

CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No: 500-11-022700-047

SUPERIOR COURT
(Sitting as tribunal designated under the
Companies' Creditors' Arrangement Act)

**IN THE MATTER OF THE
ARRANGEMENT OF:**

EAUX VIVES HARRICANA INC.

-and-

EVH U.S.A. INC.

and-

LES SOURCES PÉRIGNY INC.

Petitioners

-and-

RSM RICHTER INC.

Monitor

MOTION TO OBTAIN AN ORDER APPROVING A TEMPORARY DIP FINANCING
(Articles 4, 5 and 9 of the *Companies' Creditors Arrangement Act*)

**TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN
COMMERCIAL DIVISION, IN AND FOR THE DISTRICT OF MONTREAL,
PETITIONERS, EAUX VIVES HARRICANA INC., EVH U.S.A. INC. AND LES
SOURCES PÉRIGNY INC., RESPECTFULLY SUBMIT THAT:**

INTRODUCTION

1. Petitioners respectfully ask that this Honourable Court, *inter alia*, approves a temporary debtor in possession ("DIP") financing agreement and renders the necessary orders so as to enforce this agreement, the whole as more fully set out in the conclusions below;

EVH U.S.A. Inc.

4. EVH U.S.A. INC. ("EVH U.S.A."), is a legal person, duly constituted under the laws of Delaware, U.S.A.;
5. EVH U.S.A. solely acts as a marketing, sales and distributing agent for EVH INC. and has no customers other than EVH INC.;
6. As such, EVH U.S.A. is dependent upon EVH INC., which explains the present joint filing;

Les Sources Périgny Inc.

7. Les Sources Périgny Inc. ("**Sources Périgny**") is a legal person, duly constituted under the laws of Quebec;
8. Sources Périgny is a wholly-owned subsidiary of EVH INC.;
9. While Sources Périgny is a distinct legal entity from EVH INC., it has no cash other than EVH INC.'s and its assets and liabilities cannot be dissociated from EVH INC.'s assets and liabilities, which explains the present joint filing;

The CCAA Proceedings

10. EVH INC., EVH U.S.A. and Sources Périgny (collectively, "**EVH**", which may from time to time refer to EVH INC. and/or EVH U.S.A. and/or Sources Périgny) are currently unable to meet their liabilities generally as they become due and have sought the issuance of an order under the CCAA, as more fully appears from the Court record;
11. Since the issuance of the Initial Order, EVH continues to act in good faith and with due diligence;
12. EVH refers this Court to the content of its *Motion for the Issuance of an Initial Order* dated March 19, 2004 and of its *Motion for the Extension of Time for the Filing of the plan of arrangement* dated May 28, which provide the Court with the complete background of this matter;

- 3 -

[16] ALLOW EVH to enter into, at a later date, a DIP financing agreement with any party ready to advance such funds, on such terms and conditions as this Court may later approve;

16. EVH has had serious discussions and negotiations with lenders, and is about to complete said financing;
17. However, EVH is in urgent need of money, and the financing is not completed, even though it is on the verge to be;
18. Indeed, funds have to be available by Friday morning, June 11, 2004, as to meet the payroll and other urgent obligations;
19. In this context, Parmalat Canada Limited is prepared, on a temporary basis, to advance some money to EVH, while it completes its financing;
20. On June 9, 2004, EVH and Parmalat Canada Limited (the "**Temporary DIP Lender**") concluded a Temporary DIP Financing Agreement providing for an advance of up to \$100,000 (the "**Temporary DIP Financing Agreement**"), as more fully appears from a copy of the Term Sheet attached hereto as **Exhibit R-1**;
21. Those funds are necessary to allow EVH to continue to assume its current liabilities during the completion of the financing and the CCAA process;
22. Without such advance of funds, EVH will not be able to make said payments nor will it be able to file a plan of arrangement, the whole to the prejudice of its creditors;
23. It is absolutely essential for EVH to receive said advance;
24. As per the Temporary DIP Financing Agreement, the Temporary DIP Lender has asked, before advancing funds to EVH, that an order of this Court be rendered;
25. It is a condition of such advance that an order of this Court be rendered granting a first ranking charge (the "**Temporary DIP Charge**") over all of the assets of EVH to secure the repayment of such advance by the Temporary DIP Lender, the Temporary DIP Charge ranking only after the Administrative Charge and the

- 4 -

assets of EVH does not constitute a fraudulent preference or reviewable transaction, does not constitute illegal financial assistance by a subsidiary or could otherwise be attacked or challenged under any applicable law and is otherwise valid for all intents and purposes;

