

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

Estate/Court File No. 31-2363758

Estate/Court File No. 31-2363759

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF JONES  
CANADA, INC., A CORPORATION WITH A HEAD OFFICE IN THE CITY OF TORONTO  
IN THE PROVINCE OF ONTARIO, AND NINE WEST CANADA LP, A PARTNERSHIP  
WITH A HEAD OFFICE IN THE CITY OF TORONTO IN THE PROVINCE OF ONTARIO**

**Applicants**

**MOTION RECORD  
RETURNABLE JUNE 19, 2018  
(Re Extension of Proposal Period)**

June 12, 2018

**STIKEMAN ELLIOTT LLP**  
Barristers & Solicitors  
5300 Commerce Court West  
199 Bay Street  
Toronto, Canada M5L 1B9

**Elizabeth Pillon** LSUC#: 35638M  
Tel: (416) 869-5623  
Email: [lpillon@stikeman.com](mailto:lpillon@stikeman.com)

**Maria Konyukhova** LSUC#: 52880V  
Tel: (416) 869-5230  
Email: [mkonyukhova@stikeman.com](mailto:mkonyukhova@stikeman.com)

**Sanja Sopic** LSUC#: 66487P  
Tel: (416) 869-6825  
Email: [ssopic@stikeman.com](mailto:ssopic@stikeman.com)  
Fax: (416) 947-0866

**Lawyers for the Applicants**

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

Estate/Court File No. 31-2363758

Estate/Court File No. 31-2363759

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF JONES  
CANADA, INC., A CORPORATION WITH A HEAD OFFICE IN THE CITY OF TORONTO  
IN THE PROVINCE OF ONTARIO, AND NINE WEST CANADA LP, A PARTNERSHIP  
WITH A HEAD OFFICE IN THE CITY OF TORONTO IN THE PROVINCE OF ONTARIO**

**Applicants**

**INDEX**

TAB	DOCUMENT	PAGE NO.
1.	Notice of Motion	1 -9
2.	Affidavit of Ralph Schipani sworn June 12, 2018	10 – 20
	Exhibit “A”      Affidavit of Ralph Schipani sworn April 6, 2018 (without exhibits)	21 – 47
	Exhibit “B”      Consulting Agreement	48 – 63
	Exhibit “C”      Liquidation Process Order dated April 11, 2018	64 – 76
	Exhibit “D”      Administration Order dated April 11, 2018	77 – 88
3.	Draft Extension Order	89 - 92

**TAB 1**

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

Estate/Court File No. 31-2363758

Estate/Court File No. 31-2363759

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF JONES CANADA, INC., A CORPORATION WITH A HEAD OFFICE IN THE CITY OF TORONTO IN THE PROVINCE OF ONTARIO, AND NINE WEST CANADA LP, A PARTNERSHIP WITH A HEAD OFFICE IN THE CITY OF TORONTO IN THE PROVINCE OF ONTARIO**

**Applicants**

**NOTICE OF MOTION  
(Returnable June 19, 2018)  
(Re Extension of Proposal Period)**

Nine West Canada LP (“**NW Canada LP**”) and Jones Canada, Inc. (“**Jones Canada**”, and together with NW Canada LP, the “**NW Canada Entities**” or the “**Applicants**”), will make a motion to a judge presiding over the Commercial List on June 19, 2018 at 10:00 a.m. or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

**PROPOSED METHOD OF HEARING:**

The motion is to be heard orally.

**THE MOTION IS FOR:**

1. An order (the “**Extension Order**”), substantially in the form of the draft order located at tab 3 of the Motion Record ”)
  - (a) extending the time for each of the Applicants to file a proposal (the “**Proposal Period**”) under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) until August 3, 2018;

- (b) approving the fees and disbursements of Richter Advisory Group Inc. in its capacity as Proposal Trustee in connection with the Notices of Intention to Make a Proposal filed by the NW Canada Entities (the "**Proposal Trustee**") for the period from February 21, 2018 to June 2, 2018 and those of the Proposal Trustee's counsel, Aird & Berlis LLP ("**Aird & Berlis**"), for the period from February 23, 2018 to June 10, 2018 (collectively, the "**Fees**"); and
- (c) approving the First Report and the Second Report (both as hereinafter defined) (collectively the "**Reports**"), as well as the activities, actions and conduct of the Proposal Trustee set out therein.

**THE GROUNDS FOR THE MOTION ARE:**

**Background**

2. The NW Canada Entities are wholesalers and retailers of Nine West brand footwear and accessories in Canada. The NW Canada Entities are also the exclusive wholesalers of various brands of women's apparel, jewellery, handbags and women's footwear in Canada. The NW Canada Entities are indirect wholly-owned subsidiaries of U.S. parent companies whose ultimate parent is Jasper Parent LLC (the "**NW U.S. Entities**", and, collectively with the NW Canada Entities, the "**NW Entities**");

3. For the last several years, the NW Entities have experienced a consistent decline in the financial performance of their Canadian and U.S. operations relating to Nine West and other brands. This decline was caused by a variety of factors, including unfavourable retail market trends, changing consumer preferences, and inventory and design choices that did not align with consumer preferences;

4. On April 6, 2018, restructuring proceedings were commenced in respect of the NW Canada Entities and the Nine West U.S. Entities. Each of the NW Canada Entities filed a Notice of Intention to File a Proposal ("**NOI**") under the BIA (the "**Proposal Proceedings**"). As part of the filing of the NOIs, Richter was appointed as the Proposal Trustee in the Proposal Proceedings. The NW U.S. Entities filed for protection under Chapter 11 of the U.S. Bankruptcy

Code (the "Chapter 11 Proceedings"). The Proposal Proceedings and Chapter 11 Proceedings are independent processes;

5. Prior to the commencement of the Chapter 11 Proceedings, the NW U.S. Entities undertook a comprehensive marketing process of their Nine West and Bandolino brands to potential strategic and financial buyers. These efforts resulted in an asset purchase agreement dated April 5, 2018 between certain of the NW U.S. Entities and certain entities affiliated with Authentic Brands Group LLC ("ABG") and Marc Fisher as operating partner (the "Stalking Horse APA") which provides for those entities to purchase the intellectual property associated with the Nine West and Bandolino brands and certain of the inventory;

6. On May 5, 2018, the United States Bankruptcy Court for the District of Delaware (the "US Court") approved bidding procedures in the Chapter 11 Proceedings with respect to the assets of the West, Bandolino, and associated brands. The bidding procedures set a deadline for the submission of bids, and dates for the conduct of an auction and a sale hearing. The NW U.S. Entities received one bid prior to the bid deadline, which was submitted by shoe retailer DSW Inc. As described in more detail below, following an auction, ABG's revised bid was determined to be the successful bid;

7. The extensive marketing process undertaken by the NW U.S. Entities prior to commencing their insolvency proceedings did not generate any interest in the NW Canada Entities' assets. In the circumstances, the NW Canada Entities, together with Richter as Financial Advisor and anticipating Richter's role as Proposal Trustee, determined that the manner in which to maximize the recovery on existing retail operations was through the appointment of a liquidator to assist with the orderly wind down of the retail operations;

### **Progress of the Liquidation Sales**

8. In connection with the Proposal Proceedings, the Proposal Trustee filed its First Report dated April 9, 2018 (the "First Report"), setting out the background of the Proposal Proceedings and recommending that the Court issue the Liquidation Process Order and the Administration Order (both as hereinafter defined);

