

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

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

SUPERIOR COURT
(Commercial Division)
(Sitting as a court designated pursuant to
the *Bankruptcy and Insolvency Act*,
R.S.C. 1985, c. C-36)

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 ADVISORY GROUP INC.

Trustee

-and-

THE REGISTRAR OF THE REGISTER
OF PERSONAL AND MOVABLE REAL
RIGHTS

Mis-en-cause

MOTION FOR THE ISSUANCE OF AN ORDER APPROVING A TRANSACTION
AND ORDERING THE ASSIGNMENT OF AGREEMENTS (sections 65.13 and 84.1
of the *Bankruptcy and Insolvency Act*, R.C.S. 1985 c. B-3 (the "BIA"))

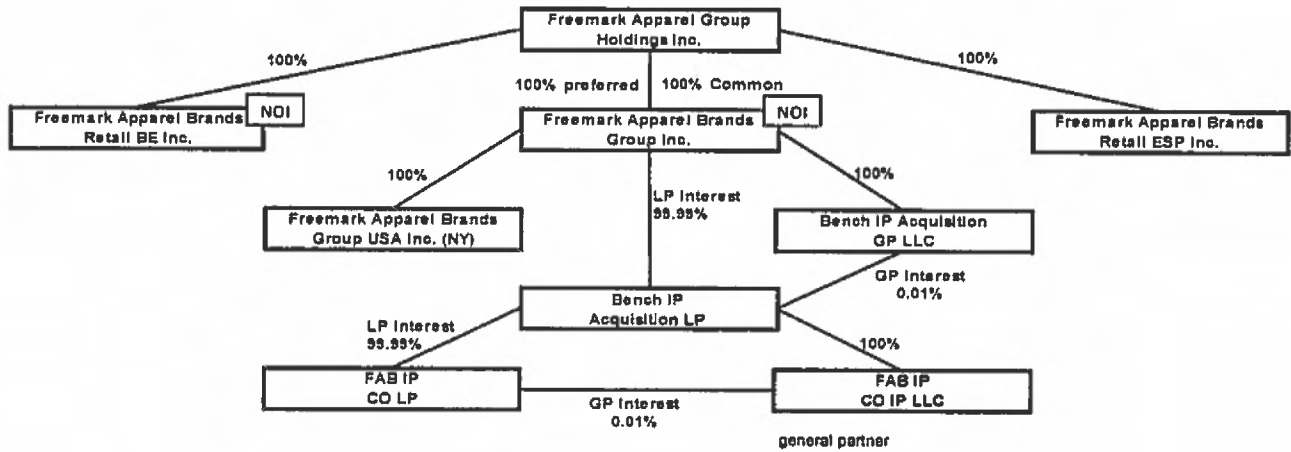
TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT OR THE REGISTRAR, SITTING IN COMMERCIAL DIVISION, IN AND FOR THE JUDICIAL DISTRICT OF MONTRÉAL, THE DEBTORS RESPECTFULLY SUBMIT THE FOLLOWING:

I. INTRODUCTION AND RELIEF SOUGHT

1. On January 21, 2020, Freemark Apparel Brands Retail BE Inc. ("FAB Retail") and Freemark Apparel Brands Group Inc. ("FAB Wholesale" and, together with FAB Retail, the "Debtors") each filed a Notice of intention to make a proposal ("NOI") under the relevant provisions of the BIA and Richter Advisory Group Inc. ("Richter") was appointed as trustee thereto, as appears from the record of this court.
2. On February 20, 2020, this court extended the delay for the Debtors' to file a proposal to April 3, 2020, as appears from the record of this court.
3. By the present Motion, the Debtors seek the issuance of an order approving the Proposed Transaction (as defined below) between the Debtors and 11951432 Canada Inc. (the "Purchaser"), substantially in the form of the draft order communicated herewith as Exhibit R-1 (the "Draft Order").

II. BACKGROUND AND OPERATIONS

4. The Debtors are companies governed by the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44, incorporated in 2017. Their registered office is located in Montreal.
5. The organizational chart for the FAB group of companies (the "FAB Group"), which includes the two Debtors, can be represented as follows:



6. The FAB Group is a retailer and wholesaler of branded apparel.
7. FAB Retail operates a clothing retail business from a total of 25 retail locations throughout Canada under the Bench brand (the "Stores") and online.

8. FAB Wholesale operates the wholesale business of the FAB Group. FAB Wholesale has relationships with The Bay, Simons, Costco, Winners, Saks Off 5th and many other retailers.
9. In 2018, FAB Wholesale purchased from an affiliate of Gordon Brothers Brands, LCC ("**GBB**") certain intellectual property and other rights related to the "Bench" brand with respect to Canada, the United States and certain other jurisdictions in the Americas (the "**Bench Americas IP**"). The "Bench" trademarks and other intellectual property rights for Mexico and Brazil are not included in the Bench Americas IP.
10. The Bench Americas IP is currently held through FAB Wholesale's indirect wholly owned affiliate FAB IP CO LP ("**FAB IP**").
11. The intellectual property and other rights relating to the "Bench" brand for those territories not included within the Bench Americas IP (including Mexico and Brazil) (the "**Bench ROW IP**") are currently owned by Bench IP Holdings LLC ("**Bench IP Holdings**"), an affiliate of GBB.
12. Pursuant to a Put/Call and Special Option Agreement (the "**Put/Call Agreement**") entered into between FAB Wholesale and GBB and dated as of October 18, 2018, FAB Wholesale has the right to acquire the Bench ROW IP (the "**Special Call Option**") for a set price (the "**Special Option Price**") and the right (i) to designate a third party who shall pay for and acquire the Bench ROW IP and/or (ii) to assign its rights and obligations under the Put/Call Agreement in favour of such third party. A copy of the Put/Call and Special Option Agreement is communicated herewith as **Exhibit R-2**.
13. Under the terms of the Put/Call Agreement:
 - (i) the deadline to exercise the Special Call Option is April 18, 2020. As explained below, the Special Call Option has been exercised on March 16, 2020;
 - (ii) to exercise the Special Call Option, FAB Wholesale must send a notice to GBB stating that it intends to exercise the Special Call Option and specifying a date for the exercise of the Special Call Option, which cannot be earlier than ten (10) but not more than thirty (30) business days after such notice is deemed to be delivered;
 - (iii) all of the Debtors' indebtedness to GBB under the GBB Loan Agreement (as defined below) and a prepayment premium equal to 10% of the outstanding principal balance at the time of repayment must be paid concurrently with the payment of the Special Call Option; and

- (iv) GBB has the right to require FAB Wholesale to purchase the Bench ROW IP at any time during the period commencing on July 1, 2021 and ending on July 1, 2023.

III. INDEBTEDNESS AND OBLIGATIONS

14. The Debtors' only secured creditors are Accord Financial Inc. ("**Accord**"), GBB and Freemark Apparel Holdings Inc. ("**FAHI**").

(i) **Accord Financial Inc.**

15. Accord, the Debtors and other related entities are party to a Loan Agreement dated as at May 12, 2017, as amended (the "**Accord Loan Agreement**").
16. As at the date of this Motion, the advances under the Accord Loan Agreement amount to approximately \$10.2 million.
17. The Debtors' obligations under the Accord Loan Agreement are secured by first ranking security and liens on substantially all of the Debtors' assets, with the exception of the GBB Collateral (as defined below).
18. As a result of the Debtors' insolvency and the imminent filing of the NOIs, on January 21, 2020, Accord, the Debtors and other related entities entered into a forbearance agreement (the "**Forbearance Agreement**").
19. The Forbearance Agreement was necessary to ensure that the Debtors would have access to financing during the NOI proceedings.

(ii) **GBB**

20. As at January 21, 2020, the Debtors owed approximately US \$4,534,000 to GBB pursuant to a loan, guarantee and security agreement dated as of October 18, 2018 (the "**GBB Loan Agreement**") in respect of a term loan used for the purchase of Bench Americas IP. A copy of the GBB Loan Agreement is communicated herewith as **Exhibit R-3**.
21. The Debtors' obligations to GBB pursuant to the GBB Loan Agreement are secured by, notably:
- (a) first ranking security and liens on (i) the Bench Americas IP and all of the present and future personal property of FAB IP, Bench IP Acquisition LP, Bench IP Acquisition GP, LLC and FAB IP CO GP (collectively, the "**FAB Bench Parties**") and (ii) FAB Wholesale's equity interest in the FAB Bench Parties and each of FAB Bench Parties' equity interest in any other of the FAB Bench Parties (the "**GBB Collateral**"); and
 - (b) Security and liens on substantially all of the Debtors' assets other than the GBB Collateral, which security and liens are fully subordinated to Accord's security.

(iii) FAHI

22. As at January 21, 2020, the Debtors owed approximately CA \$14,686,335 to FAHI in respect of shareholder loans.
23. The Debtors' indebtedness to FAHI is secured by security and liens on substantially all of the Debtors' assets and subordinated to Accord's and GBB's security.

(iv) Unsecured Creditors

24. As at January 21, 2020 (the date of the filing of the NOI), FAB Retail owed an aggregate amount of approximately CA \$738,000 to various unsecured creditors, including trade creditors such as suppliers and Landlords. As at January 21, 2020 (the date of the filing of the NOI), FAB Wholesale owed an aggregate amount of approximately CA \$5.2 million to various unsecured creditors. The actual amounts owing to the Debtors' unsecured creditors may vary once a claims process has been put in place.

IV. EVENTS LEADING TO THE PRESENT MOTION

(i) The Sale and Investment Solicitation Process

25. On February 7, 2020, the Debtors, with the assistance of Richter, launched a sale and investment solicitation process (the "SISP") in respect of the Debtors' property including notably:
 - (i) the Bench Americas IP;
 - (ii) the right to cause FAB Wholesale to exercise the Special Call Option and to designate a third party who shall pay for and acquire the Bench ROW IP; and
 - (iii) the order book owned by FAB Wholesale.
26. As mentioned above, the Bench ROW IP is currently owned by an affiliate of GBB, Bench IP Holdings. In order to complete a transaction with respect to the Bench ROW IP, FAB Wholesale is permitted under the terms of the Put/Call Agreement to exercise the Special Call Option and, subsequently, to designate a purchaser to pay the Special Option Price directly to GBB and acquire the Bench ROW IP. In essence, pursuant to the SISP, the potential bidders were requested to offer to pay a fee to FAB Wholesale to be designated as purchaser under the Special Call Option.
27. The SISP was launched with the issuance of a teaser to approximately 62 potentially interested parties consisting of strategic buyers and financial investors. A copy of the teaser is communicated herewith as **Exhibit R-4**.

28. Richter created a virtual data room with the necessary information to enable interested parties to evaluate the Debtors' property (the "Data Room").
29. During the course of the SISP, a total of seventeen (17) parties have signed a confidentiality agreement and have been granted access to the Data Room. In addition, Richter and the Debtors have responded to information requests from interested parties.
30. The deadline to submit an offer was initially set to March 6, 2020, at noon eastern time.
31. On March 4, 2020, the Debtors, in consultation with Richter, decided to extend the deadline for the submission of offers to March 13, 2020, and Richter informed all potential bidders of this extension.
32. On March 13, 2020, Richter received only one offer in accordance with the SISP. Richter, in consultation with Accord, and without the involvement of the Debtors or their counsel, concluded that the transaction contemplated in the offer submitted by the Purchaser was in the best interest of the Debtors' stakeholders, for the reasons more fully explained below.
33. Further to discussions between the Purchaser, the Debtors, Richter and Accord, the Purchaser submitted an amended and restated offer to Purchase (the "Purchase Offer"). A copy of the Purchase Offer is communicated herewith, *under seal*, as **Exhibit R-5**.

(ii) Negotiations with GBB

34. Since the filing of the NOIs, the Debtors have had discussions with GBB regarding a possible forbearance agreement, which the Debtors hoped would allow them to complete the SISP and enter into a transaction regarding the Bench Americas IP and the Bench ROW IP with the cooperation of GBB.
35. Throughout these discussions, GBB has indicated that it would not forbear unless the Debtors agree to pay a material inducement.
36. The Debtors have made certain offers to GBB, which have not been accepted.
37. On February 11, 2020, GBB has indicated that it would hire an investment/advisory firm to market the Bench Americas IP for a public disposition pursuant to Article 9 of the *Uniform Commercial Code* (the "**Competing Process**"), as appears from a copy of a letter communicated herewith as **Exhibit R-6**.
38. On February 18, 2020, the Debtors asked GBB to suspend the Competing Process to allow the SISP to proceed, as they believe that the Competing Process is duplicative and unnecessary and will lead to confusion among interested parties, as appears from a copy of a letter communicated herewith as **Exhibit R-7**.

