

Court File No. CV-19-00624902-00CL

**FIRST REPORT OF RICHTER ADVISORY GROUP INC.,
IN ITS CAPACITY AS RECEIVER AND MANAGER OF
DAVIDS FOOTWEAR LTD.**

AUGUST 16, 2019

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

BETWEEN:

ROSEJACK INVESTMENTS LTD.

Applicant

- and -

DAVIDS FOOTWEAR LTD.

Respondent

**APPLICATION UNDER section 243 of the *Bankruptcy and Insolvency Act*,
R.S.C. 1985, c. B-3, as amended, and under section 101 of the
Courts of Justice Act, R.S.O. 1990, c. C.43**

**FIRST REPORT OF RICHTER ADVISORY GROUP INC.,
IN ITS CAPACITY AS RECEIVER AND MANAGER OF
DAVIDS FOOTWEAR LTD.**

AUGUST 16, 2019

I. INTRODUCTION

1. Pursuant to an application by Rosejack Investments Ltd. ("**Rosejack**" or the "**Lender**") under 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, Richter Advisory Group Inc. ("**Richter**") was appointed as receiver and manager (in such capacity, the "**Receiver**") without security over all the assets, undertakings and properties (the "**Property**") of Davids Footwear Ltd. ("**Davids**" or the "**Company**") by way of an order (the "**Appointment Order**") of the Ontario Superior Court of Justice (Commercial List) (the "**Court**"), dated August 2, 2019 (the "**Date of Appointment**"). A copy of the Appointment Order is attached hereto as **Appendix "A"**. A copy of the Endorsement dated August 2, 2019 is attached hereto as **Appendix "B"**.
2. This report is the Receiver's first report (the "**First Report**") filed with this Court in connection with these receivership proceedings.

II. PURPOSE OF REPORT

3. The purpose of the First Report is to:
 - (i) provide background information on the Company, including its operations and financial position;
 - (ii) provide an overview of the activities of the Receiver since the Date of Appointment;
 - (iii) outline the key aspects of the Receiver's liquidation plan (the "**Liquidation Plan**"), including an overview of the proposed sale guidelines (the "**Sale Guidelines**") to govern the liquidation of the Company's inventory, and its furniture, fixtures and equipment (the "**FF&E**"); and
 - (iv) recommend the Court grant an order:
 - a) approving the activities of the Receiver as outlined in this First Report;
 - b) authorizing the Receiver to cease honouring and accepting gift cards and merchandise credits issued by the Debtor on or before the date of the Appointment Order beyond September 30, 2019; and
 - c) approving the Liquidation Plan and the Sale Guidelines, and authorizing the Receiver to take such steps as necessary to implement same.

III. TERMS OF REFERENCE

4. In preparing this First Report, Richter has relied upon unaudited financial information, the Company's books and records, financial information prepared by the Company and discussions with the Lender and its legal counsel (collectively, the "**Information**"). In accordance with industry practice, Richter has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Receiver has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Auditing Standards ("**GAAS**") pursuant to the *Chartered Professional Accountants of Canada Handbook* and, accordingly, the Receiver expresses no opinion or other form of assurance contemplated under GAAS in respect of the Information.
5. The First Report should be read in conjunction with the affidavit of Mr. Larry Rosen sworn on July 31, 2019 (the "**Rosen Affidavit**"), filed in support of Rosejack's application for the appointment of the Receiver, as certain information contained in the Rosen Affidavit has not been included herein in order to avoid unnecessary duplication. A copy of the Rosen Affidavit (without exhibits) is attached hereto as **Appendix "C"**.
6. Unless otherwise stated, all monetary amounts noted herein are expressed in Canadian dollars.

IV. BACKGROUND

Company Overview

7. Davids is one of Toronto's leading shoe retailers, specializing in luxury footwear and working with European fashion houses to bring designer footwear products to the Canadian market. Since opening its first store in 1951, Davids has expanded to five locations across Ontario, as well as an e-commerce site, www.davidsfootwear.com.
8. The Company was founded in 1951 by Louis and Julia Markowitz and for more than 60 years was operated by the Markowitz family. On November 6, 2017, Rosejack acquired the Company pursuant to an asset purchase agreement 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.
9. 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.
10. Davids is incorporated under the *Business Corporations Act* (Ontario). The Company's registered office is located at 77 Bloor Street West, Suite 500, Toronto, Ontario (the "**Central Office**"), which is also the head office for Harry Rosen Inc. ("**HRI**"). As noted in the Rosen Affidavit, HRI has provided Davids with tenancy at the Central Office

space without charge since November 2017. In addition, the Company also shares a warehouse and distribution center with HRI to handle retail store replenishment, at no cost to Davids. At the Date of Appointment, Davids operated five retail stores throughout Ontario, as follows:

- (i) four retail locations operating from leased premises across Toronto (the “**Toronto Stores**”), the largest of which is located at 66 Bloor Street West; and
- (ii) one retail location in Ottawa, Ontario at 50 Rideau Street (the “**Rideau Store**”), which is co-located with an HRI store. The lease for the Rideau Store is with HRI. HRI does not charge Davids rent for the Rideau Store.

11. In addition to the retail stores, Davids assumed an offer to lease dated December 18, 2015, as amended, with 94 Cumberland Street Retail Inc. in order to transition the store at 66 Bloor Street West to a new location in March 2020, as described in greater detail in the Rosen Affidavit. Possession of this location was scheduled to occur in and around March 2020.
12. According to the Company’s most recent internal, unaudited financial statements, as at July 6, 2019, the Property consisted of the following:

Davids Footwear Ltd. Assets (in 000s) As at July 6, 2019		
Accounts Receivable	\$	4
Inventory		4,633
Income & Prepaid Expenses		972
Fixed Assets (Net)		2,042
Goodwill		2,300
Total	\$	9,951

Note: The above amounts represent the net book values of the Company’s assets as detailed in the Company’s book and records and do not necessarily represent the sale or liquidation value of the Property.

13. As at the Date of Appointment, Davids employed approximately 57 individuals, comprised of 51 employees (the “**Retail Employees**”) at its retail locations and 6 employees (the “**Central Office Employees**”) in the Central Office, performing e-commerce, procurement, inventory management and other administration functions. The Company’s workforce is not unionized and the Company does not maintain a pension plan for its employees. Pursuant to the Appointment Order, all employees of Davids were terminated effective as of 10:00 p.m. (EST) on the Date of Appointment. As discussed in greater detail below, the Receiver made offers of engagement, on a

term and task basis, to substantially all of the active Retail Employees and certain of the Central Office Employees.

14. Further background information about Davids, including its causes of financial difficulties and insolvency, is detailed extensively in the Rosen Affidavit and not repeated herein.

Company's Creditors

15. The Receiver understands that Davids had total liabilities of approximately \$11.6 million as per its most recent internal, unaudited financial statements, as at July 6, 2019, as summarized in the table below:

Davids Footwear Ltd.		
Total Liabilities (in 000s)		
<i>As at July 6, 2019</i>		
Bank Indebtedness (net)	\$	95
Trade Payables		1,243
Accrued Liabilities		1,306
Long Term Liabilities		9,000
	\$	11,644

HSBC

16. The bank indebtedness amount shown above relates to borrowings under the Company's credit facilities with HSBC Bank Canada ("**HSBC**"). As noted in the Rosen Affidavit, the Company repaid all obligations owing to HSBC on July 29, 2019, and on July 30, 2019, HSBC provided a release agreement to Davids whereby the credit facilities that were extended by HSBC to Davids were terminated and the security held by HSBC was discharged and released.

Rosejack

17. The long-term liabilities that are in excess of \$9.0 million relate to the Company's secured obligations owed to Rosejack pursuant to advances made to Davids under a secured demand grid promissory note dated November 6, 2017 (the "**Secured Note**"). As security for the repayment of all amounts owing under the Secured Note, Davids provided a general security agreement in favour of Rosejack, including a security interest in all of the present and after acquired personal property of Davids (collectively the "**Rosejack Security**").
18. The Receiver has received a written opinion from its independent counsel, Fasken Martineau DuMoulin LLP ("**Fasken**"), that subject to customary assumptions and qualifications for opinions of this nature, the security interests in favour of Rosejack are valid and enforceable in the Province of Ontario.