28. The granting of such a prior first charge over the assets of EVH in favour of the Temporary DIP Lender would not cause prejudice to any creditors; quite to the contrary, it would be to the benefit of all of the creditors of EVH;
29. Thus, this Court should grant the conclusions sought in respect of the Temporary DIP Financing Agreement as it is the sole means available to allow EVH to complete the process undertaken;

CONCLUSIONS SOUGHT

30. Given the fact that, as described in this Motion, the circumstances are such that an order should be rendered, and given the fact that EVH has acted and is acting in good faith and with due diligence, Petitioner respectfully submits that this petition should be granted as per its conclusions;
31. It is in the best interests of EVH's employees, creditors and customers that the present Motion be granted as per its conclusions. Should the present Motion be granted as per its conclusions, EVH's creditors shall suffer no prejudice;
32. Considering the situation, EVH respectfully submits that the service of a notice of presentation of the present petition is not necessary and would not serve the interests of its creditors and/or of justice in general. In addition, no purported creditors, other than Robbie Manufacturing Inc. and Goodgoll Curtis Inc., have asked to be served with this Motion, or any motion made by EVH;
33. The present Motion is well-founded in fact and in law.

THEREFORE, PETITIONERS PRAY THIS HONOURABLE COURT TO:

GRANT the present "Motion to Obtain an Order Approving a Temporary DIP Financing Agreement" (the "**Motion**");

GRANT the present "Motion to Obtain an Order Approving a Temporary DIP Financing Agreement" (the "**Motion**");

DEBTOR IN POSSESSION FINANCING

DECLARE that EVH is authorized and empowered to borrow from Parmalat Canada Limited (the "**Temporary DIP Lender**"), such monies from time to time as EVH may consider necessary or desirable, up to an aggregate principal amount of \$100,000, to fund the ongoing costs and expenses, the restructuring, and/or the sale process (the "**Temporary DIP Loan**" or the "**Temporary DIP Financing**") on terms to be agreed upon between the Temporary DIP Lender and EVH, as per the terms of the Term Sheet, Exhibit R-1;

DECLARE that all of EVH present and future property, assets, immovable or movable, tangible and intangible, is hereby charged (hypothecated) in favour of the Temporary DIP Lender (the "**Temporary DIP Charge**") as security of the repayment of the Temporary DIP Loan and all other obligations of the DIP Borrowers under the DIP Financing Agreement, together with interest, fees, charges and other amounts payable in respect thereof without the necessity of executing or registering any further documents and that neither the DIP Borrowers nor the DIP Lender shall be required to file, register, publish, record or perfect the DIP Charge. However, this Court orders that EVH is hereby authorized and directed to execute and deliver in favour of the Temporary DIP Lender all such security as may be contemplated or required by the Temporary DIP Lender, charging all of the existing and after-acquired property, assets and undertaking of EVH (such security documents collectively referred to herein as the "**Temporary DIP Security**") and the Temporary DIP Lender is hereby authorized, but not obliged, to take such steps as it deems necessary or appropriate to register, record or perfect the Temporary DIP Security;

DECLARE that the Temporary DIP Charge and the Temporary DIP Security shall have first priority over the universality of all of the present and future undertaking, personal property and assets of EVH (the "**Property**") ranking in priority to all other charges, encumbrances, hypothecs or security but subject to the Administration Charge and the Directors' Charge created in the Initial Order rendered by Mr. Justice François Rolland on March 19, 2004 (as extended, amended and renewed);

- 6 -

- a) the obligations of EVH pursuant to the Temporary DIP Loan, Temporary DIP Charge and Temporary DIP Security and all documents delivered pursuant thereto constitute legal, valid and binding obligations of EVH enforceable against them in accordance with the terms thereof; and
- b) the payments made by EVH pursuant to such documents, whether made before, on or after the date of this Order and the granting or assignment of the security constituted by the Temporary DIP Charge and Temporary DIP Security do not constitute fraudulent preferences, reviewable transactions and cannot be challenged or attacked under any other applicable law;

DECLARE that neither the Temporary DIP Financing Agreement nor any payments made by Sources Périgny in consequence thereof constitutes prohibited financial assistance by Les Sources Périgny in favour of Eaux Vives Harricana Inc. pursuant to Division III of the *Quebec Companies Act*;

