

SUPERIOR COURT
(Commercial Division)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTRÉAL

No: 500-11-057805-208
No: 500-11-057804-201

DATE: January 31, 2020

PRESENT: M^{re} PATRICK GOSSELIN
Registraire

**IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE A
PROPOSAL OF:**

Freemark Apparel Brands Retail BE Inc.

-and-

Freemark Apparel Brands Group Inc.

Debtors/Petitioners

-and-

Richter Inc.

Trustee

**ORDER AUTHORIZING A LIQUIDATION SALE AND APPROVING ANCILLARY
RELIEF**

ON READING the *Motion for an Order Approving a Liquidation Sale and Approving Ancillary Relief* (the "**Motion**") filed by the Debtors/Petitioners, Freemark Apparel Brands Retail BE Inc. ("**FAB Retail**") and Freemark Apparel Brands Group Inc. ("**FAB Wholesale**") and, together with FAB Retail, the "**Petitioners**"), including the exhibits and the affidavit in support thereof;

GIVEN the submissions of all the parties present at the hearing on the Motion;

GIVEN the filing by each of the Petitioners of a *Notice of Intention to Make a Proposal* ("**NOI**") under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**");

GIVEN the provisions of the *BIA*;

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FOR THESE REASONS, THE COURT HEREBY:

1. **GRANTS** the Motion;
2. **DECLARES** that sufficient prior notice of the presentation of the Motion has been provided by the Petitioners to interested parties;

DEFINITIONS

3. **ORDERS** that capitalized terms used and not defined herein have the same meaning ascribed to them in the Motion;

CONSOLIDATION

4. **ORDERS** that the court files of FAB Retail (no. 500-11-057805-208) and FAB Wholesale (no. 500-11-057804-201) be treated jointly in a single court file, so as to consolidate, for administrative purposes, all proceedings in relation to these files into a single matter and **ORDERS** that all materials relating to these files be filed in court file no. 500-11-057805-208;

APPROVAL OF THE SALE

5. **ORDERS** that FAB Retail is authorized to conduct the Sale in accordance with this Order and the Sale Guidelines attached hereto as Schedule A (the "**Sale Guidelines**") and to advertise and promote the Sale (as defined in the Motion) within the Stores (as defined in the Motion) in accordance with the Sale Guidelines. If there is a conflict between this Order and the Sale Guidelines, the order of priority of documents to resolve each conflict is as follows: (1) this Order; and (2) the Sale Guidelines;
6. **ORDERS** that FAB Retail is authorized to market and sell the Merchandise (as defined in the Motion) and FF&E (as defined in the Motion) in accordance with the Sale Guidelines, and all rights, title and interest in and to the Merchandise and FF&E shall vest absolutely and exclusively in and with their respective purchaser(s), 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 (including any charges hereafter granted by this Court in these proceedings, 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 favor 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, whensoever and howsoever arising, and whether such claims arose or came into existence prior to or following the date of this Order (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 Quebec*, 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 Merchandise and FF&E, be expunged and discharged as against the Merchandise

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and FF&E, in each case effective as of the sale of the Merchandise and FF&E, which Encumbrances will attach instead to any sale proceeds received or to be received by FAB Retail in the same order and priority as the Encumbrances existed as at the date hereof;

7. **ORDERS** that nothing in this Order shall amend or vary, or be deemed to amend or vary, the terms of the leases or other occupancy agreements relating to the Stores (the "**Leases**"). Nothing contained in this Order or the Sale Guidelines shall be construed to create or impose upon FAB Retail any additional restrictions not contained in the applicable Lease;
8. **ORDERS** that, subject to and in accordance with the Sale Guidelines and this Order, FAB Retail is authorized to advertise and promote the Sale, without further consent of any Person (as defined in the *BIA*) other than the NOI Trustee or a Landlord (as defined in the Sale Guidelines) as provided under the Sale Guidelines;