9. On April 11, 2018, Justice Haaney granted an order (the "**Liquidation Process Order**"), among other things, approving the consulting agreement (the "**Consulting Agreement**") between the NW Canada Entities and SB360 Capital Partners LLC (the "**Consultant**"), approving Sale Guidelines for the conduct of the liquidations, and authorizing NW Canada LP, with the assistance of the Consultant, to conduct liquidation sales at the retail locations in accordance with the Consulting Agreement, the Liquidation Process Order, and the Sale Guidelines (the "**Liquidation Sales**");

10. On April 11, 2018, Justice Haaney also granted an order (the "**Administration Order**"), among other things, extending the Proposal Period to June 20, 2018, approving the substantive consolidation of the NW Canada Entities' Proposal Proceedings, and approving certain court-ordered charges;

11. The Consulting Agreement was executed on April 11, 2018, following the issuance of the Liquidation Process Order. Liquidation Sales commenced on April 14, 2018, and it is anticipated that they will be completed by June 30, 2018;

12. The majority of wholesale inventory was sold through the NW Canada Entities' customary wholesale channels, and the remainder has been included in the Liquidation Sales at the closing stores;

13. To date, net recoveries on the Liquidation Sales have exceeded projections. Additional information regarding the Liquidation Sales is contained in the Second Report of the Proposal Trustee dated June 12, 2018 (the "**Second Report**");

#### **Store Closures and Contract Disclaimers**

14. At the commencement of the Proposal Proceedings, the NW Canada Entities operated 35 retail locations across Canada, of which 22 were located in Ontario. Since the commencement of the Liquidation Sales at the NW Canada Entities' retail locations, lease disclaimer notices have been delivered (as necessary) with respect to all retail 35 stores, effective on or before June 30, 2018;

15. As of June 12, 2018, the NW Canada Entities have disclaimed the majority of contracts to which they were a party. To date, notices to disclaim agreements with approximately 20 counterparties have been delivered pursuant to the BIA;

16. As of June 12, 2018, no counterparty to a disclaimed lease or disclaimed contract has disputed the NW Canada Entities' disclaimer or termination of the relevant agreement;

17. As of June 12, 2018, Liquidation Sales are ongoing at 33 stores;

### **Employees**

18. At the commencement of the Proposal Proceedings, Nine West Canada LP employed approximately 332 people, of which 225 were employed on a part-time basis, and all of whom were non-unionized. Of these employees, approximately 35 made up senior management and administrative office positions and 295 were retail sales staff;

19. As the Liquidation Sales have progressed, the NW Canada Entities have sent notices of termination to 77 retail and head office employees. With the exception of 7 head office employees who are necessary to assist in concluding the orderly wind down of operations, it is expected that the employment of all remaining employees will be terminated by June 30, 2018;

20. It is expected that all employees will be terminated in connection with the Proposal Proceedings. All terminated employees will receive their wages, benefits and accrued vacation to the date of termination, and may have a claim in the Proposal Proceedings for any severance obligations;

21. In an attempt to ensure the continued participation of employees identified as key employees during the Proposal Proceedings, the NW Canada Entities obtained approval of the key employee retention agreement (the "KERA"). Following the commencement of the Proposal Proceedings, certain employees were removed or resigned prior to the earning a KERA payment, and one employee was added;

22. Currently, the KERA contemplates the participation of nine employees, with aggregate KERA payments in the amount of \$86,000. As of the date of the within motion, approximately \$8,500 of KERA payments have been paid or are payable. The NW Canada Entities anticipate



distributing the remaining KERA payments following the termination of the KERA participants, at certain milestones during the wind-down of operations;

**Status of the NW U.S. Entities' Chapter 11 Proceedings**

23. The NW U.S. Entities entered into the Stalking Horse APA with certain entities affiliated with ABG and Marc Fisher on April 5, 2018, which committed those entities to pay USD\$123 million for the intellectual property associated with the Nine West and Bandolino brands and USD \$77 million for inventory;

24. On May 5, 2018, the US Court approved bidding procedures in the Chapter 11 Proceedings with respect to the assets of the Nine West, Bandolino, and associated brands. The bidding procedures set a bid deadline of June 4, 2018, provided for an auction to be conducted on June 8, 2018 if necessary, and contemplated a sale hearing on June 18, 2018. The NW U.S. Entities received one bid prior to the bid deadline, which was submitted by shoe retailer DSW Inc. Following an auction, ABG was declared to be the successful bidder with a revised bid of USD \$350 million;

**Approval of the Reports and Fees**

25. The Proposal Trustee has reported on its activities since the commencement of the Proposal Proceedings in the Reports;

26. The Proposal Trustee and Aird & Berlis have maintained detailed records of their professional time and costs during the Proposal Proceedings, which are detailed in the affidavits of Adam Sherman and Ian Aversa appended to the Second Report;

27. The Proposal Trustee is seeking approval of its is seeking the approval of its fees and disbursements for the period from February 21, 2018 to June 2, 2018 and those of Aird & Berlis for the period from February 23, 2018 to June 10, 2018 in connection with the performance of their duties in the Proposal Proceedings;

### Stay Extension

28. The NW Canada Entities have started drafting a form of proposal to their creditors, which will be updated as available proceeds and asset monetizations are further quantified. The proposal will likely include a quantification of the claims of various creditors, including landlords and employees;

29. Since April 14, 2018, the NW Canada Entities, the Consultant, the Proposal Trustee and their advisors have been working together to carry out the Liquidation Sales, address employee, supplier, customer and other stakeholder issues, and otherwise advance the Proposal Proceedings. The Consulting Agreement contemplates that the Liquidation Sales will be completed by June 30, 2018;

30. A 45-day extension of the Proposal Period would give the NW Canada Entities the time needed to complete the Liquidation Sales and finalize a proposal for consideration of the NW Canada Entities' creditors;

31. No creditors of the NW Canada Entities would be prejudiced by this extension. The cashflow statement prepared by the NW Canada Entities with assistance from the Proposal Trustee shows that the Applicants will have sufficient liquidity to carry out the liquidation and Proposal Proceedings during the requested stay extension;

### General

32. Sections 50.4 (9) and 69.1 of the BIA and the other provisions of the BIA;

33. Rules 1.04, 1.05, 2.03, 3.02 and 37 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and

34. Such further grounds as counsel may advise and this Court may see fit.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

1. The Schipani Affidavit sworn June 12, 2018, and the exhibits attached thereto;
2. The Second Report; and

3. Such further and other materials as counsel may advise and this Court may permit.

June 12, 2018

**STIKEMAN ELLIOTT LLP**  
Barristers & Solicitors  
5300 Commerce Court West  
199 Bay Street  
Toronto, Canada M5L 1B9

**Elizabeth Pillon** LSUC#: 35638M  
Tel: (416) 869-5623  
Email: [lpillon@stikeman.com](mailto:lpillon@stikeman.com)

**Maria Konyukhova** LSUC#: 52880V  
Tel: (416) 869-5230  
Email: [mkonyukhova@stikeman.com](mailto:mkonyukhova@stikeman.com)

**Sanja Sopic** LSUC#: 66487P  
Tel: (416) 869-6825  
Email: [ssopic@stikeman.com](mailto:ssopic@stikeman.com)  
Fax: (416) 947-0866

