Court File No: CV-18-592741-00CL

ONTARIO

SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT,* R.S.C. 1985, c. B3, AS AMENDED, AND SECTION101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED

B E T W E E N:

STRONACH CONSULTING CORP.,

Applicant

- and -

BIONX CANADA INC.

Respondent

SECOND REPORT TO THE COURT OF GRANT THORNTON LIMITED IN ITS CAPACITY AS RECEIVER OF THE RESPONDENT

APRIL 18, 2018

Grant Thornton Limited
200 King Street West, 11th Floor
Toronto, Ontario
M5H 3T4

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CONFIDENTIAL APPENDICES

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APRIL 18, 2018

INTRODUCTION AND PURPOSE OF THE SECOND REPORT

1. This report (the "**Second Report**") is filed by Grant Thornton Limited ("**GTL**") in its capacity as the receiver, and the receiver and manager (in such capacities, the "**Receiver**") of BionX Canada Inc. ("**BionX**" or the "**Company**").

2. On February 27, 2018, pursuant to an application brought by Stronach Consulting Corp.'s ("**SCC**"), the Ontario Superior Court of Justice (Commercial List) (the "**Court**") granted an order appointing GTL as Receiver over the property, assets and undertakings of the

Company (the "**Appointment Order**"). A copy of the Appointment Order is attached hereto as **Appendix "1"**.

3. In the affidavit of John Simonetti sworn on February 23, 2018 in connection with SCC's application (the "**Simonetti Affidavit**"), Mr. Simonetti indicated that SCC was exploring funding a payment to the Employees (as defined herein) for amounts that were outstanding or that may arise in the course of the receivership with respect to Employee Entitlements (as defined below). SCC was unable to ascertain the quantum of the Employee Entitlements at that time, however, Mr. Simonetti advised the Court that SCC intended to continue investigating the extent of BionX's liability with respect to the same. A copy of the Simonetti Affidavit, without exhibits, is attached hereto as **Appendix "2"**.

4. The purpose of this Second Report is to:

   (a) update the Court with respect to the Receiver's activities and dealings with BionX's previous workforce consisting of: (i) 73 full-time employees (the "**Full-Time Employees**"); (ii) eight (8) engineering students (the "**Part-Time Students**", together with Full-Time Employees, the "**Employees**"); and (iii) 11 individuals engaged on a contractual basis[1] (the "**Contract Workers**");

   (b) provide the Court with the Receiver's calculation of:

      (i) the amounts owing to Employees with respect to: (i) Outstanding Wages (as defined below); (ii) outstanding vacation pay; (iii) pay in lieu of notice upon termination (i.e. termination pay); and (iv) severance pay for services (vacation pay, termination pay, and severance pay are collectively referred

[1] Contract Workers would invoice BionX on a monthly basis for their services rendered.

to as the “**Termination Entitlements**” and collectively with Outstanding Wages, the “**Employee Entitlements**”);

(ii) the outstanding amounts owed to Contract Workers for services rendered to BionX as at the date of the Appointment Order (the “**Contract Worker Arrears**”);

(c) advise the Court of SCC’s intention to advance funds equivalent to the Employee Entitlements and Contract Worker Arrears to BionX on certain conditions; and

(d) request that the Court issue an Order (the “**Employee Entitlements Order**”):

(i) approving the Second Report and the activities of the Receiver set out therein, including the payment of Outstanding Wages to Employees;

(ii) authorizing and directing the Receiver to receive, hold separately and distribute on behalf of BionX, funds advanced by SCC in the aggregate amount of $1,450,187, of which $101,006 will be in respect of Priority Employee Claims (as defined below), to Employees pursuant to the schedule prepared by the Receiver outlining the Employee Entitlements for each Employee (the “**Employee Entitlement Schedule**”), attached hereto as **Confidential Appendix “1”**,

(iii) authorizing and directing the Receiver to receive, hold separately and distribute on behalf of BionX, funds advanced by SCC in the aggregate amount of $77,976 to Contract Workers pursuant to the schedule prepared by the Receiver outlining the Contract Workers Arrears for each Contract Worker (the “**Contract Worker Arrears Schedule**”), attached hereto as **Confidential Appendix “2”**;

(iv) authorizing the Receiver to vary the quantum of the distributions set out in subparagraphs 4(d)(ii) and (iii) above, for the purpose, among other things, of ensuring that such payments conform with the relevant statutory entitlements, without further authorization of this Court;

(v) declaring that amounts advanced by SCC in respect of distributions made in respect of Priority Employee Claims shall be entitled to payment in priority under the Receiver's Borrowings Charge as defined in the Appointment Order;

(vi) declaring that the payment of Wages described in this report and distributions set out in subparagraphs 4(d)(ii) and (iii) above, do not constitute a preference or otherwise give rise to any liability on the part of the Receiver or SCC; and

(vii) sealing **Confidential Appendices "1"** and **"2"** of this Second Report until further Order of the Court.

RESTRICTIONS AND TERMS OF REFERENCE

5. In preparing this Second Report, the Receiver has relied upon unaudited financial information, BionX's books and records, certain financial information, discussions with BionX's management and employees, and discussions with other parties. The Receiver's work does not constitute an audit or verification of such information for accuracy, completeness or compliance with Generally Accepted Accounting Principles ("**GAAP**") or International Financial Reporting Standards ("**IFRS**"). Accordingly, the Receiver expresses no opinion or other form of assurance pursuant to GAAP or IFRS with respect to such information.

6. This Second Report has been prepared for the use of this Court in connection with the relief sought by the Receiver pursuant to its notice of motion dated April 18, 2018. This Second Report should not be relied on for any other purpose.

7. For greater clarity, this Second Report <u>does not</u> include details with respect to the Receiver's administration of the receivership, outside of its dealings with Employees and Contract Workers.

8. Capitalized terms not defined in this Second Report have the meaning ascribed to such terms in the Receiver's Pre-Filing Report dated February 26, 2018 (the "**Pre-Filing Report**"), a copy which, without appendices, is attached hereto as **Appendix "3"**. All references to dollars are in Canadian currency unless otherwise noted.

9. Copies of materials filed in these proceedings are available on the Receiver's case website at: www.GrantThornton.ca/BionX.

COMPANY BACKGROUND

10. BionX, together with its related companies and subsidiaries, are in the business of designing, manufacturing, and selling electronic propulsion systems for bicycles, which is further detailed in the Simonetti Affidavit.

11. BionX is solely owned by a holding company, BionX International Corporation ("**BionX International**"). SCC owns 60.50% of the voting shares of BionX International while the remaining voting shares (39.50%) are owned by 1593057 Ontario Inc., a holding company solely owned by Manfred Gingl, the former CEO and sole director of BionX.

12. SCC and its predecessor 2255681 Ontario Inc. ("**225 Ontario**"), have acted as the sole funders of BionX. Since December 2014, SCC and 255 Ontario have funded a total of US $13,925,000 and $2,918,792 in various tranches evidenced by way of a non-interest

bearing demand grid note governed by an agreement between BionX and SCC dated January 15, 2018.[2]

13. BionX's headquarters in Aurora, Ontario (the "**Aurora Facility**") served as the global head office for sales, service, marketing, testing, sourcing, and resident engineering. The Aurora Facility is also home to the main production and assembly plant, where the Company's e-bike systems consisting of a battery, motor and console are produced and shipped to customers globally.

14. The Company also had a research and development facility in Sherbrooke, Quebec which was responsible for product development and advancement (the "**Sherbrooke Facility**").

15. Additional information about the background of the Company is included in the Receiver's Pre-Filing Report and the Simonetti Affidavit.

EMPLOYEE AND CONTRACT WORKER MATTERS

16. As outlined above, prior to the appointment of the Receiver, BionX employed approximately 73 Full-Time Employees, eight (8) Part-Time Students, and 11 Contract Workers as follows:

(a) 69 Full-Time Employees, six (6) Part-Time Students, and seven (7) Contract Workers at the Aurora Facility; and

(b) four (4) Full-Time Employees, three (3) Part-Time Students, and two (2) Contract Workers at the Sherbrooke Facility; and

(c) two (2) Contract Workers based out of the United States who fulfilled the roles of traveling support and sales persons.

[2] On October 31, 2015, 225 Ontario assigned all of its right, title, property and interest to SCC, including the indebtedness of BionX owing to 225 Ontario at that time.