PAYMENT OF RENT

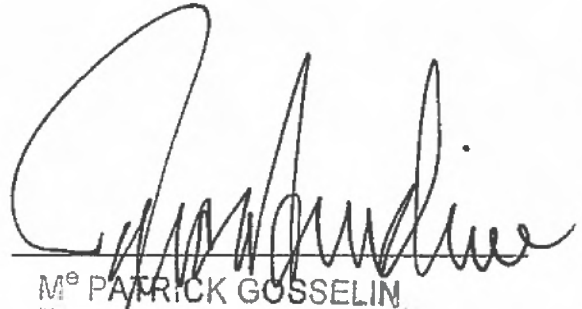
9. **ORDERS** that until a real property or immovable lease is disclaimed or resiliated in accordance with the *BIA*, the Petitioners shall pay all amounts constituting rent or payable as rent under real property or immovable leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the Landlord under the leases) or as otherwise may be negotiated between the Petitioners and the Landlord from time to time ("**Rent**"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, or the immediately following business day if that day is not a business day, in advance (but not in arrears). On the date of the first such payments, any Rent relating to the period commencing from and including the date of the NOI shall also be paid;

GENERAL

10. **DECLARES** that this Order shall have full force and effect in all provinces and territories in Canada;
11. **DECLARES** that the Petitioners shall be authorized to apply as it may consider necessary or desirable, with or without notice, to any other court or administrative body, whether in Canada, the United States of America or elsewhere, for orders which aid and complement the Order. All courts and administrative bodies of all such jurisdictions are hereby respectfully requested to make such orders and to provide such assistance to the Petitioners as may be deemed necessary or appropriate for that purpose;
12. **REQUESTS** the aid and recognition of any court or administrative body in any Province of Canada and any Canadian federal court or administrative body and any federal or state court or administrative body in the United States of America and any court or administrative body elsewhere, to act in aid of and to be complementary to this Court in carrying out the terms of the Order;

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13. **ORDERS** the provisional execution of the present Order notwithstanding any appeal and without the requirement to provide any security or provision for costs whatsoever;
14. **THE WHOLE** without costs.



M^e PATRICK GOSSELIN
Registraire

COPIE CERTIFIÉE CONFORME
AU DOCUMENT DÉTENU PAR LA COUR



Personne désignée par le greffier

Schedule "A"
SALE GUIDELINES
(See attached)

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SALE GUIDELINES

The following procedures shall apply to any sales to be held at Freemark Apparel Brands Retail BE Inc. ("FAB Retail") retail stores designated in Schedule A hereto (the "Stores"). Terms capitalized but not defined in these Sale Guidelines have the meanings ascribed to them in the Liquidation Order.

1. Except as otherwise expressly set out herein, and subject to: (i) the Order of the Superior Court of Québec (Commercial Chamber) (the "Court") approving, *inter alia*, the liquidation of the FAB Retail's inventory dated January 31, 2020 (the "Liquidation Order"); or (ii) the provisions of the BIA and any further Order of the Court; or (iii) any subsequent written agreement between FAB Retail and its applicable landlord(s) (individually, a "Landlord" and, collectively, the "Landlords"), the Sale shall be conducted in accordance with the terms of the applicable leases and other occupancy agreements for each of the Stores (individually, a "Lease" and, collectively, the "Leases"). However, nothing contained herein shall be construed to create or impose upon FAB Retail any additional restrictions not contained in the applicable Lease or other occupancy agreement.
2. The Sale shall be conducted so that each of the Stores remain open during their normal hours of operation provided for in the respective Leases for the Stores until the expiry of the notice period provided for in the BIA with respect to Leases that are disclaimed or resiliated, or as may be otherwise agreed between FAB Retail and the applicable Landlord or ordered by the Court, and in all cases by no later than May 15, 2020 (the "Vacate Date").
3. The Sale shall be conducted in accordance with applicable federal, provincial and municipal laws, unless otherwise ordered by the Court.
4. All display and hanging signs used in connection with the Sale shall be professionally produced and all hanging signs shall be hung in a professional manner. Notwithstanding anything to the contrary contained in the Leases, FAB Retail may advertise the Sale at the Stores as a "everything on sale", "everything must go", "store closing" or similar theme sale at the Stores (provided however that no signs shall advertise the Sale as a "bankruptcy", a "liquidation" or a "going out of business" sale, it being understood that the French equivalent of "clearance" is "liquidation" and that "liquidation" is permitted to be used in French language signs). Forthwith upon request, FAB Retail shall provide the proposed signage packages along with proposed dimensions by e-mail or facsimile to the applicable Landlords or to their counsel of record and the applicable Landlord shall notify the Liquidator of any requirement for such signage to otherwise comply with the terms of the Lease and/or the Sale Guidelines and where the provisions of the Lease conflicts with these Sale Guidelines, these Sale Guidelines shall govern. FAB Retail shall not use neon or day-glow signs or any handwritten signage (save that handwritten "you pay" or "topper" signs may be used). If a Landlord is concerned with "Store Closing" signs being placed in the front window of a Store or with the number or size of the signs in the front window, FAB Retail and the Landlord will work together to resolve the dispute. Nothing contained herein shall be construed to create or impose upon FAB Retail any additional restrictions not contained in

