

SUPERIOR COURT
(Commercial Division)

**CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL
No. 500-11-057984-201
DATE: AUGUST 26, 2020**

PRESIDING : THE HONOURABLE DAVID R. COLLIER, J.S.C.

IN THE MATTER OF THE PROPOSAL OF:

LA CORDÉE PLEIN AIR INC.

Debtor/Petitioner

-and-

MNP LTD.

Trustee

-and-

NATIONAL BANK OF CANADA

Principal Secured Creditor

-and-

THE REGISTRAR OF THE REGISTER OF PERSONAL AND MOVABLE REAL RIGHTS

Mis-en-Cause

APPROVAL, VESTING AND CONTRACT ASSIGNMENT ORDER

- [1] **ON READING** La Cordée Plein Air Inc.'s (the "**Petitioner**") *Motion for the Issuance of an Approval and Vesting Order and a Contract Assignment Order* (the "**Motion**"), the affidavit and the exhibits in support thereof, as well as the Report of MNP Ltd. (the "**Trustee**") dated August 20, 2020 (the "**Report**");
- [2] **SEEING** the service of the Motion;
- [3] **SEEING** the submissions of Petitioner's attorneys;
- [4] **SEEING** the provisions of the Bankruptcy and Insolvency Act ("**BIA**");
- [5] **SEEING** that it is appropriate to issue an order (i) approving the transaction(s) (the "**Transaction**") contemplated by the agreement entitled *Asset Purchase Agreement* (the "**Purchase Agreement**") by and between the Petitioner, as vendor, and La Cordée MACAP Inc. ("**MACAP**"), Édifice 2159 Sainte-Catherine Inc. and Édifice 5190 Sainte-Laurent Inc. (collectively, the "**Purchasers**"), as purchasers, copy of which was filed as Exhibit P-2 to the Motion, (ii) vesting in the Purchasers the assets described in the Purchase Agreement (the "**Purchased Assets**"), according to their respective interests, and (iii) assigning to MACAP all of the agreements designated under the Purchase Agreement and listed in **Schedule "A"** and in **Schedule "B"** attached hereto;

WHEREFORE THE COURT:

- [6] **GRANTS** the Motion.

SERVICE

- [7] **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.
- [8] **PERMITS** service of this Order at any time and place and by any means whatsoever.

SALE APPROVAL

- [9] **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

- [10] **AUTHORIZES** the Purchasers to perform all acts, sign all documents and take any necessary action to execute any agreement, contract, deed, provision, transaction or

undertaking stipulated in the Purchase Agreement (Exhibit P-2) and any other ancillary document which could be required or useful to give full and complete effect thereto.

AUTHORIZATION

- [11] **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

- [12] **ORDERS** and **DECLARES** that the Trustee shall issue a Trustee's certificate substantially in the form appended as **Schedule "C"** hereto (the "**Certificate**") once (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 Purchasers; and (c) and all the conditions to the closing of the Transaction have been satisfied or waived by the parties thereto.
- [13] **ORDERS** and **DECLARES** that upon the issuance of the Trustee's Certificate, all rights, title and interest in and to the Purchased Assets shall vest absolutely and exclusively in and with the Purchasers, according to their respective interests, free and clear of and from any and all claims, liabilities (direct, indirect, absolute or contingent), obligations, prior claims, right of retention, charges, hypothecs, deemed trusts, judgments, writs of seizure or execution, notices of sale, contractual rights relating to the Property, encumbrances, whether or not they have been registered, published or filed and whether secured, unsecured or otherwise (collectively, the "**Encumbrances**"), including without limiting the generality of the foregoing all Encumbrances created by order of this Court and all charges, or security evidenced by registration, publication or filing pursuant to the *Civil Code of Québec* in movable / immovable property, excluding however, the permitted encumbrances and restrictive covenants listed on **Schedule "D"** hereto (the "**Permitted Encumbrances**") and, for greater certainty, **ORDERS** that all of the Encumbrances affecting or relating to the Purchased Assets, other than the Permitted Encumbrances, be cancelled and discharged as against the Purchased Assets, in each case effective as of the applicable time and date of the Certificate.
- [14] **ORDERS** and **DIRECTS** the Trustee to file with the Court a copy of the Certificate as soon as practicable after issuance thereof.