39. On February 21, 2020, GBB indicated that it would proceed with the Competing Process and that was retaining Hilco Streambank ("**Hilco**") to market the Bench Americas IP, as appears from a copy of a letter communicated herewith as **Exhibit R-8**.
40. During the following weeks, hoping that GBB would wait for the outcome of the SISP before launching the Competing Process, FAB and Richter offered their entire and complete cooperation to Hilco and, among other things, provided information and documents requested by Hilco and granted access to the Data Room, for the purposes of marketing the Bench Americas IP.
41. On March 11, 2020, GBB notified FAB that, despite the cooperation offered by FAB and Richter, it would conduct, through Hilco, a disposition of the Bench Americas IP by public sale on March 30, 2020, as appears from a copy of a notice communicated herewith as **Exhibit R-9**. Such notice was totally unexpected and was sent at a time when GBB knew everything about the SISP and its timeline.
42. On March 16, 2020, following the receipt of the Purchase Offer, FAB Wholesale notified GBB of its intention to exercise the Special Call Option and indicated that the closing date would be March 30, 2020, as appears from a copy of a notice communicated herewith as **Exhibit R-10**.
43. On March 20, 2020, FAB Wholesale sent a letter to GBB outlining the terms of the Offer to Purchase, and confirmed that it would lead to the complete repayment of FAB Wholesale's indebtedness to GBB and that the sums required to do so were held in trust, as appears from a copy of a letter communicated herewith as **Exhibit R-11**.

V. THE PURCHASE OFFER AND THE PROPOSED TRANSACTION

44. The Purchaser is related to the Debtors. As demonstrated below, the Debtors submit that the specific conditions set forth in paragraph 65.13(5) *BIA* are met given that, *inter alia*, the Purchase Offer is the only offer received pursuant to the SISP and that good faith efforts were made to dispose of the Purchased Assets (as defined below) to persons who are not related to the Debtors.
45. The Purchase Offer contemplates the purchase of the following assets of FAB Wholesale (collectively, the "**Purchased Assets**"):
 - (a) the Bench Americas IP, through the acquisition of (i) the limited partnership interests in FAB IP and (ii) all of the membership interests in FAB IP CO GP LLC, which are indirectly held by FAB Wholesale;
 - (b) the right to cause FAB Wholesale to nominate Wraith Holdings International Limited ("**Wraith**"), the Purchaser's designee, as purchaser under the Special Call Option to purchase the Bench ROW IP either by way of the acquisition of (i) the interests in Bench IP Holdings or (ii) the Bench ROW IP assets (the "**FAB IP Conveyance**");

- (c) the Canadian wholesale orders placed with FAB Wholesale set forth in Schedule "A" to the Purchase Offer (the "**Purchase Orders**"), along with the underlying inventory purchase orders required to fulfil such Purchase Orders. The Purchase Orders exclude any Canadian wholesale orders placed with FAB Wholesale and shipped to Costco on or prior to April 26, 2020 and further excludes all bookings for products to fulfil such excluded purchase orders and excludes all present and future inventory of products that are intended for such excluded purchase orders (the "**Excluded Purchase Orders and Inventory**"); and
 - (d) the asset set forth in Schedule "B" to the Purchase Offer, to the extent not owned by FAB IP.
46. The material terms of the transaction contemplated in the Purchase Offer (the "**Proposed Transaction**") may be summarized as follows:
- (a) the purchase price for the Purchased Assets (the "**Purchase Price**") consists of the following:
 - (i) an amount equal to the entire indebtedness, as at the Closing Date (as defined below), of FAB Wholesale owing to GBB, payable in cash;
 - (ii) the partial payment and partial assumption by the Purchaser of the indebtedness of FAB Wholesale to Accord by a term loan, with such conditions as to repayment, security, guarantees and otherwise as is agreed between Accord and the Purchaser; and
 - (iii) the right (but not the obligation) to assume up to of \$12,500,000 of the indebtedness of FAB Wholesale currently owing to FAHI, as agent, on a secured basis with the consent of FAHI or any other mutually acceptable agreement between FAHI and the Purchaser;
 - (b) the Purchased Assets are being sold without any warranty whatsoever implicit or explicit, legal or conventional, statutory or otherwise, and solely at the Purchaser's risk and peril, on an "as is where is basis";
 - (c) the Purchased Assets must be free and clear of any lien or encumbrances;
 - (d) the Proposed Transaction is conditional upon:
 - (i) the issuance by this Court of an order substantially in the form of the Draft Order (Exhibit R-1), which order has become final or is executory notwithstanding appeal;
 - (ii) the assignment of the sublicenses set forth in Schedule "C" to the Purchase Offer by FAB Wholesale to FAB IP;
 - (iii) an agreement with Accord as to the matters set forth in paragraph 45(a)(ii) above;

- (iv) an agreement with FAHI as to the matters set forth in paragraph 45(a)(iii) above;
 - (v) the termination of the Merchandise and Retail License Agreement entered into as of October 18, 2018 between FAB IP and FAB Wholesale (the "**Internal License Agreement**"), subject to the Sell-Off Right (as defined below);
 - (vi) the execution by the Purchaser and FAB Wholesale of a mutually acceptable bill of sale with respect to the Purchase Orders and to the assets set forth in Schedule "B" to the Purchase Offer and the assignment to the Purchaser of the Purchase Orders (either through a voluntary assignment or through a court order);
 - (vii) the delivery at closing, by GBB, of (a) a payout letter setting forth all amounts owing to GBB pursuant to the GBB Loan Agreement, (b) release and discharge of all of its security granted or registered pursuant to the GBB Loan Agreement; and (c) release and discharge of all claims against the Debtors and their affiliates who are party to the GBB Loan Agreement, their respective subsidiaries, shareholders and directors;
 - (viii) completion of the FAB IP Conveyance;
 - (ix) the exercise of the Special Call Option by FAB Wholesale and the nomination of Wraith as the purchaser of the Bench ROW IP and the completion of the acquisition of the Bench ROW IP by Wraith; and
 - (x) the absence of any material adverse change affecting FAB Wholesale between the execution of the Purchase Offer and the Closing Date (as defined below) as determined by the Purchaser acting reasonably;
- (e) the Proposed Transaction is not conditional upon any additional due diligence;
 - (f) the Purchaser shall have the right to acquire from FAB Wholesale at FAB Wholesale's full landed cost inventory remaining on hand after April 26, 2020 that the Purchaser requires to fulfill the Purchase Orders; and
 - (g) the closing of the Proposed Transaction must take place by no later than March 30, 2020 (the date on which the closing is scheduled to take place is referred to as the "**Closing Date**").
47. Pursuant to the Purchase Offer, notwithstanding the termination of the Internal License Agreement, FAB Wholesale, Accord, and any receiver appointed by Accord or any trustee in bankruptcy appointed in respect of FAB Wholesale, will

- be entitled to sell all of the remaining Bench branded products, including Bench branded products on order and not yet delivered, within Canada, on a non-exclusive and royalty-free basis, for such time period as may be required (the "Sell-Off Right").
48. An amount sufficient to repay FAB Wholesale's indebtedness to GBB is currently held in trust by the undersigned counsel and Shoosmiths LLP.
 49. The Debtors respectfully submit that the Proposed Transaction clearly represents the best alternative in the present circumstances given that:
 - (a) No other offers were received pursuant to the SISP;
 - (b) The Proposed Transaction allows for the repayment in full of FAB Wholesale's indebtedness to GBB;
 - (c) The Proposed Transaction allows for the repayment and the assumption of a substantial portion of FAB Wholesale's secured indebtedness to Accord;
 - (d) The Proposed Transaction is not subject to any additional due diligence; and
 - (e) The Proposed Transaction is not subject to any financing condition.
 50. The Debtors respectfully submit that, through the SISP, considerable good faith efforts have been made to dispose of the Purchased Assets to persons who are not related to the Debtors.
 51. The Debtors have been informed that Richter will file a report which will confirm that it supports the Proposed Transaction and that it is of the view that the Proposed Transaction will yield better results for the stakeholders of FAB Wholesale than any other conceivable scenario in the present circumstances.
 52. Two of FAB Wholesale's secured creditors, Accord and FAHI, support the Proposed Transaction. FAB Wholesale's only other secured creditor, GBB, will be repaid in full pursuant to the Proposed Transaction.
 53. The Debtors are of the view that the value of the worldwide Bench trademark portfolio (i.e. the Bench Americas IP and the Bench ROW IP) is greater if sold as a whole than separately. As mentioned above, GBB has launched a Competing Process and has threatened to conduct a disposition of the Bench Americas IP by public sale on March 30, 2020. The Debtors submit that the Proposed Transaction is the only transaction which can reasonably be expected to allow for the full repayment of GBB in time to avoid the disposition by GBB of the Bench Americas IP separately, and thereby allow for the realization of the full value of the Bench trademark portfolio.
 54. For these reasons, the Debtors, with the support of Richter, respectfully submit that the Proposed Transaction should be approved by this court in accordance with the terms of the Draft Order (Exhibit R-1).

VI. CONCLUSION

55. The Debtors respectfully submit to this Court that the Proposed Transaction is the best possible outcome in the circumstances and that they should be authorized to enter into the Proposed Transaction.
56. The implementation of the Proposed Transaction is conditional upon and requires the issuance of an order substantially in the form of the Draft Order.
57. Accord and FAHI, two of the Debtors secured creditors, as well as Richter, have informed the Debtors that they are supportive of the present motion and of the order sought therein.
58. The Debtors respectfully submit that GBB will not suffer any prejudice from the Proposed Transaction or the Draft Order, and in fact will benefit from it, given that its indebtedness will be completely repaid.
59. In light of the foregoing, the Debtors respectfully submit that the present Motion should be granted and that an order substantially in the form of the Draft Order should be issued.
60. Given the urgency, it is respectfully requested that this Court order the provisional execution of the Draft Order notwithstanding any appeal.
61. The present Motion is well founded in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

GRANT the present *Motion for the Issuance of an Order Approving a Transaction and Interim Financing and Ordering the Assignment of Agreements* (the "**Motion**");

ISSUE an order substantially in the form of the draft order filed in support hereof as **Exhibit R-1**;

THE WHOLE, without costs, save in case of contestation.

MONTREAL, March 23, 2020



DAVIES WARD PHILLIPS & VINEBERG LLP
Counsel for Freemark Apparel Brands Retail BE
Inc. and Freemark Apparel Brands Group Inc.

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT
(Commercial Division)
(Sitting as a court designated pursuant to the
Bankruptcy and Insolvency Act (the "BIA"),
R.S.C. 1985, c. C-36)

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

IN THE MATTER OF THE NOTICE OF
INTENTION TO MAKE A PROPOSAL OF:

FREEMARK APPAREL BRANDS RETAIL BE
INC.

-and-

FREEMARK APPAREL BRANDS GROUP INC.

Debtors/Petitioners

- and -

RICHTER ADVISORY GROUP INC.

Trustee

ATTESTATION OF AUTHENTICITY

I, the undersigned, Gabriel Lavery Lepage, attorney, practising my profession with the law firm of Davies Ward Phillips & Vineberg LLP, having its principal place of business at 1501 McGill College Avenue, 26th Floor, in the City and District of Montréal, Province of Québec, solemnly affirm that:

1. On March 23, 2020, at 1:01 p.m., Davies Ward Phillips & Vineberg LLP received by email an Affidavit signed by Lawrence Routtenberg, dated March 23, 2020, a copy of such Affidavit is attached to this Attestation of Authenticity;
2. All the facts alleged herein are true.

AND I HAVE SIGNED:

Gabriel Lavery Lepage

SOLEMNLY DECLARED BEFORE ME,
in the City of Montréal, Province of Québec
on this 23rd day of March, 2020

Commissioner of Oaths



AFFIDAVIT

i, the undersigned, Lawrence Routtenberg, co-president of Freemark Apparel Brands Retail BE Inc. and Freemark Apparel Brands Group Inc., having a place of business at 5840, Paré Street, in the City of Mont-Royal, Quebec, solemnly declare the following:

1. I am the co-president of the Debtors/Petitioners herein and I am duly authorized for the purposes hereof;
2. I have taken cognizance of the attached *Motion for the Issuance of an Order Approving a Transaction and Ordering the Assignment of Agreements*;
3. All the facts alleged in the said motion are true.

AND I HAVE SIGNED



LAWRENCE ROUTTENBERG

Solemnly affirmed before me in Montréal
on the 23 th day of March, 2020



Howard Schneider
154 401
Notary Public
Québec

NOTICE OF PRESENTATION

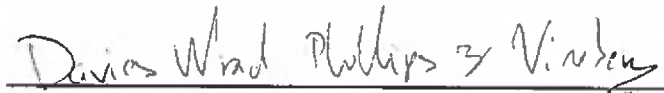
TO: The Service List

TAKE NOTICE that the attached *Motion for the Issuance of an Order Approving a Transaction and Ordering the Assignment of Agreements* will be presented for hearing and allowance on March 26, 2020 at 9:30 am, exclusively by phone, using the dial-in below or so soon thereafter as counsel may be heard:

514 736-8048
Code : 2677141

DO GOVERN YOURSELF ACCORDINGLY.

MONTREAL, March 23, 2020



DAVIES WARD PHILLIPS & VINEBERG LLP
Counsel for Freemark Apparel Brands Retail BE
Inc. and Freemark Apparel Brands Group Inc.

C A N A D A

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. C-36)

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

**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 ADVISORY GROUP INC.

Trustee

**LIST OF EXHIBITS
(Motion for the Issuance of an Order Approving a Transaction and Ordering the
Assignment of Agreements)**

EXHIBIT R-1	Draft Order Approving a Transaction and Ordering the Assignment of Agreements
EXHIBIT R-2	Copy of a Put/Call and Special Option Agreement dated as of October 18, 2018
EXHIBIT R-3	Copy of a Loan, Guarantee and Security Agreement dated as of October 18, 2018 (under seal)
EXHIBIT R-4	Copy of a teaser

- EXHIBIT R-5 Copy of an amended and restated offer to purchase (under seal)
- EXHIBIT R-6 Copy of a letter dated February 11, 2020
- EXHIBIT R-7 Copy of a letter dated February 18, 2020
- EXHIBIT R-8 Copy of a letter dated February 21, 2020
- EXHIBIT R-9 Copy of a notice dated March 11, 2020
- EXHIBIT R-10 Copy of a notice dated March 16, 2020
- EXHIBIT R-11 Copy of a letter dated March 20, 2020

MONTREAL, March 23, 2020

DAVIES WARD PHILLIPS & VINEBERG LLP
Counsel for Freemark Apparel Brands Retail BE
Inc. and Freemark Apparel Brands Group Inc.

