1M3 |
| 319 | Ira Needles | 101 Ira Needles Blvd (Unit 200-4 and 200-5) | Waterloo | ON | N2J 3Z4 |
| 320 | Greenlane Center | 18182 Yonge St, Yonge & Greenlane | Newmarket | ON | A1A |
| 325 | Limeridge Mall | 999 Upper Wentworth Street #243 | Hamilton | ON | L9A 4X5 |
| 332 | White Oaks Mall | 1105 Wellington Rd.- Unit #481 | London | ON | N6E 1V4 |
| 362 | Ottawa Trainyards | 100 Trainyards Drive Unit A32 | Ottawa | ON | K2E 7K3 |
| 371 | Georgian Mall | 509 Bayfield St., Unit #N51A | Barrie | ON | L4M 4Z8 |
| 373 | Walker Square | 4331 Walker Rd.- Unit A.1 | Windsor | ON | N8W 3T6 |
| 375 | Pen Centre | 221 Glendale Avenue, Hwy406, Unit#1007B | St. Catharines | ON | L2T 2K9 |
| 376 | Devonshire Mall | 3100 Howard Avenue Unit#E5 | Windsor | ON | N8X 3Y8 |
| 378 | Cambridge Smart Centre | 22 Pinebush Road, BldgO Unit#0004 | Cambridge | ON | N1R 8K5 |
| 398 | Gardiner's Road | 10-616 Gardiners Road | Kingston | ON | K7M 3X9 |
| 551 | West Edmonton Mall | 2127-8882-170th Street | Edmonton | AB | T5T 4J2 |
| 560 | Market Mall | 3625 Shaganappi Trail-#H003 | Calgary | AB | T3A 0E2 |
| 561 | Signal Hill | Signal Hill Unit # 5979 | Calgary | AB | T3H 3P8 |
| 583 | South Edmonton Commons | 99th Street N.W.- Unit 191 | Edmonton | AB | T6N 1K9 |
| 596 | Kenaston | 1585 Kenaston Blvd. | Winnipeg | MB | R3P 2N3 |
| 597 | Polo Park | 1485 Portage Avenue Unit #207 | Winnipeg | MB | R3G 0W4 |
| 651 | Westshore Towncentre | 2945 Jacklin Road Unit# 190 | Victoria | BC | V9B 5E3 |
| 652 | Hillside Centre | 78-1644 Hillside Avenue Unit# 78 | Victoria | BC | V8T 2C5 |
| 662 | Richmond Centre | 6551-3 Rd. Unit 1842 | Richmond | BC | V6Y 2B6 |
| 677 | Granville Street | 2526 &2536 Granville St. | Vancouver | BC | V6H 3G8 |
| 678 | Meadowtown Centre | 19800 Lougheed Hwy., Unit 930 | Pitt Meadows | BC | V3Y 2W1 |
| 687 | Abbotsford (Highstreet) | 3122 Mt. Lehman Road Unit 104 | Abbotsford | BC | V2T 0C5 |
| 695 | Langley Power Centre | 20070 Langley By-Pass | Langley | BC | V3A 9J7 |
| 912 | Yorkdale Mall | 3401 Dufferin Street, UNIT 15&16 | Toronto | ON | M6A 2T9 |
| 920 | Ajax | 20 Kingston Rd. West | Ajax | ON | L1T 4K8 |
| 921 | Markville Mall | 5000 Highway 7- Unit #57 A | Markham | ON | L3R 4M9 |
| 922 | Erin Mills Town Centre | 5100 Erin Mills Pkway- R102A | Mississauga | ON | L5M 4Z5 |
| 926 | Mapleview Mall | 900 Maple Ave. Unit A13A | Burlington | ON | L7S 2J8 |
| 927 | Dixie Outlet Mall | 1250 South Service Rd #162 | Mississauga | ON | L5E 1V4 |
| 928 | Hyde Park | 2501 Hyde Park Gate Blvd.- Unit #1G | Oakville | ON | L6H 6G6 |
| 929 | Bayview Glen | 295 High Tech Rd. | Richmond Hill | ON | L4B 0A3 |
| 930 | Oshawa Mall | 419 King Street W #2435 | Oshawa | ON | L1J 2K5 |
| 936 | Etobicoke | 160 North Queen Street Unit # B0004 | Toronto | ON | M9C 1H4 |
| 950 | Bramalea City Centre | 25 Peel Centre Drive Unit# 512 | Brampton | ON | L6T 3R5 |
| 956 | Burloak | 3487 Wyecroft Rd Unit G-003 | Oakville | ON | L6L 0B6 |
| 957 | Vaughan Mills | 1 Bass Pro Mills Drive Unit #316 | Concord | ON | L4K 5W4 |
| 959 | Oshawa North (Harmony) | 1405 Harmony Road, Unit | Oshawa | ON | L1H 7K5 |
| 976 | Scarborough Town Pad | 410 Progress Ave.- Unit D3 | Toronto | ON | M1P 5J1 |
| 990 | Trinity Common | 148 - 70 Great Lakes Drive | Brampton | ON | L6R 2K7 |
| 991 | Riocan Colossus Centre | 16 Famous Ave- Unit 145 | Woodbridge | ON | L4L 9M3 |
| 992 | Heartland Town Centre | 6075 Mavis Road- Unit #19 | Mississauga | ON | L5R 4G6 |
| 58 | | | | | |

EXHIBIT "B"

This is Exhibit... Breferred to in the
affidavit of... Fredrick Benitez
sworn before me, this... 6th
day of... August20...17.....
[Signature]
A COMMISSIONER FOR TAKING AFFIDAVITS

BOWRING & CO.
Fiscal Year 2014

| Store # | Location | Address | Unit # | City | Province | Postal Code |
|---------|-------------------------------|---------------------------------|--------------|----------------|----------|-------------|
| 308 | T.D. CENTRE | 55 KING STREET WEST | | TORONTO | ON | M5K 1G8 |
| 318 | YORKDALE SHOPPING CENTRE | 3401 DUFFERIN STREET | Unit 3B | TORONTO | ON | M6A 2T9 |
| 322 | ERIN MILLS TOWNCENTRE | 5100 ERIN MILLS PARKWAY | | MISSISSAUGA | ON | L5M 4Z5 |
| 325 | HOME & DESIGN CENTRE | 2575 DUNDAS ST. W. | UNIT 28 | MISSISSAUGA | ON | L5K 2M8 |
| 328 | HEARTLAND TOWN CENTRE | 5980 MCCLAUGHLIN RD | UNIT 4 | MISSISSAUGA | ON | L5R 3X9 |
| 327 | TRINITY COMMON | 30 GREAT LAKES DRIVE | 110 | BRAMPTON | ON | L6R 2K7 |
| 328 | RIO-CAN DURHAM CENTRE | 146 KINGSTON RD E. | UNIT 2 | AJAX | ON | L1Z 1G1 |
| 329 | COLOSSUS CENTRE | 7575 WESTON RD | UNIT 117C BL | WOODBRIIDGE | ON | L4L 1A6 |
| 330 | FIRST MARKHAM PLACE | 3215 HWY 7 EAST | G3 | MARKHAM | ON | L3R 3P3 |
| 335 | OSHAWA POWER CENTRE | 1405 HARMONY RD NORTH | UNIT E-5 | OSHAWA | ON | L1H 7K5 |
| 338 | GREEN LANE | 18166 YONGE STREET, RR#1 | UNIT #A6 | NEWMARKET | ON | L3Y 4V8 |
| 337 | QUEENSWAY TORONTO | 171 NORTH QUEEN STREET | G1 | ETOBICOKE | ON | M9C 1A7 |
| 338 | BOWRING OUTLET | 95 ORFUS ROAD | | TORONTO | ON | M6A 1M4 |
| 339 | VILLAGE AT VAUGHAN MILLS | 255 BASS PRO MILLS DRIVE | 405 & 406 | VAUGHAN | ON | L4K 0A2 |
| 351 | AURORA NORTH | 15 FIRST COMMERCE DR. | 1 | AURORA | ON | L4G 0G2 |
| 352 | GERRARD SQUARE | 1000 Gerrard Street East | UNIT# DD12 | Toronto, ON | ON | M4M 3G6 |
| 363 | GEORGIAN MALL | 509 Bayfield Street | Unit #A007A | BARRIE | ON | L4M 4Z8 |
| 365 | QUNITE MALL | 390 North Front Street | Unit #B1 | BELLVILLE | ON | K8P 3E1 |
| 367 | OSHAWA CENTRE | 418 King Street West | Unit #2220 | Oshawa | ON | L1J 2K5 |
| 368 | FAIRVIEW MALL | 1800 Sheppard Avenue East | Unit #1060 | North York, ON | ON | M2J 5A7 |
| 369 | DUFFERIN MALL | 900 Dufferin Street | 0155 | Toronto, ON | ON | M6H 4A9 |
| 602 | BURLINGTON MALL | 777 GUELPH LINE | 817 | BURLINGTON | ON | L7R 3N2 |
| 603 | DEVONSHIRE MALL | 3100 HOWARD AVE. | E13 | WINDSOR | ON | N8X 3Y8 |
| 605 | LIMERIDGE MALL | 999 UPPER WENTWORTH ST. | 104A | HAMILTON | ON | L9A 4X5 |
| 608 | MILTON | 1095 Maple Avenue | Unit H003 | Milton, ON | ON | L9T 0A5 |
| 616 | BRAMALEA CITY CENTRE | 25 PEEL CENTRE DRIVE | 172A | BRAMPTON | ON | L6T 3K5 |
| 619 | STONE ROAD MALL | 435 STONE ROAD WEST | N9 | GUELPH | ON | N1G 2X8 |
| 625 | WINDSOR CROSSING | 1555 TALBOT ROAD | 780 | LASALLE | ON | N8H 2N2 |
| 626 | WELLINGTON COMMON | 1230 WELLINGTON ROAD | UNIT 109 | LONDON | ON | N6E 1M3 |
| 627 | PEN GLENDALE | 221 GLENDALE AVE | UNIT OP8 | ST CATHERINES | ON | L2T 2K9 |
| 628 | LONDON NORTH | 1965 Hyde Park Road | UNIT#104 | LONDON | ON | N6H 0A3 |
| 630 | SUNRISE CENTRE | 1400 OTTAWA STREET SOUTH | UNIT A-7 | KITCHENER | ON | K2E 4E2 |
| 635 | CAMBRIDGE HOME (SMART CENTRE) | 34 PINEBUSH ROAD | 3 | CAMBRIDGE | ON | N1R 8K5 |
| 636 | BURLOAK | 3487 WYECROFT ROAD | G7 | OAKVILLE | ON | L6L 0B1 |
| 681 | ANCASTER POWER CENTRE | 621 Golf Links Road | Unit # 452 | Amesbury, ON | ON | L9K 1L5 |
| 688 | WHITE OAKS MALL | 1105 Wellington Road | UNIT# 479 | London, ON | ON | N6E 1V4 |
| 703 | SIGNAL HILL CENTRE | 5987 SIGNAL HILL CTR DR S.W | BLOCK H UNW | CALGARY | AB | T3H 3P8 |
| 705 | SOUTH EDMONTON COMMON | 2003 99TH STREET N.W | | EDMONTON | AB | T8N 1M1 |
| 718 | POLO PARK SHOPPING CENTRE | 1485 PORTAGE AVE. | L176 | WINNIPEG | MB | R3G 0W4 |
| 719 | LINDENWOODS | 1585 KENASTON BLVD | UNIT 6 | WINNIPEG | MB | R3P 2N3 |
| 730 | REGINA EAST | 2042 PRINCE OF WALES DR | | REGINA | SASK | S4V 3A6 |
| 731 | SKYVIEW POWER CENTRE | 13538-137 AVENUE N.W. | | EDMONTON | AB | T5L 5E9 |
| 733 | WEST EDMONTON MALL | 8882-170th STREET | F133 | EDMONTON | AB | T5T 4M2 |
| 801 | PARK ROYAL | 944 PARK ROYAL | | WEST VANCOUVER | BC | V7T 1A1 |
| 802 | METROPOLIS AT METROTOWN | 4800 KINGSWAY | F9C | BURNABY | BC | V5H 4J2 |
| 803 | ABBOTSFORD | 3122 MT. LEHMAN ROAD | Unit 104 | ABBOTSFORD | BC | V2T 0C5 |
| 815 | GUILDFORD TOWN CENTRE | 2382-10365 152nd STREET | UNIT 2382 | SURREY | BC | V3R 7B9 |
| 817 | LANGLEY POWER CENTRE | 20150 LANGLEY BY PASS | #50 | LANGLEY | BC | V3A 9J6 |
| 818 | LOUGHEED POWER CENTRE | 250-181 SCHOOLHOUSE STREET | UNIT 250 | COQUITLAM | BC | V3K 4X8 |
| 819 | COQUITLAM | 2929 BARNET HIGHWAY | Unit #1306 | COQUITLAM | BC | V3B 5R5 |
| 820 | CENTRAL PARK KELOWNA | 1575 BANKS RD. | UNIT 402 | KELOWNA | BC | V1X 7Y8 |
| 915 | BAYERS LAKE | 212 CHAIN LAKE DRIVE | | HALIFAX | NS | B3S 1C9 |
| 916 | WHEELER PARK | 181 TRINITY DRIVE | | MONCTON | NB | E1G 2J7 |
| 917 | STAVENGER ST. JOHNS | 56 ABERDEEN AVENUE | 3 | ST JOHN'S | NF | A1A 6T3 |
| 920 | RIOCAN CENTRE KIRKLAND | 3252 RUE JEAN YVES | UNIT 6 | KIRKLAND | QC | H9J 2R8 |
| 923 | SOUTH KEYS | 1009C DAZE ROAD | C | OTTAWA | ON | K1V 2G3 |
| 925 | QUARTIER DIX 30 | 9415 LEDUC BLVD | L13F | BROSSARD | QC | J4Y 0A5 |
| 926 | OTTAWA TRAINYARDS | 100 TRAINYARDS DRIVE | C28 | OTTAWA | ON | K1G 3S2 |
| 930 | BAYSHORE SHOPPING CENTRE | 100 BAYSHORE DRIVE | B128 | NEPEAN | ON | K2B 8C1 |
| 938 | DARMOOUTH CROSSING LIMITED | 205 Hector Gate | Unit#3M-1 | DARMOOUTH | NS | B3B 0E5 |
| 953 | CN CENTRAL | 895 ouest rue de la Gauchetiere | Unit #90-404 | MONTREAL | QC | H3B 4G1 |
| 958 | MEGA CENTRE NOTRE DAME | 2238 Autoroute Chomedey | Unit #200G | LAVAL | QC | H7X 4G8 |
| 960 | BILLINGSBRIDGE PLAZA | 2289 Riverside Drive | Unit #0125 | Ottawa, ON | ON | K2A 1H2 |
| 961 | CARLINGWOOD MALL | 2121 Carling Avenue | Unit #0006 | Ottawa, ON | ON | K2A 1S3 |

EXHIBIT "C"

This is Exhibit... Creferred to in the
affidavit of Freddie Benitez
sworn before me, this 6th
day of August2014
D/L CM
A COMMISSIONER FOR TAKING AFFIDAVITS

Execution Copy

AMENDED, RESTATED AND CONSOLIDATED CREDIT AGREEMENT

DATED AS OF DECEMBER 13, 2010

between:

**BENIX & CO. INC., BOMBAY & CO. INC.
and BOWRING & CO. INC., as Borrowers**

- and -

CANADIAN IMPERIAL BANK OF COMMERCE, as Lender

gowlings

TABLE OF CONTENTS

| | <u>Page</u> |
|--|-------------|
| ARTICLE 1 INTERPRETATION | 1 |
| Section 1.01 Definitions | 1 |
| Section 1.02 Audited Financial Statements | 21 |
| Section 1.03 Canadian Currency | 22 |
| Section 1.04 Interest Act | 22 |
| Section 1.05 Change in Rates | 22 |
| Section 1.06 Headings and Table of Contents | 22 |
| Section 1.07 References | 22 |
| Section 1.08 Statutory References | 22 |
| Section 1.09 Number and Gender and Expressions | 22 |
| Section 1.10 Maximum Interest Rate | 23 |
| Section 1.11 Schedules | 23 |
| ARTICLE 2 AMENDMENT, RESTATEMENT AND CONSOLIDATION OF EXISTING INDEBTEDNESS | 24 |
| Section 2.01 Existing Indebtedness | 24 |
| Section 2.02 Existing Credit Facilities | 24 |
| Section 2.03 Existing Security Documents | 25 |
| Section 2.04 Guarantees | 25 |
| ARTICLE 3 CREDIT FACILITIES | 25 |
| Section 3.01 Credit Facilities | 25 |
| Section 3.02 Maximum Borrowings | 26 |
| Section 3.03 Revolving Feature of Operating Facility | 27 |
| Section 3.04 Non-Revolving Feature of Benix Instalment Facility | 27 |
| Section 3.05 Non-Revolving Feature of Bombay Instalment Facility | 27 |
| Section 3.06 Revolving Feature of L/C Facility | 27 |
| Section 3.07 Purposes of Credit Facilities | 28 |
| Section 3.08 Restrictions on Borrowing | 28 |
| Section 3.09 Evidence of Indebtedness | 28 |
| Section 3.10 Illegality | 28 |
| Section 3.11 Joint and Several Obligations of the Borrowers | 29 |

TABLE OF CONTENTS
(continued)

| | <u>Page</u> |
|---|-------------|
| Section 3.12 Funding of Overdrafts | 29 |
| ARTICLE 4 PROCEDURES APPLICABLE TO BORROWINGS..... | 30 |
| Section 4.01 Borrowing Notice..... | 30 |
| Section 4.02 Conversion Notice..... | 30 |
| Section 4.03 Bankers' Acceptances | 31 |
| Section 4.04 Provisions Relating to Letters of Credit | 34 |
| Section 4.05 Reliance on Oral Instructions | 35 |
| ARTICLE 5 PAYMENTS..... | 35 |
| Section 5.01 Repayment | 35 |
| Section 5.02 Mandatory Prepayments | 36 |
| Section 5.03 Voluntary Prepayment..... | 38 |
| Section 5.04 Payments Generally | 38 |
| Section 5.05 No Credit for Trust Funds | 39 |
| ARTICLE 6 INTEREST, FEES AND EXPENSES | 39 |
| Section 6.01 Payment of Interest | 39 |
| Section 6.02 Interest on Overdue Amounts | 40 |
| Section 6.03 Stamping Fees..... | 40 |
| Section 6.04 Letter of Credit Fees; VISA Fees..... | 40 |
| Section 6.05 Other Fees..... | 41 |
| Section 6.06 Change in Circumstances | 41 |
| Section 6.07 Reimbursement of Expenses | 43 |
| Section 6.08 Determination Conclusive | 43 |
| Section 6.09 No Withholding/Payment of Gross-up..... | 43 |
| ARTICLE 7 CONDITIONS PRECEDENT..... | 43 |
| Section 7.01 Conditions - Initial Borrowing..... | 43 |
| Section 7.02 Conditions - Subsequent Borrowing | 46 |
| Section 7.03 Waiver | 47 |
| ARTICLE 8 REPRESENTATIONS AND WARRANTIES..... | 47 |
| Section 8.01 Representation and Warranties | 47 |

TABLE OF CONTENTS
(continued)

| | <u>Page</u> |
|--|-------------|
| Section 8.02 Survival of Representations and Warranties | 54 |
| ARTICLE 9 COVENANTS | 54 |
| Section 9.01 Positive Covenants | 54 |
| Section 9.02 Financial Covenants | 59 |
| Section 9.03 Negative Covenants | 61 |
| ARTICLE 10 SECURITY | 64 |
| Section 10.01 Existing Security Documents | 64 |
| Section 10.02 Additional Security | 64 |
| Section 10.03 Further Assurances | 65 |
| Section 10.04 Hedging Arrangements and Services Arrangements | 65 |
| ARTICLE 11 DEMAND | 66 |
| Section 11.01 Rights and Remedies of the Lender | 66 |
| Section 11.02 Remedies are Cumulative | 66 |
| Section 11.03 Set-Off | 66 |
| Section 11.04 Cash Collateral Accounts | 67 |
| ARTICLE 12 ENVIRONMENTAL MATTERS | 67 |
| Section 12.01 Representations and Warranties | 67 |
| Section 12.02 Environmental Covenants | 67 |
| Section 12.03 Indemnity | 67 |
| Section 12.04 Scope of Indemnity | 68 |
| Section 12.05 Consultants, etc. | 69 |
| Section 12.06 Fees and Expenses | 69 |
| Section 12.07 Interest | 69 |
| ARTICLE 13 GENERAL | 69 |
| Section 13.01 Notices | 69 |
| Section 13.02 Performance of Covenants by the Lender | 71 |
| Section 13.03 Indemnity | 71 |
| Section 13.04 No Set-Off or Counterclaim | 72 |
| Section 13.05 Severability | 72 |

TABLE OF CONTENTS
(continued)

| | <u>Page</u> |
|--|-------------|
| Section 13.06 Time of Essence | 72 |
| Section 13.07 Assignment | 72 |
| Section 13.08 Entire Agreement | 72 |
| Section 13.09 Amendments | 72 |
| Section 13.10 Law Governing | 73 |
| Section 13.11 Conflict | 73 |
| Section 13.12 Assignments and Participations | 73 |
| Section 13.13 Judgment Currency | 74 |
| Section 13.14 Successors and Assigns | 74 |
| Section 13.15 Guarantors | 74 |
| Section 13.16 Counterparts | 74 |
| SCHEDULE "A" BORROWING NOTICE | 1 |
| SCHEDULE "B" CONVERSION NOTICE | 1 |
| SCHEDULE "C" BORROWING BASE CERTIFICATE | 1 |
| SCHEDULE "D" COMPLIANCE CERTIFICATE | 1 |
| SCHEDULE "E" EXISTING INDEBTEDNESS | 1 |
| SCHEDULE "F" EXISTING SECURITY DOCUMENTS | 1 |
| SCHEDULE "G" LITIGATION | 1 |
| SCHEDULE "H" JURISDICTIONS IN WHICH ASSETS ARE LOCATED | 1 |
| SCHEDULE "I" OWNED PROPERTIES | 1 |
| SCHEDULE "J" LEASED PROPERTIES | 1 |
| SCHEDULE "K" OTHER LOCATIONS | 1 |
| SCHEDULE "L" INTELLECTUAL PROPERTY AND SOFTWARE | 1 |
| SCHEDULE "M" PERMITTED ENCUMBRANCES | 1 |
| SCHEDULE "N" SHAREHOLDER LOANS | 1 |
| SCHEDULE "O" PENSION PLANS | 1 |
| SCHEDULE "P" MATERIAL CONTRACTS | 1 |

AMENDED, RESTATED AND CONSOLIDATED CREDIT AGREEMENT

THIS AGREEMENT dated as of December 13, 2010.

BETWEEN:

**BENIX & CO. INC., BOMBAY & CO. INC.
and BOWRING & CO. INC., as Borrowers**

- and -

CANADIAN IMPERIAL BANK OF COMMERCE, as Lender

RECITALS:

- A. Pursuant to the Benix Credit Agreement, the Bombay Credit Agreement and the Bowring Credit Agreement each of Benix, Bombay and Bowring, respectively, are indebted to the Lender in the amount of the Existing Indebtedness.
- B. Each of the Guarantors has guaranteed to the Lender payment of all or part of the Existing Indebtedness, as the case may be.
- C. The Lender and the Borrowers have agreed to amend, restate and consolidate each Original Credit Agreement in accordance with the terms of this Agreement.
- D. Each of the Guarantors has agreed to the amendment, restatement and consolidation of each Original Credit Agreement in accordance with the provisions of this Agreement, which shall supersede and replace each Original Credit Agreement in all respects and each has agreed that its guarantee and any security granted in connection therewith shall remain in full force and effect.

NOW THEREFORE, for value received, and intending to be legally bound by this Agreement, the parties agree as follows:

**ARTICLE 1
INTERPRETATION**

Section 1.01 Definitions

For the purposes of this Agreement, the following terms shall have the following meanings unless something in the subject matter or context is inconsistent therewith:

- (1) **"Accounting Changes"** means changes in accounting principles required by the promulgation of any rule, regulation, pronouncement or opinion by the Canadian Institute of Chartered Accountants from time to time including, without limitation, changes resulting from the application of accounting standards for private companies (Private Enterprise GAAP).

- (2) **Additional Compensation** has the meaning set out in Section 6.06(2).
- (3) **"Affiliate"** of a Person means any other Person which, directly or indirectly, controls or is controlled by or is under common control with the first Person, and for purposes of this definition, **"control"** (including with correlative meanings the terms **"controlled by"** and **"under common control with"**) means the power to direct or cause the direction of the management and policies of any Person, whether through the ownership of shares or by contract or otherwise.
- (4) **"Agreement"** means this credit agreement and the schedules hereto, and any amendments, revisions, restatements, replacements, renewals, modifications or supplements to this credit agreement or the schedules at any time and from time to time.
- (5) **"Annual Financial Forecast"** means an annual financial forecast, in form and substance satisfactory to the Lender, prepared by or on behalf of the Borrowers for each Fiscal Year containing financial projections of the Borrowers for such Fiscal Year, which projections shall consist of a balance sheet and related monthly statements of income and cash flow showing the projected results of each of the Borrowers, and the Borrowers on a combined basis, in each case, for each month of such Fiscal Year.
- (6) **"Applicable Law"** means, at any time, with respect to any Person, property, transaction, event or other matter, as applicable, all then current laws, statutes, regulations, treaties, judgments and decrees and (having the force of law) all applicable official directives, rules, consents, approvals, by-laws, permits, authorizations, guidelines, orders and policies of any governmental or regulatory body or Persons relating to or applicable to such Person, property, transaction, event or other matter (collectively, the **"Law"**) and shall also include any interpretation of the Law or any part of the Law by any Person having jurisdiction over it or charged with its administration or interpretation.
- (7) **"Applicant"** means The Bombay Furniture Company of Canada Inc. - La Compagnie de Mobilier Bombay du Canada Inc.
- (8) **"Approval and Vesting Order"** means the Order of the Honourable Mr. Justice Morawetz of the Ontario Superior Court of Justice (Commercial List) dated October 19, 2007 in the matter of the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C 36, as amended, and in the matter of a plan of compromise and arrangement of The Bombay Furniture Company of Canada Inc. - La Compagnie de Mobilier Bombay du Canada Inc. approving the Purchase Agreement and vesting in the Borrower the Applicant's right, title and interest in and to the Sale Assets as defined in the Purchase Agreement.
- (9) **"Associate"** shall have the meaning given to "associate" in the *Business Corporations Act* (Ontario) as amended or re-enacted from time to time.

- (10) **"Bankers' Acceptance"** means a bill of exchange or draft, which is drawn by the Borrower and accepted by the Lender, or a depository bill as defined in the *Depository Bills and Notes Act* (Canada) that is signed by or on behalf of the Borrower, made payable to a satisfactory clearing house and accepted by the Lender, and which in each case:
- (i) is denominated in Canadian Dollars;
 - (ii) is issued initially in an aggregate amount of not less than \$1,000,000 and in whole multiples of \$100,000 thereafter;
 - (iii) is for a Contract Period of 1, 2 or 3 months as stipulated by the applicable Borrower or Borrowers or such other Contract Period as the Lender may agree to with the applicable Borrower or Borrowers in writing; and
 - (iv) is payable only in Canada.
- (11) **"BA Notice"** means a Borrowing Notice requesting the issuance of a Bankers' Acceptance, or a BA Rollover, to be given to the Lender in writing.
- (12) **"BA Rate" or "BA Discount Rate"** means, in respect of a Bankers' Acceptance to be accepted by the Lender on a Borrowing Date pursuant to Section 4.03:
- (i) for a lender that is listed in Schedule I to the *Bank Act* (Canada), the CDOR Rate at approximately 10:00 a.m. (Toronto time) on such Borrowing Date for bankers' acceptances having a comparable maturity date and comparable face amount as the maturity date and face amount of such Bankers' Acceptance, and
 - (ii) for a lender that is not listed in Schedule I to the *Bank Act* (Canada) (a **"Non Schedule I Bank"**), the rate established by the lender to be the lesser of:
 - (A) the CDOR Rate plus 0.10% per annum; and
 - (B) the average of the bankers' acceptances rates (expressed to 5 decimal places) as quoted to the lender by at least one but not more than two such Non-Schedule I Banks, each as of approximately 10:00 a.m. (Toronto time) on such Borrowing Date for bankers' acceptances having a comparable maturity date and comparable face amount as the maturity date and face amount of such Bankers' Acceptance.
- (13) **"BA Rollover"** means the replacement in whole or in part of a maturing Bankers' Acceptance with another Bankers' Acceptance of an identical face amount.
- (14) **"BA Rollover Date"** means the date upon which a BA Rollover occurs.

- (15) **"Basis Point"** and **"bp"** means one one-hundredth of one percent (.01%).
- (16) **"Benix"** means Benix & Co. Inc., an Ontario corporation, and its successors and permitted assigns.
- (17) **"Benix Credit Agreement"** means a letter loan agreement issued by the Lender on March 13, 2009 and accepted by Benix on March 20, 2009.
- (18) **"Benix Instalment Facility"** means the reducing demand instalment loan facility made available to Benix under Section 3.01(2).
- (19) **"Benix Instalment Facility Limit"** means \$350,000.
- (20) **"Bombay"** means Bombay & Co. Inc. (formerly 2151456 Ontario Inc.), an Ontario corporation, and its successors and permitted assigns.
- (21) **"Bombay Credit Agreement"** means a credit agreement dated as of February 5, 2008, as amended by amendment #1 dated March 6, 2009.
- (22) **"Bombay Instalment Facility"** means the reducing demand instalment loan facility made available to Bombay under Section 3.01(3).
- (23) **"Bombay Instalment Facility Limit"** means \$2,499,999.
- (24) **"Borrowers"** means (i) in the case of the Operating Facility and the L/C Facility, Benix, Bombay and Bowring collectively, (ii) in the case of the Benix Instalment Loan, Benix, and (iii) in the case of the Bombay Instalment Loan, Bombay; and **"Borrower"** means any one of them as the context requires.
- (25) **"Borrowing"** means a use of the Credit Facilities.
- (26) **"Borrowing Base"** means, at any time, the sum of: (i) 50% of Eligible Inventory of the Obligors, less (ii) Priority Payables of the Obligors.
- (27) **"Borrowing Base Certificate"** means a completed certificate substantially in the form of Schedule "C" signed and delivered by a senior officer of the Borrowers, as such form may be amended from time to time by mutual agreement of the Borrowers and the Lender.
- (28) **"Borrowing Date"** means a Business Day on which a Borrowing is made.
- (29) **"Borrowing Notice"** means a notice requesting a Borrowing to be given to the Lender in writing as described in Section 4.01.
- (30) **"Bowring"** means Bowring & Co. Inc., an Ontario corporation, and its successors and permitted assigns.
- (31) **"Bowring Credit Agreement"** means a credit agreement dated as of November 23, 2006, as amended by amendment #1 dated November 6, 2007, amendment #2

dated November 29, 2007, amendment #3 dated February 5, 2008, amendment #4 dated March 3, 2008 and amendment #4 dated March 6, 2009.

- (32) **"Branch of Account"** means the Lender's branch located at Toronto Main Branch, Commerce Court West, Toronto, Ontario M5L 1A2 or such other branch as the Lender and the Borrower shall mutually agree.
- (33) **"Business Day"** means a day on which banks are open for business in Toronto, Ontario other than a Saturday, Sunday or legal holiday.
- (34) **"Canadian Dollars", "Cdn. Dollars", "Cdn. \$" and "\$"** each means lawful money of Canada.
- (35) **"Canadian Dollar Equivalent Amount"** means, on any date, the equivalent amount in Canadian Dollars of an amount in some other freely-traded currency (the **"Other Currency"**) after giving effect to a conversion of such amount of the Other Currency to Canadian Dollars at the spot buying rate quoted for wholesale transactions by the Lender at or as close as possible to 12:00 noon (Toronto time) on that date.
- (36) **"Capital Expenditures"** means for any period, all expenditures (whether paid in cash or accrued as a liability, including the portion of Capitalized Lease Obligations originally incurred during such period that are capitalized) during such period made for the purchase, lease or acquisition of assets (other than Current Assets) required to be capitalized in accordance with GAAP, including, without limiting the generality of the foregoing, equipment, rolling equipment, machinery and other fixed assets and real property.
- (37) **"Capital Leases"** means all agreements for the lease or rental of real or personal property by any Person as lessee that, in accordance with GAAP, either would be required to be classified and accounted for as a capital lease on a balance sheet of such Person or otherwise be disclosed as such in a note to such balance sheet.
- (38) **"Capitalized Expenses"** means all expenditures made by the Obligors for:
 - (i) plant start-up and related costs; and
 - (ii) other expenses, including, without limitation, research and development expenditures,which have been capitalized by the Obligors for financial reporting purposes rather than expensed.
- (39) **"Capitalized Lease Obligations"** means, with respect to any Person, the aggregate of all monetary obligations under Capital Leases.
- (40) **"CDOR Rate"** means, on any date and relative to Bankers' Acceptances having a specified term, the per annum rate of interest which is the rate based on the

average of the discount rates (rounded up to two decimal places) applicable to Canadian Dollar bankers' acceptances for a term equivalent to the term of the relevant Bankers' Acceptances appearing on the "Reuters Screen CDOR Page" (as defined in the International Swap Dealer Association, Inc. definitions, as modified from time to time) for acceptances of Schedule I banks under the *Bank Act* (Canada) as of 10:00 a.m. (Toronto time) on such date, or if such a date is not a Business Day, then on the immediately preceding Business Day; provided, however, that if no such average rate appears on the Reuters Screen CDOR Page at such time on such date, then the CDOR Rate on any date shall be the rate for the term referred to above applicable to Canadian Dollar bankers' acceptances quoted by the Lender as of 10:00 a.m. (Toronto time) on such date, or if such date is not a Business Day, then on the immediately preceding Business Day.

- (41) "Closing Date" means December 13, 2010, or such other date as the Lender and the Borrowers may mutually agree upon.
- (42) "Combined Operating L/C Facility Limit" means \$29,500,000.
- (43) "Compliance Certificate" means a completed certificate substantially in the form of Schedule "D" signed and delivered by a senior officer of the Borrowers, as such form may be amended from time to time by mutual agreement of the Borrowers and the Lender.
- (44) "Contaminant" means any solid, liquid, gas, odour, heat, sound, vibration, radiation or combination of any of them that may: (i) impair the quality of the environment for any use that can be made of it, (ii) injure or damage property or plant or animal life, (iii) harm or materially discomfort any Person, (iv) adversely affect the health of any individual, (v) impair the safety of any individual, (vi) render any property or plant or animal life unfit for use by man, (vii) cause loss of enjoyment of normal use of property, or (viii) interfere with the normal course of business, and includes any "contaminant" within the meaning assigned to such term in any Environmental Law.
- (45) "Contractual Currency" has the meaning set out in Section 13.11.
- (46) "Contract Period" means the term of a Bankers' Acceptance.
- (47) "Conversion" means the conversion of one manner of Borrowing permitted hereunder into another manner of Borrowing permitted hereunder.
- (48) "Conversion Date" means the date upon which a Conversion is effected.
- (49) "Conversion Notice" means a notice requesting a Conversion to be given to the Lender in the form as attached as Schedule "B" to this Agreement.
- (50) "Corporate Distribution" means any direct or indirect declaration or payment by any Obligor to any Person whether by way of bonus, allowance, expense reimbursement, dividends, purchase, redemption or return of capital, capital

withdrawal, reduction in shareholder loan, Non-Arm's Length Advance, interest, management or similar fee or other corporate distribution or compensation or otherwise.

- (51) **"Credit Facilities"** means the credit facilities made available under Article 2 of this Agreement and **"Credit Facility"** means any of them.
- (52) **"Credit Limit"** means the maximum authorized principal amount of any Credit Facility.
- (53) **"Current Assets"** means, at any time, that amount equal to the aggregate of the value of the assets of the Obligors which may properly be classified as current assets in accordance with GAAP, other than Intangible Assets; provided that any security (as defined in the *Securities Act* (Ontario)) included in Current Assets shall be stated and included at the lower of its actual cost or its market value.
- (54) **"Current Liabilities"** means, at any time, the aggregate amount of all Indebtedness of the Obligors maturing on demand or within one year from the date on which such liabilities are calculated, including, without limitation, all liabilities which may properly be classified as current liabilities in accordance with GAAP, and including that portion of long term Indebtedness which will be maturing within one year of the date such liabilities are calculated.
- (55) **"Current Ratio"** means, at any time, on a combined basis, the ratio of Current Assets to Current Liabilities.
- (56) **"Demand"** means any communication of demand for payment of all or any portion of the Outstanding Obligations, whether made in writing or in electronic form, by the Lender.
- (57) **"Discount Proceeds"** means, in respect of any Bankers' Acceptance, an amount calculated on the applicable Borrowing Date which is calculated by:
 - (i) dividing the face amount of the Bankers' Acceptance by the sum of one plus the product of the BA Rate expressed in a decimal fraction, multiplied by (b) a fraction, the numerator of which is the Contract Period of such Bankers' Acceptance and the denominator of which is 365; and
 - (ii) deducting from the result obtained the Stamping Fee for such Bankers' Acceptance.
- (58) **"Documentary L/C"** means a documentary letter of credit issued by the Lender at the request of any Borrower pursuant to this Agreement, which is issued in connection with importing or exporting of goods and which is treated by the Lender as a trade related contingency, in each case denominated in a freely traded currency acceptable to the Lender and subject to availability.

- (59) **"EBITDA"** means, in respect of the Obligors for any period, the net income for such period, plus, without duplication and to the extent deducted in determining such net income, (a) Interest Expense, (b) income taxes (whether paid or deferred), (c) depreciation, and (d) amortization and excluding all extraordinary and other non-recurring items (including foreign exchange losses or gains), all as determined in accordance with GAAP.
- (60) **"Eligible Inventory"** means, at any time, inventory owned by any Obligor that consists of finished goods and raw materials physically located in Canada or in transit to Canada, other than:
- (i) inventory subject to a Security Interest (other than a Permitted Encumbrance);
 - (ii) inventory in respect of which the Lender does not have a valid, effective perfected and first priority Security Interest;
 - (iii) inventory which is obsolete, unsaleable, shop-worn, damaged, unfit for sale or is of substandard quality;
 - (iv) inventory which consists of display items, samples or defective goods which have been returned by a buyer;
 - (v) inventory which does not meet all material standards imposed by any Applicable Law including all Applicable Laws governing product labelling, care labelling and country of origin labelling;
 - (vi) inventory which is placed on consignment or is held on consignment from another Person;
 - (vii) inventory which has not been paid for, is identifiable as inventory delivered within the previous 30 days, is in the same state as it was on delivery, and is not subject to a *bona fide* agreement for sale to an arm's length purchaser in the ordinary course of business;
 - (viii) inventory which is not covered by the insurance coverage required under this Agreement; and
 - (ix) inventory which is subject to a distribution agreement, license or similar agreement with a third party which could restrict the Lender from exercising its rights and remedies in respect of such inventory and in respect of which the Lender does not hold an agreement duly executed by such third party in form and substance satisfactory to the Lender under which the third party consents to the Lender exercising its rights and remedies in respect of such inventory.
- (61) **"Environmental Activity"** means any past, present or future activity, event or circumstance in respect of a Contaminant, including, without limitation, its

storage, use, holding, collection, purchase, accumulation, assessment, generation, manufacture, construction, processing, treatment, stabilization, disposition, handling or transportation or its Release into the natural environment including the movement through or in the air, soil, subsoil, surface water or groundwater.