17. On February 27, 2018, upon taking possession of the Aurora Facility and the Sherbrooke Facility, the Receiver terminated all of the Employees at both the Aurora Facility and Sherbrooke Facility and provided termination letters to same. Concurrently, the Receiver also advised the Contract Workers that effective February 27, 2018, their contractual agreements with BionX would cease.

18. On February 27, 2018, the Receiver entered into short-term service contracts with nine (9) of the Employees and one (1) Contract Worker to assist with the administration of the receivership proceedings; the Receiver has since entered into an additional seven (7) short-term service contracts with Employees (the "**Retained Individuals**").

19. Since its appointment, the Receiver worked with ADP Canada (defined herein) to obtain and deliver by ordinary mail, the records of employment ("**ROE**") to all terminated Employees. The ROEs were delivered via ordinary mail on March 9, 2018.

20. The Receiver is in the process of preparing T4's for 2018 for all terminated Employees.

OUTSTANDING WAGES

21. From February 28, 2018 to March 5, 2018, the Receiver liaised with: (i) Michael Willetts, Director of Finance – BionX, ("**Mr. Willetts**"); (ii) the payroll contractor of BionX, Noreen Sadiq ("**Ms. Sadiq**"), Director of Payroll Services for EZ Pay Services & Consulting; and (iii) BionX's third party payroll provider, Automatic Data Processing (Canada) Inc. ("**ADP Canada**") to determine the quantum of wages owing to Employees as at the date of the Appointment Order. Based on the information provided by the parties above, the outstanding wages for Employees up to and including February 27, 2018 totaled $56,359, inclusive of source deductions and withholdings, (collectively the "**Outstanding Wages**"). In addition the Receiver, with the approval of SCC, paid $3,450.53 in respect of RRSP matching obligations and will pay $4,708.30 in respect of expense accounts.

22. On March 8, 2018, after consultation with SCC, the Receiver remitted payment to all Employees for the Outstanding Wages.

TERMINATION ENTITLEMENTS

23. Subsequent to the determination and payment of the Outstanding Wages, upon the Receiver's request, Mr. Willetts provided a schedule to the Receiver (the "**Employee Schedule**") that outlined, among other things, the following information for each Employee: (i) gross weekly earnings; (ii) hire dates; (iii) years of service; (iv) annual vacation entitlements; (v) eligible vacation days carried forward from the prior year; and (vi) job titles and functions (collectively, the "**Employee Information**"). Subsequent to receiving the Employee Schedule, the Receiver requested that Ms. Sadiq review the information provided to ensure the accuracy of same.

24. The Receiver has calculated that aggregate amount of the Employee Entitlements is $1,506,546, which is composed of the following amounts:

(a) Outstanding Wages – $56,359 (paid on March 9, 2018);

(b) the amount owed to Employees for outstanding statutory vacation pay – $74,956 (collectively, and for each Employee, the "**Vacation Pay Entitlement**");

(c) the amount owed to Employees for pay in lieu of notice pursuant to:

(i) the Ontario *Employment Standards Act* (the "**ESA**") for Employees working at the Aurora Facility in Ontario – $781,218; and

(ii) the Quebec *Act Respecting Labour Standards* (the "**LSA**") for Employees working in the Sherbrooke Facility in Quebec – $22,101

(collectively, and for each Employee, the "**Termination Pay Entitlement**"); and

(d) the amount owed to Employees for severance pay pursuant to the ESA for Employees working at the Aurora Facility – $571,911 (collectively, and for each Employee, the "**Severance Pay Entitlement**")[3].

25. Pursuant to section 81.4(1) of the *Bankruptcy and Insolvency Act* (BIA), certain compensation claims, including in respect of vacation pay and wages, are entitled to a super-priority security interest ("**Priority Employee Claims**"). Of the Vacation Pay Entitlement and the Outstanding Wages, $101,006 represents the Priority Employee Claims. The remaining balance of the Employee Entitlements, in the amount of $1,405,540, is categorized as an unsecured claim against BionX (the "**Unsecured Employee Claim**").

26. As noted above, the Termination Entitlements have been calculated based on the ESA or LSA, as applicable. Employees may be entitled to claim additional amounts with respect to pay in lieu of notice or severance arising from the common law or their contracts. The relief sought in Employee Entitlements Order does not purport to affect these claims. If the Court grants the Employee Entitlements Order, each Employee will be entitled to continue any such claim against the BionX estate to the extent his or her claim exceeds any payments received in respect of Termination Entitlements.

27. The Receiver's methodology in calculating the Termination Entitlements is detailed below.

<u>Vacation Pay Entitlement</u>

28. The Vacation Pay Entitlement was calculated by the Receiver separately for hourly Employees and salaried Employees as the respective vacation information was tracked separately.

[3] No amounts for Severance Pay for the Quebec Employees has been calculated as the LSA does not contain the requirement to pay same.

Employees – Hourly

29. As at the date of the Appointment Order, 23 Employees were paid on an hourly basis. To determine the Vacation Pay Entitlement for the hourly Employees, the Receiver obtained a schedule that outlined the hourly vacation balances (in dollars) from Ms. Sadiq (the "**Hourly Vacation Schedule**"). The amounts included on the Hourly Vacation Schedule included earned and carry-forward vacation pay for each hourly Employee.

30. The total Vacation Pay Entitlement for the hourly Employees, based on the Hourly Vacation Schedule is $13,370.

Employees – Salaried

31. Per discussions with Mr. Willetts and Ms. Sadiq, the information with respect to salaried Employees vacation pay (both earned and carried forward) were maintained by BionX in an internal schedule. To determine the Vacation Pay Entitlement to be allocated to salaried Employees, the Receiver obtained a schedule from Mr. Willetts that included the following items for each salaried Employee:

(a) the entitled vacation allotted to each Employee on an annual basis;

(b) the vacation days not taken and eligible to be carried over from the previous year; and

(c) the vacation days taken from January 1, 2018 to February 27, 2018.

32. The number of vacation days that each salaried Employee is eligible to be compensated for (i.e. included in the calculation of the Vacation Entitlement) (the "**Eligible Vacation Days**") was calculated by the Receiver as follows:

	[A]	[B] = [A] x [59/365]	[C]	[D]	[B] + [C] – [D]
	Vacation Entitlement	**Pro-Rated Vacation**	**Carry-Over Vacation**	**Vacation Taken**	**Eligible Vacation**
Employee	15.0 Days	2.4 Days	6.0 Days	4.0 Days	**4.4 Days**

33. To determine the Vacation Pay Entitlement for each salaried Employee, the Eligible Vacation Days were multiplied by each salaried Employee's daily gross wage. For example, assuming an salaried Employee had gross annual earnings of $52,000, his/her Vacation Entitlement would be $880, calculated as follows:

	[A]	[B] = [A] / 52	[C] = [B] / 5	[D]	[C] x [D]
	Annual Earnings	**Weekly Earnings**	**Daily Earnings**	**Eligible Vacation**	**Vacation Pay Entitlement**
Employee	$ 52,000	$ 1,000	$ 200	4.4 Days	**$ 880**

34. Based on the information set out above, the total Vacation Pay Entitlement for salaried Employees is $61,586.

<u>Termination Pay Entitlement</u>

Ontario Employees

35. The Receiver's calculation of the Termination Pay Entitlement was based on the ESA.

36. The ESA outlines the requirements of issuing a notice to employees upon termination. In the event that said notice is not provided to a terminated employee, the ESA requires the remittance of "pay in lieu of notice".

37. In accordance with the provisions of the ESA, special rules for notice of termination may apply in the event that 50 or more employees are terminated at an employer's establishment within a four-week period (a "**Mass Termination**"). The Receiver is of the view that the termination of the Employees of BionX upon the appointment of the Receiver is considered a Mass Termination.

38. Accordingly, the ESA stipulates that in a Mass Termination scenario, the length of notice employees must receive in a mass termination is not based on the employees' length of employment, but on the number of employees whose employment is being terminated in the same four-week period. More specifically, an employer must give:

(a) 8 weeks' notice if the employment of 50 to 199 employees is to be terminated.

(b) 12 weeks' notice if the employment of 200 to 499 employees is to be terminated.

