

THE COMPETITION TRIBUNAL

IN THE MATTER OF the *Competition Act*, R.S.C. 1985, c. C-34, as amended.

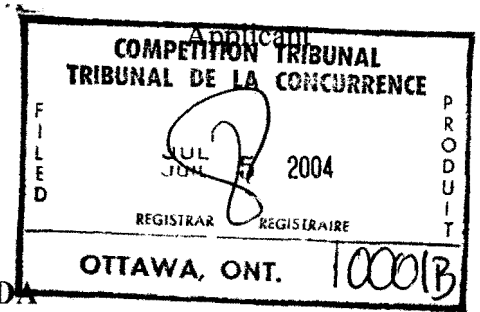
AND IN THE MATTER OF an Application by Quinlan's of Huntsville Inc. for relief pursuant to sections 75, 103.1 and 104 of the *Competition Act*.

BETWEEN:

QUINLAN'S OF HUNTSVILLE INC.

- and -

**FRED DEELEY IMPORTS LTD.
carrying on business as
DEELEY HARLEY-DAVIDSON CANADA**



Respondent

AFFIDAVIT OF JIM QUINLAN

sworn June 26, 2004

I, **JIM QUINLAN**, of the Town of Huntsville in the Province of Ontario, MAKE OATH
AND SAY:

1. I am the President of the Applicant, Quinlan's of Huntsville Inc. ("Quinlans"), and as such, I have knowledge of the matters to which I hereinafter depose, except where I refer to matters based on information provided to me in which case I identify the source of the information and do verily believe all such information to be true.

The Parties

2. Quinlans is an Ontario corporation engaged in the business of selling *inter alia* Harley-Davidson (H-D) products including motorcycles, parts, accessories, apparel, and other H-D merchandise. We employ ten people at our dealership store located in Huntsville, Ontario, which is operated as a family business by myself, my wife Lynne, and our son Chris Quinlan. We are the only H-D dealer in our area. Through Quinlans, we regularly support and contribute to various community initiatives in and around the Huntsville and surrounding area, including the Huntsville Hospital Foundation, the Heart and Stroke Foundation, and a number of community sporting events. We also sponsor a number of motorcycle rides for charity, and other motorcycle related events.

3. Fred Deeley Imports Limited, carrying on business as Deeley Harley-Davidson Canada (“FDI”) is a corporation incorporated in the Province of British Columbia and is established as Ontario company no. 305708, with its principal Ontario place of business in Concord, Ontario. FDI is the exclusive distributor of H-D products in Canada, which are provided through its national network of H-D dealers, of which we are one. We have been FDI’s dealer for H-D products in Huntsville for 17 years. FDI is the only distributor of H-D products in Canada. Accordingly, we cannot obtain H-D products from any supplier other than through FDI.

Developing the Market in our Area for H-D Products

4. In 1987, my wife Lynne and I were approached by Bob Davies, Sales Manager for FDI about establishing an authorized H-D dealership store selling and promoting H-D products in Huntsville, Ontario. While Lynne and I were prepared to build the dealership from infancy and develop the market for H-D products on a long-term basis, we knew this required a commitment of current and long-term support from FDI. FDI assured us that the relationship would be a long-term “partnership”. In reliance upon the assurances of FDI, Quinlans became an authorized dealer of H-D products. FDI would sell H-D products to us on a wholesale basis and we would then market and resell H-D products on a retail basis to our customers. Through this arrangement, we have continuously developed the retail market for H-D products throughout our market area for the past 17 years.

5. Our first location was a 900 sq. ft. outlet located in an industrial park with limited expansion possibilities. Although the store was adequate for our needs in the early years of our business, the long-term plans of FDI required us to make a much larger investment in premises to service a larger market area. In 1990, we acquired a 17 acre parcel of land and built upon it a new 18,000 sq. ft. dealership store, configured and outfitted at the request of FDI to meet the H-D new store concept and marketing image established by FDI for its H-D dealership stores. This H-D new store concept included adopting the H-D showroom design and appearance, colour scheme, floor and wall covering, H-D marketing displays, and H-D commercial premises signage. We built this store and our

H-D dealership business in reliance upon and consistent with expectations and representations of FDI that we were mutually committed to a long-term H-D dealer/distributor relationship.

6. The establishment and operation of a new concept design H-D dealership was a risky proposition at the time because it was expensive and unproven. We were one of the very first dealers in Ontario to implement the H-D vision being promoted by FDI. We put our complete efforts into it. We expended significant amounts for development and maintenance of the dealership store, building our H-D dealership business using FDI recommended store configuration and merchandise displays, and purchasing additional marketing displays and other H-D paraphernalia to comply with the numerous programs, standards, and requirements set out by FDI. As part of the continuing stipulations of FDI, we displayed the H-D logo on our store front and situated H-D paraphernalia in and around the dealership to maximize customer exposure to H-D products. About two years ago, at FDI's request we installed a large H-D highway sign at a cost of \$12,000.00. We were required to purchase and install a special computer called a H-D Diagnostic Technician, used for mechanical diagnostic applications. It is linked to a computer at H-D headquarters in Milwaukee and of course, its only use is on H-D products. The Diagnostic Technician prevents anyone from being able to service modern H-D products unless they are an authorized H-D dealer linked through this computer to the H-D headquarters in Milwaukee. We paid \$10,000.00 for this special computer. We were also required at our expense to attend ongoing training seminars and to send staff

members annually for training programs to learn the H-D way of business. We did so willingly, as part of our ongoing “partnership” with FDI as a H-D dealer.

7. Quinlans has also been an authorized Honda motorcycle dealer over the years. H-D products represent 65% of Quinlans’ sales and Honda represents 35%. For our market area, Honda customers are a far more limited group than our H-D customers and Honda products are targeted for an entirely different clientele. Generally, the H-D product line is in a far higher price bracket with very different appearance and performance features than the Honda product line. Over the years, we would dedicate from 50% to 90% of our floor space to H-D products in accordance with or in excess of the conditions set by FDI. We marketed H-D products in malls and trade shows to promote the H-D brand. All expenses for these initiatives were paid out of our own pockets.

8. Over the course of our 17 years as a H-D dealer, we experienced the many ups and downs of the business and in particular, the challenges facing our development of H-D products in our natural geographical market, which includes towns such as Huntsville, Bracebridge, Gravenhurst, Bala, Parry Sound, North Bay and the many villages and rural communities located in between. Through hard work, dedication, and a commitment to FDI and our customers’ needs, we have become one of the most respected H-D dealers in Ontario. This brought with it significant good will through our development of a substantial market for H-D products in and around Muskoka stretching south to Orillia and north to North Bay; east to Algonquin Park and west to Georgian Bay (collectively referred to as the “Area”). In some instances, we grew markets from a few riders to a

strong and loyal H-D customer base. For example, since 1988 we developed North Bay from virtually a handful of riders into a viable and mature market. We currently account for 50% of the sales of H-D products in North Bay, even though this centre is approximately 100 kilometers away from our store. We also sponsor the North Bay Harley Owner's Group ("HOG") and we have been working with them for two years preparing for the regional HOG rally in North Bay scheduled for July 2005.

9. The volume of H-D products sold by us generally has increased year over year. During our most recently completed fiscal year, we sold 120 new H-D motorcycles, recording the highest number of sales in our history and one of the highest of any FDI dealer outside the Greater Toronto area. Our sales of H-D products by dollar value and as a percentage of our overall sales for the past five years are reflective of our successful efforts to develop the market and good will for H-D products, as shown in the following chart:

Fiscal Year	Total Sales (\$)	H-D Product Sales (\$)	H-D Product Sales/Total Sales (approximate %)
1999	\$3,615,271.00	\$2,349,926.00	65%
2000	\$4,162,678.00	\$2,705,740.00	65%
2001	\$5,017,867.00	\$3,261,613.00	65%
2002	\$5,705,332.00	\$3,708,465.00	65%
2003	\$5,212,223.00	\$3,387,944.00	65%

FDI's Refusal to Deal

10. From time to time FDI presented dealer agreements or renewal or extension agreements for my wife and I to sign, which we did. In June of 1999, FDI submitted a new Dealer Agreement for our execution, which FDI had re-named "Retailer Agreement". The substance of the Dealer Agreement remained similar to the previous Dealer Agreements we signed over the years. These agreements were not negotiated, but were printed form contracts, the terms of which were entirely stipulated by FDI. The various Dealer Agreements stipulated FDI's approval for many material aspects of our dealership business. Each Dealer Agreement or renewal contained a stated time duration and FDI's invariable practice was to renew or extend the agreement each time, either by a brief extension agreement or by submitting a new Dealer Agreement for signature. The stated duration of the June 1999 Retailer Agreement was July 31, 2001. I signed the Retailer Agreement on June 9, 1999. Consistent with past practice as we approached the end of the term, FDI provided us with an extension agreement dated July 17, 2001, which extended the Dealer Agreement to July 31, 2004. Attached hereto as Exhibit A is a true copy of the Retailer Agreement between Fred Deeley Imports Ltd. and Quinlan's of Huntsville Inc. dated June 9, 1999. Also attached hereto as Exhibit B is a true copy of the Retailer Extension Agreement dated July 17, 2001.

11. Until recently our relationship with FDI was excellent. In my view this changed when my wife and I participated with other Ontario H-D dealers in the establishment of the H-D Dealers' Association for Ontario (the "Association") in or around the summer of

2001. The Association was a loose co-operative of H-D dealers created for the purpose of pursuing the collective interests and concerns of H-D dealers across Ontario in order to promote the H-D brand, explore areas of mutual profitability, and to generally function as a channel which would allow H-D dealers to have some voice with FDI in respect of their business issues and in particular, the terms of the standard form Dealer Agreement stipulated by FDI.

12. After learning of the establishment of the Association in September of 2001, Malcolm Hunter, President and Chief Operating Officer of FDI wrote to us stating FDI's disapproval about the creation of the Association and expressing their displeasure with our role in forming and operating the Association and that: "The fundamentals around creating a legal entity to better represent the interests of Ontario is somewhat disappointing" and that FDI believed "this type of association would not be necessary". FDI did not, however, mention anything about discontinuing our relationship. We noted their displeasure and continued on in reliance on the mutual expectation and understanding of our continuing "partnership" with FDI in selling and developing our market Area for H-D products. Attached hereto as Exhibit C is a true copy of the letter of FDI dated September 25, 2001.

13. During the period following FDI's renewal of the Dealer Agreement, we continued investing our efforts and resources in our business, marketing H-D products in our Area. This required our sustained expenditure and reinvestment of profits in continuing to maintain and expand our marketing of H-D products. FDI encouraged this

spending in order to ensure ongoing development of the market for H-D products in our Area.

14. On December 9, 2003, I received a letter from FDI advising that it would not offer us an “extension” of the Retailer Agreement. This was the first time that the possibility of non-renewal was ever mentioned in our 17 year relationship. I was surprised, shocked, and dismayed. I spoke with Malcolm Hunter to determine why FDI had decided to terminate us. No reason was given. When pressed for an explanation, Mr. Hunter stated that the reason was “because he could”. I asked for more facts so that we could work out any differences, but he told me his decision was final. Mr. Hunter did not contend that there was any cause or default by us, but justified the termination on the basis that FDI had the unilateral right to do so, as it might wish. After further objection and inquiry by our counsel, FDI advised through its counsel that FDI’s “market studies have demonstrated that there is no natural market for H-D products in the Huntsville area” and that:

“Based upon these market studies, Fred Deeley has determined that there is no longer a need for a Retailer in Huntsville, and as it is entitled to do, has decided not to offer Quinlan’s a new Retailer Agreement or renew or extend the existing one on July 31, 2004”.

