

Court File No.:

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

BETWEEN:

**ROSEJACK INVESTMENTS LTD.**

Applicant

- and -

**DAVIDS FOOTWEAR LTD.**

Respondent

**IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION  
243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3,  
AS AMENDED; AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*,  
R.S.O. 1990, c. C.43, AS AMENDED**

**APPLICATION RECORD  
(Returnable August 2, 2019)**

**BORDEN LADNER GERVAIS LLP**

Bay Adelaide Centre, East Tower

22 Adelaide Street West

Toronto, ON M5H 4E3

Tel: (416) 367-6000

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**ROGER JAIPARGAS – LSO No. 43275C**

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Lawyers for the Applicant

# Index

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**I N D E X**

**TAB   DOCUMENT**

- 1   Notice of Application, returnable August 2, 2019
- 2   Affidavit of Larry Rosen sworn July 31, 2019

**Exhibits**

- A   Exhibit “A” :   Davids Corporation Profile Report
- B   Exhibit “B” :   Facility Letter dated February 12, 2018
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- D   Exhibit “D” :   HSBC GSA dated February 28, 2018
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- F   Exhibit “F” :   Release Agreement dated July 30, 2019
- G   Exhibit “G” :   Secured Promissory Note dated November 6, 2017
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- I   Exhibit “I” :   PPSA Enquiry Response Certificate currency date of July 28, 2019
- J   Exhibit “J” :   Copy of Davids Demand Letter and NITES dated July 31, 2019

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- K            Exhibit “K” :   Davids Consent dated July 31, 2019
- L            Exhibit “L” :   Copy of Richter’s Consent dated July 31, 2019
- 3     Draft Order
- 4     Blackline of Draft Order to model Receivership Order



# Tab 1

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**NOTICE OF APPLICATION  
(Returnable August 2, 2019)**

**TO THE RESPONDENTS**

**A LEGAL PROCEEDING HAS BEEN COMMENCED** by the applicant. The claim made by the applicant appears on the following page.

**THIS APPLICATION** will come on for a hearing before a Judge presiding over the Commercial List on Friday, August 2, 2019 at 10:00 a.m. or so soon thereafter at 330 University Avenue, Toronto, Ontario.

**IF YOU WISH TO OPPOSE THIS APPLICATION**, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

**IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS - EXAMINE WITNESSES ON THE APPLICATION**, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but not later than two (2) days before the hearing.

**IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.**

**IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.**

Date August 2, 2019

Issued by

---

Local Registrar

**Address of court office:**

330 University Avenue  
7<sup>th</sup> Floor  
Toronto, ON M5G 1R7

**TO: ATTACHED SERVICE LIST**

## Service List

<b>TO:</b>	<p><b>BORDEN LADNER GERVAIS LLP</b> Bay Adelaide Centre, East Tower 22 Adelaide Street West Toronto, ON M5H 4E3 Tel: (416) 367-6000 Fax: (416) 367-6749</p> <p><b>Roger Jaipargas</b> Tel: (416) 367-6266 <a href="mailto:rjaipargas@blg.com">rjaipargas@blg.com</a></p> <p><b>Lawyers for Rosejack Investments Ltd.</b></p>
<b>AND TO:</b>	<p><b>RICHTER ADVISORY GROUP INC.</b> 181 Bay Street   Suite 3320 Bay Wellington Tower Toronto, ON M5J 2T3</p> <p><b>Adam Sherman</b> Tel: (416) 642-4836 <a href="mailto:asherman@richter.ca">asherman@richter.ca</a></p> <p><b>Pritesh Patel</b> Tel: (416) 642-9421 <a href="mailto:ppatel@richter.ca">ppatel@richter.ca</a></p> <p><b>Proposed Receiver</b></p>
<b>AND TO:</b>	<p><b>FASKEN MARTINEAU DUMOULIN LLP</b> 333 Bay Street, Suite 2400 Toronto, ON M5H 2T6</p> <p><b>Stuart Brotman</b> Tel: (416) 865-5419 <a href="mailto:sbrotman@fasken.com">sbrotman@fasken.com</a></p> <p><b>Lawyers for Richter Advisory Group Inc., Proposed Receiver</b></p>

<b>AND TO:</b>	<b>DEPARTMENT OF JUSTICE (CANADA)</b> Ontario Regional Office 120 Adelaide Street West   Suite 400 Toronto, ON M5H 1T1  <b>Diane Winters</b> Tel: (416) 973-3172 <a href="mailto:diane.winters@justice.gc.ca">diane.winters@justice.gc.ca</a>
<b>AND TO:</b>	<b>MINISTRY OF FINANCE</b> Legal Services Branch College Park   777 Bay Street   11th Floor Toronto, ON M5G 2C8  <b>Kevin O'Hara, Counsel</b> Tel: (416) 327-8463 <a href="mailto:kevin.ohara@ontario.ca">kevin.ohara@ontario.ca</a>

## APPLICATION

1. The Applicant, Rosejack Investments Ltd. ("**Rosejack**" or the "**Lender**"), makes an application for an Order substantially in the form filed herewith. The Order to be requested on August 2, 2019, the return date of this Application, seeks an Order, *inter alia*:

- (a) abridging the time for service of the Notice of Application and the Application Record and dispensing with further service thereof;
- (b) appointing Richter Advisory Group Inc. ("**Richter**") as receiver (in such capacity, the "**Receiver**"), without security, of all of the assets, undertakings and properties (the "**Property**") of Davids Footwear Ltd. (the "**Debtor**") pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 as amended (the "**BIA**") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "**CJA**");
- (c) granting a charge over the Property in favour of the Receiver and the Receiver's counsel to secure their fees and disbursements in respect of these proceedings on the terms as set out in the draft order filed (the "**Receiver's Charge**"); and
- (d) such further and other relief as counsel may request and this Honourable Court may permit.

2. **THE GROUNDS FOR THE APPLICATION ARE:**

- (a) The Debtor is currently indebted to Rosejack pursuant to a Secured Demand Grid Promissory Note dated November 6, 2017;
- (b) The obligations of the Debtor to Rosejack are secured by a General Security Agreement dated November 6, 2017;
- (c) The obligations of the Debtor are repayable on demand;
- (d) On July 31, 2019, the Lender issued a demand for payment and a Notice of Intention to Enforce Security ("**NITES**") to the Debtor and pursuant to the BIA, and the 10 day notice period under the NITES has now expired;

- (e) the Lender seeks to appoint the Receiver to secure the Property and review the alternatives with a view to maximizing value for all stakeholders;
- (f) Richter is a licensed trustee in bankruptcy;
- (g) the appointment of Richter as receiver is just and convenient in the circumstances;
- (h) section 243(1) of the BIA;
- (i) section 101 of the CJA;
- (j) rules 1.04, 2.03, 3.02, 16 and 38 of the Rules of Civil Procedure, R.R.O. 1990. Reg. 194, as amended; and
- (k) such further and other grounds as counsel may advise and this Court may permit.

3. **THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the application:

- (a) the Affidavit of Larry Rosen sworn July 31, 2019 and the exhibits referred to therein; and
- (b) such further and documentary evidence as counsel may advise and this Court may permit.

August 2, 2019

**BORDEN LADNER GERVAIS LLP**

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Lawyers for the Applicant

Court File No.:

IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED; AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED

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Applicant

- and -

**DAVIDS FOOTWEAR LTD.**

Respondent

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

PROCEEDINGS COMMENCED AT TORONTO

**NOTICE OF APPLICATION**  
**(Returnable August 2, 2019)**

**BORDEN LADNER GERVAIS LLP**

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Toronto, ON M5H 4E3

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**Lawyers for the Applicant**



# Tab 2

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**AFFIDAVIT OF LARRY ROSEN**

**(Sworn July 31, 2019)**

I, **LARRY ROSEN**, of the City of Toronto, in the Province of Ontario, **MAKE OATH AND SAY** as follows:

1. I am a Director of the applicant, Rosejack Investments Ltd. ("**Rosejack**") and as such have knowledge of the matters hereinafter deposed to, or where I do not possess such personal knowledge, I have stated the source of my information and in all such cases do verily believe it to be true. I am also a Director and the Chief Executive Officer of Davids Footwear Ltd. ("**Davids**" or the "**Company**"), as well as the Chairman and Chief Executive Officer of Harry Rosen Inc. ("**HRI**").
2. This Affidavit is sworn in support of an application by Rosejack to appoint Richter Advisory Group Inc. ("**Richter**") as receiver (in such capacity, the "**Receiver**"), without security, over the assets, properties and undertaking (the "**Property**") of Davids pursuant

to section 243(1) of the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”) and section 101 of the *Courts of Justice Act* (Ontario) (the “**Application**”).

**A. BACKGROUND ON DAVIDS FOOTWEAR LTD.**

3. Davids is incorporated pursuant to the laws of the Province of Ontario. Davids is in the business of retailing luxury footwear for women (the “**Davids Business**”).
4. The President of Davids is Richard Markowitz. Mr. Markowitz is also a Director of Davids. Attached hereto and marked as Exhibit “A” is a Corporation Profile Report for Davids obtained from the Ontario Ministry of Government Services on July 29, 2019.
5. As disclosed in the Corporation Profile Report for Davids, the registered office is located at 77 Bloor Street West, Suite 500, Toronto, Ontario M5S 1M2.
6. The existing Davids Business was purchased from the Markowitz family, who founded Davids, pursuant to an Asset Purchase Agreement dated November 6, 2017 (the “**APA**”), between, among others, Davids, Markio Designs Inc., Laindon Limited, Richard Markowitz, David Markowitz, Faye Markowitz, Alan Markowitz, Aimco Investments Inc., DAFA Investments Inc. and RMCO Investments Inc.
7. The current shareholders of Davids are Rosejack, which holds 70% of the common shares and Grange Avenue Holdings Ltd., which holds 30% of the common shares.
8. Davids operates 4 retail locations, whereby Davids is the named tenant under the applicable lease. The 4 retail locations are as follows:
  - (i) The flagship location located at 1200 Bay Street, Toronto, Ontario (the “**Bay/Bloor Store**”). The landlord for the Bay/Bloor Store is Kroonenberg Toronto BV and 1200 Bay Street Property Inc. (the “**Bay Bloor Landlord**”);
  - (ii) The Sherway Gardens store located at 25 The West Mall, Etobicoke, Ontario (the “**Sherway Gardens Store**”). The landlord for the Sherway Gardens Store is Cadillac Fairview Corporation Limited (“**Cadillac Fairview**”);

- (iii) The Yorkdale store located at 3401 Dufferin Street, North York, Ontario (the “**Yorkdale Mall Store**”). The landlord for the Yorkdale Mall Store is Oxford Properties Group Inc. (“**Oxford**”); and
  - (iv) The Bayview Village store located at 2901 Bayview Avenue, Toronto, Ontario (the “**Bayview Village Store**”). The landlord for the Bayview Village Store is QuadReal Property Group (“**QuadReal**”).
9. In addition to the above noted retail locations, there is a further retail location, which is located at the HRI store at 50 Rideau Street, Ottawa, Ontario (the “**Rideau Centre Store**”). The landlord for the Rideau Centre Store is Cadillac Fairview. The lease for the Rideau Centre Store is with HRI.

**B. THE FINANCIAL CHALLENGES FACING DAVIDS**

10. The footwear business is highly competitive. Davids competes with other footwear retailers, including department stores, online retailers, manufacturer-owned factory outlet stores and other retail and wholesale outlets. At various times of the year, department store chains, specialty shops and online retailers offer brand-name merchandise at substantial markdowns, which further intensifies the competitive nature of the industry.
11. I am advised by Roger Jaipargas, a partner at Borden Ladner Gervais LLP (“**BLG**”), the lawyers for Rosejack, that a number of footwear retailers have sought protection from their creditors on account of distress conditions in the retail market, including, Rockport Shoes, Nine West and Payless ShoeSource. Davids has not been immune from the challenges that the retail footwear business has encountered and continues to face.
12. There are a number of challenges that Davids has faced, including, losses over the last year, stores with rent obligations that are not reflective of current market rates and the anticipated loss of a key supplier, all of which will be detailed in the balance of this Affidavit.
13. One of the biggest challenges that Davids has faced is the monthly lease obligations for the above noted stores, listed at paragraph 8 of this Affidavit. In particular, the monthly rental obligations for the Bay/Bloor Store and the Sherway Gardens Store have been especially problematic for the Company. Typically, the rent for a retail location should

be about 15% of the gross revenue for the store. In the case of both the Bay/Bloor Store and the Sherway Gardens Store, the rents are over 30% of the gross revenue for each of these stores. That is not sustainable on a long term basis.

14. As Chief Executive Officer of Davids, I have had a number of conversations with representatives of the Bay Bloor Landlord with respect to a reduction of the rent for the Bay/Bloor Store. I have also had conversations with a representative of Cadillac Fairview with respect to a reduction of the rent for the Sherway Gardens Store.
15. The monthly rent obligations for the Bay/Bloor Store is not sustainable in the current market and retail environment. Accordingly, the discussions that I and Mr. Markowitz have had with representatives of the Bay Bloor Landlord have been focused on seeking an amendment to the lease for the Bay/Bloor Store, with a view to achieving a reduction of the monthly rent going forward, so that the Davids Business could continue.
16. In total, either myself, or Mr. Markowitz, have had at least 3 discussions with a representative at the Bay Bloor Landlord about the challenges the Company is facing. Further, I advised the Bay Bloor Landlord that if accommodations were not made on account of the monthly rental payments required in respect of the Bay/Bloor Store, the Company would have to look at all options going forward.
17. In these discussions with the Bay Bloor Landlord, I provided particulars of the concessions that Davids would need for the Bay/Bloor Store lease in order continue the Davids Business.
18. The Bay Bloor Landlord was not receptive to Davids request for a reduction on the rent for the Bay/Bloor Store.
19. An additional challenge that Davids has faced is that the lease for the Bay/Bloor Store is set to expire on December 31, 2021. In anticipation of this, Davids assumed an Offer to Lease dated December 18, 2015 and an amendment to the Offer to Lease, accepted by Davids on December 23, 2015 (the “**Offer to Lease**”) with 94 Cumberland Street Retail Inc. (the “**Proposed Cumberland Landlord**”), in order to transition the Bay/Bloor Store to a new location, which is the entire ground floor comprising approximately 5,082

square feet located in the development known as Minto Yorkville Park and municipally known as 94 Cumberland Street, Toronto, Ontario (the “**Cumberland Premises**”).

20. It is contemplated that any lease for the Cumberland Premises would be for 15 years, with 2 additional extension terms of 10 years each. No lease has been signed by Davids for the Cumberland Premises with the Proposed Cumberland Landlord.
21. I understand that the Proposed Cumberland Landlord expects to turnover possession of the Cumberland Premises to Davids on or about mid-March, 2020. The possession date will be the date on which the Proposed Cumberland Landlord actually delivers vacant possession of the Cumberland Premises to Davids and will trigger a 120 day rent-free fixturing period.
22. Assuming that possession of the Cumberland Premises were to occur in mid-March, 2020 and Davids began paying rent for the Cumberland Premises by mid-July, 2020, Davids will be facing a lengthy period of time during which it will be obligated to pay rent for the Cumberland Premises and the Bay/Bloor Store (the “**Double Rent Obligation**”). The Double Rent Obligation would create a further financial burden on Davids that is not sustainable.
23. The other problem with the Cumberland Premises is that the space contemplated by the Offer to Lease is more than what is required under the current circumstances and for the foreseeable future (the “**Proposed Cumberland Footprint**”).
24. Given the Double Rent Obligation and the problem associated with the Proposed Cumberland Footprint, the Company pursued discussions with the Proposed Cumberland Landlord, with a view to negotiating a more acceptable arrangement for the transition of the Davids Business from the Bay/Bloor Store to the Cumberland Premises. We pursued discussions with the Proposed Cumberland Landlord, with a view to arriving at an arrangement that addresses the concerns over the Double Rent Obligation and the Proposed Cumberland Footprint.
25. In our discussions with the Proposed Cumberland Landlord about the concessions that the Company would need to address the above noted concerns about the Cumberland

Premises, the Proposed Cumberland Landlord was not prepared to address the concerns. Rather, the Proposed Cumberland Landlord insisted that Davids execute a form of lease for the Cumberland Premises, to reflect the terms set out in the Offer to Lease.

26. The monthly rent obligations for the Sherway Gardens Store are also not sustainable in the current market and retail environment. Accordingly, I have had discussions with a representative of Cadillac Fairview, which have been focused on seeking an amendment to the lease for the Sherway Gardens Store, with a view to achieving a reduction of the monthly rent going forward, so that the Davids Business could continue.
27. I have had 3 discussions with a representative at Cadillac Fairview about the challenges the Company is facing. Further, I have advised Cadillac Fairview that if accommodations were not made on account of the monthly rental payments required in respect of the Sherway Gardens Store, that the Company would have to look at all options going forward.
28. In these discussions with Cadillac Fairview, I provided particulars of the concessions that Davids would need for the Sherway Gardens Store lease in order to continue the Davids Business.
29. Cadillac Fairview was not receptive to Davids request for a reduction on the rent for the Sherway Gardens Store.
30. There is another significant challenge that is facing the Davids Business. There are brands that are key to the success of the Davids Business, the loss of which would be devastating to the Davids Business.
31. Earlier this year, the Company was advised by a representative of Valentino S.p.A. (“**Valentino**”) that effective late 2019, Valentino would no longer sell Valentino merchandise to Davids for sale in the Bay/Bloor Store and the Yorkdale Mall Store. Valentino has been the largest supplier to Davids and accounted for over 20% of the gross sales in the Bay/Bloor Store and the Yorkdale Mall Store in 2018.

32. The loss of the Valentino brand for the Bay/Bloor Store and the Yorkdale Mall Store was not something that was expected. Valentino recently opened a store in Yorkdale Mall and I understand that they have expansion plans in the Bloor Street area. The loss of revenue for the Company, as a result of this development, cannot be replaced.

**C. SUPPORT PROVIDED TO DAVIDS BY HRI AND EFFORTS TO RESTRUCTURE**

33. It is important to note that since the Davids Business was purchased from the previous owners, HRI has provided support to Davids on a number of fronts, which has benefited Davids and for which HRI has not been paid. The HRI support included the following:
- (i) HRI has provided Davids with space at the HRI head office at 77 Bloor Street West, Suite 500, Toronto, Ontario M5S 1M2, free of charge since November, 2017;
  - (ii) HRI has provided warehousing service to Davids, to store its inventory, since May, 2018, free of charge;
  - (iii) HRI has forgiven rents required from Davids for the Rideau Centre Store; and
  - (iv) HRI has provided back office and other services to Davids free of charge.
34. HRI has supported the Davids Business in order to facilitate, what I hoped would be, the growth and expansion of the Davids Business. Unfortunately, notwithstanding the efforts of both HRI and Rosejack, as detailed further in this Affidavit, such measures were not sufficient to ensure the continued success of Davids.
35. Over the last few weeks, I have spent a great deal of time with professional advisors canvassing the various options for Davids, including reviewing all options to restructure the Davids Business, so that it could continue, including, speaking with potential purchasers of the Davids Business.
36. I have been concerned about the various stakeholders that would be affected by a possible closure of the Davids Business, including, the impact on the Davids customers, vendors, unsecured creditors and most especially the employees of Davids. Regrettably, Davids could not withstand the financial challenges that are detailed in this Affidavit.



37. In an effort to treat the Davids customers as fairly as possible, in discussions with Richter, as proposed receiver, we have determined that to the extent the Receiver operates any of the stores noted in this Affidavit, the Receiver should be authorized, until further Order of the Court, to honour and accept all outstanding gift cards and merchandise credits issued by Davids on or before the date of any Order made by the Court appointing Richter as Receiver. Further, it is proposed that the Receiver would accept returns for merchandise that was purchased before the date of any Order made by the Court, in accordance with the Davids return policy. However, it is proposed that the Receiver would not accept returns for merchandise purchased after the date of any Order made by the Court appointing Richter as Receiver. In addition, the Receiver would not continue the Davids rewards program named "Preferenza", or honour or accept points under the program after Richter is appointed as Receiver. I understand that the draft Appointment Order that will be included in the Rosejack Application Record will include a provision to address the foregoing proposed approach to these matters.

**D. LOAN AND SECURITY DOCUMENTS**

38. By a facility letter dated February 12, 2018 (the "**Facility Letter**") HSBC Bank Canada ("**HSBC**") extended certain credit facilities to Davids, including a demand operating revolving loan facility (the "**Operating Loan Facility**") in the amount of \$2,500,000, to assist Davids in the day-to-day operating requirements, a copy of which is attached hereto and marked as Exhibit "**B**".
39. The Facility Letter was amended by way of an amended facility letter dated August 14, 2018 (the "**Amended Facility Letter**"), a copy of which is attached hereto and marked as Exhibit "**C**".
40. As security for the repayment of all amounts owing by Davids to HSBC, Davids provided a General Security Agreement dated February 28, 2018, pursuant to which Davids pledged to HSBC a security interest in all of the present and after acquired personal property of Davids (the "**HSBC GSA**"). A copy of the HSBC GSA is attached hereto and marked as Exhibit "**D**".

41. In addition, HSBC holds an Assignment and Postponement from Rosejack dated February 28, 2018 (the “**Assignment and Postponement**”), wherein Rosejack assigned and postponed the secured obligations owing by Davids to Rosejack, as detailed further in this Affidavit, to HSBC. Attached hereto and marked as Exhibit “E” is a copy of the Assignment and Postponement.
42. On July 29, 2019, the Company repaid all obligations owing to HSBC. On July 30, 2019, HSBC provided a release agreement to Davids (the “**Release Agreement**”), whereby the credit facilities that were extended by HSBC to Davids were terminated and the security held by HSBC was discharged and released. Attached hereto and marked as Exhibit “F” is a copy of the Release Agreement.
43. As a result of the repayment of the HSBC obligations, the sole secured creditor of Davids at this time is Rosejack.
44. Pursuant to a Secured Demand Grid Promissory Note dated November 6, 2017 (the “**Secured Promissory Note**”), Rosejack advanced \$7,500,000 (the “**Initial Advance**”) to Davids. The purpose of the Initial Advance was to fund the purchase price under the APA and for working capital and approved capital investments of Davids. Attached hereto and marked as Exhibit “G” is a copy of the Secured Promissory Note.
45. Given the liquidity issues and the financial headwinds faced by Davids in the current retail climate, a further advance of \$1,500,000 (the “**Subsequent Advance**”) was made by Rosejack to Davids under the Secured Promissory Note on February 20, 2019. Schedule A to the Secured Promissory Note lists the Initial Advance and the Subsequent Advance.
46. As of July 31, 2019, Davids was indebted to Rosejack in the amount of \$9,039,643.73, inclusive of interest to such date, plus further interest and costs (the “**Rosejack Indebtedness**”).
47. As security for the repayment of all amounts owing by Davids to Rosejack, Davids provided a General Security Agreement dated November 6, 2017, pursuant to which Davids pledged to Rosejack a security interest in all of the present and after acquired

personal property of Davids (the “**Rosejack GSA**”). A copy of the Rosejack GSA is attached hereto and marked as Exhibit “**H**”.

48. Rosejack registered its security interest in respect of the security held in the assets, property and undertaking of Davids under the *Personal Property Security Act* (Ontario) (the “**PPSA**”). Attached hereto and marked as Exhibit “**I**” is a copy of the Enquiry Response Certificate in respect of the PPSA search that was conducted against Davids, with a file currency of July 28, 2019.

**E. DEFAULT UNDER THE LOAN AGREEMENTS AND DEMAND FOR PAYMENT**

49. The financial statements for Davids for the 52 weeks ended February 2, 2019 disclosed a loss of \$991,859.90. All forecasts and cash flow projections disclosed that the Company would continue to suffer further losses for a numbers of years and that the Company would require additional liquidity, beyond the credit facilities that were in place with HSBC, as detailed above.
50. The obligations under the Secured Promissory Note are repayable on demand. Rosejack took the decision to demand payment of the Rosejack Indebtedness given the losses sustained by Davids and the declining business situation, as detailed above.
51. Given the challenges facing Davids, as detailed in this Affidavit, Rosejack instructed BLG to issue a formal demand for payment on July 31, 2019 and a Notice of Intention to Enforce Security (“**NITES**”), pursuant to Section 244(1) of the BIA to Davids. Attached hereto and marked as Exhibit “**J**” is a copy of the demand letter and the NITES which was delivered to Davids.
52. On July 31, 2019, Davids waived the 10 day time period under the NITES and consented to the immediate enforcement of the security (the “**Consent**”) held by Rosejack pursuant to the Secured Promissory Note and the Rosejack GSA. Attached hereto and marked as Exhibit “**K**” is a copy of the Consent.

53. As of the date of this Affidavit, the Rosejack Indebtedness, pursuant to the Secured Promissory Note and secured by the Rosejack GSA, remain outstanding.

**F. REQUEST FOR THE APPOINTMENT OF RICHTER AS RECEIVER**

54. Rosejack has demanded payment from Davids. Davids is unable to repay the Rosejack Indebtedness.
55. As noted above, Rosejack and HRI have supported the Davids Business. Most recently, Rosejack made the Subsequent Advance to Davids on February 20, 2019. Rosejack is not prepared to fund Davids at this time under the current circumstances. However, in order to effectuate and orderly wind down of the Davids Business, Rosejack is prepared to fund Receiver's Certificate's, subject to: (i) an Appointment Order being made by the Court, as requested in the within Application; and (ii) obtaining particulars from Richter as to the funding requirements on a go forward basis.
56. Given the circumstances, Rosejack seeks to appoint Richter as the Receiver, so that the Receiver can review all options on a go-forward basis and return to Court to seek the appropriate direction under the circumstances, with a view to maximizing the realizations for the benefit of all stakeholders involved.
57. The Rosejack GSA granted by Davids to Rosejack, provides Rosejack with the right to appoint a receiver, pursuant to Section 5.03(i) thereof.
58. If the relief sought by Rosejack is not granted, Rosejack is of the view that significant value may irrevocably be destroyed. I am very concerned that the assets of Davids, as well as the security held by Rosejack under the Rosejack GSA, is at risk unless a receiver is appointed by the Court.
59. Richter is a licensed trustee in bankruptcy.
60. Richter has consented to act as Receiver. Attached hereto and marked as Exhibit "L" is a copy of the consent of Richter to act as Receiver.

61. This Affidavit is sworn in support of an Order for the appointment of Richter as Receiver over the assets, property and undertaking of the Company and for no other or improper purpose.

**SWORN BEFORE ME** at the City of  
Toronto, in the Province of Ontario, this  
31st day of July, 2019.

A Commissioner for taking affidavits

HR

LARRY ROSEN

p14458

# Tab A

THIS IS EXHIBIT "A" TO THE AFFIDAVIT  
OF LARRY ROSEN SWORN BEFORE ME  
ON THIS 31<sup>ST</sup> DAY OF JULY, 2019



---

A Commissioner for taking affidavits

P14458.

Request ID: 023394597  
Transaction ID: 72565487  
Category ID: UN/E

Province of Ontario  
Ministry of Government Services

Date Report Produced: 2019/07/29  
Time Report Produced: 08:43:29  
Page: 1

## CORPORATION PROFILE REPORT

<b>Ontario Corp Number</b>	<b>Corporation Name</b>	<b>Incorporation Date</b>
2598285	DAVIDS FOOTWEAR LTD.	2017/09/25
		<b>Jurisdiction</b>
		ONTARIO
<b>Corporation Type</b>	<b>Corporation Status</b>	<b>Former Jurisdiction</b>
ONTARIO BUSINESS CORP.	ACTIVE	NOT APPLICABLE
<b>Registered Office Address</b>	<b>Date Amalgamated</b>	<b>Amalgamation Ind.</b>
77 BLOOR STREET WEST	NOT APPLICABLE	NOT APPLICABLE
<b>Suite # 500</b> TORONTO ONTARIO CANADA M5S 1M2	<b>New Amal. Number</b>	<b>Notice Date</b>
	NOT APPLICABLE	NOT APPLICABLE
<b>Mailing Address</b>		<b>Letter Date</b>
77 BLOOR STREET WEST		NOT APPLICABLE
<b>Suite # 500</b> TORONTO ONTARIO CANADA M5S 1M2	<b>Revival Date</b>	<b>Continuation Date</b>
	NOT APPLICABLE	NOT APPLICABLE
	<b>Transferred Out Date</b>	<b>Cancel/Inactive Date</b>
	NOT APPLICABLE	NOT APPLICABLE
	<b>EP Licence Eff.Date</b>	<b>EP Licence Term.Date</b>
	NOT APPLICABLE	NOT APPLICABLE
	<b>Number of Directors</b> <b>Minimum</b> 00001	<b>Date Commenced</b> <b>in Ontario</b> NOT APPLICABLE
	<b>Maximum</b> 00010	<b>Date Ceased</b> <b>in Ontario</b> NOT APPLICABLE
<b>Activity Classification</b>		
NOT AVAILABLE		



Request ID: 023394597  
Transaction ID: 72565487  
Category ID: UN/E

Province of Ontario  
Ministry of Government Services

Date Report Produced: 2019/07/29  
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## CORPORATION PROFILE REPORT

Ontario Corp Number

2598285

Corporation Name

DAVIDS FOOTWEAR LTD.

Corporate Name History

DAVIDS FOOTWEAR LTD.

Effective Date

2017/09/25

Current Business Name(s) Exist:

NO

Expired Business Name(s) Exist:

NO

Administrator:  
Name (Individual / Corporation)

CONRAD  
FREJLICH

Address

2099 PORTWAY AVENUE

MISSISSAUGA  
ONTARIO  
CANADA L5H 3M6

Date Began

2017/09/25

First Director

NOT APPLICABLE

Designation

DIRECTOR

Officer Type

Resident Canadian

Y

Request ID: 023394597  
Transaction ID: 72565487  
Category ID: UN/E

Province of Ontario  
Ministry of Government Services

Date Report Produced: 2019/07/29  
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Page: 3

## CORPORATION PROFILE REPORT

Ontario Corp Number

Corporation Name

2598285

DAVIDS FOOTWEAR LTD.

