

CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

SUPERIOR COURT  
(Commercial Division)  
(Sitting as a court designated pursuant to the  
*Bankruptcy and Insolvency Act*,  
R.S.C. 1985, c. B-3)

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

**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/Petitioners**

- and -

**RICHTER ADVISORY GROUP INC.**

**Trustee**

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**MOTION SEEKING THE APPROVAL OF A TRANSACTION AND THE ISSUANCE  
OF A VESTING ORDER**

**(Section 65(13) of the *Bankruptcy and Insolvency Act* (the "BIA"))**

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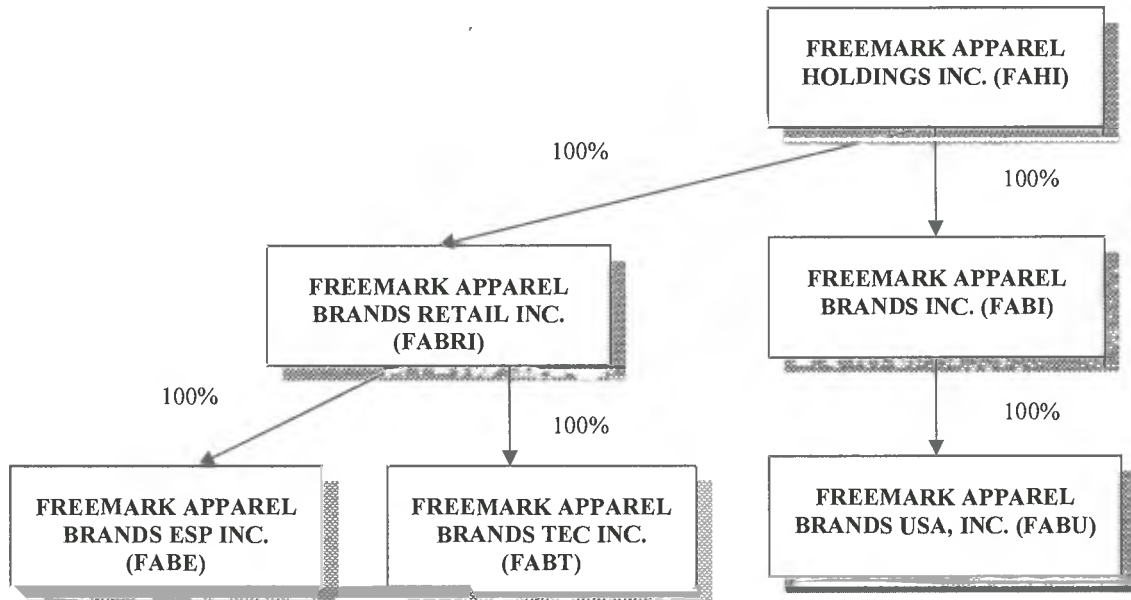
**TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT OR TO THE  
REGISTRAR, SITTING IN COMMERCIAL DIVISION, IN AND FOR THE JUDICIAL  
DISTRICT OF MONTRÉAL, THE PETITIONERS RESPECTFULLY SUBMIT THE  
FOLLOWING:**

**I. INTRODUCTION**

1. By the present motion, Freemark Apparel Brands ESP Inc. (“**FABE**”), Freemark Apparel Brands USA, Inc. (“**FABU**”), Freemark Apparel Brands Inc. (“**FABI**”) and Freemark Apparel Brands Tec Inc. (“**FABT**”) and collectively with FABE, FABI and FABU, the “**Debtors**”) seek, *inter alia*, an order approving the Transaction (as hereinafter defined), issuing a vesting order and allowing the distribution of certain proceeds.

**II. FACTUAL & PROCEDURAL BACKGROUND**

2. FABE with FABT are owned by Freemark Apparel Brands Retail Inc. (“**FABRI**”). FABRI is owned by Freemark Apparel Holdings Inc. (“**FAHI**”) which also own FABI which in turn owns FABU. FABI, FAHI, FABE, FABRI, FABT and FABU are collectively hereinafter defined as the “**FAB Group**”.
3. The FAB Group organizational chart can be represented as follows:



4. The FAB Group is a premier retailer of branded apparel, operating since 2004 (the “**Business**”). The Business can be considered more fully as follows:
- (i) As of February 17, 2017, FABE and FABT operated 58 retail locations throughout Canada under the following banners: Bench, Scotch & Soda, Esprit and Thread+Copper. FABT operated Bench, Scotch & Soda and Thread+Copper stores while FABE operated the Esprit stores;
  - (ii) FABI operates the wholesale business of the FAB Group in Canada. FABI has long-standing relationships with The Bay, Simons, Winners, Saks Off 5<sup>th</sup> and many other retailers;