In our discussions, Mr. Hunter was clear and categorical that FDI would not supply any H-D products to us after July 31, 2004. Attached hereto as Exhibit D is a true copy of the letter of FDI dated December 9, 2003. Attached hereto as Exhibit E is a true copy of the letter of FDI’s counsel dated January 16, 2004.

Substantial Detrimental Effect

15. The overall effect of the termination of our H-D dealership by FDI will be devastating upon us. If FDI fails to supply us with H-D products, for all practical purposes we will be precluded from continuing with our business. We will be substantially and detrimentally affected due to our inability to obtain H-D products to sell. In particular, the loss of 65% of our sales revenue illustrates the substantial detrimental effect that will be caused as a result of our loss of the H-D product line. This will put us out of business.

16. We have developed much of the good will for H-D products in the Area through our efforts and investment over the years in marketing H-D products. This good will built by Quinlans is not transferable by us to another product line because we invested in H-D products as part of FDI's marketing strategy to build strong H-D brand loyalty among our customers and to build interest and brand awareness for motorcyclists and non-motorcyclists alike. (A lot of the H-D apparel and promotional products are purchased by customers who do not actually own or ride a motorcycle).

17. H-D products are largely unaffected by possible substitutes to H-D products because non-H-D products do not carry the mystique developed as a unique attribute of the H-D image. Our customers have commented on many occasions that H-D products are "entirely different products" because H-D motorcycles offer them a unique sound, feel, and style. The H-D mystique and image is seen by customers as a life style

statement that is not duplicated or associated with non-H-D products. This is illustrated, for example, by the nostalgia associated with the H-D brand and also technologically, by the unique sound of the low revving engine utilized in H-D motorcycles, which in and of itself differentiates H-D motorcycles from all currently produced motorcycles. Non-H-D products have been unable to break into the H-D product market because they are significantly different products operating in a significantly different market, appealing to a different clientele. From my experience, non-H-D products are substantially weaker sales performers than H-D products. At our dealership, customers coming into our store for a H-D motorcycle will not consider a motorcycle of another brand, as they are committed to H-D products and are generally not willing to consider a non-H-D product even though it may be far cheaper and similar in performance simply as a mode of transportation. Once we have recruited a customer to the H-D product, generally they are not interested in switching. There is no equivalent substitute for the mystique and image of H-D products.

18. The devotion and effort expended by Quinlans to the H-D marketing strategy is also illustrated by the frequency of our repeat sales of H-D products, since many of our existing customers have purchased successive new H-D products from us. These customers also recommend to their friends and family members to deal with us because of our fair dealing and dedication to servicing their H-D products. This is consistent with the mission statement in FDI's written and oral dealer training programs that we should consider our H-D customers to be "customers for life".

19. The effect of FDI's failure to supply Quinlans with H-D products in these circumstances will deal a staggering blow to our business. It will also result in FDI appropriating at no cost for its own use and benefit a windfall gain resulting from the substantial investment we have made in developing the marketplace and good will for H-D products. Based on the growth achieved from our efforts developing the H-D product line, the inability to continue to sell H-D products through the appropriation of our 17 years of dedication and hard work will put us out of business. We will lose all of our H-D customers as well as 65% of our sales revenue. We cannot survive on our remaining 35% of revenue from the sale of Honda products.

20. If we are unable to obtain adequate supplies of H-D products after July 31, 2004, when the new season of H-D products begins, our sales for the upcoming season will be significantly prejudicially affected. Our H-D customers will no longer be able to purchase from us. In addition to being unable to sell H-D products to new or repeat customers, our existing customers have expressed concerns about product servicing issues because maintenance, servicing, and repairs of H-D products will require us to be able to access H-D products and FDI personnel. FDI's refusal to deal will therefore cause us to be unable to fulfill our ongoing business obligations and relationships, which will negatively impact our customers and irreparably harm our customer relationships. Moreover, we are being negatively impacted as a result of FDI's impending termination of our H-D dealership. Word has gotten out into the market about this and it is causing great concern among our customers and already is resulting in some of them curtailing their dealings with us both for sales and service. Our revenues over the past two months

have fallen 20% compared to the same period last year. I attribute this entirely to customer concern about FDI's disclosure that they intend to terminate us effective July 31, 2004.

21. Our customers are situated across our natural market centered in the Muskoka recreational area. If H-D products are no longer sold and serviced at our dealership store in Huntsville, our customers will be forced to travel to other H-D dealers a great distance away. Currently the dealers closest to our market Area are located 125 kilometers away in Barrie, or 260 kilometers away in Sudbury and 320 kilometers away in Pembroke. The time it takes for our customers to travel from Huntsville to Barrie is approximately 1 hour. The travel time from Huntsville to Sudbury is approximately 2.5 hours. From Huntsville to Pembroke takes approximately 3 hours. The effect of FDI's refusal to deal not only will have an adverse effect on competition in the market since the termination of our H-D dealership will result in reduced competition, it will also adversely affect our customers who will have to travel much greater distances to another H-D dealer.

22. FDI is the exclusive supplier of H-D products in the Area and its H-D products occupy a dominant position in the marketplace, whereby we will be precluded from carrying on our business by FDI's failure to supply. We will be substantially adversely affected due to our inability to obtain adequate supplies or indeed, any supplies of H-D products anywhere in the market since there are no other suppliers of H-D products in Canada.

23. We have consistently met FDI's usual trade terms over the past 17 years as a H-D dealer and we are willing and able to continue to meet the usual trade terms of FDI.

24. There is no shortage of H-D products in the market. The reason we will be unable to obtain H-D products is the sole result of FDI's refusal to provide H-D products to us after July 31, 2004. H-D products are in ample supply through FDI.

25. We have continuously, competently, and diligently maintained prominent and professional H-D representation and product promotion with the highest level of dedication and support. We continually kept up-to-date in our knowledge of H-D products by attending or having our staff attend FDI sponsored sales and servicing workshops. Throughout the past 17 years, FDI evaluated our performance as against other H-D dealers across Canada, which was based on the Customer Satisfaction Index criteria established by FDI. We ranked consistently high on those evaluations. Moreover, our results and efforts have been recognized by FDI on many occasions, as reflected in the positive results achieved by our dealership with respect to our representation of the H-D product, as well as comments received from customers.


26. FDI's impending refusal to supply H-D products has and will continue to directly and substantially affect our business. In a letter from Malcolm Hunter dated February 12, 2004, FDI offered a temporary extension of the existing agreement to October 31, 2004. The letter, however, was drafted in terms of a contract which we felt would extinguish our right of action against FDI arising from its termination of our Dealer Agreement if

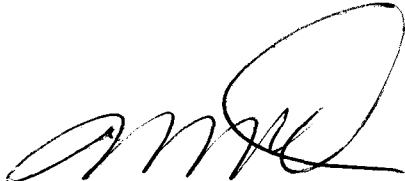
we accepted it. We did not sign back the February 2004 letter because we wished to preserve our right to seek a remedy for the injury to our business against FDI, as we are seeking to do in these proceedings. Nevertheless, this proposal by FDI for an extension, shows that there is no material prejudice to FDI if an interim order is made requiring FDI to supply us, pending the determination of this Application. Attached hereto as Exhibit F is a true copy of the letter of FDI dated February 12, 2004.

27. If leave is granted pursuant to section 103.1 of the Act, there is a serious question to be tried in these proceedings under section 75 of the Act. We will suffer irreparable harm if interim relief is not granted pending the hearing of this Application requiring FDI to continue to accept Quinlans as a customer for the supply of H-D products on its usual trade terms. Should interim relief be granted, FDI will suffer no harm as it will continue to benefit from our efforts to sell H-D products during this period. In this regard, the issuance of an Order against FDI to supply Quinlans will merely preserve the status quo pending the determination of our Application to the Competition Tribunal. On the balance of convenience, the failure to grant interim relief pending hearing of the Application will cause substantially greater harm to Quinlans than it would to FDI, since Quinlans' business and reputation as a H-D retailer will be substantially destroyed with its customers after July 31, 2004, if we have no H-D products to sell, and we are unable to service our existing customers because we no longer have a supply of H-D parts or access to the technical support supplied by FDI and H-D headquarters in Milwaukee. We have corresponded and met several times with FDI representatives since receiving their December 9, 2004 letter, trying to persuade them to continue to deal with us. Our last meeting was last Tuesday, June 22, 2004. FDI has made it clear they will not supply H-D products to us after July 31, 2004.

28. Quinlans undertakes to abide by any order that may be made against it as a result of interim relief requested, being granted.

29. I make this Affidavit in support of an application made by Quinlans for leave pursuant to section 103.1 of the Act, to make an application against FDI pursuant to section 75 of the Act, and for an interim order that FDI be required to accept Quinlans as a customer for the supply of H-D products pursuant to section 104 of the Act.

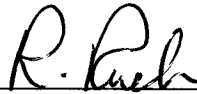
SWORN before me at the Town of)
Huntsville in the Province of Ontario this)
26th day of June, 2004)
)
_____)
Commissioner for Taking Affidavits, etc.



Jim Quinlan

THIS IS EXHIBIT "A"
REFERRED TO IN THE AFFIDAVIT OF
JIM QUINLAN

SWORN BEFORE ME THIS
26th DAY OF JUNE 2004.



A Commissioner etc.

FRED DEELEY IMPORTS LTD.
RETAILER AGREEMENT



(January 1999)

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RETAILER AGREEMENT

THIS AGREEMENT is made between:

FRED DEELEY IMPORTS LTD.,
a corporation incorporated under the laws of British Columbia
("**Deeley**"),

and

QUINLAN'S OF HUNTSVILLE INC.,
a corporation doing business as Quinlan's of Huntsville Inc.
("**Retailer**").

In consideration of the mutual covenants of the parties and other good and valuable consideration, the receipt and sufficiency of which the parties hereby acknowledge, the parties agree as follows:

A. MANAGEMENT AND OWNERSHIP

This Agreement has been entered into by Deeley with Retailer in reliance upon Retailer's representation and agreement that:

- (i) The key managing individual(s) of Retailer (individually and collectively, "**Retailer Manager**") and the owner(s) of Retailer (individually and collectively, "**Principal**") identified below possess and will maintain the personal qualifications, experience, skill and commitment necessary to ensure that Retailer will perform its obligations under this Agreement in the most effective manner;
- (ii) The Retailer Manager (or, if there is more than one Retailer Manager, all of them), and no other persons, shall have full authority for the operating management of Retailer in the performance of this Agreement and shall be so involved personally on a full-time basis; the Retailer Manager shall be **Jim & Lynne Quinlan;**

- (iii) If Retailer is a corporation or partnership, the following persons, and only the following persons, shall be the Principal and shall have ownership and control of all of the issued and outstanding shares or partnership interest of Retailer in the percentage interests identified below:

<u>Name</u>	<u>Home Address</u>	<u>Title</u>	<u>% of Interest</u>
James Dunlan	Box 143 Gaysville Ontario POB1A0	President	50
James Dunlan	Same	Treasurer	50

- (iv) No changes, directly or indirectly, intentionally or otherwise, may be made to the ownership, or operating management of Retailer without complying with Section H of this Agreement for such changes.