- (62) **"Environmental Laws"** means any and all federal, provincial, municipal, local and foreign statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, licences, agreements or other governmental restrictions having the force of law relating to the environment, occupational health and safety, health protection or any Environmental Activity.
- (63) **"Equity Securities"** means, with respect to any Person, any and all shares, stock or units of, interests, participations or rights in, or other equivalents (however designated and whether voting and non-voting) of, such Person's capital, whether outstanding on the date hereof or issued after the date hereof, including any interest in a partnership, limited partnership or other similar Person and any beneficial interest in a trust, and any and all rights, warrants, debt securities, options or other rights exchangeable for or convertible into any of the foregoing.
- (64) **"Exchange Rate Swap Agreement"** means any contract for sale, purchase, or exchange or for future delivery of foreign currency (whether or not the subject currency is to be delivered or exchanged), hedging contract, forward contract, swap agreement, futures contract, or other foreign exchange protection agreement or option with respect to any such transaction (or any combination of the foregoing or any derivative thereof), designed to hedge against fluctuations in foreign exchange rates.
- (65) **"Existing Indebtedness"** means the meaning set out in Section 2.01.
- (66) **"Existing Security Documents"** has the meaning set out in Section 2.03.
- (67) **"Federal Funds Effective Rate"** means, for any day, an annual interest rate equal to the weighted average of the rates on overnight United States federal funds transactions with members of the Federal Reserve System arranged by United States federal funds brokers, as published for such day (or, if such day is not a business day in New York, for the next preceding business day in New York) by the Federal Reserve Bank of New York, or for any such business day on which such rate is not so published, the arithmetic average of the quotations for such day on such transactions received by the Lender from three United States federal funds brokers of recognized standing selected by it.
- (68) **"Fiscal Quarter"** means each three month period of any Obligor, which currently ends on the last Saturday of each of April, July, October and January.
- (69) **"Fiscal Year"** of the Obligors means the 12 month period ending on the last Saturday of January.

(70) **"Fixed Charge Coverage Ratio"** means, for any period, in respect of the Obligors on a combined basis, the ratio calculated by dividing:

(i) the sum of:

(A) EBITDA;

(B) occupancy costs;

(C) accrued management bonuses reflected on the Obligors' income statement;

by

(ii) the sum of, without duplication:

(A) occupancy costs;

(B) Interest Expense;

(C) all payments made on all Capital Leases;

(D) scheduled principal payments on Funded Debt;

(E) all payments made on any Subordinated Debt;

(F) all Corporate Distributions; and

(G) the amount of taxes payable in cash.

(71) **"Funded Debt"** means, without duplication, at any time the aggregate Indebtedness for borrowed money incurred by the Obligors including, without limitation, Indebtedness for borrowed money evidenced by notes, bonds, debentures, documents, instruments, agreements, or electronic or manual accounting entries, the Capitalized Lease Obligations, the Outstanding Obligations and any Guarantees of such Indebtedness of other Persons less all cash which any Obligor has on deposit with Canadian Imperial Bank of Commerce which is subject to the Security.

(72) **"GAAP"** means those accounting principles which are recognized as being generally accepted in Canada as set out in the handbook published by the Canadian Institute of Chartered Accountants (subject to Accounting Changes) in effect in Canada from time to time and applied in a consistent manner from period to period except that for the purposes of Section 9.02 hereof, generally accepted accounting principles shall be determined on the basis of such principles in effect on the date hereof and consistent with those used in the preparation of the most recent audited financial statements delivered to the Lender prior to the date hereof. In the event the Borrowers are required to adopt any Accounting Changes

then each reference to "GAAP" in this Agreement shall be deemed to refer to GAAP as modified or replaced by such Accounting Changes which come into effect from time to time subject to Section 1.02.

- (73) **"Governmental Authority"** means any nation, parliament, legislature, congress, senate, government, any province, state, municipality, local or other political subdivision thereof and any agency, instrumentality or other rule making entity thereof exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.
- (74) **"Guarantee"** means, with respect to a Person, any absolute or contingent obligation of that Person under any guarantee, agreement, endorsement (other than for collection or deposit in the ordinary course of business), discount with recourse or other obligation to pay, purchase, repurchase or otherwise be or become liable or obligated upon or in respect of any Indebtedness of any other Person, and including any absolute or contingent obligations to:
- (i) advance or supply funds for the payment or purchase of any Indebtedness of any other Person,
 - (ii) purchase, sell or lease (as lessor or lessor) any property, assets, goods, services, materials or supplies primarily for the purpose of enabling any other Person to make payment of Indebtedness or to assure the holder thereof against loss, or
 - (iii) indemnify or hold harmless any other Person from or against any losses, liabilities or damages, in circumstances intended to enable such other Person to incur or pay any Indebtedness or to comply with any agreement relating thereto or otherwise to assure or protect creditors against loss in respect of such Indebtedness.

Each Guarantee shall be deemed to be in an amount equal to the amount of the Indebtedness in respect of which the Guarantee is given, unless the Guarantee is limited to a determinable amount in which case the amount of the Guarantee shall be deemed to be the lesser of the amount of the Indebtedness in respect of which the Guarantee is given and such determinable amount.

- (75) **"Guarantors"** means, collectively:
- (i) Benix, Bombay and Bowring;
 - (ii) any other present or future, direct or indirect, Subsidiary of any Obligor that is required to deliver Security as contemplated under this Agreement; and
 - (iii) any other Person that, with the prior written consent of the Lender, at any time in the future guarantees any of the Outstanding Obligations pursuant

to a Guarantee or other guarantee agreement and grants security in support thereof, all in form and substance satisfactory to the Lender,

and "**Guarantor**" means any one of them as the context requires

(76) "**Hedging Agreements**" means:

- (i) any Interest Rate Swap Agreement, or
- (ii) any Exchange Rate Swap Agreement.

Each Hedging Agreement between the Borrower and the Lender (or any of its Affiliates) shall be a Loan Document.

(77) "**Hedging Obligations**" means all indebtedness, liabilities and obligations of any Obligor to the Lender or any of its Affiliates, as applicable, in respect of any Hedging Agreement entered into from time to time with the Lender.

(78) "**Indebtedness**" of a Person means, without duplication, the aggregate of:

- (i) all debts, liabilities and obligations, direct, indirect, liquidated, unliquidated, contingent and other, including principal, interest, charges and fees, which in accordance with GAAP would be classified upon the Person's balance sheet as liabilities including, without limitation, all Capitalized Lease Obligations and all obligations under conditional sale or other title retention agreements relating to property acquired by such person;
- (ii) all obligations secured by any Security Interest, including principal, interest, charges and fees, existing on property owned or acquired by the Person subject to such Security Interest whether or not the Person has assumed or otherwise become liable for the payment of such obligations; and
- (iii) all liabilities of such Person under any Guarantee of Indebtedness granted by such Person,

provided, however, that "Indebtedness" shall not include any trade payables and other accrued current liabilities incurred in the ordinary course of business and in accordance with customary commercial terms.

(79) "**Indemnities**" means, collectively, the Lender and its officers, directors, employees, agents, representatives and counsel;

(80) "**Intangible Assets**" means the following assets now or hereafter owned or acquired by the Obligors:

- (i) all Intellectual Property;

- (ii) all Capitalized Expenses;
 - (iii) all Non-Arm's Length Advances; and
 - (iv) all goodwill.
- (81) **"Intellectual Property"** means all intellectual and industrial property including, without limitation, all patents, industrial designs, copyrights, trademarks, trade names, trade secrets, computer software and options and rights to use any of the foregoing and, when the context permits, all registrations and applications that have been made or shall be made or filed in any office in any jurisdiction in respect of the foregoing, and all reissues, extensions and renewals thereof; provided, however, that **"Intellectual Property"** shall not include Purchased Software.
- (82) **"Interest Expense"** means, for any Person and for any period, the aggregate amount determined in accordance with GAAP of interest and other financing charges in respect of Indebtedness and all but the principal component of expenses in respect of Capitalized Lease Obligations paid, accrued or scheduled to be paid or accrued by such Person during such period. For the purposes of this definition, interest expense on Capitalized Lease Obligations shall be calculated at the interest rate specified in the relevant leases, or if no such rate is specified therein, an interest rate reasonably determined in accordance with GAAP.
- (83) **"Interest Payment Date"** means, in respect of Prime Rate Loans and US Base Rate Loans, the last Business Day of each calendar month.
- (84) **"Interest Rate Swap Agreement"** means any rate swap, rate cap, rate floor, rate collar, forward rate agreement, futures or other rate protection agreement or option with respect to any such transaction (or any combination of the foregoing, or any derivative thereof), designed to hedge against fluctuations in interest rates.
- (85) **"L/C Acceptance"** means an outstanding bill of exchange drawn by the beneficiary of a Documentary L/C and which the Lender has accepted and is therefore obligated to pay at maturity.
- (86) **"L/C Facility"** means the Letter of Credit Facility made available to the Borrowers under Section 3.01(4).
- (87) **"L/C Facility Limit"** means \$10,000,000 as may be adjusted pursuant to Section 3.02(6).
- (88) **"Lender"** means Canadian Imperial Bank of Commerce and its successors and assigns.
- (89) **"Letters of Credit"** means, collectively, (i) an L/C Acceptance, (ii) a Documentary L/C, or (iii) a Standby L/C, and **"Letter of Credit"** means any one of them as the context may require.

- (90) **"Letter of Credit Agreement"** means a Letter of Credit application, indemnity, service agreement, license agreement, electronic banking agreement or such other document as the Lender may reasonably require from time to time from the applicable Borrower or other Persons when asked to issue a Letter of Credit.
- (91) **"Letter of Credit Fee"** means, with respect to any Letter of Credit, the fee set out in Section 6.04.
- (92) **"Loan Documents"** means this Agreement, the Security and any other document, agreement or certificate executed in connection herewith, and when used in relation to any Person, **"Loan Documents"** shall mean and refer to the Loan Documents executed and delivered by such Person.
- (93) **"Material Adverse Effect"** means a material adverse effect on: (i) the business, assets, operations, prospects, or financial or other condition of the Obligor taken as a whole, (ii) the Obligor's collective ability to pay or perform the Outstanding Obligations in accordance with the terms hereof, or (iii) the validity or enforceability of any of the Loan Documents or the priority of the Lender's Security Interest created thereby or the rights and remedies of the Lender thereunder.
- (94) **"Material Contract"** means any right, interest, agreement, arrangement or understanding entered into by any Obligor, whether written or oral, which relates to, is necessary to or otherwise materially affects the business, operations, assets and condition, financial or otherwise, of any Obligor.
- (95) **"Non-Arm's Length Advances"** means any loans, advances or other funds advanced by any Obligor to any Person who does not deal at arm's length with that Obligor, and who is not any of the other Obligor.
- (96) **"Obligor"** means, collectively, the Borrowers and the Guarantors; and **"Obligor"** means any one of them as the context requires.
- (97) **"Operating Facility"** means the revolving operating credit facility made available to the Borrowers under Section 3.01(1).
- (98) **"Operating Facility Limit"** means \$21,500,000 as may be adjusted pursuant to Section 3.02(6).
- (99) **"Original Credit Agreements"** means, collectively, the Benix Credit Agreement, the Bombay Credit Agreement and the Bowring Credit Agreement, and **"Original Credit Agreement"** means any one of them as the context may require.
- (100) **"Outstanding Borrowings"** means, at the time of determination, the aggregate of (i) the outstanding principal amount of all Prime Rate Loans, US Base Rate Loans and Bankers' Acceptances, and (ii) the face amount of all outstanding Letters of Credit.

- (101) **"Outstanding Benix Instalment Loans"** means the aggregate of the outstanding principal amount of all Prime Rate Loans advanced under the Benix Instalment Facility.
- (102) **"Outstanding Bombay Instalment Loans"** means the aggregate of (i) the outstanding principal amount of all Prime Rate Loans advanced under the Bombay Instalment Facility, and (ii) the face amount of all outstanding Bankers' Acceptances accepted under the Bombay Instalment Facility.
- (103) **"Outstanding Obligations"** means the aggregate of: (i) all Outstanding Borrowings, (ii) all Hedging Obligations, (iii) all Services Obligations, (iv) all unpaid interest and fees thereon as herein provided, and (v) all other indebtedness, liabilities and obligations (including, without limitation, under any indemnities) and all other fees, charges and expenses required to be paid by the Obligors to the Lender hereunder or pursuant to the Security or pursuant to any other written agreements now or hereafter entered into between any of the Obligors and the Lender.
- (104) **"Participant"** has the meaning set out in Section 13.12.
- (105) **"Permitted Asset Sale"** means a sale, transfer, lease, contribution or other conveyance by any Obligor of any asset, real or personal, which satisfy any of the following conditions:
 - (i) such sale, transfer, lease, contribution or conveyance is in the ordinary course of its business (for greater certainty, including the sale of inventory in the ordinary course of business);
 - (ii) the net proceeds from any such sale, transfer, lease, contribution or conveyance are applied to acquire replacements of any assets which are the subject of such sale, transfer, lease, contribution or conveyance;
 - (iii) such sale, transfer, lease, contribution or conveyance involves the sale of obsolete or outdated equipment;
 - (iv) such sale, transfer, lease, contribution or conveyance has been consented to by the Lender in writing; or
 - (v) such sale, transfer, lease, contribution or conveyance forms part of the Annual Financial Forecast submitted for review by and approved by the Lender with reasonable prior notice, where such sale, transfer, lease, contribution or conveyance is made on substantially the same terms as set out in that plan.
- (106) **"Permitted Capital Expenditures"** means Capital Expenditures for the Obligors, on a combined basis, not exceeding \$2,500,000 in aggregate for each Fiscal Year of the Obligors.

(107) **"Permitted Encumbrances"**, in respect of the Obligors, means:

- (i) inchoate or statutory liens or trust claims for taxes, assessments and other governmental charges or levies which are not delinquent or the validity of which are currently being contested in good faith by appropriate proceedings, provided that there shall have been set aside a reserve to the extent required by GAAP in an amount which is reasonably adequate with respect thereto;
- (ii) the right reserved to, or vested in, any Governmental Authority by the terms of any lease, license, franchise, grant, or permit acquired by any of the Obligors, or by any statutory provision, to terminate any such lease, license, franchise, grant or permit, or to require annual or periodic payments as a condition of the continuance thereof;
- (iii) inchoate or statutory liens of contractors, subcontractors, mechanics, suppliers, material men and others in respect of construction, maintenance, repair or operation of assets or properties, or other like possessory liens and public utility liens provided the same are not registered as encumbrances against the title to any real or personal property of any of the Obligors;
- (iv) security given by any of the Obligors to a public utility or other municipality or governmental or other public authority when required by such utility or municipality or other authority in connection with the operations of any of the Obligors in the ordinary course of business;
- (v) title defects which are of a minor nature and in the aggregate will not materially impair the value or the use of property for the purposes for which it is held;
- (vi) the reservations, limitations, provisos and conditions, if any, expressed in any original grants from the Crown;
- (vii) the Security;
- (viii) Security Interests securing Purchase Money Obligations not exceeding 1,000,000 at any time in the aggregate, on a non-cumulative basis, for the Obligors, on a combined basis, provided the Security Interest charges only the asset subject of the Purchase Money Obligations and no other asset. For greater clarity, Purchase Money Obligations shall not include obligations under equipment leases containing an option to purchase the leased equipment at the end of the term of such lease.
- (ix) Security Interests existing on the date hereof and identified in Schedule "M" attached to this Agreement and any extensions or renewals thereof so long as the principal amount secured by such Security Interest is no greater than the outstanding principal amount immediately prior to such

extension or renewal and such renewed or extended Lien only secures the same property and assets; and

- (x) Security Interests, other than those described in this Section, the existence of which have been disclosed in writing to the Lender and consented to by the Lender in writing.

Provided, however, that the designation of an encumbrance as a "**Permitted Encumbrance**" is not, and shall not be deemed to be, an acknowledgment by the Lender that the encumbrance shall have priority over the claims of the Lender against any one or more of the Obligors or their respective assets.

(108) "**Permitted Indebtedness**" means the following Indebtedness of the Obligors:

- (i) the Outstanding Obligations;
- (ii) Capitalized Lease Obligations and Purchase Money Obligations incurred in compliance with the terms hereof;
- (iii) Indebtedness to any shareholder of any Obligor provided that such Indebtedness is and remains unsecured at all times; and
- (iv) Indebtedness to any Postponing Shareholders.

(109) "**Person**" includes an individual, a partnership, a joint venture, a trust, an unincorporated organization, a company, a corporation, an association, a government or any department or agency thereof and any other incorporated or unincorporated entity.

(110) "**Postponing Shareholders**" means any shareholder of any Borrower, and any affiliate of any such Person, or other Person that has made a secured loan to a Borrower not dealing at arm's length with such Borrower including, without limitation, those Persons set out in Schedule "N" to this Agreement, and who has executed and delivered a subordination and postponement of claim in favour of the Lender in accordance with Section 10.02(5).

(111) "**Prime Rate**" means for any day, the fluctuating rate of interest per annum (based on a 365 day or 366 day year, as applicable) established and reported by the Lender from time to time as its reference rate of interest for the determination of interest rates that the Lender charges to customers of varying degrees of credit worthiness in Canada for Canadian Dollar loans made by it in Canada and which it designates as its prime rate; any change in such rate to be effective automatically on the date such change is established by the Lender without the necessity of any notice being given to the Borrower.

(112) "**Prime Rate Loans**" means loans in Canadian Dollars made by the Lender to the Borrowers on which the interest rate is calculated with reference to the Prime Rate, including, without limitation, Canadian Dollar overdrafts.

- (113) **"Priority Payables"** means, with respect to any Person at any time, the aggregate amount of such debts, liabilities and obligations payable by such Person to any other Person or any Governmental Authority which in a bankruptcy, receivership, winding-up, liquidation or like proceeding would or could potentially rank in priority to the Outstanding Borrowings including, without limitation, employment insurance premiums, Canada Pension Plan contributions, unpaid wages, salaries and commissions, unremitted source deductions for vacation pay, arrears of rent, amounts owed in respect of worker's compensation, withholding tax liabilities, goods and services tax, all sales and consumption taxes, customs duties, amounts owed to unpaid vendors who have a right of repossession and amounts to creditors which may claim priority by statute or under a Purchase Money Obligation.
- (114) **"Property"** means any moveable or immovable or personal or real property owned, leased, occupied or under the charge, management or control of any Obligor.
- (115) **"Purchase Agreement"** means an asset purchase agreement dated as of October 15, 2007 among the Applicant, Benix and Bombay.
- (116) **"Purchase Money Obligations"** means: (i) the outstanding balance of the purchase price of real and/or personal property, title to which has been acquired or will be acquired upon payment of such purchase price, (ii) Indebtedness to non-vendor third parties incurred to finance the acquisition of such real and/or personal property; or (iii) any refinancing of such Indebtedness or outstanding balance.
- (117) **"Purchase Transaction"** means the transaction, whereby effective as of February 5, 2008 and pursuant to the Approval and Vesting Order and the terms of the Purchase Agreement, Bombay purchases from the Applicant the Sale Assets (as such term is defined in the Purchase Agreement).
- (118) **"Purchased Software"** means all non-custom, off-the-shelf software purchased by the Obligors.
- (119) **"Release"** includes discharge, spray, inject, inoculate, abandon, deposit, spill, leak, seep, pour, emit, empty, throw, dump, place, escape, leach, disperse, migrate and exhaust, and when used as a noun (as applicable) has a similar meaning.
- (120) **"Relevant Assets"** means any assets of the Obligors other than:
- (i) inventory sold in the ordinary course of business;
 - (ii) property, plant or equipment, the proceeds of which are used to acquire replacements thereof or improvements or additions to remaining, worn-out or obsolete assets; and
 - (iii) assets sold and leased back in accordance with this Agreement.

- (121) **"Security"** means the security and agreements described in Article 10 and any additional security issued from time to time by any Person in support of the liabilities and obligations hereunder; as amended, restated or replaced from time to time.
- (122) **"Security Interest"** includes a mortgage, charge, floating charge, pledge, hypothec, assignment, lien, interest claim, encumbrance, conditional sale agreement or other title retention agreement, subordination trust or other security interest or arrangement of any kind or character intended to create a security interest in substance regardless of whether the Person creating the interest retains an equity of redemption, and any agreement to provide or enter into at any time or on the happening of any event such a security interest or arrangement.
- (123) **"Services Agreements"** means all agreements made from time to time between any Obligor and the Lender (including any of its Affiliates) in respect of, operation of accounts, centralized cash control or other cash management, payroll, deposit or payment services, credit cards and any other banking services. Each Services Agreement shall be a Loan Document.
- (124) **"Services Obligations"** means all debts, liabilities and obligations of any Obligor to the Lender or any of its Affiliates in respect of any Services Agreement entered into from time to time with the Lender and, for greater certainty, includes all outstanding indebtedness, liabilities and obligations of Benix under the VISA Facility.
- (125) **"Shareholders' Equity"** means the amount which would, in accordance with GAAP, then be included as shareholders' equity on a consolidated balance sheet of the Borrower.
- (126) **"Stamping Fee"** has the meaning given to such term in Section 6.03.
- (127) **"Standby L/C"** means a standby letter of credit issued by the Lender at the request of any Borrower pursuant to this Agreement to a designated third party (the **"Beneficiary"**) which is issued to secure a payment obligation of a Borrower to a Beneficiary and treated by the Lender as a contingent obligation which is triggered upon a Borrower's failure to perform under the terms of a contract with a Beneficiary.
- (128) **"Subordinated Debt"** of any of the Obligors means, at any time, Indebtedness of that Obligor (i) the payment of which (whether on account of principal, interest or other amounts owing thereunder) is validly and fully postponed and subordinated in right of payment and collection to the repayment in full of all Outstanding Obligations; and (ii) all security, if any, held for such Indebtedness has been fully subordinated to the Security, in each case, to the satisfaction of the Lender or such Indebtedness is unsecured.

- (129) "**Subsidiary**" means a body corporate which is a subsidiary of another body corporate within the meaning of that term as used in the *Business Corporations Act* (Ontario) as amended from time to time.
- (130) "**Tangible Net Worth**" of the Obligors means, at any time, the aggregate of:
- (i) all Shareholders' Equity; and
 - (ii) all Subordinated Debt (for greater certainty, including Indebtedness owing by the Obligors to their respective shareholders which has been validly and fully postponed and subordinated in right of payment and collection to the repayment in full of all Outstanding Obligations)
- less:
- (iii) the amount of all Intangible Assets
- all as or would be shown on a balance sheet of the Obligors prepared in accordance with GAAP.
- (131) "**Tax**" and "**Taxes**" include all present and future taxes, levies, imposts, stamp taxes, duties, charges to tax, fees, deductions, withholdings and any restrictions or conditions resulting in a charge to tax and all penalties, interest and other payments on or in respect thereof.
- (132) "**Tax Returns**" means all reports, estimates, information statements and returns relating to, or required to be filed in connection with, any Taxes pursuant to the statutes, laws, rules and regulations of any federal, provincial, municipal, city or foreign governmental taxing authority and "**Tax Return**" shall mean any one thereof.
- (133) "**Total Liabilities**" means, at any time, the total of all amounts that would be included as liabilities on a combined basis of the Obligors in accordance with GAAP.
- (134) "**Total Liabilities to Tangible Net Worth Ratio**" means, for any period, on a combined basis, the ratio calculated by dividing (i) Total Liabilities of the Obligors by (ii) the Tangible Net Worth of the Obligors.
- (135) "**US Base Rate**" means the fluctuating interest rate per annum, expressed on the basis of a year of 365 or 366 days, as applicable, which is equal at all times to the greater of:
- (i) the rate of interest most recently announced by the Lender from time to time as its base rate of interest it will charge for commercial loans in US Dollars to Canadian customers; and
 - (ii) the Federal Funds Effective Rate plus 1.0%.

- (136) **"US Base Rate Loan"** means a loan in US Dollars made by the Lender to the Borrowers on which interest is calculated with reference to the US Base Rate.
- (137) **"US Dollars"** and **"US \$"** means lawful money of the United States of America.
- (138) **"US Dollar Equivalent Amount"** means, on any date, the equivalent amount in US Dollars of an amount in Canadian Dollars after giving effect to a conversion of such amount of Canadian Dollars to US Dollars at the spot buying rate quoted for wholesale transactions by the Lender at or as close as possible to 12:00 noon (Toronto time) on that date.
- (139) **"VISA Facility"** means the corporate VISA facility made available to Benix under Section 3.01(5).
- (140) **"written"** and **"in writing"** shall include printing, typewriting or any electronic means of communication capable of being visibly reproduced at the point of reception including telecopy, facsimile and electronic mail.

Section 1.02 Audited Financial Statements

All references in this Agreement to audited financial statements of a corporation, including the balance sheet and related statements of income, retained earnings and changes in financial position, mean financial statements prepared by the corporation in accordance with GAAP together with an auditor's opinion that the statements fairly present the financial position of the corporation and the results of its operations for the Fiscal Year reported on in accordance with GAAP.

In the event that any Accounting Change shall occur and such change has an effect on the financial ratios and financial covenants contained in this Agreement, the Borrowers and the Lender shall enter into negotiations in order to revise, if appropriate, the financial ratios and financial covenants so as to reflect equitably such Accounting Changes with the desired result that the criteria for evaluating the Borrowers' financial condition shall be substantially the same after such Accounting Changes as if such Accounting Changes had not been made. Until such time as such an amendment is effected with the approval of the Lender acting reasonably, the financial ratios and financial covenants shall continue to be calculated or construed as if such Accounting Changes had not occurred. In the event such negotiations are not successful, then such financial ratios and financial covenants shall be determined in accordance with GAAP in effect as at the date of this Agreement. In such circumstances, the annual audited financial statements of the Borrowers shall be prepared in accordance with the Accounting Changes in effect on the date of such financial statements, and the Borrowers shall concurrently deliver to the Lender a reconciliation, in form and substance satisfactory to the Lender, showing all adjustments made to such financial statements in order to determine compliance with such financial ratios and financial covenants on the basis of GAAP in effect on the date of this Agreement.

Section 1.03 Canadian Currency

Unless otherwise specified herein, all amounts and values referred to in this Agreement shall be calculated in lawful money of Canada. Notwithstanding the foregoing, all payments made hereunder shall be made in the currency in respect of which the obligation requiring such payment arose.

Section 1.04 Interest Act

Unless otherwise specified, all annual rates of interest referred to herein are based on a calendar year of 365 or 366 days, as the case may be. Where a rate of interest hereunder is calculated on the basis of a year (the "Deemed Year") which contains fewer days than the actual number of days in the calendar year of calculation, such rate of interest shall be expressed as a yearly rate for the purposes of the *Interest Act* (Canada) by multiplying such rate of interest by the actual number of days in the calendar year of calculation and dividing it by the number of days in the Deemed Year.

Section 1.05 Change in Rates

Any change in the Prime Rate or US Base Rate is to be effective on the date such change is established whether or not the applicable Borrower or Borrowers receives notice thereof.

Section 1.06 Headings and Table of Contents

The division of this Agreement into Articles and Sections and the provision of a Table of Contents and the insertion of headings are for convenience of reference only and shall not affect the meaning or interpretation of this Agreement.

Section 1.07 References

All references to Sections, Subsections, Paragraphs, Articles and Schedules are to Sections, Subsections, Paragraphs and Articles of and Schedules to this Agreement. The words "hereto", "herein", "hereof", "hereunder", "this Agreement" and similar expressions mean and refer to this Agreement.

Section 1.08 Statutory References

Any reference in this Agreement to any act or statute, or to any section of any definition in any act or statute, will be deemed to be a reference to such act or statute or section or definition as amended or re-enacted from time to time.

Section 1.09 Number and Gender and Expressions

Where the context so requires, words importing the singular include the plural and vice versa, and words importing gender include the masculine, feminine and neuter genders. Where any term or expression is defined in this Agreement, derivations of such terms or expressions will have a corresponding meaning.

Section 1.10 Maximum Interest Rate

- (1) In the event that any provision of this Agreement would oblige any of the Borrowers to make any payment of interest or any other payment which is construed by a court of competent jurisdiction to be interest in an amount or calculated at a rate which would be prohibited by law or would result in a receipt by the Lender of interest at a criminal rate (as such terms are construed under the *Criminal Code* (Canada)), then notwithstanding such provision, such amount or rate shall be deemed to have been adjusted *nunc pro tunc* to the maximum amount or rate of interest, as the case may be, as would not be so prohibited by law or so result in a receipt by the Lender of interest at a criminal rate, such adjustment to be effected, to the extent necessary, as follows:
 - (i) firstly, by reducing the amount or rate of interest required to be paid under Section 6.01 of this Agreement; and
 - (ii) thereafter, by reducing any fees, commissions, premiums and other amounts which would constitute interest for the purposes of Section 347 of the *Criminal Code* (Canada):
- (2) If, notwithstanding the provisions of Section 1.10(1) of this Section and after giving effect to all adjustments contemplated thereby, the Lender shall have received an amount in excess of the maximum permitted by such clause, then such excess shall be applied by the Lender to the reduction of the principal balance of the Outstanding Borrowings and not to the payment of interest or if such excessive interest exceeds such principal balance, such excess shall be refunded to the applicable Borrower; and
- (3) Any amount or rate of interest referred to in this Section shall be determined in accordance with generally accepted actuarial practices and principles at an effective annual rate of interest over the term of this Agreement on the assumption that any charges, fees or expenses that fall within the meaning of "interest" (as defined in the *Criminal Code* (Canada)) shall, if they relate to a specific period of time, be prorated over that period of time and otherwise be prorated over the terms of this Agreement and, in the event of dispute, a certificate of a Fellow of the Canadian Institute of Actuaries appointed by the Lender shall be conclusive for the purposes of such determination.

Section 1.11 Schedules

The Schedules forming part of this Agreement are as follows:

- | | | |
|--------------|---|----------------------------|
| Schedule "A" | - | Borrowing Notice |
| Schedule "B" | - | Conversion Notice |
| Schedule "C" | - | Borrowing Base Certificate |

| | |
|--------------|---|
| Schedule "D" | - Compliance Certificate |
| Schedule "E" | - Existing Indebtedness |
| Schedule "F" | - Existing Security Documents |
| Schedule "G" | - Litigation |
| Schedule "H" | - Jurisdictions in which Assets are Located |
| Schedule "I" | - Owned Properties |
| Schedule "J" | - Leased Properties |
| Schedule "K" | - Other Locations |
| Schedule "L" | - Intellectual Property and Software |
| Schedule "M" | - Permitted Encumbrances |
| Schedule "N" | - Shareholder Loans |
| Schedule "O" | - Pension Plans |
| Schedule "P" | - Material Contracts |

ARTICLE 2 AMENDMENT, RESTATEMENT AND CONSOLIDATION OF EXISTING INDEBTEDNESS

Section 2.01 Existing Indebtedness

Each Borrower and the Lender acknowledges that the amount of the existing indebtedness under their respective Original Credit Agreement as at the date of this Agreement is the aggregate amount set forth in Schedule "E" attached to this Agreement (collectively, the "Existing Indebtedness") and that the terms and conditions of the Existing Indebtedness shall be amended and restated in accordance with the terms hereof.

Section 2.02 Existing Credit Facilities

Effective as of the date of this Agreement, each Original Credit Agreement and the rights, obligations and liabilities of each Borrower under its respective Original Credit Agreement to the Lender shall be amended and restated in accordance with the provisions of this Agreement and this Agreement shall replace and supersede the Original Credit Agreements. All amounts owing or outstanding under each Original Credit Agreement by each respective Borrower shall be deemed to be Borrowings by all the Borrowers under this Agreement.

Section 2.03 Existing Security Documents

Each Borrower, each Guarantor and the Lender acknowledge and agree that all Security delivered to the Lender pursuant to, in connection with, and as contemplated under, each Original Credit Agreement including, without limitation, the security documents listed in Schedule "F" (collectively, the "Existing Security Documents"), shall continue in full force and effect, unamended except as provided herein, and the security constituted thereby shall stand as general and continuing collateral security for the payment and performance of the Outstanding Obligations.

Section 2.04 Guarantees

Each of the Guarantors:

- (1) ratifies its guarantee of all or part of the Outstanding Obligations and acknowledges and agrees that:
 - (i) its guarantee and any Security delivered in connection therewith shall remain binding on and be enforceable against it notwithstanding the execution, delivery and performance of this Agreement by the Borrowers and the Lender and shall be a guarantee of all or part of the Outstanding Obligations in accordance with the terms of its respective guarantee;
 - (ii) the Lender shall not be estopped prior to any realization by the Lender on any Property pursuant to the terms of this Agreement or the Security, from taking any action necessary to preserve its rights against any of the Guarantors or to preserve its rights against a Guarantor after such realization by the Lender; and
 - (iii) its guarantee shall not be revoked or terminated and each Guarantor shall not be released from its liability thereunder unless and until the Outstanding Obligations are satisfied in full; and
- (2) agrees to do, execute, acknowledge or deliver or cause to be done, executed, acknowledged or delivered any and all such acts, documents, agreements, deeds, assurances, information and other matters and things upon the request of the Lender as may be reasonably necessary or desirable to give effect to the provisions of this Agreement and the other Loan Documents.

ARTICLE 3 CREDIT FACILITIES

Section 3.01 Credit Facilities

Subject to the provisions of this Agreement, the Lender agrees to make available the following credit facilities:

- (1) a demand revolving operating credit facility (the "Operating Facility") available to the Borrowers by way of overdrafts, Prime Rate Loans, US Base Rate Loans, L/C Acceptances and Standby L/Cs.
- (2) a non-revolving reducing demand instalment credit facility (the "Benix Instalment Facility") available to Benix by way of Prime Rate Loans.
- (3) a non-revolving reducing demand instalment credit facility (the "Bombay Instalment Facility") available to Bombay by way of Prime Rate Loans and Bankers' Acceptances.
- (4) a demand letter of credit facility (the "L/C Facility") available to the Borrowers by way of Documentary L/Cs in Canadian Dollars and US Dollars only.
- (5) A corporate VISA demand facility available to Benix (the "VISA Facility") on the terms of the Lender's standard VISA documentation, whereby all amounts owing are to be paid monthly upon receipt of the VISA statements.

Section 3.02 Maximum Borrowings

- (1) Outstanding Borrowings under the Operating Facility plus, without duplication, all L/C Acceptances plus, without duplication, all Standby L/Cs plus, without duplication, all outstanding sight letters of credit issued under the Operating Facility in respect of goods which are in transit, shall at no time exceed the lesser of: (i) the Operating Facility Limit, then in effect, and (ii) the Borrowing Base reflected on the most recently provided Borrowing Base Certificate; provided that Section 3.02(5) is complied with.
- (2) Outstanding Borrowings under the Benix Instalment Facility shall at no time exceed the Benix Instalment Facility Limit, as such amount may be reduced in accordance with this Agreement.
- (3) Outstanding Borrowings under the Bombay Instalment Facility shall at no time exceed the Bombay Instalment Facility Limit, as such amount may be reduced in accordance with this Agreement.
- (4) Outstanding Borrowings under the L/C Facility shall at no time exceed the L/C Facility Limit, then in effect, as such amount may be reduced in accordance with this Agreement; provided that Section 3.02(5) is complied with.
- (5) Outstanding Borrowings under: (i) the Operating Facility plus, without duplication, all L/C Acceptances plus, without duplication, all Standby L/Cs plus, without duplication, all outstanding sight letters of credit issued under the Operating Facility in respect of goods which are in transit, and (ii) the L/C Facility, in aggregate, shall at no time exceed the Combined Operating L/C Facility Limit.

- (6) Upon at least two (2) Business Days prior written notice to the Lender, the Borrowers may initially decrease the L/C Facility Limit by an amount not greater than \$2,500,000 (the "Transferable Limit Amount") and correspondingly increase the Operating Facility Limit by such Transferable Limit Amount. Thereafter, and upon at least two (2) Business Days prior written notice to the Lender, the Borrowers may increase or decrease, as applicable, the L/C Facility Limit and the Operating Facility by the Transferable Limit Amount. For greater certainty, the following conditions shall apply:
- (i) the L/C Facility Limit shall at no time be less than \$5,500,000;
 - (ii) the Operating Facility Limit shall at no time be greater than \$24,000,000;
 - (iii) Upon written notice being provided by the Lender to the Borrowers (such written notice being valid whether delivered pursuant to Section 13.01 or by email) in the form as prescribed in Section 3 of Schedule "C" confirming the adjustment of the L/C Facility Limit and the Operating Facility Limit, each of the L/C Facility Limit and the Operating Facility Limit shall automatically be adjusted to reflect the applicable Transferable Limit Amount;
 - (iv) Outstanding Borrowings under the L/C Facility shall not exceed the new L/C Facility Limit (as adjusted by the applicable Transferable Limit Amount); and
 - (v) all other Credit Limits in this Agreement are at all times complied with.

Section 3.03 Revolving Feature of Operating Facility

Subject to the limitations in this Agreement, the Borrowers may increase or decrease Borrowings under the Operating Facility by borrowing, repaying and reborrowing Prime Rate Loans and US Base Rate Loans, or by the issue and expiry of L/C Acceptances and Standby L/Cs.

Section 3.04 Non-Revolving Feature of Benix Instalment Facility

Benix shall not be permitted to reborrow any payment made under or any required reduction in the Borrowings under the Benix Instalment Loan Facility.

Section 3.05 Non-Revolving Feature of Bombay Instalment Facility

Bombay shall not be permitted to reborrow any payment made under or any required reduction in the Borrowings under the Bombay Instalment Loan Facility.

Section 3.06 Revolving Feature of L/C Facility

Subject to the limitations in this Agreement, the Borrowers may increase or decrease Borrowings under the L/C Facility by the issue and expiry of Documentary L/Cs.

Section 3.07 Purposes of Credit Facilities

The Borrower shall use the proceeds of the Borrowings as follows:

- (1) Borrowings under the Operating Facility shall only be used to finance working capital and other general corporate purposes of the Borrowers.
- (2) Borrowings under the Benix Instalment Facility shall only be used by Benix to finance capital expenditures in the ordinary course of business.
- (3) Borrowings under the Bombay Instalment Facility shall only be used by Bombay to finance a portion of the Purchase Transaction.
- (4) Borrowings under the L/C Facility shall only be used for general corporate purposes of the Borrowers.
- (5) Borrowings under the VISA Facility shall only be used by Benix for corporate purposes including, purchasing supplies and funding miscellaneous business expenses incurred by employees of Benix.

Section 3.08 Restrictions on Borrowing

No Borrower shall request a Borrowing if the result thereof would create or cause a breach of any term, representation, warranty or covenant under this Agreement.

Section 3.09 Evidence of Indebtedness

- (1) The Lender shall maintain accounts and records evidencing the Obligations of the Borrowers to the Lender hereunder. The Lender's accounts and records shall constitute *prima facie* evidence of the Indebtedness of the Borrowers to the Lender hereunder in the absence of manifest error.
- (2) The Lender shall open and maintain on its books control accounts evidencing Borrowings advanced by the Lender hereunder and all other amounts owed by the Borrowers to the Lender hereunder.

Section 3.10 Illegality

If the introduction of or any change in any Applicable Law or in the interpretation or application thereof by any court or by any Governmental Authority charged with the administration thereof, makes it unlawful or prohibited for the Lender to make, to fund or to maintain its commitment or any portion thereof or to perform any of its obligations under this Agreement, the Lender may, by thirty (30) days written notice to the applicable Borrower or Borrowers (unless the provision of the Applicable Law requires earlier prepayment in which case the notice period shall be such shorter period as required to comply with the Applicable Law), terminate its obligations under this Agreement and in such event, the applicable Borrower or Borrowers shall prepay such Borrowings forthwith (or at the end of such period as the Lender in its discretion agrees), without notice or penalty (other than breakage costs), together with all accrued but unpaid interest and

fees as may be applicable to the date of payment, or the Lender may, by written notice to the applicable Borrower or Borrowers, convert such Borrowings forthwith into another basis of Borrowing available under this Agreement.