**Lawyers for the Applicant**

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF JONES CANADA, INC., A CORPORATION WITH A HEAD OFFICE IN THE CITY OF TORONTO IN THE PROVINCE OF ONTARIO, AND NINE WEST CANADA LP, A PARTNERSHIP WITH A HEAD OFFICE IN THE CITY OF TORONTO IN THE PROVINCE OF ONTARIO

Estate/Court File No. 31-2363758  
Estate/Court File No. 31-2363759

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**  
Proceeding commenced at Toronto

**NOTICE OF MOTION**  
**(Re Extension of Proposal Period)**

**Stikeman Elliott LLP**  
Barristers & Solicitors  
5300 Commerce Court West  
199 Bay Street  
Toronto, Canada M5L 1B9

**Elizabeth Pillon** LSUC#: 35638M  
Tel: (416) 869-5623  
Email: [lpillon@stikeman.com](mailto:lpillon@stikeman.com)

**Maria Konyukhova** LSUC#: 52880V  
Tel: (416) 869-5230  
Email: [mkonyukhova@stikeman.com](mailto:mkonyukhova@stikeman.com)

**Sanja Sopic** LSUC#: 66487P  
Tel: (416) 869-6825  
Email: [ssopic@stikeman.com](mailto:ssopic@stikeman.com)  
Fax: (416) 947-0866

**Lawyers for the Applicants**

TAB 2

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

Estate/Court File No. 31-2363758

Estate/Court File No. 31-2363759

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF JONES CANADA, INC., A CORPORATION WITH A HEAD OFFICE IN THE CITY OF TORONTO IN THE PROVINCE OF ONTARIO, AND NINE WEST CANADA LP, A PARTNERSHIP WITH A HEAD OFFICE IN THE CITY OF TORONTO IN THE PROVINCE OF ONTARIO

Applicants

AFFIDAVIT OF RALPH SCHIPANI  
(Sworn June 12, 2018)

I, RALPH SCHIPANI, of the City of New York, in the State of New York, MAKE OATH AND SAY:

1. I am the President of the applicants, Jones Canada, Inc. ("**Jones Canada**") and Nine West Canada LP ("**NW Canada LP**", and together with Jones Canada, the "**NW Canada Entities**" or the "**Applicants**"). I am also Interim Chief Executive Officer of Nine West Holdings, Inc. and certain of its affiliates and subsidiaries, which are referred to herein as the NW U.S. Entities and further described below.

2. As a result of my roles with the NW Canada Entities, I have knowledge of the matters to which I hereinafter depose. I have also reviewed the books and records of the NW Canada Entities and have spoken with certain of the directors, officers and/or employees of the NW Canada Entities, as necessary and applicable, and where I have relied upon such information, I have set forth the source and believe such information to be true.

3. This affidavit is sworn in support of a motion sought by the NW Canada Entities seeking an Order (the "**Extension Order**") extending the time for each of the Applicants to file a proposal (the "**Proposal Period**") under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") to August 3, 2018.

## BACKGROUND

4. The NW Canada Entities are wholesalers and retailers of Nine West brand footwear and accessories in Canada. The NW Canada Entities are also the exclusive wholesalers of various brands of women's jewellery, handbags and women's footwear in Canada. The NW Canada Entities are indirect wholly-owned subsidiaries of U.S. parent companies whose ultimate parent is Jasper Parent LLC (collectively, the "NW U.S. Entities", and, together with the NW Canada Entities, the "NW Entities").

5. For the last several years, the NW Entities have experienced a consistent decline in the financial performance of their Canadian and U.S. operations relating to Nine West and other brands. This decline was caused by a variety of factors, including unfavourable retail market trends, changing consumer preferences, and inventory and design choices that did not align with consumer preferences.

6. On February 26, 2018, Richter Advisory Group Inc. ("Richter") was engaged as Financial Advisor to the NW Canada Entities.

7. On April 6, 2018, restructuring proceedings were commenced in respect of the NW Canada Entities and the Nine West U.S. Entities. Each of the NW Canada Entities filed a Notice of Intention to File a Proposal ("NOI") under the BIA (the "Proposal Proceedings"). The NOI filings were necessary to provide stability to the NW Canada Entities and permit the implementation of the proposed liquidation, which is now being implemented and which is further described below. The NW U.S. Entities filed for protection under Chapter 11 of the U.S. Bankruptcy Code (the "Chapter 11 Proceedings"). As part of the filing of the NOIs, Richter was named as the Proposal Trustee in the Proposal Proceedings.

8. The Proposal Proceedings and the Chapter 11 Proceedings are independent processes. The NW Canada Entities are neither borrowers nor guarantors of the debt of the NW U.S. Entities, and are not borrowers under the U.S. debtor-in-possession facility in the Chapter 11 Proceedings. The NW Canada Entities are not applicants in the Chapter 11 Proceedings, and no recognition orders are being sought in Canada with respect to the Chapter 11 Proceedings. Similarly, no relief was sought in respect of the NW Canada Entities in the U.S.

9. Further background information on the NW Entities and the circumstances leading up to the commencement of the Proposal Proceedings and Chapter 11 Proceedings can be found in my affidavit sworn April 6, 2018, a copy of which, without exhibits, is attached hereto as **Exhibit "A"**.

10. Prior to the commencement of the Chapter 11 Proceedings, the NW U.S. Entities undertook a comprehensive marketing process of their Nine West and Bandolino brands to potential strategic and financial buyers. These efforts ultimately resulted in an asset purchase agreement dated April 5, 2018 between certain of the NW U.S. Entities and certain entities affiliated with Authentic Brands Group LLC ("**ABG**") and Marc Fisher as operating partner (the "**Stalking Horse APA**") which commits those entities to pay USD\$123 million for the intellectual property associated with the Nine West and Bandolino brands and USD \$77 million for inventory. The Stalking Horse APA set a minimum price for the sale of the purchased assets, ensured the continued viability of the Nine West brand to consumers, and allowed the NW U.S. Entities to leave the footwear business.

11. On May 5, 2018, the United States Bankruptcy Court for the District of Delaware (the "**US Court**") approved bidding procedures in the Chapter 11 Proceedings with respect to the assets of the West, Bandolino, and associated brands. The bidding procedures set a bid deadline of June 4, 2018, provided for an auction, if necessary, to be conducted on June 8, 2018, and contemplate a sale hearing on June 18, 2018. The NW U.S. Entities received one bid prior to the bid deadline, which was submitted by shoe retailer DSW Inc. As described in more detail below, following an auction, ABG was determined to be the successful bidder.

12. The extensive marketing process undertaken by the NW U.S. Entities did not generate any interest in the NW Canada Entities' assets. In the circumstances, the NW Canada Entities, together with Richter as Financial Advisor and anticipating Richter's role as Proposal Trustee, determined that the manner in which to maximize the recovery from the NW Canada Entities' existing retail operations was through the engagement of a liquidator to assist with the orderly wind down of the retail operations.

13. A final decision relating to the Canadian wholesale operations is not known but will become definitive upon the completion of the U.S. sales process to be completed within the



Chapter 11 Proceedings. In the interim, in order to monetize the current value of the NW Canada Entities for existing creditors, it was decided that the inventory previously purchased for wholesale distribution should be monetized either through Canadian wholesale channels or through liquidation via retail distribution channels with the assistance of the Consultant (as described below).