B. OPERATIONS AND FACILITIES

1. Term

Unless previously terminated pursuant to this Agreement, this Agreement shall expire on July 31, 2001 unless Retailer fails to maintain the minimum overall score specified on the attached Schedule "A" ("**Required Minimum Score(s)**"). If Retailer fails to maintain the Required Minimum Score(s), Retailer shall be so notified by Deeley and this Agreement shall expire upon the earlier of:

- (i) one year from the date of delivery of the notice to Retailer that Retailer has failed to maintain the Required Minimum Score(s); or
- (ii) July 31, 2001

(the period from initial notice by Deeley to Retailer that Retailer has failed to maintain the Required Minimum Score(s) until the earlier of the two above-noted dates is referred to hereinafter as the "**Probationary Period**"). If Retailer, during the Probationary Period, re-attains the Required Minimum Score(s), Retailer shall notify Deeley and upon verification by Deeley that Retailer has re-attained the Required Minimum Score(s), the Probationary Period shall expire and the term of

this Agreement shall be reinstated to July 31, 2001 (unless previously terminated pursuant to this Agreement). In the case of any further failure by Retailer to maintain the Required Minimum Score(s) after the expiry of the Probationary Period and reinstatement of the term of this Agreement to July 31, 2001, Retailer shall be so notified by Deeley and this Agreement shall expire upon the earlier of:

- (i) six months from the date of delivery of the notice to Retailer that Retailer has failed to maintain the Required Minimum Score(s) following the expiry of the Probationary Period; or
- (ii) July 31, 2001.

2. **Appointment**

Subject to the terms of this Agreement, Deeley grants Retailer a non-exclusive right to sell Harley-Davidson Motor Company (“HDMC”) motorcycles, parts and accessories therefor, MotorClothes, collectibles and other related products (all hereinafter referred to as “**Harley-Davidson Products**”) at retail. Retailer agrees that it will concentrate its sales efforts primarily on persons, businesses and government agencies, residing, doing business or located in the following area:

Huntsville, Ontario and surrounding area
 (“**Territory**”).

Deeley may, in its sole discretion, appoint other retailers in the Territory.

3. **Retailer Location**

In order that Deeley may establish and maintain an effective network of authorized retailers, Retailer agrees that it shall conduct all of its operations under this Agreement only in and from facilities and at the location(s) approved under this Agreement (including any location approved by an addendum to this Agreement). Retailer or Principal shall not, either directly or indirectly, relocate to or establish any place of business for the temporary or permanent sale or service of Harley-Davidson Products or the conduct of any other responsibilities under this Agreement at any other location, without the express prior written consent of Deeley. Deeley hereby designates and approves only the following location for sale and servicing of Harley-Davidson Products and the display of

Harley-Davidson Properties (as defined in paragraph C.5 of this Agreement):

**R.R. # 1 Old Ferguson Road
Huntsville, Ontario
P1H 2J2**

(referred to in this Agreement as the “**Retailer Location**”).

4. Place of Business

Retailer shall maintain a clean, orderly and properly stocked place of business acceptable to Deeley of a size which is in proportion to the volume of Harley-Davidson Products expected to be sold by it in the Territory.

5. Proper Identification

Retailer shall identify its business with current Harley-Davidson identification at Retailer's expense. If permitted by local ordinance, Retailer shall display a current Harley-Davidson internally illuminated outdoor sign or a sign which is equal in prominence and quality in the opinion of Deeley.

6. Hours of Operation

Retailer shall, subject to any applicable laws, regulations, or ordinances, keep its facilities open for business during such days and hours as will most conveniently fulfill the needs of sales and service customers and based on customary hours of similar businesses in the Territory.

7. Retailer Restaurants

Retailer shall not own or operate, in whole or in part, directly, any restaurant or other beverage or food service operation (“**Restaurant**”) at, or in close proximity to, the Retailer Location or any other approved location as set forth from time to time as an “Addendum to Retailer Agreement”, without the prior written consent of Deeley. Nothing in this paragraph is intended to prohibit the Retailer from owning or operating, in whole or in part, directly or indirectly, any Restaurant, provided that such Restaurant is not at or in close proximity to the Retailer Location and does not have a motorcycle theme or use or display the Harley-Davidson Properties (as defined in paragraph C.5 of this Agreement).

8. Prohibited Practices

In recognition of the need to maintain the highest standards of ethical advertising and business practice, neither Deeley nor Retailer will publish or cause or permit to be published any representation or advertising relating to the Harley-Davidson

Products or their servicing which may mislead or deceive the public, impair the goodwill of Deeley, HDMC, Harley-Davidson Properties (as defined in paragraph C.5 of this Agreement), Retailer or the reputation of the Harley-Davidson Products. Retailer shall not represent or sell any custom-built motorcycles (whether new or used) as Harley-Davidson Products. Retailer shall avoid in every way any deceptive, misleading, confusing, illegal or "bait" advertising or business practice. Deeley agrees not to publish or employ any such advertising or practice or encourage Retailer to do so.

C. SALES EFFORT

Retailer shall devote its best efforts to promote the sale of the Harley-Davidson Products only to consumers, police agencies (municipal, provincial, and federal), fraternal groups and other customers located within the Territory assigned to Retailer by personal calls, by intelligent sales presentations, by demonstration of Harley-Davidson Products, by having a listing in the Yellow Pages of Retailer's local telephone directory incorporating an appropriate logotype in a form approved by Deeley, by reasonable use of newspaper, direct mail and other advertising, by encouraging and participating in motorcycle activities designed to further interest in motorcycles and by such additional methods as might be desirable to promote the sales of Harley-Davidson Products. Retailer shall stock an adequate amount of literature for all models of Harley-Davidson motorcycles available from Deeley. Retailer shall also use its best efforts to meet any retail sales objectives and wholesale purchase objectives that Deeley may reasonably set from time to time.

1. Police Sales Effort

Retailer shall devote its best efforts to promote the sale of Harley-Davidson Products in the Territory to municipal, provincial, and federal police agencies and shall furnish Deeley with a police activity report within thirty (30) days of Deeley's written request.

2. Motorcycle Inventory and Demonstrators

Subject to availability from Deeley, Retailer shall keep on hand at all times at least the assortment of new current model Harley-Davidson motorcycles specified on the attached Schedule "B". Subsequent inventory requirements will be set forth from time to time as specified by Deeley.

Retailer further agrees, subject to availability from Deeley, to keep on hand at all times in first class operating condition the assortment of new current model Harley-Davidson motorcycle demonstrators specified by Deeley. Demonstrator requirements will be set forth from time to time as specified by Deeley.

3. **Parts and Accessories and MotorClothes Inventories**

Subject to availability from Deeley, Retailer shall at all times maintain an inventory of Harley-Davidson parts and accessories and MotorClothes of a quantity and assortment as are in accordance with such reasonable guidelines as may be established by Deeley for Retailer from time to time to meet current and anticipated customer demand in the Territory and to fulfill Retailer's obligations for performing warranty, recall and other services pursuant to this Agreement.

4. **Corporate Programs**

Retailer agrees to participate in all corporate programs including various advertising and sales promotion programs made available to it by Deeley including, without limiting the foregoing, Harley-Davidson Owners Group of Canada Ltd. In particular, Retailer shall participate at its own expense to the extent and in the manner that Deeley may direct in such co-operative advertising, training programs, store design, and parts and accessories bookings as Deeley may institute from time to time including without limiting the foregoing, the Essential Tools Program. Deeley shall endeavour to provide Retailer with advance notice of such programs.

5. **Harley-Davidson Properties**

Retailer acknowledges that H-D Michigan, Inc. ("**HDMI**"), the parent company of HDMC, is the exclusive owner of the trade-marks, trade names and service marks listed in "Exhibit A" (referred to herein as the "**Harley-Davidson Properties**") of the License Agreement attached as Addendum #1 to this Agreement as amended or modified from time to time ("**License Agreement**"). For the limited purposes of the Retailer's performance of its obligations pursuant to this Agreement, Retailer shall enter into such License Agreement. The terms of this License Agreement shall govern all use and display of the Harley-Davidson Properties. Retailer acknowledges that the License Agreement may be terminated by HDMI or Deeley independently from this Agreement. Retailer further acknowledges that Deeley, without the consent of Retailer, may amend or modify the terms and conditions of the License Agreement or offer Retailer a new license agreement.

D. ORDERS AND TERMS OF SALE

1. **Purchase and Sale**

Deeley agrees to sell to Retailer and Retailer agrees to purchase from Deeley, either directly or through a wholesale finance company approved by Deeley from time to time ("**Finance Company**"), as Retailer may order during the term of this Agreement for resale to the public, such Harley-Davidson Products as Deeley may

have available from time to time. References to Finance Company shall include its successors and assigns.

Retailer recognizes that in order to fulfill its responsibilities under this Agreement, Retailer hereby agrees to accept delivery of those Harley-Davidson Products ordered for current delivery and those Harley-Davidson Products ordered for future delivery when said items are available for delivery. Sales shall be at the prices and on the terms and conditions specifically set forth in this Agreement.

2. Execution of Orders

All orders by Retailer (including orders made through Finance Company) are subject to acceptance or rejection by Deeley in whole or in part. Deeley will use reasonable efforts to fill accepted orders for Harley-Davidson Products; however, all accepted orders are subject to delays or changes occurring in manufacture or shipment. Deeley will not be liable for delays in delivery or for non-delivery. Nothing in this Agreement will obligate Deeley to deliver to Retailer any particular number, type or assortment of Harley-Davidson Products. Furthermore, during any period of shortage of any Harley-Davidson Products due to any cause whatsoever, Deeley shall have the exclusive right to allocate Harley-Davidson Products to Retailer and all other retailers and customers based upon such criteria as Deeley may establish in its sole and absolute discretion from time to time, notwithstanding anything herein to the contrary.

3. Resale of Products

Retailer shall **not**:

- (i) obtain new Harley-Davidson Products for resale from any person, firm or company other than Deeley, Finance Company, or any other authorized Canadian Harley-Davidson retailer, without the prior written consent of Deeley;
- (ii) be concerned or interested, either directly or indirectly, in the manufacture or wholesale distribution in the Territory of any goods which compete with the Harley-Davidson Products, except that Retailer may sell one-off custom-built motorcycles provided that Retailer does not represent or sell such custom-built motorcycles as Harley-Davidson Products;
- (iii) sell Harley-Davidson Products to any customer where Retailer knows, or should know, that the Products are being purchased for the purpose of resale and not for the personal or primary business use of the customer;

- (iv) sell Harley-Davidson Products to any customer that has not first executed and delivered to Retailer a representation and warranty that Harley-Davidson Products are being purchased by the customer for the personal or primary business use of the customer and not for resale, which representation and warranty shall be in a form determined by Deeley in its sole discretion;
- (v) sell Harley-Davidson Products through a sales agent or to a subdistributor;
- (vi) sell or offer for sale as Harley-Davidson Products any products which are not either Harley-Davidson Products or licensed products purchased from any authorized licensee of Deeley or HDMC; or
- (vii) sell Harley-Davidson Products to any customer where the Retailer knows, or should know, that the customer intends to (a) export said products from Canada, (b) permit the products to be exported from Canada, or (c) enter into or acquiesce in any agreement whereby the products are leased or sold for use outside of Canada.

If Retailer, after reasonable notice, continues to contravene any of the above, Deeley may, at its option, refuse to supply products to Retailer, reduce the supply of Harley-Davidson Products to Retailer, or terminate this Agreement upon reasonable notice. Any monies credited to, set aside for floor plans, booking orders, or spent on behalf of Retailer by Deeley in respect of co-operative advertising or any other corporate program made available by Deeley in respect of Harley-Davidson Products shall be debited or charged back to Retailer, as appropriate, if those said products are sold by Retailer outside the Territory or if a customer exports Harley-Davidson motorcycles from Canada. Harley-Davidson motorcycles shall be deemed to have been exported by a customer if Deeley, through registration searches or other investigative means, determines that the motorcycle was registered outside Canada or is owned by a non-resident of Canada within one year of the purchase thereof from the Retailer.