Section 3.11 Joint and Several Obligations of the Borrowers

The Borrowers acknowledge that at their specific request that the Operating Facility and the L/C Facility have been made available to all Borrowers, and that each individual Borrower's ability to drawdown the full amount available for Borrowings is not restricted. All covenants, agreements and obligations of the Borrowers contained in this Agreement relating to or in connection with the Operating Facility and the L/C Facility shall be joint and several covenants, agreements and obligations of the Borrowers as co-borrowers, and the Borrowers shall be jointly and severally liable for and obligated to repay all Outstanding Obligations under the Operating Facility and/or the L/C Facility, in each case without the necessity of restating the words "jointly and severally" or "joint and several" in respect thereof. Each Borrower waives all benefits of discussion and division among the Borrowers, and each Borrower acknowledges that the Lender shall have no obligation to pursue any other Obligor for all or any part of the Outstanding Obligations under the Operating Facility and/or the L/C Facility before it can recover all such Outstanding Obligations from it. Each Borrower acknowledges that it is fully responsible for all such Outstanding Obligations even though it may not have requested a single Borrowing and even though its co-borrowers may have fraudulently converted all Borrowings.

Section 3.12 Funding of Overdrafts

- (1) At any time that a Borrower would be entitled to obtain Prime Rate Loans and U.S. Base Rate Loans under the Operating Facility, the applicable Borrower shall be entitled to draw cheques on its Cdn. Dollar chequing account maintained from time to time with the Lender and its U.S. Dollar chequing account maintained from time to time with the Lender, in each case at the Branch of Account (or in such other accounts with the Lender or at such other branch of the Lender as may be agreed upon by the Lender and the Borrower from time to time). The debit balance from time to time in any such account shall be deemed to be a Prime Rate Loan or a U.S. Base Rate Loan, as applicable, outstanding to the applicable Borrower from the Lender under the Operating Facility. If at any time the applicable Borrower is a party to a centralized cash control, cash concentration or cash management arrangement with the Lender, the amount of any overdraft from time to time in the Cdn. Dollar or U.S. Dollar control account or concentration account of the applicable Borrower established pursuant to such arrangement (which for greater certainty may include one of the accounts identified above) shall also be deemed to be a Prime Rate Loan or US Base Rate Loan, as applicable, outstanding to the applicable Borrower.
- (2) The outstanding Cdn. Dollar Amount of all overdrafts at any time shall not exceed the amount, if any, by which the lesser of: (i) the Operating Facility Limit at such time exceeds the Canadian Dollar Equivalent Amount of all Outstanding Borrowings under the Operating Facility plus all L/C Acceptances plus all outstanding sight Letters of Credit in respect of goods which are in transit, and (ii)

the Borrowing Base reflected on the most recently provided Borrowing Base Certificate at such time exceeds the Canadian Dollar Equivalent Amount of all Outstanding Borrowings under the Operating Facility plus all L/C Acceptances plus all outstanding sight Letters of Credit in respect of goods which are in transit.

ARTICLE 4

PROCEDURES APPLICABLE TO BORROWINGS

Section 4.01 Borrowing Notice

Each Borrowing (other than a Borrowing by way of overdraft which requires no prior notice) of:

- (1) Prime Rate Loans or US Base Rate Loans shall be made on at least one (1) Business Day's prior notice;
- (2) Bankers' Acceptances shall be made on at least three (3) Business Days prior notice;

given not later than 10:00 a.m. (Toronto Time) by the applicable Borrower or Borrowers to the Lender. Each such Borrowing notice (a "**Borrowing Notice**") shall be in the form as attached as Schedule "A" to this Agreement and shall specify therein:

- (3) the requested date of such Borrowing;
- (4) the requested Credit Facility under which such Borrowing is being made; and
- (5) the aggregate amount and currency of such Borrowing.

Each Borrowing made by way of overdraft pursuant to the Operating Facility shall be deemed to be a Prime Rate Loan if drawn on the applicable Borrower's Canadian Dollar bank account, and deemed to be a US Base Rate Loan if drawn on the applicable Borrower's US Dollar bank account for all purposes of this Agreement.

Each Borrowing Notice shall be irrevocable and binding on each of the Borrowers. The Borrowers shall jointly and severally indemnify the Lender against any loss or expense incurred by the Lender as a result of any failure to fulfill on or before the date specified for such Borrowing the applicable conditions set forth in Section 7.01 and Section 7.02, including, without limitation, any loss or expense incurred by reason of the liquidation or re-employment of deposits or other funds acquired by the Lender to fund any loan to be made by the Lender as part of such Borrowing if such loan, as a result of such failure, is not made on such date.

Section 4.02 Conversion Notice

The Borrowers may convert in whole or in part one type of Borrowing under a Credit Facility into another type of Borrowing available under the same Credit Facility provided that:

- (1) a Borrower delivers to the Lender a Conversion Notice within the notice periods required for a new Borrowing of the type into which such Borrower wishes to convert;
- (2) after obtaining the converted Borrowing, the Borrowers will remain in compliance with the Credit Limits and Borrowing Base limitations set out in this Agreement;
- (3) if the Conversion will involve a change in currency, the applicable Borrower repays the existing Borrowing in the currency in which it was originally borrowed, and then borrows the proposed converted Borrowing in the new currency;
- (4) if the proposed converted Borrowing is in the form of Bankers' Acceptances, the provisions of Section 4.03 are complied with; and
- (5) if the existing Borrowing is in the form of Bankers' Acceptances, the Conversion is completed upon the maturity of the applicable Bankers' Acceptances.

Each Conversion Notice shall specify, with respect to the outstanding loans to which such Notice applies, the new type of Borrowing selected and the date on which such change is to be made.

Each Conversion Notice shall be irrevocable and binding upon the Borrowers.

Section 4.03 Bankers' Acceptances

- (1) When Bombay wishes to obtain a Borrowing by way of Bankers' Acceptances, including pursuant to a permitted Conversion to a Bankers' Acceptance, Bombay shall provide to the Lender a BA Notice or a Conversion Notice, as applicable within the time limits specified herein.
- (2) Bombay shall deliver to the Lender from time to time, a supply of drafts in the appropriate form for the Lender, executed on behalf of Bombay, but with the date, the face amount and the maturity thereof left blank. On the applicable Borrowing Date, Conversion Date, or BA Rollover Date, the Lender shall withdraw one or more pre-signed drafts from its inventory thereof and complete the same by inserting the applicable Borrowing Date, Conversion Date or BA Rollover Date, the face amount thereof, and the maturity date thereof (each in accordance with the applicable BA Notice, or Conversion Notice), shall accept such draft, shall discount same at the BA Rate, and shall remit the Discount Proceeds thereof to Bombay; provided that in the case of any BA Rollover or Conversion, such Discount Proceeds shall be adjusted to reflect the notional required repayment of the maturing Borrowing.

In addition, in order to facilitate availment of Borrowings by way of Bankers' Acceptances, Bombay hereby appoints the Lender as its attorney to sign and endorse on its behalf (in accordance with a Borrowing Notice relating to Bankers' Acceptances), in handwriting or by facsimile or mechanical signature as and when

deemed necessary by Bombay, blank forms of Bankers' Acceptances in the form requested by the Lender. All Bankers' Acceptances signed and/or endorsed by the Lender on behalf of Bombay shall bind Bombay as fully and effectually as if signed in the handwriting of and duly issued by the proper signing officers of Bombay. The Lender is hereby authorized (in accordance with a Borrowing Notice relating to Bankers' Acceptances) to issue such Bankers' Acceptances endorsed in blank in such face amounts as may be determined by the Lender; provided that the aggregate amount thereof is equal to the aggregate amount of Bankers' Acceptances required to be accepted and purchased by the Lender. The Lender shall not be liable for any damage, loss or other claim arising by reason of any loss or improper use of any such instrument except to the extent such damage, loss or other claim is determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from the gross negligence or wilful misconduct of the Lender or its officers, employees, agents or representatives. The Lender shall maintain a record with respect to Bankers' Acceptances (i) received by it in blank hereunder, (ii) voided by it for any reason, (iii) accepted and purchased by it hereunder, and (iv) cancelled at their respective maturities. On request by or on behalf of Bombay, the Lender shall cancel all forms of Bankers' Acceptances which have been pre-signed or pre-endorsed on behalf of Bombay and which are held by the Lender and are not required to be issued in accordance with the Bombay's irrevocable notice.

Any executed drafts to be used for Bankers' Acceptances which are held by the Lender shall be held in safekeeping with the same degree of care as if they were the Lender's own property.

Notwithstanding that any Person whose signature appears on any Bankers' Acceptances may no longer be an authorized signatory for the Lender or Bombay at the date of issuance of a Bankers' Acceptance, such signature shall nevertheless be valid and sufficient for all purposes as if such authority had remained in force at the time of such issuance and any such Bankers' Acceptance so signed shall be binding on Bombay.

- (3) If a Bankers' Acceptance is outstanding at any time that the Outstanding Borrowings become immediately due and payable pursuant to the terms of this Agreement, Bombay shall forthwith pay to the Lender, for the account of the Lender which had accepted such Bankers' Acceptance, an amount equal to the face amount of such Bankers' Acceptance. The proceeds of such payment shall be held by the Lender for set-off against the liability of Bombay to the Lender in respect of such Bankers' Acceptance. The Lender shall credit Bombay with interest on such proceeds at the prevailing rate for comparative term deposits maturing on the maturity date of the Bankers' Acceptance.
- (4) Upon maturity of a Banker's Acceptance, Bombay shall pay to the Lender, for the account of the Lender which accepted the maturing Bankers' Acceptance, an amount equal to the face amount of the maturing Bankers' Acceptance unless

prior to the maturity date Bombay shall have requested either a BA Rollover or a permitted Conversion of the maturing Bankers' Acceptance.

- (5) Until termination or expiration of the Bombay Instalment Facility, a maturing Bankers' Acceptance may be renewed by a BA Rollover or converted in accordance with Section 4.02, on the applicable BA Rollover Date or Conversion Date, provided:
 - (i) no breach of any term, representation, warranty or covenant under any Loan Document shall exist;
 - (ii) the Lender have received a BA Notice or a Conversion Notice as applicable; and
 - (iii) the maturity date of the new Bankers' Acceptance is not later than the Maturity Date.
- (6) Should the conditions set out in Sections 4.03(4) or (5) not be satisfied, or should a Bankers' Acceptance not be available for a period which matures prior to the expiry or termination of the Bombay Instalment Facility, then the maturing Bankers' Acceptance shall be converted by the Lender into a Prime Rate Loan and shall bear interest at the applicable interest rate.
- (7) The acceptance by the Lender of a Bankers' Acceptance shall be deemed to be a Borrowing under the Bombay Instalment Facility in an amount equal to the face amount of such Bankers' Acceptance for the purpose of determining: (i) the portion of the Bombay Instalment Facility remaining available for drawdown; and (ii) the maximum level of Borrowings permitted to be outstanding hereunder.
- (8) The availability of Bankers' Acceptances to Bombay shall be subject to its obligations to make repayments and prepayments of its Outstanding Obligations as provided herein.
- (9) Borrowings in the form of Bankers' Acceptances hereunder in accordance with this Section 4.03 remain subject to overall market availability.
- (10) Bombay waives presentment for payment and any other defence to payment of any amounts due to the Lender or a Participant (as defined in Section 13.12) in respect of a Bankers' Acceptance accepted by it pursuant to this Agreement which might exist solely by reason of the Bankers' Acceptance being held, at the maturity thereof, by the Lender or a Participant in its own right, and Bombay agrees not to claim any days of grace if the Lender or a Participant as holder sues Bombay on the Bankers' Acceptance for payment of the amount payable by Bombay thereunder.
- (11) The Lender reserves the right to reasonably restrict the Bombay's right to convert a Bankers' Acceptance into a Prime Rate Loan under this Agreement.

Section 4.04 Provisions Relating to Letters of Credit

- (1) Borrowings by way of Letters of Credit shall not at any time exceed the lesser of:
(i) the L/C Facility Limit then in effect, or (ii) the Combined Operating L/C Facility Limit less all Outstanding Borrowings under the Operating Facility then in effect. In ascertaining whether this limit has been exceeded on any date, the Canadian Dollar Equivalent Amount of the face amount of any Letter of Credit issued in U.S. Dollars at the time of such calculation shall be used.
- (2) All Letters of Credit shall be for a term not exceeding one (1) year.
- (3) Whenever a Borrower requires the issuance of a Letter of Credit, it shall deliver to the Lender a duly executed Letter of Credit Agreement, together with such other supporting documentation as the Lender may reasonably require, not less than three (3) Business Days prior to the anticipated date of issuance.
- (4) A Borrower may at any time on or after the Closing Date request a Letter of Credit subject to compliance by the Lender with all Applicable Laws in respect of such Letter of Credit.
- (5) Upon the honouring of payment by the Lender to any Person named therein, of any amount under the terms of a Letter of Credit, payment shall be deemed to be a Prime Rate Loan or a US Base Rate Loan under the Operating Facility, as applicable, in a principal amount equal to the aggregate of (i) the amount of such payment and (ii) any costs and expenses incurred by the Lender in connection therewith. If there is not sufficient availability under the Operating Facility to cover such Prime Rate Loan or US Base Rate Loan, the Borrowers shall repay such Prime Rate Loan to the Lender forthwith following its receipt of notice of such honouring of payment by the Lender.
- (6) Until the honouring of payment by the Lender of a Letter of Credit, at which time Section 4.04(5) shall govern, the issuance by the Lender of a Letter of Credit shall be deemed to be a use of the L/C Facility in an amount equal to the face amount of the Letter of Credit for the purpose of determining (i) the portion of the L/C Facility remaining available for drawdown and (ii) the maximum level of Borrowings permitted to be outstanding thereunder.
- (7) Upon receipt of demand for payment under any Letter of Credit, the Lender shall be under no obligation whatsoever to inquire or investigate the merits or appropriateness of such demand. The Borrowers, on a joint and several basis, shall fully and immediately indemnify and save harmless the Lender from any and all debts, liabilities and obligations or causes of action in respect of making any payment under a Letter of Credit.
- (8) If a Letter of Credit is outstanding at any time that all or any part of the Outstanding Obligations become payable, the Borrowers shall forthwith pay to the Lender an amount equal to the face amount of such Letter of Credit. Such

funds shall be held by the Lender for set-off against the liability of the Borrowers to the Lender in respect of such Letter of Credit.

- (9) The Lender shall act in accordance with the "*Uniform Customs and Practice for Documentary Credits* (2007 Revision), International Chamber of Commerce, Publication No. 600" for each documentary Letter of Credit, in accordance with "*The International Standby Practices* - ISP98, International Chamber of Commerce" for each standby Letter of Credit, and in accordance with the duties specified in each Letter of Credit.

Section 4.05 Reliance on Oral Instructions

The Lender shall be entitled to act upon the oral and electronically-generated instructions of any Person whom the Lender believes is a Person a Borrower has identified as being a Person authorized to give instructions regarding matters contemplated by this Agreement, including, without limiting the generality of the foregoing, the Credit Facilities. The Lender shall not be responsible for any error or omission relating to such instructions. Oral and electronically-generated instructions shall, at the request of the Lender, be immediately confirmed in writing by the applicable Borrower. Any Borrower may revoke the authority of any authorized Person by notifying the Lender in writing, which notice shall be effective on the second Business Day immediately following the date of its actual receipt by the Lender.

ARTICLE 5 PAYMENTS

Section 5.01 Repayment

- (1) **Demand.** Notwithstanding anything else contained in this Agreement, all Outstanding Obligations of the Borrowers to the Lender are payable upon Demand and the Credit Facilities are terminable by the Lender at any time. The provision of instalment payment due dates as set forth herein shall not have the effect of causing any of the Outstanding Obligations of the Borrowers to be considered payable otherwise than on Demand or of preventing the Lender from terminating the Credit Facilities at any time.
- (2) **Operating Facility.** Subject to Section 5.01(1), the Operating Facility shall fluctuate with Borrowings obtained and deposits and payments made from time to time. The Outstanding Borrowings under the Operating Facility, together with all accrued and unpaid interest thereon and all other fees and charges payable in connection therewith, shall become immediately due and payable to the Lender on Demand.
- (3) **Benix Instalment Facility.** The Outstanding Borrowings under the Benix Instalment Facility, together with all accrued and unpaid interest thereon and all other fees and charges payable in connection therewith, shall become immediately due and payable to the Lender on Demand. Until Demand is made for repayment of the Outstanding Obligations under the Benix Instalment Facility, and in

addition to any mandatory payments required to be made by Benix pursuant to Section 5.02, the following repayment terms shall apply:

- (i) For the period commencing from the Closing Date and thereafter until the Outstanding Benix Instalment Loans are repaid in full, Benix shall make equal monthly payments of \$8,333.33 each, payable monthly in arrears on the last Business Day of each calendar month, plus payments of interest on each Interest Payment Date.
 - (ii) Benix, in connection with the last payment of the Outstanding Benix Instalments Loans which is scheduled to occur on March 20, 2014, shall pay to the lender any other Outstanding Obligations in connection with the Benix Instalment Facility at such time.
- (4) **Bombay Instalment Facility.** The Outstanding Borrowings under the Bombay Instalment Facility, together with all accrued and unpaid interest thereon and all other fees and charges payable in connection therewith, shall become immediately due and payable to the Lender on Demand. Until Demand is made for repayment of the Outstanding Obligations under the Bombay Instalment Facility, and in addition to any mandatory payments required to be made by Bombay pursuant to Section 5.02, the following repayment terms shall apply:
- (i) For the period commencing from the Closing Date and thereafter until the Outstanding Bombay Instalment Loans are repaid in full, Bombay shall make equal quarterly payments of \$416,666.67 each, payable quarterly in arrears on the last day of each April, July, October and January, plus payments of interest on each Interest Payment Date.
 - (ii) Bombay, in connection with the last payment of the Outstanding Bombay Instalments Loans which is scheduled to occur on January 31, 2012, shall pay to the lender any other Outstanding Obligations in connection with the Bombay Instalment Facility at such time.
- (5) **L/C Facility.** All Outstanding Obligations under the L/C Facility together with accrued and unpaid interest thereon and all fees and other charges payable thereon shall be repaid in full by the Borrowers upon Demand. Until Demand is made, all Outstanding Obligations under the L/C Facility shall be repaid in accordance with the applicable Letter of Credit Agreements or other relative documentation.
- (6) **VISA Facility.** All Outstanding Obligations under the VISA Facility together with accrued and unpaid interest thereon shall be repaid in full by Benix upon Demand. Until Demand is made, all amounts under the VISA Facility shall be paid monthly in accordance with the relevant Services Agreement.

Section 5.02 Mandatory Prepayments

- (1) **Proceeds of Equity / Debt Issuance.** The Borrowers shall prepay to the Lender outstanding Borrowings in an aggregate principal amount equal to 100% of the

net cash proceeds of any equity raised from an initial public or private offering undertaken by any Obligor or any debt financing or other issuance of Indebtedness (other than Permitted Indebtedness) undertaken by any Obligor within two (2) Business Days of closing the equity offering or debt financing.

- (2) **Asset Sales.** The Borrowers shall prepay outstanding Borrowings in an aggregate principal amount equal to 100% of the net cash proceeds of any sale or disposition by any Obligor of any or all of its Relevant Assets (other than proceeds generated from Permitted Asset Sales) above \$500,000 in the aggregate for all Obligors per Fiscal Year, to the Lender forthwith and no later than two (2) Business Days following receipt of proceeds by the applicable Obligor.
- (3) **Insurance Proceeds.** The Borrowers shall prepay outstanding Borrowings in an aggregate principal amount equal to 100% of the net cash proceeds from any insurance claim (other than liability insurance) made or settled by any Obligor to the Lender forthwith and no later than two (2) Business Days following receipt by the applicable Obligor unless:

- (i) (A) an individual insurance claim is less than \$400,000; and
- (B) the aggregate of all insurance claims for all Obligors in any Fiscal Year is less than \$2,000,000; or
- (ii) the Lender shall have agreed to permit the applicable Obligor to replace or rebuild the assets to which the insurance proceeds apply, and the Lender agrees to notify the applicable Obligor of its decision in this regard within ten (10) Business Days of the Lender having received all documentation and other information as it deems necessary in its sole discretion, requested from the applicable Obligor relating to the applicable assets, the replacement costs or detailed budget for rebuilding of such assets, and the business of the applicable Obligor.

provided that the foregoing subparagraphs (i) and (ii) shall not apply to any net cash proceeds in respect of the Assignment of Life Insurance.

- (4) **Exchange Rate Fluctuations.** If fluctuations in rates of exchange in effect between Canadian Dollars and US Dollars cause the amount of the Outstanding Obligations under any Credit Facility to exceed the overall Credit Limit for such Credit Facility, the applicable Borrower or Borrowers shall pay to the Lender on demand such amount as is necessary to repay the entire excess back to the Credit Limit for such Credit Facility. The applicable Borrower or Borrowers shall pay interest on such excess at a rate equal to the Prime Rate plus 3.0% per annum, calculated and payable daily, until such excess is repaid in full. Nothing in this Section shall, however, entitle the Borrowers to obtain Borrowings (through rollovers, conversions or otherwise) if, after such Borrowings were made, the aggregate amount of Outstanding Obligations under any Credit Facility would exceed its overall Credit Limit.

- (5) **Credit Limit Excess.** If, for any reason, Outstanding Borrowings under any Credit Facility exceed the maximum Credit Limit or Borrowing Base, as applicable, permitted hereunder, the applicable Borrower or Borrowers shall forthwith pay to the Lender an amount sufficient to reduce the Outstanding Borrowings, as applicable, under the relevant Credit Facility to the maximum level permitted hereunder. The applicable Borrower or Borrowers shall pay interest on such excess at a rate equal to the Prime Rate plus 3.0% per annum, calculated and payable daily, until such excess is repaid in full.
- (6) **Application of Payments.** Amounts prepaid under this Section 5.02 shall be applied, at the Lender's discretion, firstly against the scheduled principal payments provided for in Section 5.01(3) and Section 5.01(4), on a pro rata basis based on the Outstanding Borrowings under the Benix Instalment Facility and the Bombay Instalment Facility, in inverse order of maturity commencing with the final scheduled principal payments, secondly against the Outstanding Obligations under the Operating Facility, thirdly as cash collateral to secure the L/C Facility, and fourthly against any other Outstanding Obligations. After all amounts prepaid under this Section 5.02 have been applied to pay and satisfy in full all Outstanding Obligations, any amounts in excess thereof shall be immediately credited to the applicable Borrower or Borrowers by the Lender.

Section 5.03 Voluntary Prepayment

Benix and Bombay shall have the right at any time or from time to time to prepay, in amounts of no less than \$250,000 and without fee or penalty, all or any Borrowings under the Benix Instalment Facility or the Bombay Instalment Facility, as applicable, by providing the Lender with prior written notice given before 10:00 a.m. (Toronto time) three (3) Business Days prior to such prepayment of their intention to do so and by reimbursing the Lender for all applicable breakage funding costs and related expenses. Any partial prepayment of Borrowings under this Section 5.03 shall be applied firstly on a pro rata basis against the scheduled principal payments provided for in Section 5.01(3) and Section 5.01(4), as applicable, secondly against the Outstanding Obligations under the Operating Facility, thirdly as cash collateral to secure the L/C Facility, and fourthly against any other Outstanding Obligations. Bombay shall not be entitled to prepay any Bankers' Acceptance, and such loans may only be cash collateralized.

Section 5.04 Payments Generally

Each payment under this Agreement shall be made for value at or before 1:00 pm (Toronto Time) on the day such payment is due, provided that, if any such day is not a Business Day, such payment shall be deemed for all purposes of this Agreement to be due on the Business Day next following such day (and any such extension shall be taken into account for purposes of the computation of interest and fees payable under this Agreement). All payments shall be made to the Lender at the Lender's Branch of Account.

Section 5.05 No Credit for Trust Funds

For greater certainty, payments of any nature whatsoever made by any of the Borrowers to the Lender which the recipient is required to pay to any Person by reason of any trust imposed by law or by any Person upon amounts received by the recipient from a Borrower, shall not be credited against, or deemed to be payment on account of, all or any portion of the Outstanding Obligations. All costs and expenses incurred by the Lender, its agents, representatives and solicitors in connection with the repayment of such monies to any Person shall be for the account of the Borrowers and payable on Demand. Interest shall accrue on these costs and expenses, until paid, at a rate equal to the sum of the Prime Rate plus 3.0% per annum, and shall be calculated in accordance with Section 6.01(2).

**ARTICLE 6
INTEREST, FEES AND EXPENSES**

Section 6.01 Payment of Interest

- (1) **Rate.** Interest shall accrue from day to day from the date of each Borrowing, and the applicable Borrower or Borrowers shall be liable for and pay interest to the Lender, both before and after Demand, breach, default and judgment at an interest rate or rates per annum as follows:

Operating Facility

- (i) on Prime Rate Loans made under the Operating Facility at the Prime Rate plus 2.50% per annum; and
- (ii) on US Base Rate Loans made under the Operating Facility at the US Base Rate plus 2.50% per annum.

Benix Instalment Facility

- (i) on Prime Rate Loans advanced under the Benix Instalment Facility at the Prime Rate plus 2.50% per annum; and
- (ii) on US Base Rate Loans advanced under the Benix Instalment Facility at the US Base Rate plus 2.50% per annum.

Bombay Instalment Facility

- (i) on Prime Rate Loans advanced under the Bombay Instalment Facility at the Prime Rate plus 2.50% per annum;
- (ii) on US Base Rate Loans advanced under the Bombay Instalment Facility at the US Base Rate plus 2.50% per annum; and
- (iii) on Bankers' Acceptances advanced under the Bombay Instalment Facility at the BA Rate plus 3.50% per annum.

Each change in the fluctuating interest rate for a Prime Rate Loan or a US Base Rate Loan will take place simultaneously with the corresponding change in the Prime Rate or US Base Rate, as applicable.

- (2) **Calculation - Prime Rate Loans and US Base Rate Loans.** Interest on Prime Rate Loans and US Base Rate Loans shall be payable monthly in arrears on each Interest Payment Date for the period commencing on the Borrowing Date, and thereafter on the first day of every month and terminating on the last day of each month. Such interest shall accrue on a daily basis on the principal amount remaining unpaid from time to time and shall be calculated on the basis of the actual number of days elapsed and a year of 365 or 366 days, as applicable. Interest on US Base Rate Loans shall be paid in US Dollars. Interest on Prime Rate Loans shall be paid in Canadian Dollars. The first interest payment shall be made on December 31, 2010 in respect of the period from the Closing Date to December 31, 2010.

Section 6.02 Interest on Overdue Amounts

Upon a default in the payment of principal, interest, fees or other amounts due under this Agreement, the Borrowers shall pay interest on such overdue amount both before and after judgment at a rate per annum equal to the sum of the Prime Rate or the US Base Rate, as the case may be, plus 3.0% per, calculated on a daily basis and on the basis of the actual number of days elapsed and a 365 or 366 day year in the case of Prime Rate Loans or US Base Rate Loans, computed from the date such amount becomes overdue for so long as such amount remains overdue. Such interest shall be payable upon Demand by the Lender and shall be compounded on each Interest Payment Date.

Section 6.03 Stamping Fees

Upon tendering any Bankers' Acceptance for acceptance, Bombay shall pay to the Lender a fee (the "Stamping Fee"). The initial Stamping Fee payable hereunder shall be equal to 3.50% per annum. The Stamping Fee shall be calculated upon the face amount of such Bankers' Acceptance on the basis of the applicable number of days in the Contract Period for such Bankers' Acceptance and a year of 365 or 366 days, as applicable, commencing on, and including, the date the Lender accepted the Bankers' Acceptance and ending on, but excluding, its stated payment date. Payment of the Stamping Fee shall be collected through the remittance of the Discount Proceeds as contemplated by Section 4.03 hereof, without duplication.

Section 6.04 Letter of Credit Fees; VISA Fees

In connection with the issuance of a Letter of Credit, the Borrowers shall pay to the Lender a fee equal to 1.30% per annum (the "Letter of Credit Fee"). Letter of Credit Fees shall be calculated on the principal amount of such Letter of Credit for the duration of its stated term, plus the Lender's out of pocket expenses. Such fee shall be calculated on the basis of the actual number of days in the stated term, commencing on, and including, the date the Lender issued the Letter of Credit and ending on, but excluding, its stated maturity date; provided, however, that the Letter of Credit Fee shall be subject to a minimum amount of \$250 plus the Lender's out of

pocket expenses. The Borrowers shall also pay the Lender's standard Letter of Credit charges for extensions, amendments and other services related to Letters of Credit which shall also be subject to an amount mutually agreed upon by the Lender and the Borrower.

Benix shall pay to the Lender such fees, charges and other costs in respect of the VISA Facility as may be provided for or contemplated by the Lender's standard form VISA documentation.

Section 6.05 Other Fees

- (1) The Borrowers shall pay to the Lender a renewal fee in the amount of \$25,000 which shall be fully earned by the Lender and payable by the Borrowers to the Lender on the Closing Date.
- (2) The Borrowers shall pay to the Lender an annual renewal fee in the amount of \$25,000 which shall be payable by the Borrowers to the Lender beginning in the 2011 Fiscal Year and each Fiscal Year thereafter.
- (3) The Borrowers shall pay to the Lender a loan administration fee of \$500 per month, which fee will be payable monthly in arrears on the last Business Day of each month.
- (4) The Borrower shall pay to the Lender such other reasonable fees, service charges and other costs in respect of other credit accommodation provided by the Lender as may be provided for or contemplated by the Lender's standard form agreements for such services.
- (5) The Borrowers hereby authorize and direct the Lender to debit the amount of all fees payable by the Borrowers under this Section 6.05, together with all amounts to be reimbursed by the Borrower under Section 6.07 hereof, from any one or more accounts of the Borrowers.

Section 6.06 Change in Circumstances

- (1) **Reduction in Rate of Return.** If at any time the Lender determines, acting reasonably, that (a) any change in any Applicable Law or any interpretation thereof after the date of execution hereof, or (b) compliance by the Lender with any direction, requirement or request from any regulatory authority given after the date of execution hereof, having the force of law, has or would have, as a consequence of the Lender's obligations under this Agreement and taking into consideration the Lender's policies with respect to capital adequacy, the effect of reducing the rate of return on the Lender's capital to a level below that which the Lender could have achieved but for such change or compliance, then from time to time, upon Demand by the Lender, the Borrowers shall pay to the Lender such additional amounts as will compensate the Lender for such reduction; provided that should the Lender make such Demand, the Borrowers shall be entitled to prepay the Outstanding Borrowings without notice or penalty (other than breakage cost and related costs).

- (2) **Taxes, Reserves, Capital Adequacy, etc.** If after the date of execution hereof, any introduction of any Applicable Law or any change or introduction of a change in any Applicable Law (having the force of law) or in the interpretation or application thereof by any court or by any governmental agency, central bank or other authority or entity charged with the administration thereof or any change in the compliance of the Lender therewith now or hereafter:

- (i) subjects the Lender to, or causes the withdrawal or termination of a previously granted exemption with respect to, any Tax or changes the basis of taxation, or increases any existing Tax, on payments of principal, interest, fees or other amounts payable by the Borrower to the Lender under this Agreement (except for taxes on the overall net income of the Lender);
- (ii) imposes, modifies or deems applicable any reserve, special deposit, deposit insurance or similar requirement against assets held by, or deposits in or for the account of or loans by or any other acquisition of funds by, an office of the Lender;
- (iii) imposes on the Lender or expects there to be maintained by the Lender any capital adequacy or additional capital requirement in respect of any Borrowing or its commitment hereunder or any other condition with respect to this Agreement; or
- (iv) imposes any Tax on reserves or deemed reserves with respect to the undrawn portion of the Credit Facilities,

and the result of any of the foregoing, in the sole determination of the Lender acting reasonably, shall be to increase the cost to, or reduce the amount of principal, interest or other amount received or receivable by the Lender hereunder or its effective return hereunder in respect of making, maintaining or funding a Borrowing under this Agreement the Lender shall, acting reasonably, determine that amount of money which shall compensate the Lender for such increase in cost or reduction in income (herein referred to as "Additional Compensation").

- (3) **Claim for Additional Compensation.** Upon the Lender having determined that it is entitled to Additional Compensation in accordance with the provisions of this Section 6.06, the Lender shall promptly so notify the Borrowers and shall provide to the Borrowers a certificate of a duly authorized officer of the Lender confirming its entitlement to Additional Compensation and setting forth the Additional Compensation, which shall be prima facie evidence of such Additional Compensation. The Lender shall promptly notify the Borrowers and the Borrowers shall pay to the Lender, within ten (10) Business Days of the giving of such notice, the Additional Compensation calculated to the date of such notification. The Lender shall be entitled to be paid such Additional Compensation from time to time to the extent that the provisions of this Section 6.06 are then applicable notwithstanding that the Lender has previously been paid

Additional Compensation. If it is commercially reasonable, the Lender shall make reasonable efforts to limit the incidents of any such Additional Compensation. Should the Lender be entitled to collect Additional Compensation in accordance with this Section, the Borrowers shall be entitled to prepay the Outstanding Borrowings without notice or penalty provided that it pays to the Lender such Additional Compensation relating to the period prior to prepayment in which any Borrowings were outstanding.

Section 6.07 Reimbursement of Expenses

All statements, reports, certificates, opinions and other documents or information required to be furnished to the Lender by the Borrowers under this Agreement shall be supplied without cost to the Lender. The Borrowers agree to pay promptly on demand all of the Lender's reasonable legal fees and disbursements, documentation costs, travel expenses, and other out-of-pocket costs and expenses incurred in connection with the preparation, negotiation, creation, documentation, syndication, publication, management and operation of (i) this Agreement and the Credit Facilities, (ii) any amendment of, restatement of, or supplement or modification to this Agreement, and (iii) any other document prepared in connection herewith, including the Security, whether or not any amounts are advanced under this Agreement. In addition, the Borrowers agree to pay the actual legal fees and disbursements and other expenses incurred by the Lender in the collection, enforcement or preservation of any rights under this Agreement, the Security and all documents delivered in connection therewith.

Section 6.08 Determination Conclusive

Each determination by the Lender of any rate or fee shall, in the absence of manifest error, be final, conclusive and binding on the Borrowers.

Section 6.09 No Withholding/Payment of Gross-up

Each interest, fee or similar payment under this Agreement, including any penalties attached thereto, shall be made without set-off or counterclaim and without withholding for or on account of any present or future taxes or duties imposed by any federal, state, provincial or other taxing authority. In the event any Obligor is required to deduct or withhold any amount for or on account of such taxes or duties, the Obligor shall pay to the Lender such additional amounts as may be necessary to ensure that the Lender receives a net amount equal to the full amount which it would have received had such interest, fee or similar payment been made without such deduction or withholding.

**ARTICLE 7
CONDITIONS PRECEDENT**

Section 7.01 Conditions - Initial Borrowing

The obligation of the Lender to make available the initial Borrowings under this Agreement is subject to the terms and conditions of this Agreement and is conditional upon satisfactory evidence being given to the Lender and its counsel as to compliance with the following conditions:

- (1) **Representations and Warranties True.** The representations and warranties contained in Section 8.01 are and shall continue to be true and correct in every material respect as if made by each Obligor contemporaneously with the initial Borrowing, and each Obligor has provided a bringdown certificate from a senior officer of the Borrowers in respect thereof.
- (2) **Resolutions and Certificates.** The Lender shall have received, duly executed and in form and substance satisfactory to it:
 - (i) a copy of the constating documents and by-laws of each Obligor and a copy of the resolutions of the board of directors of each Obligor authorizing the execution, delivery and performance of this Agreement, the Security and any other instruments contemplated hereunder and thereunder, certified in each case by a senior officer of the applicable Obligor;
 - (ii) a certificate of incumbency for each Obligor showing the names, offices and specimen signatures of the officers who will execute this Agreement, the Security and any other instruments contemplated hereunder and thereunder;
 - (iii) a certificate as to general corporate information and other matters for each Obligor;
 - (iv) such additional supporting documents as the Lender or its counsel may reasonably request.
- (3) **Delivery of this Agreement.** The Borrowers shall have executed and unconditionally delivered this Agreement to the Lender.
- (4) **Delivery of Security.** The Lender shall have received the Security (including any necessary consents or subordinations of third parties as may be required by the Lender) duly executed by the issuer thereof and in form and substance satisfactory to the Lender and its counsel.
- (5) **Registration.** The Security has been registered, recorded or filed in all jurisdictions deemed necessary or advisable by the Lender and its counsel.
- (6) **Approvals.** The Lender shall have received evidence of receipt by the Obligors of all necessary consents and approvals required from any creditor, Governmental Authority or other Person for the entry into, execution and delivery of the Loan Documents and the performance of its obligations thereunder.
- (7) **Indebtedness.** Except for the Permitted Indebtedness, no Obligor shall have any other Indebtedness.
- (8) **Legal Opinions.** The Lender shall have received a favourable legal opinion from counsel to each Obligor in connection with (i) the due authorization, execution,

delivery and enforceability of the Loan Documents and (ii) the creation and perfection of the Lender's Security Interest, and (iii) such other matters as may be reasonably requested by legal counsel to the Lender.

- (9) **Borrowing Notice.** The Lender shall have received a proper Borrowing Notice as may be required hereunder.
- (10) **Letter of Credit Agreement.** Where the Borrowing contemplates the issuance of a Letter of Credit, the Lender shall have received from the applicable Borrower a duly executed Letter of Credit Agreement in respect of each Letter of Credit requested.
- (11) **No Breach.** No breach of any covenant, term or condition shall have occurred under any of the Loan Documents.
- (12) **Priority Payables.** There are no Priority Payables outstanding other than those which are not yet due and payable.
- (13) **Notice of Liens.** The Lender shall not have received written notice of any lien, trust, charge or encumbrance affecting the assets charged by the Security or an execution (other than the Permitted Encumbrances).
- (14) **Environmental Information.** The Lender shall have received such favourable environmental reports and audits relating to the Obligors as it may require acting reasonably.
- (15) **Due Diligence.** The Lender shall have completed and be satisfied with the results of its financial, business, legal and other due diligence enquiries including the corporate, capital, tax, legal and management structure and cash management systems of the Obligors, and shall be satisfied, in its sole judgment, but acting reasonably with the nature and status of all securities, labour, tax, employee benefit (including pension plan), environmental, health and safety matters, organizational and capital structure matters involving or affecting any Obligor.
- (16) **Intercreditor Agreements.** All such intercreditor agreements, comfort letters or estoppel certificates from other secured creditors as the Lender may reasonably require shall have been duly executed and delivered by all parties thereto.
- (17) **Organization and Capital Structure.** The Lender shall be satisfied with the organizational and capital structure of the Obligors, and shall have received a certified copy of the share register for each Obligor.
- (18) **Material Adverse Effect.** No event, circumstance or situation shall have occurred nor any fact become known which the Lender was not previously aware of and which is reasonably likely to have a Material Adverse Effect.
- (19) **Fees and Disbursements.** The Lender shall have received a direction re funds from the Borrower authorizing the Lender to pay an appropriate portion of the

initial Borrowings to itself as payment in full of all fees and out of pocket expenses paid by or incurred by the Lender on or before the Closing Date (including fees and expenses of counsel to the Lender).

- (20) **Insurance.** The Lender shall have received a satisfactory certificate of insurance issued by the Obligors' insurance broker in respect of all policies maintained by the Obligors (or to be maintained upon the acquisition of the applicable assets) which are to name the Lender as an additional insured, first mortgagee and loss payee as applicable.
- (21) **Financial Documentation.** The Lender shall have received copies of and shall be satisfied with the most recent audited and unaudited financial statements or pro forma financial statements, as the case may be, for the Obligors.
- (22) **Security Interests.** All Security Interests charging any asset of any Obligor shall have been discharged other than Security Interests in favour of the Lender and Permitted Encumbrances.
- (23) **Recent Financial Statements.** The Lender shall have received the most recent month end financial statements for the Obligors and a Compliance Certificate demonstrating all terms and conditions of the Credit Agreement are being met.
- (24) **Inventory/Borrowing Base.** The Lender shall have received the most recent inventory listing and Borrowing Base calculation demonstrating an acceptable Borrowing Base on the Closing Date.
- (25) **Account Documentation.** The Borrowers shall have executed and delivered all of the Lender's standard form account opening documentation required to establish a Canadian Dollar account and a US Dollar account.