Administrator:  
Name (Individual / Corporation)

Address

CONRAD  
FREJLICH

2099 PORTWAY AVENUE

MISSISSAUGA  
ONTARIO  
CANADA L5H 3M6

Date Began

First Director

2017/10/30

NOT APPLICABLE

Designation

Officer Type

Resident Canadian

OFFICER

CHIEF FINANCIAL OFFICER Y

Administrator:  
Name (Individual / Corporation)

Address

RICHARD  
MARKOWITZ

41 WARWICK AVE

TORONTO  
ONTARIO  
CANADA M6C 1T7

Date Began

First Director

2017/09/25

NOT APPLICABLE

Designation

Officer Type

Resident Canadian

DIRECTOR

Y

Request ID: 023394597  
Transaction ID: 72565487  
Category ID: UN/E

Province of Ontario  
Ministry of Government Services

Date Report Produced: 2019/07/29  
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## CORPORATION PROFILE REPORT

Ontario Corp Number

2598285

Corporation Name

DAVIDS FOOTWEAR LTD.

Administrator:  
Name (Individual / Corporation)

RICHARD  
MARKOWITZ

Address

41 WARWICK AVE

TORONTO  
ONTARIO  
CANADA M6C 1T7

Date Began

2017/10/30

First Director

NOT APPLICABLE

Designation

OFFICER

Officer Type

PRESIDENT

Resident Canadian

Y

Administrator:  
Name (Individual / Corporation)

RICHARD  
MARKOWITZ

Address

41 WARWICK AVE

TORONTO  
ONTARIO  
CANADA M6C 1T7

Date Began

2017/10/30

First Director

NOT APPLICABLE

Designation

OFFICER

Officer Type

OTHER

Resident Canadian

Y

Request ID: 023394597  
Transaction ID: 72565487  
Category ID: UN/E

Province of Ontario  
Ministry of Government Services

Date Report Produced: 2019/07/29  
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## CORPORATION PROFILE REPORT

Ontario Corp Number

2598285

Corporation Name

DAVIDS FOOTWEAR LTD.

Administrator:  
Name (Individual / Corporation)

LARRY

ROSEN

Address

15 DEWBOURNE AVENUE

TORONTO  
ONTARIO  
CANADA M5P 1Z3

Date Began

2017/09/25

First Director

NOT APPLICABLE

Designation

DIRECTOR

Officer Type

Resident Canadian

Y

Administrator:  
Name (Individual / Corporation)

LARRY

ROSEN

Address

15 DEWBOURNE AVENUE

TORONTO  
ONTARIO  
CANADA M5P 1Z3

Date Began

2017/10/30

First Director

NOT APPLICABLE

Designation

OFFICER

Officer Type

CHIEF EXECUTIVE OFFICER Y

Resident Canadian

Request ID: 023394597  
Transaction ID: 72565487  
Category ID: UN/E

Province of Ontario  
Ministry of Government Services

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## CORPORATION PROFILE REPORT

Ontario Corp Number

2598285

Corporation Name

DAVIDS FOOTWEAR LTD.

Administrator:  
Name (Individual / Corporation)

LARRY

ROSEN

Address

15 DEWBOURNE AVENUE

TORONTO  
ONTARIO  
CANADA M5P 1Z3

Date Began

2017/10/30

First Director

NOT APPLICABLE

Designation

OFFICER

Officer Type

CHAIR

Resident Canadian

Request ID: 023394597  
Transaction ID: 72565487  
Category ID: UNE

Province of Ontario  
Ministry of Government Services

Date Report Produced: 2019/07/29  
Time Report Produced: 08:43:29  
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## CORPORATION PROFILE REPORT

Ontario Corp Number

2598285

Corporation Name

DAVIDS FOOTWEAR LTD.

### Last Document Recorded

Act/Code	Description	Form	Date
CIA	CHANGE NOTICE	1	2019/04/01 (ELECTRONIC FILING)

THIS REPORT SETS OUT THE MOST RECENT INFORMATION FILED BY THE CORPORATION ON OR AFTER JUNE 27, 1992, AND RECORDED IN THE ONTARIO BUSINESS INFORMATION SYSTEM AS AT THE DATE AND TIME OF PRINTING. ALL PERSONS WHO ARE RECORDED AS CURRENT DIRECTORS OR OFFICERS ARE INCLUDED IN THE LIST OF ADMINISTRATORS.

PLEASE NOTE THAT WHEN THE SAME INDIVIDUAL HOLDS MULTIPLE 'OTHER UNTITLED' OFFICER POSITIONS, AS INDICATED ON A FORM 1 UNDER THE *CORPORATIONS INFORMATION ACT*, ONLY ONE OF THESE 'OTHER UNTITLED' POSITIONS HELD BY THAT INDIVIDUAL WILL BE REFLECTED ON THIS REPORT.

ADDITIONAL HISTORICAL INFORMATION MAY EXIST ON MICROFICHE.

The issuance of this report in electronic form is authorized by the Ministry of Government Services.

# Tab B

THIS IS EXHIBIT "B" TO THE AFFIDAVIT  
OF LARRY ROSEN SWORN BEFORE ME  
ON THIS 31<sup>ST</sup> DAY OF JULY, 2019



---

A Commissioner for taking affidavits

P14458





PRIVATE & CONFIDENTIAL

February 12, 2018

Davids Footwear Ltd.  
77 Bloor Street West – Suite 500  
Toronto, Ontario  
M5S 1M2

Attention: Mr. Laurance Rosen

Dear Sir:

On the basis of the financial and other information, representations, warranties and documents provided by the Borrower (as defined below), HSBC Bank Canada (the “Bank”) is pleased to offer the following credit facilities (the “Credit Facilities”) on the terms and conditions set out below. Additional terms and conditions are contained in the Schedule(s) attached to this facility letter (this letter and all attached Schedule(s) constituting collectively, the “Facility Letter”). All capitalized terms not otherwise defined in this letter shall have the meanings ascribed to them in Schedule A.

#### **BORROWER**

Davids Footwear Ltd. (the “Borrower”).

#### **CREDIT FACILITIES**

The following credit facilities (collectively referred to as the “Credit Facilities” and each a “Credit Facility”) are authorized subject to the satisfaction of all terms and conditions in this Facility Letter.

##### **1. Operating Loan Facility**

###### **1.1 Amount**

Demand operating revolving loan facility (“Operating Loan Facility”) available by way of any of the types of advances and other credit described in Section 1.3 (below) up to but not exceeding in aggregate (for all such types of advances and other credit) CAD 2,500,000 (or the USD Equivalent), subject to the Maximum Limit.

###### **1.2 Purpose**

To assist in financing the day-to-day operating requirements of the Borrower.

###### **1.3 Availability**

Loan advances and other credit under the Operating Loan Facility are available subject to the Maximum Limit as follows:

- (a) CAD account overdraft up to an aggregate principal amount not exceeding CAD 2,500,000 (“CAD Overdraft Loans”);
- (b) USD account overdraft up to an aggregate principal amount not exceeding USD Equivalent of CAD 2,500,000 (“USD Overdraft Loans”);
- (c) letters of credit or documentary credits (“DCs”) up to an aggregate amount of CAD 1,000,000 or USD equivalent, in each case for a period of up to 180 days and an usance term of up to 90 days to finance trade activity in form satisfactory to the Bank. DCs shall be available in major currencies, subject to availability;

- (d) LGs up to an aggregate amount of CAD 1,000,000 or USD equivalent (the "LG Limit"), in each case for a maximum term of one year to finance the day to day operations of the Borrower through the issuance by the Bank of letters of guarantee, standby letters of credit, performance bonds, counter guarantees, counter standby letters of credit or similar credits from time to time (each an "LG") upon the instructions of the Borrower, each such LG to be in form satisfactory to the Bank. The availability of each LG shall be at the sole and absolute discretion of the Bank and subject to the Conditions Precedent below and in Schedule A attached hereto. Each issuance of an LG is an advance of credit (for the Borrower's account) for purposes of the LG Limit. Any amount drawn under any LG shall be immediately reimbursed to the Bank by the Borrower. Interest on any amount drawn under an LG in Canadian dollars and not immediately reimbursed by the Borrower to the Bank shall accrue, calculated monthly in arrears accruing daily at the Bank's Prime Rate plus 1.00% per annum, and interest on any amount drawn under a LG in U.S. dollars and not immediately reimbursed by the Borrower to the Bank shall accrue, calculated monthly in arrears accruing daily at the Bank's U.S. Base Rate plus 1.00% per annum. The Borrower shall pay the Bank the following fees:
- (i) At the time of issuance by the Bank of each Financial LG (including at the time of issuance of any renewal or replacement Financial LG, following maturity or expiry of a Financial LG), a fee equal to 1.00% per annum calculated against the face amount and over the term of the Financial LG;
  - (ii) At the time of issuance by the Bank of each Performance LG, a fee equal to 1.00% per annum calculated against the face amount and over the term of the Performance LG; and
  - (iii) At the time of amendment of each LG, the additional standard fees as set out in the attached Schedule B.

The Borrower shall ensure that the amounts advanced and outstanding (including liabilities in respect of DCs and LGs) under the Operating Loan Facility shall at no time exceed the amount of each of the available credit sub-limits set out above and that the aggregate of all such advances and credits outstanding at no time exceeds the Maximum Limit in the applicable currency.

#### 1.4 Repayment

All amounts advanced and outstanding under the Operating Loan Facility shall be repaid on demand by the Bank.

#### 1.5 Interest

Until demand for payment is made by the Bank, interest on the outstanding principal balance of all Loans and other credit advanced under the Operating Loan Facility shall, unless otherwise provided, be calculated and payable as follows:

- (a) for CAD Overdraft Loans, the Bank's Prime Rate plus 1.00% per annum calculated monthly in arrears on the daily balance, payable on the last Business Day of each month;
- (b) for USD Overdraft Loans, the Bank's U.S. Base Rate plus 1.00% per annum on the basis of a year of 360 days, calculated monthly in arrears on the daily balance, payable on the last Business Day of each month.

#### 1.6 Fees

The Borrower shall pay to the Bank:

- (a) a set up fee of CAD 2,500 payable on acceptance of this Facility Letter; and
- (b) at the time of issuance of each DC under the Operating Loan Facility, a fee as provided in Schedule B, calculated against the face amount and over the term of the DC subject to a minimum fee of \$100 per issuance;

- (c) at the time of issuance of each LG under the Operating Loan Facility, a fee equal to 1.00% per annum, calculated against the face amount and over the term of the LG subject to a minimum fee of \$100 per issuance;
- (d) annual review fee of CAD 1,000

2. **Capital Loan Facility**

2.1 **Amount**

CAD 750,000 demand non-revolving loan facility (the "Capital Loan Facility").

2.2 **Purpose**

To assist in financing capital expenditures by the Borrower.

2.3 **Availability**

The Capital Loan Facility is available by way of multiple draws in minimum amounts of CAD100,000 (the "Capital Loan") to be requested by the Borrower by delivery of a Required Notice to the Bank by way of:

- (a) CAD advance based on the Bank's Prime Rate ("CAD Prime Rate Loan");

2.4 **Repayment**

All amounts outstanding under the Capital Loan shall be repaid on demand by the Bank and until such demand, the Borrower shall make equal monthly instalments of blended principal and accrued interest calculated at the applicable rate per annum for the CAD Prime Rate Loan and a notional amortization period of 5 years as confirmed by the Bank to the Borrower on the last Business Day of each month commencing in the month following the month in which an advance of the Capital Loan is made.

The Capital Loan shall, in any event, be repaid in full by February 12, 2023, subject to the Bank's unfettered rights of demand for accelerated payment at any time.

2.5 **Interest**

Until demand for payment is made by the Bank, interest on the principal balance of the Capital Loan shall, unless otherwise provided, be calculated and payable as follows:

- (a) for the CAD Prime Rate Loan, the Bank's Prime Rate plus 1.00 % per annum accruing daily, calculated monthly in arrears on the daily balance, payable as provided in Section 2.4;

3. **Foreign Exchange Facility**

3.1 **Amount**

Demand revolving foreign exchange facility up to a permitted maximum of USD 495,000 or the Canadian Dollar Equivalent thereof (the "Foreign Exchange Facility Limit").

3.2 **Purpose**

Advances as one or more Loans are available to purchase foreign exchange forward contracts for major currencies identified and approved by the Bank for periods up to one year, subject to an overall maximum outstanding amount equal to the Foreign Exchange Facility Limit and subject to the Availability Requirements (in Section 3.3 below), in order to hedge against currency fluctuations in connection with import purchases by the Borrower.

### 3.3 Availability Requirements

The Borrower shall ensure that the Foreign Exchange Percentage (as defined below) of the aggregate face amount of outstanding foreign exchange forward contracts at no time exceeds the Foreign Exchange Facility Limit. For purposes of this Facility Letter the "Foreign Exchange Percentage" means the notional risk percentage established and recorded by the Bank from time to time, based on the Bank's assessment of the foreign exchange market. All amendments made to the Foreign Exchange Percentage as announced by the Bank from time to time will be binding on the Borrower and shall form part of this Facility Letter.

### 3.4 Repayment:

All liabilities of the Bank under forward foreign exchange contracts shall be paid by the Borrower on demand by the Bank and, unless and until otherwise demanded, such contracts shall be fulfilled by the Borrower as they fall due.

## 4. Loan Documents

### 4.1 Loan Documents

The liability, indebtedness and obligations of the Borrower under all of the Credit Facilities shall be evidenced, governed and secured, as the case may be, by the following documents (which, together with any other loan or security documents required by this Facility Letter, are referred to collectively as the "Loan Documents") completed in a form and manner satisfactory to the Bank:

- (a) agreement for USD and CAD Line of Credit by way of Current Account Overdraft, from the Borrower;
- (b) general security agreement from the Borrower creating a first priority security interest in all present and after acquired property of the Borrower (including intellectual property, if any);
- (c) assignment of all risk insurance from the Borrower with coverages (including extended coverage, public liability coverage and business interruption coverage) and in amounts and from an insurer acceptable to the Bank in each case, on all of the Borrower's real and personal property, showing the Bank as first loss payee with standard mortgage endorsement for property damage coverage (and as an additional insured for public liability coverage), as acknowledged/consented to by relevant insurer(s) or the authorized representative of the insurer;
- (d) agreement for foreign exchange contracts from the Borrower;
- (e) assignment and postponement by Rosejack Investments Ltd. in favour of the Bank of all present and future amounts owing to them by the Borrower;
- (f) the Bank's standard documentation from the Borrower in connection with the provision of trade finance/receivables finance facilities and the issuance of DCs and/or LGs including the Bank's form of Trade Financing General Agreement and an Indemnity and Reimbursement Agreement;
- (g) all supporting officer's certificates, certificates of status (or good standing) and other certificates in connection with the Borrower as the Bank may reasonably require which shall confirm, among other things, the constitutional documents for the Borrower, incumbent officers with specimen signatures of authorized signatories, and the applicable authorizing resolutions for the Loan Documents, together with legal opinion of the solicitors acting for the Borrower confirming power and capacity of the Borrower, existence, due authorization, execution, delivery and enforceability of the Loan Documents to which each is a party and the priority of the security interests granted by each to the Bank; and
- (h) such other Loan Documents as the Bank may reasonably request in order to register or otherwise perfect the security interests granted to the Bank.

4.2 Registration and Priority; Counsel Fees

Loan Documents (or notice thereof) will be registered in all jurisdictions and at all registries as the Bank may determine is necessary or beneficial to perfect or protect its security interests, mortgages and charges. The Bank's security interests shall rank in priority to all other mortgages, charges, liens, encumbrances and security interests, subject to Permitted Encumbrances. The Borrower shall pay all legal fees and disbursements incurred by Bank's counsel in connection with negotiation, implementation and enforcement of the Credit Facilities, including any expenses incurred to perfect or register Loan Documents.

5. Conditions Precedent

In addition to the conditions precedent set out in the attached Schedule A, it shall be a condition precedent to the advance and the continued availability of the Credit Facilities that the Bank shall have received in form and content satisfactory to the Bank:

- (a) The Loan Documents, duly authorized, executed and delivered, and, as relevant, duly registered.

6. Covenants and Conditions

- (a) Without limiting the Bank's right to demand repayment of any outstanding amounts, the Borrower covenants and agrees with the Bank that, so long as any indebtedness, liability and obligations of the Borrower to the Bank remain outstanding, it shall not, without the prior written consent of the Bank:
  - (i) permit its ratio of Debt to TNW to at any time exceed 2.50 to 1.0;
  - (ii) permit its ratio of current assets to current liabilities to at any time be less than 1.20 to 1.0. For the purposes hereof, the amount of debt scheduled to be repaid at least one year plus one day from the balance sheet date may be excluded from current liabilities. Current assets shall exclude amounts due from related companies and affiliates.

The Borrower agrees that the foregoing financial tests shall be calculated by the Bank annually using internally prepared financial statements of the Borrower or with such other statements as the Bank may agree to use from time to time.

- (b) The Borrower agrees to give the Bank written notice of any of the following events as soon as possible and in any event within 5 Business Days of the occurrence thereof:
  - (i) any litigation, proceeding or dispute affecting the Borrower which if adversely adjudged, mediated or arbitrated could reasonably be expected to constitute a Material Adverse Change;
  - (ii) any representation and warranty given by the Borrower to the Bank being false or misleading;
  - (iii) the dissolution, merger or insolvency of the Borrower;
  - (iv) any notice from any Governmental Authority with respect to any violation, possible violation, non-compliance or possible non-compliance or claim which constitutes or could reasonably be expected to constitute a Material Adverse change;
  - (v) any claim or action made or taken by a creditor of the Borrower with respect to Debt exceeding CAD 100,000 with respect to an actual or alleged default;
- (c) The Borrower shall give the Bank at least 5 Business Days prior notice of any proposed change of name by the Borrower and any proposed change in governing jurisdiction or location of the Borrower.

**7. Reporting Requirements**

The continued availability of the Credit Facilities is subject to the Borrower delivering to the Bank the following reports in a form and on a frequency acceptable to the Bank as advised by the Bank from time to time.

- (a) quarterly, within 30 days of the end of each of the first 3 fiscal quarters:
  - (i) interim internally prepared financial statements on a consolidated basis; and
  - (ii) a certificate of covenant compliance in the form requested by the Bank;
- (b) annually, within 90 days of the Borrower's fiscal year end:
  - (i) on a consolidated basis review engagement financial statements for the Borrower; and
  - (ii) detailed business plan, including *pro forma* financial statements, cash flow forecast and budget for the following fiscal year of the Borrower demonstrating the ability of the Borrower to comply with the financial terms and conditions of this Facility Letter on a monthly basis; and
- (c) such additional financial statements and information as and when requested by the Bank.

**8. Counterparts and Electronic Communication**

This Facility Letter and each Loan Document may be executed in one or more counterparts, each of which when so executed when taken together shall constitute one and the same agreement. Delivery of an executed counterpart of this Facility Letter or Loan Document by facsimile or by Electronic Communication shall be as effective as physical delivery of an original counterpart signed manually.

This Facility Letter (and each Loan Document) may be signed by handwritten signature or electronically by using technology acceptable to the Bank. To evidence execution of this Facility Letter (or any Loan Document), the Borrower must deliver and return to the Bank an executed copy of each with the original handwritten signatures of the Borrower's duly authorized signatories (or Electronic Signatures of such signatories if so permitted by the Bank) by physical delivery, or if so permitted by the Bank, by facsimile, email or other electronic delivery or transmission and such transmission shall constitute delivery of an executed copy of the Facility Letter or relevant Loan Document. If the Borrower uses an electronic signature to indicate its agreement, it shall ensure that its electronic signature is attached to or associated with this Facility Letter (or such Loan Document).

**9. Notices**

Any notice, request or other communication which the Bank or the Borrower may be required or may desire to give to the other party(ies) for purposes of this Facility Letter shall be in writing and may be sent either by electronic transmission (facsimile or email), or hand delivery or first class registered mail postage prepaid to the addresses below. Any such notice, request or other communication shall be deemed to have been effectively given, made and received: (i) when transmitted with receipt confirmed in the case of electronic transmission if such transmission was made on or before 5:00 p.m. (Toronto time) on that Business Day, failing which it shall be deemed to have been effectively given, made and received on the next following Business Day, (ii) when received if sent by hand delivery on or before 5:00 p.m. (Toronto time) on a Business Day, failing which it shall be deemed to have been effectively given, made and received on the next following Business Day, or (iii) five (5) days after deposit in the mail if so mailed, but any notice, request or other communication to be given or made during a strike, lock-out or other labour disturbance at the post office or during an actual or threatened interruption in the mail service shall be hand delivered or sent by electronic transmission and not mailed. Any party hereto may change the address to which all notices, requests and other communications are to be sent to it by giving written notice of such address change to the other parties in conformity with this paragraph, but such change shall not be effective until notice of such change has been received by the other parties. The addresses of the parties for the purposes hereof shall be:

If to the Borrower, addressed as follows:

Attention: Mr. Conrad Frejlich, CFO  
Email: [cfrejlich@harryrosen.com](mailto:cfrejlich@harryrosen.com)

If to the Bank, addressed as follows:

HSBC Bank Canada  
Attention: Mr. David A Wearing, Sr. Relationship Manager  
Email: [david.a.wearing@hsbc.ca](mailto:david.a.wearing@hsbc.ca)

10. **Lapse and Cancellation**

This Facility Letter shall, at the option of the Bank, expire, and be of no further force and effect if an initial advance of credit under the Credit Facility has not been made within sixty (60) days of the date of this Facility Letter.

Credit Facilities under this Facility Letter are uncommitted and, notwithstanding any other provision of this Facility Letter, the Bank may, at any time, in its sole discretion on notice to the Borrower: (i) terminate the Borrower's right to make requests for credit or advances under the Credit Facilities; (ii) even if the Bank has not terminated the Borrower's right to request credit or advances under the Credit Facilities, decline any request for credit or advances under the Credit Facilities and refuse to honour any cheques or other payment items; (iii) demand repayment of all outstanding indebtedness and liability of the Borrower at any time, all upon such notice and otherwise in accordance with applicable law as the Bank may determine.

11. **Schedules**

Each of the following Schedules and Appendices attached hereto comprise part of the Facility Letter:

Schedule A	-	Definitions and Additional Terms and Conditions
Schedule B	-	Fees for Collections and Documentary Credits

12. **Language Choice**

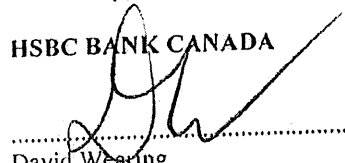
The parties hereto have requested that this Facility Letter and any document relating thereto be drafted in English.

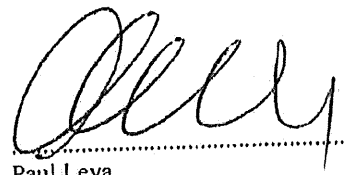
13. **Acceptance**

The offer of credit upon the terms and conditions contained in this Facility Letter may be accepted by the Borrower signing, dating and delivering a copy of this Facility Letter to the Bank by 5:00 p.m. local time on February 28, 2018. Failing such acceptance and delivery to the Bank, this offer shall be of no further force or effect.

Yours truly,

HSBC BANK CANADA

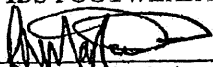
  
.....  
David Wearing  
Senior Relationship Manager  
Corporate Banking

  
.....  
Paul Leva  
Senior Director & Team Lead  
Corporate Banking

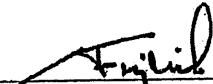
Davids Footwear Ltd.

The undersigned hereby acknowledge(s) and agrees to the terms and condition(s) of this Facility Letter this  
 20<sup>th</sup> day of FEBRUARY, 2018.

**BORROWER:**  
**DAVIDS FOOTWEAR LTD.**

Per:   
 Authorized Signatory

Title:  
Name:

Per:   
 Authorized Signatory

Title: CFO  
Name: C. Froelich



**SCHEDULE A**

**TO FACILITY LETTER  
FROM HSBC BANK CANADA  
TO: DAVIDS FOOTWEAR LTD.  
DATED: FEBRUARY 12, 2018**

This Schedule shall form part of the Facility Letter and the availability of the Credit Facilities as described in this Facility Letter shall also be subject to the terms and conditions contained in this Schedule.

**I. Definitions**

For the purpose of this Facility Letter, the following terms shall have the meanings indicated below.

**"Bank Branch"** means the branch of the Bank first described in the Facility Letter or as otherwise advised by the Bank from time to time.

**"Bank's Prime Rate"** means the variable annual rate of interest per annum established and adjusted by the Bank from time to time as a reference rate for purposes of determining rates of interest it will charge on commercial loans in Canada denominated in Canadian dollars based on the actual number of days in a year (whether 365 or 366 days) and which was 3.45% per annum on February 12, 2018 but in no event shall such interest rate be less than 0% per annum. A certificate of a manager or account manager of the Bank shall, absent manifest error, be conclusive evidence of the Bank's Prime Rate from time to time.

**"Bank's U.S. Base Rate"** means the variable annual rate of interest established and adjusted by the Bank from time to time as a reference rate for purposes of determining rates of interest it will charge on commercial loans denominated in United States dollars in Canada based on a year of 360 days, and which was 5.00 % per annum on February 12, 2018 but in no event shall such interest rate be less than 0% per annum. A Certificate of a manager or account manager of the Bank shall, absent manifest error, be conclusive evidence of the Bank's U.S. Base Rate from time to time.

**"Business Day"** means a day, other than a Saturday, Sunday or statutory (or civic) holiday, upon which the Bank is open for business in the Bank Branch.

**"CAD" and "Canada Dollars"** means lawful currency of Canada in same day immediately available funds, or, if such funds are not available, the form of money of Canada that is customarily used in the settlement of international banking transactions on the day in question.

**"CAD Prime Rate Loan"** has the meaning ascribed to it in the Facility Letter.

**"Canadian Dollar Equivalent"** means at any time on any date in relation to any specified amount in a currency other than Canadian dollars, the amount of Canadian dollars which could be purchased from the Bank by the payment of that specified amount of such other currency at the rate of exchange quoted by the Bank at or about 8:00 a.m. Pacific time on such date, including all premiums and costs of exchange.

**"Compliance Action"** has the meaning ascribed to it in Section XVII of this Schedule A.

**"Credit Facilities"** has the meaning ascribed to such term in the Facility Letter.

**"DC's"** has the meaning ascribed to it in section 1.3 of the Facility Letter.

**"Debt"** means all indebtedness and liability of the Borrower including without limitation under the Credit Facilities, and Off Balance Sheet Arrangements, less (i) deferred taxes; (ii) loans to the Borrower that are postponed and subordinated in favour of the Bank, in form and substance satisfactory to the Bank; and (iii) the after tax portion of any management bonus or any amount payable under an employee profit sharing plan ("EPSP") which has been postponed and subordinated, to the Bank's satisfaction, to the indebtedness and liability of the Borrower to the Bank.

**"Electronic Communication"** means any agreement, instruction, document, information, disclosure, notice or other form of communication that is sent or stored by means of any electronic or other digital transmission.

**"Electronic Signature"** means a signature that consists of one or more letters, characters, numbers or other symbols in digital form incorporated in, attached to or associated with an electronic communication and includes a secure electronic signature as may be prescribed by applicable law or otherwise required by us.

**"Facility Letter"** means the letter from the Bank to the Borrower to which this Schedule is attached, together with this Schedule, and includes all amendments and restatements thereof.

**"Financial LG"** means any LG which is not a Performance LG and in that regard, determination of whether an LG is a Financial LG or Performance LG shall be at the Bank's sole discretion.

**"Governmental Authority"** means any government, legislature or regulatory authority, agency, commission, law enforcement agency, board or court, tribunal or other law, regulation or rule making entity having or purporting to have jurisdiction on behalf of any nation, province, state, municipality or country or other subdivision thereof or other jurisdiction.

**"Legal Requirement"** means any law, statute, code, ordinance, order, award, judgment, decree, injunction, rule, regulation, authorization, directive, guidance note, advisory, consent, approval, order, permit, franchise, licence, direction, deferred prosecution agreement or other requirement of any Governmental Authority.

**"LG's"** has the meaning ascribed to it in the Facility Letter and may be a Financial LG or a Performance LG.

**"Loan"** means any advance to the Borrower in USD on which interest is calculated and payable on the basis the Bank's U.S. Base Rate (as a U.S. Base Rate Loan) and any advance to the Borrower in CAD on which interest is calculated and payable on the basis the Bank's Prime Rate.

**"Loan Documents"** means the Loan Documents described in the Facility Letter, any additional documents delivered in connection with the Credit Facilities by the Borrower and any amendments or restatements of any of such documents from time to time.

**"Material Adverse Change"** means, with respect to the Borrower any event, circumstance, act or omission which individually or in the aggregate has had or could reasonably be expected to have, a material adverse effect on: (i) the business, operations, prospects, properties, assets or condition, financial or otherwise, of the Borrower; (ii) the ability of the Borrower to perform its obligations and covenants in this Facility Letter or any other Loan Document to which it is a party; or (iii) to the rights and remedies of the Bank under this Facility Letter or any other Loan Document.

**"Maximum Limit"** means the lesser of (i) the maximum principal amount stipulated as being available respectively under each of (i) the Credit Facilities, and (ii) the permitted aggregate of all advances and credit issued and outstanding under each Credit Facility subject any other covenant restrictions. For the purposes hereof, any available credits in USD or any other currency shall be calculated using the Canadian Dollar Equivalent thereof.

**"Off-Balance Sheet Arrangements"** means any transaction, agreement or other contractual arrangement between the Borrower and an entity that is not consolidated on the Borrower's financial statements, under which the Borrower may have: (i) any obligation under a direct or indirect guarantee or similar arrangement; (ii) a retained or contingent interest in assets transferred to an unconsolidated entity, (iii) derivatives, to the extent that the financial statements do not fully reflect fair value thereof as a liability or asset; or (iv) any obligation or liability, including a contingent obligation or liability, to the extent that it is not fully reflected in the Borrower's financial statements.

**"Performance LG"** means an LG which is (a) an LG issued to secure ordinary course performance obligations of the Borrower to a third party (the **"Performance Obligations"**), including, without limitation, any performance related advance payment, retention or warranty obligations, in each case in connection with project engineering, procurement, construction, power business, maintenance and other similar projects (including projects about to be commenced) or bids for prospective project engineering, procurement, construction, power business, maintenance and other similar projects, or (b) an LG issued to back a bank guarantee, surety bond, performance bond, or other similar obligation in

each case issued to support performance obligations and is not a documentary credit issued to finance the import or export of goods.

**"Permitted Encumbrances"** means liens, encumbrances or other rights permitted by the Bank in writing.

**"Person"** shall mean and include an individual, a partnership, a corporation, a joint stock company, a trust, an unincorporated association, a joint-venture or other entity or a government or any agency or political subdivision of the above.