ASSIGNMENT OF AGREEMENTS

- [15] **ORDERS** and **DECLARES** that upon the issuance of the Certificate, the rights and obligations of the Vendor under the agreements listed on **Schedule "A"** hereto (the "**Assigned Agreements**") are assigned to MACAP pursuant to sections 66(1) and 84.1 of the BIA and **ORDERS** that all monetary defaults of the Debtor 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 by MACAP within thirty (30) days following Closing (as such term is defined in the Purchase Agreement).

- [16] **ORDERS and DECLARES** that upon the issuance of the Certificate, the rights and obligations of the Petitioner under the Agreements that are real property leases listed on **Schedule "B"** attached hereto (the "**Assigned Leases**") are assigned to MACAP pursuant to sections 66(1) and 84.1 of the BIA.
- [17] **ORDERS** that, with respect to the Assigned Leases, upon delivery of the Certificate, MACAP shall be entitled and subject to all of the rights and obligations as tenant pursuant to the terms of the Assigned Leases and to the registrations thereof, if any, and may enter into and enjoy each premises contemplated by the Assigned Leases and, if applicable, any renewals thereof, for its own use and benefit, all in accordance with the terms of the Assigned Leases, without any interruption from the landlords under the Assigned Leases or any person whomsoever claiming through or under any of the landlords under the Assigned Leases.
- [18] **ORDERS** that the assignment of the Assigned Leases to MACAP pursuant to this Order is valid and binding upon all of the counterparties of the Assigned Leases notwithstanding any restriction or prohibition contained in any such Assigned Leases relating thereto, including, without limitation, any provision requiring the consent of any party to the assignment.
- [19] **ORDERS** that, except as may otherwise be agreed to by MACAP and the applicable counterparty to an Assigned Lease (an "**Assigned Landlord**"), nothing in this Order shall affect the rights and remedies of such Assigned Landlord against MACAP that may exist or arise under or in respect of an Assigned Lease.
- [20] **ORDERS** that each Assigned Landlord is prohibited from exercising any right or remedy as against MACAP by reason of any defaults thereunder arising from the assignment of the Assigned Leases, the insolvency of the Petitioner, the commencement of these BIA proceedings, or the Petitioner having breached a non-monetary obligation under the Assigned Leases, unless such non-monetary breach arises or continues after the Assigned Leases is assigned to MACAP, such nonmonetary default is capable of being cured by MACAP, and MACAP has failed to remedy the default after having received notice of such default pursuant to the terms of the Assigned Leases. For clarification purposes, no Assigned Landlord shall rely on a notice of default sent to the Petitioner to terminate an Assigned Lease as against MACAP.
- [21] **ORDERS and DIRECTS** the Petitioner to send by e-mail, registered mail or courier a copy of this Order to every party to the Assigned Agreements and the Assigned Leases.

CANCELLATION OF SECURITY REGISTRATIONS

[22] **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 identified in **Schedule “E”** attached hereto and publish a discharge and mainlevée of all such registrations in connection with the Purchased Assets, in order to allow the transfer of the Purchased Assets to the Purchasers, according to their respective interests, free and clear of all Encumbrances under such registrations.

PROCEEDS OF SALE

[23] **ORDERS** that the proceeds from the sale of the Purchased Assets (the “**Proceeds of Sale**”) shall be remitted to the Petitioner.

[24] **ORDERS** that for the purposes of determining the nature and priority of the Encumbrances, the Proceeds of Sale from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that upon payment of the Purchase Price (as defined in the Purchase Agreement) by the Purchasers, all Encumbrances except for the Permitted Encumbrances shall attach to the Proceeds of Sale with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

PROTECTION OF PERSONAL INFORMATION

[25] **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 Petitioner is authorized and permitted to disclose and transfer to MACAP all human resources and payroll information in the Petitioner’s records pertaining to the Petitioner’s past and current employees. MACAP 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 Petitioner.