the applicable Leases. In addition, FAB Retail shall be permitted to utilize exterior banners/signs at stand alone or strip mall Stores or enclosed mall Store locations with a separate entrance from the exterior of the enclosed mall; provided, however, that: (i) no signage in any other common areas of a mall shall be used; and (ii) where such banners are not explicitly permitted by the applicable Lease and the Landlord requests in writing that banners are not to be used, then no banners shall be used absent further Order of the Court, which may be sought on an expedited basis on notice to the Service List. Any banners used shall be located or hung so as to make clear that the Sale is being conducted only at the affected Store and shall not be wider than the premises occupied by the affected Store. All exterior banners shall be professionally hung and to the extent that there is any damage to the facade of the premises of a Store as a result of the hanging or removal of the exterior banner, such damage shall be professionally repaired at the expense of FAB Retail. FAB Retail shall not utilize any commercial trucks to advertise the Sale on Landlord's property or mall ring roads.

5. FAB Retail shall be permitted to utilize sign walkers and street signage; provided, however, such sign walkers and street signage shall not be located on the shopping centre or mall premises.
6. FAB Retail shall be entitled to include additional merchandise in the Sale; provided that (a) the additional merchandise is currently in the possession of FAB Retail or FAB Wholesale (including in their warehouses) or has previously been ordered by or on behalf of FAB Retail or FAB Wholesale; and (b) the additional merchandise is of like kind and category and no lesser quality to FAB Retail merchandise, and consistent with any restriction on usage of the Stores set out in applicable Leases.
7. Conspicuous signs shall be posted in the cash register areas of each Store to the effect that all sales are "final" and customers with any questions or complaints are to contact FAB Retail.
8. FAB Retail shall not distribute handbills, leaflets or other written materials to customers outside of any of the Stores on Landlord's property, unless explicitly permitted by the applicable Lease or, if distribution is customary in the shopping centre in which the Store is located. Otherwise, FAB Retail may solicit customers in the Stores themselves. FAB Retail shall not use any giant balloons, flashing lights or amplified sound to advertise the Sale or solicit customers, except as explicitly permitted under the applicable Lease or agreed to by the Landlord.
9. At the conclusion of the Sale in each Store, FAB Retail shall arrange that the premises for each Store are in "broom-swept" and clean condition, and shall arrange that the Stores are in the same condition as on the commencement of the Sale, ordinary wear and tear excepted. No property of any Landlord of a Store shall be removed or sold during the Sale. No permanent fixtures (other than FAB Retail FF&E (as defined below) for clarity) may be removed without the Landlord's written consent unless otherwise provided by the applicable Lease and in accordance with the Liquidation Order. Any trade fixtures or personal property left in a Store after the applicable Vacate Date in respect of which the applicable Lease has been disclaimed by FAB Retail shall be deemed abandoned, with the applicable

Landlord having the right to dispose of the same as the Landlord chooses, without any liability whatsoever on the part of the Landlord.