Section 7.02 Conditions - Subsequent Borrowing

The obligation of the Lender to make available any Borrowing under this Agreement after the initial Borrowing is conditional upon satisfactory evidence being given to the Lender as to compliance with the following conditions:

- (1) **Representations and Warranties True.** The representations and warranties contained in Section 8.01 are and shall continue to be true and correct in every material respect as if made by the Obligors contemporaneously with any Borrowing.
- (2) **Indebtedness.** Except for the Permitted Indebtedness, no Obligor shall have any other Indebtedness.
- (3) **Borrowing Notice.** The Lender shall have received a proper Borrowing Notice as may be required hereunder.

- (4) **Letters of Credit.** Where any Borrowing contemplates the issuance of a Letter of Credit, the Lender shall have received from the applicable Borrower a duly executed Letter of Credit Agreement in respect of each Letter of Credit requested.
- (5) **No Breach.** No breach of any covenant, term or condition shall have occurred under any of the Loan Documents.
- (6) **Priority Payables.** There are no Priority Payables outstanding other than those which are not yet due and payable.
- (7) **Notice of Liens.** The Lender shall not have received written notice of any lien, trust, charge or encumbrance affecting the assets charged by the Security or an execution (other than the Permitted Encumbrances).
- (8) **Subordination of Shareholder Loans.** If any shareholder of any Obligor, or other Person not dealing at arm's length with such Obligor has advanced loans to such Obligor, such shareholder or other Person has executed and delivered to the Lender a subordination and postponement on the Lender's required form, supported by any security registrations and corporate opinions deemed necessary by counsel for the Lender.
- (9) **Material Adverse Effect.** No event, development, circumstance or situation shall have occurred since the time of the most recent Compliance Certificate delivered by the Borrowers that has had or could have a Material Adverse Effect.

Section 7.03 Waiver

The terms and conditions stated in this Article 7 are inserted for the sole benefit of the Lender and may be waived by it in whole or in part and with or without terms or conditions in respect of all or any Borrowings.

ARTICLE 8 REPRESENTATIONS AND WARRANTIES

Section 8.01 Representation and Warranties

The Obligors jointly and severally represent and warrant to the Lender that:

- (1) **Due Incorporation.** Each of the Obligors is a corporation duly incorporated, organized and validly subsisting under the laws of their respective jurisdictions of incorporation. Each of the Obligors holds all necessary permits and has all necessary corporate power and authority to own its properties and assets and to carry on its business as now conducted, and is or will be duly licensed or registered or otherwise qualified in all jurisdictions wherein the nature of its assets or the business transacted by it makes such licensing, registration or qualification necessary, except where failure to do so would not have a material adverse effect on such assets or the ability of any Obligor to perform its obligations hereunder.

- (2) **Power.** Each of the Obligor has full corporate power and capacity to enter into, deliver and perform its obligations under each of the Loan Documents.
- (3) **Due Authorization and No Conflict.** The execution, delivery and performance by each of the Obligor of the Loan Documents, and the consummation of the transactions contemplated hereby and thereby:
 - (i) have been duly authorized by all necessary corporate action on the part of each Obligor;
 - (ii) do not and will not conflict with, result in any breach or violation of, or constitute a default under the constating documents or by-laws of any Obligor, or any Applicable Laws, or any determination or award presently in effect and applicable to any Obligor, or of any material commitment, agreement or any other instrument to which any Obligor is now a party or is otherwise bound;
 - (iii) do not (except for the Security) result in or require the creation of any Security Interest upon or with respect to any of the properties or assets of any Obligor; and
 - (iv) do not require the consent or approval (other than those consents or approvals already obtained and copies of which have been delivered to the Lender) of, or registration or filing with, any other party (including shareholders of any Obligor) or any Governmental Authority.
- (4) **Valid and Enforceable Obligations.** The Loan Documents are, or when executed and delivered to the Lender will be, legal, valid and binding obligations of each Obligor, as applicable, enforceable in accordance with their respective terms.
- (5) **Title:** Subject to Permitted Encumbrances, each Obligor has good and marketable title to its real and personal property, free and clear of all Security Interests.
- (6) **Validity and Priority of Security.** The Security constitutes assignments, fixed and specific mortgages and charges, floating charges or security interests, as applicable, on the undertaking and property and assets of each Obligor purported to be assigned, mortgaged, charged or subjected to a security interest thereby, and ranks in priority to any other Security Interests upon such undertaking and property and assets other than (i) Purchase Money Obligations in amounts authorized hereunder; and (ii) Security Interests identified in Schedule "M" attached hereto as Permitted Encumbrances.
- (7) **No Actions.** Save and except as set forth in Schedule "G", there are no actions, suits, proceedings, inquiries or investigations existing, pending or, to the knowledge of the Obligor, threatened or affecting any Obligor in any court or before or by any federal, provincial or municipal or other governmental

department, commission, board, tribunal, bureau or agency, Canadian or foreign, which if determined adversely would have a Material Adverse Effect.

- (8) **Financial Information.** Subject to any limitations stated therein, the financial statements of the Obligors furnished to the Lender under this Agreement, or which were furnished to the Lender to induce it to enter into this Agreement, or otherwise furnished in connection with this Agreement, fairly present the financial condition of the Obligors as at the date thereof, and no material adverse change has occurred in their financial position between such date and the Closing Date.
- (9) **No Breach or Default.** No breach of any term, condition or covenant of any Loan Document has occurred or any default or event of default in respect of any Material Contract, entitling any other party thereto to accelerate the maturity of amounts of principal owing thereunder, or terminate any such material commitment, agreement or instrument, or which would have a Material Adverse Effect.
- (10) **Compliance with Law.** No Obligor is in violation of any terms of its constituting documents or by-laws or of any law, regulation, rule, order, judgment, writ, injunction, decree, determination or award presently in effect and applicable to it, the violation of which would have a Material Adverse Effect.
- (11) **Non-Dilution.** No Person presently has any agreement, option or right capable of becoming an agreement or option for the pledge, purchase, subscription or issuance from any Obligor of any shares of any Obligor, issued or unissued.
- (12) **Location of Assets.** The property and assets of the Obligors are located in those jurisdictions specified for each in Schedule "H", and in no other jurisdiction. Set out in Schedule "I" is the legal description of all real property owned by the Obligors as at the Closing Date. Set out in Schedule "J" is a list of all locations leased by the Obligors as at the Closing Date. Set out in Schedule "K" is a list of all locations in which any asset owned by the Obligors is located and which locations are neither owned nor leased by the Obligors as at the Closing Date.
- (13) **Subsidiaries.** The Obligors do not have any direct or indirect Subsidiaries as at the Closing Date nor does any Obligor own any Equity Securities or voting Equity Securities of any Person as at the Closing Date.
- (14) **Partnership.** No Obligor is in partnership with any Person nor is any Obligor a participant in any joint venture.
- (15) **Taxes.** Each of the Obligors has filed all foreign, provincial and local Tax Returns which are required to be filed and has paid all Taxes due pursuant to such returns or pursuant to any assessment received by each of them, except such Taxes, if any, as are being contested in good faith and as to which adequate reserves have been provided. All information provided in such Tax Returns pertaining to the Obligors is true, complete, and accurate in all material respects.

The charges, accruals and reserves on the books of the Obligors in respect of any Taxes or other governmental charges payable for the current or prior year which are not yet due are adequate to the extent that the Obligors are aware of them. As of the Closing Date, none of the Obligors' Tax Returns are being audited by Canada Revenue Agency and/or other applicable Government Authority and there are no assessments or threatened assessments otherwise outstanding. No Obligor has received any notice of assessment of additional taxes or any other claim of notice of any nature whatsoever that any Tax or additional Tax is due which has not been paid or otherwise finally settled or satisfied. To the knowledge of the Obligors, there are no actions, suits, proceedings, investigations or claims, threatened or pending, in respect of any Taxes owing to, or alleged to be owing by, the Obligors and there are no matters under discussion with any Governmental Authority relating to any such Taxes asserted by any such body. The Obligors have each withheld from its employees, customers and any other applicable payees (and timely paid to the Governmental Authority) the proper and accurate amount of all Taxes and other amounts required to be withheld or collected and remitted in compliance with all Applicable Laws. There are no Security Interests for Taxes on the assets of the Obligors except for Security Interests arising under Applicable Law, that are unregistered or otherwise unperfected, for Taxes not yet due. No Obligor has executed or filed with Canada Revenue Agency or any other Governmental Authority any agreement, waiver or other document extending or having the effect of extending the period for assessment, reassessment or collection of any Taxes or the filing of any Tax Returns.

- (16) **Intellectual Property.** The Obligors own or have the right to use all patents, trademarks, trade names, copyrights, licenses and rights with respect thereto, necessary for the conduct in all material respects of their businesses as now conducted and as presently proposed to be conducted, without any known conflict with the rights of others, and in each case free from any Security Interest. Set out in Schedule "L" is a list of all Intellectual Property currently owned by the Obligors.
- (17) **Software.** Set out in Schedule "L" is a list of all computer software both owned by and used or presently proposed to be used by the Obligors in the operation of their respective businesses. The Obligors are the sole legal and beneficial owners of, and have good and marketable title to, all of the computer software (other than operating systems software and the Purchased Software) running on each of the Obligor's systems free and clear of all Security Interests whatsoever. No royalty or other fee is required to be paid by any Obligor to any Person in respect of the use of any computer software. Each Obligor has the right to use all software used or presently proposed to be used by it and no Obligor has granted any license or other rights to any other Person in respect of such software. There are no restrictions on the ability of any Obligor or any successor to, or assignee from, any Obligor to use and exploit all rights in the software owned by it.
- (18) **Customer and Trade Relations.** There is not any actual or threatened termination or cancellation of, or any material adverse change in, the business

relationship between any Obligor with any supplier or customer material to the operations of any Obligor.

- (19) **Labour Matters.** There are no strikes or other labour disputes against any Obligor that are in effect, pending or threatened. All payments due from any Obligor on account of:

- (i) Workers' Compensation, Canada Pension Plan, Quebec Pension Plan, employee health plans, social security and insurance of every kind and employee income tax source deductions and vacation pay; and
- (ii) the equivalent plans of those specified in (i) above in each other jurisdiction where any Obligor carries on business.

have been paid in full to date. No Obligor has any obligation under any collective bargaining agreement. There is no organizing activity involving any Obligor by any labour union or group of employees.

- (20) **Pensions.**

- (i) All employee and employer contributions under any pension plan operated by any Obligor have been made and the fund or funds established under such plans are funded in accordance with applicable regulatory requirements and the rules of such plans and there exists no going concern unfunded liabilities or solvency deficiencies thereunder.
- (ii) No Obligor has any pension plan other than those listed on Schedule "O".
- (iii) No Obligor has any pension plan which has been terminated or partially terminated or is insolvent or in reorganization, nor have any proceedings been instituted to terminate or reorganize any pension plan.
- (iv) No Obligor has withdrawn from any pension plan in a complete or partial withdrawal, nor has a condition occurred which if continued would result in a complete or partial withdrawal.
- (v) No Obligor has any withdrawal liability, including contingent withdrawal liability, to any pension plan.
- (vi) No Obligor has any liability in respect of any pension plan other than for required insurance premiums or contributions or remittances which have been paid, contributed and remitted when due.
- (vii) Each Obligor has made all contributions to its pension plans required by law or the terms thereof to be made by it when due and is not in arrears in the payment of any contribution, payment, remittance or assessment or in default in filing any reports, returns, statements and similar documents in respect of the pension plans required to be made or paid by it pursuant to

any pension plan, any law, act, regulation, directive or order or any employment, union, pension, deferred profit sharing, benefit, bonus or other similar agreement or arrangement.

- (viii) No Obligor is liable nor, to the best of the Obligor's knowledge, alleged to be liable, to any employee or former employee, director or former director, officer or former officer resulting from any violation or alleged violation of any pension plan, any fiduciary duty, and law or agreement in relation to any pension plan and does not have any unfunded pension or like obligations (including any past service or experience deficiency funding liabilities), other than accrued obligations not yet due, for which they have made full provision in their books and records.
 - (ix) All vacation pay, bonuses, salaries and wages, to the extent accruing due, of any Obligor are properly reflected in each Obligor's books and records.
 - (x) Without limiting the foregoing, each Obligor's pension plans are duly registered where required by, and are in compliance and good standing in all material respects under, all Applicable Laws, acts, statutes, regulations, orders, directives and agreements, including, without limitation, the *Income Tax Act* (Canada), and the *Pension Benefits Act* (Ontario), any successor legislation thereto, and other applicable laws of any jurisdiction.
 - (xi) Other than ordinary course claims for benefits under such plans, there are no outstanding or pending, or, to any Obligor's knowledge, threatened investigations, claims, suits or proceedings in respect of any Obligor's pension plans (including to assert rights or claims to benefits or that could give rise to any material liability).
 - (xii) No Obligor has made any promises of benefit improvements under any of its pension plans or benefit plans except where such improvements could not have a Material Adverse Effect and, in any event, no such improvements will result in a solvency deficiency or going concern unfunded liability in the affected pension plan.
 - (xiii) All the material obligations of the Obligors (including fiduciary, funding, investment and administration obligations) required to be performed in connection with their pension plans and the funding agreements therefore have been performed in a timely fashion.
 - (xiv) There have been no improper withdrawals or applications of the assets of any pension plan or benefit plan of any Obligor.
- (21) **Accuracy of Information.** All factual information previously or contemporaneously furnished by or on behalf of any Obligor in writing for purposes of or in connection with this Agreement or any transaction contemplated hereby is true and accurate in every material respect, and such information is not incomplete by the omission of any material fact necessary to make such

information not misleading. There is no fact known to any Obligor which any Obligor has not disclosed to the Lender which materially adversely affects, or so far as any Obligor can now reasonably foresee, will materially adversely affect the assets, liabilities, affairs, business, prospects, operations or conditions, financial or otherwise of any Obligor or the ability of any Obligor to fulfill its obligations under the Loan Documents and the Material Contracts.

- (22) **Solvency.** Each Obligor is solvent and will not become insolvent after giving effect to the transactions contemplated in this Agreement.
- (23) **Principal Place of Business.** The "place of business", "registered office" and "chief place of business" (within the meaning of the *Personal Property Security Act* (Ontario)) and the "principal place of business" (within the meaning of the *Bank Act* (Canada)) of each Obligor is located in the Province of Ontario.
- (24) **Fiscal Year End.** The Fiscal Year End of each Obligor is on the last Saturday in January.
- (25) **Guarantees.** No Obligor has guaranteed the obligation of any Person except for (i) the guarantees delivered by the Obligors to the Lender under this Agreement; (ii) guarantees in respect of Permitted Indebtedness; and (iii) any guarantees of the Obligors in favour of any other of the Obligors.
- (26) **Economic Benefit.** The Credit Facilities established herein are for the economic benefit of the Borrower.
- (27) **Shareholder Loans.** Save and except for the amounts owed to: (i) in the case of secured loans, the Postponing Shareholders as set out in Schedule "N" under the heading "Secured Loans", and (ii) in the case of unsecured loans, shareholders of the Obligors and to those additional Persons otherwise set out in Schedule "N" under the heading "Unsecured Loans", in each case, as amended or replaced from time to time, there are no outstanding secured or unsecured loans and/or advances made by (i) any shareholder of any Obligor to any Obligor, or (ii) any Person who does not deal at arm's length with the any Obligor. All shareholder loans listed in Schedule "N" under the heading "Unsecured Loans" are unsecured and will remain unsecured.
- (28) **Corporate Name and Prior Transactions.** Each Obligor has not, during the past five years, been known by or used any other corporate or fictitious name, or been a party to any amalgamation, merger or consolidation, or acquired all or substantially all of the assets of any Person, or acquired any of its property out of the ordinary course of business except as disclosed to the Lender.
- (29) **Withholdings.** Each Obligor has withheld from its employees, customers and other applicable payees (and timely paid to the applicable Governmental Authority) the proper and accurate amount of all Taxes and other amounts required to be withheld or collected and remitted in compliance with all Applicable Laws. There are no liens for Taxes on the assets of any Obligor

except for liens arising under Applicable Law, that are unregistered or otherwise unperfected, for Taxes not yet due.

- (30) **Material Contracts.** The Material Contracts listed in Schedule "P" are the only Material Contracts existing as of the Closing Date, and valid and enforceable in accordance with their terms, have not been modified, amended, altered or changed in any material manner and are in full force and effect, there being no material default thereunder by any party thereto of which any Obligor is aware. Each obligor has the right, power and authority to assign their right, title and interest in and to any and all of the Material Contracts to the Lender upon the terms and conditions of the Loan Documents to which it is party (save and except all leases to which each Obligor is party and except as described in Schedule "P". No Obligor has assigned, mortgaged, pledged, encumbered or otherwise hypothecated its right, title and interest in and to any or all of the Material Contracts in any manner, nor will any Obligor do so at any time hereafter without the Lender's prior written consent in each instance. Any such assignment, mortgage, pledge or encumbrance in violation of the foregoing shall be void and of no force and effect.
- (31) **Retractable Shares.** No Obligor has issued any Equity Interests in its capital stock which are retractable at the option of the holder of such Equity Interests.
- (32) **Indebtedness.** No Obligor has any Indebtedness other than Permitted Indebtedness.
- (33) **Use of Proceeds.** Borrowings have been and continue to be used only for the business purposes of the Borrowers as permitted pursuant to Section 3.06 and the Borrowings have not and will not be permitted to be used, directly or indirectly, by any other Person or for any other purpose.
- (34) **1057305.** Each Borrower confirms that 1057305 Ontario Limited has no material assets or business operations.

Section 8.02 Survival of Representations and Warranties

The representations and warranties contained in this Article 8 shall survive the execution and delivery of this Agreement and the making of Borrowings hereunder until all Outstanding Obligations have been paid in full, regardless of any investigation or examination made by the Lender or its counsel and the Lender shall be deemed to have relied upon each of such representations and warranties in making available each Borrowing hereunder.

ARTICLE 9 COVENANTS

Section 9.01 Positive Covenants

From the date hereof and until the Outstanding Obligations are repaid in full, the Obligors jointly and severally will observe and perform, or will cause the observance and performance of each of

the following covenants, unless compliance therewith shall have been waived in writing by the Lender:

- (1) **Existence.** Each Obligor will do or cause to be done all such things as are necessary to maintain its corporate existence in good standing, to ensure that it has at all times the right and is duly qualified to conduct its businesses and to obtain and maintain all rights, privileges and franchises necessary for the conduct of its business, except where failure to do so would not have a material adverse impact on its business or its ability to perform its obligations hereunder.
- (2) **Conduct of Business.** Each Obligor will maintain, operate and use its properties and assets, and will carry on and conduct its business in a proper and efficient manner so as to preserve and protect such properties and assets and business and the profits thereof.
- (3) **Payment of Principal, Interest and Expenses.** Each Borrower will duly and punctually pay or cause to be paid to the Lender the Outstanding Obligations owed by it to the Lender at the times and places and in the manner provided for herein.
- (4) **Payment of Taxes and Claims.** Each Obligor will pay and discharge promptly when due all Taxes, assessments and other governmental charges or levies imposed upon it or upon its properties or assets or upon any part thereof, as well as all claims of any kind (including claims for labour, materials and supplies) which, if unpaid, would by law become a lien, charge, trust or other claim upon any such properties or assets; but no Obligor shall be required to pay any such Tax, assessment, charge or levy or claim if the amount, applicability or validity thereof shall currently be contested in good faith by appropriate proceedings and if the Obligor shall have set aside on its books a reserve to the extent required by GAAP in an amount which is reasonably adequate with respect thereto.
- (5) **Annual Financial Information.** As soon as practicable and in any event within 120 days of the end of each Fiscal Year, the Borrowers shall deliver to the Lender:
 - (i) the annual audited financial statements of each of the Borrowers, which financial statements shall include balance sheets and related statements of operations, shareholders' equity and cash flows, stating in comparative form on a consistent basis the respective figures as of the end of each Fiscal Year and for the previous Fiscal Year including a comparison to the budget contained in the Annual Financial Forecast, together with an auditor's report confirming that in such auditor's opinion the statements present fairly the financial position of each of the Borrowers and the results of its operations for the Fiscal Year reported on

- (ii) the annual unaudited combined financial statements of the Borrowers (such financial statements to be based on the annual financial statements of the Borrowers delivered in Section 9.01(5)(i) above); and
 - (iii) a Compliance Certificate for the fourth Fiscal Quarter.
- (6) **Quarterly Financial Information.** As soon as practicable and in any event within 45 days after the end of the first, second and third Fiscal Quarters in each Fiscal Year of the Borrowers, the Borrowers shall deliver to the Lender:
 - (i) the quarterly unaudited financial statements of the Borrowers, on a combined basis, which financial statements shall include balance sheet and related statements of operations, shareholders' equity and cash flows for the portion of such Fiscal Year ended with the last day of such quarterly accounting period, all in reasonable detail and prepared and certified (subject to year end audit adjustments) by a senior financial officer of the Borrowers, and stating in comparative form the respective figures for the corresponding date and period in the previous Fiscal Year including a comparison to the budget contained in the Annual Financial Forecast;
 - (ii) the quarterly unaudited financial statements of each of the Borrowers; and
 - (iii) a Compliance Certificate.
- (7) **Monthly Reporting.** As soon as practicable and in any event within 30 days after the end of each month, the Borrowers shall deliver to the Lender:
 - (i) monthly unaudited financial statements for the Borrowers, on a combined basis (except for those months which comprise a Fiscal Quarter end);
 - (ii) monthly unaudited financial statements of each of the Borrowers (except for those months which comprise a Fiscal Quarter end);
 - (iii) an inventory declaration as at the end of that prior month listing the amount and location of each Borrower's inventory;
 - (iv) a Borrowing Base Certificate (including, without limitation, instructions in respect of the allocation of the Operating Facility and the L/C Facility among each of the Borrowers); and
 - (v) such other monthly operating and financial reports as may be required by the Lender, all in form satisfactory to the Lender.
- (8) **Annual Financial Forecast.** The Obligors shall deliver to the Lender for approval, not later than 120 days after the end of the each Fiscal Year, an Annual Financial Forecast.

- (9) **Use of Proceeds.** The Borrowers shall use the proceeds of all Borrowings solely for the purposes set out in Section 3.06.
- (10) **Reserves.** The Obligors will maintain appropriate reserves for Taxes and other contingent expenses or liabilities in accordance with GAAP.
- (11) **Other Information.** Each Obligor shall furnish to the Lender promptly on request such other information in its possession respecting its financial condition and its business and operations as the Lender may from time to time reasonably require.
- (12) **Insurance.** Each Obligor shall insure and keep insured its properties, assets and business placed with such insurers and with such coverage (including business interruption insurance) and against such loss or damage to the full insurable value of such properties and assets without co-insurance as the Lender shall reasonably require or, in the absence of any specification of such requirement, to the extent insured against by comparable corporations engaged in comparable businesses. Losses under all such insurance policies affecting assets charged by the Security shall be payable to the Lender as first mortgagee, subject to the Insurance Bureau of Canada's standard mortgage clause, or as first loss payee where mortgagee status cannot be obtained for any reason. Each such policy shall provide for a minimum of 30 days notice to the Lender of cancellation or lapse; the Obligors shall pay or cause to be paid all premiums necessary to maintain any such insurance policies in good standing as such premiums become due and payable. The Lender reserves the right to retain, at the Borrowers' expense, an independent insurance auditor to confirm compliance with this covenant and to advise the Lender generally as to the insurance coverage which the Obligors should be maintaining.
- (13) **Books and Records.** The Obligors will at all times maintain proper records and books of account and therein make true and correct entries of all dealings and transactions relating to its business and, upon prior notice by the Lender, shall make the same available for inspection by the Lender or any agent of the Lender at all times during regular business hours.
- (14) **Access.** Each Obligor will permit the Lender through its officers or employees or through any consultants retained by it, upon prior written notice by the Lender, to have reasonable access at all times during regular business hours, to any of the Obligors' premises and to any records, information or data in their possession so as to enable the Lender to ascertain the state of any Obligor's financial condition or operations, and will permit the Lender to make copies of and abstracts from such records, information or data, and will upon request of the Lender deliver to the Lender copies of such records, information or data.
- (15) **Notice of Material Adverse Effect.** The Obligors will give to the Lender prompt written notice of any Material Adverse Effect.

- (16) **Notice of Litigation.** The Obligors will give to the Lender prompt written notice of any action, suit, claim, litigation, or other proceeding which is commenced or threatened against any Obligor and is in an amount greater than or equal to \$200,000.
- (17) **Notice of Breach.** The Obligors shall immediately give to the Lender notice of any material default under any Material Contract or any breach of any term, condition or covenant under any Loan Document as soon as it becomes aware of same.
- (18) **Registration of Security.** The Obligors will provide the Lender with such assistance and do such things as the Lender may from time to time request so that the Security and any other instruments of conveyance or assignment effected pursuant to this Agreement or otherwise will be and remain registered, recorded or filed from time to time in such manner and in such places as may in the opinion of the Lender be necessary or advisable in perfecting the Security Interests constituted thereby.
- (19) **Material Contracts.** Each Obligor shall perform all of its obligations pursuant to all Material Contracts where failure to so perform would reasonably be expected to have a Material Adverse Effect.
- (20) **Compliance with Laws.** Each Obligor shall comply in all material respects with all Applicable Laws, including Environmental Laws.
- (21) **New Locations and Names.** The Obligors shall advise the Lender in writing not less than 30 days prior to any Obligor (i) changing the location of its "place of business", "registered office", "chief place of business", "principal place of business" or the location of its records or acquiring any such new locations; (ii) keeping, maintaining or storing inventory at any location other than the locations listed in Schedules "H", "I", "J" and "K"; or (iii) changing its corporate name. Upon any event described in subparagraph (ii) above, Schedules "H", "I", "J" and "K" as applicable shall be deemed to be amended to reflect such occurrence without the requirement of any further action. The Obligors shall provide the Lender with any additional security which the Lender may deem necessary to maintain or continue the effectiveness of its Security notwithstanding such change.
- (22) **Leased Locations.** The Obligors shall fully pay their respective monetary obligations in a timely manner and otherwise perform their respective material obligations under all leases and other agreements with respect to each leased location or public warehouse or other location that is not owned by any Obligor and where any asset charged by the Security is located.
- (23) **New Intellectual Property and Software.** The Obligors shall provide the Lender with full written particulars of any new patents, trademarks, trade names, copyrights, licenses and rights with respect thereto, or any new software (other

than Purchased Software), owned or acquired by any Obligor after the date of this Agreement forthwith following the acquisition of such new Intellectual Property or new software.

- (24) **New Material Contracts.** Upon request by the Lender, the Obligors shall provide the Lender with copies of all new Material Contracts entered into by any Obligor after the Closing Date.
- (25) **Good Repair.** Each Obligor will keep all of the assets and properties used or useful in the conduct of their business in good repair, working order and condition, ordinary wear and tear excepted and from time to time shall make, or cause to be made, all needful and proper repairs, renewals and replacements, betterments and improvements thereto, all as in the reasonable judgment of such Obligor may be necessary so that the business carried on by such Obligor may be properly and advantageously conducted at all times.
- (26) **Cooperate With Lender.** The Obligors shall cooperate fully with the Lender with respect to any proceedings before any court, board or other Governmental Authority which may in any way materially and adversely affect the rights of the Lender hereunder or any rights obtained by the Lender under any of the other Loan Documents and, in connection therewith, permit the Lender, at its election, to participate in any such proceedings. The Obligors shall cooperate with the Lender in obtaining for the Lender the benefits of any insurance proceeds lawfully or equitably payable in connection with any Property to the extent that the Lender is entitled to the same under the terms of this Agreement, and the Lender shall be reimbursed for any actual out-of-pocket expenses incurred in connection therewith (including, without limitation, reasonable attorney's fees and disbursements, and the payment by the Borrowers of the expense of an appraisal on behalf of the Lender in case of a fire or other casualty affecting such Property or any part thereof) out of such insurance proceeds.
- (27) **Insurance Policies.** The Obligors shall cause its insurance brokers to update their insurance records with a view to removing from the applicable policies the interests of Persons who no longer have business relations with the Obligors and no longer have an interest in their assets.
- (28) **Extra-Provincial Registrations.** The Borrowers shall cause, to the extent not already registered, for each Obligor to be duly registered as an extra-provincial corporation in all jurisdictions where any Obligor carries on business on or before January 21, 2011.

Section 9.02 Financial Covenants

From the date hereof and until the Outstanding Obligations are repaid in full, the Obligors jointly and severally will observe and perform each of the following covenants, unless compliance therewith shall have been waived in writing by the Lender:

- (1) **Total Liabilities to Tangible Net Worth Ratio.** The Obligors shall maintain a Total Liabilities to Tangible Net Worth Ratio calculated quarterly on the last day of each Fiscal Quarter of less than or equal to the ratio for each period indicated below:

| <u>Period</u> | <u>Ratio</u> |
|--|--------------|
| On the Closing Date to and including January 31, 2011 | 4.00:1.00 |
| For the period from and including February 1, 2011 to January 31, 2012 | 3.50:1.00 |
| For the period from February 1, 2012 and thereafter | 3.00:1.00 |

- (2) **Current Ratio.** The Obligors shall maintain a Current Ratio calculated quarterly on the last day of each Fiscal Quarter equal to or greater than 1.10:1.00 at all times from and after the Closing Date. The Current Ratio shall be tested on a quarterly basis on the last day of each Fiscal Quarter of the Obligors.
- (3) **Fixed Charge Coverage Ratio.** The Obligors shall maintain a Fixed Charge Coverage Ratio equal to or greater than 1.10:1.00 at all times from and after the Closing Date. The Fixed Charge Coverage Ratio shall be tested on an annual basis on the last day of each Fiscal Year.
- (4) **Calculation Principles.** The parties agree that in calculating the financial ratios listed below, the following additional calculation principles shall be used:
- (i) Fixed Charge Coverage Ratio.
- (A) a spot date shall be used to determine the amount of Funded Debt, being the last day of the Fiscal Quarter in respect of which the Ratio is being calculated (the "Ratio Date");
 - (B) the currency exchange rates in effect on the Ratio Date shall be used to determine the Funded Debt amount; and
 - (C) each of the four calculations of EBITDA used for the rolling four-quarter basis shall be determined using the currency exchange rates in effect on the last day of each applicable Fiscal Quarter (each being a "Test Date"), rather than the currency exchange rates in effect on the Ratio Date, in order to address fluctuations in the currency exchange rates between the various Test Dates.

(ii) Total Liabilities to Tangible Net Worth Ratio

- (A) deferred lease inducements and all shareholders advances shall be excluded from the definition of Total Liabilities for the purposes of calculating the Total Liabilities to Tangible Net Worth Ratio; and
- (B) future income taxes and/or income tax recoverable shall be excluded from the definition of Tangible Net Worth for the purposes of calculating the Total Liabilities to Tangible Net Worth Ratio; and
- (C) all shareholder loans shall be included in the definition of Tangible Net Worth (for greater certainty, all shareholder loans owing by the Obligors to any of their respective shareholders which have been validly and fully postponed and subordinated in right of payment and collection to the repayment in full of all Outstanding Obligations and already included in the definition of Tangible Net Worth shall not be double-counted as a result of this Section 9.02(4)(ii)(C)).

For greater certainty, the Obligors shall be required to maintain the financial ratios and covenants in this Section 9.02 at all times during the relevant periods, notwithstanding that such ratios and covenants may only be calculated for the purposes of this Agreement on a quarterly basis or annual basis.

Section 9.03 Negative Covenants

From the date hereof and until the Outstanding Obligations are paid in full, the Obligors jointly and severally shall adhere to the following covenants unless waived in writing by the Lender:

- (1) **Not to Amalgamate, etc.** No Obligor shall enter into any transaction or series of related transactions (whether by way of amalgamation, merger, winding-up, consolidation, reorganization, reconstruction, continuance, transfer, sale, lease or otherwise) whereby all or substantially all of its undertaking, properties, rights or assets would become the property of any other Person or, in the case of amalgamation or continuance, of the continuing corporation resulting therefrom.
- (2) **Indebtedness.** No Obligor shall create, assume, issue or permit to exist, directly or indirectly, any Indebtedness except for Permitted Indebtedness.
- (3) **Negative Pledge.** No Obligor shall create, assume, incur or suffer to exist any Security Interest in or upon its property, or in or upon any of its respective other undertakings, properties, rights or assets except for Permitted Encumbrances.
- (4) **No Guarantees.** No Obligor shall be or become liable, directly or indirectly, contingently or otherwise, for any obligation of any other Person by Guarantee except for: (i) guarantees delivered by the Obligors to the Lender under this

Agreement; (ii) guarantees in respect of Permitted Indebtedness, and (iii) any guarantees by any of the Obligor in favour of any of the other Obligor.

- (5) **Restrictions on Subsidiaries, Investments and Loans.** Unless approved in writing by the Lender, no Obligor shall directly or indirectly:
- (i) acquire or form any new Subsidiary without ensuring that such Subsidiary first executes and delivers an unlimited and unconditional Guarantee of the Outstanding Obligations together with security charging all present and after-acquired assets of such Subsidiary and a satisfactory opinion of counsel to such Subsidiary as to the enforceability of such guarantee and security, all in form and substance satisfactory to the Lender in its sole discretion;
 - (ii) become a partner in any partnership or a participant in any joint venture; or
 - (iii) make any advance, loan, extension of credit, capital contribution to or purchase any stock, bonds, notes, debentures or other Equity Securities of or make any other investment in any Person other than another Obligor.
- (6) **Relocation of Assets.** No Obligor shall locate or permit to be situated any of its property or assets in any jurisdiction other than as set out in Schedules "H", "I", "J" and "K" without having first (i) notified the Lender in writing in accordance with Section 9.01(21), (ii) taken such action as is necessary to perfect a Security Interest in favour of the Lender in such property or assets, and (iii) delivered such opinions of counsel with respect thereto as the Lender may reasonably require.
- (7) **Corporate Distributions.** No Obligor shall make, declare or pay (or agree to declare, declare or pay), directly or indirectly, any Corporate Distribution of any kind whatsoever other than:
- (i) reasonable bonuses to employees and management and expense reimbursements paid after the Closing Date in accordance with past practice in the ordinary course of business;
 - (ii) regularly scheduled interest payments to shareholders that have advanced shareholder loans to the Obligor provided that the interest rate in respect of such Indebtedness shall not exceed a rate of 10% per annum;
 - (iii) provided that the Lender has (A) completed, and is satisfied with its review of the Borrowers' in-house prepared financial statements for each Fiscal Year of the Obligor (including, without limitation, a comparison to budget analysis and commentary for each such Fiscal Year), and (B) granted its prior written consent, such consent not to be unreasonably withheld, repayments of Indebtedness owed by any Obligor to its respective shareholders in such amounts and at such times permitted and notified in writing by the Lender to the Borrowers; and

- (iv) all other Corporate Distributions as approved in writing from time to time by the Lender,

in each case, provided that at the time of and immediately after making such Corporate Distribution, no Default or Event of Default shall have occurred and be continuing or result therefrom.

- (8) **Disposition of Assets.** No Obligor shall sell, assign, transfer, convey, lease (as lessor), contribute or otherwise dispose of, or grant options, warrants or other rights with respect to, any of its properties or assets other than Permitted Asset Sales. Without limiting the generality of the foregoing, no Obligor shall enter into any sale or transfer and lease back arrangement with any Person.
- (9) **Material Contracts.** No Obligor shall cancel or terminate any Material Contract or amend or otherwise modify any Material Contract, or waive any default or breach under any Material Contract, or take any other action in connection with any Material Contract that would have a Material Adverse Effect.
- (10) **Capital Expenditures.** No Borrower shall make capital expenditures in excess of Permitted Capital Expenditures in any Fiscal Year except where the prior written consent of the Lender has been provided, such consent not to be unreasonably withheld.
- (11) **Change in Fiscal Year or Business.** No Borrower shall (i) change its Fiscal Year end, (ii) change the nature, form or substance of its business or lines of business which it now conducts, or (iii) commence carrying on any other business.
- (12) **Transactions with Related Parties.** No Obligor shall enter into any transactions with any future Subsidiaries, Affiliates or associates for goods or services unless such goods and services are provided on commercially reasonable terms.
- (13) **Shareholder Loans.** No Obligor shall accept a loan, advance or other payment from any shareholder or from any other Person who does not deal at arm's length with the Obligors until such shareholder or other Person executes and delivers to the Lender a subordination and postponement of claim on the Lender's required form, supported by an opinion of corporate counsel and security registrations to the extent deemed necessary by counsel to the Lender.
- (14) **Issuance of Shares.** No Obligor shall issue or agree to issue any shares of any class of its capital stock, nor grant any options, warrants, special warrants or other rights whereby the grantee thereof or any other Person could acquire any shares or other equity interests in any Obligor.
- (15) **Change in Articles, Name and Asset Location.** No Obligor shall (i) amend its articles or other constituting documents without the prior written consent of the Lender, or (ii) change its name or the location of its assets except in compliance with Section 9.01(21) hereof.

- (16) **Limitations on Hedging.** No Obligor shall enter into or otherwise become a party to or be obligated under any Hedging Agreement unless: (i) such Hedging Agreement is entered into with the Lender, (ii) such Hedging Agreement is entered into in the ordinary course of business for the purpose of hedging against the risk of fluctuations in currencies and/or interest rates, and not for speculative purposes, and (iii) in respect of any Exchange Rate Swap Agreement, such Exchange Rate Swap Agreement is only in respect of Canadian and/or U.S. currency.
- (17) **Limitation on Take Over Bids.** No Obligor shall enter into a hostile take over bid to acquire another entity.
- (18) **Change in Control.** No Obligor shall consent to, process, register or record any transfer of its shares by Fred Benitah or Isaac Benitah or any other Person controlled by any of them, directly or indirectly, beneficially or of record, without the prior written consent of the Lender.
- (19) **No Enforcement of Inter-Obligor Security.** No Obligor shall be entitled to take any steps in the enforcement of any security it may hold from another Obligor without the prior written consent of the Lender.
- (20) **No Acquisition.** No Obligor shall make any investment in or purchase or otherwise acquire (i) some or all of the Equity Securities of any other Person, or (ii) some or substantially all of the property or assets of another Person, in each case, without the prior written consent of the Lender.
- (21) **Clean Up Period.** The Borrowers shall not have Outstanding Borrowings under the Operating Facility in excess of \$10,000,000, in aggregate, for a minimum period of ten (10) consecutive Business Days in the month of January of each Fiscal Year.

ARTICLE 10 SECURITY

Section 10.01 Existing Security Documents

The Existing Security Documents shall be general and continuing security for the due payment and performance of the Obligations.

Section 10.02 Additional Security

The Borrowers shall execute and deliver to or shall cause to be executed and delivered to the Lender in form and substance satisfactory to the Lender documents to secure all debts, liabilities and obligations of the Borrowers to the Lender including, without limitation, the Outstanding Obligations as follows:

- (1) a guarantee and postponement of claim executed by Benix in respect of the Outstanding Obligations of the other Borrowers to the Lender;

- (2) a guarantee and postponement of claim executed by Bombay in respect of the Outstanding Obligations of the other Borrowers to the Lender;
- (3) a guarantee and postponement of claim executed by Bowring in respect of the Outstanding Obligations of the other Borrowers to the Lender;
- (4) an assignment of insurance executed by Benix;
- (5) a subordination and postponement of claim from each Postponing Shareholder of each Borrower (and from each other Person who does not deal with a Borrower at arm's length) who has advanced or subsequently advances a secured loan to a Borrower, together with an opinion from counsel to each corporate shareholder or other Person as to the due authorization, execution and delivery of such assignment;
- (6) use commercially reasonable efforts to obtain a non-disturbance agreement or waiver from those landlords of each Borrower's leased locations designated by the Lender; and
- (7) all such other security agreements or instruments as the Lender may reasonably require.

