



This is the 2<sup>nd</sup> affidavit  
of Dillon Cameron in this case  
and was made on 14 / February / 2017

NO. S-171026  
VANCOUVER REGISTRY

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

DEANS KNIGHT CAPITAL MANAGEMENT LTD.

PETITIONER

AND:

SHOEME TECHNOLOGIES LIMITED

RESPONDENT

**AFFIDAVIT**

I, **DILLON CAMERON**, OF 1500-999 West Hastings Street, Vancouver, BC, V6C 2W2, businessperson, SWEAR (OR AFFIRM) THAT:

1. I am a portfolio manager with Deans Knight Capital Management Ltd. ("**Deans Knight**", and in its capacity as collateral agent for and on behalf of certain investors, the "**Collateral Agent**"). As such, I have personal knowledge of the facts and matters deposed to herein, except where indicated to be based on information and belief, in which case I verily believe such facts and matters to be true.
2. To the best of my knowledge, Shoes.com Technologies Inc. (formerly known as 1006903 BC Ltd., referred to herein as the "**Parent**") carried on business as a holding company for the online shoe retail business of its subsidiaries (the "**Shoes.com Group**"), including ShoeMe Technologies Limited ("**ShoeMe**"), until January 27, 2017, when the group ceased operations.
3. On or about December 12, 2014, Deans Knight, acting as portfolio manager on behalf of certain investors (the "**Investors**"), and the Parent entered in a debenture purchase agreement (the "**Debenture Purchase Agreement**").
4. The resulting transaction is described in more detail in my first affidavit in these proceedings sworn February 2, 2017 (the "**First Cameron Affidavit**"), and certain documents relevant to such transaction, including the debenture issued by the Parent (the "**Debentures**") are attached to that affidavit.

5. Also on or about December 12, 2014, to secure the Parent's obligations to the Collateral Agent under the Debenture Purchase Agreement, the Debentures, and other related agreements, the Parent also signed a general security agreement granting the Collateral Agent a security interest in all its present and after-acquired property (the "**GSA**").

6. Now shown to me and attached hereto as **Exhibit "A"** is a copy of the GSA.

7. Pursuant to the Debentures, as of February 2, 2017, the Parent was indebted to the Collateral Agent in the amount of CAD\$10,098,630.14, plus interest and costs of enforcement, which interest continues to accrue (the "**Indebtedness**").

8. The Indebtedness has not been repaid.

9. Also described in more detail in the First Cameron Affidavit is the credit facility provided to Onlineshoes.com Inc. (formerly known as Gerler and Son Inc. and referred to herein as "**Gerler**") and Shoes.com Inc. ("**Shoes.com**") as borrower and Shoes.com Holdings (USA) Inc. (formerly known as A12345 Inc. and referred to herein as "**US Holdco**") and the Parent as guarantors by Wells Fargo Bank, National Association ("**Wells Fargo**") in May 2015.

10. In conjunction with this credit facility, on or about March 31, 2015, Wells Fargo, US Holdco, Gerler, Shoes.com, the Parent and the Collateral Agent entered into a Subordination, Postponement and Standstill Agreement (the "**Wells Fargo Intercreditor Agreement**") which provides, among other things:

- (a) for the subordination of the Collateral Agent's security interests in certain property of the Parent, the US Holdco and the US Guarantors to Wells Fargo;
- (b) that, subject to certain conditions, the Collateral Agent requires the consent of Wells Fargo to any enforcement actions in respect of the Parent; and
- (c) that Wells Fargo would provide the Collateral Agent with any notice of default under the credit facility.

11. Now shown to me and attached hereto as **Exhibit "B"** is a copy of the Wells Fargo Agreement.

12. I have been informed by Jeffrey Mason, chief financial officer and director of the Parent, that the Parent holds more than CAD\$300,000 in cash and much of the intellectual property used by the Shoes.com Group.

13. I believe it is critical for the realization efforts of the Collateral Agent and the other secured creditors of the Shoes.com Group that Alvarez & Marsal Canada Inc. ("**A&M**") be appointed receiver over the assets and undertakings of the Parent (in such capacity and in its capacity as receiver over ShoeMe, the "**Receiver**") as soon as possible for the following reasons, among others.

14. First, I have been informed by Jeffrey Mason and the Receiver that parties have contacted the Receiver to express interest in purchasing the "shoes.com" domain name and to inquire when the Parent's intellectual property assets will be available.

15. I believe that each day the domain is offline causes additional loss to the value of the Parent's intellectual property assets and reduces the recovery of the Collateral Agent and the Investors.

16. Second, appointment of the Receiver will ensure that the cash held by the Parent and any other assets it may hold will be preserved for the benefit of secured creditors.

17. In my view, a delay in bringing the Parent's cash and assets under the control of a receiver causes risk of dissipation of assets.

18. Through counsel, the Collateral Agent has requested that Wells Fargo consent to the appointment of A&M as Receiver over the assets and undertakings of the Parent.

19. In my view, the appointment of A&M as receiver of the Parent would be the most efficient and cost effective given that all the records and information in relation to the entities in the Shoes.com Group are now effectively under the Receiver's control as they are all located at the head office in Vancouver of which the Receiver currently has possession.

20. I have been informed by Jeffrey Mason that the Shoes.com Group owes Wells Fargo approximately US\$3.8 million.

21. I have been further informed by Jeffrey Mason that the book value of the inventory held by Gerler and Shoes.com in the United States is approximately US\$11 million.

22. Based on information provided by Jeffrey Mason and the Receiver in respect of ShoeMe, I continue to expect that the Collateral Agent and the Investors will not recover in full on the Indebtedness and will suffer a shortfall.

23. I have been informed by Todd Martin of A&M that A&M has consented to act as receiver of the Parent.

24. I have also been informed by Jeffrey Mason that the Parent has consented to the appointment of A&M as Receiver.

25. I also believe that it is necessary for the Receiver to have the power to assign the Parent into bankruptcy to fully administer the Parent's estate, including certain priority payables owed by the Parent.

SWORN (OR AFFIRMED) BEFORE ME at  
Vancouver, BC, on 14/02/2017.

**DENTONS CANADA LLP**  
*Barristers & Solicitors*  
20th Floor, 250 Howe Street  
Vancouver, B.C. V6C 3R8  
Telephone (604) 687-4460

William Stansky

A Commissioner for taking Affidavits within  
British Columbia

Wm Stansky

[Signature]

**DILLON CAMERON**

This is Exhibit " A " referred to in the  
affidavit of Dillon Cameron  
sworn before me at Vancouver BC  
this .... day of February, 2017

001

Lee  
A Commissioner for taking Affidavits  
for British Columbia

**GENERAL SECURITY AGREEMENT**

THIS SECURITY AGREEMENT is made as of the 12<sup>th</sup> of December, 2014.

BETWEEN:

**1006903 B.C. LTD.**, a British Columbia company, 2390 - 1055 West  
Hastings Street, Vancouver, British Columbia, V6E 2E9

(the "Debtor")

AND:

**DEANS KNIGHT CAPITAL MANAGEMENT LTD.**, a corporation  
governed by the Canada Business Corporations Act, 1500 - 999 West  
Hastings Street, Vancouver, British Columbia, V6C 2W2, in its capacity  
as Collateral Agent (as defined below)

RECITALS:

- A. Pursuant to a Debenture Purchase Agreement dated the date hereof (the "**Debenture Purchase Agreement**") between the Debtor and Deans Knight Capital Management Ltd. ("**Deans Knight**"), acting as portfolio manager on behalf of certain investors (the "**Holders**"), Deans Knight has committed to purchase secured convertible debentures of the Debtor (each a "**Debenture**" and collectively, the "**Debentures**") in the aggregate principal amount of ten million Canadian dollars (Cdn\$10,000,000) on the security of, *inter alia*, a general security agreement charging all of the Debtor's present and after acquired personal property, assets and undertaking.
- B. Pursuant to a collateral agency agreement dated the date hereof among the Debtor, Deans Knight and the Holders, Deans Knight has been appointed as collateral agent for and on behalf of the Holders (in such capacity, the "**Collateral Agent**").
- C. The Debtor wishes to enter into this general security agreement (this "**Security Agreement**") to provide for the terms upon which the Debtor is prepared to grant to the Collateral Agent (as collateral agent for the benefit of the Holders), as general and continuing collateral security, a security interest in all of the personal property, assets and undertaking of the Debtor to secure payment and performance of the Obligations (as defined below).

**1. Security Interest**

1.1 For good and valuable consideration and as general and continuing security for the payment and performance of all indebtedness, liability and obligations of the Debtor under or in connection with the Debentures of the Debtor issued to the Holders, including all indebtedness, liability and obligations of the Debtor to the Holders under or in connection with the Debentures, whether present or future, and any ultimate balance thereof (all of which indebtedness, liability, and obligations are herein collectively called the "**Obligations**"), the Debtor, subject to the exceptions set out in Section 2 hereof, hereby mortgages, charges, pledges and assigns to the Collateral Agent, and grants to the Collateral Agent a security interest in, all the Debtor's right, title and interest in and to all presently owned or held and after acquired or held personal property, assets and undertaking of the Debtor, of whatever nature or kind and



- 2 -

wheresoever situate and all proceeds derived directly or indirectly thereof and therefrom, and all substitutions therefor and accretions thereto including, without limiting the generality of the foregoing:

- (a) Equipment - all equipment, including, without limiting the generality of the foregoing, all machinery, tools, fixtures, furniture, furnishings, chattels, motor vehicles, vessels and other tangible personal property that is not Inventory, and all parts, components, attachments, accessories, accessions, replacements, substitutions, additions and improvements to any of the foregoing (all of which is herein collectively called the "**Equipment**");
- (b) Inventory - all inventory, including without limiting the generality of the foregoing, goods acquired or held for sale or lease or furnished or to be furnished under contracts of rental or service, all raw materials, work in process, finished goods, returned goods, repossessed goods, and all packaging materials, supplies and containers relating to or used or consumed in connection with any of the foregoing (all of which is herein collectively called the "**Inventory**");
- (c) Accounts - all debts, accounts, claims, monies and choses in action which now are, or which may at any time hereafter be, due or owing to or owned by the Debtor and all books, records, documents, papers and electronically recorded data recording, evidencing or relating to the said debts, accounts, claims, monies and choses in action or any part thereof (all of which is herein collectively called the "**Accounts**");
- (d) Other Personal Property - all documents of title, chattel paper, instruments, securities and money, and all other goods of the Debtor that are not Equipment, Inventory or Accounts;
- (e) Shares of Subsidiaries - all right, title and interest of the Debtor in and to the shares of SHOEme Technologies Limited and A12345 Holdings, Inc. (the "**Shares**") and any and all accretions, additions, accessions, substitutions and replacements thereto or therefor (the Shares and such accretions, additions, accessions, substitutions and replacements herein collectively called the "**Securities**"), together with all money, income, proceeds and benefits, of every nature and kind whatsoever, now or at any time hereafter due, owing, payable or accruing on, under or in respect of the Securities or otherwise attributable or accruing thereto, including, without limitation, all distributions of earnings or capital (including, without limitation, all dividends in cash and dividends in kind, liquidating dividends, stock dividends, new security or other properties or benefits to which the Debtor is or may hereafter become entitled to receive on account of the Securities and all payments by way of reduction of capital);
- (f) Intangibles - all contractual rights, licenses, goodwill, patents, trademarks, trade names, copyrights, domain names and other intellectual property of the Debtor, all other choses in action of the Debtor of every kind which now are, or which may at any time hereafter be, due or owing to or owned by the Debtor, and all other intangible property of the Debtor that is not Accounts, chattel paper, instruments, documents of title, securities or money; and
- (g) Proceeds - all proceeds derived directly or indirectly from any use or dealing with the collateral referred to in subsections (a) through (f) hereof including, without limiting the generality of the foregoing, proceeds of sale, lease or other dispositions of any such collateral, proceeds of a kind similar to the above described items, and money, cheques

- 3 -

or deposit accounts in deposit taking institutions (herein collectively referred to as "Proceeds").

and for the same consideration, the Debtor hereby mortgages, charges, pledges and assigns, as and by way of a floating charge, all of the Debtor's other properties, assets and undertaking for the time being and from time to time, real and personal, moveable and immoveable, both present and future, now owned or hereafter acquired of whatsoever nature and kind and wheresoever situate.

(All of the foregoing mentioned property is herein collectively referred to as the "Collateral").

**2. Exceptions**

2.1 The charges and Security Interests granted hereunder shall not extend to the last day of the term created by any lease or agreement therefor but the Debtor shall stand possessed of the reversion thereby remaining upon trust to assign and dispose thereof to any third party as the Collateral Agent shall direct in the course of any enforcement of the Security Interests hereby created or any realization on all or any portion of the Collateral.

2.2 There shall be excluded from the Security Interests hereby created any consumer goods of the Debtor.

**3. Continuing Secured**

3.1 This Security Agreement and the Security Interests hereby created are in addition to and not in substitution for any other Security Interest now or hereafter held by the Collateral Agent from the Debtor or from any other Person whomsoever.

**4. Unlimited Liability Shares**

4.1 Notwithstanding any other provision in this Security Agreement, to the extent that any shares (the "Unlimited Liability Shares") in an unlimited liability company formed under the laws of the Province of British Columbia (an "Unlimited Company") constitute Collateral, unless the Collateral Agent otherwise approves, the Collateral Agent shall not become or be deemed to become a member or shareholder, or obtain or have the right to obtain any other indicia of ownership of any Unlimited Company, and no provision in this Security Agreement (except this Section 4) or actions taken by any Collateral Agent pursuant to this Security Agreement which might provide or be deemed to provide otherwise, in whole or in part, shall, without the express written consent of such Collateral Agent, apply in respect of Unlimited Liability Shares. For the avoidance of doubt, and except as otherwise provided in the last sentence of this Section 4.1 and except with the approval of the Collateral Agent, no provision of this Security Agreement or actions taken by such Collateral Agent pursuant to this Security Agreement shall apply or be deemed to apply so as to cause the Collateral Agent to be, and the Collateral Agent shall not be or be deemed to be, or entitled to:

- (a) be registered as a shareholder or member, or apply to be registered as a shareholder or member, of any Unlimited Company;
- (b) request or assent to a notation being entered in the Collateral Agent's favour in the share register in respect of Unlimited Liability Shares;
- (c) hold itself out as a shareholder or member of any Unlimited Company; or

- 4 -

- (d) act or purport to act as a member of any Unlimited Company, or obtain, exercise or attempt to exercise any rights of a shareholder or member, including the right to attend a meeting of, or to vote any Unlimited Liability Shares or to be entitled to receive any distribution in respect of Unlimited Liability Shares.

4.2 The foregoing limitation shall not restrict the Collateral Agent from exercising the rights which the Collateral Agent is entitled to exercise hereunder in respect of any Unlimited Liability Shares constituting Collateral at any time that the Collateral Agent shall be entitled to realize on all or any portion of the Collateral.

## 5. Investment Property and Securities

5.1 If the Collateral at anytime includes investment property which is or is to be credited to a securities account established by the Debtor with a securities intermediary, the Debtor shall notify the Collateral Agent and, at the written request of the Collateral Agent, shall procure that the relevant securities intermediary shall enter into an agreement with the Collateral Agent which includes such terms as may be required by the Collateral Agent to ensure that the Collateral Agent has exclusive control over all investment property held in the relevant securities account following the occurrence of an Event of Default that is continuing including, but not limited to, an agreement of the securities intermediary that it will comply with entitlement orders that are originated by the Collateral Agent without the further consent of the Debtor. If the Collateral at any time includes securities for which a certificate (including, without limitation, any certificate representing a stock dividend or a distribution in connection with any reclassification, increase or reduction of capital) is or may be issued to the Debtor, at the written request of the Collateral Agent, the Debtor will deliver the certificates representing the same to the Collateral Agent together with stock powers of attorney in form sufficient for such securities to be transferred on the books of the issuer thereof. Upon the enforcement of the Security Interests granted hereunder, the Debtor authorizes the Collateral Agent to transfer the same or any part thereof into its own name or that of its nominee(s) so that the Collateral Agent or its nominee(s) may appear on record as the sole owner thereof.

5.2 So long as no Event of Default has occurred and is continuing, the Debtor will be entitled to vote or refrain from voting the Securities at any meeting, whether special or general, at which the holder of the Securities is entitled to vote and will be entitled to take part in or consent to or refrain from taking part in or consenting to any corporate or members' action which the holder of the Securities is entitled to take part in or consent to; provided that:

- (a) the Debtor has given the Collateral Agent not less than five (5) Business Days' prior notice of the manner in which the Debtor intends to exercise, or the reasons for refraining from exercising, any such right to vote or to take part in or consent to any such corporate action;
- (b) the exercise of such right to vote or to take part in or consent to any such corporate action would not result in a contravention of any covenant or agreement of the Debtor to the Collateral Agent, or under any other agreement evidencing or securing any of the Obligations; and
- (c) the exercise of such right to vote or to take part in or consent to any such corporate action would not, in the opinion of the Collateral Agent, have a Material Adverse Effect on the value of the Collateral or any part thereof.

5.3 Upon the occurrence and during the continuance of any Event of Default, all rights of the Debtor pursuant to Section 5.2 will cease and the Collateral Agent will be entitled (whether or not the



- 5 -

Securities are registered in the name of the Collateral Agent or its nominee) to vote or refrain from voting or direct the Debtor or any other person as the Collateral Agent may appoint to vote or refrain from voting the Securities at any meeting, whether special or general, at which the holder of the Securities is entitled to vote and will be entitled to take part in or consent to or refrain from taking part in or consenting to or direct the Debtor or any other person as the Collateral Agent may appoint to take part in or consent to or refrain from taking part in or consenting to any corporate action which the holder of the Securities is entitled to take part in or consent to and the Debtor hereby irrevocably constitutes and appoints the Collateral Agent and any other person appointed by the Collateral Agent as its true and lawful attorney in fact and agent for, in the name of and on behalf of the Debtor, to vote upon the Securities or to take part in or consent to any such corporate action, and when so acting or refraining from acting, neither the Collateral Agent nor any person appointed by the Collateral Agent will incur any liability or responsibility of any kind whatsoever to the Debtor.