4. Special Equipment

Deeley is authorized to have installed on any Harley-Davidson motorcycle ordered by Retailer any equipment, accessory, decal or notice required by any applicable federal, provincial or local law, rule or regulation. Retailer shall be entirely responsible for any consequences imposed by law in the event Retailer removes or tampers with any such equipment, accessory, decal or notice.

5. Capital and Credit Requirements

Retailer recognizes that in order to properly fulfill its responsibilities under this Agreement, it is necessary for Retailer to provide and maintain at all times sufficient net working capital, and retail and wholesale credit facilities, the amount of which will depend upon the size of the Retailer's operations as contemplated by this Agreement.

E. PRICES, PAYMENT AND DELIVERY

1. Prices, Policy and Delivery

Retailer shall pay for each of the Harley-Davidson Products the price as determined by Deeley from time to time.

Prices for all said Products shall be F.O.B. Richmond, British Columbia, or Concord, Ontario or point of shipment. Payment shall be:

- (i) cash in advance;
- (ii) C.O.D. (payable with collection charges and exchange);
- (iii) sight draft with bill of lading attached (payable with collection charges and exchange);
- (iv) Finance Company retail and wholesale credit facilities; or
- (v) as otherwise agreed upon by the parties in writing.

For greater certainty, delivery of any Harley-Davidson Products shall be made to Retailer at Richmond, British Columbia, or Concord, Ontario or at the place of shipment if shipped from any place other than Richmond, British Columbia or Concord, Ontario and said Products shall become the property of Retailer at the time shipment is made. In the event of a C.O.D. shipment, the place of delivery shall be deemed to be Richmond, British Columbia, or Concord, Ontario or the place of shipment if shipped from any place other than Richmond, British Columbia or Concord, Ontario, and the carrier or carriers shall be deemed to be Deeley's agent or agents only for the purpose of making collection; title shall be deemed to have passed to Retailer at Richmond, British Columbia or Concord, Ontario or at the place of shipment from any place other than Richmond, British Columbia, or Concord, Ontario, subject only to any security interest, lien, hypothec or charge in favour of Deeley, or Finance Company.

Retailer agrees to pay all drafts or C.O.D.'s on any Harley-Davidson Products within five (5) days from the date of arrival at their destination. Retailer shall pay all costs connected with any reconsignment or return of shipment to Richmond, British Columbia or Concord, Ontario.

2. Price Change

Prices of all Harley-Davidson Products shall be subject to change by Deeley without notice. The prices charged for such Products shall be those in effect at the time of delivery of the Products.

3. Delinquency

If Retailer is delinquent in payment of any indebtedness or obligations to Deeley or fails to execute and return any security documents requested by Deeley or if Retailer is in default with respect to any provision of this Agreement, then Deeley, in its discretion and in addition to any other rights and remedies it may have under this Agreement or at law, may suspend all pending orders and shipments to Retailer until said delinquency is cured or said security documents are received or until default is cured, as the case may be.

F. SERVICE

1. Warranty & Recall Service

Retailer shall maintain adequate facilities for repairing and servicing Harley-Davidson Products and shall have available a reasonable supply of spare Harley-Davidson parts for such products. Retailer agrees to repair and service Harley-Davidson Products, whether sold by Retailer or otherwise, which are covered by HDMC's customer warranty in accordance with HDMC's written product warranty manuals and written instructions, which warranty may be changed by HDMC from time to time upon notice to Retailer. Retailer further agrees to repair and service Harley-Davidson Products, whether sold by Retailer or otherwise, which are covered by any extended warranty program or extended service plan purchased from a vendor authorized by HDMC or Deeley. Except as otherwise permitted by Deeley in writing, Retailer shall use only genuine Harley-Davidson Products in performing warranty and recall service. Retailer agrees to use its best judgment on prioritizing service work, recognizing the importance, however, of providing timely warranty and recall service to customers. All warranty and other claims and service complaints received by Retailer from customers shall be processed and handled by Deeley, who shall assume responsibility for their proper disposition and satisfaction. Retailer will perform all warranty and other services as an independent contractor and will assume responsibility for, and hold Deeley,

HDMC and their affiliates harmless from, all liability and claims (including but not limited to, claims resulting from the negligent or willful acts or omissions of Retailer or Retailer's undue delay in performing warranty service) arising out of, or in connection with, Retailer's performance of warranty, recall, and other services contemplated herein.

2. **Product Warranty**

HDMC or Deeley may establish from time to time, by notice to Retailer, certain written warranties to Retailer and/or to Retailer's customers applicable to Harley-Davidson Products. THERE SHALL BE NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS for a particular purpose are made or will be deemed to have been made by HDMC or Deeley with respect to the Harley-Davidson Products, except such written express warranties as are in effect at the time Deeley sells any such Products to Retailer as set forth in the pertinent Deeley sales and/or service documents. Deeley neither assumes, nor authorizes any other persons to assume for it any other obligation or liability in connection with the sale of Harley-Davidson Products. Retailer shall make all sales of Harley-Davidson Products in such manner that retail customers shall acquire all rights accorded under HDMC's written express warranties then in effect. Retailer further agrees to explain said warranties to its retail customers prior to the consummation of any sale of Harley-Davidson Products and to advise its customers in writing that any extended warranty program or extended service plan that may be offered by Retailer is not a warranty of either HDMC or Deeley. Retailer shall also deliver a copy of the customer warranty to its customer at the time of delivery of any Harley-Davidson Products covered by such customer warranty. Retailer shall also register with Deeley all Harley-Davidson motorcycles and any other Harley-Davidson Products sold by Retailer for purposes of establishing warranty protection, providing essential information in the event of a recall of Harley-Davidson Products, and/or providing Deeley with useful market information all in accordance with Deeley's written procedures from time to time.

3. **Pre-Delivery Obligations**

Retailer agrees to uncrate, set up, inspect and test each Harley-Davidson motorcycle received by Retailer in accordance with Deeley's and HDMC's instructions. Retailer agrees to make all necessary repairs and to make certain that each motorcycle is in satisfactory and safe operating condition prior to use or delivery to Retailer's customer or demonstration to a potential Retailer's customer.

4. Service School

Retailer and Deeley agree that training of all Retailer employees is critical to providing retail customers a satisfactory sales and service experience and to the success of Retailer and Deeley in conducting business under this Agreement. Therefore, Retailer shall have the right and obligation to send those of its employees as may be eligible to service schools authorized by Deeley or HDMC on terms and under the rules and regulations from time to time established by Deeley.

5. Design Changes

Deeley reserves the right to require Retailer to make changes in design or add improvements on any Harley-Davidson Products as may be required by HDMC without incurring any obligations to install them on such Products previously purchased by Retailer.

6. Claims

Retailer shall submit claims to Deeley, in such form as may be required by Deeley, for compensation for labour and parts used by Retailer in performing its warranty, recall, and pre-delivery obligations for retail customers under this Agreement. Retailer agrees to furnish Deeley with full information as to its labour rates and related information respecting service matters in such form and at such intervals as may be reasonably requested by Deeley. Retailer shall maintain adequate records and documents supporting each such warranty, recall and pre-delivery claim or any other claims Retailer may make to Deeley pursuant to any advertising promotion or other program of Deeley. In addition to any other rights or remedies Deeley may have under this Agreement or at law, Deeley may charge back to Retailer all payments or credits made by Deeley to Retailer with respect to any warranty, recall, pre-delivery or any other claims whatsoever which were improperly claimed or paid.

Warranty reimbursement rates will be set forth from time to time as specified by Deeley.

7. Product Modifications

Deeley recognizes Retailer is an independent business and may sell motorcycle products which are not Harley-Davidson Products. To avoid disparagement of any Harley-Davidson Properties or Harley-Davidson Products and to avoid misleading its customers, Retailer shall, if it sells for installation or installs on any Harley-Davidson motorcycle any item of equipment or parts or accessories that are not Harley-Davidson Products, disclose to its customer, in writing, that such

item of equipment or parts or accessories has not been sold by and manufactured by or for Deeley and that neither Deeley nor HDMC assumes any responsibility therefor. Failure of non-HDMC products or unauthorized modifications to Harley-Davidson Products (including but not limited to, the use of parts or accessories for any application not specified by Deeley) or accidents arising therefrom and the entire consequences thereof, are not the responsibility of Deeley, and Retailer agrees to indemnify, defend and hold harmless Deeley, HDMC and their affiliates against any and all claims, demands, suits, causes of action, damages and expenses (including legal fees on a solicitor and own client basis) whatsoever arising directly or indirectly from Retailer's unauthorized modifications to Harley-Davidson Products or use of non-HDMC products.

G. OTHER RESPONSIBILITIES

1. Financial Reporting

Retailer shall furnish Deeley within four (4) months after the close of each fiscal year of Retailer, or at other intervals set by Deeley, a complete and accurate financial report of its business operation signed by an accredited independent accountant on such forms as may be provided by, or be acceptable to, Deeley. Retailer's financial report shall consist of a balance sheet and a profit and loss statement, and all financial reports shall be in such form as may be reasonably required by Deeley (which will include preparation and presentation in accordance with generally accepted accounting principles in Canada). Retailer shall furnish to Deeley on an ongoing basis as requested by Deeley all information required to enable Deeley to determine whether Retailer has maintained the Required Minimum Score(s). Retailer also agrees to provide all other information as may be reasonably requested by Deeley from time to time. Deeley shall regard all of the information furnished by Retailer under this paragraph as confidential between Retailer, Deeley, and any affiliate of Deeley. Retailer consents to the disclosure of any such information by Deeley to any affiliates of Deeley.

2. Inventory Reports

Retailer shall furnish Deeley with an inventory report in the form determined by Deeley on all new and used Harley-Davidson Products in Retailer's inventory bi-weekly or at other time intervals set by Deeley. Retailer recognizes that this report is of prime importance as it assists Deeley in evaluating current sales and market trends and in determining production and advertising schedules.

3. Non-Export Agreement

Retailer shall require that any purchaser of Harley-Davidson motorcycles enter into a Non-Export Agreement with the Retailer, unless said purchaser is personally known to Retailer as a legitimate retail customer purchasing Harley-Davidson motorcycles for personal use in Canada, in a form substantially the same as that attached hereto as Schedule "C". Retailer agrees to provide copies of all non-export agreements entered into by Retailer as may be reasonably requested by Deeley from time to time.

4. Compliance with Laws

Retailer shall, at all times, operate and conduct its business in full compliance with all federal, provincial, city or municipal statutes, laws, rules, regulations and ordinances. Retailer shall comply with all requests by Deeley made to implement provisions of federal, provincial and local motor vehicle safety acts and rules, regulations and standards relating to motor vehicle safety, including the forwarding of customer vehicle registration cards to Deeley immediately upon completion of vehicle sale and immediate completion of any Deeley recommended modifications on Products sold by, or delivered or consigned to, Retailer.

5. Insurance

Retailer shall, at its own expense, insure all Harley-Davidson Products from the moment that title in such Products is transferred to Retailer until such time as the Products arrive at Retailer's place of business against loss or damage by fire and all other perils for the full value thereof, and further, shall at its own expense, maintain comprehensive general liability insurance against claims for personal injury, death or property damage arising out of the shipment of the Products, such insurance to afford protection to such limits as are from time to time customarily insured against in the shipment of goods similar to the Products. Retailer shall, at its own expense, keep its place of business and any off-site storage facility and all Harley-Davidson Products and all other property located there insured against loss or damage by fire and all other perils for the full value thereof, and further, shall at its own expense, maintain comprehensive general liability insurance against claims for personal injury, death or property damage occurring on, in or about its place of business and any off-site storage facility, arising out of or resulting from the possession, occupation, use and control of said place of business and any off-site storage facility by Retailer, such insurance to afford protection to such limits as are from time to time customarily insured against in the case of similar premises. Retailer shall provide certificates of insurance to Deeley which certificates shall list Deeley, or such other party as Deeley may direct, as a loss payee, additional insured and assignee under all policies referred to above together

with the covenant of the insurers to provide to Deeley, or such other party as Deeley may direct, with at least thirty (30) days' notice prior to any material change or cancellation of any such insurance.