No. 500-11-057804-201
500-11-057805-208
SUPERIOR COURT
(Commercial Division)
District of Montreal

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

**FREEMARK APPAREL BRANDS RETAIL BE
INC. AND FREEMARK APPAREL BRANDS
GROUP INC.**

Debtors/Petitioners

-and-

RICHTER ADVISORY GROUP INC.

Trustee

**Motion for the Issuance of an Order Approving a
Transaction and Ordering the Assignment of
Agreements, Affidavit, List of Exhibit and Notice of
Presentation**

ORIGINAL

Counsel for Debtors/Petitioners
Me Gabriel Lavery Lepage
T 514.841.6492
glaverylepage@dwpv.com
File 271180

DAVIES

1501 McGill College Avenue, 26th floor
Montreal, QC H3A 3N9
Canada
T 514.841.6400
F 514.841.6499

DAVIES WARD PHILLIPS & VINEBERG LLP

BP-0181

EXHIBIT R-1

SUPERIOR COURT
(Commercial Division)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTRÉAL

No: 500-11-057805-208

No: 500-11-057804-201

DATE: March 26, 2020

PRESIDING:

**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 ADVISORY GROUP INC.

Trustee

-and-

**THE REGISTRAR OF THE REGISTER OF PERSONAL AND MOVABLE REAL
RIGHTS (QUÉBEC)**

Mis-en-cause

**ORDER APPROVING A TRANSACTION AND ORDERING THE ASSIGNMENT OF
AGREEMENTS**

ON READING the *Motion for the Issuance of an Order Approving a Transaction and Ordering the Assignment of Agreements* (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 "**Debtors**"), including the exhibits and the affidavit in support thereof, as well as the report of the Trustee dated March 23, 2020;

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

GIVEN the filing by each of the Debtors 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**");

SEEING that it is appropriate to issue an order:

- a) approving the transaction (the "**Transaction**") contemplated in the Amended and Restated Offer to Purchase (the "**Purchase Agreement**") by and between FAB Wholesale and 11951432 Canada Inc. (the "**Purchaser**") a copy of which was filed under seal as Exhibit R-5 in support of the Motion;
- b) authorizing the repayment by FAB Wholesale of all amounts owing to Gordon Brothers Brands LLC ("**GBB**") pursuant to the GBB Loan Agreement (as defined in the Purchase Agreement);
- c) vesting in the Purchaser the Purchased Assets (as defined in the Purchase Agreement), free and clear of any and all Encumbrances (as defined hereinafter);
- d) ordering the assignment in favour of the Purchaser of FAB Wholesale's rights and obligations under the purchase orders described in Schedule "A" hereto (the "**Purchase Orders**"). The Purchaser Orders exclude any Canadian wholesale orders placed with FAB Wholesale and shipped to Costco on or prior to April 26, 2020 and further excludes all bookings for products to fulfil such excluded purchase orders and excludes all present and future inventory of products that are intended for such excluded purchase orders (the "**Excluded Purchase Orders and Inventory**"), provided however that the Purchaser shall have the right to acquire from FAB Wholesale at FAB Wholesale's full landed cost inventory remaining on hand after April 26, 2020 that the Purchaser requires to fulfill the Purchase Orders;
- e) ordering the assignment of FAB Wholesale's rights and obligations under the sublicenses described in Schedule "B" hereto (the "**Assigned Sublicenses**") in favour of FAB IP CO LP ("**FAB IP**");
- f) ratifying the Special Call Exercise (as defined in the Purchase Agreement);
- g) authorizing and approving the designation of Wraith Holdings International Limited ("**Wraith**") by the Purchaser as the purchaser for the purposes of the ROW IP Conveyance (as defined in the Purchase Agreement) pursuant to the Special Option (as defined in the Purchase Agreement) and/or the assignment in favour of Wraith of the rights and obligations of FAB Wholesale pursuant to the Put/Call and Special Option Agreement dated as of October 18, 2018 (the "**Special Option Agreement**") (exhibit R-2 in support of the Motion); and

- h) authorizing the termination of the Merchandise and Retail License Agreement (the “**Internal License Agreement**”) entered into as of October 18, 2018 between FAB IP and FAB Wholesale, provided that, notwithstanding the termination of the Internal License Agreement, FAB Wholesale, Accord Financial Inc. (“**Accord**”), and any receiver appointed by Accord or any trustee in bankruptcy appointed in respect of FAB Wholesale shall be entitled to sell all of the remaining Bench branded products, including Bench branded products on order and not yet delivered, within Canada and on a non-exclusive and royalty-free basis, for such time period as may be required (the “**Sell-Off Right**”).

FOR THESE REASONS, THE COURT HEREBY:

1. **GRANTS** the Motion;

DEFINITIONS

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

SERVICE AND NOTICE

3. **DECLARES** that sufficient prior notice of the presentation of the Motion has been provided by the Debtors to interested parties, including, without limitation, the Debtors’ secured creditors, and that the Motion is properly returnable today;
4. **PERMITS** the service of this Order at any time and place and by any means whatsoever, including, without limitation, by email;
5. **DECLARES** that the parties to the Assigned Sublicenses (the “**License Counterparties**”) and to the Purchase Orders (the “**PO Counterparties**”) have received adequate notice of the Motion pursuant to section 84.1 *BIA*;

APPROVAL OF TRANSACTION

6. **ORDERS** and **DECLARES** that the Transaction is hereby approved and that the execution by FAB Wholesale of the Purchase Agreement, and of all documents and writings, and the performance by FAB Wholesale of all acts, necessary or useful to give effect to the Transaction, and the completion of the Transaction, are hereby authorized and approved, with such alterations, changes, amendments, deletions or additions thereto, as may be agreed to with the consent of the Trustee;
7. **ORDERS** and **DECLARES** that the Special Call Exercise is hereby authorized and ratified, as well as the designation of Wraith as purchaser under the Special Option and/or the assignment in favour of Wraith of the rights and obligations of FAB Wholesale pursuant to the Special Option Agreement;
8. **ORDERS** and **DECLARES** that the repayment by FAB Wholesale of all amounts owing to GBB under the GBB Loan Agreement is hereby authorized and approved;

9. **ORDERS** and **DECLARES** that the termination of the Internal License Agreement is hereby authorized and approved, subject to the Sell-Off Right;
10. **AUTHORIZES** the Purchaser to acquire from FAB Wholesale at FAB Wholesale's full landed cost inventory remaining on hand after April 26, 2020 that the Purchaser requires to fulfill the Purchase Orders;

ASSIGNMENT OF SUBLICENSES

11. **ORDERS** and **DECLARES** that, upon the issuance of a Trustee's certificate substantially in the form appended as Schedule "A" hereto (the "**Certificate**"), the rights, benefits, obligations and interests of FAB Wholesale under the Assigned Sublicenses shall be automatically and irrevocably assigned to FAB IP without any further consent or approval of this Court;
12. **ORDERS** that any monetary defaults of FAB Wholesale in relation to the Assigned Sublicenses – other than those arising by reason only of the insolvency of FAB Wholesale, the commencement of proceedings under the *BIA* or the failure to perform non-monetary obligations – shall be remedied on or before May 1, 2020;
13. **ORDERS** that any anti-assignment or consent-to-assignment provisions in any Assigned Sublicenses shall not restrict, limit, impair, prohibit or otherwise affect the assignment of the Assigned Sublicenses provided by this Order;
14. **ORDERS** that the Assigned Sublicenses shall be valid and binding and in full force and effect and enforceable by FAB IP in accordance with their terms for the benefit of FAB IP;
15. **ORDERS** and **DIRECTS** FAB Wholesale to notify a copy of this Order to each of the License Counterparties in the same manner as such License Counterparty was notified of the Motion;
16. **AUTHORIZES** the Debtors to perform all acts, sign all documents and take any other action that could be required or useful to give full effect to the assignment of the Assigned Sublicenses to FAB IP in accordance with this Order;

ASSIGNMENT OF THE PURCHASE ORDERS

17. **ORDERS** and **DECLARES** that, upon the issuance of a Trustee's certificate substantially in the form appended as Schedule "A" hereto (the "**Certificate**"), the rights, benefits, obligations and interests of FAB Wholesale under the Purchase Orders (which, for certainty, shall exclude the Excluded Purchase Orders and Inventory) shall be automatically and irrevocably assigned to the Purchaser without any further consent or approval of this Court;
18. **ORDERS** that any monetary defaults of FAB Wholesale in relation to the Purchase Orders – other than those arising by reason only of the insolvency of FAB Wholesale, the commencement of proceedings under the *BIA* or the failure to perform non-monetary obligations – shall be remedied on or before May 1, 2020;

19. **ORDERS** that any anti-assignment or consent-to-assignment provisions in any Purchase Orders shall not restrict, limit, impair, prohibit or otherwise affect the assignment of the Purchase Orders provided by this Order;
20. **ORDERS** that the Purchase Orders shall be valid and binding and in full force and effect and enforceable by the Purchaser in accordance with their terms for the benefit of the Purchaser;
21. **ORDERS** and **DIRECTS** FAB Wholesale to notify a copy of this Order to each of the PO Counterparties in the same manner as such PO Counterparty was notified of the Motion;
22. **AUTHORIZES** the Debtors to perform all acts, sign all documents and take any other action that could be required or useful to give full effect to the assignment of the Purchase Orders to the Purchaser in accordance with this Order;

VESTING OF PURCHASED ASSETS

23. **ORDERS** and **DECLARES** that upon the issuance of the Certificate, all rights, title and interest in and to the Purchased Assets (which, for greater certainty, shall exclude the Excluded Purchase Orders and Inventory) shall vest absolutely and exclusively in and with the Purchaser, 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, 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 favour 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 (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 Québec, the Ontario, Alberta, British Columbia, Manitoba, Saskatchewan, New Brunswick, Nova Scotia, Prince Edward Island or Newfoundland and Labrador Personal Property Security Act, 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 Purchased Assets be expunged and discharged as against the Purchased Assets, in each case effective as of the applicable time and date of the Certificate;
24. **ORDERS** and **DIRECTS** the Trustee to file with the Court a copy of the Certificate, forthwith after issuance thereof;

CANCELLATION OF SECURITY REGISTRATIONS

For Quebec Property:

25. **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 (i) reduce the scope of registrations number 17-0472371-0001, 17-0472371-0002, 17-0472371-0003, 17-0472371-0004, 17-1142726-0001, 17-1142744-0001, 17-1142756-0001 and 17-1142790-0001 in connection with the Purchased Assets and (ii) to strike registrations number 18-1160692-0001 and 18-1160779-0001 in order to allow the transfer to the Purchaser of the Purchased Assets free and clear of such registrations;

For Property Outside Quebec:

26. **ORDERS** that upon the issuance of the Certificate, the Vendor shall be authorized to take all such steps as may be necessary to effect the discharge of all Encumbrances registered against the Purchased Assets, including filing such financing change statements in the Ontario Personal Property Registry, the British Columbia Property Registry, the Alberta Personal Property Registry, the Saskatchewan Personal Property Registry, the Manitoba Personal Property Registry, the New-Brunswick Personal Property Registry, the Nova Scotia Personal Property Registry, the Prince Edward Island Personal Property Registry and the Newfoundland Personal Property Registry (collectively, the “PPR”) as may be necessary, from any registration filed against FAB Wholesale in the PPR, provided that FAB Wholesale shall not be authorized to effect any discharge that would have the effect of releasing any collateral other than the Purchased Assets, and that FAB Wholesale shall be authorized to take any further steps by way of further application to this Court;
27. **ORDERS** that the Purchaser or FAB Wholesale shall be authorized to take all steps as may be necessary to effect the discharge of the Encumbrances;

VALIDITY OF TRANSACTION, ASSIGNMENT OF SUBLICENSES AND ASSIGNMENT OF PURCHASE ORDERS

28. **ORDERS** that notwithstanding:
- a) the pendency of these proceedings;
 - b) any petition for a receiving or bankruptcy order now or hereafter issued pursuant to the *BIA* and any order issued pursuant to such petition, or any assignment in bankruptcy; or
 - c) the provisions of any federal or provincial legislation;

The Transaction, the assignment of the Assigned Sublicenses to FAB IP, the assignment of the Purchase Orders to the Purchaser and the vesting of the Purchased Assets in the Purchaser in accordance with this Order, as well as any payments made or actions taken 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 Debtors, the Purchaser, FAB IP or the Trustee;

GENERAL

29. **ORDERS** that Exhibits R-3 and R-5 in support of the Motion be kept confidential and under seal until further order of this Court;
 30. **DECLARES** that this Order shall have full force and effect in all provinces and territories in Canada;
 31. **DECLARES** that the Debtors 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 Debtors as may be deemed necessary or appropriate for that purpose;
 32. **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;
 33. **ORDERS** the provisional execution of the present Order notwithstanding any appeal and without the requirement to provide any security or provision for costs whatsoever;
 34. **THE WHOLE** without costs.
-