5.4 Subject to Section 15.2, if any money, income, proceed or other benefit, of any nature or kind whatsoever, is received by the Debtor in respect of any of the Securities, the Debtor will receive such money, income, proceeds or other benefit in trust for the Collateral Agent, will segregate such money, income, proceeds or other benefit from the Debtor's other property or funds and will forthwith upon receipt thereof assign, transfer, set over and deliver the same to the Collateral Agent to be held by the Collateral Agent hereunder as general and continuing security to secure payment and performance of the Obligations.

6. Contractual Rights

6.1 In the event the validity and effectiveness of the charge over any of the Collateral requires the consent, approval or waiver of a third Person in order to be effective as against such third Person, the charge with respect to any such Collateral shall be effective as against the Debtor and all Persons other than such third Person and shall be effective as against such third Person when the applicable consent, approval or waiver is obtained, retroactively, to the fullest extent legally possible, to the later of the date hereof or the date such consent, approval or waiver is obtained or becomes effective, as applicable, and until such consent, approval or waiver is obtained, the Debtor shall (subject to the other terms hereof) stand possessed of such Collateral upon trust to assign and dispose thereof as the Holder shall for such purposes direct.

7. Composite Mortgage

7.1 This Security Agreement is a composite mortgage and security agreement covering the Collateral of the Debtor located in various jurisdictions and, as to portions of the Collateral located in such separate jurisdictions, this Security Agreement shall be a separate mortgage and security agreement enforceable against the Debtor without regard to the application of this Security Agreement to portions of the Collateral located in other jurisdictions. All provisions hereof shall be applicable separately to the portions of the Collateral located in each separate jurisdiction with the same effect as if a separate mortgage and security agreement with respect thereto had been executed and delivered by the Debtor to the Collateral Agent. Upon the reasonable request of the Collateral Agent, the Debtor shall prepare, execute and deliver, at the Debtor's expense, a separate mortgage and security agreement covering the portion of the Collateral located in any such jurisdiction or jurisdictions, such separate mortgage and security agreement to be substantially in the form hereof except for such modifications as shall be required by the fact that such mortgage and security agreement relates only to the property of the Debtor located in such jurisdiction or jurisdictions or as may be required by the Collateral Agent in connection therewith.

- 6 -

**8. British Columbia Floating Charges**

8.1 For greater certainty, it is hereby confirmed that if and to the extent the Debtor has any interest in any real property in the Province of British Columbia, the floating charge created hereby is a floating charge within the meaning of Section 203 of the *Land Title Act* (British Columbia) and does not become a fixed charge on specific land until the occurrence of an Event of Default or until the Collateral Agent has made demand for payment of the Obligations and becomes a fixed charge on the interest of the Debtor in lands immediately upon the occurrence of such Event of Default or such demand is made.

**9. Registration**

9.1 The Debtor will assist the Collateral Agent to ensure that this Security Agreement and all such supplementary and corrective instruments and all additional mortgage and security documents executed and delivered by the Debtor to the Collateral Agent, and all documents, caveats, security notices and financing statements in respect thereof, are promptly filed and re-filed, registered and re-registered and deposited and re-deposited, in such manner, in such offices and places, and at such times and as often as may be required by Applicable Laws or as may be necessary or desirable to perfect and preserve the charge over the Collateral and the rights conferred or intended to be conferred upon the Collateral Agent by the charge over the Collateral and will promptly provide the Collateral Agent with evidence (satisfactory to the Collateral Agent) of such filing, registration and deposit.

**10. Prohibitions**

10.1 Without the prior written consent of the Collateral Agent, the Debtor shall not and shall not have power to create or permit to exist any Security Interest against any of its property, assets, or undertakings which ranks or could in any event rank in priority to or pari passu with any Security Interest created by this Security Agreement; other than Permitted Encumbrances.

**11. Attachment**

11.1 The Debtor acknowledges that the Security Interests hereby created attach upon the execution of this Security Agreement (or in the case of any after acquired property, upon the date of acquisition thereof), that value has been given, and that the Debtor has, or in the case of after acquired property will have, rights in the Collateral.

**12. Representations and Warranties**

12.1 The Debtor represents and warrants that this Security Agreement is granted in accordance with resolutions of the directors (and of the shareholders as applicable) of the Debtor and all other matters and things have been done and performed so as to authorize and make the execution and delivery of this Security Agreement, and the performance of the Debtor's obligations hereunder, legal, valid and binding.

12.2 The Debtor represents and warrants that unless otherwise disclosed to the Collateral Agent, the Debtor lawfully owns and possesses all presently held Collateral, free from all Security Interests save only Permitted Encumbrances, and the Debtor has good right and lawful authority to grant a Security Interest in the Collateral as provided by this Security Agreement.

12.3 The Debtor represents and warrants that:

- (a) the Debtor is the beneficial owner of the Shares, and the Shares, the proceeds thereof and the right to proceeds therefrom are owned by the Debtor free and clear of any

- 7 -

adverse claim, assignment, pledge, mortgage, hypothecation, lien, charge or other Encumbrance or Security Interest (other than pursuant to this Security Agreement and other than Permitted Encumbrances);

- (b) the Debtor is not the registered, legal or beneficial owner of any shares in the capital stock of any of its Subsidiaries other than the Shares;
- (c) the Debtor will cause each of SHOEme Technologies Limited and A12345 Holdings, Inc. to record this Security Agreement in its corporate record book;
- (d) no Person has any right, agreement or option, present or future, contingent or absolute, or any right capable of becoming a right, agreement or option:
  - (i) to require SHOEme Technologies Limited or A12345 Holdings, Inc. to issue any further or other shares in its capital or to convert any securities of SHOEme Technologies Limited or A12345 Holdings, Inc. into shares in its capital (other than as set forth in Schedule 4 attached to the Debenture Purchase Agreement); or
  - (ii) to purchase or otherwise acquire any shares in the capital stock of SHOEme Technologies Limited or A12345 Holdings, Inc. (other than pursuant to this Security Agreement and as set forth in Schedule 4 attached to the Debenture Purchase Agreement); and
- (e) there is no shareholders' agreement or other agreement in existence or contemplated with respect to the shares of SHOEme Technologies Limited or A12345 Holdings, Inc. (other than as set forth in Schedule 4 attached to the Debenture Purchase Agreement).

### 13. Covenants of the Debtor

13.1 The Debtor covenants that at all times while this Security Agreement remains in effect, the Debtor will:

- (a) defend the title to the Collateral for the benefit of the Collateral Agent against the claims and demands of all Persons, subject only to Permitted Encumbrances;
- (b) fully and effectually maintain and keep maintained the Security Interest hereby created valid and effective;
- (c) maintain insurance on the Collateral with an insurer, of kinds, for amounts and payable to such Person or Persons, all as the Collateral Agent may reasonably require and is customary in the industry and provide such proof of insurance as the Collateral Agent may reasonably require;
- (d) maintain the Collateral in good order and repair;
- (e) forthwith pay:
  - (i) all taxes, assessments, rates, duties, levies, government fees, claims and dues lawfully levied, assessed or imposed upon it or the Collateral when due, unless

- 8 -

the Debtor shall in good faith contest its obligations so to pay and shall furnish such security as the Collateral Agent may require; and

- (ii) all Security Interests which rank or could in any event rank in priority to or pari passu to any Security Interest created by this Security Agreement, other than Permitted Encumbrances;
- (f) subject to Section 20.1, forthwith pay all reasonable costs, charges, expenses and legal fees and disbursements (on a solicitor and his own client basis) which may be incurred by the Collateral Agent in:
- (i) inspecting the Collateral;
  - (ii) negotiating, preparing, perfecting and registering this Security Agreement and other documents, whether or not relating to this Security Agreement;
  - (iii) investigating title to the Collateral;
  - (iv) taking, recovering, keeping possession of and insuring the Collateral (but only to the extent the Debtor fails to insure the Collateral as provided herein); and
  - (v) all other actions and proceedings taken in connection with the preservation of the Collateral and the enforcement of this Security Agreement and of any other Security Interest held by the Collateral Agent as security for the Obligations;
- (g) at the Collateral Agent's request at any time and from time to time execute and deliver such further and other documents and instruments and do all acts and things as the Collateral Agent, acting reasonably, may require in order to confirm and perfect, and maintain perfection of, the Security Interests and charges hereby created in favour of the Collateral Agent upon any of the Collateral;
- (h) notify the Collateral Agent promptly of:
- (i) any change in the information contained herein relating to the Debtor, its address, its business or the Collateral;
  - (ii) the details of any material sale or other disposition of any of the Collateral;
  - (iii) any material loss of or damage to the Collateral;
  - (iv) any material default by any account debtor in payment or other performance of his obligations to the Debtor with respect to any Accounts; and
  - (v) the return to or repossession by the Debtor of the Collateral where such return or repossession of the Collateral is material in relation to the business of the Debtor;
- (i) prevent the Collateral, other than Inventory sold, leased, or otherwise disposed of as permitted hereby, from being or becoming a fixture not covered by this Security Agreement;

- 9 -

- (j) permit the Collateral Agent and its representatives, at reasonable times during regular business hours after reasonable notice not exceeding two (2) Business Days, access to all its property, assets and undertakings and to all its books of account and records for the purpose of inspection and render all assistance necessary for such inspection; and
- (k) deliver to the Collateral Agent from time to time promptly upon written request:
  - (i) any documents of title, instruments, securities and chattel paper constituting, representing or relating to Collateral;
  - (ii) all books of account and all records, ledgers, reports, correspondence, schedules, documents, statements, lists and other writings relating to the Collateral for the purpose of inspecting, auditing or copying the same;
  - (iii) all financial statements prepared by or for the Debtor regarding the Debtor's business;
  - (iv) all policies and certificates of insurance relating to the Collateral; and
  - (v) such information concerning the Collateral, the Debtor and the Debtor's business and affairs as the Collateral Agent may require.

**14. Performance of Obligations**

14.1 If the Debtor fails to perform its obligations hereunder, the Collateral Agent may, but shall not be obliged to, perform any or all of such obligations without prejudice to any other rights and remedies of the Collateral Agent hereunder, and any payments made and any costs, charges, expenses and legal fees and disbursements (on a solicitor and his own client basis) incurred in connection therewith shall be payable by the Debtor to the Collateral Agent forthwith on written demand with interest until paid at the highest rate borne by any of the Obligations and such amounts shall be a charge upon and Security Interest in the Collateral in favour of the Collateral Agent prior to all claims subsequent to this Security Agreement.

**15. Restrictions on Sale or Disposal of Collateral**

15.1 Except as herein provided, without the prior written consent of the Collateral Agent, the Debtor will not:

- (a) sell, lease or otherwise dispose of the Collateral;
- (b) release, surrender or abandon possession of the Collateral other than worn out or obsolete Equipment; or
- (c) move or transfer the Collateral from its present location.

15.2 Provided that the Debtor is not in default under this Security Agreement, at any time without the consent of the Collateral Agent, the Debtor may make Permitted Dispositions of items in the Collateral.

- 10 -

**16. Default**

16.1 The Debtor shall be in default under this Security Agreement upon the occurrence of an Event of Default, unless waived in writing by the Collateral Agent.

**17. Enforcement**

17.1 The Collateral Agent may demand payment at any time of any or all of the Obligations that are payable on demand (whether or not the Debtor is in default under this Security Agreement) and upon an Event of Default, the Collateral Agent may declare any or all of the Obligations not payable on demand to become immediately due and payable and upon said demand or declaration being made the security hereby constituted will immediately become enforceable. To enforce and realize on the security constituted by this Security Agreement, the Collateral Agent may take any action permitted by law or in equity, as it may deem expedient, and in particular without limiting the generality of the foregoing, the Collateral Agent may do any of the following:

- (a) appoint by instrument a receiver, receiver and manager or receiver-manager (the person so appointed is herein called the "Receiver") of the Collateral, with or without bond as the Collateral Agent may determine, and from time to time in its absolute discretion remove such Receiver and appoint another in its stead;
- (b) enter upon any premises of the Debtor and take possession of the Collateral with power to exclude the Debtor, its agents and its servants therefrom, without becoming liable as a mortgagee in possession;
- (c) preserve, protect and maintain the Collateral and make such replacements thereof and repairs and additions thereto as the Collateral Agent may deem advisable;
- (d) sell, lease or otherwise dispose of all or any part of the Collateral, whether by public or private sale or lease or otherwise, in such manner, at such price as can be reasonably obtained therefore and on such terms as to credit and with such conditions of sale and stipulations as to title or conveyance or evidence of title or otherwise as the Collateral Agent may deem reasonable, provided that if any sale is on credit the Debtor will not be entitled to be credited with the proceeds of any such sale, lease or other disposition until the monies therefore are actually received;
- (e) transfer at any time to itself or its nominee the Securities or any part thereof and to have the Securities or any part thereof registered in its name or in the name of its nominee;
- (f) exercise any option or right which the holder of any of the Collateral may at any time have; and
- (g) exercise all of the rights and remedies of a secured party under the Act.

17.2 A Receiver appointed pursuant to this Security Agreement shall be the agent of the Debtor and not of the Collateral Agent and, to the extent permitted by Applicable Laws or to such lesser extent permitted by its appointment, shall have all the powers of the Collateral Agent hereunder, and in addition shall have power to carry on the business of the Debtor and for such purpose from time to time to borrow money either secured or unsecured, and if secured by a Security Interest on any of the Collateral; such Security Interest may rank before or pari passu with or behind any Security Interest created by this



- 11 -

Security Agreement, and if it does not so specify such Security Interest shall rank before the Security Interests created by this Security Agreement.

17.3 Subject to the claims, if any, of the creditors of the Debtor ranking in priority to this Security Agreement, all amounts realized from the disposition of Collateral pursuant to this Security Agreement will be applied as the Collateral Agent, in its absolute discretion, may direct as follows:

- (a) in payment of all costs, charges and expenses (including legal fees and disbursements on a solicitor and his own client basis) incurred by the Collateral Agent in connection with or incidental to:
  - (i) the exercise by the Collateral Agent of all or any of the powers granted to it pursuant to this Security Agreement; and
  - (ii) the appointment of the Receiver and the exercise by the Receiver of all or any of the powers granted to it pursuant to this Security Agreement, including the Receiver's reasonable remuneration and all outgoings properly payable by the Receiver;
- (b) in or toward payment to the Collateral Agent of all principal and other monies (except interest) due in respect of the Obligations; and
- (c) in or toward payment to the Collateral Agent of all interest remaining unpaid in respect of the Obligations.

Subject to Applicable Laws and the claims, if any, of other creditors of the Debtor, any surplus will be paid to the Debtor.

17.4 The Debtor hereby agrees to cooperate fully with the Collateral Agent in order to permit the Collateral Agent to sell, transfer or otherwise realize on the Collateral in accordance with the terms hereof. Without limiting the generality of the foregoing, the Debtor agrees to fully comply with Applicable Securities Laws and to take such action as may be necessary to permit the Collateral Agent to sell, transfer or otherwise realize on the Securities in compliance with such laws.

## **18. Deficiency**

18.1 If the amounts realized from the disposition of the Collateral are not sufficient to pay the Obligations in full, the Debtor will immediately pay to the Collateral Agent the amount of such deficiency.

## **19. Rights Cumulative**

19.1 All rights and remedies of the Collateral Agent set out in this Security Agreement are cumulative and no right or remedy contained herein is intended to be exclusive but each will be in addition to every other right or remedy contained herein or in any existing or future security agreement or now or hereafter existing at law, in equity or by statute, or pursuant to any other agreement between the Debtor and the Collateral Agent that may be in effect from time to time.

- 12 -

**20. Liability of Collateral Agent**

20.1 The Collateral Agent shall not be responsible or liable for any debts contracted by it, for damages to Persons or property or for salaries or non-fulfilment of contracts during any period when the Collateral Agent shall manage the Collateral upon entry, as herein provided, nor shall the Collateral Agent be liable to account as mortgagee in possession or for anything except actual receipts or be liable for any loss on realization or for any default or omission for which a mortgagee in possession may be liable. The Collateral Agent shall not be bound to do, observe or perform or to see to the observance or performance by the Debtor of any obligations or covenants imposed upon the Debtor nor shall the Collateral Agent, in the case of securities, instruments or chattel paper, be obliged to preserve rights against other persons, nor shall the Collateral Agent be obliged to keep any of the Collateral identifiable. The Debtor hereby waives any applicable provision of law permitted to be waived by it which imposes higher or greater obligations upon the Collateral Agent than aforesaid. The responsibility of the Collateral Agent in regard to the Securities will be limited to exercising the same degree of care which it gives to its own valuable property.

**21. Appointment of Attorney**

21.1 The Debtor hereby irrevocably appoints the Collateral Agent or the Receiver, as the case may be, with full power of substitution, to be the attorney of the Debtor for and in the name of the Debtor to sign, endorse or execute under seal or otherwise any deeds, documents, transfers, cheques, instruments, demands, assignments, assurances or consents that the Debtor is obliged to sign, endorse or execute and generally to use the name of the Debtor and to do all things as may be necessary or incidental to the exercise of all or any of the powers conferred on the Collateral Agent or the Receiver, as the case may be, pursuant to this Security Agreement, provided that the Collateral Agent shall not be entitled to perform any act under such appointment before the occurrence of an Event of Default. The foregoing appointment and power of attorney is coupled with an interest and will not be revoked by the bankruptcy or insolvency of the Debtor and the Debtor hereby ratifies and confirms and agrees to ratify and confirm all that the Collateral Agent or any person appointed by the Collateral Agent, as attorney in fact and agent for, in the name of and on behalf of the Debtor, may lawfully do or cause to be done by virtue of this appointment.