Unsecured Trade Creditors

19. The accrued liabilities noted in the table above primarily relate to accrued expenses, employee-related costs, sales taxes and liabilities related to certain customer programs. Davids maintained programs pursuant to which customers could purchase prepaid physical gift cards (the **"Gift Cards"**) or were issued merchandise credits (the **"Merchandise Credits"**) in exchange for certain returns. The Gift Cards were issued in various denominations (up to a maximum of \$2,500) and could be redeemed in-store or online for merchandise. The Merchandise Credits could only be redeemed in-store for merchandise. The Receiver understands that the majority of the Merchandise Credits were issued prior to the Rosejack acquisition on November 6, 2017.
20. Based on the Company's books and records, Davids had approximately \$60,000 in Gift Cards (relating to 250 accounts) and \$130,000 in Merchandise Credits (relating to 670 customer accounts) outstanding as at July 23, 2019.
21. In addition to the above, the Receiver understands that the Company had outstanding trade payables of approximately \$1.4 million as at the Date of Appointment, the majority of which relates to amounts owed to the Company's foreign suppliers of footwear products and accessories.

Potential Priority Claims

22. Based on the Company's books and records, the Receiver understands that Davids had liabilities as of the Date of Appointment that rank, or may rank, in priority to the secured claim of Rosejack, including:
 - (i) approximately \$113,000 owed to former employees of Davids, in respect of gross vacation pay accrued to the Date of Appointment (the **"Pre-Filing Vacation Pay"**);
 - (ii) approximately \$37,000 owed to former employees of Davids, in respect of gross wages and commissions accrued for the stub period between the Company's last payroll run for pay period ending July 27, 2019 (the **"Stub Period Wages"**) and the Date of Appointment; and
 - (iii) approximately \$200,000 owed to Canada Revenue Agency (**"CRA"**), in respect of pre-filing sales taxes for July (the **"Pre-Filing HST"**).
23. Pursuant to paragraph 16 of the Appointment Order, the Receiver is authorized to pay on the Company's behalf, at such times and in such amounts as the Receiver deems appropriate, amounts owing to the Company's employees in respect of wages, salaries, commissions or compensation that are incurred by the Company to and including the Date of Appointment. On or about August 14, 2019, the Receiver paid the Stub Period Wages and the Pre-Filing Vacation Pay out of proceeds from the Property for all employees, even those not retained during

these proceedings. Based on the Company's books and records, 27 employees received payments that would exceed their entitlements under section 81.4(5) of the BIA, an aggregate of approximately \$73,000 in excess of the \$2,000 priority amount per employee. These payments were authorized under the Appointment Order and consented to by Rosejack.

24. The Company's books and records indicate that Davids had collected approximately \$200,000 in HST for sales in July 2019, which amount would rank in priority to the Rosejack Security as against the Property. The Receiver is currently reviewing the Company's sales tax records and intends to pay the Pre-Filing HST, net of any applicable input tax credits, out of the proceeds from the Property in the ordinary course.
25. The Lender is aware of the Pre-Filing Vacation Pay, the Stub Period Wages and the Pre-Filing HST and supports the payment of these amounts by the Receiver.
26. In addition, the appointment of the Receiver resulted in some suppliers having the right under section 81.1 of the BIA to demand that the Receiver either pay for, or return, certain goods supplied in the 30 days prior to the Date of Appointment ("**30 Day Goods Claims**"). To date, the Receiver has received four (4) 30 Day Goods Claims in the total amount of approximately \$430,000. The Receiver is reviewing those claims and has been in contact with the 30 Days Goods claimants. If all or a portion of these claims are validated, the Receiver may elect to pay the suppliers the amount of the approved 30 Day Goods Claims and to sell the inventory through the Liquidation Sale (as defined below).

V. RECEIVER'S ACTIVITIES SINCE THE DATE OF APPOINTMENT

27. On the Date of Appointment, the Receiver requested and received \$600,000 in borrowings (the "**Receiver's Borrowings**") from Rosejack in order to fund operations and interim expenditures such as rent and payroll. The Receiver's Borrowings are secured as against the Property by the Receiver's Borrowings Charge pursuant to the Appointment Order, which authorizes the Receiver to borrow monies not to exceed the principal amount of \$1,000,000. The Receiver issued a certificate to Rosejack for the Receiver's Borrowings.
28. Since the Date of Appointment, the Receiver's activities have included:
 - (i) taking possession and control of the Property;
 - (ii) opening new bank accounts under the Receiver's name and arranging for the Company's accounts to be frozen and all amounts to be transferred to the Receiver's accounts;
 - (iii) sending to all creditors on record the *Notice and Statement of Receiver* required under section 245(1) and 246(1) of the BIA;