(c) 16 weeks' notice if the employment of 500 or more employees is to be terminated."

39. In BionX's case, over 50 but less than 200 employees were terminated which entitles each Employee to 8 weeks of termination pay, regardless of time of service. Based on the above, the termination pay owing to each Employee is 8 weeks of their gross weekly earnings, inclusive of a minimum of 4% vacation pay.

40. To determine the Termination Pay Entitlement for each Employee and as a whole, each Employee's daily gross weekly earnings, including vacation pay of 4%, was multiplied by 8 weeks. For example, assuming an Employee had a gross annual earnings of $52,000, his/her Termination Pay Entitlement would be $8,320, calculated as follows:

	[A]	*[B] = [A] / 52*	*[C]*	*[D]*	*[B] x [C] x [D]*
	Annual Earnings	**Weekly Earnings**	**Notice (Weeks)**	**Vacation on Salary**	**Termination Entitlement**
Employee	$ 52,000	$ 1,000	8 Weeks	1.04	**$ 8,320**

41. The Receiver performed the above noted calculation for each of the Employees. The total Termination Pay Entitlement for the Employees in Ontario is $781,217.[4]

[4] Termination Pay Entitlements were not allocated to Part-Time Students as the ESA does not apply to these individuals.

Quebec Employees

42. As stated above, BionX had four (4) Full-Time Employees and (3) Part-Time Students at the Sherbrooke Facility in Quebec. Given that the Sherbrooke Facility is a separate establishment, in a separate province, the Mass Termination provision under the ESA does not apply to these Employees. Termination Pay Entitlements for these Employees were calculated by the Receiver in accordance with the LSA.

43. Similar to the ESA, the LSA outlines the requirements of issuing a notice to employees upon termination. In the event that said notice is not provided to a terminated employee, the LSA requires the remittance of "pay in lieu of notice". Pursuant to the LSA, the duration of the notice varies according to the length of uninterrupted service as outlined in the following table:

Uninterrupted Service	Duration of Notice
3 months to less than 1 year	1 Week
1 year to less than 5 years	2 Weeks
5 years to less than 10 years	4 Weeks
10 years and over	8 weeks

44. To determine the Termination Pay Entitlement for each Employee in Quebec, and as a whole, each Employee's daily gross weekly earnings, including vacation pay of 4%, was multiplied by their entitled "duration of notice" (in weeks) based on their length of uninterrupted service. For example, assuming an Employee had a gross annual earnings of $52,000 and had uninterrupted service of eight (8) years, his/her Termination Pay Entitlement would be $4,160, calculated as follows:

	[A]	[B] = [A] / 52	[C]	[D]	[B] x [C] x [D]
	Annual Earnings	**Weekly Earnings**	**Notice (Weeks)**	**Vacation on Salary**	**Termination Entitlement**
Employee	$ 52,000	$ 1,000	4 Weeks	1.04	**$ 4,160**

45. The Receiver performed the above noted calculation for each of the Employees in Quebec. The total Termination Pay Entitlement for the Employees in Quebec is $22,101.[5]

<u>Severance Pay</u>

Ontario Employees

46. Similar to termination pay, the Receiver's calculation of the amount owing to Employees for severance pay, if any, was based on the requirements outlined in the ESA. Under the ESA, an employee qualifies for Severance Pay if his/her employment is severed and he/she:

(a) has worked for the employer for five (5) or more years (including all the time spent by the employee in employment with the employer, whether continuous or not and whether active or not); and

(b) his/her employer:

(i) has a payroll in Ontario of at least $2.5 million; or

(ii) severed the employment of 50 or more employees in a six-month period because all or part of the business permanently closed.

47. Based on the above, the Receiver has determined that Employees with at least five (5) years of service with BionX are entitled to severance pay pursuant to the ESA.

[5] Termination Pay Entitlements were not allocated to Part-Time Students as the LSA does not apply to these individuals.

48. Under the ESA, in order to determine an employee's severance pay, an employee's regular wages for a regular work week must be multiplied by the sum of:

(a) the number of completed years of employment; and

(b) the number of completed months of employment divided by 12 for a year that is not completed.

The maximum amount of Severance Pay required to be paid under the ESA is 26 weeks.

49. To determine the Severance Pay Entitlement for each Employee and as a whole, each Employee's gross weekly wage, excluding vacation pay, was multiplied by the sum of:

(a) the number of years of service; and

(b) the number of completed months of service divided by 12.

50. For example, assuming an Employee had gross annual earnings of $52,000 (i.e. weekly earnings of $1,000), and served a total of seven (7) years and eight (8) months, his/her Severance Pay Entitlement would be $7,667, calculated as follows:

	[A]	*[B]*	*[C] = [A] X [B_Y]*	*[D] = [A] X [B_M/12]*	*[C] + [D]*
	Weekly Earnings	**Time of Service**	**Severance (Years)**	**Severance (Partial)**	**Severance Pay**
Employee	$ 1,000	7 Years; 8 Months	$ 7,000	$ 667	**$ 7,667**

51. Following the Receiver's review, out of the 73 Full-Time Employees terminated, 37 qualified for severance pay. Based on the above noted calculation for the 37 Full-Time Employees entitled for severance pay, the total Severance Pay Entitlement is $571,911.[6]

[6] Severance Pay Entitlements were not allocated to Part-Time Students as the ESA does not apply to these individuals.

CONTRACT WORKER ARREARS

52. As noted above, BionX had 11 Contract Workers. Since the Appointment Order, the Receiver has worked with Retained Staff and has communicated with the Contract Workers to quantify the Contract Worker Arrears. The Receiver had determined that the Contract Worker Arrears total $77,976, which is an unsecured claim against BionX.

STRUCTURE OF PAYMENT BY SCC

53. SCC has agreed to advance funds to the Receiver for the proposed payment of the Employee Entitlements and the Contract Worker Arrears on the condition that the court grant the Employee Entitlement Order, ordering that:

   (a) the funds are held separately by the Receiver and distributed to the Employees and Contract Workers in accordance with the Employee Entitlements Order;

   (b) funds advanced by SCC equivalent to the total amount of the Priority Employee Claims, being $101,006, will be secured by the Receiver's Borrowings Charge;

   (c) SCC, will hold an unsecured claim of $1,427,157 (consisting of the Unsecured Employee Claim and the Contract Worker Arrears) in the BionX Estate; and

   (d) the court declares, among other things, that the payments do not constitute a preference or form the basis for other liability for SCC. .

54. Under the proposed structure set out above, SCC will advance funds and effectively replace the ESA claims available to Employees and the claims of the Contract Workers. All other unsecured creditors of BionX will remain in the same position. Consequently, the Receiver is of the view that the distributions contemplated by the Employee Entitlement Order do not constitute preferences, or any other form of reviewable transaction.

55. The proposed distributions will provide a benefit to the Employees and Contract Workers who, under the Employee Entitlements Order, will receive a greater distribution than they are likely to receive through the Receivership. In addition, Employees will receive distributions more quickly than they otherwise would through the administration of the *Wage Earners Protection Plan Act* ("**WEPPA**") – this is an important benefit for Employees who remain unemployed and may require funds urgently. Other unsecured creditors are not prejudiced by the Employee Entitlements Order.

56. Finally, the payment of the Employee Entitlements provides a benefit to the BionX estate as it will satisfy all amounts covered by the WEPPA, thereby relieving the administrative costs associated with the Receiver administering same.

57. Notice of the within motion will be served on the Employees and Contract Workers.

SEALING ORDER

58. Confidential Appendices "1" and "2" contain sensitive and personal information related to the compensation of Employees and Contract Workers, respectively. This is information of the type routinely sealed by the Court. The Receiver seeks an order that the Confidential Appendices be sealed, subject to further order of this Court.

CONCLUSION AND RECOMMENDATION

59. For the reasons set out in this Receiver's Second Report, the Receiver is of the view that the relief requested is reasonable and appropriate in the circumstances and respectfully recommends that this Court make the Order granting the Receiver's requested relief.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 18th day of April, 2018.