VALIDITY OF THE TRANSACTION

[26] **ORDERS** that notwithstanding:

- (i) the pendency of these proceedings;
- (ii) any petition for a receiving order now or hereafter issued pursuant to the 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 Petitioner, the Purchasers or the Trustee.

- [27] **ORDERS** that the Purchase Agreement and any ancillary documents related thereto shall not be repudiated, disclaimed or otherwise compromised in these proceedings.

LIMITATION OF LIABILITY

- [28] **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.
- [29] **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 the Trustee shall benefit from the protection arising under the present paragraph.
- [30] **ORDERS** that the Purchasers shall, by virtue of the completion of the Transaction, have no liability of any kind whatsoever in respect of any Encumbrances against the Petitioner.
- [31] **ORDERS** that the Petitioner and all persons who claim by, through or under the Petitioner in respect of the Purchased Assets, and all persons or entities having any Encumbrances of any kind whatsoever in respect of the Purchased Assets, shall stand absolutely and forever barred, estopped and foreclosed from and permanently enjoined from, pursuing, asserting or claiming any and all right, title, estate, interest, royalty, rental, equity of redemption, or Encumbrance in respect of or to the Purchased Assets and, to the extent that any such persons or entities remain in possession or control of any of the Purchased Assets, or any artifacts, certificates, instruments or other indicia of title representing or evidencing any right, title, estate or interest in and to the Purchased Assets, they shall forthwith deliver possession thereof to the Purchasers, according to their respective interests.
- [32] **ORDERS** that the Purchasers shall be entitled to enter into and upon, hold and enjoy the Purchased Assets, according to their respective interests, for their own use and benefit absolutely without any interference of or by the Petitioner, or any person claiming by or through or against the Petitioner.

[33] **ORDERS** that under no circumstances shall any of the Purchasers be deemed a successor of or to the Petitioner for any Encumbrances of any kind or nature whatsoever against or in the Petitioner or the Purchased Assets. Following the closing of the Transaction, no person with an Encumbrance shall interfere with the Purchasers' title to or use and enjoyment of the Purchased Assets, according to their respective interests, based on or related to such Encumbrance or any actions that the Petitioner has taken or may take.

ACCOUNTS

[34] **ORDERS** that any and all institutions and payment processors (**the "Financial Institutions"**) with which the Petitioner has accounts (**the "Accounts"**) shall process and/or facilitate the transfer of, or changes to, such Accounts in order to implement the Purchase Agreement and the transactions contemplated thereby.

[35] **ORDERS** that if upon the closing of the Transaction contemplated under the Purchase Agreement, certain Accounts have not yet been transferred or changed, MACAP shall be authorized, for a period of fifteen (15) business days following the closing of such Transaction, to use the Accounts of the Petitioner (subject only to the due payment of customary fees for the use of such Accounts) for the purpose of conducting its business and operations and that any and all amounts deposited in such Accounts by MACAP shall remain the sole and exclusive property of MACAP, free and clear of any and all Encumbrances of any third party against the Petitioner.

GENERAL

[36] **ORDERS** that the Purchasers, Petitioner or the Trustee shall be authorized to take all steps as may be necessary to effect the discharge of the Encumbrances.

[37] **AUTHORIZES** the Petitioner and the Trustee on behalf of the Petitioner, to file articles of amendment to change its name following the closing of the Transaction, without the requirement (if any) of obtaining director or shareholders' approval pursuant to any federal or provincial legislation.

[38] **ORDERS** that the Purchase Agreement be kept confidential and under seal until further order of this Court.

[39] **DECLARES** that this Order shall have full force and effect in all provinces and territories in Canada.

[40] **DECLARES** that the Trustee 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 and, without limitation to the foregoing, an order under Chapter 15 of the U.S. Bankruptcy Code, for which the Trustee shall be the foreign representative of the Debtor. All courts and administrative bodies of all such jurisdictions are hereby respectfully requested to make such orders and to provide

such assistance to the Trustee as may be deemed necessary or appropriate for that purpose.