- (iv) notifying the Company's employees of the Appointment Order and the provision for the termination of their employment contained therein;
- (v) attending at the Company's retail stores and the Central Office to make offers of engagement, on a term and task basis, to a majority of the Company's employees;
- (vi) attending at the Central Office and certain of the Toronto Stores on a daily basis;
- (vii) responding to inquiries from stakeholders, including addressing questions or concerns of parties who contacted the Receiver on the toll-free telephone hotline and/or general email account established by the Receiver for these receivership proceedings;
- (viii) notifying the landlords of the Toronto Stores of the Appointment Order, arranging for the payment of occupation rent in accordance with the Appointment Order, and corresponding in respect of the Sale Guidelines;
- (ix) reviewing the Company's books and records, and specifically its accounting and financial records with respect to the Company's retail inventory;
- (x) arranging for security at certain of the Toronto Stores;
- (xi) vacating the Company's portion of the Rideau Store (which is now occupied by HRI);
- (xii) determining the amounts owed to the Company's employees as at the Date of Appointment;
- (xiii) monitoring the receipt of sale proceeds from the retail stores;
- (xiv) corresponding with the Lender and its counsel regarding the status of the receivership proceedings;
- (xv) establishing new statutory accounts with the Canada Revenue Agency for payroll and various other statutory deductions;
- (xvi) reviewing and responding to demands for repossession of goods received from suppliers, including the 30 Day Goods Claims;
- (xvii) attending before this Court in respect of the Appointment Order;
- (xviii) preparing this First Report; and
- (xix) attending to other matters pertaining to the administration of the receivership proceedings.

29. As noted above, on or about August 3, 2019, the Receiver made offers of engagement to 49 of the Retail Employees and 1 of the Central Office Employees to assist the Receiver with continuing the retail operations of the Company and realizing on the Property. In order to incentivize the Retail Employees to accept the offers of engagement, those employees were offered certain incentives, in the form of increased commissions and/or other

bonuses payable on the achievement of certain milestones. As at the date of this First Report, a majority of the Company's former employees had accepted the engagement offers (46 of the Retail Employees and 1 Central Office Employee).

30. In addition to the activities noted above, the Receiver commenced a sale of the Company's inventory and implemented the following changes effective August 3, 2019:
 - (i) disabling functionality for the Company's "Preferenza" rewards program;
 - (ii) establishing a markdown strategy on the Company's on-hand inventory;
 - (iii) implementing an "all sales final" policy for all merchandise purchased on or after August 3, 2019. Returns and exchanges for merchandise purchased prior to August 3, 2019 would continue to be accepted in accordance with the Company's standard return policy; and
 - (iv) disabling functionality on the Company's website for order processing;
31. In order to inform customers of the above changes, the Receiver arranged for, among other things, (i) information to be posted on the Company's website, (ii) signs to be placed in the retail stores at the cash register and merchandise areas, and (iii) email communications to be sent to the Company's customer base.
32. As noted in the Rosen Affidavit, Davids has a high degree of operational interdependency on HRI for certain operational and back office functions, including marketing/design, loss prevention, warehousing, human resources, IT, finance/accounting, etc., all of which was provided by HRI without cost. HRI has agreed to continue to provide support to the Receiver for some or all of these functions as needed during these receivership proceedings in order to minimize disruptions to the Davids retail operations. The Receiver has agreed to reimburse HRI for any direct employee and out-of-pocket costs incurred by HRI, at cost and without markup, for any services provided to the Receiver.
33. To inform creditors and all other stakeholders, general information on these proceedings has been posted on the Receiver's website at <http://www.richter.ca/insolvencycase/davids>. As noted above, the Receiver has also established a dedicated toll-free hotline (1-877-676-4351) for general creditor inquiries, as well as a general email address (davids@richter.ca) to address specific questions or concerns from stakeholders with respect to these receivership proceedings.