**22. Accounts**

22.1 Notwithstanding any other provision of this Security Agreement, the Collateral Agent may collect, realize, sell or otherwise deal with the Accounts or any part thereof in such manner, upon such terms and conditions and at such time or times, after an Event of Default, as may seem to it advisable, and without notice to the Debtor, except in the case of disposition after an Event of Default and then subject to the provisions of *Part 5 – Rights and Remedies on Default* of the Act. All monies or other forms of payment received by the Debtor in payment of any Account will be received and held by the Debtor in trust for the Collateral Agent.

**23. Appropriation of Payments**

23.1 Any and all payments made in respect of the Obligations from time to time and monies realized from any Security Interests held therefor (including monies collected in accordance with or realized on any enforcement of this Security Agreement) may be applied to such part or parts of the Obligations as the Collateral Agent may see fit, and the Collateral Agent may at all times and from time to time change any appropriation as the Collateral Agent may see fit.

- 13 -

**24. Liability to Advance**

24.1 None of the preparation, execution, perfection and registration of this Security Agreement or the advance of any monies shall bind the Collateral Agent to make any advance or loan or further advance or loan, or renew any Security Agreement or extend any time for payment of any indebtedness or liability of the Debtor to the Collateral Agent.

**25. Waiver**

25.1 The Collateral Agent may from time to time and at any time waive in whole or in part any right, benefit or default under any clause of this Security Agreement but any such waiver of any right, benefit or default on any occasion shall be deemed not to be a waiver of any such right, benefit or default thereafter, or of any other right, benefit or default, as the case may be. No delay or omission by the Collateral Agent in exercising any right or remedy herein or with respect to the Obligations shall operate as a waiver thereof.

**26. Notice**

26.1 Any notice, consent, waiver, direction or other communication required or permitted to be given under this Security Agreement by any party hereto to the other party shall be in writing and shall be delivered by (a) personal delivery, (b) certified or registered mail (first class postage pre-paid), (c) guaranteed overnight delivery by recognized national courier, or (d) facsimile transmission or email transmission, addressed to the party to which the notice is to be given at its address, facsimile number or email address for service herein (or to such other address which such party may subsequently designate by ten (10) calendar days' advance written notice to the other party). Any notice, consent, waiver, direction or other communication made or given by personal delivery, courier or facsimile transmission to the party to whom it was addressed as aforesaid shall be deemed to have been given and received on the date on which it was so delivered at such address (if a Business Day, and if not, or received after 4:00 p.m. local time, the next succeeding Business Day) or if sent by prepaid registered mail be deemed to have been given and received on the fourth (4th) Business Day following the date of its mailing or if sent by email transmission be deemed to have been given and received at the time of receipt unless actually received after 4:00 p.m. local time or on a date that does not fall on a Business Day at the point of delivery in which case it shall be deemed to have been given and received on the next Business Day.

The address, facsimile or email address for service of each of the parties hereto shall be as follows or at such other address as a party may designate by ten (10) calendar days' advance written notice to the other party:

If to the Debtor:

1006903 B.C. Ltd.  
Suite 2390 - 1055 West Hastings Street  
Vancouver, British Columbia, V6E 2E9  
Canada

Attention: Nicholas Bozikis  
email: nick@hardycapital.com

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

- 14 -

Michael, Evrensel & Pawar LLP  
Suite 650, 669 Howe Street  
Vancouver, British Columbia, V6C 0B4  
Canada

Attention: Ryan Patryluk  
Telecopier No.: 604-669-1953  
email: rpatryluk@meplaw.ca

If to the Collateral Agent:

Deans Knight Capital Management Ltd.  
1500-999 West Hastings Street  
Vancouver, British Columbia, V6C 2W2  
Canada

Attention: Dillon Cameron  
Telecopier No.: 604-669-0238  
email: dcameron@deansknight.com

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

Farris, Vaughan, Wills & Murphy LLP  
25<sup>th</sup> Floor – 700 W. Georgia St.  
Vancouver, British Columbia, V7Y 1B3  
Canada

Attention: Mitchell Gropper, Q.C.  
Telecopier No.: 604-661-9349  
email: mgropper@farris.com

**27. Extensions**

27.1 The Collateral Agent may grant extensions of time and other indulgences, take and give up security, accept compositions, compound, compromise, settle, grant releases and discharges, refrain from perfecting or maintaining perfection of Security Interests, and otherwise deal with the Debtor, account debtors of the Debtor, sureties and others and with respect to exercising its rights and remedies hereunder as the Collateral Agent may see fit without prejudice to the liability of the Debtor or the Collateral Agent's right to hold and realize on the security constituted by this Security Agreement.

**28. No Merger**

28.1 This Security Agreement shall not operate so as to create any merger or discharge of any of the Obligations, or any assignment, transfer, guarantee, lien, contract, promissory Security Agreement, bill of exchange or Security Interest of any form held or which may hereafter be held by the Collateral Agent from the Debtor or from any other Person whomsoever. The taking of a judgment with respect to any of the Obligations will not operate as a merger of any of the covenants contained in this Security Agreement.

- 15 -

**29. Assignment**

29.1 The Collateral Agent may, without further notice to the Debtor, at any time assign, transfer or grant a Security Interest in this Security Agreement and the Security Interests granted hereby to any Person who is agent for all of the Holders of the Debentures. The Debtor expressly agrees that the assignee, transferee or secured party, as the case may be, shall have all of the Collateral Agent's rights and remedies under this Security Agreement and the Debtor will not assert any defense, counterclaim, right of set-off or otherwise any claim which it now has or hereafter acquires against the Collateral Agent in any action commenced by such assignee, transferee or secured party, as the case may be, and will pay the Obligations to the assignee, transferee or secured party, as the case may be, as the Obligations become due.

**30. Satisfaction and Discharge**

30.1 Any partial payment or satisfaction of the Obligations, or any ceasing by the Debtor to be indebted to the Collateral Agent, shall be deemed not to be a redemption or discharge of this Security Agreement. The Debtor shall be entitled to a release and discharge of this Security Agreement only upon full payment and satisfaction of all Obligations and upon written request by the Debtor and payment to the Collateral Agent of all costs, charges, expenses and legal fees and disbursements (on a solicitor and his client basis) incurred by the Collateral Agent in connection with the Obligations and such release and discharge.

**31. Term**

31.1 This Security Agreement shall be a continuing agreement in every respect for the payment of the Obligations and it shall remain in full force and effect until all of the Obligations shall be paid and satisfied in full.

**32. Set-Off**

32.1 Without limiting any other right of the Collateral Agent, whenever the Obligations are immediately due and payable or the Collateral Agent has the right to declare the Obligations to be immediately due and payable (whether or not it has so declared), the Collateral Agent may, in its sole discretion, set off against the Obligations any and all monies then owed to the Debtor by the Collateral Agent in any capacity, whether or not due including, without in any way limiting this right of set-off, amounts due by the Collateral Agent to the Debtor, and the Collateral Agent shall be deemed to have exercised such right to set off immediately at the time of making its decision to do so even though any charge therefor is made or entered on the Collateral Agent's records subsequent thereto.

**33. Amendment**

33.1 Unless otherwise provided, any amendment, addition, deletion or other modification to this Security Agreement may be made upon the written consent of the Debtor and the Collateral Agent. Any provision of this Security Agreement may only be waived by the Party in whose favour such provision is intended to benefit, such waiver to be evidenced by a notice in writing by the waiving Party to the other Party.

- 16 -

**34. Enurement**

34.1 This Security Agreement and all its provisions shall enure to the benefit of, and be binding upon, each of the Collateral Agent and the Debtor and their respective successors, permitted assigns, permitted transferees, heirs, executors, administrators and personal representatives.

**35. Validity**

35.1 If any provision of this Security Agreement shall be judicially determined to be invalid, illegal, unenforceable, or void by any court of competent jurisdiction, the validity, legality and enforceability of the remaining provisions thereof shall not in any way be affected or impaired thereby. To the extent permitted by Applicable Laws, each Party hereby waives any provision of law that renders any provision hereof unenforceable in any respect.

**36. Currency**

36.1 Unless otherwise provided, references to "Dollars" or "\$" in this Security Agreement refer to lawful currency of Canada and references to "US Dollars" and "US\$" in this Security Agreement refer to lawful currency of the United States of America.

**37. Further Assurances**

37.1 The Parties shall at all times promptly do, make, execute, acknowledge, deliver, or cause to be done, made, executed, acknowledged or delivered, all such further acts, deeds, agreements and other instruments as may reasonably be required or desirable to give full force and effect to the terms of this Security Agreement and shall take such steps as may be reasonably within its power to implement the full extent of this Security Agreement.

**38. Governing Law**

38.1 This Security Agreement and all actions arising out of or in connection with this Security Agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia and the federal laws of Canada applicable therein, without regard to the conflict of laws provisions thereof.

**39. Exclusive Jurisdiction**

39.1 Each Party irrevocably attorns to the courts of the Province of British Columbia, which jurisdiction shall be the sole and exclusive jurisdiction for all actions arising out of or in connection with this Security Agreement.

**40. Headings and Numbering of Articles**

40.1 The headings of the articles, sections, subsections and clauses of this Security Agreement have been inserted for convenience and reference only and do not define, limit, alter or enlarge the meaning of any provision of this Security Agreement.

**41. Interpretation**

41.1 Definitions



- 17 -

- (a) **"Accounts"** has the meaning set out in Section 1.1(c) of this Security Agreement;
- (b) **"the Act"** means the *Personal Property Security Act* (British Columbia) and all regulations thereunder as amended from time to time;
- (c) **"Applicable Laws"** means, with respect to any Person, property, transaction or event, any present or future: (i) domestic or foreign statute, law (including common and civil law), treaty, code, ordinance, convention, rule, regulation, restriction or by-law (zoning or otherwise); (ii) judgment, order, writ, injunction, decision, direction, determination, ruling, decree or award; (iii) regulatory policy, practice, ruling, interpretation, guideline or directive; or (iv) any order, permit, approval, grant, license, consent, right, franchise, privilege, certificate exemption, waiver, registration or other authorization, binding on or affecting the Person, property, transaction or event referred to in the context in which the term is used in each case whether or not having the force of law;
- (d) **"Applicable Securities Laws"** means all Applicable Laws of any Governmental Authority relating to the distribution, issue, transfer, trading or purchase and sale in or of securities, including the rules and regulations of any stock exchange on which the Securities may be listed for trading an application for listing of the Securities has been made (which has not been withdrawn) for the listing of any of the Securities;
- (e) **"Bank Debt"** means Financial Indebtedness of Gerler and Son, Inc. at any time (i) in the aggregate principal amount of up to five million US Dollars (US\$5,000,000) under the Amended and Restated Credit Agreement dated as of April 1, 2014 between U.S. Bank National Association and Gerler and Son, Inc.; or (ii) in the aggregate principal amount of up to seven million and five hundred thousand US Dollars (US\$7,500,000) under a credit agreement to be entered into by Wells Fargo Bank, National Association and Gerler and Son, Inc.;
- (f) **"BDC Loan"** means Financial Indebtedness of SHOEMe Technologies Limited in the aggregate principal amount of one hundred twenty-five thousand Dollars (\$125,000) to the Business Development Bank of Canada under a letter of offer dated October 5, 2012;
- (g) **"Brown Shoe Intercreditor Agreement"** has the meaning set forth in the Debenture Purchase Agreement;
- (h) **"Business Day"** means a day (other than a Saturday, Sunday or statutory holiday) on which banks are generally open for business in the City of Vancouver, British Columbia;
- (i) **"Canadian GAAP"** means generally accepted accounting principles as may be described in the Canadian Institute of Chartered Accountants Handbook, including the Canadian Accounting Standards for Private Enterprises to the extent applicable, and other principal sources recognized from time to time by the Canadian Institute of Chartered Accountants;
- (j) **"Collateral"** has the meaning set out in Section 1.1 of this Security Agreement and any reference to Collateral shall, unless the context otherwise requires, be deemed a reference to Collateral as a whole or any part thereof;
- (k) **"Collateral Agent"** has the meaning set out in the recitals of this Security Agreement;

- 18 -

- (l) **"Control"** means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise and "Controlling" and "Controlled" have meanings correlative thereto;
- (m) **"Debenture Purchase Agreement"** has the meaning set out in the recitals of this Security Agreement;
- (n) **"Debentures"** has the meaning set out in the recitals of this Security Agreement;
- (o) **"Deans Knight"** has the meaning set out in the recitals of this Security Agreement;
- (p) **"Debtor"** and 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 depending upon whether the Debtor is one or more individuals, corporations or partnerships and, if more than one, shall apply and be binding upon each of them jointly and severally;
- (q) **"Demand Note"** has the meaning set forth in the Debenture Purchase Agreement;
- (r) **"Encumbrance"** includes any assignment, mortgage, charge, pledge, lien, hypothec, encumbrance, security interest or insurance securing or in effect securing any obligation, conditional sale or title retention agreement, contractual deposit, trust deposit, escrow arrangement or other preferential arrangement whatsoever, howsoever created or arising, whether absolute or contingent, fixed or floating, legal or equitable, perfected or not, and includes the rights of a lessor pursuant to an operating lease, capitalized lease or sale leaseback arrangement, any right of set-off and any guarantees or indemnities;
- (s) **"Equipment"** has the meaning set out in Section 1.1(a) of this Security Agreement;
- (t) **"Event of Default"** has the meaning provided for in each Debenture;
- (u) **"Financial Indebtedness"** of any Person at any date means, without duplication, all Indebtedness of such Person: (i) for borrowed money (whether or not the recourse of the lender is to the whole of the assets of such Person or only to a portion thereof); (ii) evidenced by bonds, debentures, Debentures or other similar instruments; (iii) in respect of letters of credit or other similar instruments (or reimbursement obligations with respect thereto); (iv) to pay the deferred and unpaid purchase price of property or services; (v) in respect of leases of such Person that are required to be shown as a liability on the financial statements of such Person prepared in accordance with GAAP; (vi) secured by an Encumbrance on any property of such Person, whether or not such Indebtedness is assumed by such Person or the recourse of the holder of such Indebtedness is limited to such property; (vii) under conditional sale or other title retention agreements relating to assets purchased by such Person; (viii) in respect of redemption obligations with respect to any shares of any other Person which are (I) redeemable, retractable, payable or required to be purchased or otherwise retired or extinguished, or convertible into debt of such Person (A) at a fixed or determinable date, (B) at the option of any holder thereof, or (C) upon the occurrence of a condition not solely within the control and discretion of such Person; or (II) convertible into any other securities that are convertible described in (I) above; (ix) to the extent not otherwise included in the definition, Hedging Obligations of such Person; and (x) all Guarantees of

- 19 -

Indebtedness of the type referred to in any of the foregoing sub-clauses (i) to (ix) of another Person. Notwithstanding the foregoing, the following shall not be considered Financial Indebtedness: (i) earn-outs or similar profit sharing arrangements provided for in acquisition agreements which are determined on the basis of future operating earnings or other similar performance criteria (which are not determinable at the time of acquisition) of the acquired assets or entities; and (ii) accrued expenses, trade payables, customer deposits or deferred income taxes arising in the ordinary course of business of such Person. Any Indebtedness which is incurred at a discount to the principal amount at maturity thereof shall be deemed to have been incurred at the full principal amount at maturity thereof. For all purposes hereof, the Financial Indebtedness of any Person shall include the Financial Indebtedness of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or a joint venturer, unless such Indebtedness is expressly non-recourse to such Person;

- (v) **"GAAP"** means Canadian GAAP and/or US GAAP, as the context requires;
- (w) **"Governmental Authority"** means any: (i) multinational, federal, provincial, territorial, state, regional, municipal, local or other government or any governmental or public department; (ii) court, tribunal, arbitral body, statutory body, commission, board, bureau or agency; (iii) self-regulatory organization or authority including any stock exchange on which any securities of the Issuer are listed; (iv) subdivision, agent, commission, board or authority of any of the foregoing; or (v) quasi-governmental or private body exercising any regulatory, expropriation or taxing authority under or for the account of any of the foregoing and includes a Securities Regulatory Authority;
- (x) **"Guarantee"** means, as to any Person, any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness payable or performable by another Person (the **"primary obligor"**) in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness of the payment or performance of such Indebtedness, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Indebtedness, or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part). The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. The term "Guarantee" as a verb has a corresponding meaning;
- (y) **"Hedging Obligations"** of any Person means the obligations of such Person pursuant to (i) any interest rate swap agreement, interest rate collar agreement or other similar agreement or arrangement designed to protect such Person against fluctuations in interest rates; (ii) agreements or arrangements designed to protect such Person against fluctuations in foreign currency exchange rates in the conduct of its operations; or (iii)

- 20 -

any forward contract, commodity swap agreement, commodity option agreement or other similar agreement or arrangement designed to protect such Person against fluctuations in commodity prices, in each case entered into in the ordinary course of business for bona fide hedging purposes and not for the purpose of speculation;