GRANT THORNTON LIMITED,
AS THE COURT-APPOINTED RECEIVER OF BIONX INC.
AND NOT IN ITS PERSONAL OR CORPORATE CAPACITY

Per: ______________________________
Michael Creber, CPA, CA, CIRP, LIT
Senior Vice-President

APPENDIX 1

[ATTACHED]

Court File No. CV-18-592741-00CL

ONTARIO

SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

THE HONOURABLE MR	)	TUESDAY, THE 27th
	)	
JUSTICE McEWEN	)	DAY OF FEBRUARY, 2018

STRONACH CONSULTING CORP.

Applicant

- and -

BIONX CANADA INC.

Respondent

ORDER
(appointing Receiver)

THIS APPLICATION made by Stronach Consulting Corp. ("**SCC**") for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "**CJA**") appointing Grant Thornton Limited ("**GTL**") as receiver and manager (in such capacities, the "**Receiver**") without security, of all of the assets, undertakings and properties of BionX Canada Inc. (the "**Debtor**") acquired for, or used in relation to a business carried on by the Debtor, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of John Simonetti sworn February 23, 2018 and the Exhibits thereto, the Pre-Filing report of the proposed Receiver dated February 26, 2018, and on hearing the submissions of counsel for SCC, counsel for GTL and counsel for the Debtor, no one else appearing although duly served as appears from the affidavit of service of C. Haddon Murray sworn February 26, 2018 and on reading the consent of GTL to act as the Receiver,

SERVICE

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

APPOINTMENT

2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, GTL is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the "**Property**").

RECEIVER'S POWERS

3. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

(a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;

(b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

(c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;

(d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order, and in this regard the Receiver is specifically authorized to retain counsel for SCC to advise and represent it save and except on matters upon which the Receiver in its judgment determines it requires independent advice, in which case the Receiver shall retain Brauti Thorning Zibarras LLP;

(e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;

(f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;

(g) to settle, extend or compromise any indebtedness owing to the Debtor;

(h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;

(i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

(j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;

(k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,

(i) without the approval of this Court in respect of any transaction not exceeding $250,000, provided that the aggregate consideration for all such transactions does not exceed $1,000,000; and

(ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply.

(l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;

(m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;

(n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;

(o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;

(p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;

(q) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and

(r) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

SALE PROCESS

4. THIS COURT ORDERS that the Receiver is authorized and directed to conduct the sale process, as set out in Appendix "A" hereto, including pursuing all offers for sales of material parts of the business of the debtor or Property, in whole or part, subject to prior approval of this Court being obtained before any sale (except as permitted by paragraph 3(l)(i)).

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

5. THIS COURT ORDERS that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

6. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting

records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

7. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

8. THIS COURT ORDERS that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court

upon application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.

NO PROCEEDINGS AGAINST THE RECEIVER

9. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

10. THIS COURT ORDERS that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

11. THIS COURT ORDERS that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

12. THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

13. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

14. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

15. THIS COURT ORDERS that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in

respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA

16. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "**Sale**"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

17. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the Ontario *Environmental Protection Act*, the *Ontario Water Resources Act*, or the Ontario *Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in

pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

18. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act.* Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

19. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA and subordinate to any properly registered and valid purchase money security interest, as described in section 33 of the *Personal Property Security Act*, R.S.O. 1990, c. P.10 ("**PMSIs**").

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

21. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates

and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

22. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed $1,250,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to any PMSIs, the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

23. THIS COURT ORDERS that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

24. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.

25. THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

SERVICE AND NOTICE

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

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

GENERAL

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

29. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

30. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this

Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

31. THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

32. THIS COURT ORDERS that SCC shall have its costs of this application, up to and including entry and service of this Order, provided for by the terms of SCC's security or, if not so provided by SCC's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

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

McEwen

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LE / DANS LE REGISTRE NO:

FEB 2 7 2018

PER / PAR: ML

SCHEDULE "A"

SALE PROCESS

1. The Sale Process includes three phases.

Phase 1: Preparation - Time Frame: 10 days

2. During Phase 1 the Receiver will:

   (a) further review the assets of Bionx;

   (b) prepare the following documentation:

      (i) a form of solicitation letter summarizing the Sales Process and soliciting parties to express their interest in same (the "**Solicitation Letter**");

      (ii) a form of non-disclosure agreement (the "**NDA**") to be executed in order to obtain a copy of the Sales Package and to further participate in the Sales Process

      (iii) a form of offer; and a form of Asset Purchase Agreement ("**APA**").

   (c) prepare a data room (the "**Data Room**") containing, among other things, financial information, agreements, leases, contracts, customer information, and any other information located to be shared with prospective purchasers subsequent to receiving an executed NDA; and

   (d) identify and prepare a list of potential purchasers for the assets of Bionx ("**Potential Purchasers**").

Phase 2: Marketing Assets - Time Frame: 60 days

3. During Phase 2 the Receiver will:

(a) send the Solicitation Letter and NDA to the Potential Purchasers identified in Phase 1 and any further Potential Purchasers who are subsequently identified;

(b) directly communicate with industry participants who have expressed an interest in or who the Receiver believes may have an interest in the Bionx's Property and/or operation;

(c) advertise the sale of the Property in a Canadian national newspaper;

(d) allow any Potential Purchasers who execute the NDA to access the data room;

(e) permit Potential Purchasers to inspect the assets;

(f) maintain the Data Room; and

(g) collect offers from Potential Purchasers;

Phase 3: Entering into APA - Time Frame: 20 days

4. During Phase 3 the Receiver will:

(a) review all offers submitted in Phase 2 and discuss same with the applicable offeror and SCC;

(b) if there is more than one acceptable offer, determine the offer that, in the Receiver's view, is superior (the "**Superior Offer**") with consideration of, among other things, the following factors:

(i) the total value offered;

(ii) the terms and conditions of the offer; and

(iii) the Receiver's opinion of the likelihood of successfully completing the transaction contemplated by the offer.

(iv) inform the offeror of the Superior Offer that their offer will be proceeding, negotiate and execute an APA with said offeror and, subject to court approval, close the transaction.

5. The Receiver shall have discretion to amend or vary the Sale Process in order to maximize value for stakeholders, including the ability to terminate the Sale Process if the Receiver believes that there are no interested parties for the assets and it is reasonably appropriate in the circumstances.

6. The sale of the Property shall be conditional upon this Honourable Court's approval of the recommended purchaser(s) and the terms of the agreement(s) of purchase and sale. The Receiver will attend before this Honourable Court upon the completion of the sales process to seek approval of the recommended purchaser(s) and the agreement(s) of purchase and sale prior to closing any sale transaction(s).

SCHEDULE "B"

RECEIVER CERTIFICATE

CERTIFICATE NO. ______________

AMOUNT $_____________________

1. THIS IS TO CERTIFY that GTL, the receiver (the "Receiver") of the assets, undertakings and properties of BionX Canada Inc. (the "Debtor") acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the ___ day of ______, 20__ (the "Order") made in an action having Court file number __-CL-_______, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of $___________, being part of the total principal sum of $___________ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _______ day of each month] after the date hereof at a notional rate per annum equal to the rate of ______ per cent above the prime commercial lending rate of Bank of _________ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the _____ day of ______________, 20__.

Grant Thornton Limited, solely in its capacity
as Receiver of the Property, and not in its
personal capacity

Per: ________________________________

Name:

Title:

APPENDIX 2

[ATTACHED]

Court File No.: CV-18-592741-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE - COMMERCIAL LIST

BETWEEN:

STRONACH CONSULTING CORP.

Applicant

- and -

BIONX CANADA INC.

Respondent

AFFIDAVIT OF JOHN SIMONETTI
(Sworn February 23, 2018)

I, John Simonetti, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I am the Chief Financial Officer of Stronach Consulting Corp. ("**SCC**" or the "**Lender**"), the senior secured lender to BionX Canada Inc. ("**BionX**"), as borrower. Accordingly, I have knowledge of the matters deposed to in this affidavit. Where this affidavit is not based on my direct personal knowledge, I have stated the source of that information and believe such information to be true.

2. This affidavit is sworn in support of an application (the "**Application**") for an Order:

a) appointing Grant Thornton Limited ("**GT**" or the "**Proposed Receiver**") as receiver, over the assets, property and undertakings of BionX (the "**Property**") pursuant to section 101 of the *Courts of Justice Act* and subsection 243(1) of the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**");

b) approving the marketing and sale process (the "**Proposed Sale Process**") proposed by the Proposed Receiver in its pre-filing report (the "**Pre-filing Report**");

c) granting a super-priority charge over the assets of BionX in favour of the Receiver to secure the payment of its fees and disbursements and the fees and disbursements of its counsel; and

d) granting a super-priority charge over the assets of BionX to secure the payment of amounts borrowed to fund the Receivership.