#### **APPROVAL OF THE LIQUIDATION PROCESS ORDER AND ADMINISTRATION ORDER**

14. On March 12, 2018, the NW Canada Entities, with the assistance of Richter, commenced a request for proposal (“**RFP**”) process to solicit proposals from third party liquidators to assist the NW Canada Entities in the orderly liquidation of the inventory, furniture, fixtures and other store equipment through the conduct of “going-out-of-business” or similar themed sales (the “**Liquidation Sales**”). Following consideration of all of the proposals, the NW Canada Entities, in consultation with Richter, selected SB360 Capital Partners, LLC as the successful bidder (the “**Consultant**”).

15. On April 11, 2018, Justice Haaney granted an order (the “**Liquidation Process Order**”), among other things:

- (a) approving the consulting agreement (the “**Consulting Agreement**”) between the NW Canada Entities and the Consultant, a copy of which is attached hereto as **Exhibit “B”**, and the transactions contemplated thereunder;
- (b) approving the sale guidelines with respect to the Liquidation Sales (the “**Sale Guidelines**”) in the form attached as Schedule A to the Liquidation Process Order;
- (c) authorizing NW Canada LP, with the assistance of the Consultant, to conduct the Liquidation Sales in accordance with the Consulting Agreement, the Liquidation Process Order, and the Sale Guidelines; and
- (d) authorizing and directing the NW Canada Entities to take any and all actions as may be necessary or desirable to implement the Consulting Agreement and each of the transactions contemplated therein.

A copy of the issued and entered Liquidation Process Order is attached hereto as **Exhibit "C"**.

16. The same day, Justice Hainey also granted an order (the "**Administration Order**"), among other things:

- (a) extending the Proposal Period to June 20, 2018;
- (b) approving the substantive consolidation of the Proposal Proceedings and authorizing the Proposal Trustee to administer the consolidated Proposal Proceedings as if they were a single proceeding for the purpose of carrying out its duties and responsibilities as a proposal trustee under the BIA with respect to the administration of proposal proceedings generally;
- (c) approving certain court-ordered charges, including the D&O Charge and the Administration Charge (as defined in the Administration Order); and
- (d) approving the key employee retention agreement (the "**KERA**"), a copy of which was attached as a confidential appendix to the first report of the Proposal Trustee dated April 9, 2018 (the "**First Report**"), and approving the KERA Charge (as defined in the Administration Order).

A copy of the issued and entered Administration Order is attached hereto as **Exhibit "D"**.

## **STATUS OF THE LIQUIDATION AND STORE CLOSURES**

### **Liquidation Sales**

17. The Consulting Agreement was executed on April 11, 2018, following the issuance of the Liquidation Process Order. Liquidation Sales commenced on April 14, 2018, and it is anticipated that they will be completed by June 30, 2018.

18. The majority of the NW Canada Entities' wholesale inventory was sold through the NW Canada Entities' customary wholesale channels, and the remainder has been included in the Liquidation Sales at the retail locations.

19. To date, net recoveries from the Liquidation Sales have exceeded projections. I understand that additional information regarding the Liquidation Sales will be provided in the

second report of the Proposal Trustee to be filed in connection with the within motion (the "Second Report").

20. The Consulting Agreement contemplates a final settlement with respect to the reimbursable costs and fees of the Consultant, which fees represent a percentage of the gross proceeds from the sale of inventory and the gross receipts from all sales or other dispositions of fixtures, furniture and equipment. It is expected that the final settlement will be completed as soon as possible, and within 30 days following the end of the Liquidation Sales.

#### **Store Closures and Lease Disclaimers**

21. At the commencement of the Proposal Proceedings, the NW Canada Entities operated 35 retail locations across Canada, of which 22 were located in Ontario. I am advised by Maria Konyukhova of Stikeman Elliot LLP that since the commencement of the Liquidation Sales at the NW Canada Entities' retail locations, lease disclaimer notices have been delivered (as necessary) with respect to all 35 retail locations, effective on or before June 30, 2018.

22. Pursuant to the BIA, the requisite Form 45 *Notice to Lessor to Disclaim or Resiliate a Lease by Commercial Tenant* and explanatory cover letters were sent to the relevant landlords primarily at the end of May 2018. Two of the disclaimed leases operated on a month-to-month basis.

23. The NW Canada Entities expect to calculate and make any remaining payments in respect of post-filing store lease obligations in July 2018.

24. The NW Canada Entities operate a corporate head office located in Toronto, Ontario. The lease with respect to the head office has not yet been disclaimed. As part of their orderly windup, the NW Canada Entities have determined that they will continue to require a portion of their head office space until later in the Proposal Proceedings. The NW Canada Entities were in negotiations with the landlord for the head office premises to surrender portions of the head office premises to the landlord in advance of the end of the Proposal Proceedings in order to enable the landlord to negotiate new lease agreements for the surrendered premises with two prospective tenants. However, these negotiations did not result in an agreement, and the NW Canada Entities will continue their subletting efforts.

25. As of June 12, 2018, no counterparty to a disclaimed lease or a terminated lease has disputed the NW Canada Entities' disclaimer or termination of the relevant agreement.

26. As of June 12, 2018, Liquidation Sales are ongoing at 33 stores.

## EMPLOYEES

### Employee Terminations

27. At the commencement of the Proposal Proceedings, NW Canada LP employed approximately 330 people, of which 225 were employed on a part-time basis, and all of whom were non-unionized. Of NW Canada LP's employees, approximately 35 made up senior management and administrative office positions and 295 were retail sales staff.

28. As the Liquidation Sales have progressed, the NW Canada Entities have sent notices of termination to 77 retail and head office employees. With the exception of 7 head office employees who are necessary to assist in concluding the orderly wind down of operations, it is expected that the employment of all remaining employees will be terminated by June 30, 2018.<sup>1</sup> In accordance with the requirements of the *Employment Standards Act* (Ontario), on June 6, 2018 NW Canada LP filed a Notice of Termination of Employment with the Ministry of Labour notifying the Ministry that it was terminating more than 50 employees in the same four-week period.

29. All employees whose employment was terminated were paid their wages, benefits and accrued vacation to the date of termination. The employees whose employment was terminated may have claims for severance in accordance with the requirements under the relevant provincial employment standards legislation and common law. It is expected that all employees will be terminated in connection with the Proposal Proceedings. All terminated employees will receive their wages, benefits and accrued vacation to the date of termination, and may have a claim in the Proposal Proceedings for any severance obligations.

---

<sup>1</sup> In addition to the 7 head office employees, there is one employee of Jasper Apparel Group Canada, LP, who is currently on NW Canada LP's payroll and is currently being moved to an alternate employer.

### **KERA Distribution**

30. Given the short timeframe of the retail operations wind-down, it was and remains imperative that the NW Canada Entities maintain certain key employees to assist with the orderly wind down of the NW Canada Entities' operations and the liquidation of their inventory. As stated above, in an attempt to ensure the continued participation of employees identified as key employees during the Proposal Proceedings, the NW Canada Entities obtained approval of the KERA.

31. In order for a KERA participant to receive payments under the KERA, such employee cannot have: (a) disclosed the terms of the KERA (other than to his or her legal, financial and tax advisors or as required by law); or (b) at any time on or before the date on which any portion of the funds contemplated under the KERA is paid (i) resign or (ii) be terminated for cause.

32. There were initially eleven employees who were participants in the KERA and were eligible to receive KERA payments, totalling \$75,000 in the aggregate. Following the commencement of the Proposal Proceedings, three employees were removed or resigned prior to earning a KERA payment, and one employee was added. Currently, the KERA contemplates the participation of nine employees, with aggregate KERA payments in the amount of \$86,000. As of the date of this affidavit, approximately \$8,500 of KERA payments have been paid or are payable. The NW Canada Entities anticipate distributing the remaining KERA payments following the termination of the KERA participants, at certain milestones during the wind-down of operations.