Schedule "A"
ASSIGNED PURCHASE ORDERS
(see attached)

Schedule "B"

ASSIGNED SUBLICENSES

1. Sub-License Agreement made effective as of January 29, 2019 between Freemark Apparel Brands Group Inc. and Jovi Sports Inc.
2. Sub-License Agreement made effective as of January 8, 2019 between Freemark Apparel Brands Group Inc. and TP-Holiday Group Limited
3. Sub-License Agreement made effective as of January 31, 2019 between Freemark Apparel Brands Group Inc. and AC12 Apparel Inc.
4. Sub-License Agreement made effective as of April 15, 2019 between Freemark Apparel Brands Group Inc. and Lamour Global Inc. (mens' and boys' underwear), as amended by the parties December 2019
5. Sub-License Agreement made effective as of April 15, 2019 between Freemark Apparel Brands Group Inc. and Lamour Global Inc. (socks, intimates, packaged t-shirts)

Schedule "C"

TRUSTEE'S CERTIFICATE

C A N A D A

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. C-36)

NO: 500-11-057804-201

NO: 500-11-057805-208

**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 ADVISORY GROUP INC.

Trustee

CERTIFICATE OF THE TRUSTEE

RECITALS:

WHEREAS on February 21, 2020, Freemark Apparel Brands Group Inc. ("**FAB Wholesale**") filed a notice of intention to make a proposal (the "**NOI**") pursuant to the *Bankruptcy and Insolvency Act* (the "**Act**");

WHEREAS pursuant to the terms of the NOI, Richter Advisory Group Inc. (the "**Trustee**") was named trustee of the NOI;

WHEREAS on March ●, 2020 the Superior Court of Québec issued an Order (the "**Approval and Vesting Order**") thereby, *inter alia*, authorizing and approving a transaction (the "**Transaction**") and the execution by FAB Wholesale of an agreement (the "**Purchase Agreement**") by and between FAB Wholesale, as vendor (the "**Vendor**") and 11951432 Canada Inc., as purchaser (the "**Purchaser**"), copy of which was filed in the Court record, and of all documents and writings necessary to give effect to the Transaction (together with the Purchase Agreement, the "**Transactional Documents**"), 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 Transactional Documents has been executed and delivered; and (b) the Purchase Price (as defined in the Purchase Agreement) has been paid by the Purchaser; 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 VENDOR AND THE PURCHASER OF THE FOLLOWING:

- (a) the Transactional Documents have 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) 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].

Richter Advisory Group Inc. in its capacity as trustee, and not in its personal capacity.

Name: _____

Title: _____

EXHIBIT R-2

PUT/CALL OPTION AND SPECIAL OPTION AGREEMENT

THIS PUT/CALL OPTION AND SPECIAL OPTION AGREEMENT (this “Agreement”) is made and entered into as of October 18, 2018 (the “Execution Date”), by and between (i) Gordon Brothers Brands, LLC, a Delaware limited liability company (the “Company”), and (ii) Freemark Apparel Brands Group Inc., a corporation organized under the laws of Canada (the “Purchaser”).

RECITALS

WHEREAS the Company is the owner of a 100% membership interest in Bench IP Holdings LLC, a Delaware limited liability company (“Bench Holdings”).

WHEREAS Bench Holdings owns certain intellectual property and other rights, which Bench Holdings purchased pursuant to that certain purchase agreement by and between the Company and Bench Limited dated as of June 29, 2018 and continues to own all such intellectual property and other rights save and except for certain intellectual property and other rights that were sold to Bench IP Acquisition LLC as of the date hereof (all such intellectual property and other rights owned by Bench Holdings being collectively referred to as the “Bench IP”).

NOW, THEREFORE, in consideration of the foregoing, of the mutual promises of the parties hereto and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Definitions. In this Agreement, the following terms shall have the following meanings:

“Business Day” means any day that is not a Saturday, Sunday, or other day on which banks are authorized or required to close in the state of New York or Montreal Québec.

“Closing Date” means the Put Date, Call Date or Special Option Date, as applicable.

“Intellectual Property License” means any licenses or other similar rights provided by Bench Holdings to any other person or entity in or with respect to Intellectual Property (as defined in the Loan Agreement) owned or controlled by Bench Holdings.

“Lien” means any mortgage, deed of trust, pledge, conventional hypothec, legal hypothec, prior claim, assignment, charge, deposit arrangement, encumbrance, easement, lien (statutory or other), security interest, or other security arrangement and any other preference, priority, or preferential arrangement of any kind or nature whatsoever, including any conditional sale contract or other title retention agreement, the interest of a lessor under a capital lease and any synthetic or other financing lease having substantially the same economic effect as any of the foregoing.

“Loan Agreement” means that certain Loan, Guaranty and Security Agreement by and among Purchaser, Bench IP Acquisition LP, Bench IP Acquisition GP LLC, FAB

IP CO LP, FAB IP CO GP LLC, Freemark Apparel Brands Retail Be Inc., Freemark Apparel Brands Retail ESP Inc., Freemark Apparel Brands Group USA Inc. and Bench Holdings, dated as of the date hereof.

“Suyen Agreement” means that certain Coexistence Agreement executed on August 13, 2010 by and between Suyen Corporation and Americana International Ltd.

2. Put Option.

- (a) *Right to Sell.* The Purchaser hereby grants to the Company an option (the “Put Option”) to require the Purchaser to acquire from the Company all (but not less than all) of the membership interests in Bench Holdings (the “Bench Interests”).
- (b) *Put Price.* The purchase price for the Bench Interests under the Put Option shall be the aggregate royalties actually received by Bench Holdings from Qualified Licensees (as defined below) in the twelve months immediately prior to the month during which the Put Option is exercised and relating to any and all of the Bench IP then owned by Bench Holdings (the “Put Period”) multiplied by five (5) (the “Put Price”). In addition to the Put Price, any accrued royalties from any Qualified Licensee (as defined below) relating to any sales consummated prior to the Put Date (as it may be extended), no matter when paid or payable (the “Put Royalty Receivables”) shall be assigned, without warranty, to the Company on the Put Date. The Purchaser acknowledges that all cash received by the Company prior to the Put Date shall be the property of the Company and to the extent that any Put Royalty Receivables are paid to the Purchaser they will be remitted to the Company within ten (10) Business Days of receipt. On the Put Date, the Company shall provide to the Purchaser a detailed report of the Put Royalty Receivables. A “Qualified Licensee” is a party acting at arm’s-length from the Company and who is obliged to pay a royalty to Bench Holdings in respect of its use of the Bench IP pursuant to a valid license with Bench Holdings, and which license, in the case of an asset sale, is unconditionally assigned to the Purchaser on the Closing Date. In the event that the royalties for the Put Period included royalties that were not based on annual sales (or minimums that are based on annual sales), then such royalties shall be amortized over the term to which they apply and only the portion attributable to the Put Period shall be included for purposes of calculating the Put Price.
- (c) *Put Exercise Period.* The Put Option may be exercised by the Company at any time during the period commencing on July 1, 2021 and ending on July 1, 2023, and so long as the Call Option (as defined below) has not previously been exercised (the “Put Exercise Period”).
- (d) *Put Notice.* If, at any time during the Put Exercise Period, the Company elects to sell the Bench Interests to the Purchaser pursuant to the Put Option, it shall deliver to the Purchaser by registered mail or by overnight courier, written notice of such election (the “Put Notice”). The Put Notice shall: (i) state that the Company intends to exercise its rights to sell to the Purchaser and to cause the Purchaser to purchase

from the Company all (but not less than all) of the Bench Interests, and (ii) specify the Put Date.

Delivery of the Put Notice shall constitute the commencement of the Put Option exercise process and shall bind the Purchaser to purchase the Bench Interests for an amount equal to the Put Price. The Put Notice shall be deemed to have been delivered (i) five (5) Business Days after being mailed by registered mail (returned receipt requested and postage prepaid) to the recipient or (ii) one (1) Business Day after being sent by overnight courier (receipt confirmation requested).

- (e) *Put Date.* The Company shall fix a date (the “Put Date”) for the exercise of the Put Option no earlier than ten (10) but not more than thirty (30) Business Days after the Put Notice is deemed to be delivered, provided that the Purchaser shall be entitled to defer the Put Date so as to facilitate the financing of the Put Price by up to six (6) months upon notice to the Company. The Purchaser shall pay in full the Put Price on the Put Date by certified check or by wire transfer of immediately available funds in accordance with the wire transfer instructions provided by Company.
- (f) *Licenses.* From and after receipt of the Put Notice, Bench Holdings shall not enter into any Intellectual Property Licenses or amend or terminate any existing license agreement that relates to the Bench IP without the prior written consent of the Purchaser, which consent, subject to terms and conditions set out in Section 9(g), shall not be unreasonably withheld or denied.
- (g) *Notice of Change of Control.* From and after the payment in full of the Loan Obligations (as defined in the Loan Agreement), Purchaser shall provide 30 days prior written notice to the Company of any Change of Control (as defined in the Loan Agreement). Failure to provide such notice shall constitute an immediate Event of Default under, and as defined in, the Loan Agreement.

3. Call Option.

- (a) *Right to Purchase.* The Purchaser shall have the right and option (the “Call Option”) to purchase from the Company all (but not less than all) of the Bench Interests, upon the terms and conditions herein set forth.
- (b) *Call Price.* The call purchase price for the Bench Interests under the Call Option shall be the aggregate royalties actually received by Bench Holdings from Qualified Licensees in the twelve months immediately prior to the month during which the Call Option is exercised and relating to any and all of the Bench IP then owned by Bench Holdings (the “Call Period”) multiplied by six (6) (the “Call Price”). In addition to the Call Price, any accrued royalties from any Qualified Licensee (as defined below) relating to any sales consummated prior to the Call Date, no matter when paid or payable (the “Call Royalty Receivables”) shall be assigned, without warranty, to the Company on the Call Date. The Purchaser acknowledges that all cash received by the Company prior to the Call Date shall be the property of the

Company and to the extent that any Call Royalty Receivables are paid to the Purchaser they will be remitted to the Company within ten (10) Business Days of receipt. On the Call Date, the Company shall provide to the Purchaser a detailed report of the Call Royalty Receivables. In the event that the royalties for the Call Period included royalties that were not based on annual sales (or minimums that are based on annual sales), then such royalties shall be amortized over the term to which they apply and only the portion attributable to the Call Period shall be included for purposes of calculating the Call Price.

- (c) *Call Exercise Period.* The Call Option may be exercised by the Purchaser at any time during the period commencing on July 1, 2021 and ending on July 1, 2023, and so long as the Put Option has not been exercised (the “Call Exercise Period”).
- (d) *Call Notice.* If at any time during the Call Exercise Period, the Purchaser elects to purchase the Bench Interests from the Company pursuant to the Call Option, it shall deliver written notice to the Company by registered mail or by overnight courier (the “Call Notice”). The Call Notice shall: (i) state that the Purchaser intends to exercise its right, to acquire from the Company and to cause the Company to sell to the Purchaser all (but not less than all) of the Bench Interests for an aggregate purchase price equal to the Call Price, and (ii) specify the Call Date.

The Call Notice shall be deemed to have been delivered (i) five (5) Business Days after being mailed by registered mail (return receipt requested and postage prepaid) to the recipient or (ii) one (1) Business Day after being sent by overnight courier (receipt confirmation requested).

- (e) *Call Date.* The Purchaser shall fix the date (a “Call Date”) for the exercise of the Call Option no earlier than ten (10) but not more than thirty (30) Business Days after the Call Notice is deemed to be delivered. The Purchaser shall pay in full the Call Price on the Call Date by certified check or by wire transfer of immediately available funds in accordance with the wire transfer instructions provided by Purchaser.
- (h) *Licenses.* From and after receipt of the Call Notice, Bench Holdings shall not enter into any Intellectual Property Licenses or amend or terminate any existing license agreement that relates to the Bench IP without the prior written consent of the Purchaser, which consent, subject to terms and conditions set out in Section 9(g), shall not be unreasonably withheld or denied.

4. Special Option.

- (a) *Additional Right to Purchase.* At any time during the period starting on the six (6) month anniversary of the Execution Date until the 18th month anniversary of the Execution Date (the “Special Option Exercise Period”), the Purchaser shall have an additional right and option (the “Special Option”) to purchase from the Company and cause the Company to sell to the Purchaser the Bench Interests.