3. Unless otherwise indicated, all references to dollars or "$" in this Affidavit shall be a reference to Canadian dollars.

A. OVERVIEW

4. BionX is a company incorporated under the laws of Ontario that designs, manufactures and sells electronic propulsion systems for bicycles. BionX is headquartered and operates out of a facility located in Aurora, Ontario and employs approximately 80 employees (the "**Employees**").

5. BionX is indebted to the Lender pursuant to a non-interest bearing demand grid note dated January 15, 2018 (the "**Grid Note**"). The Grid Note properly recorded the loan advances made by SCC to BionX since 2014. On January 15, 2018, BionX granted a security interest in substantially all of its assets to the Lender in respect of such indebtedness.

6. As of February 23, 2018, the aggregate indebtedness of BionX to the Lender under the Grid Note was $21,857,408.52 (the "**Indebtedness**").

7. On or about September 14, 2017, SCC, through consultants, commenced a strategic review the business with respect to options for BionX including considering a going concern, out-of-court sale of the BionX business (the "**Strategic Review**").

8. SCC continued to fund the operations of BionX during the Strategic Review; however BionX's financial situation continued to deteriorate and on February 1, 2018, General Motors of Canada Company ("**GM**"), one of BionX's primary customers, notified BionX that it was considering commencing a legal action against BionX in the approximate amount of USD $5.3 million for alleged breaches of their purchase contract.

9. On February 15, 2018, the Lender made demand on BionX pursuant to the terms of the Grid Note. BionX defaulted in payment of the Grid Note. On February 19, 2018, SCC delivered a letter notifying BionX of the default and giving notice of SCC's intention to enforce its security pursuant to section 244 of the BIA. BionX has acknowledged the indebtedness and consented to SCC enforcing its security.

10. SCC is of the view that the granting of the relief sought in this Application will (a) maximize the potential for a going concern solution for BionX in a stable and transparent court-supervised process, (b) give any potential purchaser the benefit of an approval and vesting order for the conveyance of the Property and (c) permit the full payment of employee severance funded by the Lender.

11. The proposed sales process will be discussed in greater detail in evidence to be provided to the Court by the Receiver's Pre-filing Report.

12. All procedural formalities required of the Lender to commence this enforcement proceeding have been completed, and BionX consents to the appointment of the Proposed Receiver pursuant to the Order sought.

B. BIONX BACKGROUND

13. BionX, together with its related companies, designs, manufactures and sells electronic propulsion systems for bicycles. A corporate chart illustrating the structure of BionX and its related companies is attached hereto as **Exhibit "A"** (the "**Corporate Chart**"). Attached hereto as **Exhibit "B"** is a corporate profile report for BionX.

14. BionX operates out of a light industrial facility located at 455 Magna Drive, Aurora, Ontario where it leases 58,020 square feet. This facility is owned by SCC. BionX employs 80 employees. BionX does not have any unionized employees and is not the sponsor of a registered pension plan.

15. As indicated in the Corporate Chart, 60.5% of the common shares of BionX's parent company, BionX International Corp. ("**BIC**"), are owned by SCC. The remaining 39.5% of BionX shares are owned by the sole director and officer of BIC and BionX, Fred Gingl.

16. BionX has four wholly owned subsidiaries (the "**Subsidiaries**"). Based on my review of the BionX records and discussions with the Employees, including Fred Gingl, I understand that the current status of each of the subsidiaries is as follows::

(a) Bionx America Inc, a company incorporated under the laws of Delaware. BionX America Inc. engages four contract sales people whose salaries are charged back through to BionX;

(b) Bionx Europe GmbH, a company incorporated under the laws of Austria. BionX Europe GmbH is in the process of being wound down. It currently has one employee;

(c) Bionx GmbH, a company incorporated under the laws of Germany. BionX GmbH continues to operate and employs 11 full-time employees and 2 part-time employees; and

(d) Innovator Propulsion Systems (Suzhou) Co, Ltd., a company incorporated under the laws of China. Innovator Propulsion Systems (Suzhou) Co, Ltd. does not have any ongoing operations, employees or contractors. BionX has attempted to find a purchaser for its assets, primarily a small inventory of paddle boats, but has not successfully completed a transaction at this time.

17. BionX designs, manufactures and sells electronic propulsion systems for bicycles. The BionX business has two main divisions including (a) electric bicycle conversion kits (the "**BionX System**") and (b) pursuant to various agreements with GM, the design and manufacture of an electronic propulsion system to be used on a dedicated bike produced by GM (the "**GM System**")

i) The BionX System Division

18. The BionX System is composed of an electric motor which attaches to the back wheel hub of a bicycle combined with a lithium ion battery for power. The BionX System is sold under the BionX name and brand to both original equipment manufacturer customers ("**OEM Customers**") and directly to consumers.

19. The OEM Customers incorporate the BionX System on bicycles manufactured by them. These OEM Customers include third parties such as Trek-Bike Europe B.V. and Trek Farrah Ganesh (operating as Trek), Wheeler Industrial Co., Ltd. (operating as Wheeler) and MIFA-Bike, Gesellschaft mbH and Daimler AG (operating as Smart). In addition, the BionX System is used in bicycles manufactured and sold by 2384543 Ontario Inc, a sister company wholly-owned by an affiliated of SCC, and operating under the brand name Elby.

20. The BionX System kits sold directly to consumers are used by them to convert their conventional bicycles into electronic bicycles.

21. BionX continues to operate the BionX System Division but has total payables to suppliers of approximately $7.2 million of which approximately $6.5 million is overdue. At this time, some critical suppliers are withholding supplies. SCC anticipates BionX will imminently run out of parts to produce any further units and the BionX System Division's operations will cease.

ii) GM System Division

22. BionX entered into agreements with GM to design and manufacture a mid-drive electric propulsion system for bicycles manufactured by GM.

23. Pursuant to the agreements, GM pays BionX for the design and engineering of the GM System, and agreed to purchase 8,000 units in 2018 at approximately USD$1,000 per unit (the "**Purchase Contract**"). However, BionX projects that the per unit cost for production will be approximately USD$1,400. In addition, BionX is required to fund $2.4 million in capital and engineering to support the project without reimbursement from GM.

24. BionX has addressed its concerns regarding the economics of the Purchase Contract with GM. GM responded by giving notice to BionX that BionX had defaulted under the Purchase Contract and that GM intended to make a claim against BionX in the approximate amount of USD $5.3 million. Further details of GM's claim are set out below.

C. FINANCIAL POSITION

25. BionX has been experiencing significant financial difficulties for some time.

26. The financial position of BionX is evidenced by its Balance Sheet as at December 31, 2017 (the "**Balance Sheet**"), attached hereto and marked as **Exhibit "C".** As set out in the Balance Sheet, BionX incurred a net loss of approximately $4.5 million in 2017, and has negative shareholder's equity of approximately $48.6 million. BionX's cash reserves are also depleted. As of December 31, 2017, BionX held unrestricted cash and cash equivalents of only approximately $230,000.

27. Since its inception, BionX's operations have been funded by regular advances from the Lender as set out in the schedule to the Grid Note, attached hereto as **Exhibit "D".** BionX is not able to repay its obligations under the Grid Note at this time.

D. BIONX ASSETS

28. BionX's primary assets consist of:

(a) Shares in each of its four wholly owned subsidiaries;

(b) Inventory in the form of materials to make conversion kits;

(c) Accounts and other receivables;

(d) Intercompany receivables;

(e) Fixed assets;

(f) Intellectual Property in the electrical propulsion units it designed; and

(g) Prepaid expenses and amounts.

29. The total book value of BionX's assets at December 31, 2017 excluding goodwill, as set out in the Balance Sheet, was approximately $19.7 million.