**"Potential Prior Ranking Claims"** means the aggregate of all amounts owing or required to be paid, where the failure to pay any such amount could give rise to a lien or trust or other claim pursuant to any law, statute, regulation or similar enactment, which ranks or is capable of ranking in priority to all or any portion of the Bank's security or in priority to any claim by the Bank for repayment of amounts owing under the Credit Facilities including, without limitation, amounts due and payable for wages, vacation pay, employee deductions (including income, CPP, EI, workers compensation, social security or other employment tax withholdings), sales tax, excise tax, tax payable pursuant to Part IX of the *Excise Tax Act* (Canada) (net of HST input credits) and pension fund obligations.

**"Required Notice"** means a written notice in form and content approved by the Bank, signed by the Borrower, given to the Bank Branch not later than 10:30 a.m. local time (where the branch of the Bank as indicated on the front page of this Facility Letter is located) two Business Days immediately preceding the date on which:

(a) an LG or DC is to be issued by the Bank;

as the case may be, stating the requested date, amount and term to maturity (or Interest Period) of the LG or DC requested.

With respect to the foregoing, a certificate of a manager or account manager of the Bank shall be *prima facie* evidence of the Bank's Prime Rate and the Bank's U.S. Base Rate from time to time.

**"Sanctions"** has the meaning ascribed to it in Section II(f) of this Schedule A.

**"Taxes"** means any fee (including without limitation, any documentation, licence or registration fee), any tax (including, without limitation, any gross receipts, sales, use, property (personal and real), tangible or intangible and stamp tax, value added tax, income tax, excise tax), levy, imposts, duty, charge, assessment, deduction or withholding of any nature whatsoever, together with any fine, addition to tax and interest on the fee or tax.

**"TNW"** means the aggregate of paid in capital, retained earnings and loans to the Borrower which have been subordinated and postponed in favour of the Bank, in form and substance satisfactory to the Bank, less any assets deemed by the Bank to be intangible including, without limitation, (i) goodwill, (ii) related company and affiliate accounts receivable, (iii) advances to shareholders, (iv) deferred charges and (v) investments in related companies and affiliates;

**"US Base Rate Loan"** means an advance to the Borrower in USD in respect of which interest accrues and is payable at the Bank's U.S. Base Rate.

**"USD" and "United States Dollars"** means lawful currency of the United States of America in same day immediately available funds; or, if such funds are not available, the form of money of the United States of America that is customarily used in the settlement of international banking transactions on the day in question.

**"USD Equivalent"** means at any time on any date in relation to any specified amount in a currency other than United States dollars, the amount of USD which could be purchased from the Bank by the payment of that specified amount of such other currency at the rate of exchange quoted by the Bank at or about 8:00 a.m. Pacific time on such date, including all premiums and costs of exchange.

Whenever the singular or the masculine is used herein the same shall be deemed to include the plural and other Persons, and vice versa.

## **II. Representations and Warranties**

The Borrower represents and warrants to the Bank, as of the date of the Facility Letter and as at the time of an advance or other utilization of any of the Credit Facilities from time to time that:

- (a) if a corporation, it has been duly incorporated and organized (or if a partnership or other legal entity, has been duly formed, or settled as relevant) and organized and is properly constituted, is in good standing and subsisting and is entitled to conduct its business in all jurisdictions in which it carries on business or has assets;
- (b) the execution of this Facility Letter and the Loan Documents and the incurring of liability and indebtedness to the Bank does not and will not contravene:
  - (i) any Legal Requirement applicable to the Borrower; or
  - (ii) any provision contained in any other loan or credit agreement or borrowing instrument or contract to which it is a party;
- (c) this Facility Letter and the Loan Documents to which it is a party have been duly authorized, executed and delivered by it, and constitute its valid and binding obligations and are enforceable in accordance with their respective terms;
- (d) all necessary Legal Requirements have been met and all other authorizations, approvals, consents and orders have been obtained with respect to the execution and delivery of this Facility Letter and the Loan Documents;
- (e) all financial and other information provided to the Bank in connection with the Credit Facilities is true and accurate, and it acknowledges that the offer of credit by the Bank contained in this Facility Letter is made in reliance on the truth and accuracy of this information and the above representations and warranties;
- (f) neither the Borrower nor any of its subsidiaries, directors, officers, employees, agents, or affiliates is an individual or entity (nor does the Borrower nor any such other entity or person operate, possess, own, charter, or use a vessel) that is, or is owned or controlled by any one or more individuals or entities ("Persons") that are: (i) the subject of any sanctions issued, administered or enforced by, or named on any list of specially designated or blocked Persons maintained by, the Office of Foreign Assets Control ("OFAC") of the US Department of the Treasury, the US Department of State, the United Nations Security Council, the European Union, Her Majesty's Treasury, the Hong Kong Monetary Authority, or the Department of Global Affairs (Canada), Foreign Affairs, Trade and Development Canada, Canada Border Services Agency, or Justice Canada, including any enabling legislation or executive order related thereto, and any similar sanctions laws as may be enacted from time to time in the future by the United States, Canada, the European Union (and any of its member states), the United Kingdom or the United Nations Security Council, or any other legislative body of the United Nations or other relevant Governmental Authority (collectively, "Sanctions"), or (ii) located, organised or resident in a country or territory that is, or whose government is, the subject of Sanctions;
- (g) with respect to each LG or DC issued by the Bank pursuant to any of the Credit Facilities all required import or export licenses applicable to the transactions for which such LG or DC is issued have been obtained and the Borrower is in compliance in all material respects with foreign and domestic laws and regulations pertaining to each jurisdiction in which it operates and to each LG and/or DC and the subject matter of such LG and/or DC including, if applicable, the shipment and financing of the goods described in such LG and/or DC; and
- (h) no shares in the Borrower have been issued as, or are held as, or convertible to, bearer shares; and
- (i) there is no action, litigation or legal proceedings pending or threatened against the Borrower or its assets or properties before any court or administrative agency which, if adversely determined, might (i) result in the material adverse change in the consolidated financial condition of the Borrower, or (ii) materially and

adversely affect the ability of the Borrower to perform its obligations under this Facility Letter or the Loan Documents.

**III. Interest, Fees**

- (a) Interest on the daily balance of the principal amount advanced under the Credit Facilities and remaining unpaid from time to time shall accrue and shall be payable by the Borrower as set out in this Facility Letter both before and after demand, default, maturity, or judgment and until indefeasible payment in full, except as otherwise expressly provided for.
- (b) Interest based on the Bank's U.S. Base Rate shall be computed on the basis of a year of 360 days and for actual days that the amounts are outstanding under the relevant Credit Facilities on this basis. For the purpose of the *Interest Act* (Canada), the annual rate of interest to which interest computed on the basis of a year of 360 days is equivalent is the rate of interest as provided in this Facility Letter multiplied by the actual number of days in such year (whether 365 or 366) and divided by 360.
- (c) The fees paid to and received by the Bank shall be its entitlement as consideration for the time, effort and expense incurred by the Bank in the review of financial statements and its review and administration of documents, and the Borrower acknowledges and agrees that the determination of these costs is not feasible and that the fees set out in this Facility Letter represent a reasonable estimate of such costs.
- (d) In the event that interest is not received by the Bank on any date for payment provided for in this Facility Letter or in any other relevant document, interest on such overdue interest shall be compounded on the basis of interest calculated and payable on overdue interest in the same manner and at the same rate per annum as is applicable to such overdue interest until indefeasible payment in full. Any other amounts which become payable to the Bank under this Facility Letter or the Loan Documents and which are not paid when due shall accrue interest and be payable from the due date at the Bank's Prime Rate plus 3% per annum, calculated and payable monthly on the last day of each month, both before and after demand, default, maturity or judgment and until indefeasible payment in full (other than for overdrafts exceeding the permitted limit which shall accrue interest at the rate of 21% per annum both before and after demand, default and judgment until indefeasible payment in full).
- (e) All payments by the Borrower to the Bank shall be made at the address of the Bank Branch or at such other place as the Bank may specify in writing from time to time. The Borrower shall make payment to the Bank in immediately available funds in the same currency(ies) as the currency in which the original Loan or other credit was advanced or made available by the Bank. Any payment delivered or made to the Bank by 1:00 p.m. local time at the place where such payment is to be made shall be credited as of that day, but if made after such time such payment shall be credited as of the next Business Day.
- (f) Notwithstanding anything to the contrary contained in this Facility Letter, the Borrower acknowledges that: (i) the applicable rate of interest payable by the Borrower in connection with this Facility Letter shall not be less than zero, even if a reference rate used for the calculation of such interest, or the total of the reference rate and applicable interest spread, is less than zero; and (ii) the Bank may, in its discretion, and is hereby irrevocably authorized by the Borrower to, make an advance under the Credit Facilities (or debit or set-off any bank account of the Borrower with the Bank), to pay any unpaid interest, fees or other amounts which have become due under the terms of this Facility Letter.
- (g) The Borrower acknowledges that the actual recording of the amount of any advance or repayment thereof under the Credit Facilities, and interest, fees and other amounts due in connection with the Credit Facilities, in an account of the Borrower maintained by the Bank shall constitute *prima facie* evidence of the Borrower's indebtedness and liability from time to time under the Credit Facilities; provided that the obligation of the Borrower to pay or repay any obligations in accordance with the terms and conditions of the Credit Facilities shall not be affected by the failure of the Bank to make such recording. The Borrower also acknowledges being indebted to the Bank for principal amounts shown as outstanding from time to time in the Bank's account records, and all accrued and unpaid interest in respect of such amounts, in accordance with the terms and conditions of this Facility Letter.

- (h) The obligation of the Borrower to make all payments under this Facility Letter and the Loan Documents shall be absolute and unconditional and shall be made without any deduction or withholding of any nature and shall not be limited or affected by any circumstance, including, without limitation:
  - (i) any set-off, compensation, counterclaim, recoupment, defence or other right which the Borrower may have against the Bank or anyone else for any reason whatsoever; or
  - (ii) any insolvency, bankruptcy, reorganization or similar proceedings by or against the Borrower.
- (i) In addition to and not in limitation of any rights now or hereafter available to the Bank under applicable law or arising under the Loan Documents, the Bank is hereby irrevocably authorized, at any time and from time to time, to set-off and appropriate and to apply any and all deposits (general and special) and any other indebtedness at any time held by or owing by the Bank to or for the credit of the Borrower against and on account of the obligations of the Borrower to the Bank under this Facility Letter, irrespective of currency. The Bank agrees to provide written notice to the Borrower of the exercise of any of the rights under this section promptly after the exercise of such rights.
- (j) The Borrower shall pay to and indemnify and save harmless the Bank for the full amount of all out of pocket costs and expenses (including, but not limited to, any interest payable in order to maintain any Loan hereunder) which the Bank may sustain or incur as a consequence of the failure by the Borrower to pay when due any principal of or any interest on any Loan or any other amount due hereunder.
- (k) All payments made on account of principal, interest or otherwise shall be made to the Bank, to the extent permitted by applicable Legal Requirements, free and clear of and exempt from, and without deduction for or on account of, any present or future Taxes or other charges of any nature imposed, levied, collected, withheld or assessed by any Governmental Authority. However, in the event that any payments made under this Facility Letter shall not be made free and clear of and exempt from, and without deduction or withholding for or on account of any Taxes, then the Borrower shall gross up the payments to the Bank so that the Bank receives such additional amounts as may be necessary in order that each such net payment to the Bank, after payment or deduction or withholding for and on account of any such Taxes, will not be less than the amount to be paid and received by the Bank in accordance with this Facility Letter. With respect to each such deduction or withholding, the Borrower shall promptly pay any such Taxes and (but in no event later than 90 days after payment) furnish to the Bank evidence of such payment, satisfactory to the Bank and also at the Bank's request provide such certificates, receipts and other documents required to establish any tax credit to which the Bank may be entitled.
- (l) The agreements of the Borrower pursuant to the foregoing subparagraphs (j) and (k) shall survive the repayment of the Loans and the termination of this Facility Letter or the Credit Facilities (or both).
- (m) The remedies, rights and powers of the Bank under this Facility Letter, the Loan Documents and at law and in equity are cumulative and not alternative and are not in substitution for any other remedies, rights or powers of the Bank and no delay or omission in exercise of such remedy, right, or power shall exhaust such remedies, rights or powers or be construed as a waiver of any of them.

#### **IV. Conditions Precedent**

In addition to the Conditions Precedent previously set out in the Facility Letter, it shall also be a condition precedent to the initial advance and continued availability of any credit or advances under any of the Credit Facilities that the Bank shall have received and be satisfied with:

- (a) completed Loan Documents registered where necessary in form and manner satisfactory to the Bank's solicitors;
- (b) all identification, business activity, business structure and other "know your customer" documents and information as required by the Bank and any screening conducted in accordance with Sanctions and other applicable legal requirements; and

- (c) such other conditions as the Bank may determine, in its discretion.

**V. Borrower's Covenants and Conditions of Credit**

In addition to the conditions previously set out, the following additional conditions shall apply until all indebtedness and liability under the Credit Facilities are indefeasibly repaid in full to the Bank and the Credit Facilities cancelled:

- (a) The Borrower shall not, without the prior written consent of the Bank:
  - (i) grant or allow any lien, charge, security interest, right or other encumbrance, whether fixed or floating, to be registered against or exist on any of its property;
  - (ii) become a guarantor or an endorser or otherwise become liable upon any note or other obligation other than in the normal course of business of the Borrower;
  - (iii) declare or pay dividends on any class or kind of its shares or other securities, repurchase or redeem any of its shares or other securities, or reduce its capital in any way whatsoever or repay any shareholders' advances that would cause a breach of agreed covenants;
  - (iv) amalgamate with or permit all or substantially all of its assets to be acquired by any other person, firm or corporation or permit any reorganization or change in ownership or corporate structure of the Borrower, or the issuance of bearer shares;
  - (v) permit any property taxes to be past due at any time;
  - (vi) enter into any agreement for the purchase or sale of any property outside the normal course of business; or
  - (vii) borrow money, obtain credit or incur additional funded indebtedness (other than pursuant to the Credit Facilities).
- (b) The Borrower agrees to file all tax returns which it is required to file in accordance with any Legal Requirement from time to time; to pay or make provision for the payment of all Taxes (including any interest and penalties); to pay any Potential Prior Ranking Claims when due; and to maintain adequate reserves for the payment of any tax which is being contested diligently in good faith.
- (c) The Bank shall have the right to waive the delivery of any Loan Documents or the performance of any term or condition of this Facility Letter, and may advance all or any portion of the Loan(s) prior to satisfaction of any of the Conditions Precedent, but waiver by the Bank of any obligation or condition shall not constitute a waiver of performance of such obligation or condition for any future advance.
- (d) All financial terms and covenants shall be determined in accordance with generally accepted accounting principles, applied consistently.
- (e) If the amount outstanding under any Credit Facility in CAD plus the Canadian Dollar Equivalent of the amount outstanding under any of the Credit Facilities in a currency other than Canadian Dollars, at any time exceeds the Maximum Limit, the Bank may, from time to time, in its sole discretion:
  - (i) limit the further utilization of that Credit Facility;
  - (ii) convert all or part of the amount outstanding under that Credit Facility to Canadian Dollars in which event, interest shall accrue and be paid on such converted amounts at the rate set out in this Facility Letter for Canadian dollar advances accruing interest with reference to the Bank's Prime Rate. If no such rate is set out in this Facility Letter, interest shall accrue on the amount so converted at the Bank's Prime Rate plus 3% per annum, calculated monthly and payable on the last day of each month, both before and after demand, default, maturity or judgment and until indefeasible payment in full; or

- (iii) require the Borrower to pay the excess.
- (f) With respect to any monies payable by the Borrower hereunder, or any portion or portions thereof, which are payable in a currency other than CAD (the "**Foreign Currency Obligation**"), the following provisions shall apply:
- (i) payment of the Foreign Currency Obligation made hereunder shall be made in immediately available funds in lawful money of the jurisdiction in the currency of which the Foreign Currency Obligation is payable (the "**Foreign Currency**") in such form as shall be customary at the time of payment for settlement of international payments in Vancouver, British Columbia without set-off, compensation, or counterclaim and free and clear of and without deduction for any and all present and future taxes, levies, imposts, deductions, charges and withholdings with respect thereto.
  - (ii) if the Borrower makes payment to the Bank, or if an amount is applied by the Bank, in CAD in circumstances where the relevant indebtedness and liabilities constitute a Foreign Currency Obligation, such payment or amount shall satisfy the said liability of the Borrower hereunder only to the extent that the Bank is able, using the rate of exchange applied by the Bank in accordance with its normal banking procedures, to purchase the full amount of the relevant Foreign Currency owing with the amount of the CAD received by the Bank on the date of receipt, and the Borrower shall remain liable to and hereby agrees to indemnify the Bank for any deficiency (together with interest accruing thereon calculated and payable pursuant to the terms of the relevant underlying indebtedness and liabilities).
  - (iii) the Borrower shall indemnify and hold the Bank harmless from any loss incurred by the Bank arising from any change in the value of CAD in relation to the relevant Foreign Currency between the date the Foreign Currency Obligation becomes due and the date of full, final and indefeasible payment thereof to the Bank.
  - (iv) if for the purpose of commencing any proceeding against the Borrower to enforce payment of its indebtedness and liability under the Credit Facilities it is necessary to convert a sum due hereunder in a Foreign Currency into CAD, the rate of exchange used for purposes of commencing such proceeding shall be the rate of exchange at which in accordance with its normal banking procedures the Bank could purchase CAD with such Foreign Currency amount claimed to be due hereunder on the Business Day preceding that on which proceeding is commenced.
  - (v) The obligation of the Borrower in respect of any such sum due from it to the Bank hereunder shall, notwithstanding any judgment in CAD, be discharged only to the extent that on the Business Day following receipt by the Bank of any sum adjudged to be so due in CAD the Bank may in accordance with its normal banking procedures purchase the relevant Foreign Currency in the full amount owing to the Bank with the CAD; if the amount of such Foreign Currency so purchased is less than the sum actually due to the Bank in such Foreign Currency the Borrower agrees, as a separate obligation and notwithstanding any such judgment, to indemnify the Bank against such loss and if the Foreign Currency purchased exceeds the sum actually due to the Bank in the Foreign Currency, the Bank agrees to remit such excess to the Borrower as the Borrower may be entitled thereto.
- (g) The Borrower confirms that it will (i) not use any amounts advanced or seek advances under the Credit Facilities for any illegal purpose or (a) to fund any activity or business with any person or in any country or territory that is the subject or target of Sanctions or (b) in any manner that would result in a violation of Sanctions by any person (including any lender, advisor, or otherwise) and (ii) not repay any amounts owing to the Bank using any funds derived directly or indirectly from any illegal or sanctionable activity, provided that this covenant shall be inapplicable only to the extent of any relevant violation of the *Foreign Extra-Territorial Measures Act* (Canada) or any similar applicable anti-boycott law or regulation.
- (h) The Borrower shall maintain, or cause to be maintained, with reputable insurers satisfactory to the Bank at its discretion, comprehensive all risk insurance from the Borrower with coverages (including extended coverage, public liability coverage and business interruption coverage) in such amounts and otherwise



covering such risks as are at all times satisfactory to the Bank at its discretion. The Borrower shall provide to the Bank, on an annual basis, evidence of such coverage.

**VI. Environmental Matters**

- (a) To the best of the Borrower's knowledge after due and diligent inquiry, no regulated, hazardous or toxic substances are being stored on any of the Borrower's lands, facilities or premises (the "Premises") or any adjacent property, nor have any such substances been stored or used on the Premises or in the Borrower's business or any adjacent property prior to the Borrower's ownership, possession or control of the Premises. The Borrower agrees to provide written notice to the Bank immediately upon the Borrower becoming aware that the Premises or any adjacent property are being or have been contaminated with regulated, hazardous or toxic substances. The Borrower shall not permit any activities on the Premises which directly or indirectly could result in the Premises or any other property being contaminated with regulated, hazardous or toxic substances. For the purposes of this Facility Letter, the term "regulated, hazardous or toxic substances" means any substance, defined or designated as hazardous or toxic wastes, hazardous or toxic material, a hazardous, toxic or radioactive substance or other similar term, by any Legal Requirement now or in the future in effect, or any substance or materials, the use or disposition of which is regulated by any such Legal Requirement.
- (b) The Borrower shall promptly comply with all Legal Requirements relating to the use, collection, storage, treatment, control, removal or cleanup of regulated, hazardous or toxic substances in, on, or under the Premises or in, on or under any adjacent property that becomes contaminated with regulated, hazardous or toxic substances as a result of construction, operations or other activities on, or the contamination of, the Premises, or incorporated in any improvements thereon. The Bank may, but shall not be obligated to, enter upon the Premises and take such actions and incur such costs and expenses to effect such compliance as it deems advisable and the Borrower shall reimburse the Bank on demand for the full amount of all costs and expenses incurred by the Bank in connection with such compliance activities.
- (c) The property of the Borrower which are now or in the future encumbered by any one or more of the Loan Documents are hereby further mortgaged and charged to the Bank, and the Bank shall have a security interest in such assets, as security for the repayment of such costs and expenses and interest thereon, as if such costs and expenses had originally formed part of the Credit Facilities.

**VII. Increased Cost Indemnities.**

If any change in the applicable Legal Requirements or in their interpretation or the administration of any of them by any Governmental Authority, or compliance by the Bank with any request (whether or not having the force of law) of any relevant central bank or other comparable agency or Governmental Authority, shall change the basis of taxation of payments to the Bank of the principal of or interest on the Loans or any other amounts payable under this Facility Letter (except for changes in the rate of tax on, or determined by reference to, the net income or profits of the Bank) or shall impose, modify or deem applicable any reserve, special deposits or similar requirement against assets of, deposits with or for the account of, or credit extended by the Bank or shall impose on the Bank or the London interbank market any other conditions directly affecting this Facility Letter or the Loans, and the result of any of the foregoing is to increase the cost to the Bank of making the Loans or maintaining the Loans or to reduce the amount of any sum received or receivable by the Bank under this Facility Letter by an amount deemed by the Bank to be material, then the Borrower shall, upon receiving notice from the Bank, reimburse to the Bank, on demand by the Bank, such amount or amounts as will compensate the Bank for such additional cost or reduction. A certificate of a manager or account manager of the Bank setting forth the additional amounts necessary to compensate the Bank as aforesaid, and the basis for its determination, shall be conclusive as to the determination of such amount in the absence of manifest error.

**VIII. Bank Visits**

Representatives of the Bank shall be entitled to attend at and inspect the Borrower's place(s) of business and to view all financial records of the Borrower and meet with key officers or employees of the Borrower at any time, on reasonable notice.

**IX. Legal and Other Expenses**

The Borrower shall pay (i) all reasonable legal fees and disbursements (on a solicitor and own client basis) in respect of legal advice and services to or on behalf of the Bank in connection with the Credit Facilities including: the preparation, negotiation and settlement of the Facility Letter, the preparation, issue and registration of the Loan Documents together with any amendments or restatements thereto from time to time; the enforcement and preservation of the Bank's rights and remedies; searches from time to time, including in connection with any advance; and (ii) all reasonable fees and expenses relating to appraisals, insurance consultation, environmental investigation, credit reporting and other due diligence and to responding to demands of any Governmental Authority; whether or not the documentation is completed or any funds are advanced under the Credit Facilities.

**X. Non-Merger; Records of Bank; Assignment**

The terms and conditions of this Facility Letter shall not be merged by and shall survive the execution and delivery of the Loan Documents.

The taking of judgment on any covenant contained in this Facility Letter and/or the other Loan Documents shall not operate so as to create any merger or discharge of any indebtedness or liability of the Borrower under, nor of any assignment, transfer, guarantee, lien, contract, promissory note, bill of exchange or security of any form held or which may in the future be held by the Bank from the Borrower or from any other Person.

The benefits conferred by this Facility Letter and the other Loan Documents shall enure to the benefit of the Bank and its successors and assigns and shall be binding on the Borrower and its respective heirs, successors and permitted assigns.

The records of the Bank as to the making or rollover of Loans (and the amounts thereof) hereunder, payment of any money payable hereunder or any part thereof being in default or of any notice or demand for payment having been made shall be prima facie proof of such fact, absent manifest error.

The Borrower shall not assign all or any of its rights, benefits or obligations under this Facility Letter or the Loan Documents without the prior written consent of the Bank. The Bank shall be entitled, without the consent of the Borrower, to assign, syndicate, sell or transfer all or any portion of its rights, benefits and obligations under this Facility Letter and the Loan Documents.

**XI. Waiver or Amendment**

No term or condition of this Facility Letter or any of the other Loan Documents may be waived or varied verbally or deemed to be waived or varied by any cause or course of conduct of any officer, employee or agent of the Bank. All waivers must be in writing and signed by a duly authorized officer of the Bank.

Any amendment to this Facility Letter or the other Loan Documents must be in writing and signed by a duly authorized officer of the Bank. Without limiting the foregoing, the Bank may amend this Facility Letter if such amendment is required in connection with any change in applicable law or its interpretation or in connection with any Legal Requirement; the Bank shall provide 30 days prior written notice of any such amendment.

**XII. Severability**

Any provision of this Facility Letter or other Loan Document which is determined or adjudged to be illegal, invalid, prohibited or unenforceable under applicable law in any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent of such illegality, invalidity, prohibition or unenforceability and shall be severed from the balance of this Facility Letter or such Loan Document, all without affecting the remaining provisions of this Facility Letter or such Loan Document or affecting the legality, validity or enforceability in any other jurisdiction.

**XIII. Consent to Disclosure**

- (a) The Borrower consents to and acknowledges that it is aware that credit, financial and personal inquiries regarding the Borrower and individuals connected to the Borrower (including directors, officers, shareholders

and individuals acting on behalf of the Borrower) may be gathered, made, maintained and/or used at any time in connection with: (i) initial and ongoing credit assessment, (ii) any funding of the Credit Facilities by investors or participants or any assignment or sale of the Credit Facilities by the Bank, and (iii) the enforcement of any remedies that the Bank may have under the Credit Facilities, (iv) compliance and risk monitoring purposes and the Borrower consents to the making of any such inquiries by or on behalf of the Bank and consents, without restriction and without further notice to or further consent of the the Borrower, to disclosure of any such information to any prospective investor, participant, assignee or purchaser of all or any part of the Credit Facilities. The Borrower irrevocably waives, to the extent permitted under applicable law, any and all rights it may have to notice of or to prohibit such disclosure, including, without limitation, any right of privacy.

- (b) The Bank may collect, use, transfer and disclose information for the following purposes and as follows:
  - Providing information respecting other services;
  - Taking any Compliance Action referred to in this Schedule A (including actions taken to comply with laws, international guidance, internal policies or procedures, requirements from judicial, administrative, law enforcement and regulatory authorities);
  - Conducting financial crime risk management activity, including verifying the identification of the Credit Party and related individuals, screening, monitoring and investigation activity, and sharing information within HSBC Group, including in other jurisdictions, for these purposes;
  - Judicial, administrative, public or regulatory bodies, as well as governments, tax, revenue and monetary authorities, examiners, monitors, securities or futures exchanges, courts, central banks or law enforcement bodies with jurisdiction over any HSBC Group member.
- (c) The Bank may collect, transfer and disclose information for these purposes from and to members of the HSBC Group, sub-contractors, agents and service providers within Canada and in other jurisdictions.
- (d) Before providing the Bank with personal information respecting any connected individual, the Credit Party will ensure that it has provided all necessary disclosures to, and obtained any necessary consents from, such individuals in connection with the collection, use and disclosure of such information by the Bank.

#### **XIV. Time of Essence**

Time shall be of the essence of this Facility Letter.

#### **XV. Indemnity**

The Borrower agrees to keep the Bank and its officers, directors, employees, solicitors, agents and affiliates (collectively, the “**Bank Group**”) indemnified against any claim for any damages, losses, costs or expenses (including, without limitation, legal costs on a solicitor and his own client basis) incurred or suffered by any member of the Bank Group in relation to this Facility Letter or as a consequence (direct or indirect) of any breach by the Borrower of this Facility Letter, or as a result of an assessment made by any tax authority in respect of any payment made by the Bank to any third party including, without limitation, to the beneficiary of any LG., unless such damage, loss, cost or expense was incurred solely as a direct result of the Bank’s gross negligence or wilful misconduct.

#### **XVI. Governing Law**

This Facility Letter and, unless otherwise specified therein, all Loan Documents or instruments delivered in accordance with this Facility Letter shall be governed by and interpreted in accordance with the laws of the Province of Ontario (the “**Governing Jurisdiction**”) and the federal laws of Canada applicable therein. The Borrower irrevocably submits to the non-exclusive jurisdiction of the courts in the Governing Jurisdiction and waives, to the fullest extent permitted by applicable law any defence based on convenient forum.

#### **XVII. Financial Crimes and Sanctions Laws Acknowledgements and Indemnification**

The Borrower acknowledges and agrees that:

- (a) the Bank, HSBC Holdings plc, its affiliates and subsidiaries (together “**HSBC Group**”), and HSBC Group’s service providers are required to act in accordance with the laws and regulations of various jurisdictions, including those which relate to Sanctions and the prevention of money laundering, terrorist financing, bribery, corruption and tax evasion;
- (b) the Bank may take, and may instruct other members of the HSBC Group to take, to the extent it or such member is legally permitted to do so under the laws of its jurisdiction, any action (a “**Compliance Action**”) that the Bank or any such other member, in its sole discretion, considers appropriate to act in accordance with Sanctions or domestic and foreign laws and regulations. Such Compliance Action may include but is not limited to the interception and investigation of any payment, communication or instruction or other information; the making of further enquiries as to whether a Person or entity is subject to any Sanctions; and the refusal to issue, pay, renew, extend or transfer any DC or LG or to process any transaction or instruction that, in the Bank’s discretion, may not conform with Sanctions. The Bank will use reasonable commercial efforts to notify the Borrower of the existence of such circumstances as soon as is reasonably practicable, to the extent permitted by law;
- (c) neither the Bank nor any member of HSBC Group will be liable for any loss, cost, damage, claim, action, suit, liabilities, suffered or incurred by the Borrower or other Person, or for any delay or any failure of the Bank to perform its duties under this Facility Letter arising out of or relating to any Compliance Action taken by or on behalf of the Bank, its service providers, or any HSBC Group member in its sole discretion; and
- (d) the Bank may, in its sole discretion, refuse to issue, pay, renew, extend or transfer any DC or LG in connection with or relating to any countries, governments, entities or other Persons that are subject to Sanctions or limitations imposed by domestic or foreign laws, or by the Bank or any member of the HSBC Group, and that the Bank has the right, without prior notice to any Credit Party, to reject, refuse to pay, any demand, or not process any transaction or instruction that does not conform with any such Sanctions, or limitations; and
- (e) the Borrower will indemnify the Bank for all losses, costs, damages, claims, actions, suits, demands and liabilities suffered or incurred by or brought against the Bank arising out of or relating to any Compliance Action, unless such losses, costs, damages, claims, actions, suits, demands and liabilities are determined by a final, non-appealable decision of a court of competent jurisdiction to have been caused solely and directly by the gross negligence or wilful misconduct of the Bank.