33. One KERA participant announced their resignation effective prior to the completion of the Liquidation Sales. As a result, with the approval of the Proposal Trustee, the NW Canada Entities will be setting aside a portion of the KERA funds which was earmarked for that individual and distributing it to two other KERA participants.

### **CONTRACT DISCLAIMERS**

34. As of the date of this Affidavit, the NW Canada Entities have taken steps to disclaim the majority of contracts to which they were a party (the "**Disclaimed Contracts**"). To date, notices to disclaim agreements with approximately 20 counterparties have been delivered pursuant to

the BIA. Disclaimer notices, consisting of a Form 44.1 *Notice by Debtor to Disclaim or Resiliate an Agreement* and explanatory cover letter, were sent to the counterparties of the Disclaimed Contracts between the end of April and the end of May 2018.

35. The Proposal Trustee approved the disclaimer of the Disclaimed Contracts. As of June 12, 2018, no counterparty to a Disclaimed Contract has disputed the NW Canada Entities' disclaimers.

36. The NW Canada Entities anticipate delivering more disclaimers as they continue to wind down their operations.

#### **UPDATED CASH FLOWS**

37. The initial cash flow forecast prepared by the Proposal Trustee and appended to First Report was for the 11-week period from April 8, 2018 to June 23, 2018. In connection with the within motion, the Proposal Trustee has assisted the NW Canada Entities in preparing (i) a report on actual versus forecast results for the 8 weeks ended June 2, 2018, and (ii) an extended cash flow forecast (the "**Extended Cash Flow Forecast**") for the 9 week period from June 3, 2018 to August 4, 2018 (the "**Extended Cash Flow Period**"), copies of which I understand from the Proposal Trustee will be attached as appendices to the Second Report. As set out in the Extended Cash Flow Forecast, the NW Canada Entities are expected to have sufficient liquidity to operate to the end of the Extended Cash Flow Period, which coincides with the extension of the Proposal Proceedings to August 3, 2018. The NW Canada Entities' principal use of cash following the commencement of the Proposal Proceedings to the completion of the Liquidation Sales consists of regular course operating expenditures, including amounts paid or to be paid to employees and landlords. These expenditures are expected to decrease over time as store closures are effected.

#### **STATUS OF THE NW U.S. ENTITIES' CHAPTER 11 PROCEEDINGS**

38. As outlined in my affidavit sworn April 6, 2018, the NW U.S. Entities entered into the Stalking Horse APA with certain entities affiliated with ABG and Marc Fisher on April 5, 2018, which committed those entities to pay USD\$123 million for the intellectual property associated with the Nine West and Bandolino brands and USD \$77 million for inventory. On May 5, 2018,

the US Court approved bidding procedures in the Chapter 11 Proceedings with respect to the assets of the Nine West, Bandolino, and associated brands. The bidding procedures set a bid deadline of June 4, 2018, provided for an auction to be conducted on June 8, 2018 if necessary, and contemplated a sale hearing on June 18, 2018. The NW U.S. Entities received one bid prior to the bid deadline, which was submitted by shoe retailer DSW Inc. Following an auction, ABC was declared to be the successful bidder with a revised bid of USD \$3<sup>4</sup>~~5~~0 million. (PPG)

39. The NW Canada Entities and Proposal Trustee will provide further relevant information to this Court on the Chapter 11 Proceedings as it becomes available.

#### STAY EXTENSION

40. Since April 14, 2018, the NW Canada Entities, the Consultant, the Proposal Trustee and their advisors have been working together to carry out the Liquidation Sales, address employee, supplier, customer and other stakeholder issues, and otherwise advance the Proposal Proceedings. The Consulting Agreement contemplates that the Liquidation Sales will be completed by June 30, 2018 and the NW Canada Entities are on track to meet that deadline.

41. The NW Canada Entities have started drafting a form of proposal to their creditors, subject to further drafting and advancement as available proceeds and asset monetizations are further quantified. The proposal will likely include a quantification of the claims of various creditors, including landlords and employees.

42. A 45-day extension of the Proposal Period would give the NW Canada Entities the time needed to complete the Liquidation Sales and finalize a proposal for consideration of the NW Canada Entities' creditors.

43. I am not aware of any creditors who would be harmed by the extension of the Proposal Period to August 3, 2018.

CONCLUSION

44. I swear this affidavit in support of the Extension Order being sought in the Proposal Proceedings and for no improper purpose.

SWORN BEFORE ME at the City of New York, State of New York on June 12, 2018.

*Jarita D. Whitfield*  
Notary

*Ralph Schipani*  
\_\_\_\_\_  
RALPH SCHIPANI

JARITA D. WHITFIELD  
Notary Public, State of New York  
No. 01576413449  
New York, Madison County  
Commission Expires Feb. 05, 2019



# EXHIBIT "A"

*THIS IS EXHIBIT "A", referred to in the  
Affidavit of Ralph Schipani, sworn on  
June 12, 2018.*



JARITA D. WHITFIELD  
Notary Public, State of New York  
No. 01276410460  
Qualified in Oneida County  
Commission Expires Feb. 05, 2019

---

*Commissioner for Taking Affidavits*

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

Estate/Court File No. 31-2363758

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF JONES  
CANADA, INC., A CORPORATION WITH A HEAD OFFICE IN THE CITY OF TORONTO  
IN THE PROVINCE OF ONTARIO

Applicant

Estate/Court File No. 31-2363759

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF NINE  
WEST CANADA LP, A PARTNERSHIP WITH A HEAD OFFICE IN THE CITY OF  
TORONTO IN THE PROVINCE OF ONTARIO

Applicant

AFFIDAVIT OF RALPH SCHIPANI  
(Sworn April 6, 2018)

I, RALPH SCHIPANI, of the City of New York, in the State of New York, MAKE OATH  
AND SAY:

1. I am the President of the applicants, Jones Canada, Inc. ("Jones Canada") and Nine West Canada LP ("NW Canada LP", and together with Jones Canada, the "NW Canada Entities" or the "Applicants"). I am also Interim Chief Executive Officer of Nine West Holdings, Inc. and certain of its affiliates and subsidiaries, which are referred to herein as the NW U.S. Entities and further described below.
  
2. As a result of my roles with the NW Canada Entities, I have knowledge of the matters to which I hereinafter depose. I have also reviewed the books and records of the NW Canada Entities and have spoken with certain of the directors, officers and/or employees of the NW Canada Entities, as necessary and applicable, and where I have relied upon such information, I have set forth the source and believe such information to be true.