6. Data Transmission Systems

Retailer agrees to maintain and utilize a computer system that meets the Retailer's internal business needs and permits direct communication between Retailer and Deeley. Deeley may establish from time to time reasonable standards and policies as it believes are necessary or advisable with respect to such system. Deeley will not be liable for any interruptions or loss of data due to any cause whatsoever to said computer system, notwithstanding anything herein to the contrary.

7. Year 2000 Compliant

Retailer represents, warrants and covenants that its internal computer software, hardware, data, systems, facilities, supplies, products or other materials used in Retailer's business ("Systems") and the Systems of Retailer's suppliers and contractors which Retailer uses in Retailer's business (other than Deeley), are and shall be at all times Year 2000 Compliant. "**Year 2000 Compliant**" means, with respect to any hardware, firmware, software, data, files or other item, that the item will operate and interface (both internally and externally) without error, interruption, inconsistency, malfunction or inaccuracy with respect to time, dates, years, centuries or leap years, including without limitation correctly and unambiguously using, recognizing, calculating, comparing, manipulating, managing, inputting, outputting, transferring, communicating, storing, retrieving, sorting, sequencing, displaying, referencing and indicating time, dates, years, centuries (including without limitation single century and multi-century formulas) and leap years, prior to, during and beyond year 2000.

8. Confidentiality

Retailer shall strictly maintain the confidentiality of all non-public information and documents provided to it by or on behalf of Deeley or HDMC, or to which it has access through Deeley or HDMC, including information and documents in any form or format now or hereafter without limitation developed regarding product development, new products, production and delivery schedules, pricing, marketing plans, methods of accessing internal information (electronically or otherwise) and other proprietary matters. Retailer shall not disclose any such information or documents to any other person, including competitors or customers.

9. Security Documents

Retailer acknowledges and agrees that (i) any document or instrument evidencing a security interest, charge, hypothec or other lien given by Retailer to Deeley (collectively, the “**Security**”) secures payment and performance of all Obligations (as defined therein), including without limitation, all debts, liabilities and obligations of Retailer to Deeley under this Agreement, and (ii) the term “Dealer Agreement” when used in the Security shall mean the Dealer Agreement (as defined therein) and this Agreement. Retailer further agrees, from time to time at the request of Deeley, Retailer shall grant to Deeley for and on account of all present and future indebtedness of Retailer to Deeley, a security interest, charge, hypothec or other lien, in and to all such properties and assets of Retailer as Deeley shall determine. The nature of the terms and conditions incident to such security interest, charge, hypothec or other lien and the documents and instruments reflecting it shall be in the sole and absolute discretion of Deeley. In the event that Retailer is a corporation or partnership, Deeley may at the time of making of this Agreement or otherwise require the personal guarantee of Principal (or, if there is more than one Principal, any or all of them), and the terms and conditions of the guarantee or guarantees shall be in the sole and absolute discretion of Deeley.

H. **CHANGES IN RETAILER OWNERSHIP**

- (i) Retailer shall give Deeley prior written notice and complete explanation of (a) any proposed transfer of the principal assets of Retailer that are required for the conduct of its business, and (b) any proposed change, however accomplished, in the direct or indirect ownership or operating management of Retailer;
- (ii) No transfer or change of (a) a majority of Retailer’s assets or ownership shall be effective against Deeley unless and until Deeley gives its prior written consent (which consent may be given or withheld in Deeley’s sole and absolute discretion), and the change is set forth in a new retailer agreement or a written amendment to this Agreement duly executed by Retailer and Deeley, or (b) a minority of Retailer’s ownership shall be effective against Deeley unless and until the transferee shall have assumed all of the obligations of the transferor under any guarantee delivered by the transferor to Deeley or, at the request of Deeley, executed and delivered a new guarantee in form and substance satisfactory to Deeley;
- (iii) Deeley will not approve a proposed change, execute an amendment to this Agreement or enter into a new retailer agreement unless Retailer makes

arrangements acceptable to Deeley to satisfy any indebtedness owing to Deeley or Finance Company;

- (iv) Retailer shall give Deeley immediate notice of the departure, death or incapacity of Retailer Manager, Retailer, or any Principal;
- (v) Retailer shall not, directly or indirectly, in whole or in part, own and/or operate any Harley-Davidson retail store in excess of the number permitted by Deeley's policy on multiple ownership;
- (vi) No corporation offering its shares to the public, may, directly or indirectly, in whole or in part, own and/or operate any Harley-Davidson retail store;
- (vii) Subject to the next sentence, when Retailer submits to Deeley a proposal pursuant to paragraph H(i) to sell or otherwise transfer a majority of Retailer's assets or ownership, Deeley has a right of first refusal enabling Deeley to assume the buyer's rights and obligations under any such proposal and/or buy/sell agreement, to purchase the Retailer assets, stock or other form of ownership interest(s), including any leasehold interest or realty, and to cancel this Agreement and all rights granted to Retailer. Where any of the shareholders or partners of Retailer identified in Section A(iii) have a right of first refusal over the shares or partnership interest of Retailer pursuant to a unanimous shareholder agreement or partnership agreement, as the case may be, such shareholder(s) or partner(s) shall be entitled to exercise such right prior to Deeley exercising its rights under this paragraph H(vii); provided that any transfer of shares or partnership interests resulting from the exercise of a right of first refusal remains subject to Deeley's consent in accordance with paragraph H(ii). Deeley may exercise its rights under this paragraph H(vii) within thirty (30) days after Deeley's receipt of all data and documentation required by it to evaluate the proposed sale, transfer, or other change in ownership, which Retailer agrees promptly to provide, including but not limited to information reflecting other agreements or understandings between the parties to the proposal and/or buy/sell agreement. Deeley's rights under this Section H may be assigned by it to any third party and Deeley hereby guarantees the full payment to Retailer and/or any Principal of the purchase price by such assignee.

Notwithstanding the foregoing, if the proposed successor owner is the spouse or an adult child of any Principal, Deeley agrees to waive its personal qualification standard (except as to any matter referred to in subparagraph I.1(viii)).

I. TERMINATION OF AGREEMENT

1. Default

This Agreement may be terminated prior to its expiration:

- (i) by either party upon the institution of voluntary bankruptcy proceedings by or against the other party, or if the other party shall make an assignment for the benefit of creditors, have a receiver-manager appointed, become insolvent, or otherwise suffer a substantial impairment of its financial reputation and standing;
- (ii) by Deeley, if Retailer shall fail after reasonable written notice of default to perform its financial obligations to Deeley, Finance Company, or a subsidiary or associate of Deeley or Finance Company;
- (iii) by either party, if Deeley or Retailer requires a license or permit to perform any material responsibility under this Agreement in any jurisdiction where this Agreement is to be performed and if either party fails to secure and maintain such license or permit, or if such license or permit is suspended or revoked, irrespective of the cause or reason;
- (iv) by Deeley, if Retailer, after reasonable written notice, fails to have on order or in stock the number and assortment of Harley-Davidson Products referred to in paragraph C.2 and C.3;
- (v) by Deeley, for any failure by Retailer to comply with Section H of this Agreement;
- (vi) by Deeley, if Retailer submits to it any false or fraudulent application, claim report or record;
- (vii) by Deeley, if Retailer, after reasonable notice, breaches any term or condition or provision of this Agreement or fails to fulfill any of its obligations under this Agreement, the License Agreement, or any security agreement delivered pursuant to this Agreement;
- (viii) by Deeley, if Retailer, Retailer Manager or any Principal engages in any conduct which Deeley, acting reasonably, concludes is prejudicial to the marketing and sale of Harley-Davidson Products; for greater certainty, such prejudicial conduct includes, but is not limited to, the conviction of Retailer, Retailer Manager, or any Principal of an offense under the Criminal Code of Canada;

- (ix) by Deeley, if Retailer fails, in the reasonable opinion of Deeley, to participate in any of the corporate programs;
- (x) by Deeley, if the distributorship agreement between Deeley and HDMC, pursuant to which Deeley has the exclusive right to purchase from HDMC for resale in Canada, the Harley-Davidson Products, expires or for any reason whatsoever terminates without being renewed;
- (xi) by Deeley, effective ninety (90) days after the departure (for any reason whatsoever), death or incapacity of Retailer Manager (or, if more than one, any one or more of them), unless Retailer locates another Retailer Manager acceptable to Deeley within such 90 day period;
- (xii) by Deeley, on the death or incapacity of Retailer, if Retailer is an individual; or
- (xiii) by Deeley, on sixty (60) days written notice to Retailer, if any dispute, disagreement or controversy among any of the managers, officers, directors or Principal of Retailer, in the reasonable opinion of Deeley, adversely affects the ownership, operation, management, reputation, business, goodwill or interests of Retailer or Deeley, or to impair the goodwill associated with the Harley-Davidson Properties.

2. Consequences of Termination of Agreement

On termination or expiry of this Agreement, if a new agreement is not entered into by mutual agreement of the parties:

- (i) an automatic termination of the License Agreement and any other addendum attached to this Agreement shall be effected;
- (ii) Retailer shall pay forthwith to Deeley or Finance Company, as appropriate, all sums due for Harley-Davidson Products purchased or services rendered;
- (iii) Retailer will immediately discontinue use of and remove from its premises and vehicles (other than Harley-Davidson Products) any of the Harley-Davidson Properties, words, insignia or combinations thereof including any signs, labels, stationery, advertising and reading material which, in the opinion of HDMC or Deeley, is an improper use or reflects adversely on the reputation or brand image of Harley-Davidson Products or HDMC, HDMC or Deeley, or any of their affiliates. Retailer shall comply with this provision within thirty (30) days from the date of termination of this

Agreement. If Retailer shall refuse or neglect to comply with this provision, Retailer shall reimburse Deeley for all costs, fees and other expenses incurred by Deeley in connection with legal or any other action taken by Deeley to require Retailer to comply (including legal fees on a solicitor and own client basis);

- (iv) all unfilled orders for Harley-Davidson Products previously accepted by Deeley shall be canceled and Deeley shall remit to Retailer any net balance due to Retailer; and
- (v) Deeley shall not be obligated to repurchase from Retailer any Harley-Davidson Products in Retailer's inventory at the date of termination of this Agreement.

J. MISCELLANEOUS

1. No Agency

Retailer is an independent contractor and is not an agent or employee of Deeley, and Retailer shall **not**:

- (i) make any representation to others in which the relationship of principal-agent, or employer-employee may be presumed; or
- (ii) attempt to assume or create any obligations on behalf of Deeley.

For greater certainty, Retailer has no authority either to bind Deeley to any obligation or to represent Deeley in any circumstance, and Retailer agrees not to so bind or represent Deeley. Retailer shall at all times indemnify and hold and save harmless Deeley, HDMC and their affiliates and the officers, directors, agents and employees of the foregoing, from and against any and all suits, claims (including but not limited to claims for personal injury and property damage), damages, charges and expenses (including legal fees on a solicitor and own client basis) which may arise directly or indirectly out of the acts or omissions of Retailer, and its agents, representatives or employees or the granting or cancellation of Retailer's right to sell Harley-Davidson Products.