VI. PROPOSED LIQUIDATION ORDER

34. Based on the Company's books and records, Davids had approximately \$11.0 million of inventory (at original retail value) on hand as at the Date of Appointment, the majority of which was located at the Toronto Stores.
35. Given the quantum of the Company's inventory and number of retail locations, the Receiver is of the view that engaging a liquidation agent or consultant to manage or assist with the Liquidation Plan is not economical in the circumstances. The Receiver has extensive experience with retail insolvencies and is well positioned to execute on the Liquidation Plan.
36. The Receiver has developed the Liquidation Plan and is seeking a Court order (the "**Liquidation Order**") authorizing it to conduct an orderly liquidation (the "**Liquidation Sale**") of the Company's inventory and FF&E. The Receiver will conduct a "store closing" or similar-themed sale at the Toronto Stores, which will commence as soon as practical after entry of the Liquidation Order and by no later than August 26, 2019 (the "**Sale Commencement Date**") and end by no later than December 2, 2019 (the "**Sale Termination Date**"). The Liquidation Sale will not be conducted at the Rideau Store, which will be vacated on or before August 16, 2019.
37. As the Liquidation Sale progresses, the Receiver may vacate certain of the Toronto Stores prior to December 2, 2019. The Liquidation Order contemplates that the Receiver shall provide to the applicable landlord not less than five (5) calendar days' prior written notice of its intention to vacate each Toronto Store which is occupied.

Sale Guidelines

38. It is contemplated that the Liquidation Sale and store closings be governed by the sale guidelines that are appended as Schedule "A" to the Liquidation Order (the "**Sale Guidelines**").
39. The Receiver's counsel sent a copy of the Sale Guidelines to the landlords (or their counsel, as applicable) well in advance of the issuance of this First Report and the hearing to approve the Liquidation Sale. The Receiver and its counsel have engaged in discussions with certain of the landlords for the Toronto Stores on the Sale Guidelines. As at the date of this First Report, no landlord has indicated that it takes issue with the proposed Sale Guidelines. In the Receiver's view, the Sale Guidelines are in a form consistent with recent Canadian retail liquidations.
40. The Sale Guidelines state, among other things, that the Liquidation Sale shall be conducted in accordance with the following terms:
 - (i) except as modified by the Sale Guidelines, and subject to the Appointment Order, the Liquidation Order or any further order of the Court, or any subsequent written agreement between the Receiver and the

applicable landlord(s), the Liquidation Sale will be conducted in accordance with the terms of the applicable leases or other occupancy agreements;

- (ii) the Liquidation Sale shall be conducted so that each of the Toronto Stores remain open during their normal hours of operation provided in their respective leases;
- (iii) the Liquidation Sale shall end by no later than the Sale Termination Date;
- (iv) all display and hanging signs used by the Company in connection with the Liquidation Sale shall be professionally produced and all hanging signs shall be hung in a professional manner. No signs shall advertise the Liquidation Sale as a "bankruptcy", a "going out of business" or a "liquidation" sale;
- (v) subject to the terms of the Sale Guidelines and the Appointment Order, the Receiver may sell the FF&E which is located in the Toronto Stores during the Liquidation Sale and advertise the sale of the FF&E;
- (vi) at the conclusion of the Liquidation Sale in each Toronto Store, the Receiver shall arrange that the premises for each Toronto Store is in "broom-swept" and clean condition, and shall arrange for the Toronto Stores to be in the same condition as they were on the Sale Commencement Date, ordinary wear and tear excepted; and
- (vii) the Receiver, shall not conduct any auctions of inventory or FF&E at any of the Toronto Stores.

Gift Card & Merchandise Credits

- 41. Pursuant to paragraph 4 of the Appointment Order, the Receiver is authorized, until further order of the Court, to honour and accept the Gift Cards and the Merchandise Credits. The Receiver ceased issuing new Gift Cards and Merchandise Credits to customers effective August 3, 2019 but has continued to accept, in accordance with the Company's prior practices, Gift Cards and Merchandise Credits for merchandise at the Company's retail stores. As at August 8, 2019, a combined total of approximately \$10,000 had been redeemed by customers in Gift Cards and Merchandise Credits.
- 42. As noted in the Rosen Affidavit, the Lender had requested that the Receiver be authorized to continue to accept the Gift Cards and the Merchandise Credits in order to minimize the impact on the Company's customers at the onset of these proceedings. After reviewing the quantum of the Gift Cards and Merchandise Credits exposure, as well as the rate of redemptions to date, the Receiver, in consultation with the Lender, is seeking the authority of the Court to cease honouring and accepting the Gift Cards and the Merchandise Credits beyond September 30, 2019, which date would be approximately 38 days from the date of the hearing of the within motion.

