

SUPERIOR COURT
(Commercial Division)

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No. 500-11-052107-170
500-11-052106-172
500-11-052109-176
500-11-052108-178

DATE: MAY 16, 2017

PRESIDING : Me Julie Bégin, registraire

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF:

FREEMARK APPAREL BRANDS ESP INC.
-and-
FREEMARK APPAREL BRANDS USA INC.
-and-
FREEMARK APPAREL BRANDS INC.
-and-
FREEMARK APPAREL BRANDS TEC INC.

Debtors

-and-

RICHTER ADVISORY GROUP INC.

Trustee

APPROVAL AND VESTING ORDER

[1] **ON READING** the Debtors' *Motion Seeking the Approval of a Transaction and the Issuance of a Vesting Order* (the "**Motion**"), the affidavit and the exhibits in support thereof, as well as the Report of the Trustee (the "**Report**");

- [2] **SEEING** the service of the Motion;
- [3] **SEEING** the submissions of the Debtors' attorneys;
- [4] **SEEING** that it is appropriate to issue an order approving the transaction (the "**Transaction**") contemplated by the Offer to Purchase communicated as Exhibit R-1 and the Bill of Sale communicated as Exhibit R-3 (collectively the "**Purchase Agreement**") by and between the Debtors (the "**Vendor**"), as vendor, and Freemark Apparel Brands Retail BE Inc. (the "**Bench Retail Purchaser**"), Freemark Apparel Brands Group Inc. ("**FABGI**"), Freemark Apparel Brands Retail ESP Inc (the "**Esprit Retail Purchaser**") and Freemark Apparel Brands Group USA Inc. (the "**US Purchaser**" and collectively with the Bench Retail Purchaser, the Esprit Retail Purchaser and FABGI, the "**Purchaser**"), as purchaser, and vesting in the Purchaser the "**Purchased Assets**" as defined in the Purchase Agreement.

WHEREFORE THE COURT:

- [5] **GRANTS** the Motion;

SERVICE

- [6] **ORDERS** that any prior delay for the presentation of this Motion is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
- [7] **PERMITS** service of this Order at any time and place and by any means whatsoever.

SALE APPROVAL

- [8] **ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Purchase Agreement by the Vendor is hereby authorized and approved, with such non-material alterations, changes, amendments, deletions or additions thereto as may be agreed to but only with the consent of the Trustee.

EXECUTION OF DOCUMENTATION

- [9] **AUTHORIZES** the Vendor and the Purchaser to perform all acts, sign all documents and take any necessary action to execute any agreement, bill of sale, contract, deed, provision, transaction or undertaking stipulated in the Purchase Agreement and any other ancillary document which could be required or useful to give full and complete effect thereto.

AUTHORIZATION

[10] **ORDERS** and **DECLARES** that this Order shall constitute the only authorization required by the Vendor to proceed with the Transaction and that no shareholder or regulatory approval, if applicable, shall be required in connection therewith.

VESTING OF PURCHASED ASSETS

[11] **ORDERS** and **DECLARES** that upon the issuance of a Trustee's certificate substantially in the form appended as Schedule "A" hereto (the "**Certificate**"), all rights, title and interest in and to:

- (i) the Purchased Assets located in the United States of America as well as all the Assumed Contracts (as defined in the Purchase Agreement) relating exclusively to the Business (as defined in the Purchase Agreement) being operated in the United States of America (the "**US Assets**") shall vest absolutely and exclusively in and with the US Purchaser;
- (ii) the Purchased Leases, as defined in the Purchase Agreement, which relate to the stores operating under the Bench banner, the Purchased Assets located in those stores, the Inventory (wherever located) which has been designated for sale in said stores and the Assumed Contracts which are exclusively related to the operations of the Business at those stores (the "**Bench Retail Assets**") shall vest absolutely and exclusively in and with the Bench Retail Purchaser;
- (iii) the Purchased Leases which relate to the stores operating under the Esprit banner, the Purchased Assets located in those stores, the Inventory (wherever located) which has been designated for sale in said stores and the Assumed Contracts which are exclusively related to the operation of the Business at those stores (the "**Esprit Retail Assets**") shall vest absolutely and exclusively in and with the Esprit Retail Purchaser;
- (iv) the Purchased Assets, other than the Bench Assets, the Esprit Assets and the US Assets and including, for certainty, all of the goodwill and going concern value relating to the Business, shall vest absolutely and exclusively in and with FABGI;