Section 10.03 Further Assurances

The Obligors shall deliver or shall cause to be delivered to the Lender from time to time duly executed documents in form and substance satisfactory to the Lender and its counsel as may be reasonably requested by the Lender for the purpose of giving effect to this Agreement or the Security, or for the purpose of establishing compliance with the representations, warranties and conditions of this Agreement. Without limiting the generality of the foregoing, each Obligor shall cause any present or future Subsidiary to deliver such guarantees of and Security for the Outstanding Obligations as the Lender may reasonably require before such Subsidiary takes possession of any assets of the applicable Obligor or acquires any of its own assets.

Section 10.04 Hedging Arrangements and Services Arrangements

The Security shall secure all debts, liabilities and obligations of the Borrowers to the Lender pursuant to any Hedging Agreement or Services Agreements with all other debts, liabilities and obligations arising pursuant to the Loan Documents. After the repayment of all Borrowings, the Borrowers may provide cash collateral (to replace the then existing Security) to secure all debts, liabilities and obligations of the Lender pursuant to all Hedging Agreements and Services Agreements then existing (on terms and conditions and together with such security agreement, officer's certificates and legal opinions as the Lender may reasonably request) in an amount as the Lender may determine in its sole discretion, acting reasonably. Following delivery of cash collateral in accordance with the foregoing sentence, the Lender undertakes to take reasonable steps to cause to be discharged and released the Security being replaced (except to the extent that such Security secures debts, liabilities and obligations other than those to be secured by such cash collateral). This Section shall survive the repayment of all Borrowings and the termination of this Agreement until such time as all Hedging Agreements and Services Agreements have

expired or have been terminated and there are no further obligations owing under such agreements.

ARTICLE 11 DEMAND

Section 11.01 Rights and Remedies of the Lender

Notwithstanding anything to the contrary herein, upon Demand, at the option of the Lender:

- (1) the right of the Borrowers to obtain any further Borrowings shall cease and the Lender shall have no obligation to honour any cheques or other orders for payment;
- (2) the Outstanding Obligations shall become immediately due and payable to the Lender and the Lender may, without notice to the Borrowers, apply any amounts outstanding in cash accounts maintained by the Lender on behalf of the Borrowers to repayment of the Outstanding Obligations;
- (3) the Security shall become immediately enforceable; and
- (4) the Lender will take such actions and commence such proceedings as may be permitted at law or in equity (whether or not provided for in the Agreement or in the Security) at such times and in such manner as the Lender in its sole discretion may consider expedient.

Section 11.02 Remedies are Cumulative

For greater certainty, the rights and remedies of the Lender under this Agreement are cumulative and are in addition to and not in substitution for any rights or remedies provided by law; and any single or partial exercise by the Lender of any right or remedy following Demand or for any or breach of any term, covenant, condition or agreement contained in any of the Loan Documents shall not be deemed to be a waiver of or to alter, affect or prejudice any other right or remedy to which the Lender may be lawfully entitled for the same or breach, and any waiver by the Lender of the strict observance, performance or compliance with any term, covenant, condition or agreement contained in any of the Loan Documents and any indulgence granted by the Lender shall be deemed not to be a waiver of that or any subsequent breach.

Section 11.03 Set-Off

The Lender shall be entitled at any time or from time to time after the Lender has made Demand, without notice to set-off, consolidate and to apply any or all deposits and any other Indebtedness at any time held by or owing by the Lender to the Obligors against and on account of the debts, liabilities or obligations of the Obligors to the Lender, whether or not due and payable and whether or not the Lender has made Demand therefore.

Section 11.04 Cash Collateral Accounts

Following Demand being made by the Lender and in addition to any other rights or remedies of the Lender hereunder, the Lender as and by way of collateral security shall be entitled to deposit and retain in an account to be maintained by the Lender (bearing interest at the rates of the Lender as may be applicable in respect of other deposits of similar amounts for similar terms) amounts which are received by the Lender from an Obligor hereunder or as proceeds of realization of any Security to the extent such amounts may be required to satisfy any Outstanding Obligations.

**ARTICLE 12
ENVIRONMENTAL MATTERS**

Section 12.01 Representations and Warranties

The Borrower hereby represents and warrants as follows:

- (1) The businesses of the Obligors has been operated in compliance in all material respects with all applicable Environmental Laws and with all permits, licenses and authorizations issued to them pursuant to Environmental Laws.
- (2) There are no claims, investigations, litigation, administrative proceedings, whether pending or threatened relating to any Contaminants, Releases or other forms of pollution or alleged violation of applicable Environmental Laws (collectively "Environmental Matters") that may reasonably be expected to have a Material Adverse Effect. No Obligor has assumed any material liability of any other Person for response, removal, remediation, investigation, clean up, compliance or required capital expenditures in connection with any Environmental Matter arising prior to the date hereof.

Section 12.02 Environmental Covenants

The Borrower covenants with the Lender as follows:

- (1) **Compliance.** Each Obligor shall comply in all material respects with the requirements of any Environmental Law applicable to it.
- (2) **Notification.** Each Obligor shall promptly forward to the Lender copies of all material orders, notices, permits, applications or other communications and reports in connection with any Environmental Law affecting or relating to any Property or the operations and activities of any Obligor.

Section 12.03 Indemnity

The Obligors shall at all times indemnify and hold the Indemnities harmless against and from any and all claims, suits, actions, debts, damages, costs, losses, obligations, judgments, charges, and expenses, of any nature whatsoever suffered or incurred by an Indemnitee, whether upon realization of the Security, or as lender to the Borrowers, or as successor to or assignee of any

right or interest of any Obligor, or as a result of any order, investigation or action by any Governmental Authority relating to any Obligor or its business or property or as privileged or hypothecary creditor or mortgagee in possession of property or as successor or successor-in-interest to any Obligor as a result of any taking of possession of all or any Property or by foreclosure deed or deed in lieu of foreclosure or by any other means relating to any Obligor, under or on account of any breach of any Environmental Law which occurred prior to or during the time that an Obligor had control or possession of any Property, with respect to:

- (1) the Release of a Contaminant, the threat of the Release of any Contaminant, or the presence of any Contaminant affecting any Property, whether or not the same originates or emanates from any Property or any contiguous real or immovable property located thereon, including any loss of value of any Property as a result of any of the foregoing;
- (2) the Release of a Contaminant owned by, or under the charge, management or control of the Borrower, or any predecessor or assignor of any Obligor;
- (3) any costs incurred by any Governmental Authority or any other Person or damages from injury to, destruction of, or loss of natural resources in relation to, any Property or elsewhere, including reasonable costs of assessing such injury, destruction or loss incurred under any Environmental Laws;
- (4) liability for personal injury or property damage arising by reason of any civil law offenses or quasi-offenses or under any statutory or common law tort or similar theory, including, without limitation, damages assessed for the maintenance of a public or private nuisance or for the carrying on of a dangerous activity at, near, or with respect to any Property or elsewhere; and/or
- (5) any other Environmental Matter affecting any Property or the operations and activities of any Obligor within the jurisdiction of any federal, provincial, municipal, state or local environmental agency.

The obligations of the Obligors under this Section 12.03 shall arise upon the discovery of the presence or Release of any Contaminant at, upon, under, over, within or with respect to any Property, whether or not any Governmental Authority has taken or threatened any action in connection with the presence of any Contaminant.

Section 12.04 Scope of Indemnity

The Obligors acknowledge that the Lender has agreed to make the Borrowings available in reliance upon its representations, warranties, and covenants in this Article. For this reason, it is the intention of the Obligors and the Lender that the provisions of this Article shall supersede any other provisions in this Agreement, or the Security which in any way limit the liability of the Obligors, and the Obligors shall be liable for any obligations arising under or in connection with this Article even if the amount of the liability incurred exceeds the Outstanding Obligations. The obligations of the Obligors arising under this Article are absolute and unconditional and shall not be affected by any act, omission or circumstance whatsoever, except in respect of gross negligence or wilful misconduct by the Lender. The obligations of the Obligors arising under

this Article shall survive the repayment of the Outstanding Obligations and shall survive the transfer of any or all right, title and interest in and to any Property by the Obligors to any Person.

Section 12.05 Consultants, etc.

The Lender may employ lawyers, engineers, scientists, or consultants of the Lender's choice. Any engineer, scientist, or consultant so engaged by the Lender may upon reasonable notice to the applicable Obligor enter on to any Property for the purpose of any inquiry and may make any necessary excavation or bore holes and take samples of any material or substance, and record or copy any information by any method. The Lender shall ensure that any such Person employed by or acting on behalf of the Lender shall conduct itself and any inquiry or other activity on or in respect of the Property in a manner which does not unreasonably disrupt the business of the Obligors or which results in a breach of any Environmental Law. The Obligors hereby consents to any inquiries by the Lender or any lawyers, engineers, scientists, or consultants engaged on its behalf under any freedom of access or freedom of information legislation and agrees to execute such further consents or documents as may be necessary to give effect to this Section 12.05. Until Demand is made by the Lender, the Lender shall not disclose to any Person any of the information obtained as a result of the foregoing without the prior written consent of the Obligors unless disclosure is required by law, in which case the Lender shall notify the Obligors and provide the Obligors with a reasonable opportunity to disclose such information.

Section 12.06 Fees and Expenses

If the Lender retains the services of any lawyer, engineer, scientist, or consultant in connection with the subject of this Article, the Obligors shall pay the reasonable out-of-pocket costs and fees thereby incurred if retained and applicable to such party as a result of any breach of Environmental Law or in connection with any inquiry or investigation by a Governmental Authority in connection with Environmental Law, or if the services performed are reasonably necessary for the performance of the functions of the Lender under this Agreement or for the preservation or protection of the Security.

Section 12.07 Interest

If the Lender incurs any obligations, costs or expenses under this Article or in respect of any Environmental Activity covered by this Article, the Obligors shall pay the same to the Lender immediately on demand in respect of such party's obligations, and if such payment is not received within ten days, such amount will be treated as a Prime Rate Loan and the Borrowers will pay interest thereon at a rate equal to the sum of the Prime Rate plus 3.0% per annum, which shall accrue from the date of expiry of such ten-day period to the date of payment.

**ARTICLE 13
GENERAL**

Section 13.01 Notices

Any notice, request or other communication hereunder to any of the parties hereto shall be in writing and be well and sufficiently given if delivered personally or sent by prepaid registered

mail to its address or by telecopier to the number and to the attention of the person set forth below:

(1) In the case of the Borrowers:

Benix & Co. Inc.
Bombay & Co. Inc.
Bowring & Co. Inc.
98 Orfus Road
Toronto, Ontario
M6A 1L9

Attention: Margaret Morrison
Facsimile: (416) 781-1084

with a copy to:

Fraser Milner Casgrain LLP
1 First Canadian Place, Suite 3900
Toronto, ON
M5X 1B2

Attention: Sheldon Disenhouse
Facsimile: (416) 863-4592

(2) In the case of the Lender:

Canadian Imperial Bank of Commerce
Commerce Court West, 4th Floor
Toronto, Ontario
M5L 1A2

Attention: Michael Leroux
Katharine Kim
Facsimile: (416) 861-9295

with a copy to:

Gowling Lafleur Henderson LLP
1 First Canadian Place, Suite 1600
100 King Street West
Toronto, Ontario
M5X 1G5

Attention: David F. W. Cohen
Facsimile: (416) 862-7661

Any such notice shall be deemed to be given and received, if delivered, when delivered, and if mailed, on the third Business Day following the date on which it was mailed (unless an interruption of postal services occurs or is continuing on or within the three Business Days after the date of mailing in which case the notice shall be deemed to have been received on the third Business Day after postal service resumes), and if sent by telecopier on the next Business Day after the day on which the telecopy is sent. Either party may by notice to the other, given as aforesaid, designate a changed address or telecopier number.

Section 13.02 Performance of Covenants by the Lender

If any of the covenants or obligations contained herein shall not be performed by an Obligor, the Lender may perform such covenant or obligation and, if in so doing the Lender spends money or incurs liability, the amount of money so spent or liability incurred shall be treated as a Prime Rate Loan under the Operating Facility.

Section 13.03 Indemnity

- (1) In addition to any other indemnity provided for herein, the Obligors hereby agree to indemnify the Indemnitees on demand against any loss (other than loss of profit), expense or liability (including legal fees and disbursements) which an Indemnitee may sustain or incur as a consequence of the action or inaction of the Obligors in connection with:

- (i) any default in payment of the principal amount of any Borrowing or any part thereof or interest accrued thereon, as and when due and payable;
- (ii) any failure to fulfill on or before any Borrowing Date the conditions precedent to any Borrowing as provided for in this Agreement, if as a result of such failure such Borrowing is not made on such date;
- (iii) the making of any Demand;
- (iv) any misrepresentation made by the Obligors in the Loan Documents or in any instrument in writing delivered to the Lender in connection with this Agreement;
- (v) any investigation, litigation or proceeding related to this Credit Agreement and the transactions contemplated thereby; or
- (vi) issuing or amending any Letters of Credit,

including but not limited to (i) any loss or expense sustained or incurred in liquidating or redeploying deposits or other funds contracted for or acquired or used to effect or maintain such Borrowing or part thereof, and (ii) any legal and other expenses incurred by the Lender in any action to compel payment by the

Lender under a Letter of Credit or to restrain the Lender from making payment under a Letter of Credit.

- (2) To the extent that the agreements of the Obligors set out in this Section 13.03 to indemnify and save harmless are unenforceable in whole or in part for any reason, each Obligor shall contribute the maximum amount that it is permitted by Applicable Law to contribute to the payment and satisfaction of all applicable claims, demands, liabilities, damages, losses, costs, charges and expenses incurred by the Indemnitees or any of them.

Section 13.04 No Set-Off or Counterclaim

The obligations of the Obligors to make payments hereunder shall be absolute and unconditional and shall not be affected by any circumstance, including, without limitation, any set-off, compensation, counterclaim, recoupment, defence or other right which any Obligor may have against the Lender.

Section 13.05 Severability

Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall not invalidate the remaining provisions hereof and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Section 13.06 Time of Essence

Time shall, in all respects, be of the essence of this Agreement.

Section 13.07 Assignment

The Obligors may not assign this Agreement or any part hereof without the prior written consent of the Lender. The Lender shall be entitled to assign this Agreement in accordance with Section 13.12.

Section 13.08 Entire Agreement

This Agreement, together with any Security or other instrument contemplated hereby, constitutes the entire agreement between the parties with respect to the matters covered hereby and supersedes any other prior agreements, understandings or representations with respect to the Credit Facilities and, in particular, supersedes each of the Original Credit Agreements.

Section 13.09 Amendments

No amendment, modification or waiver of any provision of this Agreement, or consent by the Lender to any departure from any provision of this Agreement, is in any way effective unless it is in writing and signed by the Obligors, and in respect of an amendment or modification, by the Lender, in which event the amendment, modification, waiver or consent is effective only in the specific instance and for the specific purpose for which it is given.

Section 13.10 Law Governing

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract, and the parties hereby submit and attorn to the non-exclusive jurisdiction of the courts of the Province of Ontario.

Section 13.11 Conflict

In the event of a conflict in or between the provisions of this Agreement and the provisions of any of the other Loan Document then, notwithstanding anything contained in such other Loan Document, the provisions of this Agreement will prevail and the provisions of such other Loan Document will be deemed to be amended to the extent necessary to eliminate such conflict. If any act or omission is expressly prohibited under a Loan Document (other than this Agreement) but this Agreement does not expressly permit such act or omission, or if any act is expressly required to be performed under a Loan Document (other than this Agreement) but this Agreement does not expressly relieve the applicable Obligor from such performance, such circumstance shall not constitute a conflict in or between the provisions of this Agreement and the provisions of such Loan Document.

Section 13.12 Assignments and Participations

The Lender, without notice to or the consent of, reserves the right to sell, assign or transfer or grant a participation in the Credit Facilities, in whole or in part, to one or more Persons (the "Participants") at such times and upon such terms as it may determine provided that the Lender shall only make such an assignment or transfer to a Participant who is a Schedule I Bank so long as the Obligors are not in breach of any representation, covenant, term or condition of any Loan Document (each individually, a "Default") (for greater certainty, the Lender may sell, assign or transfer or grant a participation in the Credit Facilities to any Person after the occurrence of a Default). For the purpose of selling, assigning, transferring or granting a participation in the Credit Facilities, the Lender may disclose, on a confidential basis, to a potential Participant such information concerning the Obligors as the Lender considers appropriate, provided such Participant agrees to maintain the confidentiality of such information. The Obligors agree to execute and deliver such further documentation and take such further action as the Lender considers necessary or advisable to give effect to such sale, assignment, transfer or grant of participation, in each case that is consistent with the obligations of the Obligors hereunder. In the case of sale, assignment, transfer or granting of a participation, the Participant shall have, to the extent of such sale, assignment, transfer or grant of participation, the same rights and obligations as it would have if it were the Lender on the Closing Date and as such had executed this Agreement and any Security hereunder as required, and from the date of delivery of a notice of participation and undertaking, the Participant shall be a Lender hereunder. The selling, granting, transferring or assigning Lender shall be relieved, to the extent of and from and after the date hereof, the sale, assignment, transfer or grant of participation, of its obligations hereunder with respect to the Credit Facilities. The Obligors hereby acknowledge and agree that any sale, assignment, transfer or granting of a participation will give rise to a direct obligation of the Obligors to the Participant. A sale, transfer, assignment or grant of participation shall be

effective upon the Obligors having received a notice from the applicable original Lender to such effect.

Section 13.13 Judgment Currency

The obligations of the Obligors pursuant to this Agreement to make payments in a specific currency (the "Contractual Currency") shall not be discharged or satisfied by any tender or recovery pursuant to any judgment expressed in or converted into any other currency except to the extent to which such tender or recovery shall result in the effective receipt by the Lender of the full amount of the Contractual Currency payable or expressed to be payable under this Agreement. Accordingly, the obligations of the Obligors shall be enforceable as an alternative or additional cause of action for the purpose of recovering the other currency of the amount (if any) by which such effective receipt shall fall short of the Contractual Currency payable or expressed to be payable under this Agreement and shall not be effected by judgment being offered for any other sum due under this Agreement.

Section 13.14 Successors and Assigns

This Agreement shall be binding upon and enure to the benefit of the parties and their respective successors and permitted assigns.

Section 13.15 Guarantors

Should at any time any Obligor create or acquire a new Subsidiary, the provisions of this Agreement shall be automatically amended without further requirement to provide that all representations and warranties of the Obligors shall become representations and warranties of the Obligors with respect to itself and all such additional Subsidiaries, all covenants of the Obligors shall become covenants of the Obligors to perform or refrain from performing and to cause all such additional Subsidiaries to perform or refrain from performing, as applicable, all indemnities of the Obligors shall become indemnities of the Obligors and each such additional Subsidiary jointly and severally and the provisions of this Agreement shall be otherwise amended as the context requires. The Obligors shall and shall cause any such additional Subsidiary to perform all such acts and things and to execute and deliver all such documents and instruments as may be required to effect the foregoing.

Section 13.16 Counterparts

This Agreement and any other Loan Document may be executed in multiple counterparts, each of which shall be deemed to be an original agreement and all of which shall constitute one agreement. All counterparts shall be construed together and shall constitute one and the same agreement. This Agreement and any other Loan Document, to the extent signed and delivered by means of electronic transmission (including, without limitation, facsimile and Internet transmissions), shall be treated in all manner and respects as an original agreement and should be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person.

IN WITNESS WHEREOF the parties have executed this Agreement as of the day and year first above written.

BENIX & CO. INC.

Per:

Name:

Title:

I have authority to bind the Corporation.

BOMBAY & CO. INC.

Per:

Name:

Title:

I have authority to bind the Corporation.

BOWRING & CO. INC.

Per:

Name:

Title:

I have authority to bind the Corporation.

CANADIAN IMPERIAL BANK OF
COMMERCE

Per:



Name: Michael Leroux

Title: Authorized signatory



Name: Cynthia Pitta

Title: Authorized signatory

I/We have authority to bind the Bank.

SCHEDULE "A"
BORROWING NOTICE

TO: CANADIAN IMPERIAL BANK OF COMMERCE (the "Lender")

RE: Amended, restated and consolidated credit agreement dated as of December 2010 (together with all amendments, supplements, restatements, renew replacements and other modifications, if any, from time to time thereafter in thereto, the "Credit Agreement") between Benix & Co. Inc., Bombay & Co. and Bowring & Co. Inc. (collectively, the "Borrowers") and the Lender

1. With reference to the Credit Agreement, [Benix / Bombay / Bowring / the Borrowers] request(s) the following Borrowing by way of [initial Borrowing / subsequent Borrowing / rollover]:

(a) The applicable Borrowing Date is to be _____, 20____.

(b) An [initial Borrowing / subsequent Borrowing / rollover/] is to be obtained:

☐ under Operating Facility

OR

☐ under Benix Instalment Facility

OR

☐ under Bombay Instalment Facility

OR

☐ under L/C Facility.

{only complete paragraph (c) below in respect of an initial Borrowing / subsequent Borrowing of any accommodation}

(c) the Borrowing is to consist of:

☐ Prime Rate Loans in the aggregate amount of Cdn. \$_____

☐ Bankers' Acceptances in the aggregate amount of Cdn. \$_____

☐ U.S. Base Rate Loans in the aggregate amount of U.S. \$_____

☐ Letter of Credit in accordance with the terms set out below.

{only complete paragraph (d) below in respect of a rollover}

- (d) Bankers' Acceptances with face amounts aggregating Cdn. \$ _____ are to be rolled over as Bankers' Acceptances with the same aggregate amount.

{complete paragraph (e) below in respect of an initial Borrowing, subsequent Borrow rollover or conversion of a Bankers' Acceptance}

- (e) Bankers' Acceptances, the term of such Bankers' Acceptances is to be months with a maturity date of _____.

{complete paragraph (f) below in respect of an initial Borrowing of a Letter of Credit}

- (f) If the Borrowing of accommodation consists of a Letter of Credit:
- (i) the face amount of the Letter of Credit will be the aggregate of [Cd U.S.] \$ _____;
 - (ii) the expiration date of the Letter of Credit will be _____;
 - (iii) the name and address of the beneficiary of the Letter of Credit is follows:

 - (iv) attached as an Annex hereto are copies of all documentation with respect to the supported transaction including a description of the proposed terms and conditions of such Letter of Credit, with a precise description of documents to be presented by the beneficiary which, if presented by beneficiary prior to the expiration date of such Letter of Credit, would require the Cdn. Lender to make payment under such Letter of Credit.

2. The Borrowers confirm that as at the date of this Borrowing Notice:

- (a) no breach of any term, condition or covenant of any Loan Document has occurred and is continuing or will have occurred and be continuing on the applicable Borrowing Date, or will result from the Borrowing requested in this Borrowing Notice and the representations and warranties contained in the Credit Agreement and the other Loan Documents are true and correct in every material respect with the same effect as if such representations and warranties had been made on and as of the date of this Borrowing Notice (except where stated in the Credit Agreement to be made only as at the Closing Date and unless this Borrowing Notice pertains solely to a rollover of an existing Borrowing);

- (b) all of the conditions precedent to the Borrowing requested in this Borrow Notice, as specified in Article 6 of the Credit Agreement have been satisfied.
- (c) All capitalized terms not otherwise defined in this Borrowing Notice shall have the meaning ascribed thereto in the Credit Agreement.

Dated this _____ day of _____, 20____.

BENIX & CO. INC.
BOMBAY & CO. INC.
BOWRING & CO. INC.
Per:

Name:
Title:

I have authority to bind the Corporation

SCHEDULE "B"
CONVERSION NOTICE

TO: CANADIAN IMPERIAL BANK OF COMMERCE, the ("Lender")

RE: Amended, restated and consolidated credit agreement dated as of December 2010 (together with all amendments, supplements, restatements, renew replacements and other modifications, if any, from time to time thereafter in thereto, the "Credit Agreement") between Benix & Co. Inc., Bombay & Co. and Bowring & Co. Inc. (collectively, the "Borrowers") and the Lender

-
1. This Conversion Notice is delivered to you pursuant to the provisions of the Credit Agreement. All defined terms set forth in this Conversion Notice shall have respective meanings set forth in the Credit Agreement.
 2. We hereby request a Conversion of a maturing Prime Rate Loan into a US Base Rate Loan as follows:
 - (a) Facility: Operating Facility/Benix Instalment Facility/Bombay Instalment Facility
 - (b) Conversion Date: _____
 - (c) Conversion Amount: _____
 3. We hereby request a Conversion of a US Base Rate Loan into a Prime Rate Loan follows:
 - (a) Facility: Operating Facility/Benix Instalment Facility/Bombay Instalment Facility
 - (b) Conversion Date: _____
 - (c) Conversion Amount: _____
 4. We hereby request a Conversion of a Prime Rate Loan into a Bankers' Acceptances follows:
 - (a) Facility: Bombay Instalment Facility
 - (b) Conversion Date: _____
 - (c) Conversion Amount: _____
 - (d) Contract Period of Bankers' Acceptance: _____

5. We hereby request a Conversion of a maturing Bankers' Acceptance into a Prime F Loan as follows:
- (a) Facility: Bombay Instalment Facility
 - (b) Conversion Date: _____
 - (c) Face amount of maturing Bankers' Acceptance: _____
6. After obtaining the converted Borrowing, the Borrowers shall remain in compliance with the Credit Limits and Borrowing Base limitations set out in the Credit Agreement.
7. The representations and warranties contained in the Credit Agreement and the other Loan Documents are true and correct in every material respect with the same effect as if such representations and warranties had been made on and as of the date of this Conversion Notice (except where stated in the Credit Agreement to be made only as at the Closing Date). All covenants of the Obligor contained in the Credit Agreement and the Security Documents have been complied and no breach of any covenant, term or condition shall have occurred under any of the Loan Documents.

Dated this _____ day of _____, 20____.

BENIX & CO. INC.
BOMBAY & CO. INC.
BOWRING & CO. INC.
Per: _____

Name:
Title:

I have authority to bind the Corporation

SCHEDULE "C"
BORROWING BASE CERTIFICATE

TO: CANADIAN IMPERIAL BANK OF COMMERCE (the "Lender")

RE: Amended, restated and consolidated credit agreement dated as of December 2010 (together with all amendments, supplements, restatements, renew replacements and other modifications, if any, from time to time thereafter in thereto, the "Credit Agreement") between Benix & Co. Inc., Bombay & Co. and Bowring & Co. Inc. (collectively, the "Borrowers") and the Lender

I, _____ the _____ of the Borrowers certify, with personal liability, on behalf of the Borrowers, as follows:

1. I have read and am familiar with the provisions of the Credit Agreement and have in such examinations and investigations, including a review of the applicable books records of the Borrowers, as are necessary to enable me to express an informed opinion as to the matters set out herein. Unless otherwise defined herein, capitalized terms u herein have the meanings given thereto in the Credit Agreement and all calculati contained in this certificate shall be made in accordance therewith.

2. As of the fiscal month ending _____ the Borrowing Base is \$ _____, calculated as follows:

A. Eligible Inventory

- | | | |
|-----|--|-------|
| i) | inventory | _____ |
| ii) | other Security Interest | _____ |
| | Lender has no Security Interest | _____ |
| | obsolete, unfit for sale, etc. | _____ |
| | display items, samples or defective goods returned | _____ |
| | does not meet standard of Applicable Laws | _____ |
| | consignment sales | _____ |
| | within 30 days | _____ |
| | not covered by insurance | _____ |
| | subject to distribution agreement or license | _____ |

iii) 50% of (i) - (ii) \$ _____
(except for a one time exception of 60% of Eligible
Inventory of the Obligors for the period from August 1,
2010 up to and including October 31, 2010)

B. Priority Payables

The following amounts:

| | |
|---|----------|
| i) unpaid wages, salaries, commissions | \$ _____ |
| ii) arrears of rent | \$ _____ |
| iii) taxes due and payable | \$ _____ |
| iv) workers' compensation obligations | \$ _____ |
| v) government royalties | \$ _____ |
| vi) pension fund obligations | \$ _____ |
| vii) unremitted employee deductions, sales tax, excise tax, and other government taxes and royalties | \$ _____ |
| viii) unpaid vendors with right of repossession | \$ _____ |
| ix) amount of other liabilities which have a trust imposed to provide for payment of or security interest, lien or charge ranking or capable of ranking senior to or <i>pari passu</i> with any of the Lender's Security by virtue of law | \$ _____ |
| x) Priority Claims = (i) + (ii) + (iii) + (iv) + (v) + (vi) + (viii) + (ix) | \$ _____ |

Borrowing Base = (A)(iii) minus (B)(x) \$ _____

3. The Borrowing Base as calculated in Section 2 above and Credit Limit shall be allocated as follows:

| (a) | Benix | <u>Borrowing Base allocation</u> | <u>Credit Limit allocation</u> |
|------|--------------------|---|---|
| (i) | Operating Facility | _____ | _____ |
| (ii) | L/C Facility | _____ | _____ |

| | <u>Borrowing Base allocation</u> | <u>Credit Limit allocation</u> |
|--|--------------------------------------|------------------------------------|
| (b) Bombay | | |
| (i) Operating Facility | | |
| (ii) L/C Facility | | |
| (c) Benix | | |
| (i) Operating Facility | | |
| (ii) L/C Facility | | |
| Total Borrowing Base not to exceed figure as calculated in Section 2 above. | | |
| Total Limit allocation of the Operating Facility not to exceed \$21,500,000 (or such other credit limit not greater than \$24,500,000 as may be applicable and adjusted pursuant to Section 3.02(6)) | | |
| Total Limit allocation of the L/C Facility not to exceed \$10,000,000 | | |
| Total Limit allocation of the Operating Facility and the L/C Facility not to exceed \$29,500,000 | | |

The representations and warranties contained in the Credit Agreement and the other Loan Documents are true and correct in every material respect with the same effect as if such representations and warranties had been made on and as of the date of this Borrowing Base Certificate (except where stated in the Credit Agreement to be made only as at the Closing Date). All covenants of the Obligors contained in the Credit Agreement and the Security have been complied and no breach of any covenant, term or condition shall have occurred under any of the Loan Documents.

[THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK]

Dated this _____ day of _____, 20____.

BENIX & CO. INC.
BOMBAY & CO. INC.
BOWRING & CO. INC.
Per: _____

Name:
Title:

I have authority to bind the Corporation

SCHEDULE "D"
COMPLIANCE CERTIFICATE

TO: CANADIAN IMPERIAL BANK OF COMMERCE (the "**Lender**")

RE: Amended, restated and consolidated credit agreement dated as of December 2010 (together with all amendments, supplements, restatements, renewals, replacements and other modifications, if any, from time to time thereafter made thereto, the "**Credit Agreement**") between Benix & Co. Inc., Bombay & Co. Inc. and Bowring & Co. Inc. (collectively, the "**Borrowers**") and the Lender

I, _____ the _____ of the Borrowers certify, without personal liability, on behalf of the Borrowers as follows:

1. This Compliance Certificate is furnished pursuant to the Credit Agreement and the capitalized term used in this Compliance Certificate and not otherwise defined herein shall have the meaning ascribed to such term in the Credit Agreement.
2. I have read and am familiar with the terms of the Credit Agreement including, in particular, the definitions of the various financial terms, the representations and warranties and the covenants.
3. I have made or caused to be made such examinations or investigations as are, in my opinion, necessary to furnish this Compliance Certificate, and I have furnished this Compliance Certificate with the intent that it may be relied upon by the Lender as a basis for determining compliance by the Obligor with their respective covenants and obligations under the Credit Agreement and the other documents and agreements delivered by the Obligor to the Lender in connection therewith (collectively, the "**Loan Documents**") as of the date hereof.
4. The representations and warranties contained in the Credit Agreement are true and correct as of the date hereof with reference to facts existing on the date hereof, with the same effect as if made on such date except for those representations and warranties which speak to a specific date which shall be true as of such date.
5. The Obligor, since [insert date of last Compliance Certificate], has duly observed and performed all of its covenants and other agreements contained in the Loan Documents and has satisfied every condition contained in the Credit Agreement and each of the other Loan Documents to be observed, performed or satisfied by it.
6. The attached financial statements for the [Fiscal Quarter/Fiscal Year] ending [insert date] (the "**Reference Date**") present fairly the information contained in such financial statements, and such financial statements, and all calculations of financial covenants and

presentation of financial information in this Compliance Certificate and the Appendix hereto, have been prepared in accordance with GAAP and the Credit Agreement.

7. The Total Liabilities to Tangible Net Worth Ratio as at the Calculation Date _____:1.00. A detailed calculation of this ratio is attached as Appendix B hereto.
8. The Current Ratio as at the Calculation Date is _____:1.00. A detailed calculation of this ratio is attached as Appendix B hereto.
9. The Fixed Charge Coverage Ratio as at the Calculation Date is _____:1.00. A detailed calculation of this ratio is attached as Appendix B hereto.

DATED this _____ day of _____, 20 ____.

By _____
Name:
Title:

**APPENDIX A
TO COMPLIANCE CERTIFICATE**

FINANCIAL STATEMENTS

See attached.

**APPENDIX B
TO COMPLIANCE CERTIFICATE**

CALCULATIONS

Calculation Date: _____, 20____

Reference Date: _____, 20____

- A. As at the Calculation Date, the Total Liabilities to Tangible Net Worth Ratio is _____, calculated as follows:

The following calculations are applicable at the Calculation Date and all figures are on a roll four quarter basis and are for the Borrowers.

2. Total Liabilities:

| | | |
|------|--------------------------------|------|
| less | (a) Deferred lease inducements | \$ ● |
| | (b) All shareholder advances | \$ ● |

3. Tangible Net Worth, calculated as follows:

| | | |
|--|---|------|
| | (a) Shareholders' Equity; | \$ ● |
| | (b) Subordinated Debt; | \$ ● |
| | (c) All shareholder advances | \$ ● |
| | (d) Intangible Assets, calculated as follows: | \$ ● |
| | (i) Intellectual Property; | \$ ● |
| | (ii) Capitalized Expenses; | \$ ● |
| | (iii) Non-Arm's Length Advances; | \$ ● |
| | (iv) goodwill; | \$ ● |

Intangible Assets is equal to the sum of 2(d)(i) to 2(d)(iv) \$ ●

(e) Future Income Taxes and/or Income Tax Recoverable \$ ●

Tangible Net Worth is equal to the sum of A2(a), A2(b) and A2(c) less A2(d) and A2(e) \$

The Total Liabilities to Tangible Net Worth Ratio is equal to A1 divided by A2 ●:1.

B. As at the Calculation Date, the Current Ratio was _____, calculated follows:

The following calculations are applicable at the Calculation Date and all figures are on a rolling quarter basis and are for the Borrower.

1. Current Assets
2. Current Liabilities

The Current Ratio is Current Assets from B1 divided by Current Liabilities from BC2 =

C. As at the Calculation Date, the Fixed Charge Coverage Ratio was _____ calculated as follows

The following calculations are applicable at the Calculation Date and all figures are on a year-date basis until four fiscal quarters have elapsed from the Closing Date and thereafter shall be a rolling four quarter basis and are for the Borrowers.

1. EBITDA (see calculation in D below); :
2. occupancy costs; :
3. accrued management bonuses; !
- To the extent not duplicated;
4. occupancy costs; :
5. Interest Expense; :
6. payments made on Capital Leases \$
7. scheduled principal payments on Funded Debt \$
8. all payments on Subordinated Debt \$
9. all Corporate Distributions \$
10. the amount of taxes payable in cash \$

The Fixed Charge Coverage Ratio is the sum of C1, C2 and C3 divided by the sum of C4, C5, C6, C7, C8, C9 and C10 =

D. As at the Calculation Date, EBITDA was \$_____, calculated as follows:

The following calculations are applicable at the Calculation Date and all figures are on a rol four quarter basis and are for the Obligors.

1. EBITDA, calculated as follows:

- | | | |
|-------|--|------|
| (i) | net income; | \$ ● |
| (ii) | to the extent deducted in determining (i), the sum of: | |
| | (A) Interest Expense; | \$ ● |
| | (B) income taxes (whether paid or deferred); | \$ ● |
| | (C) depreciation; | \$ ● |
| | (D) amortization; | \$ ● |
| | (E) management bonuses | |
| (iii) | to the extent deducted in determining (i), extraordinary losses | \$ ● |
| (iv) | to the extent added in determining (i), extraordinary gains | \$ ● |

EBITDA is equal to the sum of (i), (ii), (iii) less (iv)

SCHEDULE "E"
EXISTING INDEBTEDNESS

As of December 13, 2010

| BORROWER | CREDITY FACILITY | LIMIT | OUTSTANDING BALANCE |
|----------|------------------------|-----------|---------------------|
| BENIX | Revolver | 7,000,000 | 6,367,446 |
| | Overdraft CAD and USD | | 6,184,674 |
| | LC Acceptances | | - |
| | Standby L/C | | 182,772 |
| | Documentary L/C | - | - |
| | Visa | 25,000 | |
| | Demand Instalment Loan | 333,333 | 333,333 |

| | | | |
|---------|-----------------------|-----------|-----------|
| BOWRING | Revolver | 8,000,000 | 6,562,251 |
| | Overdraft CAD and USD | | 6,203,285 |
| | LC Acceptances | | 344,196 |
| | Standby L/C | | 14,770 |
| | Documentary L/C | 5,000,000 | 267,719 |

| | | | |
|--------|------------------------|-----------|-----------|
| BOMBAY | Revolver | 8,000,000 | 7,385,319 |
| | Overdraft CAD and USD | | 7,235,319 |
| | LC Acceptances | | - |
| | Standby L/C | | 150,000 |
| | Documentary L/C | 5,000,000 | 1,644,056 |
| | Demand Instalment Loan | 2,083,333 | 2,083,333 |

SCHEDULE "F"
EXISTING SECURITY DOCUMENTS

A. Benix & Co. Inc.

1. a general security agreement dated April 3, 1996 executed by Benix.
2. a moveable hypothec dated April 3, 1996 executed by Benix (limited to the principal amount of \$3,650,000).
3. a guarantee and postponement of claim dated June 18, 1998 executed by Benix International Inc. (now Isaac Bennet Sales Agencies Inc.) in respect of the obligations of Benix
4. a general security agreement dated June 18, 1998 executed by Benix International Inc. (now Isaac Bennet Sales Agencies Inc.)
5. an application and approval of business loan life insurance for \$1,000,000 on the life of Fred Benitah dated May 27, 1998 and approved on January 12, 1999 executed by Benix.
6. an assignment and postponement of claim dated September 19, 2000 executed by Maxstan Imperial Limited in respect of claims owed by Benix (limited to the principal sum of \$500,000).
7. an assignment and postponement of claim dated September 19, 2000 executed by Benix International Inc. (now Isaac Bennet Sales Agencies Inc.) in respect of claims owed by Benix (limited to the principal sum of \$400,000).
8. an assignment and postponement of claim dated September 19, 2000 executed by Fred Benitah in respect of claims owed by Benix (unlimited).
9. an assignment and postponement of claim dated September 19, 2000 executed by Isaac Benitah in respect of claims owed by Benix (unlimited).
10. a guarantee and postponement of claim limited to \$5,000,000 dated November 23, 2006 executed by Benix in respect of the obligations of Bowring.
11. a general security agreement dated November 23, 2006 executed by Benix.
12. a movable hypothec dated November 23, 2006 executed by Benix.
13. a subordination and postponement agreement dated November 23, 2006 executed by Benix in favour of the Lender in respect of secured indebtedness owed by Bowring.
14. under Section 427 of the Bank Act (Canada): (i) application for credit and promise to give special security under the Bank Act, (ii) notice of intention to give security under Section 427 of the Bank Act dated February 23, 2010, (iii) special security in respect of

specified property or classes of property described in section 427 of the Bank Act, and
(iv) contract relative to special security under the Bank Act, in each case (unless
otherwise noted) dated March 31, 2010 and executed by Benix.