3. This affidavit is sworn in support of a motion sought by the NW Canada Entities seeking:

- (a) An order (the "**Liquidation Process Order**"), substantially in the form of the draft order located at tab 4 of the Motion Record:
  - i. approving the consulting agreement (the "**Consulting Agreement**") between the NW Canada Entities and SB360 Capital Partners LLC (the "**Consultant**") in the form attached as **Exhibit "L"** to this affidavit (and which I understand from Richter Advisory Group Inc. ("**Richter**"), in its capacity as the Proposal Trustee of the NW Canada Entities (the "**Proposal Trustee**"), will also appended to the First Report of the Proposal Trustee that is to be filed (the "**First Report**"), and the transactions contemplated thereunder;
  - ii. approving the sale guidelines (the "**Sale Guidelines**") in the form attached as Schedule A to the Liquidation Process Order;
  - iii. authorizing NW Canada LP, with the assistance of the Consultant, to conduct a liquidation sale in accordance with the Consulting Agreement, the Liquidation Process Order and the Sale Guidelines; and
  - iv. authorizing and directing the NW Canada Entities to take any and all actions as may be necessary or desirable to implement the Consulting Agreement and each of the transactions contemplated therein;
- (b) An order (the "**Administration Order**"), substantially in the form of the draft order located at tab 5 of the Motion Record:
  - i. extending the time for filing a proposal (the "**Proposal Period**") pursuant to s. 50.4(9) of the *Bankruptcy and Insolvency Act*, RSC 1983, c B-3, as amended (the "**BIA**") to June 20, 2018;
  - ii. approving the substantive consolidation of the NW Canada Entities' Proposal Proceedings (as hereinafter defined) and authorizing the

Proposal Trustee of the consolidated Proposal Proceedings of the NW Canada Entities to administer the Proposal Proceedings as if the proceedings were a single proceeding for the purpose of carrying out its duties and responsibilities as a proposal trustee under the BIA with respect to the administration of proposal proceedings generally;

- iii. authorizing the Applicants to continue using the Cash Management System (as defined and described below) currently in place but for repayment of any intercompany amounts;
- iv. approving the D&O Charge (as defined and described below) in the amount of \$700,000<sup>1</sup>;
- v. approving the Administration Charge (as defined and described below) in the amount of \$750,000;
- vi. approving the key employee retention agreement (the "KERA"), a copy of which I understand from the Proposal Trustee will be attached as a confidential appendix to the First Report, and approving the KERA Charge (as defined and described below);
- vii. sealing the KERA and the Comparative Analysis (as defined below), copies of which I understand will be attached as confidential appendices to the First Report, pending further order of the Court; and

(c) such other relief as the Court may deem appropriate.

#### CANADIAN AND U.S. RESTRUCTURING PROCEEDINGS

4. On April 6, 2018, restructuring proceedings were commenced in respect of the NW Canada Entities and the Nine West U.S. Entities. Each of the NW Canada Entities filed a Notice of Intention to File a Proposal ("NOI") under the BIA (the "Proposal Proceedings"). The NW

---

<sup>1</sup> All references to currency in this Affidavit are to Canadian dollars unless stated otherwise.

U.S. Entities filed for protection under Chapter 11 of the U.S. Bankruptcy Code (the "Chapter 11 Proceedings").

5. The Proposal Proceedings and the Chapter 11 Proceedings are independent processes. The NW Canada Entities are not applicants in the Chapter 11 Proceedings, and no recognition orders are being sought in Canada with respect to the Chapter 11 Proceedings. As discussed further below, the Canadian NW Entities are neither borrowers nor guarantors of the debt of the NW U.S. Entities, and are not borrowers under the proposed U.S. debtor-in-possession facility in the Chapter 11 Proceedings and no relief is being sought in respect of the NW Canada Entities in the U.S.

**OVERVIEW OF THE NW CANADA ENTITIES' OPERATIONS AND ASSETS**

Introduction

6. The NW Canada Entities are wholesalers and retailers of Nine West brand footwear and accessories in Canada. Pursuant to a series of distribution agreements which are further described below, the NW Canada Entities are also the exclusive wholesalers of various brands of women's jewellery, handbags and women's footwear in Canada. The NW Canada Entities are indirect wholly-owned subsidiaries of U.S. parent companies whose ultimate parent is Jasper Parent LLC (collectively, the "NW U.S. Entities", and, together with the NW Canada Entities, the "NW Entities"). A chart showing the corporate structure of the NW Canada Entities and their position in the NW Entities' organization is attached hereto as **Exhibit "A"**.

7. Through a series of transactions in 2014, Sycamore Partners L.P. and certain of its affiliates (collectively, "Sycamore") acquired the Nine West U.S. Entities. In 2015, the Nine West U.S. Entities incorporated Canadian subsidiaries and acquired what is now the NW Canada Entities' business from Sherson Group Inc. ("Sherson"), which was the Canadian wholesaler and retailer of Nine West merchandise for nearly 30 years. Through this acquisition, the NW Canada Entities became a part of the NW Entities' group.

8. For the last several years, the NW Entities have experienced a consistent decline in the financial performance of their Canadian and U.S. operations relating to Nine West and other brands. This decline was caused by a confluence of factors, including unfavourable retail market trends, changing consumer preferences, and inventory and design choices that did not

align with consumer preferences. As outlined further below, attempts to revitalize the Nine West brand and associated brands proved challenging in both Canada and the U.S.

9. With the commencement of the Chapter 11 Proceedings (which is described in greater detail below), the NW Canada Entities have lost access to critical funding without which they are unable to continue operations. The Chapter 11 Proceedings contemplate a sale of the NW U.S. Entities' intellectual property and certain working capital assets. The extensive marketing process undertaken by the NW U.S. Entities did not generate any interest in the NW Canada Entities' assets. In the circumstances, the NW Canada Entities believe that the best way to maximize recoveries for their stakeholders is through a supervised and orderly liquidation process and wind-down of their retail operations.

10. It is currently contemplated that the Canadian wholesale operations will also be winding down as part of the Proposal Proceedings and the Chapter 11 Proceedings. A final decision relating to the Canadian wholesale operations is not known at this time but will become definitive upon the completion of the U.S. sales process to be completed within the Chapter 11 Proceedings. In the interim, in order to monetize the current value of the NW Canada Entities for existing creditors, the inventory previously purchased for wholesale distribution will be monetized either through Canadian wholesale channels or through liquidation via retail distribution channels with the assistance of the Consultant.

#### Corporate Structure

11. Jones Canada is a private company incorporated under the Ontario *Business Corporations Act*, R.S.O. 1990, c. B. 16 (the "OBCA") whose registered office is located at Suite 100, 1446 Don Mills Road, Toronto, Ontario. Jones Canada is the general partner of NW Canada LP, a limited partnership whose limited partner is Jones Apparel Group Canada ULC, a Nova Scotia unlimited liability corporation.

12. Jones Canada carries on no other business aside from being the general partner of NW Canada LP.

### Historical Overview

13. As noted, the NW Canada Entities acquired their business from Sherson in 2015, which was the Canadian wholesaler and retailer of Nine West merchandise for nearly 30 years. As a result of poor financial performance, Sherson filed a NOI under section 50.4(1) of the BIA on June 29, 2015.

14. The NW U.S. Entities were involved in the Sherson NOI proceedings in their capacity as the licensor of Nine West and other brands to Sherson and were Sherson's largest creditor at the time of the filing. In the face of an application to place Sherson into receivership by one of its secured creditors, it was ultimately determined that in order to maintain the Nine West brand in Canada, the NW U.S. Entities would acquire the assets of the Sherson operations and continue the retail and wholesale operations in Canada.

15. On August 20, 2015, this Court approved the sale of substantially all of Sherson's business and assets to NW Canada LP, which sale closed on August 21, 2015. The consideration from the sale was insufficient to satisfy all of Sherson's secured indebtedness or support a distribution to its other creditors. As Sherson failed to present a proposal to its unsecured creditors in its NOI proceedings, Sherson was deemed to have made an assignment in bankruptcy on November 19, 2015.