2. Good Faith

Retailer acknowledges that each of its obligations under this Agreement is reasonable, proper and fundamental for the purpose of this Agreement and that its failure to fulfill any of them shall constitute a material breach of this Agreement. Retailer acknowledges that any such failure, occurrence or event of default

constitutes a reasonable, fair, good, due and just cause and provocation for termination or non-renewal of this Agreement by Deeley. Retailer further acknowledges and agrees that any written communication from Deeley to Retailer respecting Retailer's alleged failure to fulfill any of its responsibilities under this Agreement shall not be considered to constitute or be evidence of coercion or intimidation, or threat thereof, or to be unreasonable, unfair, or to be not in good faith.

3. No Waiver

The failure of either party to enforce at any time any of the provisions of this Agreement or to exercise an option which is herein provided or to require at any time performance by the other party of any of the provisions hereof shall neither be construed to be a waiver of such provision nor affect in any way the validity of this Agreement or the right of the party to thereafter enforce each and every such provision.

4. Entire Agreement

This Agreement, including the schedules and the addendums, represents the entire agreement between the parties, superseding all prior agreements between the parties, and provided that any Security and any guarantee given of the obligations of Retailer continue to exist and remain in full force and effect. In consideration of the execution of this Agreement and such sales of Harley-Davidson Products as Deeley may make to Retailer, the parties waive, abandon, and relinquish any claims of any kind and nature whatsoever arising from, or in connection with, any such prior agreements other than the Security, provided however, that nothing herein contained shall be deemed a waiver of any claim arising out of a prior written settlement between the parties or prior sale of Products or services by Deeley or Retailer. This Agreement and any modification, amendment or change thereto shall not be valid or binding against Deeley unless signed by the Chief Executive Officer, or the Chief Operating Officer of Deeley.

5. Governing Law and Severability

This Agreement is to be governed by and construed according to the laws of the Province of Ontario. If any provision of this Agreement should be held invalid or unenforceable for any reason whatsoever or to violate any applicable law, such provision shall be deemed deleted from this Agreement, and the remainder of this Agreement shall be valid and enforceable without such provision.

6. Assignability

Deeley may assign any of its rights and duties hereunder, either in whole or in part, without the notice to or the consent of Retailer.

7. Notices

Any notice required or permitted to be given or made under this Agreement shall be in writing and shall be effectively given and made if (i) delivered personally, (ii) sent by prepaid courier service or registered mail, or (iii) sent prepaid by fax or other similar means of electronic communication, in each case to the applicable address set out below, which addresses may be changed by reasonable notice given in accordance with this paragraph J.7:

To Deeley: Fred Deeley Imports Ltd.
13500 Verdun Place
Richmond, B.C.
V6V 1V4

Facsimile: (604) 273-2029

or

830 Edgeley Blvd.
Concord, Ontario
L4K 4X1

Facsimile: (905) 660-3372

To Retailer:

Any such communication so given or made shall be deemed to have been given or made and to have been received on the day of delivery if delivered, or on the day of faxing or sending by other means of recorded electronic communication, provided that such day in either event is any day except Saturday, Sunday or any day on which banks are generally not open for business in Ontario, British Columbia or the province in which the Retailer Location is located ("**Business Day**") and the communication is so delivered, faxed or sent prior to 4:30 p.m. Eastern Standard Time on such day. Otherwise, such communication shall be deemed to have been given and made and to have been received on the next following Business Day. Any such communication sent by mail shall be deemed to have been given and made and to have been received on the fifth Business Day following the mailing thereof; provided however that no such communication shall be mailed during any actual or apprehended disruption of postal services. Any such communication given or made in any other manner shall be deemed to have been given or made and to have been received only upon actual receipt.

8. **Time of Essence**

Time shall be of the essence of this Agreement.

9. **Language**

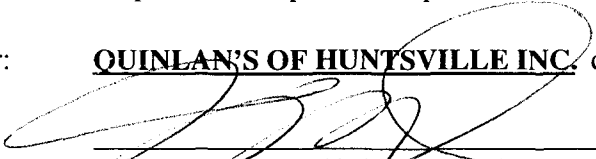
The parties have required that this Agreement and all documents and notices relating to this Agreement be written in the English language. Les parties aux présentes ont exigé que le présent contrat et tous autres contrats, documents ou avis afférents aux présentes soient rédigés en langue anglaise.

10. **Headings**

Paragraph headings and other headings are for convenience and do not constitute a part of this Agreement.

EXECUTED AS OF THE 9 DAY OF June, 1999

If Retailer is a corporation or partnership:

Retailer: **QUINLAN'S OF HUNTSVILLE INC.** c/s
By: 
I have the authority to bind the corporation/partnership
Title: President

If Retailer is an individual:

Retailer: _____ Witness: _____
Print name: _____ Print name: _____

FRED DEELEY IMPORTS LTD.

By: Malcolm H. Hunter
Malcolm H. Hunter
Title: Chief Operating Officer

SCHEDULE A

[Required Minimum Score(s)]

The Trev Deeley Award criteria shall be the vehicle used to evaluate retailer performance and said criteria may be modified from time to time at the sole and absolute discretion of Fred Deeley Imports Ltd.

The minimum acceptable level of performance shall be an overall score of 65% based upon the following categories:

- Motorcycle Sales/Facilities
- Service Department
- Parts and Accessories Department
- Financial Responsibility
- Marketing/Customer satisfaction

SCHEDULE B

[Assortment of new current model
Harley-Davidson motorcycles]

<u>MARKET SIZE</u>	<u>UNIT ALLOCATION</u>	<u>MINIMUM QUANTITY</u>
RURAL	40 & under	4
SUBURBAN	41 to 74	8
METRO	75 to 149	14
MAJOR METRO	150 & over	20

SCHEDULE C

[Non-export Agreement]

To: QUINLAN'S OF HUNTSVILLE INC.,
a corporation doing business as Quinlan's of Huntsville Inc.
"Retailer"

Re: Non-export of Harley-Davidson Motorcycle

WHEREAS the undersigned customer has agreed to purchase from the Retailer the following motorcycle (the "**Vehicle**"):

Vehicle Identification number: _____ Year: _____

Make: _____ Model: _____

for use in Canada and not for export.

IN CONSIDERATION of the sale of the Vehicle to the undersigned customer and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the undersigned customer:

1. Warrants that the Vehicle is for use in Canada and not for export;
2. Will not within one year of the delivery of the Vehicle unless otherwise agreed in writing, either directly or indirectly:
 - (a) export the Vehicle from Canada;
 - (b) permit the Vehicle to be exported from Canada; or
 - (c) enter into or acquiesce in any agreement whereby the Vehicle is leased or sold for use outside of Canada;
3. Agrees to indemnify and save harmless Retailer of and from any loss arising out of, under or pursuant to any inaccuracy of the warranty in paragraph 1 or any breach of the obligations in paragraph 2 and, without limiting the foregoing, agrees to indemnify Retailer for any claims, demands, costs or expenses which it may incur or become responsible for, arising out of the export of the Vehicle from Canada. Without limiting the generality of the foregoing, the undersigned agrees to indemnify Retailer for any debits or charges against the Retailer made

SCHEDULE C (cont'd)

by Fred Deeley Imports Ltd. (the “**Distributor**”) with respect to any monies credited to, set aside for, the Retailer for floor plans or booking orders, or paid on behalf of the Retailer by the Distributor in respect of co-operative advertising or any other corporate program made available by the Distributor in respect of any Harley-Davidson motorcycles, parts and accessories, MotorClothes, and other related products, where such debit or charge was made or imposed by the Distributor as a result of a breach by the undersigned of any provision of this Agreement.

Dated at _____ this ____ day of _____

(Year)

Witness

Name (Please print) & Signature

Witness

Name (Please print) & Signature

ADDENDUM #1 TO RETAILER AGREEMENT

LICENSE AGREEMENT

EFFECTIVE AS OF THE 9 DAY OF June, 1999

BETWEEN:

FRED DEELEY IMPORTS LTD.,

a corporation incorporated under the laws of British Columbia
("Deeley"),

and

QUINLAN'S OF HUNTSVILLE INC.,

a corporation doing business as Quinlan's of Huntsville Inc.
("Retailer").

WHEREAS, H-D Michigan, Inc., a corporation organized and existing under the laws of the state of Michigan, United States of America, located at 315 West Huron Street, Suite 400, Ann Arbor, Michigan, 48103 U.S.A. (hereinafter "**HDMI**") is the owner of the trademarks, trade names and service marks listed in "Exhibit A" hereof (hereinafter called the "**Harley-Davidson Properties**"); and

WHEREAS, HDMI has granted Harley-Davidson Motor Company, a corporation organized and existing under the laws of the state of Wisconsin, United States of America, located at 3700 West Juneau Avenue, Milwaukee, Wisconsin 53208 U.S.A. (hereinafter "**HDMC**"), the exclusive right to use and sub-license (upon consent of HDMI) the use of the Harley-Davidson Properties; and

WHEREAS, HDMC has granted Deeley, a sub-license to use and further sub-license (upon consent of HDMI) the Harley-Davidson Properties in Canada in association with the provision of various wares and services; and

WHEREAS Retailer, has entered into a Retailer Agreement with Deeley pursuant to which Retailer may operate a retail store at the location(s) designated and approved under the Retailer Agreement that would utilize and display the Harley-Davidson Properties as part of its business operations, interior or exterior store signage, advertising and promotional materials, trading style and/or trade name for a retail store to sell motorcycles, motorcycle parts and accessories, clothing and collectibles, and to provide motorcycle repair, maintenance and club membership services.

NOW THEREFORE, IN CONSIDERATION of the sum of \$1.00, and the mutual covenants and promises set out below, the receipt and sufficiency of which is hereby acknowledged by each party to the other, Deeley and Retailer hereby agree as follows:

1. Deeley, acting on behalf of, and with the consent of HDMI as the owner of the Harley-Davidson Properties, hereby grants to Retailer the non-exclusive right to use the Harley-Davidson Properties, as set out in the attached "Exhibit A", or any other trademarks or service marks subsequently agreed to in writing by Deeley in association with the performance of retail store services of selling HDMC motorcycles, parts and accessories therefor, MotorClothes, collectibles and other related products (hereinafter "**Harley-Davidson Products**"), and providing repair and maintenance services relating to HDMC motorcycles, and motorcycle club membership services for owners of HDMC motorcycles. All images, graphics, trademarks, trade dress, logos, artwork, slogans, text, domain names, and other works of authorship created by or on behalf of Retailer for use in connection with Retailer's authorized retail store shall belong exclusively to HDMI, and Retailer hereby assigns all right, title, and interest in and to said works to HDMI. Retailer agrees that it will limit its use of the Harley-Davidson Properties in accordance with this grant, and will not use the Harley-Davidson Properties on or in association with any wares whatsoever or any other services.
2. Deeley, acting on behalf of, and with the consent of HDMI as the owner of the Harley-Davidson Properties, further grants to Retailer the non-exclusive right to use only the trade names Harley, Harley-Davidson, H-D and HD, as separately listed in "Exhibit A", as part of its unregistered trade name or trading style, if necessary. Retailer acknowledges that it does not have the right to use, incorporate or register any of the trademarks, service marks or trade names listed in "Exhibit A" in its registered trade name, trading style or corporate name.
3. The right to use the Harley-Davidson Properties pursuant to this License Agreement extends only to the Retailer's Territory as set forth in paragraph B.2. of the underlying Retailer Agreement. Retailer agrees that it will not use the Harley-Davidson Properties for any purpose outside the scope of this Territory.
4. The term of this agreement shall coincide with the term as set forth in paragraph B.1. of the underlying Retailer Agreement.
5. Retailer acknowledges that the authenticity and quality of Harley-Davidson Products is important to the consumer, and therefore, agrees not to purchase or sell or offer for sale any products bearing the Harley-Davidson Properties or any trademark, trade-dress of goods, or copyright of HDMI from any source other than Deeley or sources expressly approved by Deeley. In addition, Retailer shall not create or have created on its behalf any products to be sold at Retailer's

authorized HDMC retail store or elsewhere utilizing the Harley-Davidson Properties, Retailer's trade name or any of the other trademarks or any variations or stylized representations thereof. Retailer shall not engage in any conduct or take part in any activity which, with reference to the Harley-Davidson Properties, might tend to impair the validity or enforceability of any of the Harley-Davidson Properties or which might tend to disparage the Harley-Davidson Properties or Deeley or HDMC or which might be considered unfair competition or an infringement or other violation of HDMC's rights; or which would be likely to cause any confusion, mistake or deception as to whether any third party is an authorized Harley-Davidson Retailer or is otherwise sponsored or affiliated with Deeley or HDMC if that party is not or whether any third party's products are licensed, sponsored or approved by or originate with Deeley or HDMC if they are or do not. Retailer shall not have any rights against Deeley or HDMC for damages or any other remedy by reason of Deeley's or HDMC's alleged failure to prosecute any alleged infringements or imitations by others of the Harley-Davidson Properties.