B. Bombay & Co. Inc. ("Bombay"), formerly 2151456 Ontario Inc.

*All security documents dated February 5, 2008 were entered into by 2151456 Ontario Inc. which subsequently changed its name to Bombay & Co. Inc. For simplicity, all security documents dated February 5, 2008 and listed below have been identified as being entered into by Bombay (the new name).

1. a security agreement dated February 5, 2008 executed by Bombay.
2. an assignment of key person life insurance on the life of Freddy Benitah in a minimum amount of \$5,000,000 dated February 5, 2008 executed by Bombay (Life Insurance Policy No. LI-H120, 903-7 issued by Sun Life Assurance Company of Canada).
3. an assignment of insurance dated February 5, 2008 executed by Bombay.
4. a moveable hypothec dated February 5, 2008 executed by Bombay.
5. under Section 427 of the Bank Act (Canada): (i) application for credit and promise to give special security under the Bank Act, (ii) notice of intention to give security under Section 427 of the Bank Act dated as of January 25, 2008, (iii) special security in respect of specified property or classes of property described in section 427 of the Bank Act, and (iv) contract relative to special security under the Bank Act, in each case (unless otherwise noted), dated February 5, 2008 and executed by Bombay.
6. an assignment and postponement of claim dated February 5, 2008 executed by Isaac Bennet Sales Agencies Inc. in respect of claims owed by Bombay (unlimited).
7. an assignment and postponement of claim dated February 5, 2008 executed by F.B.I. Inc. in respect of claims owed by Bombay (unlimited).
8. an assignment and postponement of claim dated February 5, 2008 executed by Isaac Benitah in respect of claims owed by Bombay (unlimited).
9. an assignment and postponement of claim dated February 5, 2008 executed by Freddy Benitah in respect of claims owed by Bombay (unlimited).
10. a subordination and postponement agreement dated February 5, 2008 executed by Isaac Bennet Sales Agencies Inc. in favour of the Lender in respect of secured indebtedness owed by Bombay.
11. a subordination and postponement agreement dated February 5, 2008 executed by F.B.I. Inc. in favour of the Lender in respect of secured indebtedness owed by Bombay.

C. Bowring & Co. Inc.

1. a general security agreement dated November 23, 2006 executed by Bowring.
2. a moveable hypothec dated November 23, 2006 executed by Bowring.
3. an assignment of insurance dated November 23, 2006 executed by Bowring.
4. an assignment of key person life insurance on the life of Freddy Benitah in a minimum amount of \$5,000,000 dated November 23, 2006 executed by Bowring (Life Insurance Policy No. LI-F524,377-0 issued by Sun Life Assurance Company of Canada).
5. an assignment and postponement of claim dated November 23, 2006 executed by Isaac Bennet Sales Agencies Inc. in respect of claims owed to Bowring (unlimited).
6. an assignment and postponement of claim dated November 23, 2006 executed by F.B.I. Inc. in respect of claims owed by Bowring (unlimited).
7. an assignment and postponement of claim dated November 23, 2006 executed by Isaac Benitah in respect of claims owed by Bowring (unlimited).
8. an assignment and postponement of claim dated November 23, 2006 executed by Freddy Benitah in respect of claims owed by Bowring (unlimited).
9. a subordination and postponement agreement dated November 23, 2006 executed by Isaac Bennet Sales Agencies Inc. in favour of the Lender in respect of secured indebtedness owed by Bowring.
10. a subordination and postponement agreement dated November 23, 2006 executed by F.B.I. Inc. in favour of the Lender in respect of secured indebtedness owed by Bowring.
11. a confirmation of security dated February 5, 2008 executed by Bowring (confirming that all security previously granted by Bowring in favour of the Lender also stands as continuing security in respect of Bowring's obligations under its guarantee in favour the Lender in respect of Bombay's obligations).
12. a guarantee and postponement of claim limited to the principal amount of \$5,000,000 dated February 5, 2008 executed by Bowring in respect of the obligations of Bombay.
13. under Section 427 of the *Bank Act* (Canada): (i) application for credit and promise to give special security under the Bank Act, (ii) notice of intention to give security under Section 427 of the Bank Act dated as of January 25, 2008, (iii) special security in respect of specified property or classes of property described in section 427 of the Bank Act, and (iv) contract relative to special security under the Bank Act, in each case (unless otherwise noted) dated February 5, 2008 and executed by Bowring.

SCHEDULE "G"
LITIGATION

A. Benix & Co. Inc.

L'Image Enterprises v. Benix & Co. Inc.
Federal Court Action No. T-353-10
Filed in Toronto, Ontario
Amount – TBD, expected to be less than \$50,000

B. Bombay & Co. Inc.

Nil.

C. Bowring & Co. Inc.

Nii Northern International Inc. and Winvic Sales Inv. V. Bowring & Co. Inc.
Federal Court File No. T-768-09
Date filed – July 19, 2010
Filed in Toronto, Ontario
Amount – TBD, expected to be less than \$50,000

SCHEDULE "H"
JURISDICTIONS IN WHICH ASSETS ARE LOCATED

A. Benix & Co. Inc.

Alberta
British Columbia
Manitoba
Ontario
Quebec

B. Bombay & Co. Inc.
(formerly 2151456 Ontario Inc.)

Alberta
British Columbia
Manitoba
New Brunswick
Newfoundland and Labrador
Nova Scotia
Ontario
Quebec
Saskatchewan

C. Bowring & Co. Inc.

Alberta
British Columbia
Manitoba
New Brunswick
Newfoundland
Nova Scotia
Ontario
Quebec
Saskatchewan

SCHEDULE "I"
OWNED PROPERTIES

A. Benix & Co. Inc.

Only property owned is furniture and fixtures; there is no real property owned.

B. Bombay & Co. Inc.

Only property owned is furniture and fixtures; there is no real property owned.

C. Bowring & Co. Inc.

Only property owned is furniture and fixtures; there is no real property owned.

SCHEDULE "J" **LEASED PROPERTIES**

A. BENIX & CO. INC.

BENIX & Co. Inc.

| STORE NO | LOCATION | ADDRESS | CITY | PROV | POSTAL CODE | LAND |
|----------|---------------------------|---------------------------------|---------------------|------|-------------|----------------------------|
| 110 | Decarie | 7335, boul. Decarie | Montréal | QC | H4P 2G8 | Auto MC-MICA Realty |
| 112 | Galerias Des Sources | 5131, boul. des Sources | Dollard des Ormeaux | QC | H3S 2V4 | Cogir In Trust-Galerias O |
| 116 | Centre Commercial Blvd. | 4162, est Jean-Talon | Sr. Leonard | QC | H1S 1J7 | The Blvd Shopping Centre |
| 117 | Place Langueuil | 825, ouest St. Laurent | Langueuil | QC | J4K 2V1 | Cogir-Place Langueuil |
| 119 | Les Galerias Joliette | 1075 boul. Flestone | Joliette | QC | J6E 6X6 | Centres D'Aschats Beauw |
| 121 | Galerias De Hull | 320 boul. St. Joseph | Hull | QC | J8Y 3Y8 | Les Galerias De Hull Limit |
| 122 | CN Central Station | 895 ouest rue de la Gauchetière | Montréal | QC | H3B 4G1 | Homco Realty Fund (130) |
| 125 | Kirkland | 3236 rue Jean Yves | Kirkland | QC | H9J 2R6 | Rio-Can REIT |
| 129 | Jean Talon | 6856 est Jean Talon | St. Leonard | QC | H1S 1N1 | S & D-Shiller |
| 130 | Messe Cite Notre Dame | 2238 Autoroute Chomedey | Laval | QC | H7X 4G8 | Rio-Can Holdings (Quebec |
| 132 | Carrefour De Nord | 980, boul Grignon | St-Jérôme | QC | J7Y 357 | Carrefour Richélieu Reali |
| 139 | Place Desjardins | 5, Complexe Desjardins | Montréal | QC | H2K 1K9 | Desjardins Gestion Immo |
| 150 | Cartwright | 127 Cartwright Avenue | Toronto | ON | M6A 1V4 | IBSA, International Clothi |
| 151 | White Oaks Mall | 1105 Wellington Road | London | ON | N6E 1V4 | White Oaks Mall Holdings |
| 152 | Oldie Outlet Mall | 1250 South Service Road | Mississauga | ON | L5E 1V4 | Ivanhoe Cambridge 11 Inc |
| 153 | Niagara Square | 7555 Montrose Road | Niagara Falls | ON | L2H 2E9 | RPS-Niagara Square |
| 155 | Dufferin Mall | 900 Dufferin Street | Toronto | ON | M6H 4A9 | Primaris Management Inc |
| 157 | Shoppers World Brampton | 499 Main Street South | Brampton | ON | L6Y 1N7 | RPS-116 Shoppers World I |
| 159 | Fairview Mall | 1800 Sheppard Avenue East | North York | ON | M2J 5A7 | Fairmail Leaseholds Inc. |
| 160 | Bramalea City Center | 25 Peel Centre Drive | Brampton | ON | L6T 3R5 | Morguard Investments Li |
| 161 | Hillcrest Mall | 9350 Yonge Street | Richmond Hill | ON | L4C 5G2 | Ontrea Inc. |
| 162 | Billingsbridge Plaza | 2269 Riverside Drive | Ottawa | ON | K2A 1H2 | 20 Vic Management Inc-2 |
| 163 | Carlingwood Mall | 2121 Carling Avenue | Ottawa | ON | K2A 1S3 | 20 Vic Management Inc-2 |
| 166 | Tecumseh Mall | 7654 Tecumseh Road East | Windsor | ON | N8T 1E9 | Ivanhoe Cambridge 11 Inc |
| 167 | Devonshire Mall | 3100 Howard Avenue | Windsor | ON | N8X 3Y8 | Devonshire Mall Ltd. |
| 170 | Scarborough Town Centre | 300 Borough Drive | Scarborough | ON | M1P 4P5 | Scarborough T.C. Holding |
| 171 | Upper Canada Mall | 17800 Yonge Street | Newmarket | ON | L3Y 4Z1 | Upper Canada Mall Limit |
| 172 | Gerrard Square | 1000 Gerrard Street East | Toronto | ON | M4M 3G6 | Davpart |
| 173 | Georgian Mall | 509 Bayfield Street | Barrie | ON | L4M 4Z8 | Georgian Leasehold Inc. |
| 176 | Erin Mills Town | 5100 Erin Mills Parkway | Mississauga | ON | L5M 4Z5 | Erin Mills Towncentre Co |
| 178 | Umaridge Mall | 999 Upper Wentworth Street | Hamilton | ON | L9A 4X5 | Ontrea Inc. |
| 179 | Eglinton Square Centre | 1 Eglinton Square | Toronto | ON | M1L 2K1 | Primaris Management Inc |
| 182 | Markville Shopping Centre | 5000 Highway 7 East | Markham | ON | L3S 4H5 | Ontrea Inc. |
| 185 | Woodbridge Shopping Ctr | 200 Windflower Gate | Woodbridge | ON | L4L 1X0 | CREIT Management Limit |
| 186 | Trinity Common | 70 Great Lakes Drive | Brampton | ON | L6R 2K7 | RPS-116 Trinity Common I |
| 187 | Ancaster Power Centre | 821 Golf Links Road | Ancaster | ON | L9K 1L5 | Capitol Management Cor |
| 188 | Heartland Power Centre | 5935 Mevis Road | Mississauga | ON | L7G 2E1 | Select Management |
| 190 | Cambridge Centre | 355 Hespeler Road | Cambridge | ON | N1R 3B6 | Morguard Investments Li |

BENIX & Co. Inc.

| STORE NO | LOCATION | ADDRESS | CITY | PROV | POSTAL CODE | LAND |
|----------|-------------------------------------|----------------------------|----------------|------|-------------|-----------------------------|
| 191 | Collingwood Centre | 55 Mountain Rd | Collingwood | ON | L9Y 4M2 | Riocan REIT (Ontario 11) |
| 192 | Quinte Mall | 190 North Front Street | Bellefleur | ON | X8P 3E3 | Quinte Mall Limited |
| 196 | Kennedy Commons | 29 William Kitchen Road | Scarborough | ON | M1P 3B7 | Kennedy Commons Inc. |
| 200 | Ottawa Trainyards | 100 Trainyards Drive | Ottawa | ON | K1G 3S2 | Conplex Corp |
| 202 | Burlong | 3487 Wyndcroft Rd | Oakville | ON | L6L 0B6 | RRL Burlong Inc. |
| 203 | Oshawa Centre | 419 King Street West | Oshawa | ON | L1J 2K5 | Oshawa Centre Holdings |
| 205 | Cataraqui Town Centre | 945 Gardiners Road | Kingston | ON | K7M 7H4 | Primaris Management Inc. |
| 206 | Marionville Place | 1680 Richmond Street North | London | ON | N6G 3Y9 | Ontario Inc. |
| 207 | Sunrise Shopping Centre | 1400 Ottawa Street South | Kitchener | ON | N2E 4E2 | Sunrise Shopping Centre |
| 208 | Vaughan Mills | 1 Bass Pro Mills Drive | Concord | ON | L4X 5W4 | Ivanhoe Cambridge 11 Inc |
| 209 | Oshawa South | 580 Lavel Drive | Oshawa | ON | L1J 0B5 | Oshawa South Co-Tenancy |
| 211 | Malvern Town Centre | 31 Tapscott Road | Toronto | ON | M4M 3G6 | Les Alles Dela Mode Inc. |
| 212 | Rainbow Centre | 40 Elm Street | Sudbury | ON | P3C 1S8 | Vista Sudbury Hotel Inc. |
| 216 | Milton | 1095 Maple Avenue | Milton | ON | L9T 0A5 | RPS-Rio Centre Milton |
| 231 | Kildonan Place | 1555 Regent Avenue West | Winnipeg | AN | R2C 4J2 | Kildonan Place |
| 261 | Sunridge Mall | 2525-36th Street N.E. | Calgary | AB | T1Y 5Y4 | Primaris Management Inc. |
| 262 | Deerfoot Mall | 901-64th Avenue N.E. | Calgary | AB | T2E 7P4 | Deerfoot Mall (Calgary) Ltd |
| 268 | West Edmonton Mall | 8842 - 170 Street | Edmonton | AB | T5T 3J7 | West Edmonton Mall |
| 272 | Willowbrook Shopping Centre | 19705 Fraser Highway | Langley | BC | V3A 7E9 | Bentall Retail Services LP |
| 273 | Guildford Town Centre | 2695 Guildford Town Centre | Surrey | BC | V3R 7C1 | Guildford Towncentre Ltd |
| 275 | Coguitam Centre | 2829 Barnet Highway | Cogitlam | BC | V3B 5R5 | Pension Fund Realty Umltd |
| 310 | Champlain Mall | 2151 boul. Lapiniere | Brossard | QC | J4W 2T5 | Ivanhoe Champlain Inc. |
| 330 | Orfus Road (Barnes) | 98 Orfus Road | Toronto | ON | M6A 1L5 | 1088983 Ontario Ltd-Inter |
| 331 | Square One (Barnes) | 100 City Centre Drive | Mississauga | ON | L5B 2C9 | Oxford In Trust For Square |
| 336 | Pen Centre (Barnes) | 221 Glendale Avenue | St. Catharines | ON | L2T 2K9 | 20 Vlc Management Inc. |
| 370 | Polo Park (Barnes) | 1485 Portage Avenue | Winnipeg | MB | R3G 0W4 | Ontario Inc. |
| 531 | Thickson Place (Designer Depot) | 1715 Victoria St East | Whitby | ON | L2N 9W4 | Les Alles Dela Mode Inc. |
| 532 | St. Catharines (Designer Depot) | 399 Louth St | St. Catharines | ON | L2S 4A2 | Les Alles Dela Mode Inc. |
| 533 | Eglinton Corners (Designer Depot) | 1920 Eglinton Ave E #1 | Toronto | ON | M11 2L9 | Les Alles Dela Mode Inc. |
| 535 | Walker Road (Designer Depot) | 4347 Walker Road | Windsor | ON | N8W3T6 | Les Alles Dela Mode Inc. |
| 536 | Vaughan Mills (Designer Depot) | 1 Bass Pro Mills Drive | Vaughan | ON | L4K5W4 | Les Alles Dela Mode Inc. |
| 580 | South Common (Designer Depot) | 1620-99TH St North West | Edmonton | AB | T6N1M5 | Les Alles Dela Mode Inc. |
| 581 | Oakridge Centre | 650 West 41st Avenue | Vancouver | BC | V5Z 2M9 | Oakridge Centre Vancouver |
| 582 | Northland Village (Designer Depot) | 5111 Northland Dr NW | Calgary | AB | T2L2L8 | Les Alles Dela Mode Inc. |
| 583 | West Pointe Centre (Designer Depot) | 17540 100th Ave North W | Edmonton | AB | T5S 2S2 | Les Alles Dela Mode Inc. |
| 585 | Sunridge Mall (Designer Depot) | 2929 Sunridge Way NE | Calgary | AB | T1Y7K7 | Les Alles Dela Mode Inc. |

B. Bombay & CO. INC.

BOMBAY & Co. Inc.

| STORE NO | LOCATION | ADDRESS | CITY | PROV | POSTAL CODE | LAN |
|----------|-----------------------------|---|----------------|------|-------------|---------------------|
| 110 | Mic Mac Mall | 21 Mic Mac Blvd. | Dartmouth | NS | B3A 4N3 | Mic Mac Mall Limit |
| 138 | Dartmouth Crossing | 174 Hector Gate Unit 3K-1 | Dartmouth | NS | B3B 0E6 | Dartmouth Crossin |
| 170 | Stavanger & Torbay | 568 Aberdeen Ave. | St. Johns | NF | A1A 5N6 | Calloway REIT-First |
| 199 | Bayers Lake Power Centre | 212-C Chain Lake Drive | Halifax | NS | B3S 1C5 | Calloway REIT(Hall |
| 230 | Place Rosemere | 401 LaBelle Blvd.- M-19 | Rosemere | QC | J7A 3T2 | Morguard Investm |
| 231 | Brossard | 9500 Leduc- Ste. 5 | Brossard | QC | J4Y 0B3 | Quartier Dix30 Rlo |
| 280 | Decarie | 7325 Decarie | Montreal | QC | H4P 2G8 | Immeubles MC Mi |
| 282 | Rockland Centre | 2305 Rockland Rd. | Mount Royal | QC | H3P 3E9 | Ivanhoe Cambridge |
| 283 | Carrefour Champetre Bromont | 575 Place Champetre | Bromont | QC | J2L 0A2 | 9146-6946 Quebec |
| 285 | Les Galeries d'Anjou | 7999 Blvd. Les Galeries D'Anjou | Ville d'Anjou | QC | H1M 1W6 | Les Galeries De An |
| 286 | Le Carrefour Laval | 3003 Boul. Le Carrefour | Laval | QC | H7T 1C7 | Le Carrefour Laval |
| 288 | Place St - Foy | 2450 Blvd. Laurier #47 | Ste-Foy | QC | G3V 2L1 | Place Ste-Foy Limit |
| 297 | Kirkland Centre | 3252 Rue Jean Yves | Kirkland | QC | H9J 2R6 | Riotin REIT In Trus |
| 311 | Bayshore Shopping Ctr | 100 Bayshore Drive | Ottawa | ON | K2B 8C1 | Ivanhoe Cambridge |
| 315 | Fairview Park Mall | 2960 Kingsway Drive | Kitchener | ON | N2C 1X1 | Fairview Park Leas |
| 316 | Masonville Mall | 1680 Richmond St. N. #123 | London | ON | N6G 2N2 | Ontrea Inc. |
| 320 | Greenlane Center | 18182 Yonge St. Yonge & Greenlane | Newmarket | ON | A1A | RPS-East Gwillimbl |
| 323 | Upper Canada Mall | 17600 Yonge Street Box 177 | Newmarket | ON | L3Y 4Z1 | Upper Canada Mall |
| 325 | Uimeridge Mall | 999 Upper Wentworth Street #243 | Hamilton | ON | L9A 4X5 | Ontrea Inc. |
| 332 | White Oaks Mall | 1105 Wellington Rd.- Unit #481 | London | ON | N6E 1V4 | White Oaks Holding |
| 371 | Georgian Mall | 509 Bayfield St., Unit #N51A | Barrie | ON | L4M 4Z8 | Georgian Leasehol |
| 373 | Walker Square | 4331 Walker Rd.- Unit A.1 | Windsor | ON | N8W 3T6 | Hudson Bay Co. |
| 375 | Pen Centre | 221 Glendale Avenue, Hwy406, Unit#10078 | St. Catharines | ON | L2T 2K9 | 20 Vic Manager |
| 378 | Cambridge Smart Centre | 22 Pinebush Road, Bldg O Unit#0004 | Cambridge | ON | N1R 8K5 | Calloway REIT-Cum |
| 398 | Gardiner's Road | 10-616 Gardiners Road | Kingston | ON | K7M 3X9 | Riocan REIT(Riocan |
| 551 | West Edmonton Mall | 2127-8882-170th Street | Edmonton | AB | T5T 4J2 | West Edmonton M |
| 560 | Market Mall | 3625 Shaganappi Trail-WH003 | Calgary | AB | T3A 0E2 | Market Mall Lease |
| 583 | South Edmonton Commons | 99th Street N.W.- Unit 191 | Edmonton | AB | T6N 1K9 | Rio-Kim Holdings (/ |
| 596 | Kenaston | 1585 Kenaston Blvd. | Winnipeg | MB | R3P 2N3 | Calloway REIT-Win |
| 652 | Hillside Centre | 52-1644 Hillside Avenue | Victoria | BC | V8T 2C5 | Hillside Centre Hok |
| 662 | Richmond Centre | 6551-3 Rd. Unit 1842 | Richmond | BC | V6Y 2B6 | Ontrea Inc. |
| 677 | Granville Street | 2526 & 2536 Granville St. | Vancouver | BC | V6H 3G8 | McLellan Reid Estat |
| 678 | Meadowtown Centre | 19800 Lougheed Hwy., Unit 930 | Plt Meadows | BC | V3Y 2W1 | Omnit Group Of Co |
| 695 | Langley Power Centre | 20070 Langley By-Pass | Langley | BC | V3A 9J7 | RioKim Holdings/La |

BOMBAY & Co. Inc.

| STORE NO | LOCATION | ADDRESS | CITY | PROV | POSTAL CODE | LANDL |
|----------|------------------------|--------------------------------------|---------------|------|-------------|-------------------------|
| 902 | Bayview Village | 2901 Bayview Avenue | Willowdale | ON | M2K 1E6 | Orlando Corporation |
| 912 | Yorkdale Mall | 3401 Dufferin Street, UNIT 15&16 | Toronto | ON | M6A 2T9 | Yorkdale Shopping Cen |
| 920 | Ajax | 20 Kingston Rd. West | Ajax | ON | L1T 4K8 | Riocan Holdings Inc. |
| 921 | Markville Mall | 5000 Highway 7-Unit #57 A | Markham | ON | L3R 4M9 | Ontrea Inc. |
| 922 | Erin Mills Town Centre | 5100 Erin Mills Pkwy- R102A | Mississauga | ON | L5M 4Z5 | The Erin Mills Towncer |
| 926 | Mapleview Mall | 900 Maple Ave. Unit A13A | Burlington | ON | L7S 2J8 | Ivanhoe Cambridge J1 |
| 927 | Dixie Outlet Mall | 1250 South Service Rd #162 | Mississauga | ON | L5E 1V4 | Ivanhoe Cambridge J1 |
| 928 | Hyde Park | 2501 Hyde Park Gate Blvd. - Unit #1G | Oakville | ON | L6H 6G6 | Purple Knights Develop |
| 929 | Bayview Glen | 295 High Tech Rd. | Richmond Hill | ON | L4B 0A3 | Yonge Bayview Holding |
| 930 | Oshawa Mall | 419 King Street W #2435 | Oshawa | ON | L1J 2K5 | Oshawa Centre Holding |
| 950 | Bramalea City Centre | 25 Peel Centre Drive Unit# 512 | Brampton | ON | L6T 3R5 | Morguard Investment |
| 976 | Scarborough Town Pad | 410 Progress Ave.-Unit D3 | Toronto | ON | M1P 5J1 | Stc Holdings (Two) Inc. |
| 990 | Trinity Common | 148 - 70 Great Lakes Drive | Brampton | ON | L6R 2K7 | Rps-Itf Trinity Commor |
| 991 | Riocan Colossus Centre | 16 Famous Ave- Unit 145 | Woodbridge | ON | L4L 9M3 | Rps-Itf Colossus Centre |
| 992 | Heartland Town Centre | 6075 Mavis Road- Unit #19 | Mississauga | ON | L5R 4G6 | Orlando Corporation |

C. Bowring & Co. Inc.

BOWRING & Co. Inc.

| STORE NO | LOCATION | ADDRESS | CITY | PROV | POSTAL CODE | LA |
|----------|-----------------------------|---------------------------|-------------|------|-------------|---------------------|
| 300 | T.D. Centre - Temp | 55 King Street West | Toronto | ON | M5K 1G8 | Toronto Dominion |
| 305 | Fairview Mall | 1800 Sheppard Ave E | Willowdale | ON | M2J 5A7 | Fairmall Leasehold |
| 308 | T.D. Centre | 55 King Street West | Toronto | ON | M5K 1G8 | Toronto Dominion |
| 311 | Scarborough Town Centre | 300 Borough Drive | Scarborough | ON | M1P 4P5 | STC Holdings Inc. |
| 312 | Yonge Eglinton | 2300 Yonge Street | Toronto | ON | M4P 1E4 | Riocan YEC Holdings |
| 313 | Square One Shopping Ctr | 100 City Centre Drive | Mississauga | ON | L5B 2C9 | Oxford ITF Square |
| 318 | Yorkdale Shopping Centre | 3401 Dufferin Street | Toronto | ON | M6A 2T9 | Yorkdale Shopping |
| 321 | Upper Canada Mall | 17600 Yonge Street | Newmarket | ON | L3Y 4Z1 | Upper Canada Me |
| 322 | Erlin Mills Towncentre | 5100 Erlin Mills Parkway | Mississauga | ON | L5M 4Z5 | Erlin Mills Town C |
| 325 | Home & Design Centre | 2575 Dundas St. W. | Mississauga | ON | L5K 2M6 | 1365809 Ontario |
| 326 | Heartland Town Centre | 5980 McLaughlin Rd | Mississauga | ON | L5R 3X9 | Orlando Corporat |
| 327 | Trinity Common | 30 Great Lakes Drive | Brampton | ON | L6R 2K7 | Rps ITF Trinity Co |
| 328 | Rio-Can Durham Centre | 140 Kingston Rd E. | Ajax | ON | L1Z 1G1 | Riocan REIT |
| 329 | Colossus Centre | 7575 Weston Rd | Woodbridge | ON | L4L 1A6 | Rps ITF Colossus C |
| 330 | First Markham Place | 3215 Hwy 7 East | Markham | ON | L3R 3P3 | Mado B Holdings |
| 335 | Oshawa Power Centre | 1405 Harmony Rd North | Oshawa | ON | L1H 7K5 | Harmony Shoppin |
| 336 | Green Lane | 18166 Yonge Street, Rm#1 | Newmarket | ON | L3Y 4V8 | Rps ITF East Gwilli |
| 337 | Queensway Toronto | 171 North Queen Street | Etobicoke | ON | M9C 1A7 | Calloway REIT- Et |
| 338 | Bowring Outlet | 95 Orfus Road | Toronto | ON | M6A 1M4 | Orfus Investment |
| 339 | Village At Vaughan Mills | 255 Bass Pro Mills Drive | Vaughan | ON | L4K 0A2 | Sunlife Assurance |
| 351 | Aurora North | 15 First Commerce Dr. | Aurora | ON | L4G 0G2 | Aurora North Co- |
| 355 | Dixie Outlet Mall | 1250 South Service Road | Mississauga | ON | L5E 1V4 | Ivanhoe Cambridg |
| 501 | Champlain Mall (Les Allés) | 2151 Boul Lapinière | Brossard | QC | J4W 2T5 | Les Allés Défa Mo |
| 502 | Carrefour Laval (Les Allés) | 3035 Boul Le Carrefour | Laval | QC | H7T 1C7 | Les Allés Défa Mo |
| 503 | Place Ste Foy (Les Allés) | 2450 Boul Laurier | Ste-Foy | QC | G1V 2L1 | Les Allés Défa Mo |
| 505 | Complexe Les Allés | 677, Rue Sainte-Catherine | Montreal | QC | H3B 5K4 | Les Allés Défa Mo |
| 602 | Burlington Mall | 777 Guelph Line | Burlington | ON | L7R 3N2 | Ivanhoe Cambridg |
| 603 | Devonshire Mall | 3100 Howard Ave. | Windsor | ON | N8X 3Y8 | Devonshire Mall L |
| 605 | Limeridge Mall | 999 Upper Wentworth St. | Hamilton | ON | L9A 4X5 | Ontrea Inc. Re: Li |
| 616 | Bramalea City Centre | 25 Peel Centre Drive | Brampton | ON | L6Y 3K5 | Morguard Investr |
| 619 | Stone Road Mall | 435 Stone Road West | Guelph | ON | N1G 2X6 | Primaris Manager |
| 621 | Cambridge Centre | 355 Hespeler Road | Cambridge | ON | N1R 6B3 | Morguard Real Es |

BOWRING & Co. Inc.

| STORE NO | LOCATION | ADDRESS | CITY | PROV | POSTAL CODE | L |
|----------|--------------------------------|-----------------------------|----------------|------|-------------|-------------------|
| 625 | Windsor Crossing | 1555 Talbot Road | Lasalle | ON | N9H 2N2 | Bentall Limited P |
| 626 | Wellington Common | 1230 Wellington Road | London | ON | N6E 1M3 | Sun Life Assuran |
| 627 | Pen Glendale | 221 Glendale Ave | St Catharines | ON | L2T 2K9 | 20 Vic Managem |
| 630 | Sunrise Centre | 1400 Ottawa Street South | Kitchener | ON | N2E 4E2 | Sunrise Shopping |
| 635 | Cambridge Home (Smart Centres) | 34 Pinebush Road | Cambridge | ON | N1A 8K5 | Calloway REIT-C |
| 636 | BurlOak | 3487 Wyecroft Road | Oakville | ON | L6L 0B1 | Rri BurlOak Inc. |
| 703 | Signal Hill Centre | 5987 Signal Hill Ctr Dr S.W | Calgary | AB | T3H 3P8 | Riocan REIT (Wo |
| 705 | South Edmonton Common | 2003 99Th Street N.W | Edmonton | AB | T6N 1M1 | Rioklm Holdings |
| 717 | Market Mall | 3625 Shaganappi Trail N.W | Calgary | AB | T3A 0E2 | Market Mall Lea |
| 718 | Polo Park Shopping Centre | 1485 Portage Ave. | Winnipeg | MB | R3G 0W4 | Ontrea-Inc Re : P |
| 719 | Lindenwoods | 1585 Keston Blvd | Winnipeg | MB | R3P 2N3 | Calloway REIT-W |
| 722 | St Vital Centre | 1225 St Mary'S Rd | Winnipeg | MB | R2M 5E5 | Opt Realty (St. V |
| 730 | Regina East | 2042 Prince Of Wales Dr | Regina | SASK | S4V 3A6 | Calloway REIT-Re |
| 731 | Skyview Power Centre | 13538-137 Avenue N.W. | Edmonton | AB | T5L 5E9 | Skyview Equitas |
| 733 | West Edmonton Mall | 8882-170Th Street | Edmonton | AB | T5T 4M2 | West Edmonton |
| 801 | Park Royal | 944 Park Royal | West Vancouver | BC | V7T 1A1 | Park Royal Shopi |
| 802 | Metropolis At Metrotown | 4800 Kingsway | Burnaby | BC | V5H 4J2 | Ivanhoe Cambric |
| 815 | Guildford Town Centre | 2695 Guildford Town Centre | Surrey | BC | V3R 7C1 | Guildford Townc |
| 817 | Langley Power Centre | 20150 Langley By Pass | Langley | BC | V3A 9J8 | Rioklm Holdings |
| 818 | Lougheed Power Centre | 250-101 Schoolhouse Street | Coquitlam | BC | V3K 4X8 | Lougheed Super |
| 820 | Central Park Kelowna | 1575 Banks Rd. | Kelowna | BC | V1X 7Y8 | Gwl Realty Advis |
| 909 | Carrefour Laval | 3035 Boul Le Carrefour | Laval | QC | H7T 1C7 | Carrefour Laval L |
| 910 | Gloucester Power Centre | 2280 City Park Drive | Gloucester | QC | K1G 1G1 | Riotrin REIT-Sive |
| 911 | St Laurent Shopping Centre | 1200 St Laurent Blvd. | Ottawa | ON | K1K 3B8 | 713949 Ontario i |
| 915 | Bayers Lake | 212 Chain Lake Drive | Halifax | NS | B3S 1C9 | Calloway REIT (H |
| 916 | Wheeler Park | 125 Trinity Drive | Moncton | NB | E1G 2J7 | Rps Wheeler Par |
| 917 | Stavenger St. Johns | 56 Aberdeen Avenue | St John'S | NF | A1A 5T3 | Calloway REIT-St |
| 920 | Riocan Centre Kirkland | 3252 Rue Jean Yves | Kirkland | QC | H9J 2R6 | Rio Trin Properti |
| 921 | Marche Central | 999 Rue Du Marché Central | Montreal | QC | H4N1J8 | Bclmc Realty Cor |
| 923 | South Keys | 1009C Dare Road | Ottawa | ON | K1V 2G3 | Bank St. Mews Li |
| 925 | Quartier Dix 30 | 9415 Leduc Blvd | Brossard | QC | J4Y 0A5 | Quartier Dix 30 |
| 926 | Ottawa Trainyards | 100 Trainyards Drive | Ottawa | ON | K1G 3S2 | Controlex Corpo |

BOWRING & Co. Inc.

| STORE NO | LOCATION | ADDRESS | CITY | PROV | POSTAL CODE | |
|----------|----------------------------|--------------------|-----------|------|-------------|----------------|
| 930 | Bayshore Shopping Centre | 100 Bayshore Drive | Nepean | ON | K2B 8C1 | Ivanhoe Cambri |
| 938 | Dartmouth Crossing Limited | 205 Hector Gate | Dartmouth | NS | B3B 0E5 | Dartmouth Cros |

SCHEDULE "K" OTHER LOCATIONS

A. Benix & Co. Inc.

BENIX & Co. Inc.

| STORE NO | LOCATION | ADDRESS | CITY | PROV | POSTAL C |
|----------|---------------------------|---------------------------------|---------------------|------|----------|
| 110 | Décarie | 7335, boul. Décarie | Montréal | QC | H4P 2G |
| 112 | Galerie Des Sources | 3131, boul. des Sources | Dollard des Ormeaux | QC | H1S 2V |
| 116 | Centre Commercial Blvd. | 4162, est Jean-Talon | Sr. Leonard | QC | H1S 1J |
| 117 | Place Longueuil | 825, ouest St. Laurent | Longueuil | QC | J4K 2V |
| 119 | Les Galeries Joliette | 1075 boul. Firestone | Joliette | QC | J6E 6X |
| 121 | Galeries De Hull | 320 boul. St. Joseph | Hull | QC | J8Y 3Y |
| 122 | CN Central Station | 895 ouest rue de la Gauchetière | Montréal | QC | H3B 4G |
| 125 | Kirkland | 3236 rue Jean-Yves | Kirkland | QC | H9J 2R |
| 129 | Jean Talon | 6856 est Jean Talon | St. Leonard | QC | H1S 1N |
| 130 | Mega Ctre Notre Dame | 2238 Autoroute Chomedey | Laval | QC | H7X 4G |
| 132 | Carrefour De Nord | 900, boul Grignon | St-Jérôme | QC | J7Y 3S |
| 139 | Place Desjardins | 5, Complexe Desjardins | Montréal | QC | H2X 1K |
| 150 | Cartwright | 127 Cartwright Avenue | Toronto | ON | M5A 1V |
| 151 | White Oaks Mall | 1105 Wellington Road | London | ON | N6E 1V |
| 152 | Dixie Outlet Mall | 1250 South Service Road | Mississauga | ON | L5E 1V |
| 153 | Niagara Square | 7555 Montrose Road | Niagara Falls | ON | L2H 2E |
| 155 | Dufferin Mall | 900 Dufferin Street | Toronto | ON | M6H 4A |
| 157 | Shoppers World Brampton | 499 Main Street South | Brampton | ON | L6Y 1N |
| 159 | Fairview Mall | 1800 Sheppard Avenue East | North York | ON | M2J 5A |
| 160 | Bramalea City Center | 25 Peel Centre Drive | Brampton | ON | L6T 3R |
| 161 | Hillcrest Mall | 9350 Yonge Street | Richmond Hill | ON | L4C 5G |
| 162 | Billingsbridge Plaza | 2269 Riverside Drive | Ottawa | ON | K2A 1H |
| 163 | Carlingwood Mall | 2121 Carling Avenue | Ottawa | ON | K2A 1S |
| 166 | Tecumseh Mall | 7654 Tecumseh Road East | Windsor | ON | N8T 1E |
| 167 | Devonshire Mall | 3100 Howard Avenue | Windsor | ON | N8X 3Y |
| 170 | Scarborough Town Centre | 300 Borough Drive | Scarborough | ON | M1P 4P |
| 171 | Upper Canada Mall | 17600 Yonge Street | Newmarket | ON | L3Y 4Z |
| 172 | Gerrard Square | 1000 Gerrard Street East | Toronto | ON | M4M 3G |
| 173 | Georgian Mall | 509 Bayfield Street | Barrie | ON | L4M 4Z |
| 176 | Erin Mills Town | 5100 Erin Mills Parkway | Mississauga | ON | L5M 4Z |
| 178 | Limoridge Mall | 999 Upper Wentworth Street | Hamilton | ON | L9A 4X |
| 179 | Eglinton Square Centre | 1 Eglinton Square | Toronto | ON | M1L 2K |
| 182 | Markville Shopping Centre | 5000 Highway 7 East | Markham | ON | L3S 4H |
| 185 | Woodbridge Shopping Ctre | 200 Windflower Gate | Woodbridge | ON | L4L 1X |
| 186 | Trinity Common | 70 Great Lakes Drive | Brampton | ON | L6R 2K |
| 187 | Ancaster Power Centre | 821 Golf Links Road | Ancaster | ON | L9K 1L |
| 188 | Heartland Power Centre | 5935 Mavis Road | Mississauga | ON | L7G 2E |
| 190 | Cambridge Centre | 355 Hespeler Road | Cambridge | ON | N1R 3B |

BENIX & Co. Inc.