E. BIONX'S LIABILITIES

i) History of BionX debt to SCC

30. 2255681 Ontario Inc ("**225 Ontario**"), a predecessor of SCC, had been a secured creditor of BIC pursuant to numerous credit agreements, with BionX acting as guarantor of the debt. The credit agreements evidencing BionX's debt to 225 Ontario are as follows:

a) a Loan Agreement dated September 1, 2011;

b) a Working Capital Bridge Loan Agreement dated July 16, 2012;

c) a Demand Loan Agreement dated Feb 11, 2013; and

d) the Assignment Agreement dated February 11, 2013 between Adena North Enterprises Inc. ("**Adena**") and 225 Ontario assigning a loan agreement dated November 30, 2010 between Adena, as lender, BIC, as borrower and BionX as guarantor from Adena to 225 Ontario.

31. On November 30, 2014, 225 Ontario forgave BIC's indebtedness. At that time the total aggregate indebtedness of BIC to 225 Ontario was $44,207,410. Attached hereto as **Exhibit "E"** is the Debt Forgiveness Agreement dated November 30, 2014.

32. 225 Ontario continued to fund the operations of BionX through further advances in 2014 and 2015 that were made directly to BionX and not BIC. On October 31, 2015, 225 Ontario was wound up into SCC and SCC and 225 Ontario entered into a General Conveyance & Assumption Agreement, through which 225 Ontario assigned to SCC all of its undertaking, property assets and rights. Attached hereto as **Exhibit "F"** is the General Conveyance & Assumption Agreement dated October 31, 2015.

i) Current BionX liabilities

33. The primary secured debt obligation of BionX is the Indebtedness under the Grid Note. The Indebtedness is secured pursuant to a general security agreement in favour of SCC dated January 15, 2018 and attached hereto as **Exhibit "G"** (the "**GSA**"). The GSA grants SCC a security interest in substantially all of the Property (the "**Security Interest**").

34. SCC registered its security interest in respect of BionX under the PPSA on January 12, 2018. Attached hereto as **Exhibit "H"** is a copy of the PPSA search of BionX dated February 16, 2018 showing SCC's registration (the "**PPSA Search**").

35. In addition, BionX has executed:

e) a confirmation of security interest in intellectual property with respect to patents and industrial designs dated February 5, 2018 executed and delivered in favour of SCC; and

f) a confirmation of security interest in intellectual property with respect to trademarks dated February 5, 2018 executed and delivered in favour of SCC.

36. As indicated by the PPSA Search, the only other registered security interest over BionX's property is a registration by Ford Credit Canada Leasing, a division of Canadian Road Leasing Company over a motor vehicle.

37. A review of the Balance Sheet shows that, with the exception of the obligations under the Grid Notes that is due at December 31, 2017 of $20.4 million, the liabilities of BionX are approximately $54.0 million as at December 2017. These liabilities are primarily intercompany debt to BIC of approximately $47 million and trade debt of $7 million, including $0.5 million of rent payable to SCC.

F. GM CLAIM AND ENFORCEMENT

38. As a result of its financial difficulties and unfavourable economics with respect to the GM Business, BionX entered into discussions with GM to renegotiate the Purchase Contract. These discussions culminated in a meeting on February 1, 2018 where GM indicated that (a) it would not renegotiate the terms of the Purchase Contract and (b) it would commence a claim against BionX for approximately USD $5.3 million (the "**GM Claim**"). That same day, GM delivered a letter to BionX alleging that BionX had defaulted under the Purchase Contract. Attached hereto as **Exhibit "I"** is the February 1, 2018 letter from Mark Fischer of GM to Fred Gingl.

39. As a result of (a) the need for significant payments to be made to BionX System suppliers for operations to continue, (b) the unfavourable economics of the GM System

business and (c) the prospect of the GM Claim, SCC was unwilling to provide further funding to continue the BionX business outside of a receivership proceeding to market and sell the Property.

40. Pursuant to the Grid Note, SCC is entitled to make demand upon BionX at any time and BionX must pay the outstanding indebtedness within three (3) days. On February 15, 2018, SCC sent a letter to BionX demanding payment of the Indebtedness within three days pursuant to the terms of the Grid Note (the "**Demand Letter**"). Attached hereto as **Exhibit "J"** is a copy of the Demand Letter addressed to Fred Gingl.

41. BionX made no payment of the Indebtedness and accordingly, the Indebtedness is currently due and payable. On February 19, 2017, SCC delivered to BionX a further demand for payment notifying BionX of the default as well as a notice of its intention to enforce its security pursuant to section 244 of the BIA (the "**244 Notice**"). Attached hereto and marked as **Exhibit "K"** is a copy of the letter dated February 19, 2018 and the 244 Notice.

42. On February 21, 2018, SCC made a further advance under the Grid Note of $375,000 to finance BionX's payroll requirements (the "**February 21 Advance**"). On February 22, 2018, SCC sent a further demand letter to BionX, demanding payment of the February 21 Advance. Attached hereto as **Exhibit "L"** is a copy of the letter from SCC's counsel, Stikeman Elliott LLP, to Fred Gingl dated February 22, 2018.

43. On February 22, 2018, BionX executed an acknowledgment with respect to the Indebtedness under the Grid Note and consented to the enforcement of SCC's security interest (the "**Acknowledgment and Consent**"). Attached hereto and marked as **Exhibit "M"** is a copy of the Acknowledgment and Consent.

44. SCC's security interest under the GSA is now enforceable. This includes the appointment of a receiver over the assets of BionX. No payments of the Indebtedness have been made as of the date of this affidavit.

G. APPOINTMENT OF GT AS RECEIVER

45. In SCC's view, the appointment of GT as the Proposed Receiver is appropriate in the circumstances. GT is a well-respected firm with significant experience in court appointed officer roles.

46. In December of 2017, Michael Creber of GT was engaged by SCC to consider strategic options with respect to BionX and, in particular, provide its recommendation with respect to any insolvency proceedings. Accordingly, GT has reviewed the financial statements provided to SCC by BionX and is familiar with the operational and financial circumstances of BionX, all of which will result in efficiencies in a receivership proceeding.

47. I am advised by Michael Creber that GT is a trustee within the meaning of section 2 of the *BIA*.

48. BionX's sole director supports the application for the appointment of GT as Receiver and has indicated his intention to cooperate with the receivership.

49. GT has consented to act as Proposed Receiver and BionX has consented to the appointment of GT as receiver.

H. SALES PROCESS

50. Since December 2017, BIC and BionX have engaged in an informal process to find a purchaser of its shares or assets. This process resulted in discussions with six potential purchasers but ultimately no successful transaction.

51. Prior to commencing this proceeding, GT had the benefit of reviewing the BionX assets and the Strategic Review. It is my understanding that, if appointed, the Proposed Receiver intends to run the Proposed Sale Process in order to find a purchaser for all or part of the BionX business and assets.

52. In the interest of efficiency, SCC is seeking to have the Proposed Sale Process approved by the court at the same time as GT's appointment as receiver. This will inform the court and public of the Proposed Sale Process without a separate and

unnecessary court appearance. The terms of the proposed sales process will be outlined in the Pre-Filing Report of the Proposed Receiver.

I. FINANCING OF THE RECEIVERSHIP AND RECEIVER'S CHARGE

53. SCC has been in discussions with the Proposed Receiver regarding the estimated cost of the Receivership. In order to permit the Proposed Sale Process to proceed. SCC is prepared to costs associated with completing the Proposed Sales Process and the receivership mandate up to a maximum of $1.25 million accruing interest at 5% per annum by way of receivership certificates secured by a court-ordered first ranking charge over the Property. Accordingly, SCC seeks an order that this funding be secured through a receiver's borrowing charge pursuant to section 31 of the BIA

54. It is proposed that the fees and expenses of the Proposed Receiver and its legal counsel in carrying out the Receiver's duties, once appointed, will be secured by a "Receiver's Charge" over the Property which will rank ahead of the Security Interest.

J. FUNDING EMPLOYEE WAGES, VACATION PAY, NOTICE AND SEVERANCE AMOUNTS

55. SCC is exploring funding a payment to the Employees, by BionX, of part or all of any wages and vacation pay owed by BionX and any payments that may arise with respect to notice, and severance (collectively, the "**Employee Entitlements**").

56. At this time, SCC is unable to ascertain the total amount of Employee Entitlements either currently payable or that will arise over the course of the Receivership. This calculation will depend, among other things, on whether a going concern solution is reached with respect to the BionX business, however SCC anticipates that there will be significant terminations upon the appointment of the Receiver.