- (z) **"Holder"** has the meaning set out in the recitals of this Security Agreement;
- (aa) **"Indebtedness"** means all present and future obligations, indebtedness, liabilities, covenants, agreements and undertakings of a Person howsoever arising, whether direct or indirect, absolute or contingent, matured or not, extended or renewed, wheresoever and howsoever incurred, including all future advances and re-advances, and whether the same is from time to time reduced and thereafter increased or entirely extinguished and thereafter incurred again and whether such Person be bound alone or with others and whether as principal or surety, including all interest, fees, expenses, indemnities and costs;
- (bb) **"Intercompany Notes"** means Financial Indebtedness of A12345 Holdings, Inc. (i) in the aggregate principal amount of ten million US Dollars (US\$10,000,000) under a secured promissory note dated July 7, 2014 issued by A12345 Holdings, Inc. to the Debtor, as subsequently assigned to and assumed by SHOEme Technologies Limited, as payee, pursuant to an Assignment and Assumption Agreement dated November 26, 2014 among the Debtor, SHOEme Technologies Limited and A12345 Holdings, Inc; (ii) in the aggregate principal amount of two million US Dollars (US\$2,000,000) under a promissory note dated the date hereof issued by A12345 Holdings, Inc. to the Debtor; and (iii) under the Demand Note, each as subordinated pursuant to the Brown Shoe Intercreditor Agreement;
- (cc) **"Inventory"** has the meaning set out in Section 1.1(b) of this Security Agreement;
- (dd) **"Material Adverse Effect"** has the meaning set forth in the Debenture Purchase Agreement;
- (ee) **"Obligations"** has the meaning set out in Section 1.1 of this Security Agreement;
- (ff) **"ordinary course of business"** or **"ordinary course"** when used in relation to the taking of any action by any Person means that the action is consistent in its nature, scope and magnitude with the past practices of such Person and is taken in the ordinary course of the day to day operations of the business of such Person;
- (gg) **"Parties"** means the parties hereto and **"Party"** means any one of them;
- (hh) **"Permitted Dispositions"** has the meaning set forth in the Debenture Purchase Agreement;
- (ii) **"Permitted Encumbrances"** means as of any particular time in relation to the Collateral any of the following Security Interests or rights:
  - (i) statutory Encumbrances of landlords and Encumbrances of carriers, warehousemen, mechanics, suppliers, material men, repairmen and other Encumbrances imposed by law incurred in the ordinary course of business and Encumbrances for taxes, assessments or governmental charges or claims, in

- 21 -

either case, for sums not yet overdue or being contested in good faith by appropriate proceedings, if such reserve or other appropriate provision, if any, as shall be required by GAAP shall have been made in respect thereof;

- (ii) Encumbrances incurred or deposits made in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security, or to secure the performance of tenders, statutory obligations, bids, trade contracts, leases, , government contracts, surety and appeal bonds, performance and return-of-money bonds and other similar obligations (exclusive of obligations for the payment of borrowed money);
- (iii) Encumbrances upon specific items of inventory or other goods and proceeds of any Person securing such Person's obligations in respect of bankers' acceptances issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or other goods;
- (iv) Encumbrances encumbering deposits made to secure obligations arising from statutory, regulatory, contractual or warranty requirements of the Debtor, including rights of offset and setoff;
- (v) bankers' liens, rights of setoff and other similar Encumbrances existing solely with respect to cash on deposit in one or more accounts maintained by the Debtor, in each case granted in the ordinary course of business in favour of the bank or banks with which such accounts are maintained, securing amounts owing to such bank with respect to cash management and operating account arrangements, including those involving pooled accounts and netting arrangements; provided, however, that in no case shall any such Encumbrances secure (either directly or indirectly) the repayment of any Indebtedness;
- (vi) leases or subleases (or any Encumbrances related thereto) granted to others that do not materially interfere with the ordinary course of business of the Debtor;
- (vii) any action, claim, lis pendens, certificate of pending litigation, attachment or judgment Encumbrances which are being contested in good faith by appropriate proceedings;
- (viii) easements, rights-of-way, restrictions and other similar charges or encumbrances not materially interfering with the ordinary course of business of the Debtor;
- (ix) zoning restrictions, building bylaws, ordinances, regulations, licenses, and other restrictions on the use of real property or minor irregularities in title thereto, which do not materially impair the use of such real property in the ordinary course of business of the Debtor and its Subsidiaries or the value of such real property for the purpose of such business;
- (x) any right of expropriation, access and use and all other similar rights conferred upon or vested in any Governmental Authority or agency imposed by law not materially interfering with the ordinary course of business of the Debtor;
- (xi) any right reserved to or vested in any Governmental Authority or agency by law or by the terms of any lease, grant or permit to terminate any such lease, grant or

- 22 -

permit not materially interfering with the ordinary course of business of the Debtor;

- (xii) any right of first refusal, right of first offer, option, contract or other agreement to sell an asset existing on the date hereof and set forth in Schedule 4 attached to the Debenture Purchase Agreement; and
- (xiii) Encumbrances securing Hedging Obligations entered into for bona fide hedging purposes of the Debtor not for the purpose of speculation;
- (xiv) Security Interests, upon or in any property acquired by the Debtor after the date hereof in the ordinary course of business, created at the time of such purchase or within sixty (60) calendar days thereafter to secure the purchase price of such property or to secure Financial Indebtedness incurred solely for the purpose of financing the acquisition of such property and Security Interests existing on such property at the time of its acquisition (other than any such Security Interest created in contemplation of such acquisition), provided that no such Security Interest shall extend to any property of the Debtor other than the property so acquired;
- (xv) Encumbrances existing at the date of the Debenture Purchase Agreement and securing each of the Bank Debt with U.S. Bank National Association, the BDC Loan, the Vendor Take Back Loan, the Intercompany Notes and the Subordinated Debt; and
- (xvi) Encumbrances securing the Bank Debt with Wells Fargo Bank, National Association;
- (jj) **"Person"** means any individual, firm, partnership, company, corporation or other body corporate, government, governmental body, agency, instrumentality, unincorporated body or association and the heirs, executors, administrators or other legal representatives of an individual;
- (kk) **"Proceeds"** has the meaning set out in Section 1.1(b) of this Security Agreement;
- (ll) **"Receiver"** has the meaning set forth in Section 17.1(a) of this Security Agreement;
- (mm) **"Securities"** has the meaning set out in Section 1.1(e) of this Security Agreement;
- (nn) **"Securities Regulatory Authorities"** means the securities commissions or similar regulatory authorities in each of the provinces and territories of Canada and any other applicable jurisdiction;
- (oo) **"Security Interest"** means any assignment, mortgage, charge, pledge, lien, hypothec, encumbrance, security interest or insurance securing or in effect securing any obligation, conditional sale or title retention agreement, contractual deposit, trust deposit, escrow arrangement or other preferential arrangement whatsoever, howsoever created or arising, whether absolute or contingent, fixed or floating, legal or equitable, perfected or not, and includes the rights of a lessor pursuant to an operating lease, capitalized lease or sale-leaseback arrangement, any right of set-off and any guarantees or indemnities;



- 23 -

- (pp) **"Shares"** has the meaning set out in Section 1.1(e) of this Security Agreement;
- (qq) **"Subordinated Debt"** has the meaning set forth in the Debenture Purchase Agreement;
- (rr) **"Subsidiary"** or **"subsidiary"** means: (i) any corporation or company of which at least a majority of the outstanding securities having by the terms thereof ordinary voting power to elect a majority of the board of such corporation or company is at the time directly, indirectly or beneficially owned or under the Control of the Debtor; (ii) any partnership of which, at the time, the Debtor directly, indirectly or beneficially owns or Controls at least a majority of the voting interests (however designated) thereof, or otherwise Controls such partnership; and (iii) any other Person of which at least a majority of the voting interests (however designated) are at the time directly, indirectly or beneficially owned or Controlled by the Debtor, and for greater certainty, includes Shoes.com, Inc.;
- (ss) **"Transaction Document"** has the meaning set forth in the Debenture Purchase Agreement;
- (tt) **"Unlimited Company"** has the meaning set forth in Section 4.1 of this Security Agreement;
- (uu) **"Unlimited Liability Shares"** has the meaning set forth in Section 4.1 of this Security Agreement;
- (vv) **"US GAAP"** means United States generally accepted accounting principles as established under the standards of the Financial Accounting Standards Board; and
- (ww) **"Vendor Take Back Loan"** means Financial Indebtedness of the Debtor in the aggregate principal amount of three million US Dollars (US\$3,000,000) to Daniel Gerler under a secured convertible subordinated promissory note dated July 8, 2014.

#### 41.2 Other Terms

- (a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation." The word "will" shall be construed to have the same meaning and effect as the word "shall." Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set out herein or in any other Transaction Document) in accordance with the terms hereof and thereof, (ii) any reference herein to any Person shall be construed to include such Person's successors and permitted assigns, (iii) the words "herein," "hereof" and "hereunder," and words of similar import, when used in any Transaction Document, shall be construed to refer to such Transaction Document in its entirety and not to any particular provision thereof, (iv) all references in a Transaction Document to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Security Agreement or the other Transaction Document in which such references appear, (v) any reference to any Applicable Laws shall include all statutory and regulatory provisions consolidating,

- 24 -

amending, replacing or interpreting such Applicable Laws and any reference to any Applicable Laws shall, unless otherwise specified, refer to such Applicable Laws as amended, modified or supplemented from time to time, (vi) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights and (vii) 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 requisite time on the next succeeding day that is a Business Day.

42. **COPY OF AGREEMENT AND FINANCING STATEMENT**

42.1 The Debtor hereby:

- (a) acknowledges receiving a copy of this Security Agreement, and
- (b) waives all rights to receive from the Collateral Agent a copy of any financing statement, financing change statement or verification statement filed at any time in respect of this Security Agreement; provided that it receives a draft copy of any financing statement or financing change statement.

IN WITNESS WHEREOF, the Debtor has executed and delivered this Security Agreement as of the date and year first written above.

1006903 B.C. LTD.

Per: 

Name: Nicholas Bozimis

Title: CFO

## SUBORDINATION, POSTPONEMENT AND STANDSTILL AGREEMENT

This Subordination, Postponement and Standstill Agreement made as of March 31, 2015, is made by and between **WELLS FARGO BANK, NATIONAL ASSOCIATION** (the "**Senior Lender**"), **ONLINESHOES.COM INC.** (formerly, Gerler and Son, Inc.), a Washington corporation, **SHOES.COM, INC.**, a Delaware corporation (jointly and severally, "**Borrower**"), **SHOES.COM HOLDINGS (USA) INC.** (formerly, A12345 Holdings Inc.), a Washington corporation ("**Holdings**"), **1006903 B.C. LTD.**, a British Columbia corporation ("**Parent**," together with Holdings, jointly and severally "**Guarantor**"), and **DEANS KNIGHT CAPITAL MANAGEMENT LTD.**, a corporation under the laws of Canada, in its capacity as collateral agent on behalf of the holders from time to time of the Subordinated Debentures defined below ("**Subordinated Debenture Holders**"), for and on behalf of such holders (in such capacity, the "**Collateral Agent**").

### RECITALS:

A. The Senior Lender has made or has agreed to make loans or advances and otherwise extend credit to the Borrower pursuant to the terms of the Credit Agreement.

B. The Collateral Agent and Parent have entered into a debenture purchase agreement (the "**Debenture Purchase Agreement**") dated as of December 12, 2014 pursuant to which the Collateral Agent purchased, as portfolio manager on behalf of investment accounts managed by it, Secured Debentures (each, a "**Subordinated Debenture**" and collectively, the "**Subordinated Debentures**") of the Parent in an aggregate amount of Cdn \$10,000,000 (the "**Subordinated Debt**"), in accordance with and subject to the Debenture Purchase Agreement, pursuant to which Borrower together with other Subsidiaries of the Parent are to guarantee the prompt payment and performance by the Parent of its liabilities and obligations under the Subordinated Debentures. The obligations under the Subordinated Debentures are secured by Security Interests in, amongst other things, the Collateral; the Subordinated Debentures, the Debenture Purchase Agreement, the Subordinated Security and related agreements, instruments and documents, including, without limitation, all guarantees and security agreements, are hereinafter referred to as the "**Subordinated Documents**."

C. Collateral Agent does not presently hold any other promissory notes or obligations owing from Borrower other than those evidenced by the Subordinated Documents.

D. The Senior Lender has required, as a condition of providing credit to Borrower that the Collateral Agent agree, on behalf of the Subordinated Debenture Holders, to postpone and subordinate the Subordinated Obligations, the Subordinated Rights, and the Subordinated Security to the Senior Obligations and the Senior Security.

E. Accordingly and as hereinafter set forth, the Senior Lender has agreed to permit the Borrower to make, and to have outstanding the Subordinated Obligations to the Subordinated Debenture Holders, provided that the Collateral Agent enters into this Agreement.

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 conclusively acknowledged by each of the Parties, the Parties covenant and agree as follows:

This is Exhibit " B " referred to in the  
affidavit of Dillon Cameron  
sworn before me at Vancouver, BC  
this ..... day of February, 2017  
[Signature]  
A Commissioner for taking Affidavits  
for British Columbia

## **ARTICLE 1 - INTERPRETATION**

### **1.01            Definitions**

In this Agreement, including in the preamble and recitals hereto, terms and expressions defined in the Credit Agreement shall have those meanings when used herein (unless otherwise defined herein), and in addition:

**“Agreement”** means this agreement, as the same may be amended, modified, supplemented or restated from time to time in accordance with the provisions hereof.

**“Bank Product Collateralization”** means providing cash collateral (pursuant to documentation reasonably satisfactory to Senior Lender) to be held by Senior Lender for the benefit of the provider of Cash Management Services in an amount determined by Senior Lender as sufficient to satisfy the reasonably estimated credit exposure with respect to the then existing Bank Product Obligations.

**“Bank Product Obligations”** means with respect to any Loan Party, any obligations of such Loan Party owed to Senior Lender (or any of its affiliates) in respect of Cash Management Services.

**“Banking Day”** means a day in Seattle, Washington, but does not in any event include a Saturday, Sunday, or other day on which banks are authorized or requested to close pursuant to the rules and regulations of the Federal Reserve System.

**“Bankruptcy Code”** means the United States Bankruptcy Code.

**“Cash Management Services”** means any cash management or related services including treasury, depository, return items, overdraft, controlled disbursement, merchant stored value cards, e-payables services, electronic funds transfer, interstate depository network, automatic clearing house transfer (including the Automated Clearing House processing of electronic funds transfers through the direct Federal Reserve Fedline system) and other cash management arrangements.

**“Collateral”** means all of the property, assets, undertakings, rights and interests, both present and future of the Borrower, Holdings’ equity interests in Borrower, Parent’s trademarks, patents, and Shoes.com domain name, together with all proceeds thereof.

**“Credit Agreement”** means the Credit and Security Agreement dated as of March \_\_, 2015 among the Loan Parties and the Senior Lender, as the same may be further amended, modified, supplemented or restated from time to time in accordance with the provisions thereof, relating to certain credit facilities which the Senior Lender agreed to make available to the Borrower.

**“Credit Facility”** means the “Credit Facility” as defined in the Credit Agreement.

**“Creditor Proceedings”** means:

- (a) any dissolution, winding-up, total or partial liquidation, adjustment or readjustment of debt, reorganization, compromise, arrangement with creditors, plan of arrangement, proposal or similar proceedings under Insolvency Laws of or with respect to the Borrower or its property or liabilities, in each case under Insolvency Laws;

- (b) any dissolution, winding-up, total or partial liquidation, adjustment or readjustment of debt, reorganization, compromise, arrangement with creditors, plan of arrangement or similar proceedings under the arrangement provisions of any applicable corporate law (in any case which involves the alteration, amendment, conversion, compromise, satisfaction or discharge of obligations of any or all creditors) of or with respect to the Borrower or its property or liabilities;
- (c) any bankruptcy, insolvency, receivership, petition or assignment in bankruptcy, or assignment for the benefit of creditors under any Insolvency Laws of or with respect to the Borrower;
- (d) any marshalling of assets and liabilities of the Borrower under any Insolvency Laws; or
- (e) any proceedings in relation to any of the foregoing,

whether any of the foregoing is voluntary or involuntary, partial or complete, and includes any such proceedings initiated or consented to by the Borrower.

**“Debenture Payments”** means any payment by any Debtor under the Subordinated Debentures (whether made, paid or satisfied in or for cash, property or both).

**“Enforcement Action”** means any action under applicable law taken by the Collateral Agent or the Senior Lender following an event of default (however denominated) in respect of, in the case of the Collateral Agent, the Subordinated Obligations and in the case of the Senior Lender, the Senior Obligations:

- (a) to foreclose, execute or levy on, collect on, take possession of or control of, or sell or otherwise realize upon (judicially or non-judicially) or to lease, license or otherwise dispose of (whether publicly or privately), any Collateral pursuant to the exercise of default rights and remedies, or otherwise to exercise or enforce remedial rights with respect to Collateral (including by way of setoff, noticing of any public or private sale or other disposition pursuant to any UCC or other applicable law, notification of account debtors, notification of depository banks under deposit account control agreements or exercise of default rights under landlord consents, if applicable);
- (b) to solicit bids from third parties to conduct the liquidation or disposition of any Collateral or to engage or retain sales brokers, marketing agents, investment bankers, accountants, appraisers, auctioneers, or other third parties for the purposes of valuing, marketing, promoting and selling any Collateral;
- (c) to receive a transfer of Collateral in satisfaction of any indebtedness or other obligation secured thereby, or
- (d) to otherwise enforce any Security Interest or exercise any other right or remedy, as a secured creditor or otherwise, pertaining to the Collateral at law, in equity (including the commencement of any applicable legal proceedings or other actions against or with respect to all or any portion of the Collateral to facilitate the actions described in the immediately preceding clauses (a), (b) and (c), and exercising voting rights in respect of any equity interests comprising Collateral),

provided that **“Enforcement Action”** shall not include any Permitted Action.