| STORE NO | LOCATION | ADDRESS | CITY | PROV | POSTAL C |
|----------|-------------------------------------|----------------------------|----------------|------|----------|
| 191 | Collingwood Centre | 55 Mountain Rd | Collingwood | ON | L9Y 4M |
| 192 | Quinte Mall | 390 North Front Street | Belleville | ON | K8P 3E |
| 196 | Kennedy Commons | 29 William Kitchen Road | Scarborough | ON | M1P 5B |
| 200 | Ottawa Trainyards | 100 Trainyards Drive | Ottawa | ON | K1G 3S |
| 202 | BurlOak | 3487 Wycroft Rd | Oakville | ON | L6L 0B1 |
| 203 | Oshawa Centre | 419 King Street West | Oshawa | ON | L1J 2K |
| 205 | Cataraqui Town Centre | 945 Gardiners Road | Kingston | ON | K7M 7H |
| 206 | Masonville Place | 1680 Richmond Street North | London | ON | N6G 3Y |
| 207 | Sunrise Shopping Centre | 1400 Ottawa Street South | Kitchener | ON | N2E 4E |
| 208 | Vaughan Mills | 1 Bass Pro Mills Drive | Concord | ON | L4K 5W |
| 209 | Oshawa South | 580 Laval Drive | Oshawa | ON | L1J 0B5 |
| 211 | Malvern Town Centre | 31 Tapscott Road | Toronto | ON | M4M 3G |
| 212 | Rainbow Centre | 40 Elm Street | Sudbury | ON | P3C 1S |
| 216 | Milton | 1095 Maple Avenue | Milton | ON | L9T 0A2 |
| 231 | Kildonan Place | 1555 Regent Avenue West | Winnipeg | AN | R2C 4J |
| 261 | Sunridge Mall | 2525-36th Street N.E. | Calgary | AB | T1Y 5T4 |
| 262 | Deerfoot Mall | 901-64th Avenue N.E. | Calgary | AB | T2E 7P4 |
| 268 | West Edmonton Mall | 8882 - 170 Street | Edmonton | AB | T5T 3J7 |
| 272 | Willowbrook Shpg Centre | 19705 Fraser Highway | Langley | BC | V3A 7E5 |
| 273 | Guildford Town Centre | 2695 Guildford Town Centre | Surrey | BC | V3R 7C1 |
| 275 | Coquitlam Centre | 2929 Barnet Highway | Coquitlam | BC | V3B 5R5 |
| 310 | Champlain Mall | 2151 boul. Lapinière | Brossard | QC | J4W 2T5 |
| 330 | Orfus Road (Barnes) | 98 Orfus Road | Toronto | ON | M6A 1L5 |
| 331 | Square One (Barnes) | 100 City Centre Drive | Mississauga | ON | L5B 2C9 |
| 336 | Pen Centre (Barnes) | 221 Glendale Avenue | St. Catharines | ON | L2T 2K9 |
| 370 | Polo Park (Barnes) | 1485 Portage Avenue | Winnipeg | MB | R3G 0W |
| 531 | Thickson Place (Designer Depot) | 1715 Victoria St East | Whitby | ON | L1N 9W |
| 532 | St Catharines (Designer Depot) | 399 Louth St | St Catharines | ON | L2S 4A2 |
| 533 | Eglinton Corners (Designer Depot) | 1920 Eglinton Ave E #1 | Toronto | ON | M1L 2L5 |
| 535 | Walker Road (Designer Depot) | 4347 Walker Road | Windsor | ON | N8W3T6 |
| 536 | Vaughan Mills (Designer Depot) | 1 Bass Pro Mills Drive | Vaughan | ON | L4K5W4 |
| 580 | South Common (Designer Depot) | 1620-99TH St North West | Edmonton | AB | T6N1M5 |
| 581 | Oakridge Centre | 650 West 41st Avenue | Vancouver | BC | V5Z 2M5 |
| 582 | Northland Village (Designer Depot) | 5111 Northland Dr NW | Calgary | AB | T2L2L8 |
| 583 | West Pointe Centre (Designer Depot) | 17540 100th Ave North W | Edmonton | AB | T5S 2S2 |
| 585 | Sunridge Mall (Designer Depot) | 2929 Sunridge Way NE | Calgary | AB | T1Y7K7 |

B. Bombay & Co. Inc.

BOMBAY & Co. Inc.

| STORE NO | LOCATION | ADDRESS | CITY | PROV | POST |
|----------|-----------------------------|---|----------------|------|------|
| 110 | Mic Mac Mall | 21 Mic Mac Blvd. | Dartmouth | NS | B3 |
| 138 | Darmouth Crossing | 174 Hector Gate Unit 3K-1 | Darmouth | NS | B3 |
| 170 | Stavanger & Torbay | 568 Aberdeen Ave. | St. Johns | NF | A1 |
| 199 | Bayers Lake Power Centre | 212-C Chain Lake Drive | Halifax | NS | B3 |
| 230 | Place Rosemere | 401 LaBelle Blvd.- M-19 | Rosemere | QC | J7 |
| 231 | Brossard | 9500 Leduc - Ste. 5. | Brossard | QC | J4 |
| 280 | Decarie | 7325 Decarie | Montreal | QC | H4 |
| 282 | Rockland Centre | 2305 Rockland Rd. | Mount Royal | QC | H3 |
| 283 | Carrefour Champetre Bromont | 575 Place Champetre | Bromont | QC | J2 |
| 285 | Les Galeries d'Anjou | 7999 Blvd Les Galeries D'Anjou | Ville d'Anjou | QC | H1 |
| 286 | Le Carrefour Laval | 3003 Boul. Le Carrefour | Laval | QC | H7 |
| 288 | Place St - Foy | 2450 Blvd. Laurier #47 | Ste-Foy | QC | G1 |
| 297 | Kirkland Centre | 3252 Rue Jean Yves | Kirkland | QC | H9 |
| 311 | Bayshore Shopping Ctr | 100 Bayshore Drive | Ottawa | ON | K2 |
| 315 | Fairview Park Mall | 2960 Kingsway Drive | Kitchener | ON | N2 |
| 316 | Masonville Mall | 1680 Richmond St. N. #L23 | London | ON | N6 |
| 320 | Greenlane Center | 18182 Yonge St, Yonge & Greenlane | Newmarket | ON | A |
| 323 | Upper Canada Mall | 17600 Yonge Street Box 177 | Newmarket | ON | L3 |
| 325 | Limeridge Mall | 999 Upper Wentworth Street #243 | Hamilton | ON | L9 |
| 332 | White Oaks Mall | 1105 Wellington Rd.- Unit #481 | London | ON | N6 |
| 371 | Georgian Mall | 509 Bayfield St., Unit #N51A | Barrie | ON | L4 |
| 373 | Walker Square | 4331 Walker Rd.- Unit A.1 | Windsor | ON | N8 |
| 375 | Pen Centre | 221 Glendale Avenue, Hwy406, Unit#1007B | St. Catharines | ON | L2 |
| 378 | Cambridge Smart Centre | 22 Pinebush Road, BldgO Unit#0004 | Cambridge | ON | N1 |
| 398 | Gardiner's Road | 10-616 Gardiners Road | Kingston | ON | K7 |
| 551 | West Edmonton Mall | 2127-8882-170th Street | Edmonton | AB | T5 |
| 560 | Market Mall | 3625 Shaganappi Trail-#H003 | Calgary | AB | T3 |
| 583 | South Edmonton Commons | 99th Street N.W.- Unit 191 | Edmonton | AB | T6 |
| 596 | Kenaston | 1585 Kenaston Blvd. | Winnipeg | MB | R3 |
| 652 | Hillside Centre | 52-1644 Hillside Avenue | Victoria | BC | V8 |
| 662 | Richmond Centre | 6551-3 Rd. Unit 1842 | Richmond | BC | V6 |
| 677 | Granville Street | 2526 & 2536 Granville St. | Vancouver | BC | V6 |
| 678 | Meadowtown Centre | 19800 Lougheed Hwy., Unit 930 | Pitt Meadows | BC | V3 |
| 695 | Langley Power Centre | 2007D Langley By-Pass | Langley | BC | V3 |

BOMBAY & Co. Inc.

| STORE NO | LOCATION | ADDRESS | CITY | PROV | POSTAL C |
|----------|-------------------------|-------------------------------------|---------------|------|----------|
| 902 | Bayview Village | 2901 Bayview Avenue | Willowdale | ON | M2K 1J |
| 912 | Yorkdale Mall | 3401 Dufferin Street, UNIT 15&16 | Toronto | ON | M6A 2J |
| 920 | Ajax | 20 Kingston Rd. West | Ajax | ON | L1T 4K |
| 921 | Markville Mall | 5000 Highway 7- Unit #57 A | Markham | ON | L3R 4V |
| 922 | Erlin Mills Town Centre | 5100 Erlin Mills Pkway- R102A | Mississauga | ON | L5M 4Z |
| 926 | Mapleview Mall | 900 Maple Ave. Unit A13A | Burlington | ON | L7S 2J |
| 927 | Dixie Outlet Mall | 1250 South Service Rd #162 | Mississauga | ON | L5E 1V |
| 928 | Hyde Park | 2501 Hyde Park Gate Blvd.- Unit #1G | Oakville | ON | L6H 6G |
| 929 | Bayview Glen | 295 High Tech Rd. | Richmond Hill | ON | L4B 0A |
| 930 | Oshawa Mall | 419 King Street W #2435 | Oshawa | ON | L1J 2K |
| 950 | Bramalea City Centre | 25 Peel Centre Drive Unit# 512 | Brampton | ON | L6T 3R |
| 976 | Scarborough Town Pad | 410 Progress Ave.- Unit D3 | Toronto | ON | M1P 5J |
| 990 | Trinity Common | 148 - 70 Great Lakes Drive | Brampton | ON | L6R 2K |
| 991 | Riocan Colossus Centre | 16 Famous Ave- Unit 145 | Woodbridge | ON | L4L 9M |
| 992 | Heartland Town Centre | 6075 Mavis Road- Unit #19 | Mississauga | ON | L5R 4G |

C. Bowring & Co. Inc.

BOWRING & Co. Inc.

| STORE NO | LOCATION | ADDRESS | CITY | PROV | POST# |
|----------|-----------------------------|---------------------------|-------------|------|-------|
| 300 | T.D. Centre - Temp | 55 King Street West | Toronto | ON | M5I |
| 305 | Fairview Mall | 1800 Sheppard Ave E | Willowdale | ON | M2 |
| 308 | T.D. Centre | 55 King Street West | Toronto | ON | M5I |
| 311 | Scarborough Town Centre | 300 Borough Drive | Scarborough | ON | M1I |
| 312 | Yonge Eglington | 2300 Yonge Street | Toronto | ON | M4I |
| 313 | Square One Shopping Ctre | 100 City Centre Drive | Mississauga | ON | L5E |
| 318 | Yorkdale Shopping Centre | 3401 Dufferin Street | Toronto | ON | M6I |
| 321 | Upper Canada Mall | 17600 Yonge Street | Newmarket | ON | L3Y |
| 322 | Erin Mills Towncentre | 5100 Erin Mills Parkway | Mississauga | ON | L5N |
| 325 | Home & Design Centre | 2575 Dundas St. W. | Mississauga | ON | L5K |
| 326 | Heartland Town Centre | 5980 McLaughlin Rd | Mississauga | ON | L5R |
| 327 | Trinity Common | 30 Great Lakes Drive | Brampton | ON | L6R |
| 328 | Rio-Can Durham Centre | 140 Kingston Rd E. | Ajax | ON | L1Z |
| 329 | Colossus Centre | 7575 Weston Rd | Woodbridge | ON | L4L |
| 330 | First Markham Place | 3215 Hwy 7 East | Markham | ON | L3R |
| 335 | Oshawa Power Centre | 1405 Harmony Rd North | Oshawa | ON | L1H |
| 336 | Green Lane | 18166 Yonge Street, Rr#1 | Newmarket | ON | L3Y |
| 337 | Queensway Toronto | 171 North Queen Street | Etobicoke | ON | M9C |
| 338 | Bowring Outlet | 95 Orfus Road | Toronto | ON | M6A |
| 339 | Village At Vaughan Mills | 255 Bass Pro Mills Drive | Vaughan | ON | L4K |
| 351 | Aurora North | 15 First Commerce Dr. | Aurora | ON | L4G |
| 355 | Dixie Outlet Mall | 1250 South Service Road | Mississauga | ON | L5E |
| 501 | Champlain Mall (Les Ailes) | 2151 Boul Lapiniere | Brossard | QC | J4W |
| 502 | Carrefour Laval (Les Ailes) | 3035 Boul Le Carrefour | Laval | QC | H7T |
| 503 | Place Ste Foy (Les Ailes) | 2450 Boul Laurier | Ste-Foy | QC | G1V |
| 505 | Complexe Les Alles | 677, Rue Sainte-Catherine | Montreal | QC | H3B |
| 602 | Burlington Mall | 777 Guelph Line | Burlington | ON | L7R |
| 603 | Devonshire Mall | 3100 Howard Ave. | Windsor | ON | N8X |
| 605 | Limeridge Mall | 999 Upper Wentworth St. | Hamilton | ON | L9A |
| 616 | Bramalea City Centre | 25 Peel Centre Drive | Brampton | ON | L6T |
| 619 | Stone Road Mall | 435 Stone Road West | Guelph | ON | N1G |
| 621 | Cambridge Centre | 355 Hespeler Road | Cambridge | ON | N1R |

BOWRING & Co. Inc.

| STORE NO | LOCATION | ADDRESS | CITY | PROV | POST |
|----------|--------------------------------|-----------------------------|----------------|------|------|
| 625 | Windsor Crossing | 1555 Talbot Road | Lasalle | ON | N1 |
| 626 | Wellington Common | 1230 Wellington Road | London | ON | N6 |
| 627 | Pen Glendale | 221 Glendale Ave | St Catharines | ON | L7 |
| 630 | Sunrise Centre | 1400 Ottawa Street South | Kitchener | ON | N2 |
| 635 | Cambridge Home (Smart Centres) | 34 Pinebush Road | Cambridge | ON | N1 |
| 636 | Burl Oak | 3487 Wyecroft Road | Oakville | ON | L4 |
| 703 | Signal Hill Centre | 5987 Signal Hill Ctr Dr S.W | Calgary | AB | T2 |
| 705 | South Edmonton Common | 2003 99Th Street N.W | Edmonton | AB | T6 |
| 717 | Market Mall | 3625 Shaganappi Trail N.W | Calgary | AB | T2 |
| 718 | Polo Park Shopping Centre | 1485 Portage Ave. | Winnipeg | MB | R3 |
| 719 | Lindenwoods | 1585 Kenaston Blvd | Winnipeg | MB | R3 |
| 722 | St Vital Centre | 1225 St Mary'S Rd | Winnipeg | MB | R2 |
| 730 | Regina East | 2042 Prince Of Wales Dr | Regina | SASK | S4 |
| 731 | Skyview Power Centre | 13538-137 Avenue N.W. | Edmonton | AB | T5 |
| 733 | West Edmonton Mall | 8882-170Th Street | Edmonton | AB | T5 |
| 801 | Park Royal | 944 Park Royal | West Vancouver | BC | V7 |
| 802 | Metropolis At Metrotown | 4800 Kingsway | Burnaby | BC | V5 |
| 815 | Guildford Town Centre | 2695 Guildford Town Centre | Surrey | BC | V3 |
| 817 | Langley Power Centre | 20150 Langley By Pass | Langley | BC | V3 |
| 818 | Lougheed Power Centre | 250-101 Schoolhouse Street | Coquitlam | BC | V3 |
| 820 | Central Park Kelowna | 1575 Banks Rd. | Kelowna | BC | V1 |
| 909 | Carrefour Laval | 3035 Boul Le Carrefour | Laval | QC | H7 |
| 910 | Gloucester Power Centre | 2280 City Park Drive | Gloucester | QC | K1 |
| 911 | St. Laurent Shopping Centre | 1200 St. Laurent Blvd. | Ottawa | ON | K1 |
| 915 | Bayers Lake | 212 Chain Lake Drive | Halifax | NS | B3 |
| 916 | Wheeler Park | 125 Trinity Drive | Moncton | NB | E1 |
| 917 | Stavenger St. Johns | 56 Aberdeen Avenue | St John'S | NF | A1 |
| 920 | Riocan Centre Kirkland | 3252 Rue Jean Yves | Kirkland | QC | H9 |
| 921 | Marche Central | 999 Rue Du Marche Central | Montreal | QC | H4 |
| 923 | South Keys | 1009C Daze Road | Ottawa | ON | K1 |
| 925 | Quartier Dix 30 | 9415 Leduc Blvd | Brossard | QC | J4 |
| 926 | Ottawa Trainyards | 100 Trainyards Drive | Ottawa | ON | K1 |

BOWRING & Co. Inc.

| STORE NO | LOCATION | ADDRESS | CITY | PROV | POS |
|----------|---------------------------|--------------------|----------|------|-----|
| 930 | Bayshore Shopping Centre | 100 Bayshore Drive | Nepean | ON | + |
| 938 | Darmouth Crossing Limited | 205 Hector Gate | Darmouth | NS | E |

SCHEDULE "L" INTELLECTUAL PROPERTY AND SOFTWARE

A. Benix & Co. Inc.

1 Registered trade-marks

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

2 Unregistered trade-marks

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

Domain Names

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

B. Bombay & Co. Inc.

| <u>No.</u> | <u>Trade-marks</u> | <u>Application number</u> | <u>Registration number</u> |
|------------|---------------------------------|---------------------------|--------------------------------|
| 1 | BOMBAY | 782,065 | TMA470,982 |
| 2 | BOMBAY & PALM TREE DESIGN | 870,209 | TMA520,885 |
| 3 | BOMBAY KIDS | 1,110,283 | TMA597,623 |
| 4 | BOMBAY KIDS & Design | 1,110,284 | TMA597,698 |
| 5 | BOMBAY MANNEQUIN | 792,025 | TMA469,764 |
| 6 | COLLECTION COQUILLE REIGNE ANNE | 796,911 | TMA474,659 |
| 7 | KEDDLESTON HALL | 843,853 | TMA501,868 |

| | | | |
|----|---------------------------------------|-----------|------------|
| 8 | LA COLLECTION METROPOLE | 796,906 | TMA474,537 |
| 9 | LA COMPAGNIE BOMBAY & DESIGN | 657,826 | TMA426,813 |
| 10 | LA COMPAGNIE BOMBAY & DESIGN | 658,576 | TMA425,951 |
| 11 | LA COMPAGNIE BOMBAYE | 752,297 | TMA442,385 |
| 12 | LA COMPAGNIE BOMBAY & DESIGN (SHIELD) | 755,825 | TMA456,250 |
| 13 | LA SERIE ENTERPRISE | 773,962 | TMA457,095 |
| 14 | LA SERIE TRELLIS DORE | 773,964 | TMA456,668 |
| 15 | LE COFFRET A SOUVENIRS | 774,094 | TMA456,670 |
| 16 | LA COLLECTION VIGNOBLE | 805,731 | TMA482,002 |
| 17 | LE MANNEQUIN BOMBAY | 796,907 | TMA470,073 |
| 18 | LOGGIA | 840,419 | TMA530,952 |
| 19 | ORANGERIE | 796,909 | TMA501,871 |
| 20 | PALM TREE DESIGN | 660,102 | TMA442,429 |
| 21 | PEMBROKE | 843,281 | TMA502,663 |
| 22 | QUEEN ANNE SHELL COLLECTION | 796,908 | TMA474,302 |
| 23 | SAVOYE | 840,709 | TMA489,699 |
| 24 | STATE ROOM | 843,280 | TMA542,278 |
| 25 | THE BOMBAY COMPANY & DESIGN | 451,370 | TMA264,811 |
| 26 | THE BOMBAY COMPANY | 651,471 | TMA402,190 |
| 27 | THE BOMBAY COMPANY & DESIGN (SHIELD) | 754,654 | TMA456,976 |
| 28 | THE ENTERPRISE | 774,095 | TMA470,398 |
| 29 | THE GILDED TRELLIS SERIES | 773,963 | TMA475,528 |
| 30 | THE MEMORY BOX | 760,835 | TMA445,455 |
| 31 | THE VINEYARD COLLECTION | 800,841 | TMA477,220 |
| 32 | WHAT PART OF YOU LIVES IN BOMBAY | 1,193,210 | TMA623,365 |
| 33 | BOMBAYBATH and Design | 1,255,758 | Pending |
| 34 | BOMBAYBATH and Design | 1,256,041 | Pending |
| 35 | VALMONT | 1,298,858 | Pending |
| 36 | BOMBAY CLASSICS | 1,503,644 | Pending |

Domain Names

| Domain Name | Expiration |
|----------------------|------------|
| bombay.ca | 01-Dec-14 |
| bombayco.ca | 01-Dec-14 |
| bombaycompany.ca | 01-Dec-14 |
| thebombaycompany.ca | 01-Dec-14 |
| bombaycanada.ca | 19-Oct-14 |
| Bombaykids.ca | 02-Jul-14 |
| Bombayoutlet.ca | 02-Jul-14 |
| bombaycompany.com | 02-Jan-12 |
| bombayco.com | 28-Apr-11 |
| thebombaycompany.com | 30-Sep-13 |

C. Bowring & Co. Inc.

1 Registered trade-marks

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

2 Unregistered trade-marks

B&C Imports

Domain Names

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

SCHEDULE "M" PERMITTED ENCUMBRANCES

A. Benix & Co. Inc.

| Secured Party(s) and Address | Collateral Classification plus Gen'l Collateral Desc. (if any) |
|--|---|
| (a) Holand Leasing 1995 Ltd 8525 Decarie Montreal, QC H4P 2J2 | Motor Vehicle Description: 2003 Mercedes Benz E320 VIN#WDBUF65J63A157775 |
| Holand Leasing 1995 Ltd 8525 Decarie Montreal, QC H4P 2J2 | Motor Vehicle Description: 2010 Nissan Murano VIN#JN8A21MW6AW105546 |
| Holand Leasing 1995 Ltd 8525 Decarie Montreal, QC H4P 2J2 | Motor Vehicle Description: 2008 Landrover Rangorover Sport HSE VIN#SALSK25448A154759 |
| Holand Leasing 1995 Ltd 8525 Decarie Montreal, QC H4P 2J2 | Motor Vehicle Description: 2008 Bentley Continental Flying Spur VIN#SC8BR93W18C000198 |
| Holand Leasing 1995 Ltd 8525 Decarie Montreal, QC H4P 2J2 | Motor Vehicle Description: 2007 Cadillac Escalade VIN#1GYFK66887R263857 |
| Holand Leasing 1995 Ltd 8525 Decarie Montreal, QC H4P 2J2 | Motor Vehicle Description: 2001 Honda Odyssey VIN#2HKRL18651H011809 |
| Landmark Vehicle Leasing Corporation 8920 Woodbine Ave, Suite 104 Markham, ON L3R 9W9 | Motor Vehicle Description: 2005 Honda Odyssey VIN#5FNRL3882SB509770 |
| Ryder Truck Rental Canada Ltd. 700 Creditstone Road Concord, ON L4K 5A5 | Motor Vehicle Description: FRHT VIN#1FVCYB58ADAR3245 |
| Isaac Benliah 111 Orfus Rd Toronto, ON M6A 1M4 | I, E, A, O, MV |
| Fred Benliah 98 Orfus Rd Toronto, ON M6A 2L9 | I, E, A, O, MV |

Quebec

| | |
|---|---|
| (a) Security: Registration Number: Debtor: Holder: Date: Charged Property: | Conventional hypothec without delivery 96-0041744-0001 Benix & Co. Inc. Canadian Imperial Bank of Commerce April 12, 1996 (1) Universality of all present and future stock, as well as all claims and proceeds resulting from the sale, rental or other disposition thereof, as well as any property acquired in replacement thereof; (2) Universality of all present and future claims; (3) Universality of all present and future equipment, including all permit, licences, authorization and other rights; (4) All insurance or expropriation indemnities with respect to the charged property. |
| Amount: Expiration: Comments: | \$4,197,500 with interest at an annual rate of 25% April 3, 2015 The original expiration date of the registration was April 3, 2005, however, it was renewed on March 15, 2005 under registration number 06-0129334-0001. |
| (b) Security: Registration Number: Debtor: Holder: Date: Charged Property: | Conventional hypothec without delivery 04-0022514-0001 Benix & Co. Inc. The Boulevard Shopping Centre January 16, 2004 (1) All of the rights, title and interests of the Grantor in and to the universality of all movable improvements, equipment, machinery, furniture and trade fixture of every kind, present and future, located in the leased premises including all indemnities or proceeds paid under insurance contracts or policies pertaining to or covering such property; |

(2) The universality of all property in stock, raw materials, work in process and inventory, present and future, situated in the leased premises including all indemnities or proceeds paid under insurance contracts or policies pertaining to or covering such property.

Amount: \$46,000 with interest at an annual rate equivalent to the prime rate +2%

Expiration: December 12, 2013

Comments: On June 27, 2005, Les Entreprises Ludco Inc. assigned all of its rights, title and interests in The Boulevard Shopping Centre under registration number 05-0371554-0001.

The information set out in the table above reflects such assignment.

(c) Security: Conventional hypothec without delivery
Registration Number: 05-0250252-0001
Debtor: Benix & Co. Inc.
Holder: Riocan Holdings (Quebec) Inc.
Date: May 3, 2005
Charged Property: The universality of all movable property located in the leased premises located at 200 Boulevard St., Suite 500 at any time during the term of the lease or which may have been in the leased premises.

Amount: \$125,000
Expiration: January 15, 2015

Security: Conventional hypothec without delivery
Registration Number: 04-0532459-0001
Debtor: Benix & Co. Inc.
Holder: Riocan Holdings (Quebec) Inc.
Date: September 13, 2004
Charged Property: The universality of all movable property located in the leased premises located at 2238 Chomedy Highway in Laval at any time during the term of the lease or which may have been in the leased premises.

Amount: \$112,500
Expiration: September 7, 2014
Comments: On February 18, 2005, Les Fiduciaires du Fond de Placement Immobilier BB, Immeubles Regime XV Inc. and 9123-2850 Quebec Inc. assigned all of their respective rights, titles and interests in and to all the hypothecs and rights resulting of the leases in favour of the lessor to Riocan Holdings (Quebec) Inc. under registration number 05-0081661-0001.

The information set out in the table above reflects such assignment.

(d) Security: Conventional hypothec without delivery
Registration Number: 02-0235670-0001
Debtor: Benix & Co. Inc.
Holder: Les Galeries de Hull Limited
Date: June 3, 2002
Charged Property: The universality of all furniture, equipment, stock and other movable property, present and future, within the leased premises located at 320 St. Joseph Blvd, Hull, Quebec, extending to all movable property removed from such premises unless such removal results from the disposal of movable property in the ordinary course of business.

Amount: \$51,212.50
Expiration: June 3, 2012
Comments: The foregoing security was granted in connection with a lease agreement between the Grantor and the Holder.

(e) Security: Conventional hypothec without delivery
Registration Number: 02-0177480-0020
Debtor: Benix & Co. Inc.
Holder: Edifice 1616 Ste. Catherine Ouest Le Faubourg Inc.
Date: May 1, 2002
Charged Property: The universality of all equipment, machinery, inventory, stock and other movable property, present and future, furnishing the leased premises located at 1616 Ste. Catherine Ouest, Suite 1300, Montreal, Quebec.

Amount: \$44,584.55
Expiration: April 30, 2012
Comments: On February 2, 2005, 1616 Ste. Catherine L.P. assigned all of its rights, title and interests in this hypothec to Edifice 1616 Ste. Catherine Ouest Le Faubourg Inc. under registration number 05-0053544-0001.

The information set out in the table above reflects such assignment.

(f) Security: Conventional hypothec without delivery
 Registration Number: 01-0203222-0002
 Debtor: Benix & Co. Inc.
 Holder: Les Rivières Shopping Centre Limited
 Date: June 11, 2001
 Charged Property: All present and future furniture, equipment, inventory and other assets located at 4125 des Forges Blvd. local #A8, Trois-Rivières, Quebec, extending to all movable property removed from such premises unless such removal results from the disposal of movable property in the ordinary course of business.
 Amount: \$47,745 at a floating rate equal to 2% above the prime commercial lending rate charged by the Royal Bank of Canada at its main office in Toronto.
 Expiration: June 11, 2011

6. Bonibay & Co. Inc.

1 Security interests granted by the borrower in favour of any one or more of the postponing shareholders.

| 2 Secured Party(s) and Address | Collateral Classification plus Gen'l Collateral Desc. (if any) |
|--|---|
| Omega Leasing Canada Ltd. 8525 Decarie Blvd Montreal, QC H4P 2J2 | Motor Vehicle Description: 2010 Dodge Journey SE TA VIN#3D4PG4FB1AT192837 |
| Omega Leasing Canada Ltd. 8525 Decarie Blvd Montreal, QC H4P 2J2 | Motor Vehicle Description: 2010 Dodge Journey SE TA VIN#3D4PG4FB5AT194798 |
| Omega Leasing Canada Ltd. 8525 Decarie Blvd Montreal, QC H4P 2J2 | Motor Vehicle Description: 2010 Dodge Journey SE TA VIN#3D4PG4FB0AT182733 |
| Omega Leasing Canada Ltd. 8525 Decarie Blvd Montreal, QC H4P 2J2 | Motor Vehicle Description: 2010 Dodge Journey SE TA VIN#3D4PG4FBAT192750 |
| Omega Leasing Canada Ltd. 8525 Decarie Blvd Montreal, QC H4P 2J2 | Motor Vehicle Description: 2010 Dodge Journey SE TA VIN#3D4PG4FB0AT194806 |

C. Bowring & Co., Inc.

Ontario

| Secured Party | File No./Registration No. | Collateral Classification/Description |
|--------------------------------------|---|--|
| 1 Benix & Co. Inc. | 629522478/20061005 1340 1590 3221 5 years | Inventory, Equipment, Accounts, Other, Motor Vehicle |
| 2 Isaac Bennet Sales Agencies Inc. | 629522568/20061005 1344 1590 3222 5 years | Inventory, Equipment, Accounts, Other, Motor Vehicle |
| 3 F.B.I. Inc. | 629522613/20061005 1345 1590 3223 5 years | Inventory, Equipment, Accounts, Other, Motor Vehicle |
| 4 Canadian Imperial Bank of Commerce | 627782787/20060808 1547 1590 0301 5 years | Inventory, Equipment, Accounts, Other, Motor Vehicle |

Saskatchewan

A financing statement was registered on June 21, 2006 as registration #300049740 in favour of Canadian Imperial Bank of Commerce as secured party against Bowring & Co. Inc.

SCHEDULE "M" **PERMITTED ENCUMBRANCES**

A. Benix & Co. Inc.

| Secured Party(s) and Address | Collateral Classification plus Gen'l Collateral Desc. (if any) |
|---|--|
| (a) Holand Leasing 1995 Ltd 8525 Decarie Montreal, QC H4P 2J2 | Motor Vehicle Description: 2003 Mercedes Benz E320 VIN#WDRUF55J63A157775 |
| Holand Leasing 1995 Ltd 8525 Decarie Montreal, QC H4P 2J2 | Motor Vehicle Description: 2010 Nissan Murano VIN#JN8A21MW6AW105546 |
| Holand Leasing 1995 Ltd 8525 Decarie Montreal, QC H4P 2J2 | Motor Vehicle Description: 2008 Landrover Rangeover Sport HSE VIN#5ALSX25A48A154753 |
| Holand Leasing 1995 Ltd 8525 Decarie Montreal, QC H4P 2J2 | Motor Vehicle Description: 2008 Bentley Continental Flying Spur VIN#SC6BR93W18C000198 |
| Holand Leasing 1995 Ltd 8525 Decarie Montreal, QC H4P 2J2 | Motor Vehicle Description: 2007 Cadillac Escalade VIN#1GYFK66887R263857 |
| Holand Leasing 1995 Ltd 8525 Decarie Montreal, QC H4P 2J2 | Motor Vehicle Description: 2001 Honda Odyssey VIN#2HKRL18651H011805 |
| Landmark Vehicle Leasing Corporation 8920 Woodbine Ave, Suite 104 Markham, ON L3R 9W9 | Motor Vehicle Description: 2005 Honda Odyssey VIN#SFNRL38875B509770 |
| Ryder Truck Rental Canada Ltd. 700 Creditstone Road Concord, ON L4K 5A5 | Motor Vehicle Description: FAHT VIN#1FVCY658ADAR3245 |
| I, E, C Benitah 111 Orfus Rd Toronto, ON M6A 1M4 | I, E, A, O, MV |
| Fred Benitah 98 Orfus Rd Toronto, ON M6A 2L9 | I, S, A, O, MV |
| Quebec | |
| (a) Security: Registration Number: Debtor: Holder: Date: Charged Property: | Conventional hypothec without delivery 96-0041744-0001 Benix & Co. Inc. Canadian Imperial Bank of Commerce April 12, 1996 (1) Universality of all present and future stock, as well as all claims and proceeds resulting from the sale, rental or other disposition thereof, as well as any property acquired in replacement thereof; (2) Universality of all present and future claims; (3) Universality of all present and future equipment, including all permit, licences, authorization and other rights; (4) All insurance or expropriation indemnities with respect to the charged property. Amount: \$4,197,500 with interest at an annual rate of 25% Expiration: April 3, 2015 Comments: The original expiration date of the registration was April 3, 2005, however, it was renewed on March 15, 2006 under registration number 06-0123334-0001. |
| (b) Security: Registration Number: Debtor: Holder: Date: Charged Property: | Conventional hypothec without delivery 04-0022814-0001 Benix & Co. Inc. The Boulevard Shopping Centre January 16, 2004 (1) All of the rights, title and interests of the Grantor in and to the universality of all movable improvements, equipment, machinery, furniture and trade fixture of every kind, present and future, located in the leased premises including all indemnities or proceeds paid under insurance contracts or policies pertaining to or covering such property; |

(2) The universality of all property in stock, raw materials, work in process and inventory, present and future, situated in the leased premises including all indemnities or proceeds paid under insurance contracts or policies pertaining to or covering such property.

Amount: \$46,000 with interest at an annual rate equivalent to the prime rate +2%

Expiration: December 12, 2013

Comments: On June 27, 2005, Les Entreprises Ludco Inc. assigned all of its rights, title and interests to The Boulevard Shopping Centre under registration number 05-0571554-0001
The information set out in the table above reflects such assignment.

(c) Security: Conventional hypothec without delivery
Registration Number: 05-0250252-0001
Debtor: Benik & Co. Inc.
Holder: Riocan Holdings (Quebec) Inc.
Date: May 3, 2005
Charged Property: The universality of all movable property located in the leased premises located at 200 Bouvier St., Suite 500 at any time during the term of the lease or which may have been in the leased premises.

Amount: \$125,000
Expiration: January 15, 2015

Security: Conventional hypothec without delivery
Registration Number: 04-0532459-0001
Debtor: Benik & Co. Inc.
Holder: Riocan Holdings (Quebec) Inc.
Date: September 13, 2004
Charged Property: The universality of all movable property located in the leased premises located at 2238 Chomedey Highway in Laval at any time during the term of the lease or which may have been in the leased premises.

Amount: \$112,500
Expiration: September 7, 2014
Comments: On February 16, 2005, Les Fiduciaires du Fond de Placement Immobilier 68, Immeubles Regime XV Inc. and 9123-2850 Quebec Inc. assigned all of their respective rights, titles and interests in and to all the hypothecs and rights resulting of the leases in favour of the lessor to Riocan Holdings (Quebec) Inc. under registration number 05-0081661-0001

The information set out in the table above reflects such assignment.

(d) Security: Conventional hypothec without delivery
Registration Number: 02-0235670-0001
Debtor: Benik & Co. Inc.
Holder: Les Galeries de Hull Limited
Date: June 3, 2002
Charged Property: The universality of all furniture, equipment, stock and other movable property, present and future, within the leased premises located at 220 St. Joseph Blvd, Hull, Quebec, extending to all movable property removed from such premises unless such removal results from the disposal of movable property in the ordinary course of business.

Amount: \$51,212.50
Expiration: June 5, 2012
Comments: The foregoing security was granted in connection with a lease agreement between the Grantor and the Holder.

(e) Security: Conventional hypothec without delivery
Registration Number: 02-0177490-0020
Debtor: Benik & Co. Inc.
Holder: Edifice 1616 Ste. Catherine Ouest Le Faubourg Inc.
Date: May 1, 2002
Charged Property: The universality of all equipment, machinery, inventory, stock and other movable property, present and future, furnishing the leased premises located at 1616 Ste. Catherine Ouest, Suite 1300, Montreal, Quebec.

Amount: \$44,584.55
Expiration: April 30, 2012
Comments: On February 2, 2005, 1616 Ste. Catherine L.P. assigned all of its rights, title and interests in this hypothec to Edifice 1616 Ste. Catherine Ouest Le Faubourg Inc. under registration number 05-0053344-0001.

The information set out in the table above reflects such assignment.

(f) Security: Conventional hypothec without delivery
 Registration Number: Q1-0203222-0002
 Debtor: Benix & Co. Inc.
 Holder: Les Rivières Shopping Centre Limited
 Date: June 11, 2001
 Charged Property: All present and future furniture, equipment, inventory and other assets located at 4175 des Forges Blvd, local #A8, Trois-Rivières, Quebec, extending to all movable property removed from such premises unless such removal results from the disposal of movable property in the ordinary course of business
 Amount: \$47,745 at a floating rate equal to 2% above the prime commercial lending rate charged by the Royal Bank of Canada at its main office in Toronto.
 Expiration: June 11, 2011

B. Bombay & Co. Inc.

security interests granted by the Borrower in favour of any one or more of the postponing shareholders.

| 2 | Secured Party(s) and Address | Collateral Classification plus Gen'l Collateral Desc. (if any) |
|---|--|---|
| | Omega Leasing Canada Ltd. 8525 Decarie Blvd Montreal, QC H4P 2J2 | Motor Vehicle Description: 2010 Dodge Journey SE TA VIN#3D4PG4F81ATJ92837 |
| | Omega Leasing Canada Ltd. 8525 Decarie Blvd Montreal, QC H4P 2J2 | Motor Vehicle Description: 2010 Dodge Journey SE TA VIN#3D4PG4F85AT194790 |
| | Omega Leasing Canada Ltd. 8525 Decarie Blvd Montreal, QC H4P 2J2 | Motor Vehicle Description: 2010 Dodge Journey SE TA VIN#3D4PG4F80AT192733 |
| | Omega Leasing Canada Ltd. 8525 Decarie Blvd Montreal, QC H4P 2J2 | Motor Vehicle Description: 2010 Dodge Journey SE TA VIN#3D4PG4F8AT192730 |
| | Omega Leasing Canada Ltd. 8525 Decarie Blvd Montreal, QC H4P 2J2 | Motor Vehicle Description: 2010 Dodge Journey SE TA VIN#3D4PG4F80AT194806 |

C. Bowring & Co. Inc.

Ontario

| | Secured Party | File No./Registration No. | Collateral Classification/Description |
|---|------------------------------------|---|--|
| 1 | Beno & Co. Inc. | 629522478/20061005 1340 1590 3221 5 years | Inventory, Equipment, Accounts, Other, Motor Vehicle |
| | Isaac Bennet Sales Agencies Inc. | 629522568/20061005 1344 1590 3222 5 years | Inventory, Equipment, Accounts, Other, Motor Vehicle |
| | F B I. Inc. | 629522613/20061005 1345 1590 3223 5 years | Inventory, Equipment, Accounts, Other, Motor Vehicle |
| 4 | Canadian Imperial Bank of Commerce | 627782787/20060808 1547 1590 0301 5 years | Inventory, Equipment, Accounts, Other, Motor Vehicle |

Saskatchewan

A financing statement was registered on June 11, 2006 as registration #300049740 in favour of Canadian Imperial Bank of Commerce as secured party against Bowring & Co. Inc.