43. The Receiver notes that the Lender is expected to suffer a shortfall on its secured advances to the Company and holders of the Gift Cards and the Merchandise Credits are unsecured creditors whose claims would rank behind those of the Lender.
44. Further, based upon the Receiver's experience, discontinuing the acceptance of gift cards and merchandise credits is commonplace in retail liquidations and consistent with practices observed in other recent filings. Should the Court grant the relief sought, customers will have had approximately 59 days from the Date of Appointment to redeem the Gift Cards and the Merchandise Credits as compared with market of approximately 30 days from the filing date.
45. Based on the experience of the Receiver with other retail insolvency liquidations, the Receiver is of the view that the Liquidation Plan, the Liquidation Order, including the Sale Guidelines, are consistent with the market in similar situations.

VII. RECOMMENDATION

46. Based on the foregoing, the Receiver respectfully recommends that the Court grant the Order granting the relief detailed in paragraph 3(iv) of the First Report.

All of which is respectfully submitted this 16th day of August, 2019.

Richter Advisory Group Inc.
In its capacity as Receiver and Manager of
Dauids Footwear Ltd.
and not in its personal or corporate capacity

Per:



Pritesh Patel,
MBA, CFA, CIRP, LIT
Senior Vice President

APPENDIX “A”



CV-19-00624 902-0002
Court File No.

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

THE HONOURABLE
MADAM JUSTICE CONWAY

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FRIDAY, THE 2nd
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.

AND ACCEPT RETURNS FOR MERCHANDISE THAT WAS PURCHASED ON OR BEFORE THE DATE OF THIS ORDER, IN ACCORDANCE WITH THE DEBTOR'S REWARDS POLICY

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 be and are hereby terminated as employees of the Debtor effective as of 10:00 p.m. on August 2, 2019 (the "Termination Date"). 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*. The Receiver is authorized, but not directed, to pay on the Debtor's behalf, at such times and in such amounts as the Receiver deems appropriate, amounts owing to the Debtor's employees in respect of wages, salaries, commissions or compensation that are incurred by the Debtor, to and including the Termination Date.

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.

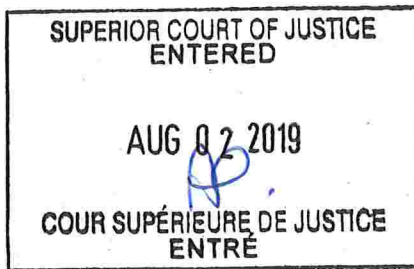
31. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, 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~~ ^{FIVE (5)} (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.

Conway



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)

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Lawyers for the Applicant

APPENDIX “B”



COUNSEL SLIP

COURT FILE NO. 12120 MATTER

DATE: 02-AUG-2019

No. ON LIST AND DND

TITLE OF
PROCEEDING

R-VS-Y

COUNSEL FOR:

Plaintiff (s)

Applicant (s)

Petitioner (s)

ROGER TAI PANGAS
(FOR THE APPLICANT)

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COUNSEL FOR:

Defendant (s)

Respondent (s)

Richter Advisory Group Inc., in its capacity
as proposed Receiver
Dylan Chochla

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Aug 2/19

The Applicant is the sole secured creditor now that HSBC has been paid out. The A is no longer willing to fund the Resp company given the operational and liquidity issues it seeks to place the company in receivership (which it is entitled to do pursuant to its security). The Application is unopposed. I have canvassed with counsel here and the proposed Receiver how it intends to proceed. In particular, while the employees are to be terminated pursuant to s. 16 of the order, the Receiver intends to retain most of the stores' employees on a term task basis. Provisions have been made for honouring returns and outstanding credits to customers pursuant to s. 48 of the order. There is a 5 day come back charge for interested parties in s. 34. CRA and the M of F are and will continue to be on the service list.

Considered all of the factors (including the demand) →

NITES

by the App on July 31/19, the waiver of the 10 day period for the ~~most~~^{NOTES} the fact that the A is the sole secured creditor w/ a right to appoint a receiver under its security agreement, as well as all of the other operational & financial matters referred to above), I consider it just and convenient to appoint a Receiver for the Respondent and have signed the appointment order today.

Conway J

APPENDIX “C”

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**

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

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RR

LARRY ROSEN

p14458

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

**FIRST REPORT OF THE RECEIVER,
RICHTER ADVISORY GROUP INC.**

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**Lawyers for Richter Advisory Group Inc., in its capacity
as court-appointed receiver**