#### **XVIII. Electronic Communications and Electronic Signatures**

- (a) The Borrower hereby authorizes the Bank to accept electronic communications and electronic signatures from the Borrower in relation to this Facility Letter and the Loan Documents and hereby consents to receiving commercial electronic messages from or on behalf of the Bank and any agreement, instruction, document, information, disclosure, notice or other form of communication from the Bank by electronic communication.
- (b) The Borrower agrees that any electronic communication, including any electronic signature associated with such electronic communication, which the Bank receives from the Borrower or in the Borrower’s name, or which appears to be from the Borrower or in its name, will be considered to be duly authorized and binding upon the Borrower (whether or not that electronic communication was actually from or authorized by the Borrower) and the Bank will be authorized to rely and act upon any such electronic communication, including any electronic signature associated with the electronic communication, even if it differs in any way from any previous electronic communication sent to the Bank.
- (c) The Borrower acknowledges that: (i) the form, format and delivery of each electronic communication will permit it to retain, store and subsequently access and retrieve such electronic communication without the requirement of any specialized or proprietary equipment or software from the Bank; and (ii) it is the Borrower’s responsibility to acquire and maintain the necessary computer equipment and software to deliver, receive, store, retain and subsequently access each electronic communication.

- (d) The Borrower acknowledges and agrees that the Bank's methods of storing, maintaining and retrieving any electronic communication, including any electronic signatures associated with such electronic communication, and the Bank's data systems, maintain the integrity of the electronic communication. If, for any reason, an electronic communication stored in the Bank's data systems differ from the Borrower's, the Borrower acknowledges and agrees that the version stored on the Bank's data systems shall prevail over any inconsistency. In this regard, the Borrower acknowledges and agrees that electronic communications maintained by the Bank will be admissible in any legal or other proceedings as conclusive evidence as to the contents of those electronic communications in the same manner as an original paper document, and that further proof of our records system integrity is not required (the integrity of the Bank's records system is hereby acknowledged and agreed by the Borrower) and the Borrower hereby waives any right to object to the introduction of any such electronic communications into evidence. To the fullest extent permitted by applicable law, the Borrower waives any defence, or waiver of liability, based on the absence of a written document in paper format, signed manually. The Borrower will keep its own records of all electronic communications for a period of 7 years (unless otherwise stipulated by local regulation) and will produce them to the Bank upon request.
- (e) At the Bank's discretion, it may require: (i) electronic communications be delivered using technology acceptable to the Bank including the use of a secure electronic signature, and (ii) any agreement, instruction, document, information, disclosure, notice or other form of communication from the Borrower to be manually signed and/or delivered to the Bank in paper format. If the Bank requires that the Borrower acknowledge its agreement to this Facility Letter or any Loan Document by clicking the appropriate button, the Borrower will follow any instructions that the Bank provides to indicate the Borrower's agreement (which may include typing the Borrower's name and/or clicking "I Agree" or similar button).
- (f) When the Borrower's handwritten or electronic signature is delivered by facsimile, email or other electronic or digital transmission, such transmission shall constitute delivery of an executed copy of this Facility Letter or relevant Loan Document. If the Borrower uses an electronic signature to indicate its agreement, the Borrower shall ensure that its electronic signature is attached to or associated with the relevant electronic communication.

**XIX. Further Assurances**

The Borrower shall, at its cost and expense, upon request of the Bank, duly execute and deliver, or cause to be duly executed and delivered, to the Bank all such further agreements, instruments, documents and other assurances and do and cause to be done all such further acts and things as may be necessary or desirable in the reasonable opinion of the Bank to carry out more effectually the provisions and purposes of this Facility Letter or any of the other Loan Documents. Without limitation, in connection with any new tenancy of the lands, the Bank may require that the tenant enter into an attornment agreement with the Bank in form satisfactory to the Bank.

**XX. Conflict**

In the event of any conflict between the terms of this Schedule and the corresponding terms of the facility letter to which this Schedule is attached, the terms of such facility letter shall prevail to the extent necessary to resolve such conflict. In the event of a conflict between the terms of this Facility Letter and the corresponding terms of any of the other Loan Documents, the terms of this Facility Letter shall prevail to the extent of such conflict.

**XXI. Confidentiality**

The Borrower acknowledges that the contents of this Facility Letter are confidential and shall not be disclosed by the Borrower other than to its solicitors (or any other person bound by a duty of confidentiality) except with the prior written consent of the Bank.

**SCHEDULE B**

**TO FACILITY LETTER  
FROM: HSBC BANK CANADA  
TO: DAVIDS FOOTWEAR LTD.  
DATED: FEBRUARY 12, 2018**

**FEES FOR COLLECTIONS AND DOCUMENTARY CREDITS**

- Note:
1. Out-of-pocket expenses are in addition to the charges outlined.
  2. All fees are to be assessed in the currency of the transaction for USD, CAD or EUR transaction. For any other currency, CAD equivalent shall apply.
  3. Standard pricing will apply on all other charges not itemized here.
  4. All fees and expenses are payable, except as otherwise provided below, immediately upon notice from the Bank of same.

**IMPORT DOCUMENTARY CREDITS**

**A. OPENING COMMISSION**

- |       |                                   |  |
|-------|-----------------------------------|--|
| (i)   | Irrevocable DCs with sight draft  | 0.35% for first 60 days or part thereof.<br>0.10% for each additional 30 days<br>Minimum \$125.  |
| (ii)  | Irrevocable DCs with Usance Draft | irrevocable DC opening commission during the pre-acceptance period as in A.(i); PLUS 0.15%, for each 30 days, minimum \$125. Usance period fee to be collected when payment is effected. |
| (iii) | Back to Back DC                   | same as in A.(i) and (ii), except minimum \$200.   |
| (iv)  | Revolving DC                      | 0.50% for first 30 days or part thereof;<br>0.10% for each additional 30 days or part thereof, minimum \$125.  |

All opening commission, together with full cable charges of \$50 are payable in full at the time of issuance of DC.

**B. AMENDMENTS**

- (i) \$75 per amendment.
- (ii) For increased amounts, extension of validity or changes in issuance A.(i)/(ii) shall apply, minimum \$75.

All amendment fees, together with cable charges of \$50 are payable in full at the time of amendment except when same is payable by Beneficiary.

**C. DRAWING COMMISSION**

0.1%, minimum \$50 per drawing.

**D. SHIPPING GUARANTEES**

\$100 the first 30 days; \$50 each additional 30 days.

**E. OUT-OF-POCKET EXPENSES**

To be reimbursed as applicable.

**EXPORT DOCUMENTARY CREDIT**

**A. ADVISING FEE**

\$75 flat

**B. AMENDMENT COMMISSION**

\$75 flat

C. TRANSFER

Issuing Fee	0.20% flat, minimum \$250.
Amendment	\$100
	For increased amount, additional issuing fee, minimum \$75 shall apply.

All transfer issuing and amendment fees, together with cable charges of \$50 are payable in full at the time of issuance and amendment.

D. NEGOTIATION FEE 0.125% on face value of DC, minimum \$150.

E. CONFIRMATION FEE

Subject to country risk and Bank availability and premiums at the discretion of the Bank, minimum 0.125% per month (1.5% per annum), minimum \$250.

F. ACCEPTANCE COMMISSION

Subject to country risk and Bank availability and premiums at the discretion of the Bank, minimum 0.125% per month, minimum \$250.

G. DISCREPANT DOCUMENTS

\$75 flat for documents requiring re-checking after first presentation.

H. ASSIGNMENT OF PROCEEDS (Letter of Direction)

0.10% on assigned value, minimum \$200.

I. DC NON-UTILIZATION FEE \$75 flat (payable at expiry).

J. OUT-OF-POCKET EXPENSES To be reimbursed as applicable.

**DOCUMENTARY COLLECTION (under provisions of ICC Publication 522).**

A. INWARD DOCUMENTARY COLLECTION

Documentary either D/P or D/A: 0.25%, minimum \$100.

Cable: \$40 per cable.

B. OUTWARD DOCUMENTARY COLLECTION

Documentary either D/P or D/A: 0.25%, minimum \$100.

Cable: \$40 per cable.

C. ENDORSEMENT FEE

\$100 flat for adding endorsement to transport documents to facilitate the release of shipment.

D. AVALIZATION / GUARANTEE PAYMENT FEE

0.175% every 30 days, minimum \$150 per quarter.

E. CLEAN COLLECTIONS

0.10%, Min. \$25, when paid plus Out-of-Pocket expenses.

F. OUT-OF-POCKET EXPENSES

To be reimbursed as applicable.



# Tab C

THIS IS EXHIBIT "C" TO THE AFFIDAVIT  
OF LARRY ROSEN SWORN BEFORE ME  
ON THIS 31<sup>ST</sup> DAY OF JULY, 2019



---

A Commissioner for taking affidavits

PI945B



**PRIVATE & CONFIDENTIAL**

August 14, 2018

Davids Footwear Ltd.  
77 Bloor Street West – Suite 500  
Toronto, Ontario  
M5S 1M2

Attention: Mr. Laurance Rosen  
Mr. Conrad Frejlich

Dear Sir:

We refer to the facility letter dated February 12, 2018 from HSBC Bank Canada (the "Bank") to Davids Footwear Ltd. (the "Borrower"), collectively called the Facility Letter. Any terms not defined in this letter shall have the meaning given to those terms in the Facility Letter.

Based on the information, representations and documents you have provided to the Bank, and at the request of the Borrower the Bank has agreed to amend the terms and conditions governing the Credit Facilities on the condition that the Facility Letter be modified as follows:

**DELETE**

1. **Operating Loan Facility**

1.1 **Amount**

Demand operating revolving loan facility ("Operating Loan Facility") available by way of any of the types of advances and other credit described in Section 1.3 (below) up to but not exceeding in aggregate (for all such types of advances and other credit) CAD 2,500,000 (or the USD Equivalent), subject to the Maximum Limit.

1.2 **Purpose**

To assist in financing the day-to-day operating requirements of the Borrower.

1.3 **Availability**

Loan advances and other credit under the Operating Loan Facility are available subject to the Maximum Limit as follows:

- (a) CAD account overdraft up to an aggregate principal amount not exceeding CAD 2,500,000 ("CAD Overdraft Loans");
- (b) USD account overdraft up to an aggregate principal amount not exceeding USD Equivalent of CAD 2,500,000 ("USD Overdraft Loans");
- (c) letters of credit or documentary credits ("DCs") up to an aggregate amount of CAD 1,000,000 or USD equivalent, in each case for a period of up to 180 days and an usance term of up to 90 days to finance trade activity in form satisfactory to the Bank. DCs shall be available in major currencies, subject to availability;
- (d) LGs up to an aggregate amount of CAD 1,000,000 or USD equivalent (the "LG Limit"), in each case for a maximum term of one year to finance the day to day operations of the Borrower through the issuance by the Bank of letters of guarantee, standby letters of credit, performance bonds, counter guarantees, counter standby letters of credit or similar credits from time to time (each an "LG") upon the instructions of the Borrower, each such LG to be in form satisfactory to the Bank. The availability of each LG shall be at the sole and absolute

discretion of the Bank and subject to the Conditions Precedent below and in Schedule A attached hereto. Each issuance of an LG is an advance of credit (for the Borrower's account) for purposes of the LG Limit. Any amount drawn under any LG shall be immediately reimbursed to the Bank by the Borrower. Interest on any amount drawn under an LG in Canadian dollars and not immediately reimbursed by the Borrower to the Bank shall accrue, calculated monthly in arrears accruing daily at the Bank's Prime Rate plus 1.00% per annum, and interest on any amount drawn under a LG in U.S. dollars and not immediately reimbursed by the Borrower to the Bank shall accrue, calculated monthly in arrears accruing daily at the Bank's U.S. Base Rate plus 1.00% per annum. The Borrower shall pay the Bank the following fees:

- (i) At the time of issuance by the Bank of each Financial LG (including at the time of issuance of any renewal or replacement Financial LG, following maturity or expiry of a Financial LG), a fee equal to 1.00% per annum calculated against the face amount and over the term of the Financial LG;
- (ii) At the time of issuance by the Bank of each Performance LG, a fee equal to 1.00% per annum calculated against the face amount and over the term of the Performance LG; and
- (iii) At the time of amendment of each LG, the additional standard fees as set out in the attached Schedule B.

The Borrower shall ensure that the amounts advanced and outstanding (including liabilities in respect of DCs and LGs) under the Operating Loan Facility shall at no time exceed the amount of each of the available credit sub-limits set out above and that the aggregate of all such advances and credits outstanding at no time exceeds the Maximum Limit in the applicable currency.

## 2. Capital Loan Facility

### 2.1 Amount

CAD 750,000 demand non-revolving loan facility (the "Capital Loan Facility").

### 2.2 Purpose

To assist in financing capital expenditures by the Borrower.

### 2.3 Availability

The Capital Loan Facility is available by way of multiple draws in minimum amounts of CAD100,000 (the "Capital Loan") to be requested by the Borrower by delivery of a Required Notice to the Bank by way of:

- (a) CAD advance based on the Bank's Prime Rate ("CAD Prime Rate Loan");

## INSERT

## Operating Loan Facility

### 1.1 Amount

Demand operating revolving loan facility ("Operating Loan Facility") available by way of any of the types of advances and other credit described in Section 1.3 (below) up to but not exceeding in aggregate (for all such types of advances and other credit) CAD 3,000,000 (or the USD Equivalent), subject to the Maximum Limit.

### 1.2 Purpose

To assist in financing the day-to-day operating requirements of the Borrower.

### 1.3 Availability

Loan advances and other credit under the Operating Loan Facility are available subject to the Maximum Limit as follows:

- (a) CAD account overdraft up to an aggregate principal amount not exceeding CAD 3,000,000 ("CAD Overdraft Loans");

- (b) USD account overdraft up to an aggregate principal amount not exceeding USD Equivalent of CAD 3,000,000 ("USD Overdraft Loans");
- (c) letters of credit or documentary credits ("DCs") up to an aggregate amount of CAD 1,000,000 or USD equivalent, in each case for a period of up to 180 days and an usance term of up to 90 days to finance trade activity in form satisfactory to the Bank. DCs shall be available in major currencies, subject to availability;
- (d) LGs up to an aggregate amount of CAD 1,000,000 or USD equivalent (the "LG Limit"), in each case for a maximum term of one year to finance the day to day operations of the Borrower through the issuance by the Bank of letters of guarantee, standby letters of credit, performance bonds, counter guarantees, counter standby letters of credit or similar credits from time to time (each an "LG") upon the instructions of the Borrower, each such LG to be in form satisfactory to the Bank. The availability of each LG shall be at the sole and absolute discretion of the Bank and subject to the Conditions Precedent below and in Schedule A attached hereto. Each issuance of an LG is an advance of credit (for the Borrower's account) for purposes of the LG Limit. Any amount drawn under any LG shall be immediately reimbursed to the Bank by the Borrower. Interest on any amount drawn under an LG in Canadian dollars and not immediately reimbursed by the Borrower to the Bank shall accrue, calculated monthly in arrears accruing daily at the Bank's Prime Rate plus 1.00% per annum, and interest on any amount drawn under a LG in U.S. dollars and not immediately reimbursed by the Borrower to the Bank shall accrue, calculated monthly in arrears accruing daily at the Bank's U.S. Base Rate plus 1.00% per annum. The Borrower shall pay the Bank the following fees:
  - (i) At the time of issuance by the Bank of each Financial LG (including at the time of issuance of any renewal or replacement Financial LG, following maturity or expiry of a Financial LG), a fee equal to 1.00% per annum calculated against the face amount and over the term of the Financial LG;
  - (ii) At the time of issuance by the Bank of each Performance LG, a fee equal to 1.00% per annum calculated against the face amount and over the term of the Performance LG; and
  - (iii) At the time of amendment of each LG, the additional standard fees as set out in the attached Schedule B.

The Borrower shall ensure that the amounts advanced and outstanding (including liabilities in respect of DCs and LGs) under the Operating Loan Facility shall at no time exceed the amount of each of the available credit sub-limits set out above and that the aggregate of all such advances and credits outstanding at no time exceeds the Maximum Limit in the applicable currency.

## 2. Capital Loan Facility

### 2.1 Amount

CAD 1,000,000 demand non-revolving loan facility (the "Capital Loan Facility").

### 2.2 Purpose

To assist in financing capital expenditures by the Borrower.

### 2.3 Availability

The Capital Loan Facility is available by way of multiple draws in minimum amounts of CAD100,000 (the "Capital Loan") to be requested by the Borrower by delivery of a Required Notice to the Bank by way of:

- (a) CAD advance based on the Bank's Prime Rate ("CAD Prime Rate Loan");

Each of the terms and conditions of the Facility Letter, as amended by this extension letter, shall remain in full force and effect, and are hereby affirmed by the undersigned. In particular, the Credit Facilities shall continue to be repayable on demand by the Bank, at any time.

**Davids Footwear Ltd.**

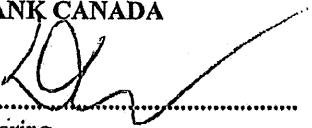
**August 14, 2018**

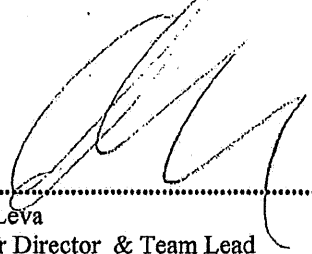
**Page #4**

The Credit Facilities shall continue to be subject to periodic review to be conducted by the Bank in the Bank's sole discretion, and the Bank shall be under no obligation to conduct any such review or to provide a renewal letter or extension letter or other notification of such review if such review is conducted.

Kindly acknowledge receipt and acceptance of this letter by dating and returning to the Bank not later than August 31, 2018, the enclosed copy of this letter executed by the parties indicated below failing which this offer will automatically expire and shall be of no further force or effect.

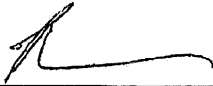
Yours truly,  
**HSBC BANK CANADA**

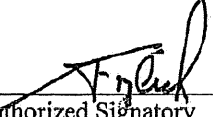
  
.....  
David Wearing  
Director  
Corporate Banking

  
.....  
Paul Leva  
Senior Director & Team Lead  
Corporate Banking

The undersigned hereby acknowledges and agrees to the terms and conditions of this Facility Letter this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**BORROWER:**  
**DAVIDS FOOTWEAR LTD.**

Per:   
\_\_\_\_\_  
Authorized Signatory  
Title:  
Name:

Per:   
\_\_\_\_\_  
Authorized Signatory  
Title:  
Name:

# Tab D

THIS IS EXHIBIT "D" TO THE AFFIDAVIT  
OF LARRY ROSEN SWORN BEFORE ME  
ON THIS 31<sup>ST</sup> DAY OF JULY, 2019



---

A Commissioner for taking affidavits

P14458





HSBC Bank Canada

**GENERAL SECURITY AGREEMENT (Ontario)**

This Agreement made as of the 28th day of February, 2018

Between:

Davids Footwear Ltd.

(Name of Debtor)

(hereinafter called the  
'Debtor')

77 Bloor Street West, Suite #500, Toronto, ON M5S 1M2

(Address)

And:

HSBC Bank Canada

(hereinafter called the 'Bank')

70 York St, Toronto, ON, M5J 1S9

(Address)

As continuing security for the payment and performance of all Indebtedness (as defined below), the Debtor hereby enters into this Agreement with the Bank for valuable consideration and as continuing security for the payment and performance of all indebtedness and liabilities of any kind, now or hereafter existing, direct or indirect, absolute or contingent, joint or several, matured or unmatured, of the Debtor to the Bank, whether as principal or surety or indemnifier, together with all expenses (including legal fees on a full indemnity basis) incurred by or on behalf of the Bank, its receiver or agent in the preparation, perfection and enforcement of security or other agreements held by the Bank in respect of such indebtedness, liabilities and interest thereon (all of which present and future indebtedness, liabilities, expenses and interest are herein collectively called the "Indebtedness").

For the purposes of this Agreement:

"**Business Day**" means a day, (other than a Saturday, Sunday or statutory or civic holiday) upon which the Bank is open for business at the Branch of the Bank described above.

"**Collateral**" means all the present and future property, assets and undertaking of the Debtor mortgaged, charged, pledged, assigned, hypothecated, transferred or otherwise made subject to the Security Interest pursuant to this Agreement.

"**Contractual Right**" means any agreement, right, franchise, licence, authorization, approval, privilege or permit (a) to which the Debtor is now or hereafter becomes a party, (b) in which the Debtor now or hereafter has any interest or (c) of which the Debtor is or hereafter becomes a beneficiary.

"**Credit Agreement**" means the facility letter, commitment letter, credit agreement or other loan document, if any, between the Debtor and the Bank setting out the terms and conditions under which the Bank might provide loans or other credit to the Debtor, as it may be amended, extended, restated or replaced from time to time.

"**Encumbrances**" means any lien, charge, mortgage, security interest, hypothec, other encumbrance or adverse claim to any property, assets or undertaking.

"**Intellectual Property**" means all patents, trademarks, trade names, business names, trade styles, logos and other business identifiers, copyrights, technology, inventions, industrial designs, know-how, trade secrets and other industrial and intellectual property in which the Debtor now or in the future has any right, title or interest, including without limitation any industrial or intellectual property specifically listed or otherwise described in Schedule "C" hereto.

"**Investment Collateral**" means all present and future Investment Property (as such term is defined in the PPSA) and Financial Assets (as such term is defined in the STA) of the Debtor, including all present and future options and warrants of the Debtor and all other rights and entitlements arising therefrom or related thereto, and the Debtor's present and future interests in partnerships, limited partnerships, limited liability partnerships and limited liability companies, and including all substitutions for any of the foregoing and dividends and income derived therefrom or payable in connection therewith.

"**Permitted Encumbrances**" means any and all liens, charges, mortgages, security interests, hypothecs and other encumbrances which affect all or any portion of the Collateral and which have been consented to in writing by the Bank which, as at the date hereof, are the liens, charges, mortgages, security interests, hypothecs and other encumbrances (if any) listed in Schedule "B" hereto.

"Person" means as the context requires any individual, partnership, firm, company, corporation, unlimited liability corporation or other body corporate, government, governmental body, agency or trust.

"PPSA" means the *Personal Property Security Act* (Ontario) as amended from time to time and any legislation substituted therefor and any amendments thereto.

"Receiver" has the meaning provided for in Section 28 below.

"Security Interest" has the meaning provided for in Section 1 below.

"STA" means the *Securities Transfer Act, 2006* (Ontario) as amended from time to time and any legislation substituted therefor and any amendments thereto.

Unless otherwise defined herein, all other capitalized terms used herein shall have the meanings ascribed to them in the PPSA.

#### A. Grant of Security Interests

1. As continuing security for the payment and performance of all Indebtedness, the Debtor hereby mortgages, charges, pledges, assigns, hypothecates, transfers and grants a security interest (collectively, the "Security Interest") to the Bank in all of the Debtor's right, title and interest in and to its present and after-acquired property, assets and undertaking of whatsoever nature and kind and wherever situate, including:
  - (a) all present and future Equipment of the Debtor, including all of its present and future machinery, fixtures, plant, tools, furniture, apparatus, plant furniture, fixtures, books, records, documents, vehicles of any nature, kind or description, and all accessions to any of the foregoing, including all spare parts and accessories installed in or affixed or attached to any of the foregoing, and all drawings, specifications, plans and manuals relating to the foregoing;
  - (b) all present and future Inventory of the Debtor of whatever kind and wherever situate, including all of its present and future raw materials, materials used or consumed in its business, work-in-progress, finished goods, goods used for packing and goods acquired or held for sale or lease or that have been leased or furnished or that are to be furnished under contracts of rental or service, and all accessions to any of the foregoing, including all spare parts and accessories installed in or affixed or attached to any of the foregoing;
  - (c) all present and future Intangibles of the Debtor, including all of its present and future Accounts and other amounts receivable, book debts, all Contractual Rights, goodwill, Intellectual Property and choses in action of every nature and kind howsoever arising or secured including, without limitation, letters of credit, guarantees and advices of credit which are now due, owing or accruing or growing due to or owned by or which may hereafter become due, owing or accruing or growing due to or owned by the Debtor;
  - (d) all present and future Documents of Title, Chattel Paper, Instruments and Money of the Debtor;
  - (e) all present and future Investment Collateral;
  - (f) all present and future real property, personal property, assets, and undertaking of the Debtor of any nature or kind, including all real property, personal property, assets and undertaking at any time owned, leased or licensed by the Debtor or in which the Debtor at any time has any right or interest or to which the Debtor is or may at any time become entitled (other than the property, assets and undertaking of the Debtor validly pledged or assigned or subjected to a valid mortgage, charge, hypothec or Security Interest by subsection 1(a), (b), (c), (d) or (e) hereof and subject to the exceptions hereinafter contained); and
  - (g) all Proceeds arising from the property, assets and undertaking of the Debtor referred to in this section 1, together with insurance proceeds and any other payment representing indemnity or compensation for loss of expropriation or damage thereto.
2. The Security Interest hereby created shall not extend or attach to: (i) any property held in trust by the Debtor and lawfully belonging to others; or (ii) any property of the Debtor that constitutes consumer goods for the personal use of the Debtor; or (iii) the last day of the term of any lease, (oral or written) or agreement therefor, now held or hereafter acquired by the Debtor, whether falling within the general or particular description of the Collateral, shall be excluded from the scope of the Security Interest but the Debtor shall stand possessed of the reversion of one day remaining in the Debtor in respect of such term upon trust to assign or dispose of the same to any Person acquiring such term upon the enforcement of the Security Interest.
3. Despite any other provision of this Agreement, the Security Interest shall not attach to any Contractual Right to the extent that the granting of the Security Interest therein would constitute a breach of, or permit any Person to terminate such Contractual Right, but the Debtor shall hold its interest in each such Contractual Right in trust for the Bank and shall, after the Security Interest shall have become enforceable, specifically assign each such Contractual Right to the Bank, or as the Bank may otherwise direct. The Debtor agrees that it shall, upon the request of the Bank, whether before or after the Security Interest has become enforceable, use all commercially reasonable efforts to obtain any consent required to permit any such Contractual Right to be subjected to the Security Interest, and the Security Interest shall attach to such Contractual Right following the receipt of such consent.

4. Despite any other provision of this Agreement, the interests granted to the Bank pursuant to this Agreement in the Debtor's existing and after-acquired trademarks shall be limited to the Bank's Security Interests therein.

**B. Attachment**

5. The Debtor warrants and acknowledges that subject to the provisions of Sections 2 and 3 above the Debtor and the Bank intend the Security Interest in existing Collateral to attach upon the execution of this Agreement; that value has been given by the Bank to the Debtor; that the Debtor has rights in such existing Collateral; the Debtor and the Bank have not postponed the time for attachment of the Security Interest on existing Collateral and that the Security Interest shall attach to existing Collateral upon the execution of this Agreement and that the Debtor and the Bank intend the Security Interest in hereafter acquired Collateral to attach at the same time as the Debtor acquires rights in such after acquired Collateral.

**C. Investment Collateral**

6. Whenever any Investment Collateral is a Security that is a Certificated Security, an Uncertificated Security or a Security Entitlement, the Debtor shall, or shall cause the issuer of such Investment Collateral to, or shall cause the securities intermediary that holds such Investment Collateral to, take all steps as are necessary to give exclusive control over such Investment Collateral to the Bank in a manner satisfactory to the Bank.
7. All certificates representing Investment Collateral may remain registered in the name of the Debtor, but the Debtor shall, promptly at the request of the Bank, duly endorse such certificates in blank for transfer or execute stock powers of attorney in respect thereof and deliver such certificates or powers of attorney to the Bank; in either case with signatures guaranteed and with all documentation being in form and substance satisfactory to the Bank. Upon the request of the Bank:
- (a) the Debtor shall promptly cause the Investment Collateral to be registered in the name of the Bank or its nominee, and the Bank is hereby appointed the irrevocable attorney (coupled with an interest) of the Debtor with full power of substitution to cause any or all of the Investment Collateral to be registered in the name of the Bank or its nominee;
  - (b) the Debtor shall promptly cause each securities intermediary that holds any Investment Collateral that is a Security Entitlement to record the Bank as the entitlement holder of such Investment Collateral; and
  - (c) the Debtor shall promptly:
    - (i) cause a Security Certificate to be issued for any Investment Collateral that is in the form of an Uncertificated Security or a Security Entitlement;
    - (ii) endorse such Security Certificate in blank;
    - (iii) deliver such Security Certificate to the Bank; and
    - (iv) take all other steps necessary to give exclusive control over such Certificated Security to the Bank, in a manner satisfactory to the Bank.
8. Until further notice is given by the Bank to the Debtor terminating such rights of the Debtor, the Debtor shall be entitled to exercise all voting rights attached to the Investment Collateral and give consents, waivers and ratifications in respect thereof; provided that no vote shall be cast or consent, waiver or ratification given or action taken which would be prejudicial to the interests of the Bank or which would have the effect of reducing the value of the Investment Collateral as security for the Indebtedness, or imposing any restriction on the transferability of any of the Investment Collateral. All such rights of the Debtor to vote and give consents, waivers and ratifications shall cease immediately upon receipt by the Debtor of such notice by the Bank.
9. All dividends, distributions, interest and other income in respect of Investment Collateral and all proceeds received by the Debtor in respect of Investment Collateral may be received by the Debtor in the ordinary course and distributed in the ordinary course to the Debtor's shareholder or shareholders until further notice by the Bank. Upon receipt by the Debtor of such notice, the Debtor shall not be entitled to retain or distribute to its shareholder or shareholders any such dividends, distributions, interest or other income or proceeds and, if any such amounts are received by the Debtor after the Debtor receives such notice by the Bank, the Debtor shall hold such amounts in trust, as trustee for the Bank, and the Debtor shall forthwith pay such amounts to the Bank, to be applied to reduce the Indebtedness or, at the option of the Bank, to be held as additional security for the Indebtedness.
10. The responsibility of the Bank in respect of any Investment Collateral held by the Bank shall be limited to exercising the same degree of care which it gives valuable property of the Bank at the Bank's office where such Investment Collateral is held. The Bank shall not be bound under any circumstances to realize on any Investment Collateral or allow any Investment Collateral to be sold, or exercise any option or right attaching thereto, or be responsible for any loss occasioned by any sale of Investment Collateral or by the retention or other refusal to sell the same; nor shall the Bank be obliged to collect or see to the payment of interest or dividends thereon but, subject to section 9, all such interest and dividends, if and when received by the Debtor, shall be held by the Debtor in trust for the Bank and shall be forthwith paid to the Bank.