- (b) *Special Option Price.* The special option price shall be the amount of £3,625,000 (the “Special Option Price”) plus (i) concurrent repayment in full of the outstanding principal balance, (ii) any accrued interest on the 3-year term loan provided by the Company to the Purchaser in the initial principal amount of £5,250,000.00, and (iii) any other Obligations under the Loan Documents including without limitation the Applicable Payment Premium (as each capitalized term is defined in the Loan Agreement). In addition to the Special Option Price, any accrued royalties from any Qualified Licensee (as defined below) relating to any sales consummated prior to the Special Option Date, no matter when paid or payable (the “Special Option Royalty Receivables”) shall be assigned, without warranty, to the Company on the Special Option Date. The Special Option Royalty Receivables, the Put Royalty Receivables, and the Call Royalty Receivables shall be referred to as the “Royalty Receivables”. The Purchaser acknowledges that all cash received by the Company prior to the Special Option Date shall be the property of the Company and to the extent that any Special Option Royalty Receivables are paid to the Purchaser they will be remitted to the Company within ten (10) Business Days of receipt. On the Special Option Date, the Company shall provide to the Purchaser a detailed report of the Special Option Royalty Receivables.
- (c) *Special Option Notice.* If at any time during the Special Option Exercise Period, the Purchaser elects to purchase the Bench Interests, it shall deliver written notice to the Company by registered mail or by overnight courier (the “Special Option Notice”). The Special Option Notice shall: (i) state that the Purchaser intends to exercise its right, to acquire from the Company and to cause the Company to sell to the Purchaser all (but not less than all) of the Bench Interests for an aggregate purchase price equal to the Special Option Price, and (ii) specify the Special Option Date (as hereinafter defined).
- The Special Option Notice shall be deemed to have been delivered (i) five (5) Business Days after being mailed by registered mail (return receipt requested and postage prepaid) to the recipient or (ii) one (1) Business Day after being sent by overnight courier (receipt confirmation requested).
- (d) *Special Option Date.* The Purchaser shall fix a date (a “Special Option Date”) for the exercise of the Special Option no earlier than ten (10) but not more than thirty (30) Business Days after the Special Option Notice is deemed to be delivered. The Purchaser shall pay in full the Special Option Price on the Special Option Date by certified check or by wire transfer of immediately available funds in accordance with the wire transfer instructions provided by Purchaser.
- (i) *Licenses.* From and after receipt of the Special Option Notice, Bench Holdings shall not enter into any Intellectual Property Licenses or amend or terminate any existing license agreement that relates to the Bench IP without the prior written consent of the Purchaser, which consent, subject to terms and conditions set out in Section 9(g), shall not be unreasonably withheld or denied.

5. Asset Sale.

- (a) After the exercise of the Put Option, the Call Option or the Special Option, the Purchaser shall be entitled by notice to the Company sent no later than five (5) Business Days prior to the Put Date, Call Date or Special Option Date (as the case may be) to structure the Put Option, Call Option or Special Option transaction as a sale by Bench Holdings of (i) all of the Bench IP; (ii) all the licenses relating to the Bench IP; and (iii) all existing book and records prepared with respect to the licenses relating to the Bench IP and the Company's licensing operations, including records of its existing royalty revenues from the Qualified Licensees and excluding, for certainty, minute books and tax related documents (an "Asset Sale"). All of the Royalty Receivables shall be excluded from any Asset Sale.
- (b) Purchaser agrees that in the event that it acquires the Bench IP through an Asset Sale, neither the Company nor Bench Holdings, nor their affiliates, employees, directors and agents shall have or assume any responsibility for any required compliance with the Suyen Agreement in connection with any such Asset Sale, which compliance shall be solely the responsibility of Purchaser. In the event of any such Asset Sale, Purchaser hereby covenants and agrees to protect, defend, indemnify, and hold harmless Company, Bench Holdings, and their affiliates, employees, directors and agents from and against any and all claims, demands, actions, suits, losses, costs, damages, fines, penalties, expenses, liabilities, judgments, or proceedings that seek to impose costs or liabilities (excluding any consequential damages) related directly to the assignment of the Suyen Agreement.

6. Documents and Actions.

- (a) As a condition to payment of the Put Price, Call Price or Special Option Price (as the case may be), Company and Purchaser shall execute and deliver such documents, assignments, instruments and other items, in such form and content as shall reasonably be required by Purchaser and Company, respectively, and shall take such other actions as shall reasonably be necessary, to transfer and assign the Bench Interests or the Bench IP (as the case may be) and related licenses and agreements to Purchaser as provided herein.
- (b) Without limiting Section 6(a) above, the sale, transfer and assignment of the Bench Interests or the Bench IP (as the case may be) shall be reflected in final documentation that shall be modelled on the Securities Purchase Agreement dated the date hereof between the Purchaser and the Bench Holdings, which shall include, for greater certainty, the representations and warranties set out therein with such changes as are necessary to reflect the Bench IP or Bench Interest (as applicable) being conveyed and that are mutually acceptable to the Company and Purchaser.

- (c) After the exercise of the Put Option, Call Option or Special Option, Purchaser may in its discretion designate one or more persons to be the acquirer of the Bench Interests or the Bench IP (as the case may be), and/or assign its rights and obligations under this Agreement to any person provided that any such designation or assignment shall not relieve Purchaser from any of its obligations under this Agreement.

7. Reports. So as to permit the Purchaser to assess whether it wishes to exercise the Call Option or the Special Option, upon Purchaser's written request, on two occasions during the period commencing on the first day of the fourth full calendar month following the Execution Date until the first day of the 18th full calendar month following the Execution Date and on four additional occasions during the period commencing sixty days prior to the third anniversary of the Execution Date until the fifth anniversary of the Execution Date, (i) the Company shall provide the Purchaser with reports on its royalty revenues from Qualified Licensees and (ii) the Company shall provide the Purchaser with copies of all licenses then in effect with Qualified Licensees. After the Call Notice, the Put Notice or the Special Option Notice is sent, as the case may be, the Company shall provide the Purchaser with copies of all licenses then in effect with Qualified Licensees. Further the Purchaser may request this information on additional occasions, which the Company may grant in its reasonable discretion.

8. Arbitration. In the event of any dispute between the parties to this Agreement as to the determination of the Put Price or the Call Price, such dispute shall be settled promptly by arbitration conducted in the City of New York, State of New York, before a single arbitrator, in accordance with the then applicable rules of the American Arbitration Association. In the event that the parties to the dispute cannot agree on an arbitrator within thirty (30) days after notice of the dispute, the arbitrator shall be selected in accordance with the then applicable rules of the American Arbitration Association. The parties shall split the costs of the arbitrator evenly. In making determinations hereunder, the laws of the State of New York shall govern, all determinations made by the arbitrator shall be final, conclusive and binding on all parties hereto and judgment upon the award entered by the arbitrator may be entered in any court having jurisdiction.

9. Limited Purposes and Activities. The Company hereby represents, warrants, covenants and agrees that until the expiry of the Put Option, the Call Option and the Special Option:

- (a) Bench Holdings has been, is and will be organized under Delaware law solely for the purposes of (1) holding the Bench IP and (2) licensing the Bench IP and Bench Holdings has not conducted, is not conducting and will not conduct any business or activities other than as directly required in connection with its limited purpose;
- (b) in addition to, and without limitation of, the forgoing, Bench Holdings shall not:
 - i. acquire or form any subsidiary following the Execution Date or make any other investment in any other Person;

- ii. assign or transfer all or any part of the Bench IP, or own any other assets other than the Bench IP and intellectual property licenses with respect to the Bench IP;
 - iii. incur any indebtedness or other obligations (contractual or otherwise) other than its obligations (A) under this Agreement, (B) as a co-obligor in connection with a third party arm's-length financing entered into by certain of the Company's affiliates and certain ancillary documents entered into pursuant thereto, and (C) in connection with licenses granted by Bench Holdings in respect to the Bench IP; or
 - iv. have any employee;
- (c) Neither the Company nor Bench Holdings shall create, incur, assume, or suffer to exist, directly or indirectly, any Lien on or with respect to any of its assets, of any kind, whether now owned or hereafter acquired, or any income or profits therefrom;
- (d) There shall be no use of Bench IP by the Company or any Affiliate thereof other than Bench Holdings;
- (e) Bench Holdings will take all commercially reasonable actions necessary to maintain any trademark, patent, industrial design and copyright registrations owned by it as of the Execution Date and applications that are pending anywhere in the world as of the Execution Date in each case that relates to the Bench IP, including but not limited to preparing, filing or submitting any additional documents, consents, declarations, affidavits, exhibits, specimens, arguments, fees, expenses or other documents or information reasonably necessary to maintain any registrations and pending applications anywhere in the world. Bench Holdings shall not abandon any trademark application owned by it and relating to the Bench IP currently pending anywhere in the world as of the Execution Date, whether as a result of an office action, a third party opposition or for any other reason that is material to its business unless Purchaser consents to such abandonment, which consent shall not be unreasonably withheld;
- (f) Bench Holdings shall take all commercially reasonable actions necessary to defend any intellectual property relating to the Bench IP against claims or challenges, whether threatened or filed in any court or any authority with competent jurisdiction, to the validity, enforceability, use, maintenance, ownership or assignment of, or which may limit the scope of Bench Holdings' rights in, any such intellectual property and which has a material effect on Bench Holdings' business or royalty revenue, including but not limited to any proceedings commenced under ICANN's Uniform Domain-Name Dispute Resolution Policy; and
- (g) Each Intellectual Property License under which Bench Holdings is a licensor shall contain (or not contain, as the case may be) the following the terms and

conditions and any departure from the terms and conditions set forth below in any Intellectual Property License shall require the prior written consent of the Purchaser:

- i. The term (including renewals) of the Intellectual Property License won't exceed 6 years in total,
- ii. The royalty rate under the Intellectual Property License must equal or exceed 4% of wholesale price of the applicable product and 2% of retail price of the applicable product,
- iii. The Intellectual Property License will not have or permit advances on the royalties that are greater than 30% of the total contractual guarantees under such license,
- iv. The Intellectual Property License will not have or permit advances of greater than US\$375,000 (or equivalent) in any year, and
- v. provided that Intellectual Property Licenses with affiliates of Bench Holdings shall not be subject to the aforesaid terms and conditions, may be on a royalty-free basis, and shall be terminable by Bench Holdings or its affiliates or other transferee upon Purchaser becoming the owner of the Bench IP or the direct or indirect owner of Bench Holdings.

10. Conditions Precedent. The Purchaser acknowledges that the Company is a co-obligor in connection with a third party arm's-length financing entered into by certain of the Company's affiliates and that the Company has obligations in connection with certain ancillary documents entered into pursuant thereto (collectively, the "**Third Party Loan Documents**"). Notwithstanding Sections 9(b)iii and 9(c) above, the Company's obligations under the Third Party Loan Documents shall not constitute violations of the terms hereof, provided (i) that on or prior to the Closing Date and as a condition precedent thereto, Bench Holdings shall be fully released from such obligations and (ii) that Bench Holdings confirms on the Closing Date that the representations and warranties set out in Section 9, including Section 9(b)iii and 9(c) above, are true and correct.

11. Certain Rights and Obligations.

- (a) The Purchaser shall indemnify and defend Company and hold it harmless against any obligations, claims, liabilities, costs or expenses arising with respect to Bench Holdings or the Bench Interests after the date of Closing.
- (b) The Company shall indemnify and defend Purchaser and hold it harmless against any obligations, claims, liabilities, costs or expenses arising with respect to Bench Holdings or the Bench Interests in respect to the period prior to the date of Closing.
- (c) The Purchaser shall take all action and shall pay all costs necessary to enable Company to receive and retain the Put Price, the Call Price or the Special Option Price as the case may be, as against any creditor of Purchaser.

12. Company acknowledges that the Purchaser (and/or its designee or assignee as set forth in Section 6(c)) intends to finance its purchase of the Bench Interests or the Bench IP (as the case may be) and the Company hereby agrees to use reasonable commercial efforts to facilitate, and shall cause Bench Holdings to use reasonable commercial efforts to facilitate, the reasonable requests of the Purchaser and its lender in connection with such financing including as to reasonable due diligence requests made by them (which may include the provision by the Company upon such a request of copies of all licenses related the Bench IP that are in effect) and existing filings required by the potential lender provided that all out of pocket costs and expenses incurred by the Company in connection with such requests shall be borne by Purchaser. Such requests for facilitation and reasonable commercial efforts shall not include (1) in person bank meetings, (2) preparation of models, projections or pro formas or (3) preparation of any information not presently prepared or formatting of any information other than as presently formatted.

13. Notices and Demands. All notices, demands or other communications hereunder shall be in writing and shall be (a) sent by U.S. registered or certified mail, return receipt requested, with postage prepaid (except in the event of a postal disruption, by strike or otherwise, in the United States), (b) sent by personal delivery by a nationally recognized courier service for next day delivery, or (c) sent by facsimile (with a copy thereof sent via one of the methods of delivery set forth in clauses (a) or (b) hereof), addressed to the applicable party at the addresses set forth below or at such other addresses as such parties may designate by notice to the other parties:

If to Company:

Gordon Brothers Brands, LLC
Prudential Tower
800 Boylston Street, 27th Floor
Boston, MA 02199
Attention: Ramez Toubassy
Rafael Klotz
Tel.: +1.310.435.4187
e-mail: rtoubassy@gordonbrothers.com
e-mail: rklotz@gordonbrothers.com

With a copy to:

Goulston & Storrs P.C.
400 Atlantic Avenue
Boston, MA 02110
Attention: James F. Wallack, Esq.
Tel.: 617.574.4107
e-mail: jwallack@goulstonstorrs.com

If to Purchaser:

Freemark Apparel Brands Group Inc.
5640 Pare Street
Mont-Royal, Quebec H4P 2M1
Attention: Howard Schnider
Lawrence Routtenberg
Tel.: 514.341.7333
e-mail: hschnider@fabinc.ca
e-mail: lrouttenberg@fabinc.ca

With a copy to:

Davies Ward Phillips & Vineberg
1501 McGill College Avenue, 26th Floor
Montreal, Quebec H3A 3N9
Attention: Hillel W. Rosen
Tel.: 514.841.6443
e-mail: hrosen@dwpv.com

All notices, demands and requests shall be effective when actually received; provided however that rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the Notice, demand or request sent.