**“Indebtedness”** means the Senior Obligations, the Junior Obligations, and the Subordinated Obligations.

**“Insolvency Laws”** means the *Bankruptcy Code* of the United States of America or any other bankruptcy, insolvency or analogous laws applicable to the Borrower or any of its properties or liabilities.

**“Letter of Credit Collateralization”** means providing cash collateral to be held by Senior Lender for the benefit of Senior Lender in an amount equal to 110% of the face amount of any outstanding letters of credit issued by Senior Lender or an affiliate.

**“Loan Documents”** means the “Loan Documents” as defined in the Credit Agreement, any promissory note, security agreement and all other agreements, instruments and documents arising out of or relating to the Credit Agreement or the Credit Facility, and includes all renewals, replacements and amendments thereof.

**“Loan Parties”** means in respect of the Loan Documents, collectively, the Borrower and Guarantor.

**“Parties”** means the parties to this Agreement.

**“Payment Blockage Event”** means any one or more of the following:

- (a) any Creditor Proceeding which is continuing;
- (b) the commencement of any Enforcement Action in respect of any Subordinated Security by the Collateral Agent or the exercise of any Enforcement Action to enforce payment of any Subordinated Obligations, in each case, which is continuing;
- (c) the commencement of any Enforcement Action under any Senior Security by the Senior Lender which is continuing and in respect of which the Senior Lender has given a Payment Blockage Notice to the Borrower and the Collateral Agent;
- (d) the occurrence of any Payment Default in respect of the Senior Obligations which is continuing and in respect of which the Senior Lender has given a Payment Blockage Notice to the Borrower and the Collateral Agent; or
- (e) the occurrence of any Senior Obligations Default (other than a Payment Default) which is continuing and in respect of which the Senior Lender has given a Payment Blockage Notice to the Borrower and the Collateral Agent; provided that: (a) the failure of the Borrower to repay the principal of the Subordinated Debentures at their full and final maturity shall not constitute a Payment Blockage Event for the purposes of this Agreement, notwithstanding any cross-default or similar provision under the Loan Documents, so long as the Collateral Agent has not (i) given the written notice contemplated by Section 2.04 hereof or (ii) taken any Enforcement Action, and (b) any such Senior Obligations Default shall cease to constitute a Payment Blockage Event for the purposes hereof after one hundred ninety five (195) days have expired after the giving of such notice by the Senior Lender, unless within that period the Senior Lender has commenced an Enforcement Action in respect of the Senior Security and is thereafter continuing to take all proceedings in respect of such Enforcement Action, diligently and in a commercially reasonable manner.

**“Payment Blockage Notice”** means a written notice given by the Senior Lender to the Borrower and the Collateral Agent (in accordance with the notice provisions hereof), referring to this Agreement and (a) stating therein that it is a “Payment Blockage Notice” for the purposes of this Agreement and (b) specifying the Payment Blockage Event in respect of which such notice is given; it being understood and agreed that in no

event may the total number of days during which any Payment Blockage Notice is in effect exceed 195 days in the aggregate during any 365 consecutive day period.

**“Payment Default”** means any Senior Obligations Default which arises as a result of or relates to the failure of the Borrower to pay any Senior Obligations when due (including any failure to pay any Senior Obligations upon the maturity or acceleration thereof).

**“Permitted Action”** means, with respect to the Collateral Agent:

- (a) the making of a demand for payment upon the Borrower of any of the Subordinated Obligations at their full and final maturity;
- (b) the filing of a claim or statement of interest with respect to the Subordinated Obligations or Subordinated Security in any Creditor Proceeding commenced by or against the Borrower by other than the Collateral Agent;
- (c) the taking of any action (not adverse to the priority status of the Senior Security, or the rights of the Senior Lender to exercise remedies in respect thereof) in order to create, perfect, preserve or protect a Security Interest on the Collateral, or the validity thereof;
- (d) the filing of any necessary responsive or defensive pleadings in opposition to any motion, claim, adversary proceeding or other pleading made by any person objecting to or otherwise seeking the disallowance of the claims of the Collateral Agent, including any claims secured by the Collateral, if any, in each case in accordance with the terms of this Agreement;
- (e) the voting in any Creditor Proceeding, filing any proof of claim, making other filings and making any arguments and motions that are, in each case, in accordance with the terms of this Agreement, with respect to the Subordinated Obligations and Subordinated Security;
- (f) the exercise of any of its rights or remedies, including any Enforcement Action, with respect to the Collateral after the termination of the Standstill Period; provided that if the Senior Lender has commenced or joined in a Creditor Proceeding, including a Creditor Proceeding commenced by the Collateral Agent (which proceeding, upon the request of the Senior Lender, the Collateral Agent will promptly permit the Senior Lender to control in any manner requested by the Senior Lender that is not inconsistent with this Agreement), the Collateral Agent will not commence an alternate Creditor Proceeding, but may join in or participate in (as applicable) the existing Creditor Proceeding in a manner consistent with this Agreement;
- (g) the joining of (but not exercising any control with respect to) any judicial proceeding or other judicial enforcement proceeding with respect to the Collateral initiated by the Senior Lender to the extent that any such action could not reasonably be expected, in any material respect, to restrain, hinder, limit, delay for any material period or otherwise interfere with the Enforcement Action by the Senior Lender;
- (h) subject to the priority of the Senior Lender and so long as such actions are not inconsistent with this Agreement, the entering the premises of the Borrower to inspect the Collateral, to review, audit and copy all information relating to the Collateral; provided it does not remove or destroy any Collateral or any such information;

- (i) the participation in any proposal or similar proceeding involving a Creditor Proceeding initiated by the Senior Lender or in which the Senior Lender is participating, provided the Collateral Agent does so in a manner not inconsistent with this Agreement; or
- (j) subject to the priority of the Senior Lender and so long as such actions are not inconsistent with this Agreement, the remedying of a default by the Borrower to protect or preserve any Collateral.

**“Protective Advance”** means amounts disbursed by Senior Lender in order to protect Senior Lender’s interest in the Collateral or to perform any obligation of Borrower under the Loan Documents or otherwise to enhance the likelihood of repayment of the Senior Obligations, including, without limitation, amounts advanced to pay rent, payroll, advertising, shipping, return obligations, gift card obligations, or other obligations for which Senior Lender has implemented a reserve; provided, that the aggregate amount of Senior Obligations (including Protective Advances but excluding Bank Product Obligations and related obligations) at any time outstanding shall not exceed \$10,000,000.

**“Purchase Price”** means (i) the full amount of all Senior Obligations then outstanding and unpaid (including principal, interest, fees (including facility fees, but excluding fees that become due solely as a result of the prepayment of the Senior Obligations or the early termination of the Credit Agreement), and expenses (including, without limitation, reasonable attorneys’ fees and legal expenses)), (ii) furnish Letter of Credit Collateralization pursuant to an agreement reasonably satisfactory to the Senior Lender and Collateral Agent providing for the refund thereof to the extent that drawings thereunder have been reimbursed by Borrower, (iii) agree to reimburse the Senior Lender and letter of credit issuing banks for any loss, cost, damage or expense (including reasonable attorneys’ fees and legal expenses) in connection with any commissions, fees, costs or expenses related to any issued and outstanding letters of credit as described above and any checks or other payments provisionally credited to the Senior Obligations, and/or as to which the Senior Lender has not yet received final payment, (iv) agree to reimburse the Senior Lender and letter of credit issuing banks, in respect of indemnification obligations of the Loan Parties under the Loan Documents as to matters or circumstances known to the Senior Lender at the time of the purchase and sale which would reasonably be expected to result in any loss, cost, damage or expense (including reasonable attorneys’ fees and legal expenses) to the Senior Lender or letter of credit issuing banks, as applicable, and which the Senior Lender shall have disclosed in writing to the Collateral Agent prior to the consummation of the purchase and sale, and (v) agree to indemnify and hold harmless the Senior Lender and letter of credit issuing banks, from and against any loss, liability, claim, damage or expense (including reasonable fees and expenses of legal counsel) arising out of any claim asserted by a third party in respect of the Senior Obligations or Subordinated Obligations, as applicable, arising out of the Collateral Agent’s acts or omissions, or as a direct result of any acts by the Senior Lender, as applicable, occurring prior to the date of such purchase to the extent such acts of Senior Lender comply with the applicable standard of care (if any) set forth for such actions in the Credit Agreement or Subordinated Documents, as applicable.

**“Purchase Notice”** has the meaning set forth in Section 2.05(a).

**“Security”** means, collectively, the Senior Security and the Subordinated Security.

**“Security Interest”** means mortgages, charges, pledges, hypothecs, assignments by way of security, conditional sales or other title retentions, security created under the *Bank Act* (Canada), liens, encumbrances, security interests or other interests in property, howsoever created or arising, whether fixed or floating, perfected or not, which secure payment or performance of an obligation and, including, in any event:

- (a) deposits or transfers of cash, marketable securities or other financial assets under any agreement or arrangement whereby such cash, securities or assets may be withdrawn,

returned or transferred only upon fulfilment of any condition as to the discharge of any other indebtedness or other obligation to any creditor;

- (b) (i) rights of set-off or (ii) any other right of or arrangement of any kind with any creditor, which in any case are made, created or entered into, as the case may be, for the purpose of or having the effect (directly or indirectly) of (A) securing indebtedness for borrowed money, (B) preferring some holders of indebtedness over other holders of indebtedness or (C) having the claims of any creditor be satisfied prior to the claims of other creditors with or from the proceeds of any properties, assets or revenues of any kind now owned or later acquired (other than, with respect to (C) only, rights of set-off granted or arising in the ordinary course of business);
- (c) the rights of lessors under capital leases, operating leases and any other lease financing; and
- (d) absolute assignments of accounts receivable, except for absolute assignments of accounts receivable made in conjunction with a sale of related assets which is permitted by the provisions of the Credit Agreement.

**“Senior Obligations”** means (a) all loans under the Credit Agreement (including Protective Advances), debts, principal, interest (including any interest that accrues after the commencement of a Creditor Proceeding, regardless of whether allowed or allowable in whole or in part as a claim in any such Creditor Proceeding), reimbursement or indemnification obligations with respect to letters of credit (irrespective of whether contingent), premiums, liabilities (including all amounts charged to the Loan pursuant to the Credit Agreement), obligations (including indemnification obligations), fees, Senior Lender’s expenses (including any fees or expenses that accrue after the commencement of a Creditor Proceeding, regardless of whether allowed or allowable in whole or in part as a claim in any such Creditor Proceeding), guaranties, and all covenants and duties of any other kind and description owing by any Loan Party pursuant to or evidenced by the Credit Agreement or any of the other Loan Documents now existing or hereafter arising, and including all interest not paid when due, and all other expenses or other amounts that any Borrower or any other Loan Party is required to pay or reimburse by the Loan Documents or by law or otherwise in connection with the Loan Documents, and (b) all Bank Product Obligations. Any reference in this Agreement to the Senior Obligations shall include all or any portion thereof and any extensions, modifications, renewals, or alterations thereof, both prior and subsequent to any Creditor Proceeding.

**“Senior Obligations Default”** means any one or more of the following:

- (a) any Event of Default (under and as defined in the Credit Agreement);
- (b) any default, event of default or other event or circumstance under the Loan Documents causing the Senior Obligations to become due and payable; or
- (c) any demand for payment or repayment made by the Senior Lender under the Loan Documents.

**“Senior Obligations Limit”** means the debt amounts identified in Section 3.02(b), outside of a Creditor Proceeding, and in Section 7.01(a), with respect to amounts advanced in a Creditor Proceeding.

**“Senior Obligations Payment Date”** means the first date on which (a) the Senior Obligations (other than those that constitute Unasserted Contingent Obligations) have been indefeasibly paid in cash in full (or cash collateralized or defeased in accordance with the terms of the Loan Documents), (b) all commitments to extend credit under the Credit Agreement have been terminated, (c) there are no outstanding letters of credit

issued under the Loan Documents (other than such as have been cash collateralized or defeased in accordance with the terms of the Loan Documents), and (d) any other conditions to termination of the Credit Agreement and Senior Security set forth in the Loan Documents have been satisfied.

**“Senior Security”** means, as the context requires:

- (a) the Security Interests granted to the Senior Lender by the Borrower in the Credit Agreement and Loan Documents, and all assignments, mortgages, debentures, pledges, guarantees and other security agreements of whatsoever in kind now, heretofore, or hereafter executed and delivered by the Borrower in favour of the Senior Lender or now, heretofore, or hereafter existing as security on or against any Collateral in favour of the Senior Lender, in each case, which secure payment or performance of the Senior Obligations;
- (b) the Security Interests, rights, interests and benefits created or arising pursuant to such assignments, mortgages, debentures, pledges, guarantees and other security agreements; and
- (c) the Collateral charged under or subject to such assignments, mortgages, debentures, pledges, guarantees and other security agreements.

**“Standstill Period”** has the meaning provided for in Section 2.04.

**“Subordinated Obligations”** means all present and future indebtedness of the Borrower and all obligations, indebtedness, liabilities, covenants, agreements and undertakings of the Borrower pursuant or relating to the guarantee by the Borrower of all indebtedness and liability of the Parent in respect of the Subordinated Debentures of the Parent issued to the Subordinated Debenture Holders under the Debenture Purchase Agreement and in each case present and future indebtedness and liabilities and obligations thereunder and any ultimate balance thereof, and the performance of all obligations and covenants of the Parent to the Collateral Agent and the Subordinated Debentures Holders in respect of the Subordinated Debentures, including all obligations, liabilities and indebtedness to pay or effect a Debenture Payment and all expenses paid or incurred by the Collateral Agent in endeavouring to collect any Subordinated Obligations.

**“Subordinated Obligations Default”** means any default, event of default or similar event, occurrence or circumstance under the Subordinated Debentures.

**“Subordinated Rights”** means, collectively, all rights, remedies and powers of the Collateral Agent:

- (a) under, pursuant or relating to the Subordinated Security or any agreement, instrument or other document evidencing or relating to any Subordinated Obligations;
- (b) in any Creditor Proceedings; and
- (c) otherwise available to the Collateral Agent pursuant to applicable laws to enforce payment and performance of the Subordinated Obligations.

**“Subordinated Security”** means, as the context requires:

- (a) the Security Interests granted to the Collateral Agent in the Subordinated Documents, each dated on or about December 12, 2014, and all assignments, mortgages, debentures, pledges, guarantees and other security agreements of whatsoever in kind now, heretofore, or hereafter executed and delivered by the Borrowers in favour of the Collateral Agent or now, heretofore, or hereafter existing as security on or against any Collateral in favour of the

Collateral Agent, in each case, which secure payment or performance of the Subordinated Obligations;

- (b) the Security Interests, rights, interests and benefits created or arising pursuant to such assignments, mortgages, debentures, pledges, guarantees and other security agreements; or
- (c) the Collateral charged under or subject to such assignments, mortgages, debentures, pledges, guarantees and other security agreements.

**“Triggering Event”** means (i) the acceleration of the Senior Obligations prior to maturity, (ii) the termination of the Senior Lender’s commitment to make advances under the Loan Documents, (iii) the exercise of any Enforcement Action by a Senior Lender, (iv) any default in any scheduled payment of principal, premium, if any, interest or fees under the Credit Agreement that remains uncured or unwaived for a period of 30 consecutive days, or (v) the commencement of a Creditor Proceeding.

**“UCCs”** means *Article 9 of the Uniform Commercial Code (Washington)* and all other applicable personal property security acts now or hereafter enacted in any other applicable jurisdiction in which Collateral may be located.

**“Unasserted Contingent Obligations”** means, at any time, Senior Obligations for taxes, costs, indemnifications, reimbursements, damages and other liabilities (excluding (a) the principal of, and interest and premium (if any) on, and fees and expenses relating to, any Senior Obligation, and (b) contingent reimbursement obligations in respect of amounts that may be drawn under outstanding letters of credit) in respect of which no assertion of liability (whether oral or written) and no claim or demand for payment (whether oral or written) has been made (and for indemnification, no notice for indemnification has been issued by the indemnitee) at such time.

## **1.02      Headings; Articles and Sections**

The division of this Agreement into Articles and Sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. The terms “this Agreement”, “hereof”, “hereunder” and similar expressions refer to this Agreement and not to any particular Article, Section or other portion hereof and include any agreement supplemental hereto. 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      Number; persons; including**

Words importing the singular number only shall include the plural and vice versa, words importing the masculine gender shall include the feminine and neuter genders and vice versa, words importing persons shall include individuals, partnerships, associations, trusts, unincorporated organizations and corporations and vice versa and words and terms denoting inclusiveness (such as “include” or “includes” or “including”), whether or not so stated, are not limited by their context or by the words or phrases which precede or succeed them.

## **1.04      References to Agreements and Enactments**

Unless otherwise stated, references herein to any agreement, instrument, licence or other document shall be deemed to include reference to such agreement, instrument, licence or other document as the same may from time to time be amended, modified, supplemented or restated; and reference herein to any

enactment shall be deemed to include reference to such enactment as re-enacted, amended or extended from time to time and to any successor enactment.

## **ARTICLE 2 - SUBORDINATION, POSTPONEMENT AND PRIORITY**

### **2.01            General**

Notwithstanding the terms of the agreements, instruments or other documents giving rise to the Indebtedness, the Security or the Subordinated Rights, the time of default under or the dates of any advances or creation of the Indebtedness or the dates of creation or perfection of the Security, the Parties agree that all and any of their rights in respect of the Indebtedness, the Security and the Subordinated Rights, as between the Collateral Agent and the Senior Lender, shall be governed by the terms of this Agreement.

