

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

**THE HONOURABLE
JUSTICE MCEWEN**

) **FRIDAY THE 20TH**
)
) **DAY OF JULY, 2018**



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

AND IN THE MATTER OF ROCKPORT BLOCKER, LLC, THE ROCKPORT GROUP HOLDINGS, LLC, TRG 1-P HOLDINGS, LLC, TRG INTERMEDIATE HOLDINGS, LLC, TRG CLASS D, LLC, THE ROCKPORT GROUP, LLC, THE ROCKPORT COMPANY, LLC, DRYDOCK FOOTWEAR, LLC, DD MANAGEMENT SERVICES LLC AND ROCKPORT CANADA ULC (THE "DEBTORS")

APPLICATION OF ROCKPORT BLOCKER, LLC, UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

O R D E R
(Sale/Final DIP/Retention/Intercompany Transfer Order)

THIS MOTION, made by Rockport Blocker, LLC ("**Rockport Blocker**"), in its capacity as the foreign representative (the "**Foreign Representative**") of the Debtors, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an Order substantially in the form enclosed in the Motion Record was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Paul Kosturos sworn July 19, 2018 and the exhibits thereto (the "**Third Kosturos Affidavit**"), the second report of Richter Advisory Group Inc. ("**Richter**") in its capacity as the Court-appointed information officer (the "**Information Officer**") dated July 19, 2018 (the "**Second Report**"), and on hearing the submissions of counsel

for the Debtors, counsel for the Information Officer, counsel for Citizens Business Capital, in its capacity as Administrative Agent and Collateral Agent for the lenders under the Senior Secured Super-Priority Debtor-in-Possession Revolving Credit Agreement (the “**DIP ABL Agent**”), counsel for the Senior Secured Noteholders and DIP Note Lenders, counsel for The Cadillac Fairview Corporation Limited, counsel for Cushman & Wakefield Asset Services Inc., Ivanhoe Cambridge Inc., RioCan Real Estate Investment Trust, counsel for Montez Hillcrest Inc., Hillcrest Holdings Inc., Scarborough Town Centre Holdings Inc., Oxford Properties Retail Holdings Inc., Oxford Properties Retail Holdings II Inc. and Yorkdale Shopping Centre Holdings Inc., and upon no one appearing for any other parties although duly served as appears from the Affidavit of Service of Mariela Adriana Gasparini sworn July 19, 2018, filed,

SERVICE

1. **THIS COURT ORDERS** that the time for service and filing of the Notice of Motion and the Motion Record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that any capitalized terms not otherwise defined herein shall have the meanings given to such terms in the Third Kosturos Affidavit.

RECOGNITION OF FOREIGN ORDERS

3. **THIS COURT ORDERS** that the following orders of the United States Bankruptcy Court for the District of Delaware (the “**US Court**”) made in the insolvency proceedings of the Debtors under Chapter 11 of Title 11 of the United States Bankruptcy Code are hereby recognized and

given full force and effect in all provinces and territories of Canada pursuant to Section 49 of the CCAA:

- a. an order, *inter alia*, (i) authorizing the Debtors to employ and retain Houlihan Lokey Capital, Inc. (“**Houlihan Lokey**”) as their financial advisor and investment banker, *nunc pro tunc*, to the Filing Date, pursuant to that certain engagement letter dated December 11, 2017, a copy of which is attached to the Houlihan Retention Order as Exhibit 1 (the “**Houlihan Engagement Letter**”), by and between Houlihan Lokey and Rockport; (ii) approving the terms of the Houlihan Engagement Letter; (iii) waiving certain time-keeping requirements pursuant to Rule 2016-2(h) of the Local Rules of Bankruptcy Practice and Procedure of the US Court; and (iv) granting related relief (the “**Houlihan Retention Order**”);
- b. a final order, *inter alia*, (i) approving post-Petition financing; (ii) granting liens and super-priority administrative expense claim status to the DIP ABL Agent on its own behalf and on behalf of the DIP ABL Lenders (as defined in the First Day Declaration); and (iii) modifying the automatic stay (the “**Final DIP Financing Order**”);
- c. an order, *inter alia*, (i) authorizing and approving the sale (the “**Sale**”) of the Purchased Assets (as defined in the asset purchase agreement dated as of May 13, 2018 (the “**Stalking Horse Agreement**”) between the Debtors and Rockport Canada Holdings Ltd. (collectively, the “**Sellers**”) and CB Marathon Opco, LLC (“**Marathon**”), an affiliate of Charlesbank Equity Fund IX, Limited Partnership, to Marathon of such assets as determined in accordance with the Bidding Procedures,

free and clear of all liens, claims, interests and encumbrances, except certain permitted encumbrances as determined by the Sellers and Marathon; (ii) authorizing the assumption and assignment of certain executory contracts and unexpired leases in connection with the proposed Sale and (iii) granting related relief (the “**Sale Order**”); and

- d. an order approving stipulation modifying final cash management order to permit intercompany transfers between Rockport Canada ULC and The Rockport Company, LLC (the “**Intercompany Payment Order**”);

provided, however, that in the event of any conflict between the terms of the Houlihan Retention Order, the Final DIP Financing Order, the Sale Order, the Intercompany Payment Order and the Orders of this Court made in these proceedings, the Orders of this Court shall govern with respect to the Property (as defined in the Supplemental Order (Foreign Main Proceeding) of this Court made in these proceedings on May 16, 2018) in Canada. Copies of the Houlihan Retention Order, the Final DIP Financing Order, the Sale Order and the Intercompany Payment Order are attached as Exhibits “**F**” to “**I**” to the Third Kosturos Affidavit.