#### D. Representations and Warranties of Debtor

11. The Debtor hereby represents and warrants to the Bank that:

- (a) the Debtor has the capacity and authority to incur the Indebtedness, to create the Security Interest and to execute and deliver and perform its obligations under this Agreement;
- (b) the execution and delivery of this Agreement and the performance by the Debtor of its obligations hereunder (including, without limitation, the repayment of the Indebtedness) have been duly authorized by all necessary proceedings;
- (c) this Agreement constitutes a legal, valid and binding obligation of the Debtor, enforceable against the Debtor in accordance with its terms subject only to bankruptcy, insolvency, reorganization, moratorium and other similar laws of general application affecting creditors' rights and the discretion exercisable by courts of competent jurisdiction in respect of the availability of equitable remedies;
- (d) the Collateral is genuine and except for the Security Interest and any Permitted Encumbrances, the Collateral is owned by the Debtor free from any mortgage, charge, lien, pledge, security interest or other encumbrance or claim whatsoever;
- (e) the jurisdiction in which the Debtor is located for purposes of the PPSA and under which the Debtor is incorporated, continued, amalgamated or otherwise organized is the Province or Territory identified in Schedule "A" of this Agreement;
- (f) the Debtor does not keep tangible Collateral at any location(s) except the location(s) listed in Schedule "A" hereto other than tangible Collateral in transit to or from such locations;
- (g) the Debtor has made all necessary filings, registrations and recordings to protect all of its right, title and interest in the presently held Intellectual Property including all relevant renewals; and all such filings, registrations and recordings have been duly and properly made and are in full force and effect and are not subject to dispute by any governmental authority or agency;
- (h) all Contractual Rights relating to or affecting the presently held Intellectual Property are in good standing;
- (i) the Debtor owns directly or is entitled to use by Contractual Right or otherwise all of the presently held Intellectual Property;
- (j) no litigation is pending or threatened which contains allegations respecting the validity, enforceability, infringement or ownership of any of the Intellectual Property, including any of right, title or interest of the Debtor in the presently held Intellectual Property;
- (k) Schedule "C" hereto contains a complete and accurate list of all of the presently registered Intellectual Property of the Debtor, including all registered patents, trademarks and copyrights of the Debtor; and
- (l) the Debtor has no Contractual Right which, because of the granting of the Security Interest therein, would be breached or could be terminated, except for any such Contractual Rights if any, identified to the Bank in writing, which schedule contains an accurate description of all such Contractual Rights, the parties thereto, and any provisions thereof which would be so breached or which would result in such a termination right.

#### E. Covenants and Agreements of Debtor

12. The Debtor hereby covenants and agrees with the Bank that at all times while this Agreement remains in effect, it shall:

- (a) pay or perform the Indebtedness when due;
- (b) not without the prior written consent of the Bank sell or dispose of any of the Collateral in the ordinary course of business or otherwise (provided however that the Inventory of the Debtor may be sold or disposed of in the ordinary course of the Debtor's business and for the purpose of carrying on the same) and if the amounts on or in respect of the Collateral or Proceeds thereof shall be paid to the Debtor, the Debtor shall receive the same in trust for the Bank and forthwith pay over the same to the Bank upon request;
- (c) not without the prior written consent of the Bank create or permit any Encumbrances upon or assign or transfer as security or pledge or hypothecate as security the Collateral except to the Bank;
- (d) at all times have and maintain insurance over the Collateral against risks of fire (including extended coverage), theft, and such risks as the Bank may reasonably require in writing, containing such terms, in such form, for such periods and written by such companies as may be reasonably satisfactory to the Bank. The Debtor shall duly pay all premiums and other sums payable for maintaining such insurance and shall cause the insurance money thereunder to be payable to the Bank as its interest hereunder may appear and shall, if required, furnish the Bank with certificates or other evidence satisfactory to the Bank of compliance with the foregoing insurance provisions. In the event that the Debtor fails to pay all premiums and other sums payable in accordance with the foregoing insurance provision, the Bank may make such payments to be repayable by the Debtor on demand and any such payments made by the Bank shall comprise part of the Indebtedness and be secured hereby;
- (e) keep the Collateral in good condition and repair according to the nature and description thereof, and the Bank may, whenever it deems necessary, either in person or by agent, inspect the Collateral and the reasonable cost of such inspection shall be paid by

the Debtor and comprise part of the Indebtedness and be secured hereby and the Bank may make repairs as it deems necessary and the cost thereof shall be paid by the Debtor and comprise part of the Indebtedness and be secured hereby;

- (f) duly pay all taxes, rates, levies, assessments and other impositions and charges of every nature and kind which may now or hereafter be lawfully levied, assessed or imposed on or in respect of the Debtor or the Collateral (or any of it), including those which could result in the creation of a statutory lien or deemed trust or other Encumbrance affecting the Debtor or the Collateral, as and when the same become due and payable;
- (g) permit the Bank, at any time, whether before or after the Security Interest shall have become enforceable, to notify any account debtor of the Debtor of the Security Interest, require such account debtor to make payment to the Bank, take control of any Proceeds of Collateral and may hold all amounts received from any account debtor and any Proceeds as part of the Collateral and as security for the Indebtedness;
- (h) make and maintain all filings, registrations and recordings necessary or desirable to protect its right, title and interest in the Collateral, including all filings, registrations and recordings necessary or desirable in respect of patents, trade-marks, copyrights and industrial designs included in the Intellectual Property;
- (i) defend the Collateral against any actions, claims and demands of any Person (other than the Bank) claiming the Collateral (or any of it) or an interest therein;
- (j) maintain its corporate existence and file or cause to be filed any returns, documents or other information necessary to preserve such corporate existence;
- (k) notify the Bank of any loss or damage to the Collateral, any change in any information provided in this Agreement (including the schedules hereto) or any actual or potential claim or Encumbrance affecting the Debtor, the Collateral or the Security Interest;
- (l) prevent any Collateral from becoming an accession to any personal property not subject to the Security Interest, or becoming affixed to any real property;
- (m) deliver to the Bank, at the Bank's request, duly endorsed and/or accompanied by such assignments, transfers, powers of attorney or other documents as the Bank may request, all items of the Collateral comprising Chattel Paper, Instruments, Investment Collateral and Documents of Title;
- (n) pay, on demand by the Bank, all costs and expenses (including all legal fees on a full indemnity basis) incurred by the Bank in the preparation, perfection, administration and enforcement of this Agreement (including expenses incurred in considering, protecting or improving the Bank's position, or attempting to do so, whether before or after default) and all such costs and expenses shall bear interest at the highest rate applicable to the Indebtedness, shall form part of the Indebtedness and shall be secured by the Security Interest;
- (o) preserve the Debtor's rights, powers, licences, privileges, franchises and goodwill, comply with all applicable laws, regulations and orders (including environmental laws, regulations and orders) affecting the Debtor or the Collateral and conduct its business in a proper and efficient manner so as to protect the Collateral, the Security Interest and the business and undertaking of the Debtor;
- (p) without limiting the generality of any of the forgoing, perform all covenants required of the Debtor under any Contractual Right relating to or affecting the Intellectual Property (or any of it), including promptly paying all required fees, royalties and taxes, to maintain each and every item of Intellectual Property in full force and effect, and vigorously protect, preserve and maintain all of the value of, and all of the right, title and interest of the Debtor in, all Intellectual Property, by way of the prosecution of or defence against suits concerning the validity, infringement, enforceability or ownership of the Intellectual Property (or any of it) or otherwise; and
- (q) give the Bank at least 10 Business Days advance notice in writing of any proposed change to the Debtor's name, location, or its governing jurisdiction.

13. The Debtor shall at all times and from time to time do, execute, acknowledge and deliver or cause to be done, executed, acknowledged or delivered any such further act, deed, transfer, assignment, assurance, document or instrument as the Bank may reasonably require for the better granting, mortgaging, charging, assigning, hypothecating and transferring unto the Bank the property, assets and undertaking hereby subjected or intended to be subject to the Security Interest or which the Debtor may hereafter become bound to mortgage, charge, assign, hypothec, transfer or subject to the Security Interest in favour of the Bank for the better accomplishing and effectuating of this Agreement and the provisions contained herein and each and every officer of the Bank is irrevocably appointed, coupled with an interest, to execute in the name and on behalf of the Debtor any document or instrument for the said purposes.

14. The Debtor shall permit the Bank at any time, either in person or by agent, to inspect the Debtor's books and records pertaining to the Collateral. The Debtor shall at all times upon request by the Bank furnish the Bank with such information concerning the Collateral and the Debtor's affairs and business as the Bank may reasonably request including, without limitation, lists of Inventory and Equipment and lists of Accounts showing the amounts owing upon each Account and securities therefor and copies of all financial statements, books and accounts, invoices, letters, papers and other documents in any way evidencing or relating to the Accounts.

15. The Debtor acknowledges and agrees that:

- (a) in the event it amalgamates with any other corporation or corporations, it is the intention of the parties hereto that the term 'Debtor' when used herein shall apply to each of the amalgamating corporations and to the amalgamated corporation, that this Agreement shall continue in full force and effect and shall be binding on the amalgamated corporation, such that the Security Interest granted hereby:
  - (i) shall continue to charge all Collateral of the Debtor and extend and attach to 'Collateral' (as that term is herein defined) owned by each of the other amalgamating corporations and the amalgamated corporation at the time of amalgamation and to any 'Collateral' thereafter owned or acquired by the amalgamated corporation; and
  - (ii) shall continue to secure the 'Indebtedness' (as that term is herein defined) of each of the amalgamating corporations including the Debtor and the amalgamated corporation to the Bank at the time of amalgamation and any 'Indebtedness' of the amalgamated corporation to the Bank thereafter arising.
- (b) The term "Indebtedness" shall include all such Indebtedness of the Debtor, the other amalgamating corporations and the amalgamated corporation.
- (c) The term "Collateral" shall include all such property, assets and undertaking of the Debtor, the other amalgamating corporations and the amalgamated corporation.
- (d) All defined terms and other provisions of this Agreement shall be deemed to have been amended to reflect such amalgamation, to the extent required by the context.
- (e) The parties agree to execute and deliver all such further documents and assurances as may be necessary or desirable in connection with the foregoing.

#### F. Default

16. Without prejudice to any right which the Bank may now or hereafter have to demand payment of any of the Indebtedness at any time, the Indebtedness shall, at the option of the Bank, become payable and the Security Interest shall become enforceable in each and every of the following events:

- (a) if the Debtor defaults in the payment of any of the Indebtedness when due;
- (b) the death or a declaration of incompetency by a court of competent jurisdiction with respect to the Debtor, if an individual;
- (c) if there occurs an Event of Default (as defined by the Credit Agreement) or if the Debtor defaults in the observance or performance of any covenant, written agreement or undertaking heretofore or hereafter given by the Debtor to the Bank, whether contained herein or not;
- (d) if an order is made or a resolution passed for the winding-up, liquidation or dissolution of the Debtor, or if a petition is presented or filed for the winding-up of the Debtor, whether pursuant to the *Winding-up and Restructuring Act* (Canada) or otherwise;
- (e) if the Debtor ceases or threatens to cease to carry on business or makes a bulk sale of its assets, or if a Receiver or trustee for the Debtor or any of its property or assets is appointed (whether privately or by court order);
- (f) if the Debtor becomes insolvent or commits or threatens to commit any act of bankruptcy or if the Debtor makes an assignment or proposal in bankruptcy or files a notice of intention to make a proposal in bankruptcy or if a bankruptcy petition is filed or presented against the Debtor or if the Debtor otherwise becomes subject to proceedings under the *Bankruptcy and Insolvency Act* (Canada), *Companies' Creditors Arrangement Act* (Canada), the *Winding Up and Restructuring Act*, the or any other bankruptcy, insolvency or analogous law in any jurisdiction for relief as a debtor;
- (g) if any proceedings with respect to the Debtor are commenced under the *Companies' Creditors Arrangement Act* (Canada) or if the Debtor seeks relief or consents to the filing of a petition against it under any law which involves any compromise of any creditor's rights against the Debtor;
- (h) if an execution or any other process of any court becomes enforceable against the Debtor or if a distress or analogous process is initiated or levied against or upon the Collateral or any part thereof;
- (i) if the Debtor permits any sum which has been admitted as due by the Debtor or is not disputed to be due by it and which forms or is capable of being made a charge on any Collateral in priority to the Security Interest to remain unpaid after proceedings have been taken to enforce such charge;
- (j) if any representation or warranty made by the Debtor or any of its officers, employees or agents to the Bank shall be false or inaccurate in any material respect;
- (k) if the Debtor defaults in the observance or performance of any provision relating to the indebtedness or liability of the Debtor to any creditor or other Person, other than the Bank, and thereby enables such creditor or other Person to demand payment of such indebtedness; or

- (l) if any licence, permit or approval required by any law, regulation or governmental policy or any governmental agency or commission for the operation by the Debtor of its business shall be withdrawn or cancelled.
17. The Bank may in writing waive any breach by the Debtor of any of the provisions contained herein or any default by the Debtor in the observance or performance of any covenant or condition required by the Bank to be observed or performed by the Debtor; provided that no act or omission by the Bank in the premises shall extend to or be taken in any manner whatsoever to affect any subsequent breach or default or the rights resulting therefrom.

#### G. Remedies of the Bank

18. Whenever the Security Interest shall have become enforceable as described in Section 16 above, and so long as it shall remain enforceable, the Bank may proceed to realize the Security Interest and the Collateral and to enforce its rights by doing any one or more of the following:
- (a) entering upon the Collateral and any lands and premises where any Collateral is or may be located;
  - (b) taking possession of Collateral by any method permitted by law;
  - (c) occupying any lands and premises owned or occupied by the Debtor and using all or any part of such lands and premises and the Equipment and other Collateral located thereon;
  - (d) leasing, selling, licensing or otherwise disposing of the whole or any part or parts of the Collateral;
  - (e) collecting, selling or otherwise dealing with any Accounts or other amounts receivable of the Debtor, including notifying any person obligated to the Debtor in respect of an Account, Chattel Paper, Investment Collateral or Instrument to make payment to the Bank of all present and future amounts due thereon;
  - (f) taking steps and expending such monies as it considers necessary or desirable in its sole discretion to maintain, preserve and protect the Collateral, including making payments on account of other security interests affecting the Collateral; provided that the Bank shall have no obligation to take any such actions or make any such expenditures; but any such amounts paid by the Bank shall be added to the Indebtedness and shall be secured by the Security Interest;
  - (g) collecting any rents, income, and profits received in connection with the business of the Debtor or the Collateral, without carrying on such business;
  - (h) exercising all voting rights attached to any Collateral constituting Investment Collateral (whether or not registered in the name of the Bank or its nominee) and giving or withholding all consents, waivers and ratifications in respect thereof and otherwise acting with respect thereto as though it were the absolute owner thereof;
  - (i) exercising any and all rights of conversion, exchange, subscription or any other rights, privileges or options pertaining to any Collateral constituting Investment Collateral as if it were the absolute owner thereof including the right to exchange at its sole discretion any and all of such Investment Collateral upon the merger, consolidation, reorganization, recapitalization or other readjustment of any issuer thereof, or upon the exercise by any issuer of any right, privilege or option pertaining to any such Investment Collateral, and in connection therewith, to deposit and deliver any such Investment Collateral with any committee, depository, transfer agent, registrar or other designated agency upon such terms and conditions as it may determine in its sole discretion, all without liability except to account for property actually received by it;
  - (j) complying with any limitation or restriction in connection with any proposed sale or other disposition of Collateral constituting Investment Collateral as may be necessary in order to comply with applicable law or regulation or any policy imposed by any stock exchange, securities commission or other governmental or regulatory authority or official, and the Debtor agrees that such compliance shall not result in such sale being considered or deemed not to have been made in a commercially reasonable manner, and the Bank shall not be liable or accountable to the Debtor for any discount in the sale price of any such Investment Collateral which may be given by reason of the fact that such Investment Collateral are sold in compliance with any such limitation or restriction;
  - (k) carrying on the business of the Debtor or any portion thereof;
  - (l) exercising any and all of the rights and remedies granted pursuant to the PPSA and any other applicable legislation, or otherwise available at law or in equity including by any other action, suit, remedy or proceeding authorized or permitted hereby or by law or by equity;
  - (m) demanding, commencing, continuing or defending any judicial or administrative proceedings for the purpose of protecting, seizing, collecting, realizing or obtaining possession or payment of the Collateral, and giving valid and effectual receipts and discharges therefor and to compromise or give time for the payment or performance of all or any part of the accounts or other amounts receivable of the Debtor or any other obligation of any third party to the Debtor;
  - (n) borrowing money for the maintenance, preservation or protection of the Collateral or for the carrying on of the business of the Debtor, and charge and grant further security interests in the Collateral in priority to the Security Interest or otherwise, as security for the money so borrowed;



- (o) accepting the Collateral in satisfaction of the Indebtedness;
- (p) appointing by instrument in writing a Receiver or Receivers of the Collateral or any part thereof;
- (q) bringing proceedings in any court of competent jurisdiction for the appointment of a Receiver or Receivers or for the sale of the Collateral or any part thereof; and
- (r) filing such proofs of claim and other documents as may be necessary or advisable in order to have its claim lodged in any bankruptcy, winding-up or other judicial proceedings relating to the Debtor or the Collateral.

19. Any Receiver appointed by the Bank may be any Person or Persons (including one or more officers or employees of the Bank), and the Bank may remove any Receiver so appointed and appoint another or others instead. Any such Receiver may exercise any and all of the rights, remedies and powers of the Bank provided in this Agreement including, without limitation, the power to take possession of the Collateral or any part thereof and to carry on the business of the Debtor, further charge the Collateral in priority to the Security Interests as security for money so borrowed, and sell, lease or otherwise dispose of the whole or any part of the Collateral on such terms and conditions and in such manner as the Receiver shall determine. The Bank shall not be responsible for the actions, errors or omissions of any Receiver it appoints and any such Receiver shall be deemed to act as agent for the Debtor for all purposes, including the occupation of any lands and premises of the Debtor and in carrying on the Debtor's business, unless the Bank expressly specifies in writing that the Receiver shall be agent for the Bank for one or more purposes. Without limiting the generality of the forgoing, for the purposes of realizing upon the Security Interest, any Receiver may sell, lease, or otherwise dispose of Collateral as agent for the Debtor or as agent for the Bank as the Bank may specify in writing in its sole discretion. The Debtor agrees to ratify and confirm all actions of any Receiver appointed by the Bank acting as agent for the Debtor, and to release and indemnify the Receiver in respect of all such actions.

20. Without limiting the ability of the Bank or any Receiver to dispose of Collateral in any other manner, the Debtor agrees that any sale, lease or other disposition of the Collateral hereunder may be completed by public auction, public tender or private contract, with or without notice, with or without advertising and with or without any other formality (except as required by law), all of which are hereby waived by the Debtor to the fullest extent permitted by applicable law. Any such disposition of Collateral may involve all or part of the Collateral and may be on such terms and conditions as to credit or otherwise and as to upset or reserve bid or price as the Bank or any Receiver appointed by the Bank may, in its sole discretion, deem advantageous and may take place whether or not the Bank or any such Receiver has taken possession of such Collateral. Any purchaser or lessee of Collateral may be a customer of the Bank.

21. The Bank shall not be liable for any delay or failure to enforce any rights, powers or remedies available to it or to institute any proceedings for such purposes.

22. No right, power or remedy of the Bank (whether granted herein or otherwise) shall be exclusive of or dependent on or merge in any other right, power or remedy, but all such rights, powers and remedies may from time to time be exercised independently or in combination.

23. The Debtor agrees, without diminishing the covenant in section 12(n) above, and in furtherance thereof, to pay to the Bank, forthwith on demand by the Bank, all costs and expenses incurred by the Bank in connection with the exercise by the Bank of its rights, powers and remedies hereunder, including:

- (a) any costs and expenses incurred by the Bank in taking, holding, moving, storing, recovering, possessing, repairing, processing, preparing for disposition or disposing of Collateral;
- (b) any legal fees and expenses incurred by the Bank in enforcing its rights, powers and remedies, including those incurred in connection with any proceedings taken for the purpose of enforcing its rights, powers and remedies hereunder or otherwise relating to the non-payment or non-performance of any Indebtedness;
- (c) the cost of borrowing amounts as hereinbefore provided (for the purpose of carrying on the Debtor's business or otherwise), including, the principal amount or any such amount borrowed, all interest thereon and fees relating thereto; and
- (d) all costs and expenses of or incurred by any Receiver, agent or consultant appointed by the Bank (including any legal fees and expenses incurred by any such Receiver, agent or consultant).

All such sums shall bear interest at the highest rate applicable to the Indebtedness, shall form part of the Indebtedness and shall be secured by the Security Interest.

24. Any and all payments made in respect of the Indebtedness from time to time and moneys realized from any Collateral (including moneys realized on any enforcement of this Agreement) may be applied to such part or parts of the Indebtedness as the Bank may see fit, and the Bank shall at all times and from time to time have the right to change any appropriation as the Bank may see fit and to re-apply the same on any other part or parts of the Indebtedness as the Bank may see fit, notwithstanding any previous application by whomsoever made.

25. The Debtor shall remain liable for all Indebtedness that is outstanding following realization of all or any part of the Collateral.



26. The Bank may pay the whole or any part of any liens, taxes, rates, charges or Encumbrances now or hereafter existing in respect of any Collateral and such payments together with all costs, charges and expenses which may be incurred in connection with making such payments shall form part of the Indebtedness, shall bear interest at the highest rate applicable to the Indebtedness, and shall be secured by the Security Interest. Whenever the Bank pays any such lien, tax, rate, charge or Encumbrance, it shall be entitled to all the equities and securities of the Person or Persons so paid and is hereby authorized to obtain any discharge thereof and hold such discharge without registration for so long as it may deem advisable to do so.
27. If the Debtor fails to perform or comply with any covenant or other obligation of the Debtor under this Agreement, the Bank may, but need not, perform or otherwise cause the performance or compliance of such covenant or other obligation, provided that any performance or compliance undertaken by the Bank will not constitute a waiver, remedy or satisfaction of such failure. The costs and expenses of the Bank incurred in connection with any such performance or compliance shall be payable by the Debtor to the Bank on demand, form part of the Indebtedness, bear interest at the highest rate applicable to the Indebtedness and be secured by the Security Interest.
28. The term 'Receiver' as used in this Agreement includes a receiver and manager, a receiver, a liquidator, a custodian, monitor, or consultant whether appointed by the Bank by instrument in writing or appointed pursuant to a court order.

#### **H. Rights of the Bank**

29. The Debtor grants to the Bank the right to set off against any and all accounts, credits or balances maintained by it with the Bank, the aggregate amount of any of the Indebtedness (or any portion thereof) when the same shall become due and payable whether at maturity, upon acceleration of maturity thereof or otherwise.
30. The Bank, without exonerating in whole or in part the Debtor, may grant time, renewals, extensions, indulgences, releases and discharges to, may take securities from and give the same and any or all existing securities up to, may abstain from taking securities from or from perfecting securities of, may accept compositions from and may otherwise deal with the Debtor and all other Persons and securities as the Bank may see fit.
31. The Bank may, without the consent of the Debtor, assign, transfer and deliver any of the Indebtedness, or the Security Interests, or any security or any documents or instruments held by the Bank in respect thereof to any transferee provided that no such assignment, transfer or delivery shall release the Debtor from any of the Indebtedness; and thereafter the Bank shall be fully discharged from all responsibility with respect to the Indebtedness and security, documents and instruments so assigned, transferred or delivered. Such transferee shall be vested with all powers and rights of the Bank under such security, documents or instruments but the Bank shall retain all rights and powers with respect to any such security, documents or instruments not so assigned, transferred or delivered. The Debtor shall not assign any of its rights or Indebtedness hereunder without the prior written consent of the Bank.

#### **I. Miscellaneous**

32. This Agreement is in addition to, not in substitution for and shall not be merged in any other agreement, security, document or instrument now or hereafter held by the Bank or existing at law in equity or by statute. This Agreement is in addition to and not in substitution for any other security now or hereafter held by the Bank and shall be general and continuing security notwithstanding that the Indebtedness shall be at any time or from time to time fully satisfied or paid.
33. Nothing herein shall obligate the Bank to make any advance or loan or further advance or loan or to renew any note or extend any time for payment of any indebtedness of the Debtor to the Bank.
34. This Agreement shall be binding upon the Debtor and its heirs, legatees, trustees, executors, administrators, successors and assigns including any successor by reason of amalgamation of or any other change in the Debtor and shall enure to the benefit of the Bank and its successors and assigns.
35. If one or more of the provisions contained herein shall be invalid, illegal or unenforceable in any respect, such provision or provisions shall be severed from this Agreement only to the extent necessary, and the validity, legality and enforceability of the remaining provisions hereof, including the provision or provisions remaining after such severance, shall not in any way be affected or impaired thereby.
36. The headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.
37. Any notice, demand, statement or other communication permitted or required to be given hereunder shall be in writing and may be effectively given by delivering it to the address(es) hereinafter set forth or by sending the same by facsimile to such address(es). Any notice, demand or other communication so given prior to 5:00 p.m. (Toronto time) on a Business Day by personal delivery or by fax shall be deemed to have been given, received and made on such Business Day and if so given after 5:00 p.m. (Toronto time) on a Business Day or a day which is not a Business Day, such notice, demand, statement or other communication shall be deemed to have been given, received and made on the next following Business Day. The addresses of the parties for the purposes hereof shall be:

- (a) in the case of the Bank, addressed as follows:

**HSBC Bank Canada**  
**70 York St, Toronto, ON, M5J 1S9**

**Attention David Wearing**  
**Fax Number: david.a.wearing@hsbc.ca**

- (b) in the case of the Debtor, addressed as follows:

**Davids Footwear Ltd.**  
**77 Bloor Street West, Suite #500, Toronto, ON M5S 1M2**

**Attention Conrad Frejlich**  
**Fax Number: cfrejlich@harryrosen.com**

Either party may from time to time notify the other, in accordance with the provisions hereof, of any change of address which thereafter, until changed by like notice, shall be the address of such party for all purposes of this Agreement.

38. Where any provision or remedy contained or referred to in this Agreement is prohibited, modified or altered by the laws of any Province or Territory of Canada which governs that aspect of this Agreement and the provision or remedies may be waived or excluded by the Debtor in whole or in part, the Debtor hereby waives and excludes such provision to the fullest extent permissible by applicable law.
39. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario. For the purpose of legal proceedings this Agreement shall be deemed to have been made in the said Province and to be performed there and the courts of that Province shall have jurisdiction over all disputes which may arise under this Agreement and the Debtor hereby irrevocably and unconditionally attorns and submits to the non-exclusive jurisdiction of such courts, provided always that nothing herein contained shall prevent the Bank from proceeding at its election against the Debtor in the Courts of any other Province, country or jurisdiction.
40. References such as "this Agreement", "hereof", "herein", "hereto" and like references refer to this Agreement and any schedules, exhibits or appendices attached hereto from time to time, or described as comprising a part of this Agreement (all of which schedules, exhibits and appendices form a part of this Agreement) and not to any particular section, subsection, paragraph or other subdivision of this Agreement.
41. The word "Debtor", the personal pronoun "it" or "its" and any verb relating thereto and used therewith shall be read and construed as required by and in accordance with the context in which such words are used. The term "successors" shall include, without limiting its meaning, any corporation resulting from the amalgamation of a corporation with another corporation. Where the context so requires, words used herein (including defined terms) importing the singular shall include the plural and vice versa and words used herein (including defined terms) importing gender shall include all genders (including the neuter).
42. Nothing herein (including the definition and use of the term Permitted Encumbrances) is intended or shall be deemed to subordinate the Security Interest to any Permitted Encumbrance or any other lien, charge, mortgage, security interest, hypothec or encumbrance affecting all or any portion of the Collateral.
43. Unless otherwise expressly provided in this Agreement, if any matter in this Agreement is subject to the determination, consent or approval of the Bank or is to be acceptable to the Bank, such determination, consent, approval or determination of acceptability will be in the sole discretion of the Bank, which means the Bank shall have sole and unfettered discretion, without any obligation to act reasonably. If any provision in this Agreement refers to any action taken or to be taken by the Debtor, or which the Debtor is prohibited from taking, such provision will be interpreted to include any and all means, direct or indirect, of taking, or not taking, such action. When used in the context of a general statement followed by a reference to one or more specific items or matters, the term "including" shall mean "including, without limitation" and the use of the term "includes" shall mean "includes, without limitation".
44. In the event that any day, on or before which any action is required to be taken hereunder, is not a Business Day, then such action shall be required to be taken on or before the first Business Day immediately thereafter.
45. Time shall be of the essence of this Agreement.
46. Upon full, final and indefeasible payment and fulfillment by the Debtor, its successors or permitted assigns, of all Indebtedness and provided that the Bank is then under no obligation (conditional or otherwise) to make any further loans, advances or extend any other type of credit to the Debtor or to any other Person, the payment of which is secured, directly or indirectly, by this Agreement, the Bank shall, upon request in writing by the Debtor, delivered to the Bank at the Bank's address as set out in section 37 hereof and at the Debtor's expense, discharge this Agreement.
47. The Bank may in writing (and not otherwise) waive any default by the Debtor in the observance or performance of any provision of this Agreement; provided that no waiver by the Bank shall extend to or be taken in any manner whatsoever to affect any subsequent default, whether of the same or a different nature, or the rights resulting therefrom.