### **2.02            Postponement and Subordination of Subordinated Obligations; Distributions to Creditors**

(1) Subject only to Section 2.02(2) hereof, the payment and performance of all Subordinated Obligations is hereby postponed and subordinated until the Senior Obligations Payment Date. Subject only to Section 2.02(2) hereof, the Collateral Agent will not directly or indirectly, accept from any Loan Party, in any manner, directly or indirectly, payment of, or consideration for the reduction of, the whole or any part of the Subordinated Obligations in any manner contrary to this Agreement and if any such payment is received or made on the Subordinated Obligations, such payment shall be held by the Collateral Agent in trust for the benefit of, and shall be promptly paid over in the form received (duly endorsed, if necessary, to the Senior Lender) to, the Senior Lender.

(2) Unless a Payment Blockage Event has occurred which is continuing, the Collateral Agent shall be entitled to receive and retain any and all cash interest payments in respect of the Subordinated Obligations not in excess of 10 percent per annum (or fifteen percent per annum while a default under the Subordinated Obligation exists. Collateral Agent may, at any time and without consent of the Senior Lender, convert any of the Subordinated Obligations into equity interests of Parent.

(3) Upon any Creditor Proceedings which are continuing:

- (a) the Senior Obligations Payment Date shall first occur before the Collateral Agent shall be entitled to receive or retain (except on behalf of the Senior Lender) any payment or distribution on account of Subordinated Obligations: (i) from Borrower or any receiver, trustee in bankruptcy, trustee named in a bankruptcy proposal, liquidator, agent or other person making such payment or distribution, (ii) in respect of such proceedings or (iii) under or in respect of any of the Subordinated Rights; and
- (b) any payment or distribution of assets of the Borrower of any kind or character, whether in cash, property or securities, to which the Collateral Agent would be entitled in respect of the Subordinated Obligations or the Subordinated Rights and the receipt of which could be contrary to this Agreement, shall be paid by the Borrower or by any receiver, trustee in bankruptcy, trustee named in a bankruptcy proposal, liquidator, agent or other person making such payment or distribution, directly to the Senior Lender until the Senior Obligations Payment Date before any payment or distribution is made to the Collateral Agent or any representative thereof.

(4) Without limiting the foregoing and in addition thereto, in connection with any Creditor Proceedings, the Collateral Agent irrevocably authorizes the Senior Lender to do, make, execute, deliver and file on behalf of the Collateral Agent a claim, proof of claim, direction to pay, petition, consent, and other documents in respect of such Creditor Proceedings (for the purposes of this Section, each, a “**Creditor Proceeding Document**”), in each case, in the event that the Collateral Agent has failed to do so within ten (10) Banking Days after delivery of a written request to do so from the Senior Lender; provided that, if any such Creditor Proceeding Document is not approved by the Collateral Agent, the execution, delivery and filing of such Creditor Proceeding Document is consistent with Article 7 or reasonably necessary to preserve the rights of Senior Lender or otherwise reasonably necessary to enhance the realization on Collateral, or in order that the Creditor Proceedings may proceed without unreasonable delay and the terms of the Creditor Proceeding Document and the terms and conditions of the Creditor Proceeding for which such Creditor Proceeding Document is to be executed, delivered or filed (i) are not inconsistent with the agreements of the Collateral Agent or the Senior Lender contained in this Agreement and the subordination and postponement of the Subordination Obligations and the Subordinated Security to the Senior Obligations and the Senior Security hereunder; and (ii) in the case of any Creditor Proceeding Document, could reasonably be expected to be executed, delivered and filed other than one identified in Section 7.05 hereof, is requested by Senior Lender acting in a commercially reasonable fashion, having regard to all the circumstances; and, in order to give effect to the foregoing, the Collateral Agent hereby irrevocably constitutes and appoints any officer for the time being of the Senior Lender as the true and lawful attorney of the Collateral Agent, with full power of substitution, to do, make, execute, deliver and file any and all of the foregoing in connection with the Creditor Proceedings (such power of attorney is a power coupled with an interest and shall survive the legal incapacity of, and any bankruptcy, insolvency or other analogous proceeding in respect of, the Collateral Agent and extends to the successors and assigns of the Collateral Agent). Subject to the proviso in the immediately preceding sentence, the foregoing authorization and power of attorney shall include the right to vote and approve on behalf of the Collateral Agent any plan of arrangement, reorganization, proposal, liquidation, compromise, or any other step, action or proceeding under, pursuant or relating to any Creditor Proceedings, all as the Senior Lender may consider appropriate in its sole discretion (and having regard to those considerations as the Senior Lender deems appropriate and, for certainty, without having any responsibility or liability to the Collateral Agent), in each case, in the event that the Collateral Agent has failed to do so, or to provide adequate assurances in respect thereof to the reasonable satisfaction of the Senior Lender, within ten (10) Banking Days after receipt of a written request to do so from the Senior Lender.

(5) Subject to Section 2.03, for greater certainty nothing in this Section 2.02 shall affect the right of the Collateral Agent to receive and retain for its own account, or require the Collateral Agent to pay over to the Senior Lender any payment or distribution or assets (other than Senior Security) from any of Parent or the Subsidiaries of Parent that are not Loan Parties and that are parties as “Borrower” or “Debtors” to the Junior Subordination, Postponement and Standstill Agreement.

## 2.03 Priority of Security

(1) The Subordinated Security shall rank subordinate to and is hereby postponed to the Senior Security with respect to all of the Collateral.

(2) Any and all proceeds of realization from or relating to the enforcement of any Security against any and all of the Collateral shall be applied to the Senior Obligations and Subordinated Obligations in the following order:

- (a) first, to the payment of costs, charges, expenses and liabilities incurred in connection with the enforcement of or realization upon any Senior Security, including any legal fees on a full indemnity basis and all costs, charges, expenses and liabilities of any receiver, receiver and manager or other person having similar power or authority appointed by the Senior Lender or



by a court of competent jurisdiction at the instance of the Senior Lender, which costs, charges, expenses and liabilities, in each case and to the extent required by law, have been approved by a court of competent jurisdiction;

- (b) second, to the indefeasible payment and satisfaction in full of all Senior Obligations (including the cash collateralization of letter of credit exposure);
- (c) third, to the payment of costs, charges, expenses and liabilities incurred in connection with the enforcement of or realization upon any Subordinated Security;
- (d) fourth, after payment and satisfaction in full of all Senior Obligations, to the payment and satisfaction in full of all Subordinated Obligations; and
- (e) fifth, to the Borrower or such other persons as may be entitled thereto under applicable laws.

#### 2.04 Standstill

Without the prior written consent of the Senior Lender, the Collateral Agent shall not:

- (a) (i) accelerate the payment of any Subordinated Obligations; provided that nothing herein shall limit the right of the Collateral Agent to make demand for repayment of the Subordinated Obligations at their full and final maturity, or (ii) take any Enforcement Action against the Borrower;
- (b) other than Permitted Actions, (i) commence any action or proceeding to enforce, collect or receive payment of any Subordinated Obligations, (ii) exercise any Subordinated Rights to enforce payment of any Subordinated Obligations, or (iii) enforce or exercise any remedies under any Subordinated Security or take any other Enforcement Action; or
- (c) commence, or join with any other creditor (other than the Senior Lender) in, any Creditor Proceedings or take any steps or proceedings in connection therewith, other than the filing of proofs of claim and other actions related to a Creditor Proceeding deemed necessary by the Collateral Agent to protect and preserve its rights as against the Borrower, so long as such actions could not reasonably be expected to adversely affect the Senior Lender, the Senior Security or the Senior Lender's rights under this Agreement and so long as such actions are not inconsistent with this Agreement,

in each case, until the earliest to occur of (x) the Senior Obligations Payment Date, and (y) the day that is one hundred ninety five (195) days after the provision of written notice by the Collateral Agent to the Senior Lender (such notice to be in accordance with Section 8.07 and to refer to this Agreement and this section) of the occurrence of a default or event of default (other than a default or event of default arising out of, or related to, a cross-default on the Senior Obligations) under or in respect of the Subordinated Obligations which is continuing; provided that such time period shall be stayed, tolled, and deemed not to have expired during any period of time for which any stay or other order prohibiting the exercise of remedies has been entered by a court of competent jurisdiction and is in effect, including the automatic stay under the Bankruptcy Code.

Notwithstanding the foregoing provisions of this Section 2.04, such provision shall not restrict (i) Permitted Actions, or (ii) the Collateral Agent's right to make a bid on all, or any portion of, the Collateral in any bankruptcy or non-bankruptcy auction or foreclosure proceeding or action, provided that, the cash portion of any such bid is sufficient for the Senior Obligations to be paid in full.

## 2.05 Purchase Right

(1) Upon the occurrence of and during the continuance of a Triggering Event, the Senior Lender shall promptly notify the Collateral Agent, and in addition, the following provisions shall apply:

- (a) the Collateral Agent may (but shall not be obligated to), at any time thereafter upon not less than ten (10) Banking Days prior written notice to the Senior Lender, irrevocably and unconditionally elect to purchase from the Senior Lender the full amount of the Senior Obligations for the Purchase Price by giving written notice (a “**Purchase Notice**”) of such irrevocable and unconditional election to the Senior Lender;
- (b) upon receipt of a Purchase Notice, the Senior Lender shall forthwith (and in any event, within five (5) Banking Days of receipt of a Purchase Notice) provide to the Collateral Agent a written statement setting out the aggregate Purchase Price, together with any supporting documentation reasonably requested by the Collateral Agent; provided that the Collateral Agent will indemnify the Senior Lender for any enforcement costs, fees and expenses of the Senior Lender and, to the extent the Senior Lender is responsible for the same, of any receiver, receiver and manager, or other person having similar power or authority appointed by the Senior Lender or by a court of competent jurisdiction at the instance of the Senior Lender (collectively, the “Enforcement Costs”) that the Senior Lender could not reasonably quantify for purposes of providing such written statement in accordance herewith, promptly upon receipt of a written demand therefor, together with reasonable particulars thereof;
- (c) the Collateral Agent shall, on the eleventh Banking Day following the delivery of a Purchase Notice, and provided it has received such written statement of the Purchase Price and any supporting documentation reasonably requested by it, pay to the Senior Lender the Purchase Price by wire transfer in federal funds;
- (d) against receipt by the Senior Lender of the Purchase Price, Senior Lender shall irrevocably sell, assign and transfer the Senior Obligations, the Credit Agreement, the Loan Documents and the Senior Security, to the Collateral Agent or as the Collateral Agent may direct in writing, on an as-is, where-is basis, without recourse, representation or warranty other than (i) the Senior Lender has not sold, assigned or transferred any interest in the Senior Obligations, the Credit Agreement, the Loan Documents or its interest in the Senior Security to any other person and that the Senior Obligations, the Credit Agreement, the Loan Documents and the Senior Security is being transferred to the Collateral Agent free and clear of all security interests and liens, and (ii) the Credit Agreement and the Loan Documents sold, assigned and transferred represent all of the material documentation governing, evidencing or securing the Senior Obligations, other than internal, non-negotiable bank records) and thereafter shall hold no Security Interests in the Collateral other than Bank Product Collateralization and Letter of Credit Collateralization. The Parties shall cause such financing change statements to be filed as may be reasonably required to reflect the assignment of the Senior Security to the Collateral Agent. Collateral Agent shall indemnify Senior Lender from any liability arising from its acts or omissions with respect to Senior Obligations and Subordinated Obligations following the transfer thereof as contemplated by this Section 2.05;
- (e) notwithstanding anything to the contrary in this Section 2.05, Senior Lender shall not be obligated to sell the Senior Obligations to Collateral Agent if prior to receipt of the Purchase Notice, Senior Lender has sold the Senior Obligations to Brown Shoe Investment Company, Inc. (“Brown Shoe”) after receipt of a purchase notice from Brown Shoe pursuant to the

terms of that certain Subordination, Postponement and Standstill Agreement among Brown Shoe, Senior Lender and Collateral Agent;

- (f) notwithstanding anything to the contrary in this Agreement, the occurrence of a Triggering Event shall not prevent, postpone, or otherwise effect the right of the Senior Lender to exercise any rights or remedies permitted under this Agreement, including, without limitation, the commencement or continuation of any Enforcement Action; provided, however, Senior Lender shall not exercise foreclosure remedies following its timely receipt of a Purchase Notice and Collateral Agent's timely purchase in accordance with such Purchase Notice; and
- (g) except as provided above, such purchase shall be expressly made without representation or warranty of any kind by the Senior Lender and without recourse of any kind, and the Collateral Agent shall assume all obligations of Senior Lender under the Loan Documents and indemnify Senior Lender for any breach thereof, all in accordance with assignment documentation in form and substance acceptable to Senior Lender, except that the Senior Lender shall represent and warrant that the Senior Lender owns the Senior Obligations free and clear of any liens or encumbrances created by it.

## **2.06 Certain Covenants of the Collateral Agent**

The Collateral Agent hereby covenants with the Senior Lender as follows:

- (a) the Collateral Agent shall not advance, hold or have outstanding any indebtedness owing to it from any Loan Party unless and until the Collateral Agent shall have executed and delivered to the Senior Lender a subordination agreement respecting such indebtedness which agreement is in form and substance satisfactory to the Senior Lender in its sole discretion; and
- (b) [Intentionally Omitted];
- (c) except as permitted by this Agreement, the Collateral Agent shall not receive or retain any payment on or in respect of, or any repayment of, any Subordinated Obligations until the Senior Obligations has been paid, performed and indefeasibly satisfied in full and termination of all commitments to lend by the Senior Lender under the Credit Agreement, and any such payment or repayment received in contravention of the foregoing shall not be retained by the Collateral Agent, but shall be held in trust for the benefit of, and shall be promptly paid over in the form received (duly endorsed, if necessary, to the Senior Lender) to, the Senior Lender.

## **2.07 Payment Blockage to Collateral Agent**

(1) Subject to Section 2.02(3), upon the occurrence and during the continuance of any Payment Blockage Event, Borrower and the Collateral Agent covenant and agree that no payment or distribution shall be made by any Loan Party, whether directly or indirectly, to the Collateral Agent nor be retained by the Collateral Agent on account or in respect of the Subordinated Obligations.

(2) The Senior Lender shall give written notice to the Collateral Agent (in accordance with the notice provisions hereof) promptly after it becomes actually aware of any cessation of any Payment Blockage Event specified in subparagraphs (c), (d) and (e) of the definition thereof (including by reason of any written waiver thereof or consent thereto). Further, the Senior Lender shall give written notice to the Collateral Agent of the

termination of its commitments under the Credit Agreement within 10 business days after such termination. The failure of the Senior Lender to give any notice required by this Agreement shall not release, restrict or otherwise affect any of the obligations of the Collateral Agent hereunder nor limit, derogate from or otherwise affect any of the other provisions hereof or the effect thereof.

## **2.08                    Obligations of Borrowers not Affected**

(1) The failure of any Loan Party to make any payment or distribution with respect to the Subordinated Obligations by operation of Section 2.07 or any other provision of this Agreement shall not be construed as preventing the occurrence of a Subordinated Obligations Default or the accrual of default interest in accordance with the terms of the Subordinated Documents.

(2) Nothing contained in this Agreement is intended to or shall impair, as between any Loan Party and the Collateral Agent, the obligation of such Loan Party, which is absolute and unconditional, to pay to the Collateral Agent the principal of and interest on the Subordinated Debentures, as and when the same shall become due and payable in accordance with their terms, or affect the rights of the Collateral Agent as against any Loan Party, nor shall anything herein or therein prevent the Collateral Agent from exercising all remedies otherwise permitted by applicable law in respect of the Subordinated Obligations, in each case, subject to (i) the terms and provisions of this Agreement, (ii) the postponement of the Subordinated Obligations to the Senior Obligations set forth herein, (iii) the priority of the Senior Security over the Subordinated Security set forth herein, and (iv) the rights and interests of the Senior Lender hereunder.

(3) The Borrower shall resume payments and distributions in respect of the Subordinated Obligations prohibited hereunder as soon as such payments and distributions are no longer prohibited hereunder, including any amounts (including any interest at the rate specified during such period in the Subordinated Documents) in arrears by reason of operation of this Agreement.

## **2.09                    Trust**

Notwithstanding Section 2.02, if upon any such dissolution, winding up, liquidation, readjustment, reorganization, compromise, adjustment of debt, arrangement with creditors or similar proceeding in respect of the Borrower or in any bankruptcy, insolvency, receivership, assignment for the benefit of creditors, marshalling of assets and liabilities of the Borrower or other Creditor Proceedings, or proceedings in relation to any of the foregoing, whether any of the foregoing is voluntary or involuntary, partial or complete (including any acts or proceedings related to the Subordinated Rights), any payment or distribution of assets of the Borrower of any kind or character, whether in cash, property or securities (other than securities in Borrower that are subordinated to the Senior Obligations to the same extent as provided in this Agreement), shall be received by the Collateral Agent or any representative thereof before the Senior Obligations Payment Date, such payment or distribution shall be held by the Collateral Agent (or such representative) in trust for the benefit of, and shall be promptly paid over in the form received (duly endorsed, if necessary, to the Senior Lender) to, the Senior Lender.

## **2.10                    Marking Books**

The Collateral Agent and the Borrower shall mark their books and records relating to the Subordinated Obligations so as to clearly indicate that the Subordinated Obligations are subordinated in accordance with the terms of this Agreement and shall cause to be clearly inserted on any agreement, lien filing, instrument and other document (including the Subordinated Debentures) which at any time evidence, create or relate to the Subordinated Obligations a statement to the effect that the payment of the Subordinated Obligations is subject to, and is subordinated in accordance with, the terms of this Agreement.