SCHEDULE "N"
SHAREHOLDER LOANS

A. Benix & Co. Inc.

| <u>Lender</u> | <u>Amount</u> | <u>Interest Rate</u> |
|-----------------------------|--------------------|----------------------|
| Maxstan Imperial Limited | \$500,000 | |
| Benix International Inc. | \$414,883 | |
| 1057305 Ontario Limited | \$408 | |
| F.B.I. | \$1,930,500 | 10% per annum |
| Isaac Bennet Sales Agencies | \$400,000 | 10% per annum |
| | <u>\$3,245,791</u> | |

B. Bombay & Co. Inc.

| <u>Lender</u> | <u>Amount</u> | <u>Interest Rate</u> |
|----------------------------------|---------------|----------------------|
| Isaac Bennet Sales Agencies Inc. | \$5,000,000 | 10% per annum |

C. Bowring & Co. Inc.

| <u>Lender</u> | <u>Amount</u> | <u>Interest Rate</u> |
|----------------------------------|---------------|----------------------|
| Isaac Bennet Sales Agencies Inc. | \$5,000,000 | 10% per annum |

SCHEDULE "O"
PENSION PLANS

A. Benix & Co. Inc.

None

B. Bombay & Co. Inc.

None

C. Bowring & Co. Inc.

None

SCHEDULE "P"
MATERIAL CONTRACTS

A. Benix & Co. Inc.

None

B. Bombay & Co. Inc.

None

C. Bowring & Co. Inc.

None

TOR_LAW\7474005\1

**AMENDMENT NO. 1 TO
AMENDED, RESTATED AND CONSOLIDATED CREDIT AGREEMENT**

This Amendment No. 1 to Amended, Restated and Consolidated Credit Agreement dated as of July 30, 2011 is made

BETWEEN:

BENIX & CO. INC., BOMBAY & CO. INC. and BOWRING & CO. INC., as Borrowers
(collectively, the "Borrowers")

- and -

CANADIAN IMPERIAL BANK OF COMMERCE, as Lender
(the "Lender")

RECITALS:

- A. Pursuant to an amended, restated and consolidated credit agreement dated as of December 13, 2010 between the Borrowers and the Lender (the "Credit Agreement"), the Lender established certain credit facilities available to the Borrowers on the terms and conditions set out in the Credit Agreement.
- B. The Borrowers have requested that the Lender amend certain terms and provisions of the Credit Agreement, all as provided below.
- C. The Lender is prepared to amend the Credit Agreement subject to the terms hereof and the satisfaction of the conditions precedent set out herein.
- D. It is not the intention of the parties hereto that this Amendment No. 1 shall novate the Credit Agreement.

NOW THEREFORE for valuable consideration, the receipt and sufficiency of which are acknowledged by the parties to this Amendment No. 1, the parties agree as follows:

**ARTICLE I
INTERPRETATION AND GENERAL**

Section 1.1 Definitions.

This Amendment No. 1 to Amended, Restated and Consolidated Credit Agreement shall be herein referred to as "this Amendment No. 1". All capitalized terms used in this Amendment No. 1 which are not otherwise defined shall have the meanings established for such terms in the Credit Agreement.

Section 1.2 Canadian Currency.

Unless otherwise specified herein, all amounts and values referred to in this Amendment No. 1 shall be calculated in lawful money of Canada.

Section 1.3 Headings.

The division of this Amendment No. 1 into Articles, Sections and Subsections and the insertion of headings are for convenience of reference only and shall not affect the meaning or interpretation of this Amendment No. 1.

Section 1.4 Number and Gender.

Where the context so requires, words importing the singular include the plural and vice versa, and words importing gender include the masculine, feminine and neuter genders.

ARTICLE 2 AMENDMENT TO CREDIT AGREEMENT PROVISIONS

Section 2.1 Amendments to Interest, Fees and Expenses

Subsection 6.01(1) of the Credit Agreement is deleted in its entirety and replaced with the following:

"Operating Facility"

- (i) on Prime Rate Loans made under the Operating Facility at the Prime Rate plus (A) 2.50% per annum from the Closing Date up to and including October 18, 2011, and (B) 1.00% per annum from October 19, 2011 and at all times thereafter; and
- (ii) on US Base Rate Loans made under the Operating Facility at the US Base Rate plus (A) 2.50% per annum from the Closing Date up to and including October 18, 2011, and (B) 1.00% per annum from October 19, 2011 and at all times thereafter.

Benix Instalment Facility

- (i) on Prime Rate Loans advanced under the Benix Instalment Facility at the Prime Rate plus (A) 2.50% per annum from the Closing Date up to and including October 18, 2011, and (B) 1.00% per annum from October 19, 2011 and at all times thereafter; and
- (ii) on US Base Rate Loans advanced under the Benix Instalment Facility at the US Base Rate plus (A) 2.50% per annum from the Closing Date up to and including October 18, 2011, and (B) 1.00% per annum from October 19, 2011 and at all times thereafter.

Bombay Instalment Facility

- (i) on Prime Rate Loans advanced under the Bombay Instalment Facility at the Prime Rate plus (A) 2.50% per annum from the Closing Date up to and including October 18, 2011, and (B) 1.00% per annum from October 19, 2011 and at all times thereafter;
- (ii) on US Base Rate Loans advanced under the Bombay Instalment Facility at the US Base Rate plus (A) 2.50% per annum from the Closing Date up to and including October 18, 2011, and (B) 1.00% per annum from October 19, 2011 and at all times thereafter; and
- (iii) on Bankers' Acceptances advanced under the Bombay Instalment Facility at the BA Rate plus (A) 3.50% per annum from the Closing Date up to and including

October 18, 2011, and (B) 2.00% per annum from October 19, 2011 and at all times thereafter."

Section 2.4 Amendments to Financial Covenants

Article 9 of the Credit Agreement is hereby amended as follows:

- (a) Section 9.02(1) to the Credit Agreement is hereby deleted in its entirety and replaced with the following:

- "(1) **Total Liabilities to Tangible Net Worth Ratio.** The Obligors shall maintain a Total Liabilities to Tangible Net Worth Ratio calculated quarterly on the last day of each Fiscal Quarter of less than or equal to the ratio for each period indicated below:

| <u>Period</u> | <u>Ratio</u> |
|---|--------------|
| On the Closing Date to and including January 31, 2011 | 4.00:1.00 |
| For the period from and including February 1, 2011 to April 30, 2011 | 3.50:1.00 |
| For the period from and including May 1, 2011 to July 31, 2011 | 4.00:1.00 |
| For the period from and including August 1, 2011 to October 31, 2011 | 5.75:1.00 |
| For the period from and including November 1, 2011 to February 29, 2012 | 3.50:1.00 |
| For the period from March 1, 2012 and thereafter | 3.00:1.00" |

- (b) Section 9.02(3) to the Credit Agreement is hereby deleted in its entirety and replaced with the following:

- "(3) **Fixed Charge Coverage Ratio.** The Obligors shall maintain a Fixed Charge Coverage Ratio calculated on the last day of each Fiscal Quarter of greater than or equal to the ratio for each period indicated below:

| <u>Period</u> | <u>Ratio</u> |
|--|--------------|
| On the Closing Date to and including April 30, 2011 | 1.10:1.00 |
| For the period from and including May 1, 2011 to July 31, 2011 | 1.05:1.00 |

For the period from and including
August 1, 2011 to October 31, 2011

1.10:1.00

For the period from and including
November 1, 2011 to January 31, 2012

1.05:1.00

For the period from and including
February 1, 2012 and thereafter

1.10:1.00".

ARTICLE 3 REPRESENTATIONS AND WARRANTIES

Section 3.1 Representations and Warranties.

The Obligors jointly and severally represent and warrant to the Lender that:

- (a) The representations and warranties set out in the Credit Agreement and the other Loan Documents are true, complete and correct in every material respect as at the date of this Amendment No. 1; and
- (b) There is no Default or Event of Default which has occurred and is continuing as at the date of this Amendment No. 1.

ARTICLE 4 CONDITIONS PRECEDENT TO THIS AGREEMENT

Section 4.1 Conditions Precedent.

Upon the following events having occurred to the satisfaction of the Lender and its legal counsel, this Amendment No. 1 shall come into effect and the Credit Agreement shall be amended to reflect the amendments contemplated herein:

- (a) the Lender having received this Amendment No. 1 executed by the Obligors;
- (b) no Default or Event of Default shall have occurred and be continuing; and
- (c) the Lender shall have received such other agreements, documents and instruments as the Lender shall reasonably require to effect the amendments contemplated in this Amendment No. 1.

ARTICLE 5 GENERAL

Section 5.1 Nature of this Amendment No. 1.

It is acknowledged and agreed that the terms of this Amendment No. 1 are in addition to and, unless otherwise specifically provided for, shall not limit, restrict, modify, amend or release any of the understandings, agreements or covenants as set out in the Credit Agreement. The Credit Agreement shall be read and construed in conjunction with this Amendment No. 1 and the Credit Agreement, as amended by this Amendment No. 1, together with all of the powers, provisions, conditions, covenants and agreements contained or implied in the Credit Agreement shall be and shall continue to be in full force and effect. References to the "Credit Agreement" or the "Agreement" in the Credit Agreement or in any

other document delivered in connection with, or pursuant to, the Credit Agreement, shall mean the Credit Agreement, as amended by this Amendment No. 1. In the event of any conflict between this Amendment No. 1 and the Credit Agreement, this Amendment No. 1 shall govern.

Section 5.2 Waiver.

The conditions listed in Section 4.1 to this Amendment No. 1 may be waived by the Lender in whole or in part and with or without terms or conditions.

Section 5.3 Further Assurances.

The Obligors, from time to time, shall deliver or shall cause to be delivered to the Lender duly executed documents in form and substance satisfactory to the Lender as may be reasonably requested by the Lender for the purpose of giving effect to this Amendment No. 1 or for the purpose of establishing compliance with the representations, warranties and conditions of this Amendment No. 1, the Credit Agreement or the Security contemplated under the Credit Agreement.

Section 5.4 Severability.

Any provision of this Amendment No. 1 which is prohibited or unenforceable in any jurisdiction shall not invalidate the remaining provisions hereof and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Section 5.5 Time of Essence.

Time shall, in all respects, be of the essence of this Amendment No. 1.

Section 5.6 Assignment.

The Borrowers shall not assign this Amendment No. 1 or any part hereof without the prior written consent of the Lender.

Section 5.7 Law Governing.

This Amendment No. 1 shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract. The parties hereby submit and attorn to the non-exclusive jurisdiction of the courts of the Province of Ontario.

Section 5.8 Successors and Assigns.

This Amendment No. 1 shall be binding on each of the Obligors and their respective successors and permitted assigns, and will enure to the benefit of the Lender and its successors and assigns.

Section 5.9 Counterparts.

This Amendment No. 1 may be executed in multiple counterparts, each of which shall be deemed to be an original agreement and all of which shall constitute one agreement. All counterparts shall be construed together and shall constitute one and the same agreement. This Amendment No. 1, to the extent signed and delivered by means of electronic transmission (including, without limitation, facsimile and PDF transmissions), shall be treated in all manner and respects as an original agreement and should be

considered to have the same binding legal effect as if it were the original signed version thereof delivered in person.

Section 5.10 Continuing Effect of Guarantees and Security Documents.

Each of the Borrowers and the Guarantors acknowledges, confirms and agrees: (i) to the amendments and provisions hereof, and (ii) that the respective guarantees and other Security executed by it shall remain in full force and effect as binding obligations enforceable against it notwithstanding the execution and delivery of Amendment No. 1 and continue to secure all present and future indebtedness, liabilities and obligations of the Borrowers to the Lender.

Section 5.10 No Novation.


Nothing in this Amendment No. 1, nor in the Credit Agreement when read together with this Amendment No. 1, shall constitute novation, payment, re-advance, or otherwise of any existing indebtedness, liabilities and obligations of the Borrowers to the Lender.

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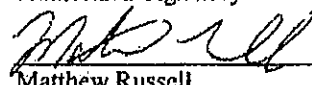
IN WITNESS WHEREOF the parties have executed this Amendment No. 1 as of the day and year first above written.

CANADIAN IMPERIAL BANK OF COMMERCE

Per:



Michael Leroux
Authorized Signatory



Matthew Russell
Authorized Signatory

We have the authority to bind the Bank.

BENIX & CO. INC.

Per:

B. Smith
Name:

Title:

I have the authority to bind the Corporation.

BOMBAY & CO. INC.

Per:

B. Smith
Name:

Title:

I have the authority to bind the Corporation.

BOWRING & CO. INC.

Per:

B. Smith
Name:

Title:

I have the authority to bind the Corporation.

12000 -

**AMENDMENT NO. 2 TO
AMENDED, RESTATED AND CONSOLIDATED CREDIT AGREEMENT**

This Amendment No. 2 to Amended, Restated and Consolidated Credit Agreement dated as of December 21, 2012 is made

BETWEEN:

BENIX & CO. INC., BOMBAY & CO. INC. and BOWRING & CO. INC., as Borrowers
(collectively, the "Borrowers")

- and -

CANADIAN IMPERIAL BANK OF COMMERCE, as Lender
(the "Lender")

RECITALS:

- A. Pursuant to an amended, restated and consolidated credit agreement dated as of December 13, 2010 between the Borrowers and the Lender, as amended by amendment no. 1 to amended, restated and consolidated credit agreement dated as of July 31, 2011 between the Borrowers and the Lender (collectively, the "Credit Agreement"), the Lender established certain credit facilities in favour of the Borrowers on the terms and conditions set out in the Credit Agreement.
- B. The Borrowers have requested that the Lender amend certain terms and provisions of the Credit Agreement, all as provided below.
- C. The Lender is prepared to amend the Credit Agreement subject to the terms hereof and the satisfaction of the conditions precedent set out herein.
- D. It is not the intention of the parties hereto that this Amendment No. 2 shall novate the Credit Agreement.

NOW THEREFORE for valuable consideration, the receipt and sufficiency of which are acknowledged by the parties to this Amendment No. 2, the parties agree as follows:

**ARTICLE 1
INTERPRETATION AND GENERAL**

Section 1.1 Definitions.

This Amendment No. 2 to Amended, Restated and Consolidated Credit Agreement shall be herein referred to as "this Amendment No. 2". All capitalized terms used in this Amendment No. 2 which are not otherwise defined shall have the meanings established for such terms in the Credit Agreement.

Section 1.2 Canadian Currency.

Unless otherwise specified herein, all amounts and values referred to in this Amendment No. 2 shall be calculated in lawful money of Canada.

Section 1.3 Headings.

The division of this Amendment No. 2 into Articles, Sections and Subsections and the insertion of headings are for convenience of reference only and shall not affect the meaning or interpretation of this Amendment No. 2.

Section 1.4 Number and Gender.

Where the context so requires, words importing the singular include the plural and vice versa, and words importing gender include the masculine, feminine and neuter genders.

ARTICLE 2 AMENDMENT TO CREDIT AGREEMENT PROVISIONS

Section 2.1 Amendment to Schedule

Schedule N (Shareholder Loans) of the Credit Agreement is hereby deleted in its entirety and replaced with revised Schedule N (Shareholder Loan) as set out in Schedule "I" to this Amendment No. 2.

Section 2.2 Amendment to Positive Covenants

Section 9.01(7) of the Credit Agreement is hereby amended by deleting the word "and" at the end of Subsection (iv), removing the period and adding the word "; and" at the end of Subsection (v) and adding a new Subsection (vi) as follows:

- "(vi) a monthly progress report in respect of the Borrowers which tracks the progress of the restructuring plan adopted by the Borrowers (such report to include details of which stores have been converted or closed, the date in respect thereof, the inventory remaining after conversion for each store, the budgeted conversion costs and the actual conversion costs of each store and, in the case of those stores which have not been converted on schedule, the new planned conversion date and the budgeted conversion costs for each store), in form and substance satisfactory to the Lender."

Section 2.3 Amendment to Financial Covenants

- (a) Section 9.02(1) to the Credit Agreement is hereby deleted in its entirety and replaced with the following:

- "(1) **Total Liabilities to Tangible Net Worth Ratio.** The Obligors shall maintain a Total Liabilities to Tangible Net Worth Ratio calculated quarterly on the last day of each Fiscal Quarter of less than or equal to the ratio for each period indicated below:

| <u>Period</u> | <u>Ratio</u> |
|---|--------------|
| On the Closing Date to and including January 31, 2011 | 1.00:1.00 |

| | |
|---|-----------|
| For the period from and including February 1, 2011 to April 30, 2011 | 3.50:1.00 |
| For the period from and including May 1, 2011 to July 31, 2011 | 4.00:1.00 |
| For the period from and including August 1, 2011 to October 31, 2011 | 5.75:1.00 |
| For the period from and including November 1, 2011 to January 31, 2012 | 3.50:1.00 |
| For the period from February 1, 2012 and thereafter | 3.00:1.00 |

- (b) Section 9.02(3) to the Credit Agreement is hereby deleted in its entirety and replaced with the following:

- “(3) **Fixed Charge Coverage Ratio.** The Obligors shall maintain a Fixed Charge Coverage Ratio calculated on the last day of: (i) each Fiscal Quarter for the period from and after the Closing Date to January 31, 2012, and (ii) each Fiscal Year for the period from and after February 1, 2012 and thereafter, in each case, of greater than or equal to the ratio for each period indicated below:

| <u>Period</u> | <u>Ratio</u> |
|---|--------------|
| On the Closing Date to and including April 30, 2011 | 1.10:1.00 |
| For the period from and including May 1, 2011 to July 31, 2011 | 1.05:1.00 |
| For the period from and including August 1, 2011 to October 31, 2011 | 1.10:1.00 |
| For the period from and including November 1, 2011 to January 31, 2012 | 1.05:1.00 |
| For the period from and including February 1, 2012 and thereafter | 1.10:1.00 |

Section 2.4 Amendment to Negative Covenants

Section 9.03(7)(iii) to the Credit Agreement is hereby amended and as follows:

- (a) Section 9.03(7)(iii) is hereby deleted in its entirety and replaced with the following:

- (iii) provided that the Lender has (A) completed, and is satisfied with its review of the Borrowers' in-house prepared financial statements for each Fiscal Year of the Obligor (including, without limitation, a comparison to budget analysis and commentary for each such Fiscal Year), and (B) granted its prior written consent, repayments of indebtedness owed by any Obligor to its respective shareholders in such amounts and at such time permitted and notified in writing by the Lender to the Borrowers; and";
- (b) Section 9.03(7) is hereby amended by deleting the words "no Default or Event of Default shall have occurred and be continuing or result therefrom" in the last sentence (immediately after subsection (iv)) and replacing such words with "no default or breach of any term, condition or covenant of this Agreement or any other Loan Document shall have occurred or result therefrom.";

ARTICLE 3 WAIVER AND HISTORICAL BREACHES

Section 3.1 Waiver and Historical Breaches.

- (a) As a consequence of certain withdrawals of capital from the Borrowers by the Postponing Shareholders from time to time between the period from January 26, 2012 to January 28, 2012, and the subsequent re-advances of such capital by the Postponing Shareholders to the Borrowers which re-advances did not occur until after the respective test date of the financial covenants set out in Section 9.02(1) to (3) of the Credit Agreement, the Borrowers acknowledge that the Borrowers breached the financial covenants set out in Section 9.02(1) to (3) inclusive of the Credit Agreement as follows (collectively, the "Breached Financial Covenants"):
- (i) a Total Liabilities to Tangible Net Worth Ratio of 8.23:1.00 for the Fiscal Quarter ending January 28, 2012 which was above 3.50:1.00;
 - (ii) a Total Liabilities to Tangible Net Worth Ratio of 3.97:1.00 for the Fiscal Quarter ending April 28, 2012 which was above 3.00:1.00;
 - (iii) a Total Liabilities to Tangible Net Worth Ratio of 4.62:1.00 for the Fiscal Quarter ending July 28, 2012 which was above 3.00:1.00;
 - (iv) a Total Liabilities to Tangible Net Worth Ratio of 3.65:1.00 for the Fiscal Quarter ending October 27, 2012 which was above 3.00:1.00;
 - (v) a Current Ratio of 1.00:1.00 for the Fiscal Quarter ending January 28, 2012 which was less than 1.05:1.00; and
 - (vi) a Fixed Charge Coverage Ratio of 0.79:1.00 for the Fiscal Quarter ending January 28, 2012 which was less than 1.10:1.00.
- (b) The Lender hereby specifically waives each of the Breached Financial Covenants for the specified time periods set out immediately above. Notwithstanding such waiver, the Borrowers hereby acknowledge and confirm that: (i) the Lender requires compliance going forward by each of the Borrowers with all of their respective obligations and covenants under the Credit Agreement, and any other Loan Documents to which each is a party (including, for greater certainty, all financial covenants set out in Section 9.03(1) to (3) inclusive), and (ii) nothing in

this Article 3, the waivers contemplated herein or the existence of the Breached Financial Covenants in any manner whatsoever relieves the Borrowers from the full observance and performance of all of the representations, warranties, covenants, terms and conditions under the Credit Agreement, the Security or any other Loan Document to which each is a party.

ARTICLE 4 REPRESENTATIONS AND WARRANTIES

Section 4.1 Representations and Warranties.

The Obligors jointly and severally represent and warrant to the Lender that:

- (a) The representations and warranties set out in the Credit Agreement and the other Loan Documents are true, complete and correct in every material respect as at the date of this Amendment No. 2;
- (b) There is no default or breach of any covenant, term or condition under any of the Loan Documents which has occurred and is continuing as at the date of this Amendment No. 2 (other than the Breached Financial Covenants set out in Section 3.1); and
- (c) As at the date of this Amendment No. 2, the particulars set out in the Schedule 1 attached hereto are true, accurate and complete in all respects (including, without limitation, the principal amount of each shareholder loan, the legal name of each shareholder advancing the respective shareholder loan and whether each shareholder loan is secured or unsecured).

ARTICLE 5 CONDITIONS PRECEDENT TO THIS AGREEMENT

Section 5.1 Conditions Precedent.

Upon the following events having occurred to the satisfaction of the Lender and its legal counsel, this Amendment No. 2 shall come into effect and the Credit Agreement shall be amended to reflect the amendments contemplated herein:

- (a) the Lender having received this Amendment No. 2 executed by the Obligors;
- (b) there is no default or breach of any covenant, term or condition under any of the Loan Documents which has occurred and is continuing as at the date of this Amendment No. 2 (other than the Breached Financial Covenants set out in Section 3.1); and
- (c) the Lender shall have received such other agreements, documents and instruments as the Lender shall reasonably require to effect the amendments contemplated in this Amendment No. 2.

ARTICLE 6 GENERAL

Section 6.1 Nature of this Amendment No. 2.

It is acknowledged and agreed that the terms of this Amendment No. 2 are in addition to and, unless otherwise specifically provided for, shall not limit, restrict, modify, amend or release any of the understandings, agreements or covenants as set out in the Credit Agreement. The Credit Agreement shall be read and construed in conjunction with this Amendment No. 2 and the Credit Agreement, as amended

by this Amendment No. 2, together with all of the powers, provisions, conditions, covenants and agreements contained or implied in the Credit Agreement shall be and shall continue to be in full force and effect. References to the "Credit Agreement" or the "Agreement" in the Credit Agreement or in any other document delivered in connection with, or pursuant to, the Credit Agreement, shall mean the Credit Agreement, as amended by this Amendment No. 2. In the event of any conflict between this Amendment No. 2 and the Credit Agreement, this Amendment No. 2 shall govern.

Section 6.2 Waiver.

The conditions listed in Section 5.1 to this Amendment No. 2 may be waived by the Lender in whole or in part and with or without terms or conditions.

Section 6.3 Further Assurances.

The Obligors, from time to time, shall deliver or shall cause to be delivered to the Lender duly executed documents in form and substance satisfactory to the Lender as may be reasonably requested by the Lender for the purpose of giving effect to this Amendment No. 2 or for the purpose of establishing compliance with the representations, warranties and conditions of this Amendment No. 2, the Credit Agreement or the Security contemplated under the Credit Agreement.

Section 6.4 Severability.

Any provision of this Amendment No. 2 which is prohibited or unenforceable in any jurisdiction shall not invalidate the remaining provisions hereof and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Section 6.5 Time of Essence.

Time shall, in all respects, be of the essence of this Amendment No. 2.

Section 6.6 Assignment.

The Borrowers shall not assign this Amendment No. 2 or any part hereof without the prior written consent of the Lender.

Section 6.7 Law Governing.

This Amendment No. 2 shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract. The parties hereby submit and affirm to the non-exclusive jurisdiction of the courts of the Province of Ontario.

Section 6.8 Successors and Assigns.

This Amendment No. 2 shall be binding on each of the Obligors and their respective successors and permitted assigns, and will endure to the benefit of the Lender and its successors and assigns.

Section 6.9 Counterparts.

This Amendment No. 2 may be executed in multiple counterparts, each of which shall be deemed to be an original agreement and all of which shall constitute one agreement. All counterparts shall be construed together and shall constitute one and the same agreement. This Amendment No. 2, to the extent signed and delivered by means of electronic transmission (including, without limitation, facsimile and PDF transmissions), shall be treated in all manner and respects as an original agreement and should be

considered to have the same binding legal effect as if it were the original signed version thereof delivered in person.

Section 6.10 Continuing Effect of Guarantees and Security Documents.

Each of the Borrowers and the Guarantors acknowledges, confirms and agrees: (i) to the amendments and provisions hereof, and (ii) that the respective guarantees and other Security executed by it shall remain in full force and effect as binding obligations enforceable against it notwithstanding the execution and delivery of Amendment No. 2 and continue to secure all present and future indebtedness, liabilities and obligations of the Borrowers to the Lender.

Section 6.11 No Novation.

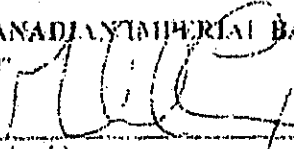
Nothing in this Amendment No. 2, nor in the Credit Agreement when read together with this Amendment No. 2, shall constitute novation, payment, re-advance, or otherwise of any existing indebtedness, liabilities and obligations of the Borrowers to the Lender.

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IN WITNESS WHEREOF the parties have executed this Amendment No. 2 as of the day and year first above written.

CANADIAN IMPERIAL BANK OF COMMERCE

Per


Michael Leroix

Authorized Signatory



Matthew Russell

Authorized Signatory

We have the authority to bind the Bank.

BENIX & CO. INC.

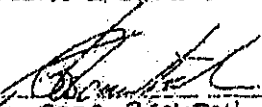
Per:


Name: FRED BENITAH
Title: CEO

I have the authority to bind the Corporation.

BOMBAY & CO. INC.

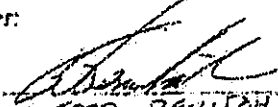
Per:


Name: FRED BENITAH
Title: CEO

I have the authority to bind the Corporation.

BOWRING & CO. INC.

Per:


Name: FRED BENITAH
Title: CEO

I have the authority to bind the Corporation.

SCHEDULE "T"

SCHEDULE "V" SHAREHOLDER LOANS

A. POSTPONED LOANS (as at December 21, 2012)

| Debtor | Lender | Amount | Interest Rate | Secured / Unsecured |
|--------------------|---|--------------|-----------------|------------------------|
| Benix & Co. Inc. | Maxstar Imperial Limited | \$500,000 | [●] % per annum | Unsecured |
| | Benix International Inc. | \$400,000 | [●] % per annum | Unsecured |
| | Known known as Isaac Bennet Sales Agencies Inc. | | | |
| | 1057305 Ontario Limited | [●] | | Unsecured |
| | I.B. Inc. | [●] | 10% per annum | Unsecured |
| | Isaac Bennet Sales Agencies Inc. | [●] | 10% per annum | Unsecured |
| Bombay & Co. Inc. | Isaac Bennet Sales Agencies Inc. | \$5,000,000 | 10% per annum | Secured |
| Bowring & Co. Inc. | Isaac Bennet Sales Agencies Inc. | \$5,000,000 | 10% per annum | Secured |
| TOTAL | | \$14,858,510 | | |

B. NON-POSTPONED LOANS (as at December 21, 2012)

| Debtor | Lender | Amount | Interest Rate | Secured / Unsecured |
|--------------------|--------|--------------|-----------------|------------------------|
| Benix & Co. Inc. | [●] | \$3,500,000 | [●] % per annum | Unsecured |
| Bombay & Co. Inc. | [●] | 5,000,000 | [●] % per annum | Unsecured |
| Bowring & Co. Inc. | [●] | 10,500,000 | [●] % per annum | Unsecured |
| TOTAL | | \$19,000,000 | | |

**AMENDMENT NO. 3 TO
AMENDED, RESTATED AND CONSOLIDATED CREDIT AGREEMENT**

This Amendment No. 3 to Amended, Restated and Consolidated Credit Agreement dated as of July 23, 2013 is made

BETWEEN:

BENIX & CO. INC., BOMBAY & CO. INC. and BOWRING & CO. INC., as Borrowers
(collectively, the "Borrowers")

- and -

CANADIAN IMPERIAL BANK OF COMMERCE, as Lender
(the "Lender")

RECITALS:

- A. Pursuant to an amended, restated and consolidated credit agreement dated as of December 13, 2010 between the Borrowers and the Lender, as amended by amendment no. 1 to amended, restated and consolidated credit agreement dated as of July 31, 2011 between the Borrowers and the Lender and as amended by amendment no. 2 to amended, restated and consolidated credit agreement dated as of December 21, 2012 between the Borrowers and the Lender (collectively, and as may further be amended, restated, supplemented, replaced or otherwise modified from time to time, the "Credit Agreement"), the Lender established certain credit facilities in favour of the Borrowers on the terms and conditions set out in the Credit Agreement.
- B. The Borrowers have requested that the Lender amend certain terms and provisions of the Credit Agreement, all as provided below.
- C. The Lender is prepared to amend the Credit Agreement subject to the terms hereof and the satisfaction of the conditions precedent set out herein.
- D. It is not the intention of the parties hereto that this Amendment No. 3 shall novate the Credit Agreement.

NOW THEREFORE for valuable consideration, the receipt and sufficiency of which are acknowledged by the parties to this Amendment No. 3, the parties agree as follows:

**ARTICLE 1
INTERPRETATION AND GENERAL**

Section 1.1 Definitions.

This Amendment No. 3 to Amended, Restated and Consolidated Credit Agreement shall be herein referred to as "this Amendment No. 3". All capitalized terms used in this Amendment No. 3 which are not otherwise defined shall have the meanings established for such terms in the Credit Agreement.

Section 1.2 Canadian Currency.

Unless otherwise specified herein, all amounts and values referred to in this Amendment No. 3 shall be calculated in lawful money of Canada.

Section 1.3 Headings.

The division of this Amendment No. 3 into Articles, Sections and Subsections and the insertion of headings are for convenience of reference only and shall not affect the meaning or interpretation of this Amendment No. 3.

Section 1.4 Number and Gender.

Where the context so requires, words importing the singular include the plural and vice versa, and words importing gender include the masculine, feminine and neuter genders.

**ARTICLE 2
AMENDMENT TO CREDIT AGREEMENT PROVISIONS**

Section 2.1 Addition to Definitions

Section 1.01 of the Credit Agreement is hereby amended by adding the following definition:

"**Effective Equity**" means, in respect of the Borrowers for any period, the aggregate of, without duplication: (i) Shareholders' Equity, and (ii) all shareholder loans owed by the Borrowers to their respective shareholders from time to time, whether subordinated and postponed or not subordinated and postponed, including, without limitation, the shareholder loans set out in Schedule "N" (as such Schedule may be replaced or updated from time to time)."

Section 2.2 Amendment to Financial Covenants

- (a) Section 9.02(1) to the Credit Agreement is hereby deleted in its entirety and replaced with the following:

- "(1) **Total Liabilities to Tangible Net Worth Ratio.** The Obligors shall maintain a **Total Liabilities to Tangible Net Worth Ratio** calculated quarterly on the last day of each Fiscal Quarter of less than or equal to the ratio for each period indicated below:

| <u>Period</u> | <u>Ratio</u> |
|--|--------------|
| On the Closing Date to and including January 31, 2011 | 4.00:1.00 |
| For the period from and including February 1, 2011 to April 30, 2011 | 3.50:1.00 |
| For the period from and including May 1, 2011 to July 31, 2011 | 4.00:1.00 |
| For the period from and including August 1, 2011 to October 31, 2011 | 5.75:1.00 |

For the period from and including
November 1, 2011 to January 31, 2013 3.50:1.00

For the period from and including
February 1, 2013 to April 30, 2013 3.00:1.00

For the period from and including May
1, 2013 to January 31, 2014 N/A

For the period from and including
February 1, 2014 and thereafter 3.00:1.00

For greater certainty, for the period from and including May 1, 2013 to January 31, 2014, the Obligors shall not be required to maintain or report the Total Liabilities to Tangible Net Worth Ratio."

- (b) Section 9.02 of the Credit Agreement is hereby amended by adding a new Subsection (5) immediately after Subsection (4) as follows:

"(5) **Minimum Effective Equity.** The Obligors shall maintain at all times Effective Equity, tested on the last day of each Fiscal Quarter, equal to an amount of not less than \$13,750,000 for each of the Fiscal Quarters ending July 31, 2013, October 31, 2013 and January 31, 2014."

Section 2.3 Amendment to Negative Covenants

Section 9.03(21) of the Credit Agreement is hereby amended by deleting the amount "\$10,000,000" and replacing such amount with "\$5,000,000".

Section 2.4 Amendment to Security

Section 10.02 of the Credit Agreement is hereby amended by deleting the word "and" at the end of Subsection (6), removing the period and adding the word "and" at the end of Subsection (7) and adding a new Subsection (8) as follows:

"(8) a debt servicing and financial covenant agreement from Fred Benitah."

ARTICLE 3 REPRESENTATIONS AND WARRANTIES

Section 3.1 Representations and Warranties.

The Obligors jointly and severally represent and warrant to the Lender that:

- (a) The representations and warranties set out in the Credit Agreement and the other Loan Documents are true, complete and correct in every material respect as at the date of this Amendment No. 3; and
- (b) There is no default or breach of any covenant, term or condition under any of the Loan Documents which has occurred and is continuing as at the date of this Amendment No. 3 (other than the Covenant Breaches as set out and defined in the reservation of rights letter issued by the Lender on or about the date hereof).

ARTICLE 4
CONDITIONS PRECEDENT TO THIS AGREEMENT

Section 4.1 Conditions Precedent.

Upon the following events having occurred to the satisfaction of the Lender and its legal counsel, this Amendment No. 3 shall come into effect and the Credit Agreement shall be amended to reflect the amendments contemplated herein:

- (a) the Lender having received this Amendment No. 3 executed by the Obligor;
- (b) the Lender having received the debt servicing and financial covenant agreement executed by Fred Benitah;
- (c) there is no default or breach of any covenant, term or condition under any of the Loan Documents which has occurred and is continuing as at the date of this Amendment No. 3 (other than the Covenant Breaches as set out and defined in the reservation of rights letter issued by the Lender on or about the date hereof); and
- (d) the Lender shall have received such other agreements, documents and instruments as the Lender shall reasonably require to effect the amendments contemplated in this Amendment No. 3.

ARTICLE 5
GENERAL

Section 5.1 Nature of this Amendment No. 3.

It is acknowledged and agreed that the terms of this Amendment No. 3 are in addition to and, unless otherwise specifically provided for, shall not limit, restrict, modify, amend or release any of the understandings, agreements or covenants as set out in the Credit Agreement. The Credit Agreement shall be read and construed in conjunction with this Amendment No. 3 and the Credit Agreement, as amended by this Amendment No. 3, together with all of the powers, provisions, conditions, covenants and agreements contained or implied in the Credit Agreement shall be and shall continue to be in full force and effect. References to the "Credit Agreement" or the "Agreement" in the Credit Agreement or in any other document delivered in connection with, or pursuant to, the Credit Agreement, shall mean the Credit Agreement, as amended by this Amendment No. 3. In the event of any conflict between this Amendment No. 3 and the Credit Agreement, this Amendment No. 3 shall govern.

Section 5.2 Waiver.

The conditions listed in Section 4.1 to this Amendment No. 3 may be waived by the Lender in whole or in part and with or without terms or conditions.

Section 5.3 Further Assurances.

The Obligor, from time to time, shall deliver or shall cause to be delivered to the Lender duly executed documents in form and substance satisfactory to the Lender as may be reasonably requested by the Lender for the purpose of giving effect to this Amendment No. 3 or for the purpose of establishing compliance with the representations, warranties and conditions of this Amendment No. 3, the Credit Agreement or the Security contemplated under the Credit Agreement.

Section 5.4 Severability.

Any provision of this Amendment No. 3 which is prohibited or unenforceable in any jurisdiction shall not invalidate the remaining provisions hereof and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Section 5.5 Time of Essence.

Time shall, in all respects, be of the essence of this Amendment No. 3.

Section 5.6 Assignment.

The Borrowers shall not assign this Amendment No. 3 or any part hereof without the prior written consent of the Lender.

Section 5.7 Law Governing.

This Amendment No. 3 shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract. The parties hereby submit and attorn to the non-exclusive jurisdiction of the courts of the Province of Ontario.

Section 5.8 Successors and Assigns.

This Amendment No. 3 shall be binding on each of the Obligors and their respective successors and permitted assigns, and will enure to the benefit of the Lender and its successors and assigns.

Section 5.9 Counterparts.

This Amendment No. 3 may be executed in multiple counterparts, each of which shall be deemed to be an original agreement and all of which shall constitute one agreement. All counterparts shall be construed together and shall constitute one and the same agreement. This Amendment No. 3, to the extent signed and delivered by means of electronic transmission (including, without limitation, facsimile and PDF transmissions), shall be treated in all manner and respects as an original agreement and should be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person.

Section 5.10 Continuing Effect of Guarantees and Security Documents.

Each of the Borrowers and the Guarantors acknowledges, confirms and agrees: (i) to the amendments and provisions hereof, and (ii) that the respective guarantees and other Security executed by it shall remain in full force and effect as binding obligations enforceable against it notwithstanding the execution and delivery of Amendment No. 3 and continue to secure all present and future indebtedness, liabilities and obligations of the Borrowers to the Lender.

Section 5.11 No Novation.

Nothing in this Amendment No. 3, nor in the Credit Agreement when read together with this Amendment No. 3, shall constitute novation, payment, re-advance, or otherwise of any existing indebtedness, liabilities and obligations of the Borrowers to the Lender.

Section 5.12 Priority Payables Confirmation.

Notwithstanding past practice, each Borrower agrees, acknowledges and confirms that Priority Payables are required to be and shall be deducted from the Borrowing Base commencing with the Borrowing Base Certificate delivered for the reporting period ending June 30, 2013 and for each Borrowing Base Certificate required to be delivered thereafter pursuant to Section 9.01(7) of the Credit Agreement.

Section 5.13 Hedging Limit Confirmation.

Each of the Borrowers acknowledge, confirm and agree that, as of the date hereof and until otherwise notified in writing by the Lender, the maximum aggregate deemed risk, as calculated by the Lender, of all Hedging Agreements entered into by any Borrower with the Lender at any time, as determined by that Lender in accordance with its usual practices and calculated on a mark to market basis at such time, shall not exceed US \$3,000,000.

Section 5.14 Operating Facility Limit Confirmation


Each of the Borrowers acknowledge, confirm and agree that, as previously notified in writing pursuant to a letter dated January 28, 2013 issued by the Lender to the Borrowers, the Operating Facility Limit is reduced from \$21,500,000 to \$20,000,000 until such time as the Lender receives and reviews the annual audited financial statements for the Fiscal Year ending January 2013. For greater certainty, maximum Borrowings under the Credit Agreement are determined pursuant to Section 3.02(1) of the Credit Agreement together with the reduction to the Operating Facility Limit as set out in this Section 5.14.

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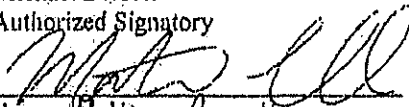
IN WITNESS WHEREOF the parties have executed this Amendment No. 3 as of the day and year first above written.

CANADIAN IMPERIAL BANK OF COMMERCE

Per:


Michael Leroux

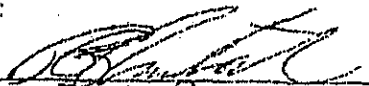
Authorized Signatory


Name: Matthew Russell
Authorized Signatory

We have the authority to bind the Bank.

BENIX & CO. INC.

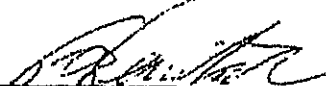
Per:


Name: FRED BENITAH
Title:

I have the authority to bind the Corporation.

BOMBAY & CO. INC.

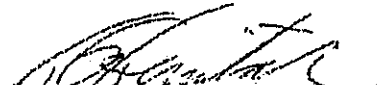
Per:


Name: FRED BENITAH
Title:

I have the authority to bind the Corporation.

BOWRING & CO. INC.

Per:


Name: FRED BENITAH
Title:

I have the authority to bind the Corporation.

Court File No.

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

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

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

Proceedings commenced in Toronto

APPLICATION RECORD

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