48. The Debtor agrees that the Bank may from time to time provide information concerning this Agreement (including a copy hereof), the Collateral and the Indebtedness to any Person the Bank in good faith believes is entitled thereto pursuant to applicable law.
49. The Debtor acknowledges having received an original executed copy of this Agreement and hereby waives, to the fullest extent permitted by applicable law, receipt of a copy of any financing statement or financing change statement filed at any time in respect of this Agreement or any verification statement in respect of the same.
50. This Agreement and any amendment, supplement, restatement or termination may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed an original and all of which, taken together, shall constitute one and the same agreement. Any party hereto may deliver an executed copy of this Agreement by facsimile to the other parties hereto provided that in such event that party shall promptly deliver to the other parties hereto an originally executed copy of this Agreement.
51. The Debtor by its signature of this Agreement on the one hand and the Bank by making this Agreement available to the Debtor on the other hand acknowledge having expressly required it to be drawn up in the English language. *La soussignée par sa signature de ce cautionnement d'une part et la Banque en mettant ledit cautionnement à la disposition des garants d'autre part reconnaissent avoir expressément exigé qu'il soit rédigé en langue anglaise.*

This Agreement has been duly executed by the Debtor on the 28th day of February, 2018.

**FOR A CORPORATION**

David's Footwear Ltd.

(Full Legal Name of Corporation)

Per: [Signature]

(Authorized Signatory)

Name: Larry Rosen

Title: Chief Executive Officer

Per: [Signature]

(Authorized Signatory)

Name: CFREDLICK

Title: CFO

C/S

**FOR AN INDIVIDUAL**

Witness:

Debtor:

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Signature of Debtor

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Address: \_\_\_\_\_

Full Name and Address <i>For Individual, insert first given name, initial of second given name, if any, then surname.</i>	Date of Birth MM/DD/YY	Sex M/F

**Schedule 'A'**

**Location of the Debtor:**

**[NOTE: List all Provinces and/or Territories of: (i) the Debtor's incorporation, amalgamation or other organization; and (ii) the Debtor's places of business.]**

Ontario

**Locations of Collateral:**

**[NOTE: List all municipal addresses and Provinces and/or Territories in which any of the Collateral is located.]**

Ontario

**Schedule 'B'**

**Permitted Encumbrances:**

\$7,500,000 promissory note issued by the Debtor in favour of Rosejack Investments Ltd.

Schedule 'C'

**Intellectual Property of Debtor:**

Owned Intellectual Property:

Trademark: Davids

Trade Name: Davids

Doman Name: [www.davidsfootwear.com](http://www.davidsfootwear.com)

## GUIDELINES FOR COMPLETION OF GENERAL SECURITY AGREEMENT

### 1. Governing Jurisdiction

This General Security Agreement (Ontario) is to be used if the Debtor is located in the Province of Ontario.

### 2. Registration of Personal Property Financing Statements

PPSA Financing Statements must be registered in: (i) the Province of Ontario; and (ii) any other Province/Territory listed in Schedule "A" under Locations of Collateral.

### 3. Debtor – Legal Entity

The Debtor is assumed to be a Corporation in the standard template. Where the Debtor is not a corporation but a partnership, use the following variations, in the signature blocks.

#### General Partnership

A partnership may be a general or a limited partnership. For a general partnership describe it by naming each partner, followed by the name of the partnership as follows:

"X" and "Y" carrying on business in partnership as "P"

The signature block is to be set out as follows:

\_\_\_\_\_ and  
\_\_\_\_\_ carrying on business in partnership as

Per: \_\_\_\_\_

Name:

Title:

Per: \_\_\_\_\_

Name:

Title:

#### Limited Partnership

A limited partnership is intended to create limited liability for the limited partners and therefore it carries on business by the actions of a general partner. The general partner is named after the reference to the name of the limited partnership:

"X Limited Partnership" by its general partner, "GP"

The signature block is to be set out as follows:

\_\_\_\_\_, by its general partner.

Per: \_\_\_\_\_

Name:

Title:

Per: \_\_\_\_\_

Name:

Title:

#### Trust

Where the Debtor is a trust, use the following signature block and describe the trust using its full legal name:

\_\_\_\_\_, by its authorized trustees

Per: \_\_\_\_\_

Name:

Title:

Per: \_\_\_\_\_

Name:

Title:

# Tab E



THIS IS EXHIBIT "E" TO THE AFFIDAVIT  
OF LARRY ROSEN SWORN BEFORE ME  
ON THIS 31<sup>ST</sup> DAY OF JULY, 2019



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A Commissioner for taking affidavits

P14458



HSBC Bank Canada

## ASSIGNMENT AND POSTPONEMENT

In consideration of advances made or to be made to                     Davids Footwear Ltd.                     (the "Debtor") by HSBC Bank Canada (the "Bank"), and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by                     Rosejack Investments Ltd.                     (the "Undersigned"), the Undersigned hereby assigns and transfers all present and future indebtedness and liability, direct or indirect, absolute or contingent, matured or unmatured, extended or renewed of the Debtor to the Undersigned (collectively, the "Claims") unto the Bank by way of security for any and all indebtedness and liability, present and future, direct and indirect, absolute and contingent of the Debtor and the Undersigned, or either of them, to the Bank (collectively, the "Secured Obligations") and agrees that:

1. The Claims are hereby postponed and subordinated to the Secured Obligations. Until the Secured Obligations have been finally and indefeasibly paid and satisfied in full and any right of the Debtor to request advances or other credit from the Bank has been irrevocably terminated, the Undersigned shall not, without the prior written consent of the Bank, claim, demand or receive from the Debtor, or from any other source, payment of any Claims, and without limiting the generality of the foregoing, the Undersigned shall not, without the Bank's prior written consent:
  - (a) exercise or seek to exercise any right or remedy with respect to any of the Claims, including any collection or enforcement right or remedy; or
  - (b) institute any action or proceeding against the Debtor or any of its assets (including, without limitation, any possession, sale or foreclosure action or proceeding); or
  - (c) contest, protest or object to any enforcement proceeding or other action commenced by the Bank, any other exercise by the Bank of any right or remedy under any security now or hereafter held for all or any portion of the Secured Obligations or at law, or any application by the Bank of monies or proceeds therefrom.
2. The Bank shall not be bound to demand payment of the Claims or any part thereof or take any proceeding to collect any Claim or to enforce any security in respect thereof except as the Bank may in its discretion deem fit.
3. In the event of the receivership, bankruptcy, liquidation or winding up of the Debtor or any distribution of all or any portion of the assets of the Debtor or proceeds thereof among its creditors, in any manner whatsoever, the Bank may prove in respect of the Claims hereby assigned as a debt owing to it by the Debtor and the Bank shall be entitled to receive the dividends payable in respect thereof, such dividends to be applied on such part or parts of the Secured Obligations as the Bank in its discretion shall see fit, until the whole of such Secured Obligations have been finally and indefeasibly paid and satisfied in full and thereafter the Undersigned shall be entitled to such dividends and in that regard, the Undersigned hereby irrevocably authorizes the Bank to collect and receive any dividends or other payments which may otherwise be payable to the Undersigned in the course of any receivership, bankruptcy, liquidation or winding-up of the Debtor or any similar proceeding and, in the event that the Secured Obligations at such time have not been finally and indefeasibly paid and satisfied in full, the Undersigned hereby irrevocably authorizes the Bank to apply such dividends or other payments so collected by the Bank to reduce the Secured Obligations.
4. Upon final and indefeasible payment and satisfaction in full of the Secured Obligations and of all bills, notes and other instruments (including, without limitation, any negotiable instruments) representing the same and upon irrevocable termination of the rights of the Debtor to request advances or other credit from the Bank, and upon the written request of the Undersigned, the Bank will release to the Undersigned the Bank's rights under this agreement in respect of the Claims.
5. All moneys received by the Undersigned from the Debtor shall be received in trust for the Bank and forthwith upon receipt shall be paid over to the Bank until the whole of the Secured Obligations have been finally and indefeasibly paid and satisfied in full.
6. This shall be a continuing agreement and the transfer and assignment of the Claims contained herein:
  - (a) is in addition to and not in substitution for any other security held by the Bank;
  - (b) shall not operate as a merger of any debt or suspend the fulfilment of, or affect the rights, remedies and powers of the Bank with respect to any of the Secured Obligations or any other securities; and
  - (c) shall not be terminated by reason of any partial payment on account of the Secured Obligations made by the Debtor or the Undersigned or any Secured Obligations ceasing to exist, and the transfer and assignment contained herein shall be and remain valid security for any subsequent Secured Obligations.
7. The Bank shall not be obliged to exhaust its recourse against the Debtor, the Undersigned or any other party or against any other security before realizing on or otherwise dealing with any of the Claims in whatever way the Bank considers desirable.

8. The Bank may:

- (a) grant time, renewals, extensions, indulgences, releases and discharges to,
- (b) take securities from,
- (c) give additional security to,
- (d) abstain from taking additional security from,
- (e) abstain from perfecting securities of,
- (f) accept composition from, and
- (g) otherwise deal with the Debtor, the Undersigned and all other persons and securities, including any of the Claims, as the Bank in its discretion may see fit,

without prejudice to the right of the Bank to hold, deal with and realize on any of the Claims, in whatever way the Bank considers desirable.

9. Any moneys owing and which may become owing by the Debtor to the Undersigned shall not be withdrawn, but remain on the books of the Debtor, unless the Bank's written consent to withdrawal is first obtained.

10. Except as provided in this agreement or with the prior consent in writing of the Bank, the Undersigned will not assign any of the Claims to any other person or ask for or obtain any bills, notes, other instruments (including, without limitation, any negotiable instruments) of or in respect of all or any portion of the Claims.

11. The Debtor and the Undersigned each represents and warrants to the Bank, that:

- (a) the Claims are not the subject of, nor will any future Claim be made the subject of, any set-off or counter-claim by the Debtor;
- (b) the Undersigned holds no security for the Claims or any part thereof.

12. The Debtor and the Undersigned hereby agree with the Bank that no satisfaction, release, consideration or security will be given to or accepted by the Undersigned for any Claims, without the prior written consent of the Bank first had and obtained.

13. The Undersigned acknowledges that this agreement has been delivered free of any conditions and that no statements, representations, agreements, collateral agreements or promises have been made to or with the Undersigned affecting or limiting the liability of the Undersigned under this agreement or inducing the Undersigned to enter into this agreement except as specifically contained herein in writing.

14. Where the Debtor or the Undersigned is a corporation, this agreement shall not be affected by:

- (a) any change whatsoever in its or their objects, capital structure, or constitution with respect to transactions occurring before or after such change; or
- (b) its or their amalgamation with one or more other corporations, with respect to transactions occurring before or after such amalgamation;

but shall, notwithstanding the happening of any such events, continue to apply to all the Secured Obligations and all the Claims whether incurred before or after this agreement and in this agreement the word "Debtor" and "Undersigned" shall, if the Debtor or the Undersigned, respectively, is a corporation, include every firm and corporation which results from the events described in subsections 14(a) and (b) above.

15. If the Bank receives any payment on, or proceeds of any property or assets of the Debtor on account of any Secured Obligations and such payment or proceeds are subsequently invalidated, declared to be fraudulent or preferential, or required to be repaid to the Debtor, or to a trustee, receiver, receiver and manager, liquidator or any other person under any applicable law, then to the extent of such payment or proceeds received by the Bank and required to be repaid, the Secured Obligations, or such part thereof, intended to be satisfied by such payment or proceeds shall be revived and shall continue in full force and effect as if such payment or proceeds had not been received by the Bank.

16. Any and all payments made in respect of the Secured Obligations from time to time and moneys realized from the Claims (including moneys realized on any enforcement of this agreement) may be applied to such part or parts of the Secured Obligations as the Bank in its discretion may see fit, and the Bank shall at all times and from time to time have the right to change any appropriation as the Bank in its discretion may see fit and to re-apply the same on any other part or parts of the Secured Obligations as the Bank in its discretion may see fit, notwithstanding any previous application by whomsoever made.

17. The Bank may, without the consent of the Debtor or the Undersigned, assign, transfer and deliver any of the Claims, and the Bank's rights under this agreement to any transferee provided that no such assignment, transfer or delivery shall release the Debtor from any of the Secured Obligations nor release the Debtor from any of the Claims. Such transferee shall be vested with all powers and rights of the Bank thereunder to the extent of such assignment, transfer and delivery but the Bank shall retain all rights and powers with respect to any such Secured Obligations, Claims and related documents or instruments not so assigned, transferred or delivered. Neither the Debtor nor the Undersigned shall assign any of its rights hereunder without the prior written consent of the Bank.

18. All words denoting the singular shall be pluralized throughout this agreement as the context requires and all words denoting gender shall be construed as the context requires.
19. If one or more of the provisions contained herein shall be invalid, illegal or unenforceable in any respect, such provision or provisions shall be severed from this agreement only to the extent necessary, and the validity, legality and enforceability of the remaining provisions hereof, including the provision or provisions remaining after such severance, shall not in any way be affected or impaired thereby.
20. This agreement shall be binding upon the Debtor and the Undersigned and their respective heirs, legatees, trustees, executors, administrators, successors and assigns including any successor by reason of amalgamation of or any other change in the Debtor and the Undersigned and shall enure to the benefit of the Bank and its successors and assigns.
21. All rights, powers and remedies of the Bank hereunder and under any other agreement now or at any time hereafter in force between the Bank and the Undersigned shall be cumulative and shall be in addition to and not in substitution for all rights, powers and remedies of the Bank at law or in equity.
22. The Undersigned undertakes and agrees, when requested by the Bank, to execute all sworn statements of claims, assignments and other documents and to do all matters and things which may be necessary or advisable to carry this agreement into effect.
23. This agreement shall be governed by and construed in accordance with the laws of the Province of Ontario  
(Insert Canadian Province or Territory  
in which Undersigned is located)

and shall be deemed to have been made in such Province or Territory and to be performed there, and the courts of such Province or Territory shall have jurisdiction over all disputes which may arise under this agreement, provided that nothing herein contained shall prevent the Bank from proceeding at its election against the Undersigned in the courts of any other province or country. The Undersigned hereby irrevocably attorns and submits to the non-exclusive jurisdiction of the courts of competent jurisdiction of the Province or Territory referred to in this paragraph in respect of any proceeding hereon.

24. Any notice, demand, statement or other communication to be given for purposes of this agreement shall be in writing and may be effectively given by delivering it to the address(es) hereinafter set forth or by sending the same by facsimile to such address(es). Any notice, demand or other communication so given prior to 5:00 p.m. (Toronto time) on a business day (being a day, other than a Saturday, Sunday or statutory or civic holiday, upon which the Bank is open for business in the City of Toronto, Ontario) by personal delivery or by fax shall be deemed to have been given, received and made on such business day and if so given after 5:00 p.m. (Toronto time) on such a business day, or a day which is not such a business day, such notice, demand, statement or other communication shall be deemed to have been given, received and made on the next following such business day. The addresses of the parties for the purposes hereof shall be:

- (a) in the case of the Bank, addressed as follows:

HSBC Bank Canada  
70 York St, Toronto, ON, M5J 1S9  
Attention: David Wearing  
Fax Number: david.a.wearing@hsbc.ca

- (b) in the case of the Undersigned, addressed as follows:

Rosejack Investments Ltd.  
77 Bloor Street West, Suite 1600  
Attention: Conrad Frejlich  
Fax Number: creflich@harryrosen.com

- (c) in the case of the Debtor, to the address of the Debtor in the Bank's books and records.

Any party hereto may from time to time notify the others, in accordance with the provisions hereof, of any change of address which thereafter, until changed by like notice, shall be the address of such party for all purposes of this agreement.

25. This agreement and any amendment, supplement, restatement or termination may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed an original and all of which, taken together, shall constitute one and the same agreement. Any party hereto may deliver an executed copy of this agreement by facsimile to the other parties hereto provided that in such event that party shall promptly deliver to the other parties hereto an originally executed copy of this agreement.
26. The Undersigned acknowledges receipt of a copy of this agreement and waives to the fullest extent permitted by applicable law all rights to receive from the Bank a copy of any financing statement, financing change statement or verification statement registered with or issued by any personal property registry at any time or from time to time in respect of this agreement.
27. It is the express wish of the parties that this agreement and any related documents be drawn up and executed in English. *Les parties ont exprimé la volonté expresse que cette convention et tous les documents s'y rapportant soient rédigés en anglais.*



Limited Partnership

A limited partnership is intended to create limited liability for the limited partners and therefore it carries on business by the actions of a general partner. The general partner is named after the reference to the name of the partnership:

"X Limited Partnership" by its general partner, "GP"

The signature block is to be set out as follows:

N/A , by its general partner.

N/A

Per: N/A

Name: N/A

Title: N/A

Per: N/A

Name: N/A

Title: N/A

Trust

Where the Undersigned is a trust, use the following signature block and describe trust using its full legal name:

N/A , by its authorized trustees

Per: N/A

Name: N/A

Title: N/A

Per: N/A

Name: N/A

Title: N/A

# Tab F

THIS IS EXHIBIT "F" TO THE AFFIDAVIT  
OF LARRY ROSEN SWORN BEFORE ME  
ON THIS 31<sup>ST</sup> DAY OF JULY, 2019



---

A Commissioner for taking affidavits

Y14458



## RELEASE AGREEMENT

**TO:** David's Footwear Ltd. (the "**Obligor**")

**AND TO:** Borden Ladner Gervais LLP

**DATE:** July 30, 2019

---

### RECITALS:

- A. Pursuant to a facility letter dated February 12, 2018, as amended by amended facility letter dated August 14, 2018 (as so amended, and as the same may have been further amended, restated or otherwise modified to the date hereof, the "**Loan Agreement**") entered into between the Obligor and HSBC Bank Canada (the "**Lender**"), the Lender provided certain loans in favour of the Obligor.
- B. As security for the obligations owing to the Lender from time to time by the Obligor, including without limitation under the Loan Agreement, the Obligor has, from time to time, executed and delivered to the Lender certain security documents, mortgages, pledges, charges, hypothecs, liens, and other instruments and documents, including, without limitation, a general security agreement dated February 28, 2018 (as amended, restated or otherwise modified to the date hereof, the "**GSA**") and Rosejack Investments Ltd. granted the Lender an Assignment and Postponement dated February 28, 2018 (as amended, restated or otherwise modified to the date hereof, the "**Assignment and Postponement**").
- C. The Obligor has paid and satisfied all debts, liabilities, and obligations, including, without limitation, those under the Loan Agreement, owing by the Obligor to the Lender (collectively, the "**Obligations**").

**NOW THEREFORE** for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Lender:

- 1. acknowledges and agrees that the Obligor has repaid and discharged in full all of the Obligations, and all credit facilities established by the Lender in favour of the Obligor under the Loan Agreement and any other documents and agreements are hereby terminated and cancelled and no further drawdowns or other credit extensions shall be made thereunder;
- 2. acknowledges and agrees that the Loan Agreement and all other agreements, documents or other instruments pertaining to the Obligations are cancelled, discharged, released and terminated and are of no further force and effect;


3. absolutely and unconditionally releases and forever discharges in full (without any further action required by any person) any and all guarantees, security interests, charges, mortgages, liens, assignments, pledges, hypothecs, interests in policies of insurance, and other encumbrances granted in favour of the Lender which secure the Obligations, and any other relevant agreements, howsoever created or arising, including, without limitation the GSA and the Assignment and Postponement, and whether absolute or contingent, fixed or floating, legal or equitable, perfected or not, including, without limitation, on or over any of the assets of the Obligor and any guarantor or surety of the Obligations of whatsoever nature or kind (collectively the "**Security**"), and effective immediately, such Security ceases to be of any further force or effect;
4. undertakes and agrees to, at the Obligor's expense, promptly execute and deliver or cause to be executed and delivered to the Obligor, as it may reasonably request, such financing change statements and all such other and further documents, agreements and instruments necessary to effect the discharge, release and termination of the Security now held by or in favour of the Lender, including, without limitation, the discharge of any registrations made by the Lender against the Obligor and Rosejack Investments Ltd. pursuant to applicable property security legislation in Ontario. Further, the Lender specifically authorizes and directs Borden Ladner Gervais LLP, and its agents, to discharge all security registrations made in favour of the Lender against the Obligor and Rosejack Investments Ltd. in respect of the Security including, without limitation, those listed in Schedule A attached hereto (the "**Registrations**");
5. authorizes the Obligor to deliver a copy of this letter agreement to any insurance company, insurance broker, bank, landlord, tenant, warehouseman or other person to evidence the termination and release of all Security, and thereafter any contract, agreement, control, bailee or warehouse agreement, landlord or collateral access agreement, non-disturbance and attornment agreement, tenant estoppel agreement, commitment to deliver insurance certificates and proceeds and the like, executed by any such party in favour of the Lender in connection with the Loan Agreement and the other relevant agreements shall be automatically terminated, without further action or consent by the Lender or any other person;
6. represents and warrants that it has not sold, transferred, assigned or encumbered or agreed to sell, transfer, assign or encumber any of the Security or any of its interest in the collateral described in the Security or any of the indebtedness owing by the Obligor to the Lender;
7. undertakes and agrees to execute and deliver or to cause to be executed and delivered to the Lender, from time to time, at the Obligor's request, and at the sole expense of the Obligor, such further agreements, instruments and other documents as the Obligor may request, acting reasonably, to give full effect to the intent of this Agreement or to publicly record any matter arising from this Agreement;
8. acknowledges and agrees that this Agreement shall be governed by and construed in accordance with the laws of Ontario and the laws of Canada applicable therein;

9. acknowledges and agrees that delivery of an executed signature page of this Agreement by facsimile or electronic transmission shall be as effective as delivery of a manually executed original version of this Agreement by such party; and
10. acknowledges and agrees that this Agreement shall enure to your benefit and the benefit of your successors and assigns and shall bind the undersigned and its successors and assigns.

*[signature page follows]*

IN WITNESS OF WHEREOF this Agreement has been executed by the Lender.

**HSBC BANK CANADA**

By:   
Name: **Chad Iwata**  
Title: **Sr. Director**

By:   
Name: **Falzan Abid**  
Title: **Director  
Corporate Banking**

**SCHEDULE "A"**  
**REGISTRATIONS**

The following registrations at the Ontario Personal Property Registry:

<b>Debtor</b>	<b>Secured Party</b>	<b>Reference File No.</b>
Davids Footwear Ltd.	HSBC Bank Canada	7366166502
Rosejack Investments Ltd.	HSBC Bank Canada	736422039

# Tab G

THIS IS EXHIBIT "G" TO THE AFFIDAVIT  
OF LARRY ROSEN SWORN BEFORE ME

ON THIS 31<sup>ST</sup> DAY OF JULY, 2019



---

A Commissioner for taking affidavits

Y14458

**SECURED DEMAND GRID PROMISSORY NOTE**

November 6, 2017

**COPY**

FOR VALUE RECEIVED, the undersigned, DAVIDS FOOTWEAR LTD. (the "Debtor") hereby promises to pay on demand to the order of ROSEJACK INVESTMENTS LTD. (the "Lender") at 77 Bloor Street West, Suite 500, Toronto, ON M5S 1M2 (Attention: Larry Rosen), or at such other address as directed by the Lender from time to time, in lawful money of Canada in immediately available funds, the aggregate unpaid amount of all advances, indebtedness, loans and other extensions of credit and obligations (individually, an "Advance" and, collectively, "Advances") made by the Lender to the Debtor, or otherwise owing by the Debtor to the Lender, from time to time, as set forth on the grid attached hereto as Schedule A (the "Grid") (collectively, the "Unpaid Principal Balance"), together with interest thereon as hereinafter provided.

1. **Advances.** The Lender may, as and when requested from time to time by the Debtor, make an Advance, in such principal amount and on such date or dates as is requested by the Debtor.
2. **Use of Advances.** Advances will only be used by the Debtor (a) to pay the purchase price under the asset purchase agreement (the "Purchase Agreement"), made as of October 31, 2017, between, among others, Markio Designs Inc., Laindon Limited and the Debtor, as such agreement may be amended, restated, supplemented or otherwise modified from time to time; and (b) for working capital and approved capital investments of the Debtor for the growth plans of the business operated by the Debtor and purchased by the Debtor pursuant to the Purchase Agreement.
3. **Currency.** All references to \$ or to a currency in this Promissory Note are to the legal currency of Canada.
4. **Grid Entries.** The Debtor agrees that the Unpaid Principal Balance will be evidenced on the Grid and the Debtor hereby authorizes the Lender, or a person who has been appointed and authorized to do so by the Lender, to so record on the Grid to this Promissory Note the amount of the Unpaid Principal Balance and any changes to such Unpaid Principal Balance, including, without limitation, any Advances made by the Lender and any repayments made by the Debtor. The Debtor acknowledges, confirms and agrees with the Lender that all Advances recorded on the Grid will constitute *prima facie* evidence of the balance of the Unpaid Principal Balance owing by the Debtor to the Lender hereunder and, in the absence of evidence to the contrary or manifest error, will be conclusive evidence of such Unpaid Principal Balance. The failure to record any amount on the Grid, however, shall not limit the obligations of the Debtor to repay Unpaid Principal Balance or any other advances by the Lender to the Debtor. The Lender will give the Debtor written confirmation upon request of all notations made by the Lender on the Grid to this Promissory Note, provided that the failure by the Lender to give such confirmation will not impair the validity of any notation.
5. **Security.** As general and continuing security for the payment and performance of the obligations of the Debtor under this Promissory Note, the Debtor shall execute and deliver to the



Lender a general security agreement in favour of the Lender made as of the date hereof (as such general security agreement may be amended, restated, supplemented or otherwise modified from time to time), to create a first-ranking security interest in such collateral, as security in favour of the Lender:

6. **Interest.** Subject to the terms and conditions of this Promissory Note, the Unpaid Principal Balance (together with accrued and unpaid interest thereon that has not been added thereto) remaining from time to time unpaid and outstanding will bear interest at the Prime Rate (as hereinafter defined) plus 1.00% *per annum* calculated on the basis of a year of 365 days. Subject to the terms and conditions of this Promissory Note, interest will accrue and be calculated daily in arrears and will be payable on demand. For purposes of this Promissory Note, "Prime Rate" means an interest rate being the prime lending rate of interest expressed as a rate *per annum* which the principal banker of the Debtor (being HSBC Bank Canada as at the date hereof) publishes from time to time as the reference rate of interest to determine the interest rate that such bank shall charge for demand loans made in Canadian funds to its Canadian commercial customers at its head office; provided that, if the principal banker of the Debtor publishes more than one such rate then the Prime Rate determined hereunder shall be the higher of such rates.

7. **Advances Payable on Demand.** The Unpaid Principal Balance together with all accrued and unpaid interest will be due and payable on demand on the date that written demand for payment of the same is given by the Lender to the Debtor. The Unpaid Principal Balance may be demanded, in whole or in part, and the Unpaid Principal Balance will be payable, in whole or in part, as the case may be, upon demand by the Lender notwithstanding the payment or non-payment of principal, interest or fees by the Debtor or compliance or non-compliance with any undertaking or covenant given by the Debtor to the Lender.

8. **Voluntary Prepayment.** Without prejudice to any other term of this Promissory Note, the Debtor will be entitled at any time and from time to time to prepay the whole or any part of the principal amount outstanding under this Promissory Note together with accrued and unpaid interest thereon without premium or penalty.

9. **Waiver.** The Debtor and all other persons who are or may become liable for the payment hereof hereby waives presentment, demand, protest or other notice of any kind in the enforcement of this Promissory Note.

10. **Interest Rate Act.** Each interest rate which is calculated under this Promissory Note on any basis other than a full calendar year (the "deemed interest period") is, for the purposes of the *Interest Act* (Canada), equivalent to a yearly rate calculated by dividing such interest rate by the actual number of days in the deemed interest period, then multiplying such result by the actual number of days in the calendar year (being either 365 or 366, as the case may be).

11. **Criminal Rate of Interest.** In no event will the aggregate "interest" (as defined in Section 347 (the "Criminal Code Section") of the *Criminal Code* (Canada)), payable to the Lender under this Promissory Note exceed the effective annual rate of interest lawfully permitted under the Criminal Code Section. Further, if any payment, collection or demand pursuant to this Promissory Note in respect of such "interest" is determined to be contrary to the provisions of

the Criminal Code Section, such payment, collection, or demand will be deemed to have been made by mutual mistake of the Lender and the Debtor and such "interest" will be deemed to have been adjusted with retroactive effect to the maximum amount or rate of interest, as the case may be, as would not be so prohibited by law or so result in the receipt by the Lender of interest at a rate not in contravention of the Criminal Code Section.

12. **Lost or Destroyed Promissory Note.** Upon receipt by the Debtor of evidence reasonably satisfactory to the Debtor of the loss, theft, destruction or mutilation of this Promissory Note, and in the case of any such loss, theft or destruction, upon delivery of an indemnity reasonably satisfactory to the Debtor or, in case of any such mutilation, upon surrender and cancellation of this Promissory Note, the Debtor will issue a new promissory note of like tenor in lieu of this Promissory Note.

13. **Severability.** If any provision of this Promissory Note is determined to be invalid, illegal or unenforceable, in whole or in part, such invalidity, illegality or unenforceability will attach only to such provision or part thereof and the remaining part of such provision and all other provisions hereof will remain in full force and effect.

14. **Amendment and Modification.** This Promissory Note may be amended, modified or changed to address events and circumstances not expressly addressed or governed hereby by an instrument in writing signed by both the Debtor and the Lender. No amendment, modification or change to this Promissory Note and no waiver of any provision hereof, will be effective or be deemed to occur except by an instrument in writing signed by the party against whom enforcement of any such waiver, amendment, change or modification is sought.

15. **Costs and Expenses.** The Debtor promises to pay all costs and expenses incurred by the Lender in collecting any amount due under this Promissory Note and enforcing its rights hereunder and the security granted by the Debtor to the Lender, including, without limitation, the reasonable fees and disbursements of counsel to the Lender.

16. **Further Assurances.** Each of the parties hereby covenant and agree that at any time and from time to time after execution of this Promissory Note, it will upon the request of the other, do, execute and acknowledge and deliver or cause to be done, executed, acknowledged and delivered all such further acts, deeds, assignments, agreements, transfers, certificates, conveyances or assurances as may be required for the better carrying out and performance of the terms of this Promissory Note.