- (iii) FABU operates the wholesale business of the FAB Group in the United States; and
  - (iv) The FAB Group has or had licensing agreements for the following world class brands: Bench, Scotch & Soda, Esprit and Garcia.
5. On February 17, 2017, each of the Debtors filed a notice of intention to make a proposal (the “**Notices**”) and Richter Advisory Group Inc. (“**Richter**”) was appointed trustee to the Notices.
  6. On February 23, 2017, this Court allowed the joint administration of the Notices of all the Debtors, the whole as it appears from this Court’s record. Therefore, this motion is filed in file 500-11-052107-170 (FABI), but also applies to files number 500-11-052108-178 (FABU), 500-11-052109-176 (FABT) and 500-11-052106-172 (FABE).
  7. On or around February 28, 2017, the Debtors disclaimed, in accordance with section 65.11 *BIA*, 31 underperforming leases.
  8. On March 9, 2017, this Court issued a vesting order in accordance with section 65.13 *BIA* pursuant to which FABI and FABT sold the Business that relates to the Scotch and Soda brand (the “**S&S Transaction**”), the whole as it appears from this Court’s record.
  9. On March 16, 2017, the Debtors presented a *First Motion for an Extension of Time to File a Proposal* which was granted by this Court. The Debtors had until April 28, 2017 to file their proposal, the whole as it appears from this Court’s record.
  10. On the same day, this Court granted an *Order Authorizing a Sale and Investment Solicitation Process*, the whole as it appears from this Court’s record.
  11. The milestones provided for in the *Sale and Investment Solicitation Process* (the “**SISP**”) were subsequently amended with the consent of Richter and HSBC Bank Canada (the “**Bank**”), the Debtors’ first ranking secured creditor. The revised key milestones are:
    - (i) Offers to be submitted by no later than April 28, 2017 (the “**Deadline**”);
    - (ii) Selection of the best offer(s) by no later than May 3, 2017 and;
    - (iii) Closing of the transaction(s) no later than May 19, 2017.
  12. On April 27, 2017, the Debtors presented a *Second Motion for an Extension of Time to File a Proposal* which was granted by this Court. The Debtors currently have until June 12, 2017 to file their proposal.

### **III. THE SECURED CREDITORS OF THE DEBTORS**

13. The Debtors only have two secured creditors, namely the Bank and FAHI.
14. As of the day of the filing of the Notices, the indebtedness of the Debtors towards the Bank was approximately CDN\$10,208,352 and US\$2,117,324. Following closing of the S&S Transaction, the Bank received a portion of the purchase price equal to \$1,300,000

(including taxes) which had the effect of reducing the amount of the indebtedness owed to the Bank. The Debtors and the Bank have entered into a Forbearance Agreement that expires on May 19, 2017, i.e. the day the closing of the transaction should occur.

15. As of the day of the filing of the Notices, the indebtedness of FABI and FABT towards FAHI was approximately \$10,700,000. However, FAHI subsequently advanced an additional amount of \$500,000 so as to finance, *inter alia*, the restructuring process. In consideration of said additional advance, the Debtors have granted additional security to FAHI to secure the additional advance.
16. As of May 2, 2017, the indebtedness of the FAB Group towards the Bank is approximately CA\$8,118,453.11 plus US\$ 1,171,061.19.
17. As of May 2, 2017, the indebtedness of FABI and FABT towards FAHI is approximately \$11,200,000.
18. The Bank and FAHI are supportive of this Motion and of the conclusions sought herein.

#### IV. THE SALE AND INVESTMENT SOLICITATION PROCESS

19. Following the approval of the SISP by this Court, the Debtors together with Richter took the following steps:
  - (i) Finalized a list of potential purchasers and investor for the assets of the Debtors;
  - (ii) Created a virtual data room containing all relevant information concerning the Debtors' business and operations (the "**Data Room**");
  - (iii) Prepared a draft non-disclosure agreement to be signed by each prospective purchaser or investor in order to access the Data Room; and
  - (iv) Prepared and issued solicitations of offers to over 300 potential purchasers or investors, advising them of the salient terms of the SISP, including the fact that all offers in respect of the Property had to be submitted to Richter by the Deadline. Receipt was confirmed for 76 parties, consisting of potential strategic acquirers (35), financial investors (23) and liquidators (18).
20. In total, 20 interested parties agreed to execute, in accordance with the SISP, a non-disclosure agreement allowing them to access the Data Room.
21. On April 28, 2017, Richter received three (3) offers in accordance with the SISP. Richter, in consultation with the Bank and without the involvement of the Debtors or their counsel, ultimately concluded that the offer from 10036331 Canada Inc. (the "**Purchaser**") represented the best offer, as more fully detailed below. A copy of said offer (the "**Offer**") will be communicated under seal as Exhibit R-1.
22. The Offer is substantially more beneficial than the other offers received given that the transaction contemplated by the Offer:

- (i) provides for a “going concern” transaction (while the other two (2) offers contemplate a complete liquidation of inventory and store closures) which will allow, *inter alia*, several hundred employees to retain their jobs; and
  - (ii) repays or assumes all secured indebtedness while the highest liquidation offer may not have repaid in full the first ranking secured creditor.
23. After review by Richter of the Offer, Richter determined that the Offer complies with all of the conditions set forth under the SISP.

V. THE CONTEMPLATED TRANSACTION

24. The Purchaser is a related entity to the Debtor. As demonstrated below, the Debtors respectfully submit that the specific conditions set forth in section 65.13 *BIA* are met given that, *inter alia*, the aggregate consideration payable under the Offer is superior by several millions dollars to the other offers received and good faith efforts were made to sell the assets to person who are not related to the Debtors.
25. In the Offer, the Purchaser seeks to acquire substantially all the assets of the Debtors (the “**Purchased Assets**”). The Purchased Assets include, without limitation, all the accounts receivable, the inventory, the equipment, the intellectual property, certain specific contracts (the “**Assumed Contracts**”), certain specific leases (the “**Purchased Leases**”), all permits and licenses, the books and records, the prepaid expenses and deposits and the goodwill, the whole as more fully appeared from Exhibit R-1.
26. The material terms of the transaction, as set out in the Offer (the “**Transaction**”) are as follows:
- (i) the purchase price shall be the aggregate amount of (a) the entire indebtedness of the Debtors towards the Bank as at the Closing Date (b) the entire indebtedness of the Debtors towards FAHI as at the Closing Date (or any other mutually acceptable agreement between FAHI and the Debtor) and (c) certain assumed liabilities which are listed at Schedule C of the Offer and include only obligations which were incurred and became due after the filing of the Notices (save and except for obligations incurred and/or accrued prior to the date of the filing of the Notices in respect of employees which are being assumed by the Purchaser) (collectively, the “**Assumed Liabilities**”);
  - (ii) the Purchased Assets must be free of all liens or other encumbrances;
  - (iii) the Purchased Assets are being sold on an “as is, where is” basis;
  - (iv) the Purchaser shall not assume any liabilities of the Debtors other than the Assumed Liabilities;
  - (v) the Assumed Contracts and the Purchased Leases must be assigned to the Purchaser either through a voluntary assignment or through the vesting order sought herein;
  - (vi) this Court shall issue the Vesting Order sought herein;

- (vii) the Transaction shall close by no later than May 19, 2017.
27. As a result of the completion of the Transaction, the Debtors will have disposed of all or substantially all of their assets to the Purchaser.
28. In light of the foregoing, it is submitted that the Transaction represents the best offer under the circumstances given that:
- (i) The Transaction will allow the repayment in full of all of the Debtors' secured creditors;
  - (ii) The Transaction will save a substantial number of jobs which is not the case of the other offers received;
  - (iii) The Transaction is beneficial to the suppliers and the majority of the Debtors' landlords than the other offers received; and
  - (iii) The Transaction is for a substantially greater considerations than the other offers received.
29. For the reasons set forth above, the Debtors with the support of Richter, the Bank and FAHI submit that the Transaction should be approved in accordance with the terms of the draft Approval and Vesting Order.
30. Bench has already agreed to the assignment of their respective licence which is an essential element for a going concern sale and a condition to closing of the Transaction.
31. Richter will file in advance of the hearing on this Motion a report describing the SISP undertaken as well as its recommendation to have the Transaction approved by this Court.
32. As will appear from its report, Richter is of the view that the SISP was conducted in a fair and open manner, that the market was properly canvassed and that all interested parties were provided the opportunity to perform adequate due diligence and submit their highest and best offer.
33. Richter is of the view that the Offer presented by the Purchaser provides the greatest benefit to all stakeholders of the Debtors.