## **2.11      Application of Proceeds**

All payments and distributions received by the Collateral Agent in respect of the Subordinated Obligations or Subordinated Rights, to the extent received in or converted into cash and paid over to the Senior Lender, may be applied by the Senior Lender first to the payment of any and all expenses (including legal fees and expenses on the basis of a full indemnity) paid or incurred by the Senior Lender in enforcing the provisions hereof or in endeavouring to collect or realize upon any of the Senior Obligations, and any balance thereof shall, solely as between the Collateral Agent and the Senior Lender, be applied by the Senior Lender to the payment of the Senior Obligations until the Senior Obligations Payment Date and, notwithstanding any such payments or distributions received by the Senior Lender in respect of the Subordinated Obligations or Subordinated Rights and so applied by the Senior Lender toward the payment of the Senior Obligations, the Collateral Agent shall be subrogated, without recourse, representation and warranty to the then existing rights of the Senior Lender, if any, in respect of the Senior Obligations subject to the provisions of Section 2.12.

## **2.12      Restriction on Subrogation**

The Collateral Agent shall not exercise any rights which it may acquire by way of subrogation or contribution under this Agreement until the Senior Obligations Payment Date and until this Agreement has ceased to be effective in accordance with Section 5.01. If any amount is paid to the Collateral Agent on account of such subrogation or contribution rights at any time before this Agreement has ceased to be effective in accordance with Section 5.01, such amount shall be held in trust by the Collateral Agent for the benefit of the Senior Lender and shall be promptly paid to the Senior Lender.

# **ARTICLE 3 - ACKNOWLEDGEMENTS OF THE COLLATERAL AGENT; FURTHER COVENANTS; REPRESENTATIONS AND WARRANTIES**

## **3.01      Absolute Obligations**

This Agreement shall operate and apply, and shall remain in full force and effect, in all events and circumstances and the obligations of the Collateral Agent hereunder shall be absolute, irrevocable and unconditional in all events and circumstances. In addition to and without limiting the foregoing, this Agreement shall remain in full force and effect and the obligations of the Collateral Agent hereunder shall be absolute, irrevocable and unconditional irrespective of:

- (a) any change in the time, manner or place of payment of, or in any other term of, any of the Senior Obligations, the Loan Documents, or any other amendment or waiver of or any consent to departure from any of the Senior Obligations or the Loan Documents;
- (b) any release or amendment or waiver of or consent to departure from any covenant, agreement or undertaking of any person respecting any of the Senior Obligations or the Loan Documents;
- (c) any merger, consolidation, amalgamation, dissolution, winding-up, liquidation or termination of the existence of the Senior Lender or the Collateral Agent into or with any other person or any other change of its identity or capacity;
- (d) any (i) liquidation, winding up, bankruptcy, dissolution, compromise, proposal, arrangement, plan of reorganization or other event or proceeding relating to, or which might affect the existence, obligations, creditors, assets, business or affairs of, (ii) change or changes in the

name of, or (iii) amalgamation, consolidation, merger or reorganization of any kind of, or with respect to, the Borrower;

- (e) in addition to and not in limitation of Section 3.01(d) above, any Creditor Proceedings;
- (f) any change in applicable laws or any defence, claim or right of any Party which would effect a result contrary to the terms in this Agreement; or
- (g) any impossibility or impracticality of performance or *force majeure*, any act of any governmental authority, or any other circumstance which might constitute a defence available to, or a discharge of, the Borrower in respect of the Senior Obligations or the Loan Documents.

### 3.02 Dealings by Senior Lender

Notwithstanding anything in this Agreement, the Collateral Agent acknowledges and agrees that the Senior Lender shall be entitled to:

- (a) lend monies or otherwise extend credit or accommodations to Borrower as part of the Senior Obligations; provided that the Senior Lender will not make senior credit facilities (which, for certainty, will not include hedging agreements entered into other than for speculative purposes; that is, indebtedness of the Borrower, including the mark-to-market exposure of the Borrower, under all hedging agreements between the Senior Lender and the Borrower entered into other than for speculative purposes will not be considered to be "senior credit facilities" for purposes of this Section 3.02(a) only) available to the Debtors in excess of the Senior Obligations Limit;
- (b) agree to any change in, amendment to, waiver of, or departure from, any term of any Loan Document including any amendment, renewal, restatement or extension of any Loan Document, and lend monies, or increase in the payment or other obligations of the Borrower under any Loan Document, provided that in no event will Senior Lender increase its commitment under the Senior Obligations (excluding Protective Advances) to a principal amount in excess of \$7,500,000 (after giving effect to reserves and availability blocks), plus Protective Advances, Bank Product Obligations, and related obligations, without the consent of the Collateral Agent;
- (c) take any Security Interest from the Borrower or its Subsidiaries;
- (d) grant time, renewals, extensions, releases, discharges or other indulgences or forbearances to the Borrower in respect of Senior Obligations;
- (e) waive timely and strict compliance with or refrain from exercising any rights under or relating to any Senior Obligations;
- (f) accept credit enhancements or make any compositions, arrangements, plans of reorganization or compromises with the Borrower as the Senior Lender may deem appropriate in connection with any Senior Obligations;
- (g) change, whether by addition, substitution, removal, succession, assignment, grant of participation, transfer or otherwise, the Senior Lender;

- (h) acquire, give up, vary, exchange, release, discharge or otherwise deal with or fail to deal with any Security Interests relating to any Senior Obligations, or allow the Borrower or any other person to deal with any property which is subject to such Security Interests, all as the Senior Lender may deem appropriate; or
- (i) abstain from taking, protecting, securing, registering, filing, recording, renewing, perfecting, insuring or realizing upon any Security Interests for any Senior Obligations; and no loss in respect of any of the Security Interests received or held by the Senior Lender, whether occasioned by fault, omission or negligence of any kind by the Senior Lender, or otherwise, shall in any way limit or impair the liability of the Collateral Agent or the rights of the Senior Lender under this Agreement,

all of which may be done without notice to or consent of the Collateral Agent and without impairing, releasing or otherwise affecting any rights or obligations of the Collateral Agent hereunder or any rights of the Senior Lender hereunder. The Senior Lender agrees to any change in, amendment to, waiver of, or departure from, any term of any Subordinated Document, including any amendment, renewal, restatement or extension of any Subordinated Document, provided that no change in, amendment to, waiver of, or departure from, any term of any Subordinated Document shall (i) increase the payment (or expedite the dates of repayment) or other obligations of Borrower under any Subordinated Document, or add new events of default or any financial covenants under any Subordinated Document, without the prior written consent of Senior Lender or (ii) affect the subordination of the Subordinated Obligations.

### **3.03            Notice of Demand, Acceleration, Default and Enforcement**

(1) The Collateral Agent shall give the Senior Lender prompt (and, in any event, within five (5) Banking Days) written notice of each of the following:

- (a) the occurrence of a Subordinated Obligations Default of which it has actual knowledge;
- (b) any acceleration of the Subordinated Obligations, the making of a demand for repayment of the Subordinated Obligations upon their full and final maturity, or the occurrence of any other event requiring repayment of any principal of the Subordinated Obligations prior to final maturity;
- (c) any enforcement of or other exercise of any remedies under any Subordinated Security; and
- (d) the commencement of any action or proceeding to enforce, collect or receive payment of any Subordinated Obligations or other Enforcement Action to enforce payment of any Subordinated Obligations.

(2) The Senior Lender shall give the Collateral Agent prompt (and, in any event, within five (5) Banking Days) written notice of each of the following:

- (a) the acceleration of the Senior Obligations or termination of the commitment;
- (b) the occurrence of a Senior Obligations Default of which it has actual knowledge; and
- (c) any enforcement of or other exercise of any remedies under any Senior Security.

(3) The failure to give the notices required pursuant to Section 3.03(2) shall not release, restrict or otherwise affect any of the obligations of the Collateral Agent hereunder nor limit, derogate from or otherwise affect any of the other provisions hereof or the effect thereof.

### **3.04            Agreement Not to Challenge**

The Collateral Agent shall not at any time challenge, dispute or contest the validity or enforceability of any of the Senior Obligations, the Senior Security or the Loan Documents (including this Agreement) or the perfection of the Security Interests constituted by any of the Loan Documents, nor shall it at any time challenge, dispute or contest the validity or enforceability of the subordination and postponement provided for herein or take any action whereby the subordination and postponement contemplated hereby may be prejudiced. Likewise, the Senior Lender shall not at any time challenge, dispute or contest the validity or enforceability of any of the Subordinated Obligations, the Subordinated Security or the Subordinated Documents (including this Agreement) or the perfection of the Security Interests constituted by any of such Subordinated Documents.

### **3.05            Representations and Warranties**

The Collateral Agent hereby represents and warrants to the Senior Lender that:

- (a) it is validly subsisting under the laws of its jurisdiction of incorporation, it has all necessary power and authority to enter into this Agreement and to perform its obligations hereunder, the execution, delivery, observance and performance on its part of this Agreement has been duly authorized by all necessary action and it has duly executed and delivered this Agreement;
- (b) this Agreement constitutes a valid and legally binding obligation of it, enforceable against it in accordance with its terms, subject, however, to limitations with respect to enforcement imposed by law in connection with bankruptcy, insolvency, reorganization or other laws affecting creditors' rights generally and to the qualification that equitable remedies such as specific performance and injunction are only available in the discretion of the court from which they are sought and general equitable principles;
- (c) none of the authorization, execution or delivery of this Agreement or performance of any obligation pursuant hereto requires or will require, pursuant to applicable law now in effect, any approval or consent of any governmental authority having jurisdiction (except such as has already been obtained and are in full force and effect) nor is in conflict with or contravention of (i) the Collateral Agent's articles, bylaws or other constating documents or any resolutions of directors or shareholders or the provisions of its partnership agreement or declaration of trust or trust indenture (as applicable) or (ii) the provisions of any other indenture, instrument, undertaking or other agreement to which the Collateral Agent is a party or by which it or its properties or assets are bound; and
- (d) it is authorized by each other holder of any Subordinated Debentures to enter into this Agreement and to bind such other holder or holders to the terms and provisions hereof.

The Senior Lender hereby represents and warrants to the Collateral Agent that:

- (e) it is validly subsisting under the laws of its jurisdiction of incorporation, it has all necessary power and authority to enter into this Agreement and to perform its obligations hereunder, the execution, delivery, observance and performance on its part of this Agreement has been



duly authorized by all necessary action and it has duly executed and delivered this Agreement;

- (f) this Agreement constitutes a valid and legally binding obligation of it, enforceable against it in accordance with its terms, subject, however, to limitations with respect to enforcement imposed by law in connection with bankruptcy, insolvency, reorganization or other laws affecting creditors' rights generally and to the qualification that equitable remedies such as specific performance and injunction are only available in the discretion of the court from which they are sought and general equitable principles;
- (g) none of the authorization, execution or delivery of this Agreement or performance of any obligation pursuant hereto requires or will require, pursuant to applicable law now in effect, any approval or consent of any governmental authority having jurisdiction (except such as has already been obtained and are in full force and effect) nor is in conflict with or contravention of (i) the Senior Lender's articles, by laws or other constating documents or any resolutions of directors or shareholders or the provisions of its partnership agreement or declaration of trust or trust indenture (as applicable) or (ii) the provisions of any other indenture, instrument, undertaking or other agreement to which the Senior Lender is a party or by which it or its properties or assets are bound.

#### **ARTICLE 4 - ACKNOWLEDGEMENT OF THE BORROWER AND GUARANTOR**

##### **4.01      Acknowledgement**

The Borrower and Guarantor hereby acknowledge, covenant and agree that:

- (a) it authorizes the Senior Lender and the Collateral Agent to share with each other any information possessed by them relating to the Indebtedness and to payments received by the Senior Lender and the Collateral Agent in respect thereof;
- (b) this Agreement shall not modify, relieve or release the Borrower or Guarantor from any of its Indebtedness or performance obligations under the agreements, instruments or other documents giving rise to the Subordinated Rights or the guarantee thereof by Guarantor;
- (c) it is a party hereto solely for the purpose of providing the acknowledgements, covenants and agreements set forth herein and does not, and is not intended to, derive any benefits hereunder; and
- (d) it consents to the terms of this Agreement and agrees to comply with, and to not act contrary to, the terms of this Agreement.

#### **ARTICLE 5 - TERMINATION**

##### **5.01      Termination; Delivery of Collateral.**

(a) The provisions hereof shall in all respects be a continuing agreement and shall remain in full force and effect until: (a) the Senior Obligations Payment Date; (b) upon completion of the assignment by the Senior Lender of, *inter alia*, the Senior Obligations to the Collateral Agent pursuant to the exercise by the Collateral Agent of its rights under Section 2.05 above.

(b) The Senior Lender hereby acknowledges that, to the extent that it holds, or a third party holds on its behalf, physical possession of or "control" (as defined in the Uniform Commercial Code) over Collateral pursuant to the Loan Documents or the Subordinated Documents, as applicable, such possession or control is also for the benefit of the Collateral Agent and Brown Shoe, solely to the extent required to perfect their security interest in such Senior Security. Nothing in the preceding sentence shall be construed to impose any duty on the Senior Lender (or any third party acting on such Person's behalf) with respect to such Collateral, or obtaining possession thereof, or provide the Collateral Agent or Brown Shoe, as applicable, with any rights with respect to such Collateral beyond those specified in this Agreement, the Loan Documents and the Subordinated Documents, as applicable, provided that subsequent to the occurrence of the Senior Obligations Payment Date, the Senior Lender shall (i) deliver to the Collateral Agent, at the Loan Parties' sole cost and expense, the Collateral in its possession or control or (ii) direct and deliver such Collateral as a court of competent jurisdiction otherwise directs.

## **5.02      Reinstatement**

This Agreement shall continue to be effective or be reinstated, as the case may be, if at any time any payment or performance of the Senior Obligations is rescinded, reversed, nullified, rendered void or voidable or must otherwise be restored, refunded, returned or unwound for any reason, all as though such payment had not been made or such performance had not occurred.

# **ARTICLE 6 - CONTINUING SUBORDINATION**

## **6.01      Continuing Subordination**

This Agreement shall create a continuing subordination and shall:

- (a) be binding upon the Parties hereto and their respective successors and assigns; and
- (b) enure, together with the rights and remedies of the Senior Lender hereunder, to the benefit of and be enforceable by the Senior Lender and its successors and assigns for its benefit and for the benefit of any other person entitled to the benefit of any Loan Documents from time to time, including any permitted assignee or participant of some or all of the Loan Documents.

## **6.02      Other Obligations not Affected**

The subordination provided for herein is in addition to and not in substitution for any other agreement or any other security by whomsoever given or at any time held by the Senior Lender in respect of the Senior Obligations, and the Senior Lender shall at all times have the right to proceed against or realize upon all or any portion of any other agreement or any security or any other monies or assets to which the Senior Lender may become entitled or have a claim in such order and in such manner as the Senior Lender in its sole discretion may deem appropriate.

## **6.03      Acknowledgment of Documentation**

The Collateral Agent hereby acknowledges that it is familiar with and understands the terms of the Credit Agreement and all other Loan Documents. The Collateral Agent shall ensure that the Borrower provides such copies as the Collateral Agent wishes to receive of all amendments, modifications or supplements to any of the aforementioned documents and of any other documents, instruments or agreements which are executed in the future pursuant to which Senior Obligations or Senior Security may arise. The Senior Lender shall not in any manner have any obligation to ensure such receipt nor shall lack of receipt in

any way affect the absolute, irrevocable and unconditional nature of the Collateral Agent's obligations hereunder in respect of the Senior Obligations or Senior Security thereby created or arising.

#### **6.04            Consents to Security**

The Senior Lender hereby consents to the Subordinated Obligations and the Subordinated Security and the Collateral Agent hereby consents to the Senior Obligations and the Senior Security.

### **ARTICLE 7 - BANKRUPTCY**

#### **7.01            Financing Matters.**

(a) If any Loan Party becomes a principal obligor or debtor subject to any Creditor Proceeding in the United States (other than solely as a creditor holding an unsecured claim for right of payment in such proceeding) at any time prior to the Senior Obligations Payment Date, and if the Senior Lender desires to consent (or not object) to the use of cash collateral under the Bankruptcy Code (or similar bankruptcy law) that represents proceeds of Senior Security or to provide financing to any Loan Party under the Bankruptcy Code (or similar bankruptcy law) or to consent (or not object) to the provision of such financing to any Loan Party secured by a lien on any Senior Security (any such financing, "Senior DIP Financing"), then, so long as (1) the maximum principal amount of indebtedness that may be outstanding from time to time in connection with such Senior DIP Financing, together with the principal amount of Senior Obligations outstanding at such time (after giving effect to the application of the proceeds of any Senior DIP Financing to refinance all or any portion of the Senior Obligations), may not exceed the principal amount of \$10,000,000 (after giving effect to reserves and availability blocks), plus Bank Product Obligations, and related obligations, (2) subject to clause (A) of this subparagraph (a), the Collateral Agent retains a lien on all Senior Security with the same priority as existed prior to the commencement of the Creditor Proceeding, (3) the terms of such Senior DIP Financing do not require any Loan Party to seek approval for any plan of reorganization that is inconsistent with this Agreement, and (5) the terms of such Senior DIP Financing do not require the Collateral Agent to advance additional funds pursuant to such Senior DIP Financing, the Collateral Agent agrees, that Collateral Agent (A) will be deemed to have consented to, will raise no objection to, nor support any other person objecting to, the use of such cash collateral or to such Senior DIP Financing on the grounds of a failure to provide "adequate protection" for the Subordinated Security or on any other grounds and (B) if requested by the Senior Lender, will subordinate (and will be deemed hereunder to have subordinated) the Subordinated Security on any Senior Security (i) to such Senior DIP Financing on the same terms as the Senior Security are subordinated thereto (and such subordination will not alter in any manner the terms of this Agreement), (ii) to any adequate protection provided to the Senior Lender and (iii) to any "carve-out" agreed to by the Senior Lender, so long as (x) the Collateral Agent retains its lien on the Subordinated Security to secure the Subordinated Obligations (in each case, including proceeds thereof arising after the commencement of the case under the Bankruptcy Code) and such lien has the same priority as existed prior to the commencement of the case under the Bankruptcy Code, (y) all liens on Senior Security securing any such Senior DIP Financing shall be senior to or on a parity with the liens of the Senior Lender securing the Senior Obligations on Senior Security.