17. **Governing Law.** This Promissory Note will be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

18. **Successors and Assigns.** This Promissory Note will enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns. Neither the Debtor nor the Lender may assign its rights or obligations under this Promissory Note without the prior consent of the other party, provided that the Lender may assign its rights and obligations under this agreement to an affiliate. A person who is not a party to this Promissory Note has no rights to enforce or enjoy the benefit of any provision of this Promissory Note.

19. **Notices.** Any demand, notice or other communication to be given in connection with this Promissory Note must be given in writing and may be given by personal delivery, by registered mail or by electronic means of communication, addressed to the recipient as follows:

To the Debtor:

Davids Footwear Ltd.  
77 Bloor Street West, Suite 500  
Toronto, ON M5S 1M2

Email: [larryrosen@harryrosen.com](mailto:larryrosen@harryrosen.com)  
Fax No.: 1-416-515-7067

Attention: Chief Executive Officer

with a copy to:

Richard Markowitz  
490 Winnett Avenue  
Toronto, Ontario M6C 3M7

E-mail: [rmarkowitz@outlook.com](mailto:rmarkowitz@outlook.com)

Attention: Richard Markowitz

To the Lender:

Rosejack Investments Ltd.  
77 Bloor Street West, Suite 500  
Toronto, Ontario M5S 1M2

Email: [larryrosen@harryrosen.com](mailto:larryrosen@harryrosen.com)  
Fax No.: 1-416-515-7067

Attention: Chief Executive Officer

with a copy (which shall not constitute notice) to:

McCarthy Tétrault LLP  
66 Wellington Street West, Suite 5300  
Toronto, Ontario

Email: [dtennant@mccarthy.ca](mailto:dtennant@mccarthy.ca)  
Fax No.: 1-416-868-0673

Attention: David Tennant

or such other address, individual or electronic communication number as may be designated by notice given by any party to the other. Any demand, notice or other communication given by personal delivery will be conclusively deemed to have been given on the day of actual delivery thereof and, if given by registered mail, on the third business day following the deposit thereof in the mail and, if given by electronic communication, on the day of transmittal thereof if given during the normal business hours of the recipient and on the next business day during which such normal business hours next occur if not given during such hours on any day. If the party giving any demand, notice or other communication knows or ought reasonably to know of any difficulties with the postal system that might affect the delivery of mail, any such demand, notice or other communication must not be mailed but must be given by personal delivery or by electronic communication.

20. **Counterparts.** This Promissory Note may be executed in any number of counterparts, each of which will be deemed to be an original and all of which taken together will be deemed to constitute one and the same instrument.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF the Debtor has caused this Promissory Note to be executed and delivered by its duly authorized officer as of the date first written above.

DEBTOR:

**DAVIDS FOOTWEAR LTD.**

By: 

Name: Larry Rosen

Title: Chief Executive Officer

ACKNOWLEDGED AND AGREED as of the 6th day of November, 2017:

LENDER:

**ROSEJACK INVESTMENTS LTD.**

By: 

Name: Larry Rosen

Title: Chief Executive Officer

## SCHEDULE A

Attached to and forming part of the Secured Demand Grid Promissory Note made as of October 31, 2017, issued by DAVIDS FOOTWEAR LTD., as the Debtor in favour of ROSEJACK INVESTMENTS LTD., as the Lender.

### Advances and Payments

[illegible]

# Tab H



THIS IS EXHIBIT "H" TO THE AFFIDAVIT  
OF LARRY ROSEN SWORN BEFORE ME  
ON THIS 31<sup>ST</sup> DAY OF JULY, 2019



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A Commissioner for taking affidavits

P14458

**GENERAL SECURITY AGREEMENT**

THIS GENERAL SECURITY AGREEMENT is made as of November 6, 2017

BETWEEN

DAVIDS FOOTWEAR LTD., a corporation incorporated  
under the laws of the Province of Ontario (the “**Debtor**”),

- and -

ROSEJACK INVESTMENTS LTD., a corporation  
incorporated under the laws of the Province of Ontario (the  
“**Secured Party**”).

WHEREAS the Debtor has borrowed certain credit from the Secured Party as evidenced by a secured demand grid promissory note, made as of the date hereof (as amended, restated, supplemented or otherwise modified from time to time, the “**Promissory Note**”), granted by the Debtor in favour of the Secured Party;

AND WHEREAS the Debtor has agreed to grant a security interest and assignment, mortgage and charge in the Collateral in order to secure the performance of its Obligations to the Secured Party;

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**ARTICLE 1 - INTERPRETATION**

1.01 **Interpretation**

In this Agreement, unless something in the subject matter or context is inconsistent therewith,

“**Agreement**” means this general security agreement, including its recitals and schedules, as amended, restated, supplemented or otherwise modified from time to time.

“**Collateral**” has the meaning set out in Section 2.01.

“**Event of Default**” has the meaning set out in Section 5.01.

“**Obligations**” means all obligations and liabilities of any kind whatsoever of the Debtor to the Secured Party pursuant to the Promissory Note, including all debts and liabilities, present or future, direct or indirect, absolute or contingent, matured or not, whenever, wherever and however incurred, in any currency at any time owing by the Debtor to the Secured Party or remaining unpaid by the Debtor to the Secured Party pursuant to the Promissory Note and whether the same is from time to time reduced and thereafter increased or entirely extinguished

and thereafter incurred again, whether incurred by the Debtor alone or with another or others and whether as principal or surety or otherwise, including all interest, commissions, legal and other costs, charges and expenses.

“**Receiver**” has the meaning set out in Section 5.03(i).

The terms “accessions”, “accounts”, “chattel paper”, “documents of title”, “goods”, “instruments”, “intangibles”, “inventory”, “money”, “proceeds” and “securities” whenever used herein have the meanings given to those terms in the *Personal Property Security Act* currently in effect in the province referred to in Section 6.13 below.

1.02            **Headings**

The division of this Agreement into Articles and Sections and the insertion of headings are for convenience of reference only and do not affect the construction or interpretation of this Agreement. The terms “hereof”, “hereunder” and similar expressions refer to this Agreement and not to any particular Article, Section or other portion hereof. Unless something in the subject matter or context is inconsistent therewith, references herein to Articles and Sections are to Articles and Sections of this Agreement.

1.03            **Extended Meanings**

In this Agreement words importing the singular number only include the plural and *vice versa*, words importing any gender include all genders and words importing persons include individuals, corporations, limited and unlimited liability companies, general and limited partnerships, associations, trusts, unincorporated organizations, joint ventures and governmental authorities. The term “including” means “including without limiting the generality of the foregoing”.

**ARTICLE 2 - GRANT OF SECURITY INTEREST**

2.01            **Security Interest**

As general and continuing security for the payment and performance of all Obligations, the Debtor hereby grants to the Secured Party a security interest in all of the Debtor’s present and after-acquired undertaking and property, both real and personal (collectively, the “**Collateral**”), and, as further general and continuing security for the payment and performance of the Obligations, the Debtor hereby also assigns the Collateral (other than trademarks) to the Secured Party and mortgages and charges the Collateral as and by way of a fixed and specific mortgage and charge to the Secured Party. Without limiting the generality of the foregoing, the Collateral includes all right, title and interest that the Debtor now has or may hereafter have or acquire in any manner whatsoever (including by way of amalgamation) in all property of the following kinds:

- (a)    Receivables: all debts, accounts, claims and choses in action for monetary amounts (collectively, the “**Receivables**”);

- (b) Inventory: all inventory of whatever kind and wherever situated (collectively, the **"Inventory"**);
- (c) Equipment: all machinery, equipment, fixtures, furniture, plant, vehicles and other tangible personal property that are not Inventory (collectively, the **"Equipment"**);
- (d) Chattel Paper: all chattel paper;
- (e) Documents of Title: all warehouse receipts, bills of lading and other documents of title, whether negotiable or not;
- (f) Securities: all shares, bonds, debentures, and other securities (collectively, the **"Securities"**);
- (g) Intangibles: all intangibles not otherwise described in this Section 2.01 including all goodwill, patents, trademarks, copyrights and other intellectual property;
- (h) Instruments and Money: all bills, notes, cheques and other instruments and all coins or bills or other medium of exchange adopted for use as part of the currency of Canada or of any foreign government;
- (i) Books, Records, Etc.: all books, invoices, documents and other records in any form evidencing or relating to the Collateral;
- (j) Real Property: all real and immovable property, both freehold and leasehold, together with all buildings and fixtures (collectively, the **"Real Property"**), and all rights under any lease or agreement relating to Real Property;
- (k) Substitutions, Etc.: all replacements of, substitutions for and increases, additions and accessions to any of the property described in this Section 2.01; and
- (l) Proceeds: all proceeds of any Collateral in any form derived directly or indirectly from any dealing with the Collateral or that indemnifies or compensates for the loss of or damage to the Collateral;

provided that the said grant of a security interest, assignment, mortgage and charge will not render the Secured Party liable to observe or perform any term, covenant or condition of any agreement, document or instrument to which the Debtor is a party or by which it is bound.

## 2.02 Attachment of Security Interest

The Debtor acknowledges that value has been given and agrees that the security interest granted hereby attaches upon the execution of this Agreement by the Debtor (or, in the case of any after-acquired property, at the time of acquisition by the Debtor of any rights therein).

2.03      **Exception for Contractual Rights**

The security interest granted hereby does not and will not extend to, and Collateral will not include any agreement, right, franchise, licence or permit (the “contractual rights”) to which the Debtor is a party or of which the Debtor has the benefit, to the extent that the creation of the security interest herein would constitute a breach of the terms of or permit any person to terminate the contractual rights, but the Debtor must hold its interest therein in trust for the Secured Party and will assign such contractual rights to the Secured Party forthwith upon obtaining the consent of the other party thereto. The Debtor agrees that it will, upon the request of the Secured Party, use all commercially reasonable efforts to obtain any consent required to permit any contractual rights to be subjected to the security interest.

2.04      **Real Property**

(1)      With respect to (and only to) Real Property, the security granted hereby is constituted by way of floating charge, but will become a fixed charge upon the earlier of (i) the Obligations becoming immediately payable, and (ii) the occurrence of any other event that by operation of law would result in such floating charge becoming a fixed charge.

(2)      The assignment, mortgage and charge granted hereby will not extend to the last day of the term of any lease or agreement relating to Real Property, but the Debtor will hold such last day in trust for the Secured Party and, upon the enforcement by the Secured Party of its security, will assign such last day as directed by the Secured Party.

**ARTICLE 3 - REPRESENTATIONS,  
WARRANTIES AND COVENANTS OF THE DEBTOR**

3.01      **Representations and Warranties**

The Debtor hereby represents and warrants to the Secured Party that:

- (a)      the Debtor is a corporation duly incorporated, organized and subsisting under the laws of its jurisdiction of incorporation, with the corporate power to enter into this Agreement; this Agreement has been duly authorized by all necessary corporate action on the part of the Debtor and constitutes a valid and legally binding agreement enforceable against the Debtor in accordance with its terms; the making and performance of this Agreement will not contravene, result in a breach of, constitute a default under or result in the creation of any lien, charge, security interest, encumbrance or any other rights of others upon any property of the Debtor pursuant to, any agreement, indenture or other instrument to which the Debtor is a party or by which the Debtor or any of its property may be bound or affected;
- (b)      (i) the jurisdiction or incorporation of the Debtor and (ii) the chief executive office and the registered office of the Debtor and the office where the Debtor keeps its books & records relating to Receivables, are located at the addresses specified in Schedule A; and

- (c) the Inventory, Equipment and Securities of the Debtor are located in the provinces or states specified in Schedule A, except for goods in transit or on lease or consignment.

3.02

**Covenants**

The Debtor covenants with the Secured Party that the Debtor will:

- (a) ensure that the representations and warranties set forth in Section 3.01 will be true and correct at all times;
- (b) maintain, use and operate the Collateral and carry on and conduct its business in a lawful and business-like manner;
- (c) defend the Collateral against all claims and demands respecting the Collateral made by all persons at any time and, except as otherwise provided herein, keep the Collateral free and clear of all security interests, mortgages, charges, liens and other encumbrances or interests except for those disclosed in a schedule hereto or hereafter approved in writing by the Secured Party prior to their creation or assumption;
- (d) not change its jurisdiction of organization, chief executive office, the registered office or the location of the office where it keeps its records respecting the Receivables, or move any of the Inventory, Securities or Equipment from the jurisdictions specified in any schedule hereto, without the prior written consent of the Secured Party;
- (e) not change its name or, if the Debtor is a corporation, not amalgamate with any other corporation without first giving notice to the Secured Party of its new name and the names of all amalgamating corporations and the date when such new name or amalgamation is to become effective; and
- (f) pay to the Secured Party forthwith upon demand all reasonable costs, fees and expenses (including all legal, Receiver's, consulting and accounting fees and expenses) incurred by or on behalf of the Secured Party in connection with the preparation, execution, perfection, administration and discharge of this Agreement and the security granted hereby and the preservation and exercise of the rights, powers and remedies of the Secured Party, and all such costs, fees and expenses will bear interest at the highest rate borne by any of the Obligations and will form part of the Obligations.

**ARTICLE 4 - DEALING WITH COLLATERAL**

4.01

**Dealing with Collateral by the Debtor**

The Debtor must not sell, lease or otherwise dispose of any of the Collateral without the prior written consent of the Secured Party, except that the Debtor may, until an Event

of Default occurs, deal with its money or sell items of Inventory in the ordinary course of its business so that the purchaser thereof takes title thereto free and clear of the security interest, assignment and mortgage and charge granted hereby, but all proceeds of any such sale will continue to be subject to the security granted hereby. Upon the occurrence of an Event of Default and the exercise by the Secured Party of any of its rights and remedies under Section 5.03, all money received by the Debtor will be held by the Debtor in trust for the Secured Party and must be held separate and apart from other money of the Debtor and paid over to the Secured Party on request.

4.02      **Rights and Duties of the Secured Party**

(1)      The Secured Party may perform any of its rights and duties hereunder by or through agents and is entitled to retain counsel and to act in reliance upon the advice of such counsel concerning all matters pertaining to its rights and duties hereunder.

(2)      In the holding of the Collateral, the Secured Party and any agent on its behalf is only bound to exercise the same degree of care as it would exercise with respect to similar property of its own of similar value held in the same place. The Secured Party and any agent on its behalf will be deemed to have exercised reasonable care with respect to the custody and preservation of the Collateral if it takes such action for that purpose as the Debtor reasonably requests in writing, but failure of the Secured Party or its agent to comply with any such request will not of itself be deemed a failure to exercise reasonable care.

4.03      **Notification of Account Debtors**

Before an Event of Default occurs, the Secured Party may give notice of this Agreement and the security granted hereby to any account debtor of the Debtor or to any other person liable to the Debtor and, after the occurrence of an Event of Default and the exercise by the Secured Party of any of its rights and remedies under Section 5.03, may give notice to any such account debtors or other person to make all further payments to the Secured Party. Any payment or other proceeds of Collateral received by the Debtor from account debtors or from any other person liable to the Debtor after the occurrence of such Event of Default and exercise of such rights and remedies will be held by the Debtor in trust for the Secured Party and must be held separate and apart from other money of the Debtor and paid over to the Secured Party on request.

4.04      **Purchase-Money Security Interests**

The Debtor will be permitted to grant purchase-money security interests in the ordinary course of its business in connection with the purchase or lease of Inventory or Equipment; provided that, the foregoing will not constitute a subordination of the security interest and mortgage and charge granted hereby to such purchase-money security interests or a waiver by the Secured Party of the requirements prescribed by statute that, if complied with, would result in such purchase-money security interests ranking in priority to the security interest and mortgage and charge granted hereby.

4.05            **Application of Funds**

All money collected or received by the Secured Party in respect of the Collateral may be applied on account of such parts of the Obligations as the Secured Party in its sole discretion determines, or may be held unappropriated in a collateral account, or in the discretion of the Secured Party may be released to the Debtor, all without prejudice to the Secured Party's rights against the Debtor.

**ARTICLE 5 - DEFAULT AND REMEDIES**

5.01            **Events of Default**

Notwithstanding and without limitation of the right of the Secured Party to demand payment of all Obligations at any time, the Debtor hereby acknowledges that (i) the Secured Party may declare the principal amount outstanding under the Promissory Note, together with interest thereon, to be forthwith due and payable, whereupon the same shall become and be forthwith due and payable; and (ii) the Debtor will be in default under this Agreement upon the occurrence of any of the following events (herein referred to as an “**Event of Default**”):

- (a) the Debtor does not pay to the Secured Party any sum owing pursuant to the Promissory Note when due;
- (b) the Debtor does not perform any of its covenants or obligations under the Promissory Note;
- (c) any representation or warranty made by the Debtor herein or in any document provided at any time to the Secured Party in connection herewith is incorrect or misleading in any material respect;
- (d) the Debtor ceases or threatens to cease to carry on the business currently being carried on by it or a substantial portion thereof or makes or agrees to make an assignment, disposition or conveyance, whether by way of sale or otherwise, of its assets in bulk;
- (e) the Debtor is an insolvent person within the meaning of the *Bankruptcy and Insolvency Act* (Canada) or commits or threatens to commit any act of bankruptcy;
- (f) the commencement of any proceeding or the taking of any step by or against the Debtor (i) for the bankruptcy, insolvency, reorganization, liquidation, dissolution or winding-up of the Debtor, (ii) for an arrangement or compromise with its creditors, or (iii) for the appointment of a trustee, receiver, receiver and manager, custodian, liquidator or any other person with similar powers with respect to the Debtor or any part of the Collateral;
- (g) the Collateral or any part thereof is seized or otherwise attached pursuant to any legal process, including distress, execution or any similar proceeding, and the



same is not released or discharged within the shorter of a period of 15 days and 10 days less than such period as would permit such property to be sold pursuant thereto; or

- (h) the Secured Party believes in good faith that the prospect of payment or performance of any of the Obligations is impaired or that the Collateral is in danger of being lost, damaged or confiscated, or of being encumbered by the Debtor or seized or otherwise attached.

#### 5.02 **Consequences of a Default**

On or after the occurrence of any Event of Default that has not been either cured or waived, at the option of the Secured Party, (a) any or all of the Obligations not yet payable will become immediately payable, without presentment, protest, notice of protest or notice of dishonour, all of which are expressly waived; (b) the obligation, if any, of the Secured Party to extend further credit to the Debtor will cease; and (c) the security granted hereby will become immediately enforceable.

#### 5.03 **Remedies**

In addition to any right or remedy otherwise provided herein or by law, on or after the occurrence of any Event of Default that has not been either cured or waived, the Secured Party will have the rights and remedies set out below, all of which may be enforced successively or concurrently:

- (a) the Secured Party may take possession of the Collateral and require the Debtor to assemble the Collateral and deliver or make the Collateral available to the Secured Party at such places as may be specified by the Secured Party, and neither the Secured Party nor any Receiver will be or be deemed to be a mortgagee in possession by virtue of any such actions;
- (b) the Secured Party may take such steps as it considers desirable to maintain, preserve or protect the Collateral;
- (c) the Secured Party may carry on, or concur in the carrying on of, all or any part of the business of the Debtor;
- (d) the Secured Party may have, exercise or enforce any rights of the Debtor in respect of the Collateral;
- (e) the Secured Party may sell, lease or otherwise dispose of the Collateral at public auction, by private tender, by private sale or otherwise either for cash or upon credit, upon such terms and conditions as the Secured Party may determine and without notice to the Debtor unless required by law;
- (f) the Secured Party may accept all or any part of the Collateral in total or partial satisfaction of the Obligations in the manner provided by law;

- (g) the Secured Party may, for any purpose specified herein, including for the maintenance, preservation or protection of any Collateral or for carrying on any of the business or undertaking of the Debtor, borrow money on the security of the Collateral, which security will rank in priority to the security granted hereby;
- (h) the Secured Party may occupy and use all or any of the premises, buildings and plants occupied by the Debtor and use all or any of the Equipment and other property of the Debtor for such time as the Secured Party requires to facilitate the realization of the Collateral, free of charge and the Secured Party will not be liable for any rent, charges, depreciation or damages in connection with such actions, nor will the Secured Party or any Receiver be or be deemed to be a mortgagee in possession by virtue of any such actions;
- (i) the Secured Party may appoint a receiver or receiver and manager (each herein referred to as the “**Receiver**”) of the whole or any part of the Collateral and may remove or replace such Receiver from time to time or may institute proceedings in any court of competent jurisdiction for the appointment of a Receiver of the Collateral; and
- (j) the Secured Party may discharge any claim, lien, mortgage, charge, security interest, encumbrance or any rights of others that may exist or be threatened against the Collateral, and in every such case the amounts so paid together with costs, charges and expenses incurred in connection therewith will be added to the Obligations.

5.04 **Powers of the Receiver**

Any Receiver will have all of the rights and powers that the Secured Party is entitled to exercise pursuant to Section 5.03 but the Secured Party will not be in any way responsible for any misconduct or negligence of any such Receiver.

5.05 **Liability of Secured Party**

The Secured Party will not be liable or responsible for any failure to seize, collect, realize, or obtain payment with respect to the Collateral and is not bound to institute proceedings or to take other steps for the purpose of seizing, collecting, realizing or obtaining possession or payment with respect to the Collateral or for the purpose of preserving any rights of the Secured Party, the Debtor or any other person in respect of the Collateral. In the exercise of its rights and the performance of its obligations, the Secured Party will only be liable for gross negligence or wilful misconduct.

5.06 **Proceeds of Realization**

The Secured Party may apply any proceeds of realization of the Collateral to payment of costs, fees and expenses mentioned in Section 3.02(f), including those related to the realization of the Collateral, and the Secured Party may apply any balance to payment of all other Obligations in such order as the Secured Party sees fit. If there is any surplus remaining, the Secured Party may pay it to any person entitled thereto by law of whom the Secured Party

has knowledge and any balance remaining may be paid to the Debtor. If the realization of the Collateral fails to satisfy the Obligations, the Debtor will be liable to pay any deficiency to the Secured Party

5.07            **Waivers by Debtor**

The Secured Party may (a) grant extensions of time, (b) take and perfect or abstain from taking and perfecting security, (c) give up any security, (d) accept compositions or compromises, (e) grant releases and discharges, and (f) otherwise waive rights against the Debtor, debtors of the Debtor, guarantors and others and with respect to the Collateral and other security as the Secured Party sees fit. No such action or omission will reduce the Obligations or affect the Secured Party's rights hereunder

**ARTICLE 6 - GENERAL**

6.01            **Failure of Debtor to Perform**

If the Debtor fails to perform any of its covenants or obligations under this Agreement, the Secured Party may, in its absolute discretion, but without being required to do so, perform any such covenant or obligation. If any such covenant or obligation requires the payment of monies, the Secured Party may make such payment. All sums so paid by the Secured Party will be payable by the Debtor to the Secured Party and, for greater certainty, Section 3.02(f) will apply to such sums. No such performance or payment will relieve the Debtor from any default under this Agreement or any consequences of such default.

6.02            **Waivers of Legal Limitations**

To the fullest extent permitted by law, the Debtor waives all of the rights, benefits and protections that is given by the provisions of any law that imposes limitations upon the powers, rights or remedies of a secured party, including any law that limits the rights of a secured party to both seize Collateral and sue for any deficiency following realization of Collateral.

6.03            **Benefit of the Agreement**

This Agreement will enure to the benefit of and be binding upon the respective successors and permitted assigns of the parties.

6.04            **Entire Agreement**

This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and cancels and supersedes any prior understandings and agreements between the parties with respect thereto. There are no representations, warranties, terms, conditions, undertakings or collateral agreements, express, implied or statutory, between the parties other than as expressly set forth in this Agreement.

6.05            **Amendments and Waivers**

No amendment to this Agreement will be valid or binding unless set forth in writing and duly executed by all of the parties. No waiver of any breach of any provision of this Agreement will be effective or binding unless made in writing and signed by the party purporting to give the same and, unless otherwise provided, will be limited to the specific breach waived.

6.06            **Assignment**

Neither the Debtor nor the Secured Party may assign its rights or obligations under this Agreement without the prior consent of the other party, provided that the Secured Party may assign its rights and obligations under this agreement to an affiliate.

6.07            **Severability**

If any provision of this Agreement is determined by any court of competent jurisdiction to be illegal or unenforceable, that provision will be severed from this Agreement and the remaining provisions will continue in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to either of the parties.

6.08            **Notices**

Any demand, notice or other communication to be given in connection with this Agreement must be given in writing and may be given by personal delivery, by registered mail or by electronic means of communication, addressed to the recipient as follows:

To the Debtor:

Davids Footwear Ltd.  
77 Bloor Street West, Suite 500  
Toronto, ON M5S 1M2

Email:            [larryrosen@harryrosen.com](mailto:larryrosen@harryrosen.com)  
Fax No.:          1-416-515-7067

Attention:      Chief Executive Officer

with a copy (which shall not constitute notice) to:

Richard Markowitz  
490 Winnett Avenue  
Toronto, Ontario M6C 3M7

E-mail: [rmarkowitz@outlook.com](mailto:rmarkowitz@outlook.com)

Attention: Richard Markowitz

To the Secured Party:

Rosejack Investments Ltd.  
77 Bloor Street West, Suite 500  
Toronto, Ontario M5S 1M2

Email: [larryrosen@harryrosen.com](mailto:larryrosen@harryrosen.com)  
Fax No.: 1-416-515-7067

Attention: Chief Executive Officer

with a copy (which shall not constitute notice) to:

McCarthy Tétrault LLP  
66 Wellington Street West, Suite 5300  
Toronto, Ontario

Email: [dtennant@mccarthy.ca](mailto:dtennant@mccarthy.ca)  
Fax No.: 1-416-868-0673

Attention: David Tennant

or such other address, individual or electronic communication number as may be designated by notice given by any party to the other. Any demand, notice or other communication given by personal delivery will be conclusively deemed to have been given on the day of actual delivery thereof and, if given by registered mail, on the third business day following the deposit thereof in the mail and, if given by electronic communication, on the day of transmittal thereof if given during the normal business hours of the recipient and on the next business day during which such normal business hours next occur if not given during such hours on any day. If the party giving any demand, notice or other communication knows or ought reasonably to know of any difficulties with the postal system that might affect the delivery of mail, any such demand, notice or other communication must not be mailed but must be given by personal delivery or by electronic communication.

6.09 **Remedies Cumulative; Additional Continuing Security**

The rights and remedies of the Secured Party hereunder are cumulative and are in addition to and not in substitution for any other security now or hereafter held by the Secured Party or any other rights or remedies available at law or in equity or otherwise. No single or partial exercise by the Secured Party of any right or remedy precludes or otherwise affects the exercise of any other right or remedy to which the Secured Party may be entitled. This Agreement is a continuing agreement and security that will remain in full force and effect until discharged by the Secured Party.

6.10 **Further Assurances**

Each of the Debtor and the Secured Party will from time to time execute and deliver all such further documents and instruments, including financing statements and schedules, and do all acts and things as the other party may reasonably require to effectively carry out or better evidence or perfect the security granted hereby and the full intent and meaning of this Agreement.

6.11 **Power of Attorney**

The Debtor hereby irrevocably appoints any officer for the time being of the Secured Party the true and lawful attorney of the Debtor upon the occurrence of an Event of Default that is continuing, with full power of substitution, to do all things and execute and deliver all such documents and instruments, including financing statements and schedules, as are referred to in Section 6.10 above, with the right to use the name of the Debtor whenever and wherever the officer may deem necessary or expedient and from time to time to exercise all rights and powers and to perform all acts of ownership in respect to the Collateral in accordance with this Agreement

6.12 **Discharge**

The Debtor will be entitled to a discharge of this Agreement upon written request by the Debtor and full and irrevocable payment, performance and satisfaction of the Obligations. No discharge will be effective unless in writing and executed by the Secured Party.

6.13 **Governing Law**

This Agreement is governed by and will be construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

6.14 **Copy of Documents and Consent to Filings**

The Debtor acknowledges having received a fully executed copy of this Agreement and, to the extent permitted by applicable law, waives all rights to receive from the Secured Party a copy of any financing statement, financing change statement, or verification statement, filed or issued at any time in respect of this Agreement. The Debtor confirms its consent to the filing by the Secured Party or on its behalf of any financing statement or financing change statement filed or issued at any time in respect of this Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF the parties have executed this Agreement as of the date first written above.

DEBTOR:

**DAVIDS FOOTWEAR LTD.**

By: 

\_\_\_\_\_  
Name: Larry Rosen

Title: Chief Executive Officer

SECURED PARTY:

**ROSEJACK INVESTMENTS LTD.**

By: 

Name: Larry Rosen

Title: Chief Executive Officer



## SCHEDULE A

1. (i) JURISDICTION OF INCORPORATION:

Province of Ontario

(ii) ADDRESS(ES) OF PLACE(S) OF BUSINESS , LOCATION OF BOOKS AND RECORDS RELATING TO RECEIVABLES (Section 3.01(b))

Chief executive office: 77 Bloor Street West, Suite 500  
Toronto, ON, Canada M5S 1M2

Registered office: 77 Bloor Street West, Suite 500  
Toronto, ON, Canada M5S 1M2

Other place(s) of business: Bayview Village Shopping Centre  
(Unit No. 214), 2901 Bayview Av.  
Toronto, ON, Canada M2K 1E6

Bayview Village Shopping Centre  
(Unit No. 16), 2901 Bayview Av.  
Toronto, ON, Canada M2K 1E6

1200 Bay Street, Suite 600  
Toronto, ON, Canada M5R 2A5

Sherway Gardens, 25 The West Mall  
Toronto, ON, Canada M9C 1B8

Yorkdale Shopping Centre  
(Unit No. 247), 3401 Dufferin Street  
Toronto, ON, Canada M6A 2T9

Books & records relating to Receivables: 77 Bloor Street West, Suite 500  
Toronto, ON, Canada M5S 1M2

2. PROVINCE OR STATE OF INVENTORY, EQUIPMENT AND SECURITIES (Section 3.01(c))

Locations: Province of Ontario

# Tab I

THIS IS EXHIBIT "T" TO THE AFFIDAVIT  
OF LARRY ROSEN SWORN BEFORE ME  
ON THIS 31<sup>ST</sup> DAY OF JULY, 2019



---

A Commissioner for taking affidavits

P14458

RUN NUMBER : 210  
RUN DATE : 2019/07/29  
ID : 20190729084637.80

PROVINCE OF ONTARIO  
MINISTRY OF GOVERNMENT SERVICES  
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
ENQUIRY RESPONSE  
CERTIFICATE

REPORT : PSSR060  
PAGE : 1  
( 1984)

THIS IS TO CERTIFY THAT A SEARCH HAS BEEN MADE IN THE RECORDS OF THE CENTRAL OFFICE  
OF THE PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM IN RESPECT OF THE FOLLOWING:

TYPE OF SEARCH : BUSINESS DEBTOR

SEARCH CONDUCTED ON : DAVIDS FOOTWEAR LTD.