14. Bench Holdings. The Company shall cause Bench Holdings to fulfil the obligations set forth in this Agreement to be performed by Bench Holdings.

15. General. This Agreement (a) shall be construed in accordance with the internal law of the State of New York without regard to its conflicts of law principles, (b) may not be assigned without the prior consent of the non-assigning party, and (c) may not be modified, amended or terminated, except by a written agreement between the Purchaser and Company. In the event of any action at law or in equity to enforce the provisions of this Agreement or to secure relief or damages for the breach of this Agreement, the prevailing party shall be entitled to have its costs (including attorneys', accountants' and experts' fees and related expenses) incurred in such proceedings paid by the party who did not prevail in such action.

16. Sole Benefit. The obligations of each party hereunder are imposed solely and exclusively for the benefit of the other party (and their permitted successors and assigns) and no other Persons shall have any standing to enforce such obligations or be deemed to be beneficiaries of such obligations.

17. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed to be an original copy and all of which together shall constitute one agreement binding on all parties hereto, notwithstanding that all the parties shall not have signed the same counterpart.

18. Interest. The Purchaser agrees that should the Purchaser not make full payment of the Put Price, Call Price or Special Option Price obligations within five (5) days of the Closing, any amount payable shall accrue interest until the date such amount has been paid in full at a rate equal to 1.5% per month.

19. Entire Agreement. This Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof, and supersedes in their entirety any and all written or oral agreements previously existing between the parties with respect to such subject matter.

20. Severability. Should any one or more provisions of this Agreement be determined to be illegal or unenforceable, all other provisions nevertheless shall be effective.

IN WITNESS WHEREOF, the parties have caused this Put/Call Option and Special Option Agreement to be duly executed as of the date first written above.

PURCHASER:

FREEMARK APPAREL BRANDS GROUP INC.

By: Howard Schneider

Name: Howard Schneider

Title: Chief Financial Officer

COMPANY:

GORDON BROTHERS BRANDS, LLC

By: 

Name: Patricia E. Parent

Title: Vice President

EXHIBIT R-3 (under seal)

EXHIBIT R-4

BRAND ACQUISITION OPPORTUNITY

Bench.

A WORLD CLASS ATHLEISURE STREET BRAND

Brand Overview

Bench.



“From humble beginnings to global status...”

- Inspired by an active 24hr lifestyle, Bench is a brand that designs, sources, and markets clothing and accessories for men, women and kids. Born in the heart of Manchester, England, it originated in the late 80s as a niche t-shirt brand.
- The brand direction today is inspired by multipurpose city clothing. The hoodie is an iconic piece of Bench heritage and has become a staple in each season’s collection. Bench offers two core categories of products: athleisure and streetwear.
- These categories are rooted in the brand DNA and sustained by a contemporary and functional approach to product design. From humble beginnings to global status, Bench has become renowned for offering fashionable, comfortable, and timeless pieces.

Bench is an ideal fit for multi-brand licensing groups and/or wholesaler-distributors wishing to expand their brand portfolio, as well as for North American or European retailers seeking a competitive edge by securing exclusive rights to a world class athleisure street brand.

BRAND ACQUISITION OPPORTUNITY

Bench.

A WORLD CLASS ATHLEISURE STREET BRAND

Key Investment Considerations



Multi-channel distribution network and strong licensees

The brand has a multi-channel distribution network, including wholesale and ecommerce, with annual sales exceeding 5 million units in Canada.

Canadian wholesale distribution: Costco, Mark's, Saks Off 5th, Winners & other major wholesale accounts.

Canadian specialty products licensees: Multiple well-established licensees in various product categories.

European distribution:

- Main licensee is a major UK brand distributor, which has been a mainstay at the forefront of the fast fashion sector within the UK and worldwide for more than 20 years.
- Specialty Bench products are also distributed in Germany and other European markets via several additional licensees.

Significant growth potential

Bench is positioned for major growth in multiple channels:

- U.S. wholesale & licensing: *significant opportunity to expand brand awareness in US market.*
- Licensing of non-core categories in existing markets: *discussions under way to add eyewear and bedding licenses in NA.*
- Growth of existing Canadian and US E-Commerce, and launch of Global E-Commerce: *currently more than 250,000 registered online users in Canada.*
- US & International Costco.
- Global licensing.

Strong brand equity

Bench is widely recognized for its multipurpose city clothing and has built extremely strong equity in Canada, the UK and Germany. The Brand is currently widely available in those markets.

Investment opportunity

FAB is seeking to monetize its interest in the Bench Brand via a sale transaction either to a single purchaser interested in owning the Global Bench IP, or multiple acquirers interested in regional ownership of the Bench Brand (Canada, USA, rest of world). FAB will also entertain opportunities to enter into a strategic partnership.

BRAND ACQUISITION OPPORTUNITY

Bench.

A WORLD CLASS ATHLEISURE STREET BRAND

Financial Overview

- Worldwide annual sales CAD \$125M at wholesale value
- Royalty revenues in excess of CAD \$9.5M

Canada

~\$80M Sales at Wholesale
\$6.0M Annual Royalties

Europe

~\$45M Sales at Wholesale
\$3.6M Annual Royalties

Sale and Investment Solicitation Process

- On January 21, 2020, Freemark Apparel Brands Group Inc. ("FAB") filed a Notice of Intention to Make a Proposal ("NOI") under the Bankruptcy and Insolvency Act ("BIA").
- Richter Advisory Group Inc. ("Richter" or "Trustee") was named Trustee.
- Richter is conducting an accelerated formal sale and investment solicitation process for the intellectual property and current order book owned by FAB.
- Detailed information relating to the Bench intellectual property will be made available, in a virtual data room, upon signature and receipt by Richter of the Confidentiality Agreement (attached hereto). All inquiries and any requests for additional information should be made directly to Richter.
- Upon execution of the Confidentiality Agreement, interested parties will also be provided with a process letter setting out the terms of the solicitation process and associated timelines. **Interested parties will be required to submit Binding Offers by no later than 12:00 PM ET on Friday, March 6, 2020.**
- Documents relating to the NOI are available on the Trustee's website at:
<https://www.richter.ca/insolvencycase/freemark-apparel/>
- Any transaction will be subject to approval by the Court and secured lenders.

BRAND ACQUISITION OPPORTUNITY

Bench.

A WORLD CLASS ATHLEISURE STREET BRAND

About Richter

Founded in Montréal in 1926, Richter is a licensed public accounting firm that provides assurance, tax and wealth management services, as well as financial advisory services in the areas of organizational restructuring, business valuation, corporate finance, litigation support, and forensic accounting. Richter has offices in Toronto, Montréal and Chicago. Our team is composed of more than 450 partners, specialists, high level professionals and administrative staff.

Confidentiality and Disclaimer

This document has been prepared based on information provided by our client and is intended to provide preliminary information to interested parties to formulate the basis of their investment and/or transaction intent. The information contained herein is confidential and proprietary to our client. Accordingly, the reader agrees to treat all information as strictly confidential and shall not disclose, either in part or in whole, to any party not directly involved in the investment and/or transaction decision.

This document is not intended for general circulation or publication and cannot be reproduced in any form without the written permission of our client and of Richter Advisory Group Inc. This document does not constitute a prospectus, offering memorandum or public offering. No guarantees are made or implied with regards to the investment and/or transaction that may ultimately result.

**Enquiries concerning this Investment Opportunity
should be directed to**

Richter Advisory Group Inc.

ERIC BARBIERI
PARTNER
EBarbieri@richter.ca
514.934.8693

ANDREW ADESSKY
PARTNER
Aadessky@richter.ca
514.934.3513

EXHIBIT R-5 (under seal)

EXHIBIT R-6

BY EMAIL

February 11, 2020

Davies Ward Phillips & Vineberg LLP
1501 McGill College Avenue
26th Floor
Montreal (Quebec)
H3A 3N9
Canada
Attention: Hillel Rosen
Email: hrosen@dwpv.com

Re: Public Disposition of US Collateral

Dear Hillel:

We are writing in connection with our prior discussions and correspondence with respect to (A) the Loan, Guaranty and Security Agreement dated as of October 18, 2018 (as amended, restated, supplemented or otherwise modified from time to time, the "Loan Agreement") by and among Freemark Apparel Brands Group Inc. ("FAB"), Bench IP Acquisition LP ("Acquisition LP"), Bench IP Acquisition GP LLC ("Acquisition GP"), FAB IP CO LP ("IP LP"), and FAB IP CO GP LLC ("IP GP" and, collectively with Acquisition LP, Acquisition GP and IP LP, the "US Borrowers"), Freemark Apparel Brands Retail BE Inc. ("Retail BE"), Freemark Apparel Brands Retail ESP Inc. ("Retail ESP") and Freemark Apparel Brands Group USA Inc. ("FAB USA") and Bench IP Holdings LLC ("Lender"), (B) Lender's letter to FAB, as Agent for each FAB Party, dated January 13, 2020 re: Notice of Default and Reservation of Rights (the "Default Letter"), specifying certain Events of Default under the Loan Agreement, including Borrowers' failure to make interest and principal payments due under the Loan Agreement on January 1, 2020 (collectively, the "Specified Events of Default"), and (C) Lender's letter to the US Borrowers, dated February 3, 2020 re: Notice of Acceleration and Demand for Payment (the "Acceleration Letter") accelerating, and demanding immediate payment of, the US Borrowers' Obligations. The US Borrowers and FAB are collectively referred to herein as the "Borrowers". Capitalized terms used in this letter without definition shall have the respective meanings ascribed thereto in the Loan Agreement.

As you know, the Borrowers are in default under the Loan Agreement as a result of, *inter alia*, the Specified Events of Default, and Lender has accelerated the Obligations owed to Lender by the US Borrowers pursuant to the Acceleration Letter. Throughout our discussions and correspondence following the Borrowers' payment default on January 1, 2020, and in the business discussions and correspondence directly between the

Borrowers and Lender, the Borrowers have offered no material inducement to Lender to forbear from the Lender's exercise of remedies against the US Borrowers.

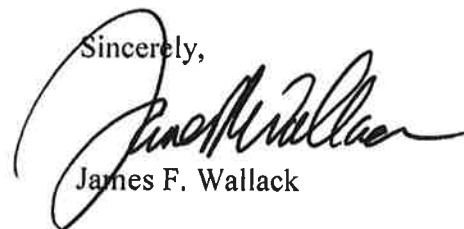
In the meantime, the value of the collateral pledged to Lender by the US Borrowers (including the US Borrowers' equity interests and Bench brand intellectual property assets, as applicable, the "US Collateral") has materially diminished and continues to diminish as a result of (A) the Borrowers' decisions, made without any consultation with Lender, to close and liquidate all of FAB's retail stores and commence a Canadian insolvency proceeding with respect to FAB and (B) FAB's inability to control its suppliers' attempts to distribute Bench-branded inventory outside of approved channels. As you also know, Lender holds a sole, first priority security interest in the US Collateral as security for the Obligations.

In light of the foregoing and without limitation or waiver of any of its other rights, Lender is retaining an investment/advisory firm with expertise in intellectual property transactions to market the US Collateral for a public disposition pursuant to Article 9 of the Uniform Commercial Code. Lender will also publicly advertise the sale of the US Collateral in one or more national publications such as the New York Times and/or the Wall Street Journal.

Given the Borrowers' prior marketing of the US Collateral, and in order to maximize the value of the US Collateral at the foreclosure sale, please arrange for the delivery to Lender of (i) the contact information for any parties who have expressed to Borrowers an interest in all or any portion of the US Collateral and (ii) any written indications of interest (including by email) received by the Borrowers or any of their representatives or agents, in either case within the last twelve months.

Lender will market the assets and conduct the public disposition of the US Collateral in a commercially reasonable manner in all respects and looks forward to the US Borrowers' cooperation with a process that will maximize value for all stakeholders. Lender's and GBB's respective rights and remedies remain reserved and are not hereby being waived, deferred or limited in any respect.

Sincerely,



James F. Wallack

Copies by email to:

Gerald Kandestin, Esq.
Mackenzie Shea, Esq.
Sandra Abitan, Esq.
Timothy J. Carter, Esq.

EXHIBIT R-7

DAVIES1501 McGill College Avenue, 26th Floor
Montréal, QC H3A 3N9 Canada

dwpv.com

Hillel W. Rosen
T 514.841.6443
F 514.841.6499
hrosen@dwpv.com

File 271180

February 18, 2020

BY EMAILMr. Jim Wallack
Goulston and Storrs
400 Atlantic Avenue
Boston, MA 02110-3333
United States of America

Dear Jim:

Subject: Public Disposition of US Collateral

I writing in reply to your letter dated February 11, 2020.

In my letter to you dated January 23, 2020 and in prior conversations between ourselves and our clients, Freemark Apparel Brands Group Inc. ("**FAB**") advised that on January 21, 2020 it had filed a notice of intention under the *Bankruptcy and Insolvency Act* (Canada) ("**NOI Proceedings**") as an orderly way in which to reorganize its business for the benefit of all stakeholders, including Gordon Brothers. Gordon Brothers was specifically advised that FAB was initiating a sale and investment solicitation plan ("**SISP**") for the solicitation of offers to invest in FAB or to purchase all, or any part of, FAB's property. Richter Advisory Group, an investment advisor known to, and frequently engaged by, Gordon Brothers has been retained to lead the SISP.