the whole free and clear of and from any and all claims, liabilities (direct, indirect, absolute or contingent), obligations, interests, prior claims, security interests (whether contractual, statutory or otherwise), liens, charges, hypothecs, mortgages, pledges, deemed trusts, assignments, judgments, executions, writs of seizure or execution,

notices of sale, options, adverse claims, levies, rights of first refusal or other pre-emptive rights in favour of third parties, restrictions on transfer of title, or other claims or encumbrances, whether or not they have attached or been perfected, registered, published or filed and whether secured, unsecured or otherwise (collectively, the "**Encumbrances**"), including without limiting the generality of the foregoing all charges, security interests or charges evidenced by registration, publication or filing pursuant to the Civil Code of Québec, the British-Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Nova Scotia and Newfoundland Personal Property Security Act, or any other applicable legislation providing for a security interest in personal or movable property and, for greater certainty, **ORDERS** that all of the Encumbrances affecting or relating to the Purchased Assets be expunged and discharged as against the Purchased Assets, in each case effective as of the applicable time and date of the Certificate provided however that nothing herein shall affect the rights and remedies of the applicable landlord against the Purchaser that may exist or arise under or in respect of any real property lease that is assigned to the Purchaser in connection with the Transaction, except as may otherwise be agreed to by the landlord and the Purchasers or further order of the Court.

- [12] **ORDERS** and **DECLARES** that upon the issuance of the Certificate, the rights and obligations of the Vendor under the Agreements listed on **Schedule "B"** hereto (the "**Assigned Agreements**") are assigned to the Purchaser and **ORDERS** that all monetary defaults of the Debtors in relation to the Assigned Agreements – other than those arising by reason only of the insolvency of the Debtor, the commencement of proceedings under the BIA or the failure to perform non-monetary obligations - shall be remedied on or before the closing of the Transaction.
- [13] **ORDERS** and **DIRECTS** the Vendor to serve a copy of this Order to every party to the Assigned Agreements.
- [14] **ORDERS** and **DECLARES**, that save for paragraph 12 of this Order assigning the Assigned Agreements to the Purchaser, nothing in this Order shall amend or vary or be deemed to amend or vary the terms of any real property leases assigned to the Purchaser by way of this Order.
- [15] **ORDERS** and **DIRECTS** the Trustee to file with the Court a copy of the Certificate, forthwith after issuance thereof.

CANCELLATION OF SECURITY REGISTRATIONS

For Quebec Property:

- [16] **ORDERS** the Quebec Personal and Movable Real Rights Registrar, upon presentation of the required form with a true copy of this Order and the Certificate, to strike the registrations number 11-0437573-0009, 11-0437573-0006, 11-0437573-0003, 10-0168511-0005, 10-0168511-0004, 10-0168511-0003, 13-1104027-0001, 13-0774914-0002, 14-0585712-0001, 13-0216975-0001, 14-1049125-0001, 14-0871719-0002, 13-0533463 0001, 14-0301348-0002, 16-1087454-0001, 16-0931345-0001, 16-1234016-0002, 16-0579064-0001, 16-0323890-0002, 16-0125246-0001, 15-1206069-0001, 15-1011589-0001, 15-0487901-0002, 11-0437573-0007, 11-0437573-0004, 11-0437573-0001, 10-0168511-0006, 10-0168511-0002, 10-0168511-0001, 16-0568860-0001, 14-0585412-0003, 16-0932721-0001, 14-0862501-0002, 16-0318825-0002, 16-0318825-0001, 16-0910419-0001, 16-0617950-0001, 16-0381969-0001, 12-0530139-0002, 16-0318825-0003, 12-0234654-0001 in connection with the Purchased Asset in order to allow the transfer to the Purchaser of the Purchased Assets free and clear of such registrations.