FILE CURRENCY : 28JUL 2019

ENQUIRY NUMBER 20190729084637.80 CONTAINS 4 PAGE(S), 2 FAMILY(IES).

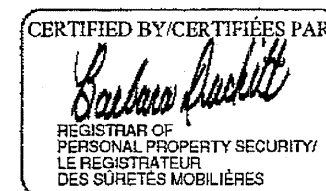
THE SEARCH RESULTS MAY INDICATE THAT THERE ARE SOME REGISTRATIONS WHICH SET OUT A BUSINESS DEBTOR NAME  
WHICH IS SIMILAR TO THE NAME IN WHICH YOUR ENQUIRY WAS MADE. IF YOU DETERMINE THAT THERE ARE OTHER  
SIMILAR BUSINESS DEBTOR NAMES, YOU MAY REQUEST THAT ADDITIONAL ENQUIRIES BE MADE AGAINST THOSE NAMES.

FASKEN MARTINEAU DUMOULIN LLP/ADAM SIMON

333 BAY STREET, SUITE 2400  
TORONTO ON M5H2T6

CONTINUED...

2



(crf)5 06/2019)



RUN NUMBER : 210  
RUN DATE : 2019/07/29  
ID : 20190729084637.80

PROVINCE OF ONTARIO  
MINISTRY OF GOVERNMENT SERVICES  
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
ENQUIRY RESPONSE  
CERTIFICATE

REPORT : PSSR060  
PAGE : 2  
( 1985)

TYPE OF SEARCH : BUSINESS DEBTOR  
SEARCH CONDUCTED ON : DAVIDS FOOTWEAR LTD.  
FILE CURRENCY : 28JUL 2019

FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN

00 FILE NUMBER  
735166502

01 CAUTION PAGE TOTAL MOTOR VEHICLE REGISTRATION REGISTERED REGISTRATION  
FILING NO. OF PAGES SCHEDULE NUMBER UNDER PERIOD  
001 1 20180202 0848 1590 2534 P PPSA 10

02 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME

03 NAME BUSINESS NAME DAVIDS FOOTWEAR LTD.

04 ADDRESS 77 BLOOR STREET WEST, SUITE #500 TORONTO ONTARIO CORPORATION NO. M5S 1M2

05 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME

06 NAME BUSINESS NAME

07 ADDRESS ONTARIO CORPORATION NO.

08 SECURED PARTY / HSBC BANK CANADA

09 LIEN CLAIMANT ADDRESS 70 YORK STREET TORONTO ON M5H 1J8

COLLATERAL CLASSIFICATION

10 CONSUMER MOTOR VEHICLE AMOUNT DATE OF NO FIXED  
GOODS INVENTORY EQUIPMENT ACCOUNTS OTHER INCLUDED MATURITY OR MATURITY DATE  
X X X X X

11 YEAR MAKE MODEL V.I.N.

12 MOTOR VEHICLE

13 GENERAL

14 COLLATERAL

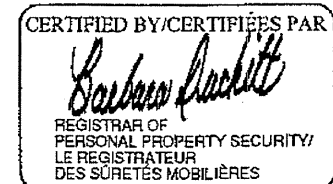
15 DESCRIPTION

16 REGISTERING CASSELS BROCK & BLACKWELL LLP (WOODMAN/33332-291/JP)

17 AGENT ADDRESS SUITE 2100, 40 KING STREET WEST TORONTO ON M5H 3C2

\*\*\* FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. \*\*\*

CONTINUED... 3



(en) 06/2019



RUN NUMBER : 210  
RUN DATE : 2019/07/29  
ID : 20190729084637.80

PROVINCE OF ONTARIO  
MINISTRY OF GOVERNMENT SERVICES  
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
ENQUIRY RESPONSE  
CERTIFICATE

REPORT : PSSR060  
PAGE : 3  
( 1986)

TYPE OF SEARCH : BUSINESS DEBTOR  
SEARCH CONDUCTED ON : DAVIDS FOOTWEAR LTD.  
FILE CURRENCY : 28JUL 2019

FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN

00 FILE NUMBER  
733574466

01 CAUTION PAGE TOTAL MOTOR VEHICLE REGISTRATION REGISTERED REGISTRATION  
FILING NO. OF PAGES SCHEDULE NUMBER UNDER PERIOD  
001 001 20171102 0923 1862 8080 P PPSA 10

02 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME

03 NAME BUSINESS NAME DAVIDS FOOTWEAR LTD.

04 ADDRESS 77 BLOOR STREET WEST, SUITE 500 TORONTO ONTARIO CORPORATION NO. M5S 1M2

05 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME

06 NAME BUSINESS NAME

07 ADDRESS

08 SECURED PARTY / ROSEJACK INVESTMENTS LTD.

09 LIEN CLAIMANT

ADDRESS 77 BLOOR STREET WEST, SUITE 500 TORONTO ON M5S 1M2

COLLATERAL CLASSIFICATION

10 CONSUMER MOTOR VEHICLE AMOUNT DATE OF NO. FIXED  
GOODS INVENTORY EQUIPMENT ACCOUNTS OTHER INCLUDED MATURITY OR MATURITY DATE  
X X X X X

11 YEAR MAKE MODEL V.I.N.

12 MOTOR  
VEHICLE

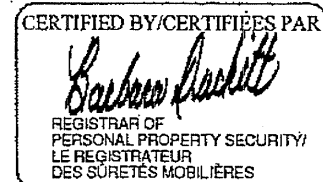
13 GENERAL  
14 COLLATERAL  
15 DESCRIPTION

16 REGISTERING MCCARTHY TETRAULT LLP (D.J. LYNDE)

17 AGENT ADDRESS STE. 5300, TD BANK TOWER, TD CENTRE TORONTO ON M5K 1E6

\*\*\* FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. \*\*\*

CONTINUED... 4



(c)1lu 09/2019



RUN NUMBER : 210  
RUN DATE : 2019/07/29  
ID : 20190729084637.80

PROVINCE OF ONTARIO  
MINISTRY OF GOVERNMENT SERVICES  
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
ENQUIRY RESPONSE  
CERTIFICATE

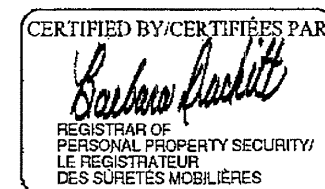
REPORT : PSSR060  
PAGE : 4  
( 1987)

TYPE OF SEARCH : BUSINESS DEBTOR  
SEARCH CONDUCTED ON : DAVIDS FOOTWEAR LTD.  
FILE CURRENCY : 28JUL 2019

INFORMATION RELATING TO THE REGISTRATIONS LISTED BELOW IS ATTACHED HERETO.

FILE NUMBER	REGISTRATION NUMBER	REGISTRATION NUMBER	REGISTRATION NUMBER	REGISTRATION NUMBER
736166502	20180202 0848 1590 2534			
733574466	20171102 0923 1862 8080			

2 REGISTRATION(S) ARE REPORTED IN THIS ENQUIRY RESPONSE.



(crf)5 06/2019)

# Tab J



THIS IS EXHIBIT "J" TO THE AFFIDAVIT  
OF LARRY ROSEN SWORN BEFORE ME  
ON THIS 31<sup>ST</sup> DAY OF JULY, 2019



---

A Commissioner for taking affidavits

P14458

## Gasparini, Adriana

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**From:** Jaipargas, Roger  
**Sent:** July 31, 2019 9:14 AM  
**To:** 'Richard Markowitz'; 'rmarkowitz@outlook.com'; Conrad Frejlich  
**Subject:** Davids Footwear Limited  
**Attachments:** Demand Letter and Notice of Intention to Enforce Security.pdf

Dear Sirs:

We are the lawyers for Rosejack Investments Ltd. Please see the attached correspondence.

Regards,

Roger



**Roger Jaipargas**

T 416.367.6266 | [RJaipargas@blg.com](mailto:RJaipargas@blg.com)

Bay Adelaide Centre, East Tower, 22 Adelaide St. W, Toronto, ON, Canada M5H 4E3

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Borden Ladner Gervais LLP

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Roger Jaipargas  
T (416) 367-6266  
F (416) 367-6749  
rjaipargas@blg.com

Borden Ladner Gervais LLP  
Bay Adelaide Centre, East Tower  
22 Adelaide Street West  
Toronto, ON, Canada M5H 4E3  
T 416.367.6000  
F 416.367.6749  
blg.com



July 31, 2019

Delivered by Email

(rmarkowitz@outlook.com / rmarkowitz@davidfootwear.com/ cfrejlich@harryrosen.com)

Davids Footwear Ltd.  
77 Bloor Street West, Suite 500  
Toronto, ON M5S 1M2

Attention: Richard Markowitz, President / Conrad Frejlich, Chief Financial Officer

Dear Sirs:

**Re: Indebtedness of Davids Footwear Ltd. (the "Company") to Rosejack Investments Ltd. (the "Lender")**

We are the lawyers for the Lender in connection with the above-captioned matter.

We refer to the Secured Demand Grid Promissory Note dated November 6, 2017 (the "**Demand Promissory Note**"), wherein certain funds were advanced by the Lender to the Company, subject to the terms and conditions therein. The Lender holds certain security in respect of the Company's indebtedness to the Lender, including a General Security Agreement dated November 6, 2017 (the "**GSA**"). Unless otherwise specified, capitalized terms used herein shall have the meanings ascribed thereto in the GSA.

In accordance with Paragraph 7 of the Demand Promissory Note, the Obligations of the Company to the Lender are payable on demand. Pursuant to Paragraph 7 of the Demand Promissory Note, we hereby declare, on behalf of the Lender, that all of the Obligations of the Company to the Lender have become immediately due and payable.

As of July 31, 2019, the Company is indebted or otherwise liable to the Lender in the amount of \$9,039,643.73, inclusive of interest to July 31, 2019, but excluding any costs and expenses (including, without limitation, legal fees and expenses) incurred to date and that will be incurred after the date hereof and additional interest from and after July 31, 2019, to which the Lender is entitled to under the Demand Promissory Note and the GSA (the "**Indebtedness**"). The Indebtedness is secured by the GSA.

The Lender hereby demands the immediate payment of the Indebtedness in full by the Company. Payment of the Indebtedness is to be made forthwith to the Lender. If payment is not made forthwith, the Lender intends to take such steps as are necessary or appropriate to obtain payment thereof, including, without limitation, the enforcement of the security held by the Lender. In this regard, we enclose a Notice of Intention to Enforce Security pursuant to section 244 (1) of the *Bankruptcy and Insolvency Act* (Canada).

Yours very truly,



Roger Jaipargas  
RJ/je

Encl.

cc: Client (with attachments by email)

TOR01: 8148715: v2

**NOTICE OF INTENTION TO ENFORCE SECURITY**  
(Subsection 244(1) of the *Bankruptcy and Insolvency Act*)

TO: Davids Footwear Ltd., an insolvent person<sup>1</sup>  
77 Bloor Street West, Suite 500  
Toronto, Ontario  
M5S 1M2

**TAKE NOTICE THAT:**

1. Rosejack Investments Ltd., as Lender, a secured creditor, intends to enforce its security on the property of the insolvent person described below:  
  
All of the present and future assets, property and undertaking, of the insolvent person.
2. The security that is to be enforced is in the form of:
  - (a) General Security Agreement dated November 6, 2017; and
  - (b) such further and other security as may be held by Rosejack Investments Ltd., as Lender.
3. The total amount of indebtedness secured by the security as of July 31, 2019 is the sum of \$9,039,643.73, plus costs and interest to the date of payment.
4. The secured creditor will not have the right to enforce the security until after the expiry of the 10-day period after this Notice is sent, unless the insolvent person consents to an earlier enforcement.

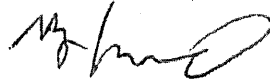
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<sup>1</sup> The term "insolvent person" is inserted in this form merely to comply with Form 86 and Rule 124 of the *Bankruptcy and Insolvency Act*.

**DATED** at Toronto, Ontario this 31<sup>st</sup> day of July, 2019.

**ROSEJACK INVESTMENTS LTD.,  
by its lawyers, Borden Ladner  
Gervais LLP**

Per: \_\_\_\_\_



Roger Jaipargas

**TO: ROSEJACK INVESTMENTS LTD., as Lender**

Davids Footwear Ltd. hereby acknowledges receipt of the Notice of Intention to Enforce Security delivered by Rosejack Investments Ltd., as Lender and hereby waives the time period provided therein and consents to the immediate enforcement of the security.

**DATED** at Toronto, Ontario this 31<sup>st</sup> day of July, 2019.

**DAVIDS FOOTWEAR LTD.**

Per: \_\_\_\_\_

Name:

Title:

I am authorized to bind the company

TOR01: 8148670: v2

# Tab K



THIS IS EXHIBIT "K" TO THE AFFIDAVIT  
OF LARRY ROSEN SWORN BEFORE ME  
ON THIS 31<sup>ST</sup> DAY OF JULY, 2019



---

A Commissioner for taking affidavits

P14458

**TO: ROSEJACK INVESTMENTS LTD., as Lender**

Davids Footwear Ltd. hereby acknowledges receipt of the Notice of Intention to Enforce Security delivered by Rosejack Investments Ltd., as Lender and hereby waives the time period provided therein and consents to the immediate enforcement of the security.

**DATED** at Toronto, Ontario this 31<sup>st</sup> day of July, 2019.

**DAVIDS FOOTWEAR LTD.**

Per: \_\_\_\_\_

Name: C. FREELICH

Title: CFO

I am authorized to bind the company

TOR01: 8148670: v2

# Tab L

THIS IS EXHIBIT "L" TO THE AFFIDAVIT  
OF LARRY ROSEN SWORN BEFORE ME  
ON THIS 31<sup>ST</sup> DAY OF JULY, 2019



---

A Commissioner for taking affidavits

P14458

Court File No.:

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

BETWEEN:

**ROSEJACK INVESTMENTS LTD.**

Applicant

- and -

**DAVIDS FOOTWEAR LTD.**

Respondent

**IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION  
243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3,  
AS AMENDED; AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*,  
R.S.O. 1990, c. C.43, AS AMENDED**

**CONSENT  
(Appointment of Receiver)**

Richter Advisory Group Inc. ("**Richter**") hereby consents to act as the court-appointed receiver of the assets, properties and undertaking of Davids Footwear Ltd. in accordance with an order substantially in the form requested by the Applicant, or as such order may be amended in a manner satisfactory to Richter.

Dated at Toronto this 31<sup>st</sup> day of July, 2019

**RICHTER ADVISORY GROUP INC.**

By: 

Name:

Adam Sherman

Title:

Senior Vice-President

Court File No.

IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED; AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED

ROSEJACK INVESTMENTS LTD.

- and -

DAVIDS FOOTWEAR LTD.

Applicant

Respondent

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

PROCEEDINGS COMMENCED AT TORONTO

**CONSENT**  
**(Appointment of Receiver)**

**BORDEN LADNER GERVAIS LLP**  
Bay Adelaide Centre, East Tower  
22 Adelaide Street West  
Toronto, ON M5H 4E3  
Tel: (416) 367-6000  
Fax: (416) 367-6749

**ROGER JAIPARGAS – LSO No. 43275C**  
Tel: (416) 367-6266  
Email: rjaipargas@blg.com

Lawyers for the Applicant

**Court File No.**

**IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED; AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED**

**ROSEJACK INVESTMENTS LTD.**  
**Applicant**

**- and -**

**DAVIDS FOOTWEAR LTD.**

**Respondent**

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

**PROCEEDINGS COMMENCED AT TORONTO**

**AFFIDAVIT OF LARRY ROSEN  
(Sworn July 31, 2019)**

**BORDEN LADNER GERVAIS LLP**  
Bay Adelaide Centre, East Tower  
22 Adelaide Street West  
Toronto, ON M5H 4E3  
Tel: (416) 367-6000  
Fax: (416) 367-6749

**ROGER JAIPARGAS – LSO No. 43275C**  
Tel: (416) 367-6266  
Email: rjaipargas@blg.com

**Lawyers for the Applicant**

# Tab 3



Court File No.

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

THE HONOURABLE  
MADAM JUSTICE CONWAY

)  
)  
)

FRIDAY, THE 2<sup>nd</sup>  
DAY OF AUGUST, 2019

**ROSEJACK INVESTMENTS LTD.**

Applicant

- and -

**DAVIDS FOOTWEAR LTD.**

Respondent

**ORDER  
(Appointment of Receiver)**

**THIS APPLICATION** made by Rosejack Investments Ltd. ("Rosejack") for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "CJA") appointing Richter Advisory Group Inc. as receiver and manager (in such capacities, the "Receiver") without security, of all of the assets, undertakings and properties of Davids Footwear Ltd. (the "Debtor") acquired for, or used in relation to a business carried on by the Debtor, was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the affidavit of Larry Rosen sworn July 31, 2019 and the Exhibits thereto and on hearing the submissions of counsel for Rosejack, counsel for Richter Advisory Group Inc., no one appearing for any other party, although duly served, as appears from the affidavit of service of Mariela Adriana Gasparini sworn July 31, 2019 and on reading the consent of Richter Advisory Group Inc. to act as the Receiver,

## **SERVICE**

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

## **APPOINTMENT**

2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA Richter Advisory Group Inc. is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the "Property").

## **RECEIVER'S POWERS**

3. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Debtor, including the power to enter into any agreements, incur any obligations in the ordinary

course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;

- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and

negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;

- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
  - (i) without the approval of this Court in respect of any transaction not exceeding \$25,000, provided that the aggregate consideration for all such transactions does not exceed \$250,000; and
  - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, shall not be required;

- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;

- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (q) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (r) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

4. THIS COURT ORDERS that, if and to the extent the Receiver operates the retail business of the Debtor, (i) the Receiver is authorized, until further order of this Court, to honour and accept gift cards and merchandise credits issued by the Debtor on or before the date of this Order, and (ii) the Receiver shall not accept returns of merchandise purchased after the date of this Order and shall not continue the Debtor's "Preferenza" rewards program or honour or accept points under that program.

#### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

5. THIS COURT ORDERS that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

6. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

7. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

8. THIS COURT ORDERS that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of

the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.

#### **NO PROCEEDINGS AGAINST THE RECEIVER**

9. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

#### **NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY**

10. THIS COURT ORDERS that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

11. THIS COURT ORDERS that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

#### **NO INTERFERENCE WITH THE RECEIVER**

12. THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, without written consent of the Receiver or leave of this Court.

### **CONTINUATION OF SERVICES**

13. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

14. THIS COURT ORDERS that, if and to the extent the Receiver is obligated to pay occupation rent in respect of any leased premises, such occupation rent shall be paid by the Receiver twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears), for the period commencing from and including the date on which the Receiver is first obligated to pay occupation rent in respect of such premises (the "Occupation Date"). On the date of the first of such payments, any occupation rent relating to the period commencing from and including the Occupation Date shall also be paid.

### **RECEIVER TO HOLD FUNDS**

15. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "Post Receivership Accounts") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for



herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

## **EMPLOYEES**

16. THIS COURT ORDERS that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

## **PIPEDA**

17. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

## **LIMITATION ON ENVIRONMENTAL LIABILITIES**

18. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release

or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

#### **LIMITATION ON THE RECEIVER'S LIABILITY**

19. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

#### **RECEIVER'S ACCOUNTS**

20. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "Receiver's Charge") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

21. THIS COURT ORDERS that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

22. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

### **FUNDING OF THE RECEIVERSHIP**

23. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$1,000,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "Receiver's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

24. THIS COURT ORDERS that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

25. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "Receiver's Certificates") for any amount borrowed by it pursuant to this Order.

26. THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

#### **SERVICE AND NOTICE**

27. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the "Protocol") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL '<https://www.richter.ca/insolvencycase/davids>'.

28. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

#### **GENERAL**

29. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

30. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

31. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

32. THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

33. THIS COURT ORDERS that the Plaintiff shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Plaintiff's security or, if not so provided by the Plaintiff's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

34. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

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## SCHEDULE "A"

### RECEIVER CERTIFICATE

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

1. THIS IS TO CERTIFY that Richter Advisory Group Inc., the receiver (the "Receiver") of the assets, undertakings and properties of Davids Footwear Ltd. (the "Debtor") acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the \_\_\_\_ day of \_\_\_\_\_, 2019 (the "Order") made in an action having Court file number \_\_-CL-\_\_\_\_\_, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$\_\_\_\_\_, being part of the total principal sum of \$\_\_\_\_\_ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the \_\_\_\_\_ day of each month] after the date hereof at a notional rate per annum equal to the rate of \_\_\_\_\_ per cent above the prime commercial lending rate of Bank of \_\_\_\_\_ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver

to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

RICHTER ADVISORY GROUP INC., solely in  
its capacity as Receiver of the Property, and not  
in its personal capacity

Per: \_\_\_\_\_

Name:

Title:

**Court File No.**

**IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED; AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED**

**ROSEJACK INVESTMENTS LTD.**

**- and -**

**DAVIDS FOOTWEAR LTD.**

**Applicant**

**Respondent**

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

**PROCEEDINGS COMMENCED AT TORONTO**

**ORDER**  
**(Appointment of Receiver)**

**BORDEN LADNER GERVAIS LLP**  
Bay Adelaide Centre, East Tower  
22 Adelaide Street West  
Toronto, ON M5H 4E3  
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Email: rjaipargas@blg.com

**Lawyers for the Applicant**



# Tab 4

Court File No.

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

THE HONOURABLE \_\_\_\_\_ ) ~~WEEKDAY~~FRIDAY, THE #2<sup>nd</sup>  
 )  
MADAM JUSTICE — CONWAY ) DAY OF MONTH AUGUST, 20YR2019

**PLAINTIFF<sup>1</sup>**

Plaintiff

**ROSEJACK INVESTMENTS LTD.**

Applicant

- and -

**DEFENDANT**

Defendant

**DAVIDS FOOTWEAR LTD.**

Respondent

**ORDER**  
**(~~appointing~~Appointment of Receiver)**

**THIS MOTION**APPLICATION made by the ~~Plaintiff~~<sup>2</sup>Rosejack Investments Ltd.  
("Rosejack") for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*,  
R.S.C. 1985, c. B-3, as amended (the "BIA") and section 101 of the *Courts of Justice Act*, R.S.O.  
1990, c. C.43, as amended (the "CJA") appointing ~~[RECEIVER'S NAME]~~Richter Advisory

<sup>1</sup> The Model Order Subcommittee notes that a receivership proceeding may be commenced by action or by application.  
This model order is drafted on the basis that the receivership proceeding is commenced by way of an action.

<sup>2</sup> Section 243(1) of the BIA provides that the Court may appoint a receiver "on application by a secured creditor".

Group Inc. as receiver {and manager} (in such capacities, the "Receiver") without security, of all of the assets, undertakings and properties of ~~[DEBTOR'S NAME]~~ Davids Footwear Ltd. (the "Debtor") acquired for, or used in relation to a business carried on by the Debtor, was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the affidavit of ~~[NAME]~~ Larry Rosen sworn ~~[DATE]~~ July 31, 2019 and the Exhibits thereto and on hearing the submissions of counsel for ~~[NAMES]~~ Rosejack, counsel for Richter Advisory Group Inc., no one appearing for ~~[NAME]~~ any other party, although duly served, as appears from the affidavit of service of ~~[NAME]~~ Mariela Adriana Gasparini sworn ~~[DATE]~~ July 31, 2019 and on reading the consent of ~~[RECEIVER'S NAME]~~ Richter Advisory Group Inc. to act as the Receiver,

## **SERVICE**

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion is hereby abridged and validated<sup>3</sup> so that this motion is properly returnable today and hereby dispenses with further service thereof.

## **APPOINTMENT**

2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, ~~[RECEIVER'S NAME]~~ Richter Advisory Group Inc. is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the "Property").

## **RECEIVER'S POWERS**

3. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality

<sup>3</sup> ~~If service is effected in a manner other than as authorized by the Ontario Rules of Civil Procedure, an order validating irregular service is required pursuant to Rule 16.08 of the Rules of Civil Procedure and may be granted in appropriate circumstances.~~

of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Debtor, including the ~~powers~~power to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor;

- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings;<sup>4</sup> The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
  - (i) without the approval of this Court in respect of any transaction not exceeding \$          , 25,000, provided that the aggregate consideration for all such transactions does not exceed \$           250,000; and
  - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, ~~for section 31 of the Ontario *Mortgages*~~

<sup>4</sup> This model order does not include specific authority permitting the Receiver to either file an assignment in bankruptcy on behalf of the Debtor, or to consent to the making of a bankruptcy order against the Debtor. A bankruptcy may have the effect of altering the priorities among creditors, and therefore the specific authority of the Court should be sought if the Receiver wishes to take one of these steps.

~~Act, as the case may be,]<sup>5</sup> shall not be required, and in each case the Ontario Bulk Sales Act shall not apply.~~

- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (q) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (r) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

<sup>5</sup> ~~If the Receiver will be dealing with assets in other provinces, consider adding references to applicable statutes in other provinces. If this is done, those statutes must be reviewed to ensure that the Receiver is exempt from or can be exempted from such notice periods, and further that the Ontario Court has the jurisdiction to grant such an exemption.~~

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

4. THIS COURT ORDERS that, if and to the extent the Receiver operates the retail business of the Debtor, (i) the Receiver is authorized, until further order of this Court, to honour and accept gift cards and merchandise credits issued by the Debtor on or before the date of this Order, and (ii) the Receiver shall not accept returns of merchandise purchased after the date of this Order and shall not continue the Debtor's "Preferenza" rewards program or honour or accept points under that program.

#### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

5. 4. THIS COURT ORDERS that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

6. 5. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due

to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

7. ~~6.~~-THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

8. ~~7.~~-THIS COURT ORDERS that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.

#### **NO PROCEEDINGS AGAINST THE RECEIVER**

9. ~~8.~~-THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.



### **NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY**

10. ~~9.~~ THIS COURT ORDERS that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

### **NO EXERCISE OF RIGHTS OR REMEDIES**

11. ~~10.~~ THIS COURT ORDERS that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

### **NO INTERFERENCE WITH THE RECEIVER**

12. ~~11.~~ THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, without written consent of the Receiver or leave of this Court.

### **CONTINUATION OF SERVICES**

13. ~~12.~~ THIS COURT ORDERS that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current

telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

14. THIS COURT ORDERS that, if and to the extent the Receiver is obligated to pay occupation rent in respect of any leased premises, such occupation rent shall be paid by the Receiver twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears), for the period commencing from and including the date on which the Receiver is first obligated to pay occupation rent in respect of such premises (the "Occupation Date"). On the date of the first of such payments, any occupation rent relating to the period commencing from and including the Occupation Date shall also be paid.

#### **RECEIVER TO HOLD FUNDS**

15. 13. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "Post Receivership Accounts") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

#### **EMPLOYEES**

16. 14. THIS COURT ORDERS that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in

respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

## **PIPEDA**

17. ~~15.~~ THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

## **LIMITATION ON ENVIRONMENTAL LIABILITIES**

18. ~~16.~~ THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the

Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

### **LIMITATION ON THE RECEIVER'S LIABILITY**

19.    ~~17.~~ THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

### **RECEIVER'S ACCOUNTS**

20.    ~~18.~~ THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "Receiver's Charge") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.<sup>6</sup>

21.    ~~19.~~ THIS COURT ORDERS that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

22.    ~~20.~~ THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the

<sup>6</sup> Note that subsection 243(6) of the BIA provides that the Court may not make such an order "unless it is satisfied that the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations".

standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

### **FUNDING OF THE RECEIVERSHIP**


23.    ~~21.~~ THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$          1,000,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "Receiver's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

24.    ~~22.~~ THIS COURT ORDERS that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

25.    ~~23.~~ THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "Receiver's Certificates") for any amount borrowed by it pursuant to this Order.

26.    ~~24.~~ THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

## SERVICE AND NOTICE

27. ~~25.~~—THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the “**Protocol**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL ‘ <https://www.richter.ca/insolvencycase/davids>’.

28. ~~26.~~—THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

## GENERAL

29. ~~27.~~—THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

30. ~~28.~~—THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

31. ~~29.~~—THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give

effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

32.    ~~30.~~ THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

33.    ~~31.~~ THIS COURT ORDERS that the Plaintiff shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Plaintiff's security or, if not so provided by the Plaintiff's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

34.    ~~32.~~ THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

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## SCHEDULE "A"

## RECEIVER CERTIFICATE

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

1. THIS IS TO CERTIFY that ~~[RECEIVER'S NAME]~~ Richter Advisory Group Inc., the receiver (the "Receiver") of the assets, undertakings and properties ~~[DEBTOR'S NAME]~~ of Davids Footwear Ltd. (the "Debtor") acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the \_\_\_\_ day of \_\_\_\_\_, 20\_\_2019 (the "Order") made in an action having Court file number \_\_-CL-\_\_\_\_\_, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$ \_\_\_\_\_, being part of the total principal sum of \$ \_\_\_\_\_ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the \_\_\_\_\_ day of each month] after the date hereof at a notional rate per annum equal to the rate of \_\_\_\_\_ per cent above the prime commercial lending rate of Bank of \_\_\_\_\_ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver



to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[RECEIVER'S NAME] RICHTER ADVISORY  
GROUP INC., solely in its capacity as Receiver  
of the Property, and not in its personal capacity

Per: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Court File No.

IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED; AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED

ROSEJACK INVESTMENTS LTD.

- and -

DAVIDS FOOTWEAR LTD.

Applicant

Respondent

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

PROCEEDINGS COMMENCED AT TORONTO

ORDER  
(Appointment of Receiver)

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Court File No.:

IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED; AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED

**ROSEJACK INVESTMENTS LTD.**

- and -

**DAVIDS FOOTWEAR LTD.**

**Applicant**

**Respondent**

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

PROCEEDINGS COMMENCED AT TORONTO

**APPLICATION RECORD  
(Returnable August 2, 2019)**

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