FAB remains extremely confident that the equity value in FAB's interest in the worldwide Bench trademark portfolio (i.e. both Americas and Rest of World), exceeds all amounts owing or payable to GBB and that the Richter led SISP is the most effective way to realize on that value. FAB and GBB have agreed in the past that the worldwide trademark portfolio has greater value than the sum of its parts and FAB, through its ownership interests in the Americas intellectual property and its exclusive option to purchase the Bench Rest of World intellectual property is uniquely positioned to market that opportunity. This process will ensure that GBB is paid in full and that all excess proceeds will be available to FAB and all of its creditors as required under all applicable laws.

FAB and Richter have been diligently proceeding with the SISP. In particular:

- i. The SISP was launched on February 7, 2020;

Mti#: 3047039.2

DAVIES

- ii. A Teaser has been sent to approximately sixty-two (62) interested parties consisting of strategic buyers and financial investors;
- iii. Richter has created a virtual data room with the necessary information to enable interested parties to evaluate the opportunity;
- iv. To date, 17 parties have signed a confidentiality agreement and have been granted access to the data room. Additional parties have requested the confidentiality agreement;
- v. Richter and FAB are responding to information requests or questions from interested parties on a prompt basis and have already held several in-person meetings with potential investors.

FAB has sought to pursue the SISP with the support and cooperation of Gordon Brothers. Instead, Gordon Brothers continues to take an adversarial approach to FAB's efforts.

In particular:

1. FAB has outlined how the SISP benefits Gordon Brothers and has sought Gordon Brothers' forbearance and cooperation. However, from the outset and as expressly set forth in the February 11, 2020 letter, Gordon Brothers has made it clear that the prospect of the timely payment to Gordon Brothers of all monies owing to it (whether under the Loan Agreement or the Put/Call Agreement) is simply not enough and that Gordon Brothers is insisting on additional and material consideration to buy its co-operation. While under no obligation to do so, FAB has in fact offered material inducements to Gordon Brothers to forebear that have included proposed amendments to various agreements and a significant monetary amount. FAB remains open to furthering those discussions.
2. Gordon Brothers claims that the value of the US Collateral has materially diminished. This is untrue. As stated above, there is a substantial equity value in FAB's interests in the US Collateral and any claim by Gordon Brothers to the effect that the NOI Proceedings has in any way prejudiced Gordon Brothers ability to recover all amounts owing to it are without merit. The specific examples provided by Gordon Brothers to substantiate the claim of diminished value actually demonstrate that no prejudice has been suffered by Gordon Brothers. First, Gordon Brothers complains that actions taken by FAB were done "without consultation" with Gordon Brothers. It has been previously communicated to Gordon Brothers that decisions to initiate Canadian insolvency proceedings were taken at the express direction of FAB's operating lender as it is this lender (and not Gordon Brothers) that was materially effected by FAB's financial predicament. Second, Gordon Brothers cites the closure of FAB's retail stores as evidence of prejudice. However, not a single retail store has as yet been closed and it is anticipated that the SISP will be completed before the stores are scheduled to close. Third, there is no evidence whatsoever that any of FAB's suppliers have in fact distributed Bench branded inventory outside of approved channels.
3. Despite the benefits of the SISP, Gordon Brothers now threatens to initiate its own public disposition of the US Collateral (the "**Competing Process**").

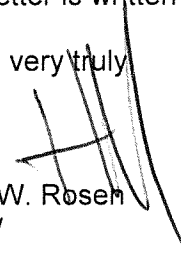
The Competing Process is duplicative and unnecessary. Initiating a Competing Process will lead to mass confusion in the market place and amongst interested parties. In particular, only FAB can offer for sale both the Americas IP and the Rest of World IP. Gordon Brothers is called upon to suspend the Competing Process so as to allow the SISP to proceed. FAB is certainly open to providing Gordon Brothers with ongoing information concerning the SISP on the condition that Gordon Brothers suspend the Competing Process and undertakes to forebear and cooperate. In any event, FAB will not agree to be responsible for any costs and expenses incurred by Gordon Brothers in connection with the Competing Process and reserves its rights on the negative impact of such Competing Process on the value of FAB's property.

4. Pursuant to the Put/Call Agreement, FAB is required to repay the outstanding loan to Gordon Brothers as a condition to the exercise of its option. This is precisely what FAB intends to achieve through the SISP. If Gordon Brothers insists on proceeding with the Completing Process then it follows that the only condition that FAB must fulfil to exercise its option is to pay the Special Option price of £3,625,000.
5. Without prejudice to paragraph 3 above, should Gordon Brothers insist upon proceeding with the Competing Process, then FAB hereby requests to be provided with all relevant information relating thereto, including:
 - i. name and contact information of the investment/advisory firm to be engaged by Gordon Brothers, with contact information for the appropriate persons;
 - ii. the process and timing contemplated for the Competing Process;
 - iii. copies of any notices to be published;
 - iv. copies of any offer submitted.

Gordon Brothers claims that it will conduct the Competing Process in a commercial reasonable manner. The very act of initiating the Completing Process in these circumstances is unreasonable to the extreme and is not the best way of enhancing the value of FAB's property to the benefit of all stakeholders. FAB continues to wish to work cooperatively with Gordon Brothers so that FAB's SISP is successful for the benefit of all creditors. We would urge Gordon Brothers to consider taking a constructive and non adversarial approach to recent events so that FAB may achieve those ends.

This letter is written under reserve of all of FAB's rights.

Yours very truly


Hillel W. Rosen
HWR/

DAVIES

cc Denis Ferland, *Davies Ward Phillips & Vineberg LLP*
Andrew Adessky, *Richter Advisory Group Inc.*
Freemark Apparel Brands Group Inc.
Gerald Kandestin, Esq
Mackenzie Shea, Esq
Sandra Abitan, Esq
Timothy J. Carter, Esq

EXHIBIT R-8

James F. Wallack
jwallack@goulstonstorrs.com
(617) 574-4107 Tel
(617) 574-7646 Fax

BY EMAIL

February 21, 2020

Davies Ward Phillips & Vineberg LLP
1501 McGill College Avenue
26th Floor
Montreal (Quebec)
H3A 3N9
Canada
Attention: Hillel Rosen
Email: hrosen@dwpv.com

Re: Public Disposition of US Collateral

Dear Hillel:

I am writing in response to your letter of February 18, 2020 regarding our letter of February 11, 2020 re: Public Disposition of US Collateral (the "February 11 Letter"). Capitalized terms used but not defined herein have the meanings set forth in the February 11 Letter.

The transactions between Lender and FAB were specifically structured so that, if FAB were to default under the Loan Agreement, Lender could exercise remedies in the United States against the US Collateral held by FAB's US subsidiaries. Given the ongoing Specified Events of Default, Lender is well within its rights to foreclose on the US Collateral, and will proceed accordingly.

Your assurances of repayment are reminiscent of the very similar assurances FAB made to Lender in December 2019. The debt and equity financing that your clients promised failed to materialize, notwithstanding assurances to the contrary just days before the supposed closing. Instead, FAB defaulted on its payment obligations and abruptly filed an insolvency proceeding in Canada without seeking Lender's prior input or even advising Lender of its plans until immediately before the filing. It is simply unreasonable to assume that Lender would stand still based on hollow assurances of a coming transaction, when FAB could not complete such a transaction outside of bankruptcy after many months of marketing efforts.

Further, the more recently commenced sale process is already fraught with misrepresentations. Specifically, as described in our separate correspondence regarding the “Teaser,” FAB has misrepresented its ownership of, and rights to, certain of the assets to be sold (which are actually owned by Lender), and substantially overstated the actual license royalty revenues with respect to these assets, as any serious potential purchaser will quickly discern. We are left to wonder whether last December’s failed financing transaction was caused by the same lack of clarity.

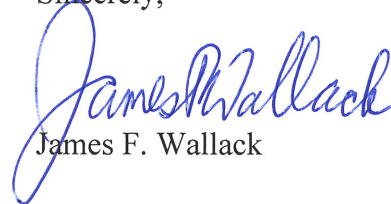
FAB’s stores are being liquidated. The liquidation and pending store closings will have an obvious impact on the value of the Bench brand. It is unclear how FAB could be missing this dynamic with respect to brand value.

We also reject your suggestion, in Paragraph 3 of your February 18 letter, that FAB “will not agree” to be responsible for Lender’s enforcement costs. FAB has already expressly agreed in the Loan Agreement that such enforcement costs are and will be Obligations (as defined in the Loan Agreement) to be repaid by FAB. We are similarly confused by your suggestion in paragraph 4 of your February 18 letter that Lender’s exercise of rights under the Loan Agreement has any bearing on the price required to be paid to Gordon Brothers Brands, LLC in exercising the Special Option under the Put/Call Agreement. The Transaction Documents are entirely clear on these points: (1) all enforcement costs are Obligations under the Loan Agreement, and (2) all Obligations under the Loan Agreement (including any deficiency that remains unpaid after completion of the foreclosure process) must be repaid in full as a condition to exercise of the Special Option under the Put/Call Agreement.

In light of the Specified Events of Default and the foregoing, Lender is retaining Hilco Streambank (“Hilco”) to market the US Collateral in connection with a public disposition under the Uniform Commercial Code. There is no better firm to take on this assignment. Hilco has deep experience managing distressed IP sales for consumer brands. In just the past two years they have managed sales or acted as an advisor in the sales of Forever 21, Destination Maternity, Dressbarn, Charming Charlies, Bluefly.com, Kenmore and DieHard, Fuji Bikes, dELIA*s and Fashion Fair, among others. They will run a very efficient and comprehensive sale process, which will be commercially reasonable in all aspects. Your clients will be provided with the notice required under Article 9 and copies of any published notices.

Hilco will be reaching out to FAB for information in connection with its marketing efforts. We look forward to FAB's assistance and cooperation in that process, which will help maximize the value of the US Collateral for all stakeholders. Gordon Brothers' and Lender's rights and remedies remain reserved and are not hereby being waived, deferred or limited in any respect.

Sincerely,



James F. Wallack

Copies by email to:

cc: Gerald Kandestin, Esq.
Mackenzie Shea, Esq
Sandra Abitan, Esq.
Timothy J. Carter, Esq.

EXHIBIT R-9

NOTICE OF DISPOSITION OF COLLATERAL BY PUBLIC SALE

BY CERTIFIED MAIL RETURN RECEIPT REQUESTED AND OVERNIGHT MAIL

To: Bench IP Acquisition LP,
Bench IP Acquisition GP LLC,
FAB IP CO LP,
FAB IP CO GP LLC,
Freemark Apparel Brands Retail ESP Inc., and
Freemark Apparel Brands Group USA Inc.
5640 Paré Street
Mont-Royal (Quebec)
H4P 2M1
Canada
Attention: Howard Schnider

Davies Ward Phillips & Vineberg LLP
1501 McGill College Avenue
26th Floor
Montréal (Québec)
H3A 3N9
Canada
Attention: Hillel Rosen

PLEASE TAKE NOTICE THAT Bench IP Holdings LLC ("Lender") will conduct, through its agent, Hilco Streambank (the "Agent"), a disposition of the below described collateral by public sale in accordance with the provisions of N.Y. UCC Section 9-601, et seq., as follows:

- a) **Debtors**: The debtor that owns the assets being sold is Bench IP Acquisition LP, a Delaware limited partnership ("IP Acquisition"). Bench IP Acquisition GP LLC, FAB IP CO LP, FAB IP CO GP LLC, Freemark Apparel Brands Group Inc., Freemark Apparel Brands Retail BE Inc., Freemark Apparel Brands Retail ESP Inc., and Freemark Apparel Brands Group USA Inc. are also obligors with respect to IP Acquisition's obligations to Lender.
- b) **Secured Party**: The secured party is Lender.
- c) **Agreement Pursuant to Which the Sale is Held**: Loan, Guaranty and Security Agreement dated as of October 18, 2018 by and among the Debtors and Lender (the "Loan Agreement");
- d) **Description of Property to be Sold**: All of IP Acquisition's rights and interests in and to equity interests in (i) FAB IP CO LP ("IP CO LP"), consisting of a 99.99% limited partnership interest, and (ii) FAB IP CO GP LLC ("IP CO GP", and, together with IP LP, the "IP COs"), consisting of a 100% limited liability company interest, and all rights relating thereto (collectively, the "Property"). IP CO GP in turn owns the remaining 0.01% equity interest in IP CO LP such that the sale will include, directly and indirectly, all of the outstanding equity

interests in the IP COs. Lender has a first priority security interest in the Property. **The Property will be sold free and clear of Lender's lien and any subordinate security interests in the Property and, upon the closing of such sale, Lender will release the IP COs from their obligations under the Loan Agreement and will release its liens on the assets of the IP COs.**

The Property includes the right to receive any certificates representing any of the above described equity interests, all warrants, options, share appreciation rights and other rights, contractual or otherwise, in respect thereof and the right to receive all dividends, distributions of income, profits, surplus, or other compensation by way of income or liquidating distributions, in cash or in kind, and all cash, instruments, and other property from time to time received, receivable, or otherwise distributed in respect of or in addition to, in substitution of, on account of, or in exchange for any or all of the foregoing, also including, without limitation, all of IP Acquisition's right to participate in the management of the business and affairs of the IP COs or otherwise control the IP COs, and including all voting rights of IP Acquisition in the IP COs, and in the case of the equity interests in IP CO GP, IP Acquisition's rights and status as a "member" (as such term is defined in the Delaware Limited Liability Company Act) in IP CO GP.