For Property Outside Quebec:

- [17] **ORDERS** that upon the issuance of the Certificate, the Vendor shall be authorized to take all such steps as may be necessary to effect the discharge of all Encumbrances registered against the Purchased Assets, including filing such financing change statements in the Ontario Personal Property Registry, the British Columbia Property Registry, the Alberta Personal Property Registry, the Saskatchewan Personal Property Registry, the Manitoba Personal Property Registry, the Nova Scotia Personal Property Registry and the Newfoundland Personal Property Registry (collectively, the "PPR") as may be necessary, from any registration filed against the Vendor in the PPR, provided that the Vendor shall not be authorized to effect any discharge that would have the effect of releasing any collateral other than the Purchased Assets, and the Vendor shall be authorized to take any further steps by way of further application to this Court.

PROCEEDS

- [18] **ORDERS** that upon closing of the Transaction, the Purchaser shall pay or cause to be paid to HSBC Bank Canada the entire indebtedness owed to the latter by the Debtors as of the day of the closing of the Transaction.

PROTECTION OF PERSONAL INFORMATION

[19] **ORDERS** that, pursuant to sub-section 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act* or any similar provision of any applicable provincial legislation, the ~~Receiver~~ ^{Trustee} is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Company's records pertaining to the Debtor's past and current employees. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtor;

VALIDITY OF THE TRANSACTION

[20] **ORDERS** that notwithstanding:

- (i) the pendency of these proceedings;
- (ii) any petition for a receiving order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* ("**BIA**") and any order issued pursuant to any such petition; or
- (iii) the provisions of any federal or provincial legislation;

the vesting of the Purchased Assets contemplated in this Order, as well as the execution of the Purchase Agreement pursuant to this Order, are to be binding on any trustee in bankruptcy that may be appointed, and shall not be void or voidable nor deemed to be a preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, as against the Vendor, the Purchaser or the Trustee.

LIMITATION OF LIABILITY

[21] **DECLARES** that, subject to other orders of this Court, nothing herein contained shall require the Trustee to occupy or to take control, or to otherwise manage all or any part of the Purchased Assets. The Trustee shall not, as a result of this Order, be deemed to be in possession of any of the Purchased Assets within the meaning of environmental legislation, the whole pursuant to the terms of the BIA;

[22] **DECLARES** that no action lies against the Trustee by reason of this Order or the performance of any act authorized by this Order, except by leave of the Court. The entities related to the Trustee or belonging to the same group as

Trustee JS

the ~~Receiver~~ shall benefit from the protection arising under the present paragraph;

GENERAL

- [23] **ORDERS** that the Purchaser or the Vendor shall be authorized to take all steps as may be necessary to effect the discharge of the Encumbrances.
- [24] **ORDERS** that the Purchase Agreement be kept confidential and under seal until the earlier of a) the closing of the Transaction; or b) further order of this Court.
- [25] **DECLARES** that this Order shall have full force and effect in all provinces and territories in Canada;
- [26] **ORDERS** the provisional execution of the present Order notwithstanding any appeal and without the requirement to provide any security or provision for costs whatsoever;

THE WHOLE WITHOUT COSTS, SAVE IN CASE OF A CONTESTATION

signé

Me Julie Bégin, registraire

COPIE CERTIFIÉE CONFORME
AU DOCUMENT DÉTENU PAR LA COUR

Assen: Ivane
Personne désignée par le greffier

SCHEDULE "A"
DRAFT CERTIFICATE OF THE TRUSTEE

CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT
Commercial Division

File: No: 500-11-052107-170
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IN THE MATTER OF THE NOTICE OF
INTENTION TO MAKE A PROPOSAL:

FREEMARK APPAREL BRANDS ESP
INC.

-and-

FREEMARK APPAREL BRANDS USA
INC.

-and-

FREEMARK APPAREL BRANDS INC.

-and-

FREEMARK APPAREL BRANDS TEC
INC.

Debtors

-and-

RICHTER ADVISORY GROUP INC.