(b) All liens granted to the Senior Creditor in any Creditor Proceeding, whether as adequate protection or otherwise, are intended to be and shall be deemed to be subject to the lien priority and the other terms and conditions of this Agreement.

**7.02            Relief From the Automatic Stay.** Until the Senior Obligations Payment Date, the Collateral Agent agrees that it will not seek relief from the automatic stay or from any other stay in any Creditor Proceeding or take any action in derogation thereof, in each case in respect of any Senior Security, without the prior written consent of the Senior Lender.

**7.03            No Contest.** The Collateral Agent agrees that, prior to the Senior Obligations Payment Date, it shall not contest (or support any other person contesting) (a) any request by the Senior Lender for adequate protection of its interest in the Senior Security or any request for relief from the automatic stay with respect to the Senior Security, or (b) any objection by the Senior Lender to any motion, relief, action, or proceeding based on a claim by the Senior Lender that its interests in the Senior Security are not adequately protected (or any other similar request under any law applicable to a Creditor Proceeding).

**7.04            Avoidance Issues.** If any Senior Lender is required in any Creditor Proceeding or otherwise to disgorge, turn over or otherwise pay to the estate of any Loan Party, because such amount was avoided or ordered to be paid or disgorged for any reason, including because it was found to be a fraudulent or preferential transfer, any amount (a “Recovery”), whether received as proceeds of security, enforcement of any right of set-off or otherwise, then the Senior Obligations shall be reinstated to the extent of such Recovery and deemed to be outstanding as if such payment had not occurred and the Senior Obligations Payment Date shall be deemed not to have occurred. If this Agreement shall have been terminated prior to such Recovery, this Agreement shall be reinstated in full force and effect, and such prior termination shall not diminish, release, discharge, impair or otherwise affect the obligations of the parties hereto. The Collateral Agent agrees that it shall not be entitled to benefit from any avoidance action affecting or otherwise relating to any distribution or allocation made in accordance with this Agreement, whether by preference or otherwise, it being understood and agreed that the benefit of such avoidance action otherwise allocable to them shall instead be allocated and turned over for application in accordance with the priorities set forth in this Agreement.

**7.05            Asset Dispositions in an Insolvency Proceeding.** The Collateral Agent shall not, in Creditor Proceeding or otherwise, oppose any sale or disposition of any Senior Security that is supported by the Senior Lender, and the Collateral Agent will be deemed to have consented under Section 363 of the Bankruptcy Code (and otherwise) to any sale of any Senior Security supported by the Senior Lender, free and clear of the Collateral Agent’s liens in the Subordinated Security so long (a) the Senior Lender has consented to such sale or other disposition of such assets, (b) either (i) pursuant to court order, the Collateral Agent’s liens in the Security attach to the net proceeds of the sale or other disposition with the same priority and validity, and the liens remain subject to the terms of this Agreement, or (ii) the proceeds of the sale or other disposition are applied in accordance with this Agreement, (c) such sale or disposition is not in contravention of the terms of this Agreement and (d) the net cash proceeds of the sale or other disposition that are applied to Senior Obligations permanently reduce the Senior Obligations. The Collateral Agent hereby appoints the Senior Lender and any officer or duly authorized person of the Senior Lender, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power of attorney in the place and stead of the Collateral Agent and in the name of the Collateral Agent or in the Senior Lender’s own name, from time to time, in the Senior Lender’s sole discretion, for the purposes of carrying out the terms of this Section 7.05, to take any and all reasonable and appropriate action and to execute and deliver any and all documents and instruments as may be necessary or desirable to accomplish the purposes of this Section 7.05, and which is consistent with this Section 7.05, including any financing statements, endorsements, assignments, releases or other documents or instruments of transfer (which appointment, being coupled with an interest, is irrevocable).

The foregoing to the contrary notwithstanding, the Collateral Agent may raise any objections to any sale or disposition of the Senior Security that could be raised by a creditor of the Loan Parties whose claims are not secured by liens on the Senior Security, provided such objections are not inconsistent with any other term or provision of this Agreement and are not based on their status as secured creditors (without limiting the foregoing, the Collateral Agent may not raise any objections based on rights afforded by Sections 363(e) and (f) of the Bankruptcy Code to secured creditors (or any comparable provision of any other Bankruptcy Law) with respect to the liens granted to the Collateral Agent in respect of the Senior Security).

**7.06            Effectiveness in Insolvency Proceedings.** This Agreement, which the parties hereto expressly acknowledge is a “subordination agreement” under Section 510(a) of the Bankruptcy Code, including, without limitation, the lien priorities set forth herein, shall be effective before, during and after the commencement of a Creditor Proceeding.

**7.07            Certain Waivers.** The Collateral Agent waives any claim it may hereafter have against Senior Lender or Collateral Agent arising out of (a) the election by Collateral Agent of the application of Section 1111(b)(2) of the Bankruptcy Code, or any comparable provision of any other applicable law, or (b) any use of cash collateral or financing arrangement, or any grant of a security interest in the Security or otherwise in any Creditor Proceeding, in each case, to the extent consistent with the terms of this Agreement.

## **ARTICLE 8 - MISCELLANEOUS**

### **8.01            Assignments and Participations by Senior Lenders**

Without limiting (as between the Senior Lender and the Borrower) the provisions of the Credit Agreement relating to assignments and participations, the Senior Lender may, from time to time without notice to or consent of the Collateral Agent, assign or transfer or grant participations in respect of any or all of the Senior Obligations, the Senior Security or any interest therein; and, notwithstanding any such assignment or transfer or grant of a participation or any subsequent assignment or transfer thereof or grant of a participation therein, the Collateral Agent acknowledges that such Senior Obligations shall be and remain Senior Obligations for the purposes hereof, and every immediate and successive assignee or transferee of, or participant in, any of the Senior Obligations or of any interest therein shall, to the extent of the interest of such assignee, transferee or participant in the Senior Obligations, be entitled to the full rights and benefits hereof; provided that, as a condition of any such assignment or transfer of the Senior Obligations, any such assignee or transferee thereof shall agree in writing to be bound by the terms and provisions of this Agreement.

### **8.02            Assignment by the Collateral Agent or Borrower**

The Borrower shall not assign all or any portion of its obligations under this Agreement without the prior written consent of Senior Lender. The Borrower shall not assign all or any portion of its obligations under the Subordinated Obligations without the prior written consent of the Senior Lender, which consent may not be unreasonably withheld or delayed; provided that, it shall be a condition of any such assignment that any assignee of all or any portion of the obligations under this Agreement shall agree in writing to be bound by the terms and provisions of this Agreement. Except for (a) assignments and participations by and among investments accounts managed by the Collateral Agent, (b) assignments to other duly licensed portfolio managers in the same or a similar business as the Collateral Agent, to the extent required to effect the *bona fide* transfer of any Subordinated Debenture Holder's investment accounts to any such other portfolio manager and (c) assignments to a Subordinated Debenture Holder, the Collateral Agent shall not assign all or any portion of its Subordinated Obligations, Subordinated Rights or obligations under this Agreement without the prior written consent of the Senior Lender, which consent may not be unreasonably withheld or delayed; provided that, it shall be a condition of any such assignment (including any assignment referenced in (a) or (b) above) that any assignee of all or any portion of the Subordinated Obligations, Subordinated Rights or obligations under this Agreement shall agree in writing to be bound by the terms and provisions of this Agreement.

### **8.03            Accounts**

The accounts and records of the Senior Lender shall constitute, in the absence of manifest error, *prima facie* evidence of the Senior Obligations.

#### **8.04            Further Assurances**

Each Party agrees to execute and deliver all deeds, documents, instruments and assurances (including discharges) as may be reasonably required by another Party from time to time (but at the expense of the Borrower) to reflect, confirm or give effect to the terms hereof and to provide such information regarding the Indebtedness and the Subordinated Rights as may be reasonably requested from time to time.

#### **8.05            Severability**

Any provision of this Agreement which is or becomes prohibited or unenforceable in any jurisdiction does not invalidate, affect or impair the remaining provisions hereof in such jurisdiction and any such prohibition or unenforceability in any jurisdiction does not invalidate or render unenforceable such provision in any other jurisdiction.

#### **8.06            Amendments; Waivers**

- (a) No provision of this Agreement may be amended, waived, discharged or terminated orally nor may any breach of any of the provisions of this Agreement be waived or discharged orally, and any such amendment, waiver, discharge or termination may only be made in writing signed by the Parties; and provided that if such amendment does or would adversely affect the interests of the Borrower, it may only be made in writing signed by the Borrower.
- (b) No failure on the part of the Senior Lender to exercise, and no delay in exercising, any right, power or privilege hereunder shall operate as a waiver thereof unless specifically waived in writing, nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege.
- (c) Any waiver of any provision of this Agreement or consent to any departure by the Senior Lender therefrom shall be effective only in the specific instance and for the specific purpose for which given and shall not in any way be or be construed as a waiver of any future requirement.

#### **8.07            Notice**

All notices, requests, consents, demands, approvals and other communications hereunder shall be deemed to have been duly given, made or served if made in writing and delivered personally, one business day after being sent via confirmed facsimile, five business days after being mailed by first-class mail, certified or registered and postage prepaid, or two business day after being deposited with a reputable express courier, to the respective parties to this Agreement as follows:

If to Borrower or Guarantor:

Onlineshoes.com Inc.  
1730 Minor Ave., Suite 700  
Seattle, WA 98101  
Attention: Nick Bozikis  
Telecopier No: (206) 436-5199

If to Senior Lender:

Wells Fargo Bank, National Association  
 MAC N2689-250  
 40 King Street West  
 25th Floor, Suite 2500  
 Toronto, Ontario, M5H 3Y2  
 Canada  
 Attention: Gerler Relationship Manager

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

Lane Powell PC  
 1420 Fifth Avenue, Suite 4200  
 Seattle, WA 98111-9402  
 Attention: Gregory R. Fox  
 Telecopier No: (206) 223-7107

If to Collateral Agent:

Deans Knight Capital Management Ltd.  
 1500-999 West Hastings Street  
 Vancouver, British Columbia, V6C 2W2  
 Canada  
 Attention: Dillon Cameron  
 Telecopier No: (604) 669-0238

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

Farris, Vaughan, Wills & Murphy LLP  
 25<sup>th</sup> Floor – 700 W. Georgia St.  
 Vancouver, British Columbia, V7Y 1B3  
 Canada  
 Attention: Mitchell Gropper, Q.C.  
 Telecopier No: (604) 661-9349

The designation of the persons to be so notified or the address of such persons for the purposes of such notice may be changed from time to time by similar notice in writing, except that any communication with respect to a change of address shall be deemed to be given or made when received by the party to whom such communication was sent.

#### **8.08 Governing Law**

This Agreement is conclusively deemed to be made under, and for all purposes to be governed by and construed in accordance with, the laws of the State of Washington applicable therein. The Parties hereby irrevocably submit and attorn to the jurisdiction of the courts of the State of Washington for all matters arising out of or relating to this Agreement or any of the transactions contemplated hereby.

#### **8.09            Enurement**

This Agreement shall be binding upon the Parties and their respective successors and permitted assigns.

#### **8.10            Time of Essence**

Time shall be of the essence with respect to this Agreement.

#### **8.11            Entire Agreement**

This Agreement contains the entire agreement between the Parties with respect to the matters herein contained and there are no other representations, warranties, covenants or collateral agreements between any of the Parties in connection therewith other than as expressly herein provided.

#### **8.12            Counterparts**

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart. Delivery of an executed counterpart of a signature page of this Agreement by telecopy or by sending a scanned copy by electronic mail shall be as effective as delivery of a manually executed counterpart of this Agreement.

#### **8.13            Payment of Expenses**

Borrower and Collateral Agent, jointly and severally, agree to pay to Senior Lender any and all costs and expenses, including attorneys' fees, incurred by Senior Lender in protecting or enforcing its rights under the terms of this Agreement whether or not a lawsuit is commenced. Attorneys' fees shall include services rendered at both the trial and appellate levels, as well as services rendered subsequent to judgment and obtaining execution thereon. In addition to the payment of expenses provision, reasonable attorney fees' also shall include, without limitation, attorneys' fees and costs incurred in connection with any bankruptcy case or other insolvency proceeding commenced by or against Borrower or any person granting a security interest in any item of Collateral, including all fees incurred in connection with (a) moving for relief from the automatic stay, to convert or dismiss the case or proceeding, or to appoint a trustee or examiner, or (b) proposing or opposing confirmation of a plan of reorganization or liquidation, in any case without regard to the identity of the prevailing party. The award of such fees, costs and expenses shall bear interest at the default rate provided for in the Credit Agreement. Costs and expenses, including attorneys' fees, shall be considered as part of the Senior Obligations, as that term is used herein.

#### **8.14            Consent to Jurisdiction**

For the purpose of enforcing the performance of its obligations hereunder or otherwise in connection herewith, Borrower and Collateral Agent hereby consents to the jurisdiction and venue of the courts of the state of Washington or of any federal court located in such state, including, without limitation, the Superior Court of the state of Washington for King County and the Federal District Court for the Western District of Washington at Seattle. Collateral Agent and Borrower hereby waive the right to contest the jurisdiction of the courts located in the state of Washington on the grounds of inconvenience or otherwise, and further waive any right to bring any action or proceeding against the Senior Lender in any court outside the state of Washington. The provisions of this Section 7.14 shall not limit or otherwise affect the right of Senior Lender to institute and conduct action in any other appropriate manner, jurisdiction or court.



## 8.15 Jury Waiver

BORROWER AND COLLATERAL AGENT HEREBY EACH WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM ARISING OUT OF THIS AGREEMENT, WHETHER NOW OR HEREAFTER ARISING AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE, AND HEREBY CONSENTS AND AGREES THAT ANY SUCH CLAIM MAY, AT SENIOR LENDER'S ELECTION, BE DECIDED BY TRIAL WITHOUT A JURY AND THAT SENIOR LENDER MAY FILE AN ORIGINAL COUNTERPART OR COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE WAIVER AND AGREEMENT CONTAINED HEREIN.

## 8.16 Conversion of Currencies

If, in connection with any action or proceeding brought in connection with this Agreement or any resulting judgment or order, it becomes necessary to convert any amount due hereunder in one currency (the "**first currency**") into another currency (the "**second currency**"), then, the conversion shall be made at the Judgment Conversion Rate on the first business day prior to the day on which payment is received. If Senior Lender or Subordinated Creditor reasonably believe the conversion is not able to be made in the manner contemplated by the preceding paragraph in the jurisdiction in which the action or proceeding is brought, then the conversion shall be made at the Judgment Conversion Rate on the day on which the judgment is given. If the Judgment Conversion Rate on the date of payment is different from the Judgment Conversion Rate on such first business day or on the date of judgment, as the case may be, the party shall pay such additional amount (if any) in the second currency as may be necessary to ensure that the amount paid on such payment date is the aggregate amount in the second currency which, when converted at the Judgment Conversion Rate on the date of payment, is the amount due in the first currency, together with all costs, charges and expenses of conversion. Any additional amount owing pursuant to the provisions of this section shall be due as a separate debt and shall give rise to a separate cause of action and shall not be affected by or merged into any judgment obtained for any other amounts due under or in respect of this Agreement.

The term "**Judgment Conversion Rate**" used in this section means the noon rate of exchange for Canadian interbank transactions in Canadian dollars in the other currency published by the Bank of Canada for the date in question.

## 8.17 Statutory Notice

**ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, EXTEND CREDIT OR FORBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.**

## 8.18 Collateral Agent Consent

The Collateral Agent hereby consents to the Credit Agreement, Borrower being jointly and severally liable thereunder, and to Holdings and Parent being Loan Parties thereunder and Guarantor thereof.

[The remainder of this page has been intentionally left blank.]

[Signatures appear in the following pages]

IN WITNESS WHEREOF each Party has duly executed this Agreement as of the date and year first above written.

By Senior Lender:

WELLS FARGO BANK, NATIONAL ASSOCIATION

Per:


Name: Roger Pfiffner  
Its: Authorized Signatory

SUBORDINATION, POSTPONEMENT AND STANDSTILL AGREEMENT  
DEANS KNIGHT CAPITAL MANAGEMENT LTD.

**By Collateral Agent:**

**DEANS KNIGHT CAPITAL MANAGEMENT LTD.**, in its  
capacity as Collateral Agent on behalf of the Subordinated  
Debenture Holders

Per:

  
Name: *Dillon Cameron*  
Title: *Authorized Signatory*

**By Borrower:**

**ONLINESHOES.COM INC.**

Per: 

Name: Nicholas Bozikis  
Its: Chief Financial Officer

**SHOES.COM INC.**

Per: 

Name: Nicholas Bozikis  
Its: Chief Financial Officer

**By Guarantor:**

**SHOES.COM HOLDINGS (USA) INC.**

Per: 

Name: Nicholas Bozikis  
Its: Chief Financial Officer

**1006903 B.C. LTD.**

Per: 

Name: Nicholas Bozikis  
Its: Chief Financial Officer