57. SCC is not seeking relief with respect to payments to employees at this time. SCC intends to continue investigating the extent of BionX's liability with respect to Employee Entitlements and may seek relief at a future date permitting the Receiver to pay Employee Entitlements, on behalf of BionX, from funds advanced by SCC to BionX for the purpose of satisfying part of all of the Employee Entitlements.

K. CONCLUSION

58. This affidavit is made in support of SCC's Application for the appointment of GT as the Proposed Receiver over the Property of BionX, together with the proposed ancillary and related relief as set out in the draft Receivership Order filed, and for no other or improper purpose.

SWORN AFFIRMED BEFORE ME at the City of Toronto, this 23rd day of February, 2018.

A Commissioner for taking Affidavits *(or as may be)*

John Simonetti

APPENDIX 3

[ATTACHED]

Court File No: CV-18-592741-00CL

ONTARIO

SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT,* R.S.C. 1985, c. B-3, AS AMENDED, AND SECTION101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED

B E T W E E N:

STRONACH CONSULTING CORP.,

Applicant

\- and -

BIONX CANADA INC.

Respondent

REPORT OF GRANT THORNTON LIMITED,

THE PROPOSED RECEIVER

FEBRUARY 26, 2018

GrantThornton

Grant Thornton Limited
200 King Street West, 11th Floor
Toronto, Ontario
M5H 3T4

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Respondent

REPORT OF GRANT THORNTON LIMITED,
THE PROPOSED RECEIVER

FEBRUARY 26, 2018

INTRODUCTION AND PURPOSE OF THIS REPORT

1. This report (the "**Proposed Receiver's Report**") is filed in connection with an application made to the Ontario Superior Court of Justice (Commercial List) (the "**Court**") by Stronach Consulting Corp. ("**SCC**") seeking an order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act (Canada)* (the "**BIA**") and section 101 of the *Courts of Justice Act (Ontario)* (the "**CJA**") appointing Grant Thornton Limited ("**GTL**") as the receiver (the "**Proposed Receiver**") over all of the assets, property and undertaking of Bionx Canada Inc. ("**Bionx Canada**" or the "**Company**"), substantially in the form included in SCC's application record (the "**Appointment Order**").

2. In addition to the appointment of GTL as receiver, the Appointment Order contains, among other things, the following relief:

(a) approval of the Proposed Receiver's expedited sale process for the Property (as defined herein) (the "**Sales Process**"), described in detail in this Proposed Receiver's Report; and

(b) authorization of the Proposed Receiver to borrow up to $1.25 million to fulfill the mandate of the Proposed Receiver and to complete the proposed Sales Process.

3. GTL has consented to its appointment as the receiver and is qualified to act in such capacity as it is a trustee as that term is defined in section 2 of the BIA. A copy of GTL's consent to act as the receiver is attached hereto as **Appendix "1"**.

SCOPE AND TERMS OF REFERENCE

4. The information contained in this Proposed Receiver's Report has been obtained from the records of the Company, publicly available information, and/or is based upon discussions with, and representations made by, the Company's management and shareholders and other professional advisors retained in this matter. The information has not been audited by the Proposed Receiver as to its accuracy or completeness, nor has it necessarily been prepared in accordance with generally acceptable accounting principles and the reader is therefore cautioned that this Proposed Receiver's Report may not disclose all significant matters about the Respondents.

5. This Proposed Receiver's Report has been prepared for the use of this Court and the Companies' stakeholders as general information relating to the Respondents and to assist the Court in making a determination of whether to approve the relief sought. Accordingly, the reader is cautioned that this Proposed Receiver's Report may not be appropriate for

any other purpose. The Proposed Receiver assumes no responsibility or liability for any loss or damage occasioned by any party because of the circulation, publication, reproduction or use of this Proposed Receiver's Report. Any use that a party makes of this Proposed Receiver's Report, or any reliance on or decisions to be made based on it, is the responsibility of such party.

6. A copy of this Proposed Receiver's Report and other relevant documents with respect to these proceedings will be made available on the Proposed Receiver's website at: www.GrantThornton.ca/Bionx if appointed.

7. Capitalized terms not defined in this Proposed Receiver's Report have the meanings ascribed to them in the application record filed by SCC.

8. All references to dollars are in Canadian currency unless otherwise noted.

BACKGROUND

9. Bionx Canada is solely owned by a holding company, Bionx International Corporation ("**Bionx International**"). SCC owns 60.50% of the voting shares of Bionx International while the remaining voting shares (39.50%) are owned by 1593057 Ontario Inc., a holding company solely owned by Manfred Gingl, the CEO and sole director of Bionx Canada.

10. Bionx Canada employs 80 employees and 11 contractors (the "**Employees**"). Bionx Canada does not have any unionized employees and is not a sponsor of a registered pension plan.

11. Bionx Canada has the following four (4) subsidiaries:

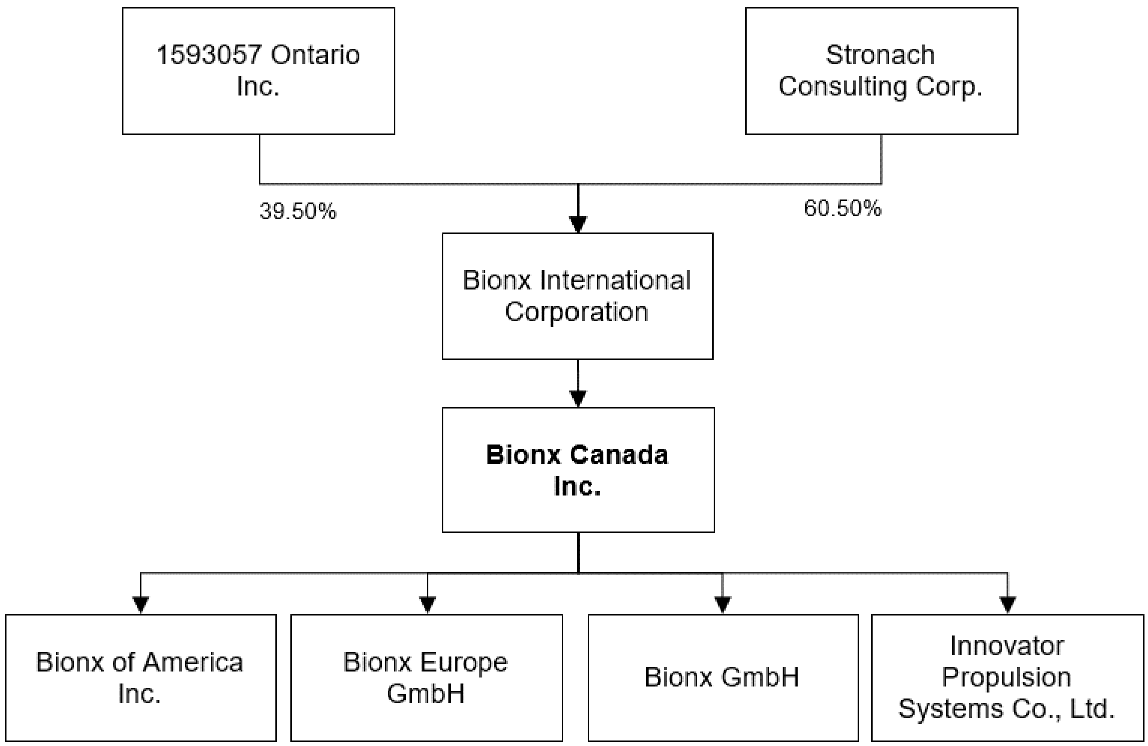
(a) Bionx America Inc, a company incorporated under the laws of Delaware. BionX America Inc. engages four contract sales people whose salaries are charged back through to BionX;

(b) Bionx Europe GmbH, a company incorporated under the laws of Austria. BionX Europe GmbH is in the process of being wound down. It currently has one employee;

(c) Bionx GmbH, a company incorporated under the laws of Germany. BionX GmbH continues to operate and employs 11 full-time employees and 2 part-time employees; and

(d) Innovator Propulsion Systems (Suzhou) Co, Ltd., a company incorporated under the laws of China. Innovator Propulsion Systems (Suzhou) Co, Ltd. does not have any ongoing operations, employees or contractors. Bionx Canada has attempted to find a purchaser for its assets, primarily a small inventory of paddle boats, but has not successfully completed a transaction at this time.