10. Subject to the terms of paragraph 8 above, FAB Retail may sell its furniture, fixtures and equipment ("FF&E") and located in the Stores during the Sale. FAB Retail may advertise the sale of FF&E consistent with these Sale Guidelines on the understanding that the Landlord may require such signs to be placed in discreet locations within the Stores reasonably acceptable to the Landlord. Additionally, the purchasers of any FF&E sold during the Sale shall only be permitted to remove the FF&E either through the back shipping areas designated by the Landlord or through other areas after regular Store business hours or, through the front door of the Store during Store business hours if the FF&E can fit in a shopping bag, with Landlord's supervision as required by the Landlord and in accordance with the Approval Order. FAB shall repair any damage to the Stores resulting from the removal of any FF&E by third party purchasers of FF&E.
11. FAB Retail shall not make any alterations to interior or exterior Store lighting, except as authorized pursuant to the affected Lease. The hanging of exterior banners or other signage, where permitted in accordance with the terms of these Sale Guidelines, shall not constitute an alteration to a Store.
12. FAB Retail hereby provides notice to the Landlords of its intention to sell and remove FF&E from the Stores. FAB Retail shall make commercially reasonable efforts to arrange with each Landlord that so requests, a walk-through to identify the FF&E subject to the Sale. The relevant Landlord shall be entitled upon request to have a representative present in the applicable Stores to observe such removal. If the Landlord disputes FAB Retail's entitlement to sell or remove any FF&E under the provisions of the Lease, such FF&E shall remain on the premises and shall be dealt with as agreed between FAB Retail and such Landlord, or by further Order of the Court upon application by FAB Retail on at least two (2) days' notice to such Landlord and the NOI Trustee. If FAB Retail has disclaimed or resiliated the Lease governing such Store in accordance with the BIA, it shall not be required to pay rent under such Lease pending resolution of any such dispute (other than rent payable for the notice period provided for in the BIA), and the disclaimer or resiliation of the Lease shall be without prejudice to FAB Retail's claim to the FF&E in dispute.
13. If a notice of disclaimer or resiliation is delivered pursuant to the BIA to a Landlord while the Sale is ongoing and the Store in question has not yet been vacated, then:
 - (a) during the notice period prior to the effective time of the disclaimer or resiliation, the Landlord may show the affected leased premises to prospective tenants during normal business hours, on giving FAB Retail and the NOI Trustee 24 hours' prior written notice; and
 - (b) at the effective time of the disclaimer or resiliation, the relevant Landlord shall be entitled to take possession of any such Store without waiver of or prejudice to any claims or rights such Landlord may have against FAB in respect of such Lease or Store, provided that nothing herein shall relieve such Landlord of any obligation to mitigate any damages claimed in connection therewith.

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14. FAB Retail and the Landlords shall have the rights of access to the Stores during the Sale provided for in the applicable Lease (subject, for greater certainty, to any applicable stay of proceedings).
15. FAB Retail shall not conduct any auctions of Merchandise or FF&E at any of the Stores.
16. FAB Retail shall designate a party to be contacted by the Landlords should a dispute arise concerning the conduct of the Sale. The initial contact for FAB Retail shall be Carolyn Kulczycky who may be reached by phone at 647-938-7333 or email at ckulczycky@fabinc.ca. If the parties are unable to resolve the dispute between themselves, the Landlord or FAB Retail shall have the right to schedule a "status hearing" before the Court on no less than two (2) days written notice to the other party or parties, during which time FAB Retail shall cease all activity in dispute other than activity expressly permitted herein, pending determination of the matter by the Court; provided, however, subject to paragraph 4 of these Sale Guidelines, if a banner has been hung in accordance with these Sale Guidelines and is the subject of a dispute, FAB Retail shall not be required to take any such banner down pending determination of any dispute.
17. Nothing herein is or shall be deemed to be a consent by any Landlord to the sale, assignment or transfer of any Lease, or shall, or shall be deemed to, or grant to the Landlord any greater rights than already exist under the terms of any applicable Lease.
18. These Sale Guidelines may be amended by written agreement between FAB Retail and the applicable Landlord.