### License Arrangements with NW U.S. Entities

16. Since their founding in 1970, the NW U.S. Entities have acquired numerous licenses or trademarks for several well-known brands and currently operate several major business lines. These are described in greater detail in my Declaration in support of the NW U.S. Entities' Chapter 11 petitions (the "US First Day Declaration"), a final copy of which I understand will be appended to the First Report and will be posted to the Proposal Trustee's website.

17. The NW U.S. Entities licence their brands to U.S.-based and international licensees in over 60 countries, including Canada. Pursuant to a 2004 Distribution and Licence Agreement between Sherson Marketing Group and certain of the NW U.S. Entities (the "Sherson Licence Agreement"), which was assumed by the NW Canada Entities upon their acquisition of Sherson's assets in 2015, the NW Canada Entities are the exclusive distributors in Canada of women's footwear and accessories bearing certain trademarks owned by the NW U.S. Entities,



including Nine West®, Bandolino® and Anne Klein®. The NW Canada Entities do not own their own trademarks.

18. In addition, pursuant to a series of Distribution and Buying Agent Agreements between Sherson and several third party licensors, some of which agreements were assigned to the NW Canada Entities upon the Sherson asset acquisition in 2015, the NW Canada Entities are wholesalers of various brands of women’s jewellery, handbags and footwear in Canada. As further outlined below, the NW Canada Entities sell this merchandise on a wholesale basis to various department stores, including The Hudson’s Bay Company.

Sourcing and Manufacturing

19. The NW U.S. Entities design merchandise in-house and contract with various foreign manufacturers for inventory which is then available throughout the NW Entities, including the NW Canada Entities.

Internal Supply Chain

20. As noted, the NW Canada Entities purchase the inventory needed for their operations from the NW U.S. Entities, which source the merchandise from third party manufacturers. The NW Canada Entities pay the NW U.S. Entities for the cost of the merchandise purchased from overseas manufacturers. Inventory charges, such as license, royalty or design fees, have historically been charged on the merchandise as further described below. The merchandise purchased by the NW U.S. Entities which is sold to the NW Canada Entities is shipped directly from the overseas manufacturers to Vancouver, British Columbia. From there, the merchandise is shipped by rail to a distribution centre located in Toronto, Ontario, which is owned and operated by a third party logistics provider. The third party provider sorts the merchandise and delivers it to Canadian Nine West retail locations, as well as department stores with which the NW Canada Entities have contractual wholesale arrangements.

21. At the time of the 2015 purchase from Sherson, the NW U.S. Entities (as suppliers and licensors of goods to Sherson for the Canadian operations) were owed approximately \$17 million by Sherson. These amounts were assumed by the NW Canada Entities upon their acquisition of the Sherson business, however the majority of the amount was written down following the initial acquisition. Thereafter, the NW U.S. Entities initially continued to charge

license fees at the rate of 7% found in the Sherson License Agreement which had been assumed. As a result of limited resources within Canada, the royalty rates were altered and were instead charged on a "cost plus 20%" commissions basis commencing in January 2016. Thereafter, the royalty arrangement was amended internally to a design fee basis, with varying rates based on the brand.

22. Since purchasing the Sherson operations, a total of approximately \$4.545 million was charged by the NW U.S. Entities by way of licence-related charges (royalties, commissions and/or design fees) on branded product sold by the NW Canada Entities. These inventory charges were accrued, but in many cases the NW Canada Entities were unable to pay the total amounts, and as such they were accounted for within the intercompany amounts owing to the NW U.S. Entities, as outlined below. The Sherson License Agreement, which had been assumed, was never terminated or formally amended to reflect the internal change in licensing fees, which the NW U.S. Entities had agreed to in order to attempt to maintain the Canadian operations.

#### Customs and Duties

23. The NW Canada Entities use customs brokers to handle duties, shipping charges and other related expenses. The NW Canada Entities also maintain customs bonds as security for the payment of duties on the merchandise received in the amount of \$400,000. As of the date of filing, the NW Canada Entities owe approximately \$900,000 in duties for merchandise that has arrived in Vancouver.

#### Retail and Wholesale operations

24. The NW Canada Entities operate 35 retail locations across Canada, of which 22 are located in Ontario. The NW Canada Entities also have stores in Manitoba, Alberta, British Columbia, Quebec and Nova Scotia. All of the NW Canada Entities' retail locations are leased. Approximately 75% of the NW Canada Entities' total revenues is derived from their retail operations. A chart showing the store locations by province is attached hereto as Exhibit "B".

25. The NW Canada Entities have wholesale arrangements to supply branded footwear and accessories with several large retailers including The Hudson's Bay Company, Nordstrom Rack, Winners, Saks Off Fifth, the Designer Shoe Warehouse, the Shoe Company, and Amazon.

Approximately 25% of the NW Canada Entities' total revenues is derived from their wholesale operations.

26. The NW Canada Entities will be liquidating their wholesale inventory and winding down their wholesale operations as part of the Proposal Proceedings. A final conclusion on whether the wholesale operations in Canada will be carried on by another entity will be reached once the sales process being undertaken in the Chapter 11 Proceedings is completed. As described further below, Nine West Holdings Inc. has entered into an agreement to sell the Nine West and Bandolino brands to Authentic Brands Group LLC ("ABG") with Marc Fisher Footwear as ABG's operating partner. Currently, ABG does not intend to continue wholesale operations on the current Canadian platform. The transaction is subject to a bidding process and approval by the U.S. Bankruptcy Court. If an alternative buyer is identified in the Chapter 11 Proceedings, the alternative buyer has the right to determine whether it wants to continue wholesale operations in Canada. The NW Canada Entities will update its Canadian wholesalers as and when additional information is available during the Chapter 11 Proceedings.

#### Properties and Facilities

27. In addition to the NW Canada Entities' 35 retail locations, the NW Canada Entities have a leased head office located in Toronto, Ontario, which employs managerial and administrative staff. The NW Canada Entities also make use of a distribution centre in Toronto, which is owned and operated by a third party logistics provider.

#### Employees

28. As of the date of swearing this affidavit, Nine West Canada LP employed approximately 332 people, of which 225 are employed on a part-time basis, and all of whom are non-unionized. Of these employees, approximately 35 make up senior management and administrative office positions and 295 are retail sales staff. The NW Canada Entities do not sponsor any pension plans for their employees.

### Cash Management System

29. In the ordinary course of their business, the NW Canada Entities use a centralized cash management system (the "Cash Management System") to, among other things, collect funds and pay expenses associated with their operations.

30. The NW Entities maintain bank accounts in both Canada and the U.S. for their respective Canadian and U.S. operations. Most of the NW Entities' North American accounts are with Bank of America ("BOA") and Wells Fargo ("Wells Fargo"). The NW Canada Entities' bank accounts are in the name of NW Canada LP. A chart outlining the NW Canada Entities' BOA account structure is attached hereto as Exhibit "C". With the exception of one account, the accounts are in Canadian dollars. There are separate accounts for wholesale accounts receivable deposits, daily credit card deposits and daily cash deposits, and the funds from those accounts are swept into a Canadian operating account. Disbursements for operating expenses and payroll are made from separate disbursement accounts, and the funds used to make these disbursements are sourced from the operating account. Further, there is a standalone disbursement account in U.S. dollars, which is used to pay U.S. invoices, and was also the account into which the NW U.S. Entities advanced funds to the NW Canada Entities pursuant to the intercompany financing, described further below.