(collectively, the "**Subsidiaries**" and together with Bionx Canada and Bionx International, the "**Bionx Group**"). An organizational structure of the Bionx Group is included below (all ownership is 100% unless otherwise indicated).



12. Bionx Canada's headquarters in Aurora, Ontario (the "**Aurora Facility**") serves as the global head office for sales, service, marketing, testing, sourcing, and resident engineering. The Aurora Facility is also home to the main production and assembly plant, where the Company's e-bike systems consisting of a battery, motor and console are produced and shipped to customers globally.

13. The Company also has a research and development facility in Sherbrooke, Quebec which is responsible for product development and advancement.

14. SCC, and its predecessor 2255681 Ontario Inc. ("**225 Ontario**"), have acted as the sole funders of Bionx Canada whereby, since December 2014, it has provided total funding of US $13,925,000 and $2,918,792 in various tranches evidenced by way of a non-interest bearing demand grid note (the "**Grid Note**") governed by an agreement between Bionx Canada and SCC dated January 15, 2018 (the "**Grid Note Loan Agreement**").

15. On October 31, 2015, 225 Ontario assigned all of its right, title, property and interest to SCC, including the indebtedness of BionX Canada owing to 225 at that time.

16. The timing of the advances under the Grid Note are outlined in the schedule attached as Exhibit "D" to the affidavit of Mr. John Simonetti, the Chief Financial Officer of SCC, sworn on February 23, 2018 (the "**Simonetti Affidavit**").

17. Based on the information provided to the Proposed Receiver, since its inception, the Bionx Group has generated consistent significant losses and is projected to require funding of approximately $10.46 million to continue operations as a going concern throughout 2018. SCC is not prepared to continue funding such losses with no near-term prospect of profitable operations.

18. Additional information about the background of the Company, its assets, and its financial performance is included in the Simonetti Affidavit.

PROPOSED SALES PROCESS

19. The proposed Sales Process is designed to market the Company's right, title and interest, if any, in the remaining inventory, manufacturing equipment, warehouse equipment, and intellectual property including the Company's patents, web site, and customer list, among other things (collectively, the "**Property**").

20. In summary, the proposed Sales Process will be conducted in the following manner:

<u>Phase 1: Preparation - Time Frame: 10 days</u>

21. During Phase 1 the receiver will:

(a) further review the assets of Bionx Canada;

(b) prepare the following documentation:

(i) a form of solicitation letter summarizing the Sales Process and soliciting parties to express their interest in same (the "**Solicitation Letter**");

(ii) a form of non-disclosure agreement (the "**NDA**") to be executed in order to obtain a copy of the Sales Package and to further participate in the Sales Process

(iii) a form of offer; and a form of Asset Purchase Agreement ("**APA**").

(c) prepare a data room (the "**Data Room**") containing, among other things, financial information, agreements, leases, contracts, customer information, and any other information located to be shared with prospective purchasers subsequent to receiving an executed NDA; and

(d) identify and prepare a list of potential purchasers for the assets of Bionx Canada ("**Potential Purchasers**").

Phase 2: Marketing Assets - Time Frame: 60 days

22. During Phase 2 the receiver will:

(a) send the Solicitation Letter and NDA to the Potential Purchasers identified in Phase 1 and any further Potential Purchasers who are subsequently identified;

(b) directly communicate with industry participants who have expressed an interest in or who the receiver believes may have an interest in the Company's assets and/or operation;

(c) advertise the sale of the Bionx Canada assets in a Canadian national newspaper;

(d) allow any Potential Purchasers who execute the NDA to access the data room;

(e) permit Potential Purchasers to inspect the assets;

(f) maintain the Data Room; and

(g) collect offers from Potential Purchasers;

<u>Phase 3: Entering into APA - Time Frame: 20 days</u>

23. During Phase 3 the receiver will:

(a) review all offers submitted in Phase 2 and discuss same with the applicable offeror and SCC;

(b) if there is more than one acceptable offer, determine the offer that, in the receiver's view, is superior (the "**Superior Offer**") with consideration of, among other things, the following factors:

(i) the total value offered;

(ii) the terms and conditions of the offer; and

(iii) the receiver's opinion of the likelihood of successfully completing the transaction contemplated by the offer.

(iv) inform the offeror of the Superior Offer that their offer will be proceeding, negotiate and execute an APA with said offeror and, subject to court approval, close the transaction.

(c) The receiver shall have discretion to amend or vary the Sale Process in order to maximize value for stakeholders, including the ability to terminate the Sale Process if the receiver believes that there are no interested parties for the assets and it is reasonably appropriate in the circumstances;

24. The time period contemplated in the proposed Sale Process provides interested parties with 60 days to submit offers to the Proposed Receiver after Phase 1 is complete. The Proposed Receiver believes the expedited period in which to inspect the assets and submit offers is appropriate because:

(a) Since December 2017, Bionx Canada has been subject to an informal sale process to find a purchaser for their shares or assets. This process resulted in discussions with potential purchasers, but ultimately no successful transaction;

(b) it is likely that the Proposed Receiver will not be operating the Company and therefore, it is unlikely that a longer tender process will increase the likelihood of a going concern sale; and

(c) the Proposed Receiver has shared this proposed Sale Process with the secured lender who is supportive of the expedited time frame targeted at competitors, customers and liquidators.

25. The sale of the Company's Property shall be conditional upon this Honourable Court's approval of the recommended purchaser(s) and the terms of the agreement(s) of purchase and sale. The Proposed Receiver will attend before this Honourable Court upon the completion of the sales process to seek approval of the recommended purchaser(s) and the agreement(s) of purchase and sale prior to closing any sale transaction(s).

26. The Proposed Receiver has engaged Steven Weisz and Caitlin Fell at Brauti Thorning Zibarras LLP ("**BTZ**") as its independent counsel, and if appointed as receiver, BTZ will provide an independent opinion on the validity of the security of SCC over the assets of Bionx Canada.

ESTIMATED FUNDING REQUIRED

27. A funding of approximately $1.25 million will be required to administer the receivership proceedings and execute the proposed Sales Process. SCC, as the secured lender, has agreed to provide the necessary funding of $1.25 million by way of a Receiver's Certificate, the form of which is attached to the Appointment Order included as Tab 3 to the Applicant's Application Record.

DISCUSSIONS WITH BIONX STAKEHOLDER

28. The Proposed Receiver understands that Bionx Canada manufactures motor assembly drive units for General Motors LLC and General Motors Company of Canada (together, "**GM**"). As part of the contractual agreement, the Proposed Receiver understands that GM supplied Bionx Canada with certain tooling and equipment.

29. On February 24, 2018, legal counsel to the Proposed Receiver received correspondence from GM requesting access to Bionx Canada's facilities on Monday February 26, 2018 and for the removal of GM's equipment during the week of February 26, 2018. A copy of the correspondence between GM and the Proposal Receiver's legal counsel is attached hereto as **Appendix "2"**.

30. Following a conference call with the Company, GM, the Proposed Receiver and counsel thereto, it was agreed that GM would be permitted access to the Bionx Canada premises on February 26, 2018 solely for the purposes of inspecting their equipment, however GM would not be permitted to remove such equipment until such time as the receiver had verified the ownership of the equipment.

CONCLUSION AND RECOMMENDATION

31. For the reasons set out in this Proposed Receiver's Report, the Proposed Receiver is of the view that the relief requested by the Applicant is reasonable and appropriate in the circumstances and respectfully recommends that this Court make the Order granting the Applicant's requested relief.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 26th day of February, 2018.

GRANT THORNTON LIMITED,
AS PROPOSED RECEIVER OF THE RESPONDENTS
AND NOT IN ITS PERSONAL OR CORPORATE CAPACITY

Per: ______________________________
Michael Creber, CPA, CA, CIRP, LIT
Senior Vice-President

CONFIDENTIAL

APPENDIX 1

[Subject to a request for a sealing order]

CONFIDENTIAL

APPENDIX 2

[Subject to a request for a sealing order]

STRONACH CONSULTING CORP., Applicant and **BIONX INC.** Respondent

Court File No.: CV-18-592741-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE – COMMERCIAL LIST

Proceeding commenced at Toronto

SECOND REPORT OF THE RECEIVER DATED APRIL 18, 2018

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