[41] **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.

[42] **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.

A handwritten signature in black ink, appearing to read 'D Collier', written over a horizontal line.

The Honourable David R. Collier, j.s.c.

M^{es} Sylvain Rigaud and Arad Mojtahedi
Attorneys for the Petitioner

SCHEDULE "A"
ASSIGNED AGREEMENTS

- Agreement number 958392086-520367400 dated January 10, 2017 between Xerox Canada Ltd. and La Cordée Plein Air Inc.
- Leasing Agreement dated November 11, 2015 between La Cordée Plein Air Inc. and Services financiers Mercedes-Benz in respect of the 2015 Mercedes-Benz SP 2C1704 – S/N : WD3BE8DC8FP114058.
- Lease Agreement dated May 8, 2017 between Toyota Credit Canada Inc., Duval Toyota and La Cordée Plein Air Inc. in respect of the 2017 Toyota Highlander – S/N : 5TDJZRFH2HS421190.
- Vehicle Maintenance and Rental Agreement dated February 17, 2014 between Location de camions Penske Canada Inc. and La Cordée Plein Air Inc. in respect of the 2019 Freightliner M2 – S/N : 3ALACXFC7KDKK8646.
- Leasing Agreement dated August 31, 2017 between Pitney Bowes and La Cordée Plein Air Inc.
- Mandate Agreement (Contrat de mandat) between Coopérative La Cordée and La Cordée Plein Air Inc. dated December 12, 2004 [Unsigned].

SCHEDULE "B"
ASSIGNED LEASES

- Lease Agreement dated April 18, 2018 between Les Immeubles Yves Jacques Inc. and La Cordée Plein Air Inc., as amended on August 18, 2020.
- Lease Agreement signed on September 11, 2002 by Tenant and on October 21, 2002 by Landlord, between Ivanhoé Cambridge Inc. and La Cordée Plein Air Inc.
- Agreement of Lease dated December 1, 2004 between Capital Property Development CPD Inc., previously known as Centre Perspectives Décor CPD Inc., and La Cordée Plein Air Inc.

SCHEDULE "C"
DRAFT CERTIFICATE OF THE TRUSTEE

CANADA

**PROVINCE OF QUEBEC
DISTRICT OF MONTRÉAL**

File: No: 500-11-057984-201

SUPERIOR COURT
Commercial Division

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

LA CORDÉE PLEIN AIR INC.

Debtor/Petitioner

-and-

MNP LTD.

Trustee

-and-

NATIONAL BANK OF CANADA

Principal Secured Creditor

-and-

**THE REGISTRAR OF THE REGISTER OF
PERSONAL AND MOVABLE REAL RIGHTS**

Mis-en-Cause

CERTIFICATE OF THE TRUSTEE

RECITALS:

WHEREAS on February 17, 2020, the petitioner La Cordée Plein Air Inc. (the "**Petitioner**") filed a *Notice of Intention to Make a Proposal* (the "**NOI**") pursuant to section 50.4 of the *Bankruptcy and Insolvency Act* (the "**BIA**"), and MNP Ltd. was appointed as trustee to the NOIs (the "**Trustee**");

WHEREAS on August 24, 2020, the Court issued an Order (the "**Approval and Vesting Order**") thereby, *inter alia*, authorizing and approving the execution by the Petitioner of an agreement entitled *Asset Purchase Agreement* (the "**Purchase Agreement**") by and between the Petitioner, as vendor and La Cordée MACAP Inc., Édifice 2159 Sainte-Catherine Inc. and Édifice 5190 Sainte-Laurent Inc. as purchasers (collectively the "**Purchasers**"), according to their respective interests, 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 Approval and 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 Purchasers; 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 PETITIONER AND THE PURCHASERS 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) the Excluded Assets (as defined in the Purchase Agreement) are no longer subject to the security held or previously held by the National Bank of Canada; and
- (d) all conditions to the closing of the Transaction have been satisfied or waived by the parties thereto.

This Certificate was issued by the Trustee at ____ [TIME] on _____ [DATE].