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Schedule "A"

FREEMARK
LEASE SCHEDULE

LANDLORD	STORE NAME	STORE NO.	STORE ADDRESS
Ivanhoe Cambridge	Conestoga	132	550 KING STREET NORTH WATERLOO ON N2L 5W6 519-886-5500
Ivanhoe Cambridge	Southgate Centre	107	5015 111TH STREET NW EDMONTON AB T6H 4M6 780-638-2386
Ivanhoe Cambridge	Cross Iron Mills	175	261055 CROSSIRON BOULEVARD ROCKY VIEW AB T4A 0G3 403-800-3119
Ivanhoe Cambridge	Winnipeg Outlet	182	555 STERLING LYON PARKWAY WINNIPEG MB R3P 1J9 204-800-1189
Ivanhoe Cambridge	Guildford	128	10355 152ND STREET SURREY BC V3R 7C1 778-801-3530

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Ivanhoe Cambridge	Tsawwassen Mills	181	5000 CANOE PASS WAY TSAWWASSEN BC V4M 0B3 604-227-6327
Ivanhoe Cambridge	Niagara	177	300 TAYLOR ROAD NIAGARA ON THE LAKE ON L0S 1J0 289-477-1014
Ivanhoe Cambridge	Vaughan Mills	179	1 BASS PRO MILLS VAUGHN MILLS ON L4K 5W4 289-459-0183
Smart Centres	New Westminster	170	805 BOYD STREET NEW WESTMINSTER BC V3M 5G7 604-200-0505
RioCan Management Inc.	St-Sauveur	171	100 AVENUE GUINDON SAINT-SAUVEUR QC J0R 1R6 450-995-8014
RioCan Management Inc.	Tangers Outlet	178	8555 CAMPEAU DRIVE OTTAWA ON K2T 1B7 613-518-1715
IC SPG POC at Edmonton GP Inc.	Edmonton Int. Airport Outlet	183	1 OUTLET COLLECTION WAY EDMONTON AB T9E 1J5

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			780-652-0390
Oxford Properties	Kingsway	112	109 PRINCESS ELIZABETH EDMONTON AB T5G 3A6 780-423-9568
OPTrust Retail Inc. c/o Bentall Kennedy (Canada) LP	Windsor	172	1555 TALBOT ROAD WINDSOR ON N9H 2N2 226-315-1965
West Edmonton Mall Property Inc.	West Edmonton	115	8882-170 STREET EDMONTON AB T5T 4J2 780-666-1071
Cushman & Wakefield Asset Services Inc.	Dixie Mall	184	1250 S SERVICE RD MISSISSAUGA ON L5E 2N6 289-297-0122
Cushman & Wakefield Asset Services Inc.	Midtown Plaza	117	201 1ST AVENUE SASKATOON SK S7K 1J9 866-781-0077
Cushman & Wakefield Asset Services Inc.	Cornwall (Cornwall Centre)	123	2012 11TH AVENUE REGINA SK S4P 3Y6 306-992-4434
Cushman & Wakefield Asset Services Inc.	St-Vital	125	1225 ST. MARY'S ROAD WINNIPEG MB R2M 5E5 204-515-1171

Knightsstone Capital Management Inc.	Kingston	173	101 DALTON AVENUE KINGSTON ON K7K 0C4 613-417-0312
The Cadillac Fairview Corporation	Polo Park	136	1485 PORTAGE WINNIPEG MB R3G 0W4 204-515-5532
QuadReal Property Group	Willowbrook	124	19705 FRASER HIGHWAY LANGLEY BC V3A 7E9 778-726-0344
Simon Property Group - Premium Outlets	Halton Hills	176	13850 STEELES AVENUE W. HALTON HILLS ON L7G 0J1 259-428-1016
Simon Property Group - Premium Outlets	Mirabel Outlet	180	19001 CHEMIN NOTRE-DAME MIRABEL QC J7J 0A1 450-595-2201
McArthurGlen Designer Outlet Vancouver	McArthurGlen	874	7899 TEMPLETON STATION ROAD - CRU 089-090 RICHMOND BC V7B 0B7 604-330-5748

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