[Receiver/Trustee/Monitor]

CERTIFICATE OF THE TRUSTEE

RECITALS:

WHEREAS on February 17, 2017, the Debtors filed notice of intention to make a proposal pursuant to the Bankruptcy and Insolvency Act (the "**Act**")

WHEREAS Richter Advisory Group Inc. (the "**Trustee**") was named Trustee to the Notice of intention of the Debtors; and

WHEREAS on May _____, 2017, the Court issued an Order (the "**Vesting Order**") thereby, *inter alia*, authorizing and approving the execution by the Debtors of an agreement entitled ● *Agreement* (the "**Purchase Agreement**") by and between the Debtors, as vendor (the "**Vendor**") and Freemark Apparel Brands Retail BE Inc., Freemark Apparel Brands Group Inc., Freemark Apparel Brands Retail ESP Inc and Freemark Apparel Brands Group USA Inc. as purchaser (collectively the "**Purchaser**"), copy of which was filed in the Court record, and into all the transactions contemplated therein (the "**Transaction**") with such alterations, changes, amendments, deletions or additions thereto, as may be agreed to with the consent of the Trustee.

WHEREAS the Vesting Order contemplates the issuance of this Certificate of the Trustee once the (a) the Purchase Agreement has been executed and delivered; and (b) the Purchase Price (as defined in the Purchase Agreement) has been paid by the Purchaser; and (c) and all the conditions to the closing of the Transaction have been satisfied or waived by the parties thereto.

THE TRUSTEE CERTIFIES THAT IT HAS BEEN ADVISED BY THE VENDOR AND THE PURCHASER AS TO THE FOLLOWING:

- (a) the Purchase Agreement has been executed and delivered;
- (b) the Purchase Price (as defined in the Purchase Agreement) payable upon the closing of the Transaction and all applicable taxes have been paid; and
- (c) all conditions to the closing of the Transaction have been satisfied or waived by the parties thereto.

This Certificate was issued by the **Trustees** at _____ [TIME] on _____ [DATE].

Richter Advisory Group Inc. in its capacity as trustee to the notice of intention, and not in its personal capacity.

Name: _____

Title: _____

SCHEDULE "B"
ASSIGNED AGREEMENTS

LIST OF LEASES

LEASES
Factoreries Tanger - Bench / Tanger and Riocan 100 Avenue Guindon Saint-Sauveur, Quebec, Canada J0R 1R6
Ottawa Tangers Outlets – Bench / Tanger and Riocan 8555 Campeau Drive Ottawa, Ontario, Canada K2T 1B7
Windsor Crossing Outlet Mall Stores – Bench / Royal Courtyards 1555 Talbot Rd Windsor, ON N9H 2N2
Ste-Catherine – Bench / TrioGreen East Limited Partnership 1387 Sainte-Catherine West St. Montréal (Qc) H3G 1R1
Metropolis at Metrotown (Esprit) / Ivanhoe Cambridge 4700 Kingsway Burnaby, British Columbia, Canada V5H 4M1
West Edmonton Mall (Bench) / West Edmonton Mall Property Inc. 8882-170 Street Edmonton, Alberta, Canada T5T 4J2
West Edmonton Mall (Esprit) / West Edmonton Mall Property Inc. 8882-170 Street Edmonton, Alberta, Canada T5T 4J2