DECLARE that the Temporary DIP Loan, Temporary DIP Charge and Temporary DIP Security shall be deemed to be valid and effective notwithstanding any negative covenants, prohibitions or other similar provisions with respect to incurring debt or the creation of liens or security contained in any existing agreement between EVH and any lender, and that, notwithstanding any provision to the contrary in such agreements;

DECLARE that the Temporary DIP Lender and the directors of EVH shall have no liability to any person whatsoever as a result of any breach of any agreement caused by or resulting from EVH entering into the Temporary DIP Loan, the creation of the Temporary DIP Charge or the execution, assignment and delivery of the Temporary DIP Security;

DECLARE that the Temporary DIP Lender shall be treated as an unaffected creditor in these proceedings with regard to the Temporary DIP Loan, Temporary DIP Charge and Temporary DIP Security;

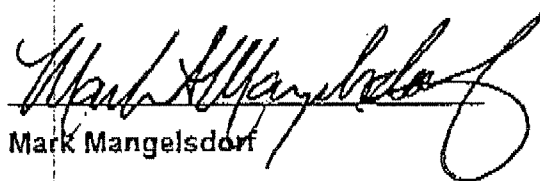
ORDER the provisional execution of the Order to be rendered herein notwithstanding appeal;

AFFIDAVIT

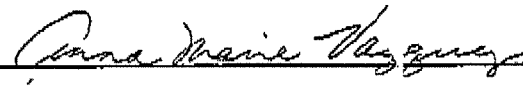
I, the undersigned, Mark Mangelsdorf, domiciled and residing at 304 Loring Avenue, Pelham, State of New-York, 10803 solemnly declare the following:

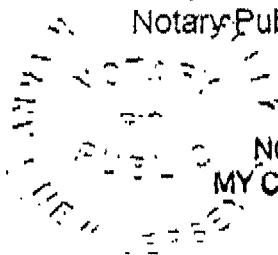
1. I am the Vice-President and General Manager of Eaux Vives Harricana Inc. and EVH U.S.A. Inc. and a duly authorized representative of Les Sources Périgny Inc.;
2. I have taken cognizance of the present Motion to Obtain an Order Approving a Temporary DIP Financing;
3. All the facts alleged in the present Motion are true.

AND I HAVE SIGNED


 Mark Mangelsdorf

SWORN TO BEFORE ME AT Wallington, New-Jersey, U.S.A.
the 9th day of June 2004


 Notary Public



ANNA MARIE VAZQUEZ
 NOTARY PUBLIC OF NEW JERSEY
 MY COMMISSION EXPIRES AUG. 1, 2006
 Bergen County

CANADA

PROVINCE DE QUÉBEC
DISTRICT DE MONTREAL

No: 500-11-022700-047

COUR SUPÉRIEURE

**DANS L'AFFAIRE DE
L'ARRANGEMENT DE:**

EAUX VIVES HARRICANA INC.

-et-

EVH U.S.A. INC.

-et-

LES SOURCES PÉRIGNY INC.

Requérantes

-et-

RSM RICHTER INC.

Contrôleur

CERTIFICAT D'AUTHENTICITÉ

Je, soussigné, **Louis-Martin O'Neill**, avocat, pratiquant ma profession au cabinet de Davies Ward Phillips & Vineberg s.r.l., ayant sa place d'affaires au 1501 avenue McGill College, 26^e étage, en la ville de Montréal, province de Québec, déclare solennellement ce qui suit :

1. Le 9 juin 2004 à 14h47, Davies Ward Phillips & Vineberg s.r.l. a reçu un affidavit daté du 9 juin 2004 et signé par monsieur Mark Mangelsdorf;
2. La copie de l'affidavit jointe à la présente est une copie conforme de l'affidavit reçu de Mark Mangelsdorf, résidant et domicilié au 304 Loring Avenue, Pelham, State of New-York, 10803. Le numéro de télécopieur est le (973) 249-3828.
3. Tous les faits allégués aux présentes sont vrais.

ET J'AI SIGNÉ :



NOTICE OF PRESENTATION

RSM RICHTER INC.
c/o **Mr. Yves Vincent**
2 Place Alexis-Nihon
3500, de Maisonneuve Blvd. West
22nd Floor
Montreal, Quebec H3Z 3C2

ROBBIE MANUFACTURING INC.
c/o: **Me Christopher Besant**
CASSELS BROCK
2100 Scotia Plaza
40 King Street West
Toronto, Ontario M5H 3C2

POULIOT MERCURE
c/o **Mr. Stéphane Hébert**
1155 René Lévesque blvd. W., 31 Floor
Montreal, Quebec H3B 3S6

GOODGOLL CURTIS INC.
c/o: **Me Barry Landy**
SPIEGEL SOHMER
5 Place Ville Marie, suite 1203
Montreal, Quebec H3B 2G2

TAKE NOTICE that the present Motion to Obtain an Order Approving a Temporary DIP Financing will be presented on **June 10, 2004**, 9:30 a.m. or so soon thereafter as Counsel may be heard, at Montreal Courthouse located at 1 Notre-Dame Street East in Montreal, Room 15.09.