Additional information regarding the Property can be obtained by accessing a Virtual Data Room maintained by the Agent.

- e) **Date, Hour and Place of Sale:** Auction for qualified bidders will convene on Monday, March 30, 2020 at 2:00 p.m. Eastern Time at the law offices of Goulston & Storrs PC, 885 Third Avenue, 18th Floor, New York, New York, 10022.
- f) **Participation Requirements, Information and Due Diligence:** Only qualified bidders may participate in the auction. Potential bidders interested in obtaining information regarding the Property, participation requirements, bid forms and the terms of the sale may contact Richelle Kalnit at Hilco Streambank (rkalnit@hilcoglobal.com).

Lender is a qualified bidder and may credit bid all or a portion of its secured claim for the Property.

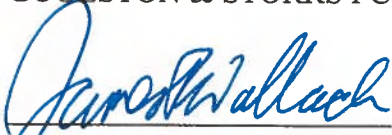
- g) **Terms of Sale:** At the auction, the Property will be sold to the highest qualified bidder. Lender reserves the right to permit, at its sole discretion, qualified bidders to participate telephonically in the auction. Payment must be made in full at the time and place of the sale, or on such other terms as agreed by Lender in its sole discretion. The sale of the Property shall be effectuated by delivery of a Secured Party Bill of Sale.
- h) **No Warranties:** The Property will be sold "AS IS, WHERE IS," "WITH ALL FAULTS," and "WITHOUT ANY WARRANTIES WHATSOEVER, EXPRESSED OR IMPLIED, INCLUDING, WITHOUT LIMITATION, A WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR OR OTHER PURPOSE," and subject to taxes, special

assessments and liens that have been levied or assessed, and/or are unpaid or unsatisfied (none of which will be paid by Lender). The sale of the Property will not release or discharge any other obligations (if any) of the IP COs or any other liens (if any) on the assets of the IP COs. The Property is being sold without recourse to Lender, its attorneys or representatives. Lender does not claim title to the Property being sold hereunder and disclaims any warranty of title, possession, quiet enjoyment and the like in the sale.

- i) **Right to Accounting:** Pursuant to the requirements of N.Y. UCC Section 9-613, the Debtors are entitled to an accounting of the unpaid indebtedness secured by the Property. An accounting may be requested by calling the undersigned counsel for Lender.
- j) **Postponement of Public Sale:** The public sale scheduled on the above date, time and location may be postponed. In such event, an announcement of postponement of the scheduled sale will be made by Lender at the currently proposed date and time of the sale.

Dated: March 9, 2020

GOULSTON & STORRS PC



James F. Wallack
 Timothy J. Carter
 885 Third Avenue, 18th Floor
 New York, NY 10022
 jwallack@goulstonstorrs.com
 tcarter@goulstonstorrs.com
 (617) 574-3561
 Attorneys for Bench IP Holdings LLC

Copy (by overnight mail) to:
 Freemark Apparel Brands Group Inc., and
 Freemark Apparel Brands Retail BE Inc.,
 5640 Paré Street
 Mont-Royal (Quebec)
 H4P 2M1
 Canada
 Attention: Howard Schnider

EXHIBIT R-10

DAVIES

1501 McGill College Avenue, 26th Floor
Montréal, QC H3A 3N9 Canada

dwpv.com

Hillel W. Rosen
T 514.841.6443
F 514.841.6499
hrosen@dwpv.com

File 271180

March 16, 2020

CONFIDENTIAL

BY OVERNIGHT COURIER, BY FAX AND BY EMAIL

Gordon Brothers Brands, LLC
Bench IP Holdings LLC
Prudential Tower
800 Boylston Street, 27th Floor
Boston, MA 02199
Attention: Ramez Toubassy
Rafael Klotz
Tel.: + 1,310.435.4187
email: rtoubassy@gordonbrothers.com
email: rklotz@gordonbrothers.com

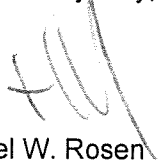
Goulson & Storrs P.C.
400 Atlantic Avenue
Boston, MA 02110
Attention: James F. Wallack, Esq.
Tel. : 617.574.4107
email : jwallack@goulstonstorrs.com

Dear Sirs:

Please find attached the Special Option Notice issued by Freemark Apparel Brands Group Inc. pursuant to the Put/Call Option and Special Option Agreement.

Please also note the requirement for a pay-out statement pursuant to the Loan, Guaranty and Security Agreement.

Yours very truly,



Hillel W. Rosen

Enclosures

MII#: 3072158.1

DAVIES WARD PHILLIPS & VINEBERG LLP

Special Option Notice

March 16, 2020

To : Gordon Brothers Brands, LLC (the "**Company**")
Bench IP Holdings LLC ("**Bench Holdings**")

Gordon Brothers Brands, LLC
Prudential Tower
800 Boylston Street, 27th Floor
Boston, MA 02199

Goulson & Storrs P.C.
400 Atlantic Avenue
Boston, MA 02110

From: Freemark Apparel Brands Group Inc. (the "**Purchaser**")

Reference is made to that certain Put/Call Option and Special Option Agreement (the "**Put/Call Agreement**") made and entered into as of October 18, 2018 between the Company and Purchaser.

Reference is further made to that certain Loan, Guaranty and Security Agreement entered into as of October 18, 2018 amongst Bench Holdings as lender, the Purchaser and others as borrowers and guarantors (the "**Loan, Guaranty and Security Agreement**").

Defined terms used in this Notice shall have the meaning set out in the Put/Call Agreement unless the context otherwise indicates.

We wish to advise as follows:

1 Notice is hereby given (i) that Purchaser hereby exercises its right to acquire from the Company and to cause the Company to sell to the Purchaser all (but not less than all) of the Bench Interests for an aggregate purchase price equal to the Special Option Price, and (ii) the Special Option Date shall be March 30, 2020 or such earlier date as may be agreed upon by the Company and Purchaser. For certainty, this notice constitutes the Special Option Notice under the Put/Call Agreement.

2 Without limiting any of its rights under the Put/Call Agreement, Purchaser hereby expressly reserves its right under Section 6(c) of the Put/Call Agreement to designate, in its discretion, one or more persons to be the acquirer of the Bench Interests or the Bench IP (as the case may be) and/or assign its rights and obligations under the Put/Call Agreement to any person, the whole in accordance with the terms of the Put/Call Agreement.

3 Without limiting any of its rights under the Put/Call Agreement, the Purchaser hereby expressly reserves its rights under Section 5(a) of the Put/Call Agreement to structure the Special Option transaction as an Asset Sale.

4 Pursuant to Section 4(b) of the Put/Call Agreement the payment of the Special Option Price requires concurrent repayment of amounts owing under the Loan, Guaranty and Security Agreement (as further detailed in such Section). Accordingly, Bench Holdings is hereby called upon to provide the Purchaser with a payout statement indicating such amounts calculated as at the Special Option Date. We would ask that preliminary payout be delivered to us as soon as practicable.

5 We would reiterate that pursuant to Section 6(a) of the Put/Call Agreement the Company and Purchaser are each obliged to execute and deliver such documents, assignments, instruments and other items, in such form and content as shall reasonably be required by each of us and shall take such other actions as shall reasonably be necessary to transfer and assign the Bench Interest or the Bench IP (as the case may be) and related licenses and agreements to Purchaser. The Company has further obligations, as set out in Section 12 of the Put/Call Agreement, to facilitate the reasonable requests of Purchaser (or its designee or assignee) and its lenders. We trust that we can count on the cooperation of each of the Company and Bench Holdings towards these ends and would suggest an immediate call amongst counsel to coordinate same.

Freemark Apparel Brands Group Inc.

Per:



cc Andrew Adessky (Richter LLP)
Richard Millington (Shoosmiths LLP)
Hillel W. Rosen (Davies, Ward, Phillips & Vineberg)

EXHIBIT R-11

DAVIES1501 McGill College Avenue, 26th Floor
Montréal, QC H3A 3N9 Canada

dwpv.com

Hillel W. Rosen
T 514.841.6443
F 514.841.6499
hrosen@dwpv.com

File 271180

March 20, 2020

BY EMAILMr. Jim Wallack
Goulston and Storrs
400 Atlantic Avenue
Boston, MA 02110-3333
United States of America

Dear Jim:

Subject: Public Disposition of US Collateral

Further to our recent conversations, and as requested by you, I wanted to outline the terms of the ("**Bid**") made by 11951432 Canada Inc. (the "**Purchaser**") a venture between the Routtenberg Family on the one hand and Wraith International (an affiliate of Apparel Brands) in connection with the sale and investment solicitation plan for Freemark Apparel Brands Group Inc. ("**FAB**").

The essential elements of the Bid may be summarized as follows:

- 1 Payment in full to Bench IP Holdings LLC ("**Gordon Brothers**") of all amounts owing to it pursuant to the Loan, Guaranty and Security Agreement dated October 18, 2018 (the "**Loan Agreement**"), the full release and discharge of the borrowers and the guarantors thereunder and the release of all security granted by such borrowers and guarantors in respect thereof (the "**Loan Repayment**").
- 2 The Special Option set forth in the Put/Call Option and Special Option Agreement dated October 18, 2018 was exercised on March 16, 2020, Under the Bid, Wraith International shall be designated as the purchaser.
- 3 Closing for the Loan Repayment and the closing of the Special Option exercise shall occur on March 30, 2020. The two transactions must close concurrently.
- 4 The Bid provides for substantial payments to Accord Financial.

Mt#: 3071743.2

DAVIES

We can confirm that all of the monies required to fund the Loan Repayment have been deposited into escrow with Davies (U.S. \$4,733,989 and CDN \$1,000,000) and all of the monies required to fund the payment of the Special Option Price have been deposited into escrow with Shoosmith (3,625,000 GBP).

As discussed, the Bid requires approval of the Québec Superior Court. I can confirm that the motion material will be served on Monday March 23, 2020. As I advised the Québec courts are closed. We have already written to the presiding judge and given the threatened deadline being imposed by Gordon Brothers have requested a hearing date on or before March 27, 2020. We understand that your Canadian counsel has advised you that such proceedings are expected to be uncontested and will be routinely approved by the presiding official. Further to your request, confirm that your Canadian counsel will receive copies of the motion materials.

FAB takes note of the Notice of Disposition of Collateral by Public Sale issued by Gordon Brothers that contemplates an auction sale to be conducted on March 30, 2020. In light of the Bid and the Loan Repayment, Gordon Brothers is called upon to postpone the public sale (as it is entitled to do pursuant to paragraph (j) of the Notice) to allow for the transactions under the Bid. In addition, Gordon Brothers is called upon to cease incurring any expense in respect to the Public Sale which may be for the account of FAB. Further as a result of the Coronavirus and the broad disruption being caused (including the likely inaccessibility to the premises where such auction is to be held), Gordon Brother's legal obligation is to postpone the auction irrespective of the Bid.

In a call with Wraith counsel on March 19 2020 you indicated that Gordon Brothers does not want to see the Special Option transaction completed – that Gordon Brothers would prefer to keep the assets for itself. Gordon Brothers has previously indicated that it would also prefer to keep the Americas IP held in FAB IP CO (ie its Collateral under the Loan Agreement) instead of accepting the Loan Repayment. In addition, in an email of March 19 you indicated that Gordon Brothers would hold FAB to the March 30 date. Gordon Brothers must not use the March 30 deadline imposed by it as a device to frustrate the Loan Repayment and the right of FAB to complete the Special Option. Gordon Brothers is put on notice of its obligations, which includes acting in good faith, in a commercially reasonable manner and in accordance with its legal and contractual obligations. That requires Gordon Brothers to suspend the Public Sale and to cooperate and facilitate the Loan Repayment and closing of the Special Call (especially given the current global crisis). Gordon Brothers has demanded the Loan Repayment and it shall be repaid. It is again worth noting that in light of the substantial recoveries to Accord under the Bid, the failure of Gordon Brothers to do so would cause FAB and its creditor's material damages.

The global pandemic makes these extraordinarily difficult and unprecedented times. We are making every effort to complete the transactions in the artificial time frame unilaterally imposed by Gordon Brothers. Gordon Brothers has the obligation to offer its true collaboration, to act in good faith and to extend whatever reasonable delays are required as a result of this global crisis to allow for the Loan Repayment and the closing of the exercise of the Special Option and the failure to do so will be actionable. Clearly no creditor should prevent repayment, or make payment unnecessarily difficult, so as to take advantage of the situation for its own purposes and deprive the borrower (and its creditors) of rights and assets.

DAVIES

This letter is written under reserve of all FAB's rights.

Yours very truly,

A handwritten signature in black ink, appearing to read 'HWR', with a stylized flourish at the end.

Hillel W. Rosen
HWR/cg

cc Denis Ferland, *Davies Ward Phillips & Vineberg LLP*
Andrew Adessky, *Richter Advisory Group Inc.*
Freemark Apparel Brands Group Inc.
Gerald Kandestin, Esq
Mackenzie Shea, Esq
Sandra Abitan, Esq
Timothy J. Carter, Esq