VESTING OF PURCHASED ASSETS AND APPLICATION OF SALE PROCEEDS

4. **THIS COURT ORDERS AND DECLARES** that, upon the delivery of a Foreign Representative certificate to the Purchaser, substantially in the form attached as Schedule A hereto (the “**Foreign Representative Certificate**”), all of the Sellers right, title and interest in and to the Purchased Assets (as defined in the Stalking Horse Agreement), shall vest absolutely in Marathon or a designated affiliate of Marathon, as provided for by the Stalking Horse Agreement (the “**Purchaser**”), free and clear of and from any and all security interests (whether

contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the “**Claims**”) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Supplemental Order (Foreign Main Proceeding) dated May 16, 2018; and (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system (all of which are collectively referred to as the “**Encumbrances**”), and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

5. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets (as defined in the Stalking Horse Agreement) shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Foreign Representative Certificate, all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets (as defined in the Stalking Horse Agreement) had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale and this Court further orders that the proceeds of the sale shall be applied as set forth in paragraph 28 and paragraph 29 of the Sale Order.

6. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Sellers are authorized and permitted

to disclose and transfer to the Purchaser all human resources and payroll information in the Sellers records pertaining to the Sellers 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 Sellers.

7. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of Rockport Canada ULC (“**Rockport Canada**”) and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of Rockport Canada;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of Rockport Canada and shall not be void or voidable by creditors of the Sellers, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

GENERAL

8. **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 Foreign Representative, the Sellers, the Information Officer and their respective 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 Foreign Representative, the Sellers, the Information Officer, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Foreign Representative, the Sellers, the Information Officer and their respective agents in carrying out the terms of this Order.

9. **THIS COURT ORDERS** that each of the Foreign Representative, the Debtors and the Information Officer 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.

A handwritten signature in black ink, appearing to be 'M. G. S.', written over a horizontal line.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

JUL 20 2018

PER / PAR:

Handwritten initials in blue ink, possibly 'MP'.

Schedule A – Form of Foreign Representative Certificate

Court File No. _____

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**AND IN THE MATTER OF ROCKPORT BLOCKER, LLC, THE ROCKPORT GROUP
HOLDINGS, LLC, TRG 1-P HOLDINGS, LLC, TRG INTERMEDIATE HOLDINGS,
LLC, TRG CLASS D, LLC, THE ROCKPORT GROUP, LLC, THE ROCKPORT
COMPANY, LLC, DRYDOCK FOOTWEAR, LLC, DD MANAGEMENT SERVICES
LLC AND ROCKPORT CANADA ULC (THE "DEBTORS")**

**APPLICATION OF ROCKPORT BLOCKER, LLC, UNDER SECTION 46 OF THE
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FOREIGN REPRESENTATIVE CERTIFICATE

RECITALS

A. All capitalized terms used and not otherwise defined herein shall have the meanings ascribed thereto in the asset purchase agreement dated as of May 13, 2018 between the Debtors and Rockport Canada Holdings Ltd. (collectively, the "**Sellers**") and CB Marathon Opco, LLC, an affiliate of Charlesbank Equity Fund IX, Limited Partnership (the "**Stalking Horse Agreement**").

B. Pursuant to the Initial Recognition Order (Foreign Main Proceeding) and Supplemental Order (Foreign Main Proceeding) of the Honourable Justice McEwen of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") each dated May 16, 2018, Rockport Blocker, LLC was appointed as the foreign representative (the "**Foreign Representative**") of the undertaking, property and assets of The Rockport Company, LLC, Rockport Blocker, LLC, The Rockport Group Holdings, LLC, TRG 1-P Holdings, LLC, TRG Intermediate Holdings, LLC, TRG Class D, LLC, The Rockport Group, LLC, Drydock Footwear, LLC, DD Management Services LLC and Rockport Canada ULC (the "**Debtors**").

C. Pursuant to an Order of the Court dated July 20, 2018, the Court approved the Stalking Horse Agreement between the Sellers and the Purchaser and provided for the vesting in the Purchaser of the Seller's right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Foreign Representative to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in Article X of the Stalking Horse Agreement have been satisfied or waived by the Sellers and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Foreign Representative.

D. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Stalking Horse Agreement.

THE FOREIGN REPRESENTATIVE CERTIFIES the following:

1. The Purchaser has paid the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Staking Horse Agreement;
2. The conditions to Closing as set out in Article X of the Stalking Horse Agreement have been satisfied or waived by the Sellers and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Foreign Representative.
4. This Certificate was delivered by the Foreign Representative at _____ [TIME] on _____ [DATE].

**ROCKPORT BLOCKER, LLC, in its
capacity as Foreign Representative of the
Debtors, and not in its personal capacity**

Per: _____
Name:
Title:

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PROCEEDINGS COMMENCED AT TORONTO

ORDER

(Sale/Final DIP/Retention/Intercompany Transfer Order)

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