MONTREAL, June 9, 2004

(S) Davies Ward Phillips & Vineberg LLP

DAVIES WARD PHILLIPS & VINEBERG LLP
Attorneys for Petitioners

COPIE CONFORME/TRUE COPY



DAVIES WARD PHILLIPS & VINEBERG

CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No: 500-11-022700-047

SUPERIOR COURT

(Sitting as tribunal designated under the
Companies' Creditors' Arrangement Act)

**IN THE MATTER OF THE
ARRANGEMENT OF:**

EUX VIVES HARRICANA INC.

-and-

EVH U.S.A. INC.

-and-

LES SOURCES PERIGNY INC.

Petitioners

-and-

RSM RICHTER INC.

Monitor

LIST OF EXHIBIT

Motion to Obtain an Order Approving a Temporary DIP Financing

EXHIBIT R-1: Term Sheet

MONTREAL, June 9, 2004

(S) Davies Ward Phillips & Vineberg L L P

DAVIES WARD PHILLIPS & VINEBERG LLP
Attorneys for Petitioners

No. 500-11-022700-047

S U P E R I O R C O U R T
District of Montreal

**IN THE MATTER OF THE ARRANGEMENT
OF:**

EAUX VIVES HARRICANA INC.

-and-

EVH U.S.A. INC.

-and-

LES SOURCES PÉRIGNY INC.

Petitioners

-and-

RSM RICHTER INC.

Monitor

LIST OF EXHIBIT
Motion To Obtain An Order Approving A
Temporary Dip Financing

COPY

Me Louis-Martin O'Neill
Davies Ward Phillips & Vineberg LLP
1501 McGill College Avenue, 26th Floor
Montréal, Québec H3A 3N9
Tel. 514.841.6400 Fax 514.841.6499

BP-0181

O/F 88345-107428

TERM SHEET FOR A TEMPORARY DIP FINANCING ARRANGEMENT
BETWEEN
FARMALAT CANADA LIMITED AND EAUX VIVES HARRICANA INC.,
EVH USA INC. AND LES SOURCES PERIGNY INC.

BORROWER: Eaux Vives Harricana Inc., EVH USA Inc. and Les Sources Périgny Inc. (the "Borrower")

LENDER: Parmalat Canada Limited (the "Lender")

AMOUNT: Up to a maximum of \$100,000, as such amount may be disbursed at the Lender's sole discretion further to its review of the Borrower's weekly cash requirements as the same will be laid-out in a detailed breakdown of the use of the proceeds to be submitted to the Lender at the latest on Thursday of the preceding week. For greater certainty, the Lender is under no obligation whatsoever to make any advance to the Borrower under this DIP Financing, nor does it have the obligation to advance the maximum amount referred to herein.

PURPOSE: Temporary Debtor in possession financing ("*DIP Financing*") to support, in the Lender's sole discretion, the operations and expenses (including any and all professional fees) of the Borrower until the filing of a plan of arrangement in accordance with the provisions of the *Companies' Creditors Arrangement Act* (Canada; the "*CCAA*") and the terms of an order of the Québec Superior Court, declaring *inter alia* the Borrower to be a company to which the CCAA applies (the "*Order*") and allowing for the granting of the security hereinafter referred to.

INTEREST: Prime Rate posted by the Toronto Dominion Bank plus 1%. Interest shall be payable from the day any amount is disbursed.

REPAYMENT: If not already prepaid, repayment in full at the Term.

TERM: The earlier of: (a) the closing of an agreement with respect to a DIP financing facility between the Borrower and a DIP Lender; and (b) the date that is three months following the date hereof; or any other date agreed to by Lender in its sole discretion.