V. CONCLUSIONS

34. Given the foregoing, the Debtors are respectfully seeking this Court's approval for:
- a) the authorization to complete the sale of the Purchased Assets and proceed with the closing of the Transaction and vesting in and to the Purchasers all of the right, title and interest in and to the Purchased Assets free and clear of all claims, liens, hypothecs, security interests and other encumbrances, as set out more specifically in the Vesting Order;

- b) the assignment of the Assumed Contracts and the Purchased Leases listed at Schedule B of the Vesting Order; and
  - c) all necessary orders of this Court so as to allow for the closing of the Transaction.
35. The Debtors with the consent of Richter are also seeking the authorization of this Court to pay, from the net proceeds of the Transaction, the entire indebtedness owed to the Bank as of the day of the closing of the Transaction.
36. The Debtors will now work on whether or not they will be able to formulate a proposal to their unsecured creditors.
37. The Debtors have acted and are acting in good faith and with due diligence.
38. The present motion is well founded in fact and in law.

**FOR THESE REASONS, MAY IT PLEASE THE COURT TO:**

**GRANT** the present *Motion Seeking the Approval of a Transaction and the Issuance of a Vesting Order* (the “**Motion**”);

**RENDER** a Vesting Order substantially in the form of the order communicated in support of the Motion as Exhibit R-2;

**ORDER** the provisional execution of the judgment to be rendered on the Motion notwithstanding appeal.

**ORDER AND DECLARE** that this Order shall also apply to files bearing the court numbers 500-11-052108-178, 500-11-052109-176 and 500-11-052106-172, as if it were rendered in such court files

**THE WHOLE**, without costs, save in the event of a contestation.

MONTREAL, May 9, 2017

*Daren Ward*

*Phillips & Vineberg*

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**DAVIES WARD PHILLIPS & VINEBERG LLP**

Attorneys for the Debtors.

**AFFIDAVIT**

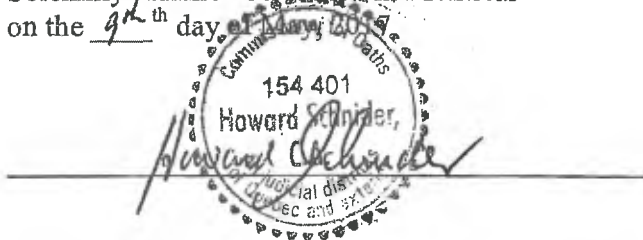
I, the undersigned, Michael Routtenberg, Vice-President of the Debtors, having a place of business at 5640 Paré Street in the City of Mont-Royal, Québec, solemnly declare the following:

1. I am the Vice-President of the Debtors/Petitioners herein and I am duly authorized for the purposes hereof;
2. I have taken cognizance of the attached *Motion Seeking the Approval of a Transaction and the Issuance of a Vesting Order*;
3. All the facts alleged in the said motion are true.

AND I HAVE SIGNED



Solemnly affirmed before me in Montreal  
on the 9<sup>th</sup> day of May, 2015



154 401  
Howard Schneider,  
Notary Public  
Quebec and s.c.



**NOTICE OF PRESENTATION**

**TO THE SERVICE LIST**

**TAKE NOTICE** that the *Motion Seeking the Approval of a Transaction and the Issuance of a Vesting Order* will be presented for hearing and allowance at 8:45 a.m. on May 12, 2017 in room 16.10 in the Montréal Courthouse, located at 1 Notre-Dame Street East, in the City of Montréal, Province of Québec, or so soon thereafter as Counsel may be heard.

**DO GOVERN YOURSELF ACCORDINGLY.**

MONTRÉAL, May 9, 2017

*Davies Ward  
Phillips & Vineberg*

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**DAVIES WARD PHILLIPS & VINEBERG LLP**  
Attorneys for the Debtors

Nos. 500-11-052107-170 / 500-11-052106-172  
500-11-052109-176 / 500-11-052108-178  
**SUPERIOR COURT**  
Commercial Division/District of Montréal

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INTENTION TO MAKE A PROPOSAL OF:**

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FREEMARK APPAREL BRANDS USA  
FREEMARK APPAREL BRANDS INC.  
FREEMARK APPAREL BRANDS TEC INC.**

Debtors/Petitioners

- and -

**RICHTER ADVISORY GROUP INC.**

Trustee

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**MOTION SEEKING THE APPROVAL OF A  
TRANSACTION AND THE ISSUANCE OF A  
VESTING ORDER, AFFIDAVIT AND NOTICE  
OF PRESENTATION**

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**ORIGINAL**

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