6. Retailer agrees that it will only display the Harley-Davidson Properties under such guidelines and directions, including the use of any relevant trademark or copyright notices, as may be requested of Retailer from time to time by Deeley. In the event Deeley gives Retailer any guidelines or directions regarding the use, advertising or display of the Harley-Davidson Properties, or regarding the character or quality of the services provided under the Harley-Davidson Properties, Retailer agrees that it will follow such guidelines and directions promptly. Retailer specifically agrees that it will, on all advertising and printed materials, including letterhead, use a notice as specified by Deeley or HDMC identifying Retailer as a licensee of the Harley-Davidson Properties.
7. Upon request, Retailer shall submit to Deeley, HDMC and/or HDMC representative samples of all advertising and promotional materials which bear the Harley-Davidson Properties as created by or for Retailer.
8. Deeley, HDMC, HDMC and/or their authorized representatives shall have the right of access to the premises of Retailer to inspect the Retailer's premises to confirm that the Harley-Davidson Properties are being used properly, and to evaluate the character and quality of the services provided under those Properties to ensure that they conform with the approved standards as set forth from time to time by Deeley, HDMC or HDMC.
9. Retailer acknowledges that the Harley-Davidson Properties and the goodwill relating thereto are the sole and exclusive property of HDMC, and agrees that it will not, at any time, during or after the termination of this agreement, do or refrain from doing any act to contest, directly or indirectly, the validity or ownership of the Harley-Davidson Properties, or to dilute the value of the

goodwill attaching to such Properties. Retailer shall not in any manner represent that it has any ownership rights in the Harley-Davidson Properties, or any other trademark, trade name, service mark, copyright or dress of goods of HDMI.

10. In the event that any infringement of the Harley-Davidson Properties shall come to the attention of Retailer, Retailer agrees to promptly notify Deeley of the infringement in writing. Retailer also agrees to fully cooperate and assist Deeley, HDMC or HDMI in connection with any matter pertaining to the protection, registration, licensing, or enforcement of rights in the Harley-Davidson Properties, or any intellectual property right, whether in the Courts, administrative agencies, or otherwise, and to make available to Deeley, HDMC, HDMI or their representatives all of Retailer's records, files and other information pertaining to goods sold or services rendered under the Harley-Davidson Properties, including the furnishing of relevant evidence, documentation and testimony available to Retailer. Retailer shall have no right to commence action against third parties for infringement of any of the Harley-Davidson Properties, for passing off, or for any other action pertaining to the Properties, without the prior written consent of Deeley and HDMI.
11. Retailer shall have no right to assign or sub-license any of its rights under this agreement. Any such attempt to assign or sub-license these rights shall be grounds for immediate termination of this License Agreement.
12. This License Agreement may be terminated prior to its expiration in accordance with the provisions of paragraph I.1 of the underlying Retailer Agreement. Deeley or HDMI may each independently exercise the right to terminate this License Agreement in the same circumstances Deeley would be allowed to terminate the underlying Retailer Agreement, and this is regardless of Deeley's actual exercise of that right. Retailer acknowledges that Deeley, without the consent of Retailer, may amend or modify the terms and conditions of this License Agreement or offer Retailer a new license agreement.
13. In the event of a breach of any of the terms of this License Agreement, Deeley may notify Retailer, and Retailer shall have one month from such notice within which to remedy such breach to the satisfaction of Deeley and HDMI. In the event that Retailer fails to remedy such breach to the satisfaction of Deeley and HDMI, or makes persistent breaches of the terms of this agreement, Deeley or HDMI may terminate this License Agreement forthwith.
14. Upon expiration or termination of this License Agreement, Retailer agrees that it will immediately cease all use, advertising and display of the Harley-Davidson Properties, or any similar designations, or any other trademark, service mark, trade name, dress of goods or copyright of HDMI or Deeley, whether as a

trademark, service mark, trade name or otherwise, and for greater certainty agrees that it will:

- a) cease all use of the Harley-Davidson Properties on all signage;
- b) cease all use of the Harley-Davidson Properties on all printed material, and deliver up or destroy under oath all printed material of any type whatsoever bearing the Harley-Davidson Properties;
- c) cancel any registration or record of any corporate name, business name, or trading style required by law that includes any of the Harley-Davidson Properties; and
- d) at the election of Deeley or HDMI, cancel any telephone listings, electronic mail addresses and domain names that include any of the Harley-Davidson Properties or, if possible, transfer them to Deeley or to a person nominated by Deeley.

Retailer shall comply with this provision no later than thirty (30) days from the date of termination or expiration of this License Agreement. Furthermore, should Retailer not perform all of the obligations set forth in this provision, Retailer hereby grants Deeley, HDMI and their representatives the Power of Attorney to take all steps necessary to fully perform each and every obligation set forth in this provision.

15. Following expiration or termination of this License Agreement, Retailer shall have no right to use, as a trademark, service mark, electronic mail address, domain name, trade name, corporate name or otherwise, any word, design, or combination thereof, which is, in whole or in part, similar to any of the Harley-Davidson Properties, or any other trademark, service mark, trade name, corporate name, dress of goods or copyright of HDMI, HDMC, or Deeley.
16. Retailer recognizes and agrees that the above provisions regarding expiration and termination are reasonable and necessary to protect the value, integrity, reputation, and brand image of HDMC, HDMI and the Harley-Davidson Properties, and agrees that Deeley and/or HDMI (as owner of the Harley-Davidson Properties) may enforce such provisions by injunction, including interlocutory injunction, in any court of competent jurisdiction.
17. It is agreed that clauses 9, 10, 11, 14, 15, 16 and 20 shall survive termination of this agreement.
18. Any notice required or permitted by this License Agreement, or given in connection therewith, shall be in writing and may be given by prepaid registered

mail or by fax in accordance with the provisions of paragraph J.7 of the Retailer Agreement to the addresses set out below:

Fred Deeley Imports, Ltd.
830 Edgeley Blvd.
Concord, Ontario
L4K 4X1
Canada

or

Fred Deeley Imports, Ltd.
13500 Verdun Place
Vancouver, British Columbia
V6V 1V4
Canada

Phone: 905-660-3500
Fax: 905-660-3372

Phone: 604-273-5421
Fax: 604-273-2029

Retailer:

QUINLAN'S OF HUNTSVILLE INC.
R.R. # 1 Old Ferguson Road
Huntsville, Ontario
P1H 2J2
Canada

Phone: 705-789-7473
Fax: 705-789-6628

19. This License Agreement is to be governed by and construed according to the laws of the Province of Ontario. If any provision of this License Agreement should be held invalid or unenforceable for any reason whatsoever or to violate any applicable law, such provision shall be deemed deleted from this License Agreement, and the remainder of this License Agreement shall be valid and enforceable without such provision.
20. This agreement shall be binding upon and shall enure the benefit of the parties hereto, and any successors and assigns of Deeley.

IN WITNESS WHEREOF the parties hereto have executed this License Agreement as of the 9 day of June, 1999

If Retailer is a corporation or partnership:

Retailer: QUINLAN'S OF HUNTSVILLE INC. c/s

By: 

I have the authority to bind the corporation/partnership

Title: President

If Retailer is an individual:

Retailer: _____

Witness: _____

Print name: _____

Print name: _____

FRED DEELEY IMPORTS LTD.

By: 

Malcolm H. Hunter

Title: Chief Operating Officer

EXHIBIT A

Trade Marks

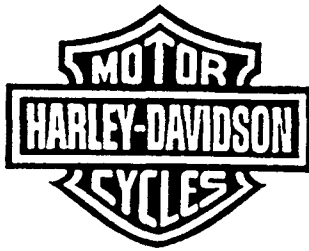
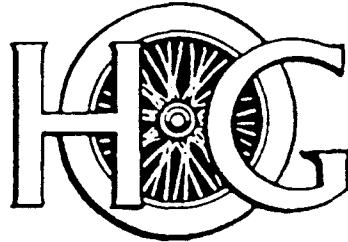


EXHIBIT A (CONT.)

Trade Names

HARLEY-DAVIDSON	HOG TALES
ALUMINATOR	HUGGER
AN AMERICAN LEGEND	LADIES OF HARLEY
BAD BOY	LEGENDARY
BADLANDER	LEGENDARY HARLEY-DAVIDSON
BIKER BLUES	LOW GLIDE
BUDDY SEAT	LOW RIDER
DIAMOND BACK	LOW-BOY
DISC GLIDE	MOTORCLOTHES
DYNA	POWER BLEND
DYNA GLIDE	PRE-LUXE
EAGLE IRON	RIDE FREE
ELECTRA GLIDE	ROAD KING
ELECTRA GLIDE ROAD KING	ROADSTER
EVOLUTION	SCREAMIN' EAGLE
FAT BOB	SOFTAIL
FAT BOY	SPORT GLIDE
H-D	SPORTSTER
HD-240	SPRINGER
HD	STURGIS
HARLEY	SUPER GLIDE
HARLEY CHROME	THE ENTHUSIAST
HARLEY OWNERS GROUP	THE LEGEND ROLLS ON
HARLEY WOMEN	THINGS ARE DIFFERENT ON A HARLEY
HERITAGE SOFTAIL	TOUR GLIDE
HOG	TOUR-PAK
H.O.G.	ULTRA CLASSIC
WIDE GLIDE	WILLIE G.

THIS IS EXHIBIT "B"
REFERRED TO IN THE AFFIDAVIT OF
JIM QUINLAN

SWORN BEFORE ME THIS
26th DAY OF JUNE 2004.



A Commissioner etc.

RETAILER EXTENSION AGREEMENT

THIS AGREEMENT made the 17 day of July, 2001

BETWEEN:

FRED DEELEY IMPORTS LTD.

a company incorporated under the laws of
the Province of British Columbia
("Deeley")

- and -

QUINLAN'S OF HUNTSVILLE INC.

("Retailer")

WHEREAS:

- A. Deeley and Retailer hereto are parties to a Retailer Agreement (the "Retailer Agreement"), dated June 9, 1999 and attached as Schedule "A" hereto.
- B. The term of the Retailer Agreement is scheduled to expire July 31, 2001;
- C. The parties wish to extend the Retailer Agreement for a further period of three (3) years commencing on August 1, 2001 upon the terms and conditions set forth herein.