CONDITIONS: Any advance to the Borrower under the DIP Financing, in whole or in part, shall be subject to, and conditional upon, the consent of the Lender, which consent may be withheld for any reason whatsoever. In addition, this DIP Financing and any advance made in accordance therewith are subject to the following:

- obtaining by the Borrower of an Order, the terms of which shall be satisfactory to Lender and its attorneys (i) authorizing the DIP Financing, (ii) declaring all of Borrower's present and future property to be charged in favour of the Lender as security for the repayment of the amounts loaned to Borrower pursuant to the DIP Financing, together with interest, fees, charges and other amounts payable in respect thereof (the "*Amount Owed*"), (iii) declaring that such charge and security shall have first priority over all of the undertaking, personal property and asset of the Borrower, ranking in priority to all other charges, (iv) declaring that this DIP Financing shall be deemed valid and effective notwithstanding, *inter alia*, any negative covenants,

prohibitions or other similar provisions and that, consequently, this DIP Financing and first ranking priority created in accordance thereto, cannot be challenged and (v) other orders customary to a DIP Financing.

SECURITY: Subject to the priority of the "Administration Charge" and the "Director's Charge" (as such terms are defined in the order of the Québec Superior Court rendered by Mr. Justice François Rolland, dated March 19, 2004, pursuant to which, *inter alia* the Borrower was provided protection under the CCAA, as the same may have been, or may in the future be, further extended, renewed amended, restated or supplemented), all Amounts Owed under this DIP Financing shall be senior in priority to any other indebtedness, liabilities and obligations of the Borrower arising either before or after the date of this Term Sheet, whether listed in the notice of application for an Order or otherwise.

EXPENSES: All legal costs, fees and out-of-pocket expenses relating to the drafting, negotiation and enforcement of the Credit Documents will be paid by the Borrower.

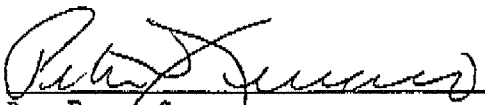
RISK OF SUPERIOR FORCE: The Borrower expressly assumes all risks of superior force, such that it shall be bound to timely execute each and every one of its obligations hereunder notwithstanding the existence or occurrence of any event or circumstance constituting a superior force within the meaning of Article 1693 of the *Civil Code of Quebec*.

GOVERNING LAW: The laws of the Province of Québec and the federal laws of Canada applicable therein.

If the terms of this offer are acceptable to you, please indicate your acceptance thereof by signing and returning a counterpart hereof to the undersigned by no later than June 9, 2004, at 5:00 p.m., after which time this offer shall be null and void.

DATED THIS 9th DAY OF June, 2004

PARMALAT CANADA LIMITED

PER: 
Peter Ferraro, Secretary

ACCEPTED ON THIS 9th DAY OF June, 2004

EAUX VIVES HARRICANA INC.

PER: Mark Allmendinger

ACCEPTED ON THIS 9th DAY OF June, 2004

LES SOURCES PERIGNY INC.

PER: Mark Allmendinger

ACCEPTED ON THIS 9th DAY OF June, 2004

EVH USA INC.

PER: Mark Allmendinger

No. 500-11-022700-047

S U P E R I O R C O U R T
District of Montreal

**IN THE MATTER OF THE ARRANGEMENT
OF:**

EAUX VIVES HARRICANA INC.

-and-

EVH U.S.A. INC.

-and-

LES SOURCES PÉRIGNY INC.

Petitioners

-and-

RSM RICHTER INC.

Monitor

EXHIBIT R-1
Motion To Obtain An Order Approving A
Temporary Dip Financing

COPY

Me Louis-Martin O'Neill
Davies Ward Phillips & Vineberg LLP
1501 McGill College Avenue, 26th Floor
Montréal, Québec H3A 3N9
Tel. 514.841.6400 Fax 514.841.6499

BP-0181

O/F 88345-107428

No. 500-11-022700-047

S U P E R I O R C O U R T
District of Montreal

IN THE MATTER OF THE ARRANGEMENT
OF:

EAUX VIVES HARRICANA INC.

-and-

EVH U.S.A. INC.

-and-

LES SOURCES PÉRIGNY INC.

Petitioners

-and-

RSM RICHTER INC.

Monitor

MOTION TO OBTAIN AN ORDER
APPROVING A TREMPORARY DIP
FINANCING

COPY FOR :
RICHTER & ASSOCIÉS INC.
c/o Mr. Yves Vincent
2 Place Alexis-Nihon
3500, de Maisonneuve Blvd. West
22nd Floor
Montréal, Québec H3Z 3C2

Me Louis-Martin O'Neill
Davies Ward Phillips & Vineberg LLP
1501 McGill College Avenue, 26th Floor
Montréal, Québec H3A 3N9
Tel. 514.841.6400 Fax 514.841.6499

BP-0181

O/F 88345-107428