MNP Ltd. in its capacity as Trustee, and not in its personal capacity.

Name: _____

Title: _____

SCHEDULE "D"
PERMITTED ENCUMBRANCES

- Reservation of ownership granted by La Cordée Plein Air Inc. in favour of Trek Bicycle Canada ULC registered at the Register of Personal and Movable Real Rights on September 15, 2000 under number 00-0276639-0013.
- Reservation of ownership granted by La Cordée Plein Air Inc. in favour of Icebreaker Merino Clothing Inc. registered at the Register of Personal and Movable Real Rights on July 10, 2009 under number 09-0418157-0014.
- Reservation of ownership granted by La Cordée Plein Air Inc. in favour of 9365-4853 Québec Inc. registered at the Register of Personal and Movable Real Rights on November 17, 2011 under number 11-0889970-0001.
- Reservation of ownership granted by La Cordée Plein Air Inc. in favour of Louis Garneau Sports Inc. registered at the Register of Personal and Movable Real Rights on November 21, 2013 under number 13-1035331-0001.
- Reservation of ownership granted by La Cordée Plein Air Inc. in favour of TBG The Bicycle Group Limited registered at the Register of Personal and Movable Real Rights on October 28, 2015 under number 15-1047519-0001.
- Reservation of ownership granted by La Cordée Plein Air Inc. in favour of LTP Sports Group Inc. registered at the Register of Personal and Movable Real Rights on October 30, 2015 under number 15-1057797-0001.
- Reservation of ownership granted by La Cordée Plein Air Inc. in favour of Sugoï Global Inc. registered at the Register of Personal and Movable Real Rights on August 24, 2018 under number 18-0935118-0001.
- Rights under a lease granted by La Cordée Plein Air Inc. in favour of Xerox Canada Ltd. registered at the Register of Personal and Movable Real Rights on January 25, 2017 under number 17- 0065752-0012.
- Rights under a lease granted by La Cordée Plein Air Inc. in favour of Toyota Duval registered at the Register of Personal and Movable Real Rights on May 19, 2017 under number 17-0498870- 0014.
- Rights under a lease granted by La Cordée Plein Air Inc. in favour of Mercedes Benz Laval registered at the Register of Personal and Movable Real Rights on November 18, 2015 under number 15-1121343-0016.

- Rights under a lease granted by La Cordée Plein Air Inc. in favour of Penske Truck Leasing Canada Inc. registered at the Register of Personal and Movable Real Rights on June 19, 2018 under number 18-0665445-0004.
- Conventional hypothec without delivery granted by La Cordée Plein Air Inc. in favour of Banque Nationale du Canada registered at the Register of Personal and Movable Real Rights on October 1, 2009 under number 09-0613154-0001 and at the Land Register, Registration Division of Montreal, on October 1, 2009 under number 16 596 565 and on October 8, 2015 under number 21 886 326.
- Conventional hypothec without delivery granted by La Cordée Plein Air Inc. in favour of Banque Nationale du Canada registered at the Register of Personal and Movable Real Rights on April 12, 2018 under number 18-0361976-0001.
- Immovable hypothec granted by La Cordée Plein Air Inc. in favour of Banque Nationale du Canada registered at the Land Register, Registration Division of Montreal, on June 7, 2005 under number 12 385 893.
- Immovable hypothec granted by La Cordée Plein Air Inc. in favour of Banque Nationale du Canada registered at the Land Register, Registration Division of Montreal, on November 25, 2002 under number 10 165 720.
- Immovable hypothec granted by La Cordée Plein Air Inc. in favour of Banque Nationale du Canada registered at the Land Register, Registration Division of Montreal, on June 28, 2001 under number 5 269 742.

SCHEDULE "E"
SECURITY/ENCUMBRANCES TO BE DELETED FROM PPRs

- Conventional hypothec without delivery granted by La Cordée Plein Air Inc. in favour of Développement Immobilier Capital CPD Inc. registered at the Register of Personal and Movable Real Rights on November 9, 2015 under number 15-1093217-0004.