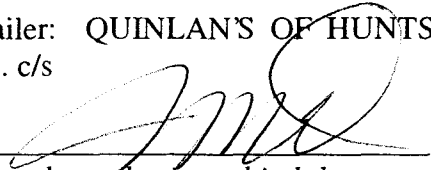
NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the mutual covenants of the parties and other good and valuable consideration, the receipt and sufficiency of which the parties hereby acknowledge, the parties hereto agree as follows:

1. The Retailer Agreement is hereby extended upon the terms and conditions set out therein for a term commencing on the 1st day of August 2001 and ending on the 31st day of July, 2004.
2. The Retailer Agreement shall remain in full force, unamended save for the aforementioned extension of its term.
3. This Agreement and the Retailer Agreement together constitute the entire agreement between the parties relating to the subject matter hereof.
4. This Agreement shall be governed by the laws of the Province of Ontario and the federal laws of Canada applicable therein.

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

If Retailer is a corporation or partnership:

Retailer: QUINLAN'S OF HUNTSVILLE
INC. c/s

By: 
*I have the authority to bind the corporation /
partnership*

Title: PRESIDENT

If Retailer is an individual:


Retailer: _____
(Please sign)

Print Name: _____

Witness: _____
(Please sign)

Print Name: _____

FRED DEELEY IMPORTS LTD.

By: 
Name: Malcolm H. Hunter
Title: Chief Operating Officer

THIS IS EXHIBIT "C"
REFERRED TO IN THE AFFIDAVIT OF
JIM QUINLAN

SWORN BEFORE ME THIS
26th DAY OF JUNE 2004.



A Commissioner etc.

Fred Deeley Imports Ltd.

Exclusive Harley-Davidson Distributor/Distributeur Exclusif.

September 25, 2001



Jim & Lynne Quinlan
Quinlan's of Huntsville Inc.
RR 1 Old Ferguson Road
Huntsville, ON
Canada
P1H 2J2

PRIVATE & CONFIDENTIAL

Dear Jim & Lynne ,

I understand that a proposed meeting in October has been slated to once again pursue the creation of an Ontario Retailers Association. The fundamentals around creating a legal entity to better represent the interests of Ontario is somewhat disappointing.

As we outlined in our reply to the meeting at the Canadian Imperial Bank of Commerce Leadership Centre in June, we really believed that with open communication, which is a fundamental building block of our business, this type of association would not be necessary.

We have created and will continue to create opportunities to provide input and feedback on our programs. These include the Executive Forum at our New Model Announcement Meetings, the D.A.C. Forum and the Town Hall Meetings, to mention a few.

We, at Fred Deeley Imports have prided ourselves in staying close to all our Retailers. We have continually requested input and opportunities for each and every one of you to communicate directly with us.

At our June meeting, we requested the opportunity of having representation at any and all gatherings of our Retailers across Canada. This has not changed.

We honestly believe that through open communication, the ability to create a win-win scenario for you and Fred Deeley Imports in representing the best interests of Harley-Davidson and the Harley-Davidson brand in Canada can be achieved. Between Don, Buzz and myself, we are available and willing to meet and discuss



Page 2
September 25, 2001

with you on anything regarding your relationship with Harley-Davidson and Fred Deeley Imports Ltd.

I look forward to the opportunity to discuss this with you and ask that you contact my assistant Diane McCann at 604-273-5421 so that I can return your call.

Sincerely,

FRED DEELEY IMPORTS LTD.

Per:

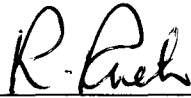
A handwritten signature in black ink that reads "Malcolm Hunter". The signature is written in a cursive style with a small dot at the end.

Malcolm Hunter
President & Chief Operating Officer

MH/dm

THIS IS EXHIBIT "D"
REFERRED TO IN THE AFFIDAVIT OF
JIM QUINLAN

SWORN BEFORE ME THIS
26th DAY OF JUNE 2004.



A Commissioner etc.

Fred Deeley Imports Ltd.

Exclusive Harley-Davidson Distributor/Distributeur Exclusif.

December 9, 2003



James Quinlan & Chris Quinlan
Quinlan's of Huntsville Inc.
325 Old Ferguson Road
Huntsville, ON P1H 2J2

Dear Jim and Chris:

Re: Retailer Agreement with Fred Deeley Imports Ltd.

As you are aware, your Retailer Agreement executed on June 9, 1999, which was subsequently extended by the Retailer Extension Agreement dated July 17, 2001 (collectively referenced hereinafter as the "Retailer Agreement"), will expire on July 31, 2004.

As a courtesy to you, we take this opportunity to inform you that we will not be offering you either a new retail contract or an extension of the existing one, upon the expiry of the Retailer Agreement on July 31, 2004. Additionally, for further clarification, all rights granted under the Retailer Agreement to use the Harley-Davidson trademarks and trade names will concurrently end upon expiry of the Retailer Agreement.

If you have any questions or comments in regard to the foregoing, I invite you to contact me at 604-273-5421.

Yours truly,
FRED DEELEY IMPORTS LTD.
Per:

A handwritten signature in black ink, appearing to read 'Malcolm H. Hunter'.

Malcolm H. Hunter
Chief Operating Officer

MHH/ja

cc: Judy Chan - Blake, Cassels & Graydon LLP.
Scott Jewell – Fred Deeley Imports Ltd.



THIS IS EXHIBIT "E"
REFERRED TO IN THE AFFIDAVIT OF
JIM QUINLAN

SWORN BEFORE ME THIS
26th DAY OF JUNE 2004.



A Commissioner etc.

BLAKE, CASSELS & GRAYDON LLP

BARRISTERS & SOLICITORS | PATENT & TRADE-MARK AGENTS

Box 25, Commerce Court West
199 Bay Street
Toronto, Ontario, Canada
M5L 1A9

January 16, 2004

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VIA FACSIMILE + *MAIL*

Judy L. Chan
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Mr. Robert Rueter
Rueter Scargall Bennett LLP
200 King Street West
Suite 1701, Box 28
Toronto, ON M5H 3T4

Reference: 34445/7

Dear Mr. Rueter:

Re: Fred Deeley Imports Ltd.
re: Quinlan's of Huntsville Inc.

Your letter dated December 29, 2003 to Mr. Don James of Fred Deeley Imports Ltd. has been forwarded to me for a response.

As a preliminary matter, Fred Deeley's letter to your client dated December 9, 2003, is not, as you characterize it, a "termination" letter. As you are no doubt aware, the term of the Retailer Agreement between Fred Deeley and Quinlan's expires as of right on July 31, 2004. Notwithstanding that Fred Deeley may have renewed or extended previous retailer agreements with Quinlan's, nothing in such agreements imposes any obligation on Fred Deeley to continue do so, and it is entirely within Fred Deeley's discretion not to do so.

Fred Deeley's market studies have demonstrated that there is no natural market for Harley-Davidson products in the Huntsville area. My understanding is that Fred Deeley representatives have previously discussed this issue with Quinlan's. Based upon these market studies, Fred Deeley has determined that there is no longer a need for a retailer in Huntsville, and as it is entitled to do, has decided not to offer Quinlan's a new Retailer Agreement or renew or extend the existing one on July 31, 2004. The December 9 letter is merely a courtesy, advising Quinlan's of this decision. It follows that because it does not purport to terminate the Retailer Agreement during its term, the December 9 letter does not give "notice" in the legal sense.

It is Fred Deeley's position that the duty to act in good faith and in accordance with reasonable commercial standards described in the *Arthur Wishart Act* and the *Shelanu* case does not apply in the present circumstances. In any event, even if such a duty is imposed on the

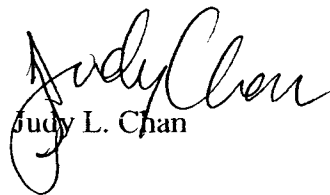
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parties in this case, the evidence is clear that none of the circumstances which courts have found to be evidence of a breach of such a duty is present in this case. In particular, among other things, Fred Deeley has neither breached any provisions of the Retailer Agreement, acted out of vindictiveness, nor withheld payments as a means of gaining an advantage. Nor has it exercised its discretion in an arbitrary or commercially unreasonable manner.

Fred Deeley's actions in entering into a Retailer Agreement with certain former Quinlan's employees do not constitute a breach of a duty of good faith. My understanding is that approximately six and a half years ago, these individuals approached Fred Deeley and expressed an interest in purchasing the existing Harley-Davidson dealership in the Barrie area. I note that in *Shelanu*, the Court of Appeal specifically rejected the argument that developing and establishing a similar or even competing business constituted a breach of the duty of good faith. In any event, the duty of good faith, even if it exists in the present circumstances, is not a fiduciary one. Fred Deeley is not obliged to place Quinlan's interests ahead of its own interests or even ahead of the interests of any other person. The obligation is merely one of good faith, and as shown above, there is no evidence that Fred Deeley has acted in any way other than in good faith towards Quinlan's. Moreover, if it exists, the duty is imposed on both contracting parties, and not just on Fred Deeley. In carrying out its obligations under the Retailer Agreement, Quinlan's would also be obliged to act in good faith and in accordance with the community standards of "candour, honesty and fairness" *vis-a-vis* Fred Deeley.

That being said, I can advise that Fred Deeley remains prepared to act in good faith towards Quinlan's by providing assistance and guidance to ensure a smooth and orderly wind-up of Quinlan's Harley-Davidson business.

Yours very truly,



Judy L. Chan

c: Mr. Don James, C.E.O., Fred Deeley Imports Ltd.
Mr. Malcolm Hunter, C.O.O., Fred Deeley Imports Ltd.

THIS IS EXHIBIT "F"
REFERRED TO IN THE AFFIDAVIT OF
JIM QUINLAN

SWORN BEFORE ME THIS
26th DAY OF JUNE 2004.



A Commissioner etc.



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February 12, 2004

James Quinlan
Quinlan's of Huntsville Inc.
325 Old Ferguson Road
Huntsville, ON PIH 2J2

Dear Jim:

Re: Extension to the Retailer Agreement with Fred Deeley Imports Ltd.

This is further to our letter dated December 9, 2003 notifying you of our decision not to offer you a new retail contract or to extend the existing one upon its expiry on July 31, 2004.

Following our meeting in Orlando on January 23, 2004, after giving consideration to your request for an extension of the existing contract, as a gesture of good faith, we are prepared to offer you an extension of the existing agreement to **October 31, 2004**, to allow you to finish this year's riding season. The terms and conditions of the extended agreement will remain unchanged. However, take note that such extension expressly excludes the right and access to any and all 2005 Harley-Davidson products or participation in any Deeley or Harley-Davidson 2005 retailer programs.

This is our only and final offer of an extension of the existing retail agreement. Your signature to this letter where indicated below and the return of 2 signed originals to my attention by March 5, 2004 is evidence of your acceptance of this offer. Failing receipt of the signed letter from you by the date set out herein, we will proceed on the assumption that you have declined our offer and the existing Retailer Agreement will expire on July 31, 2004 as previously stated.

If you have any questions or comments in regard to the foregoing, I invite you to contact me at 604-273-5421.

Yours truly,
FRED DEELEY IMPORTS LTD.

Per:

Malcolm H. Hunter
Chief Operating Officer

MHH/ja

cc: Judy Chan - Blake, Cassels & Graydon LLP.
Scott Jewell - Fred Deeley Imports Ltd.

ACKNOWLEDGED AND AGREED
THIS ___ day of _____ 2004.

QUINLAN'S OF HUNTSVILLE INC.

Per: _____
James Quinlan, President