Toronto Eaton Center – Bench / Cadillac Fairview

220 Yonge Street
Toronto, Ontario, Canada
M5B 2H1

Carrefour Laval – Bench / Cadillac Fairview

3035 Boul. Le Carrefour
Laval, Quebec, Canada
H7T 1C8

Chinook Centre – Bench / Cadillac Fairview

6455 Macleod Trail SW
Calgary, Alberta, Canada
T2H 0K8

Promenade Shopping Centre – Bench / Cadillac Fairview

1 Promenade Circle
Thornhill, Ontario, Canada
L4J 4P8

Market Mall – Bench / Cadillac Fairview

3625 Shaganappi Trail NW
Calgary, Alberta, Canada
T3A 0E2

Masonville Place – Bench / Cadillac Fairview

1680 Richmond Street N
London, Ontario, Canada
N6G 3Y9

Lime Ridge Mall – Bench / Cadillac Fairview

999 Upperwentworth Street
Hamilton, Ontario, Canada
L9A 4X5

Polo Park – Bench / Cadillac Fairview

1485 Portage
Winnipeg, Manitoba, Canada
R3G 0W4

Square One Shopping Centre – Bench / Oxford

100 City Center Drive
Mississauga, Ontario, Canada
L5B 2C9

<p>Yorkdale Shopping Centre – Bench / Oxford 3401 Dufferin Street Toronto, Ontario, Canada M6A 2T9</p>
<p>Kingsway Mall – Bench / Oxford 109 Princess Elizabeth Edmonton, Alberta, Canada T5G 3A6</p>
<p>Quartier DIX30 – Bench / Oxford 9130 Boul Leduc Brossard, Quebec, Canada J4Y 0L3</p>
<p>Willowbrook Shopping Centre – Bench / Bentall Kennedy (Canada) LP 19705 Fraser Hwy Langley, BC V3A 7E9</p>
<p>Cornwall Centre – Bench / 20 Vic Management Inc. 2012 11th Avenue Regina, Saskatchewan, Canada S4P 3Y6</p>
<p>St. Vital Centre – Bench / 20 Vic Management Inc. 1225 St. Mary's Road Winnipeg, Manitoba, Canada R2M 5E5</p>
<p>Midtown Plaza – Bench / 20 Vic Management Inc. 201 1st Avenue Saskatoon, Saskatchewan, Canada S7K 1J9</p>
<p>Guildford Town Centre – Bench / Ivanhoe Cambridge 10355 152nd Street Surrey, British Columbia, Canada V3R 7C1</p>
<p>Outlet Collection at Niagara – Bench / Ivanhoe Cambridge 300 Taylor Road Niagara on the Lake, Ontario, Canada L0S 1J0</p>

<p>Vaughan Mills – Bench /Ivanhoe Cambridge 1 Bass Pro Mills Vaughn Mills, Ontario, Canada L4K 5W4</p>
<p>Tsawwassen Mills – Bench /Ivanhoe Cambridge 5000 Canoe Pass Way Delta, BC V4M 0B3</p>
<p>Conestoga Mall – Bench / Ivanhoe Cambridge 550 King Street N Waterloo, Ontario, Canada N2L 5W6</p>
<p>Metropolis at Metrotown (Bench) / Ivanhoe Cambridge 4700 Kingsway Burnaby, British Columbia, Canada V5H 4M1</p>
<p>Southgate Centre – Bench / Ivanhoe Cambridge 5015 111th Street NW Edmonton, Alberta, Canada T6H 4M6</p>
<p>Laurier Quebec – Bench / Ivanhoe Cambridge 2700 boul. Laurier Quebec, Quebec, Canada G1V 2L8</p>
<p>Mic Mac Mall – Bench / Ivanhoe Cambridge 21 Mic Mac Boulevard Dartmouth, Nova Scotia, Canada B3A 4K7</p>
<p>Cross Iron Mills – Bench / Ivanhoe Cambridge 261055 Crossiron Blvd Rocky View No. 44, Alberta, Canada T4A 0G3</p>
<p>Montreal Premium Outlets – Bench / Simons 19001 Chemin Notre-Dame Mirabel, Quebec, Canada J7J 0A1</p>

Toronto Premium Outlets – Bench / Simons

13850 Steeles Avenue W
Halton Hills, Ontario, Canada
L7G 0J1

SmartCentres Queensborough Landing – Bench / Smart Reit

805 Boyd St
New Westminster, BC
V3M 5X2

The Outlet Collection at Winnipeg – Bench / Ivanhoe Cambridge

555 Sterling Lyon Pkwy
Winnipeg, MB
R3P 1E9

McArthurGlen Designer Outlet Vancouver – Bench / Templeton DOC Limited Partnership

1000-7899 Templeton Station Rd
Vancouver, BC
V7B 0B7

King's Crossing Fashion Outlet – Bench / KCAP Kingston Inc.

95 Dalton Ave
Kingston, ON
K7K 0C4