31. The NW Canada Entities will continue to operate the existing cash management process, with one modification: where cash sweeps were sometimes made from NW Canada LP to the NW U.S. Entities, these sweeps will cease unless approved by the Proposal Trustee.

### **THE NW CANADA ENTITIES' LIABILITIES**

#### Intercompany Indebtedness

32. The acquisition of the Nine West business from Sherson in 2015 was completed on an urgent basis and it was not possible for the NW Canada Entities to implement third party secured financing for the Canadian operations. Thus, portions of the initial purchase price and future operating costs were funded to the NW Canada Entities on an intercompany basis through various NW U.S. Entities.

33. Intercompany financing has continued to be utilized since the 2015 Sherson acquisition to assist with Canadian operations. Attempts were made post 2015 to secure outside financing from traditional lenders, including NW U.S. Entities' third party lenders; however, these attempts were unsuccessful.

34. The operating costs of the NW Canada Entities funded by intercompany financing included inventory purchases initiated by the NW U.S. Entities on behalf of the Canadian entities, licence-related charges / design assist costs relating to the NW U.S. Entities and other branded merchandise acquired by the NW Canada Entities and various other operating costs such as travel and insurance. Partial payments were historically made by the NW Canada Entities to the U.S. intercompany lenders. From the 2015 Sherson asset acquisition to date, intercompany funding totalled in excess of \$40 million.

35. In the fall of 2017, the NW Canada Entities sought and obtained additional financing on a secured basis from the NW U.S. Entities. This financing was critical as it permitted the NW Canada Entities to meet their obligations and continue operations. On October 18, 2017, NW Canada LP issued two interest-bearing revolving inter-company notes in favour of two U.S. entities (collectively, the "Promissory Notes"): a note in favour of Nine West Management Service LLC ("NW Management") in the principal amount of \$2 million and a note in favour of Nine West Holdings Inc. ("NW Holdings") in the principal amount of \$23 million. Copies of the NW Management note and the NW Holdings note are attached hereto as Exhibits "D" and "E", respectively. Intercompany financing continued on a secured basis thereafter, with in excess of \$6 million of secured financing being provided post October 2017.

36. As security for NW Canada LP's obligations under the Promissory Notes, NW Canada LP provided general security agreements and hypothecs to NW Management and NW Holdings (collectively, the "Intercompany Security"), copies of which are attached hereto as Exhibits "F" and "G", respectively. The Intercompany Security was registered in the personal property registration systems of Ontario, Manitoba, British Columbia, Nova Scotia and Quebec, as well as Alberta's real property registration system.

37. Partial repayments have been made toward the unsecured and secured intercompany financing historically since 2015. Upon the closing of the March financial statements for the NW

Entities, updated intercompany balances will be available and provided to the Proposal Trustee. At the time of the swearing of this Affidavit, the estimated balances of unsecured intercompany financing from the Nine West U.S. entities (not including March 2018 advances) total approximately US \$12,465,000 and secured intercompany financing total approximately US \$1,583,000. While historically repayments of intercompany financing had occurred through a sweep of the Canadian accounts, all repayments of intercompany amounts have ceased.

#### PPSA Registrations

38. A search of the Personal Property Security Registration System in Ontario ("PPRS") as of March 20, 2018 shows that the only registrations against the NW Canada Entities are NW Management and NW Holdings on account of the Intercompany Security, and equipment lessors. A copy of the PPRS search results in Ontario for the NW Canada Entities is attached hereto as Exhibit "H". As outlined below, the Applicants will be seeking the D&O Charge, Administration Charge and KERA Charge, all of which will rank subordinate to the security interests of registered equipment lessors not receiving notice of this motion.

#### Employee Liabilities

39. As noted above, as of April 4, 2018, the NW Canada Entities employed 332 employees in Canada. The NW Canada Entities are current on all required payments in respect of employee wages, vacation pay for store employees and benefits to their employees, as well as outstanding obligations of amounts required to be remitted to governmental authorities through source deductions or otherwise. There are vacation pay accruals totalling approximately \$85,000 for head office staff and a number of outstanding obligations to employees relating to outstanding commissions, benefits and expenses, totalling approximately \$30,000.

#### GST/HST Liabilities

40. Through their retail operations, the NW Canada Entities are net payors of GST/HST. Returns are filed in the ordinary course one month in arrears of operations. The February GST/HST return was filed and the obligations owing as reflected in the return totalling \$308,000 have been paid. The March GST/HST return is due to be filed in April.

Other Indebtedness

41. I understand from a review of the NW Canada Entities' corporate records that in addition to the liabilities described above, NW Canada LP and Jones Canada have liabilities to unsecured creditors totalling approximately \$1,300,000.

**FINANCIAL DIFFICULTIES**

42. The NW Canada Entities have experienced declining financial performance since acquiring the Canadian Nine West business from Sherson in 2015. Despite the well-known and respected nature of the Nine West brand and the other brands sold by the NW Canada Entities through retail and wholesale channels, the NW Canada Entities have encountered a confluence of factors that have adversely affected their financial position. First, the NW Canada Entities, like the NW U.S. Entities, have faced unfavourable trends in the retail market, such as a change in consumer preferences away from branded apparel and decreased foot traffic due to a rising preference for online shopping. Second, the NW U.S. Entities made unfavourable inventory and design choices that did not align with consumer preferences and led to substantial losses in revenue generation from the sale of footwear, which losses were echoed in Canada. The investment hypothesis behind the Sherson acquisition in 2015 was initially to protect and maintain the Canadian operations and then attempt to revitalize the Nine West brand in Canada, but this did not happen.

43. Similarly, in the U.S., the 2014 leveraged buyout that led to the NW U.S. Entities' existing business operations and capital structure was not successful in turning the Nine West and associated brands around, and losses continued to accumulate since 2014 in respect of the Nine West brands. As a result, the NW U.S. Entities have commenced the Chapter 11 Proceedings and are unable to provide any additional funding to NW Canada Entities.

Current Financial Position

44. The NW Canada Entities' most current unconsolidated unaudited financial statements are for the fiscal year ended December 31, 2017. Copies of the NW Canada Entities' unconsolidated unaudited financial statements for the fiscal years ending December 31, 2016 and December 31, 2017, in CAD and USD, are attached as Exhibit "I" to this affidavit.

45. The financial statements show that the NW Canada Entities are insolvent. NW Canada LP's current and capital assets as of December 31, 2017 totalled US \$12,088,529 (CAD \$15,175,336) consisting of cash, accounts receivable, inventory, office supplies and equipment. NW Canada LP had total liabilities of USD \$17,893,085 (CAD \$22,462,089) as at this same date. Jones Canada carries on no other business aside from being the general partner of NW Canada LP and has no significant assets or liabilities aside from those arising as a result of it being a general partner of NW Canada LP.

46. The financial statements attached as Exhibit "I" show that the NW Canada Entities operated at a loss of USD \$7,463,667 (CAD \$9,881,296) in 2016 and USD \$4,020,022 (CAD \$4,950,470) in 2017.

47. These losses have been financed by the NW U.S. Entities.

48. When the Canadian operations were operated under Sherson, the operations were also uneconomic but were able to sustain themselves as a result of the failure to pay the inventory payables and licensing fees accruing and owing to the NW U.S. Entities. At the time of Sherson's demise in 2015, the payables to the NW U.S. Entities totalled in excess of \$17 million.

#### NW U.S. Entities' Financial Difficulties

49. In light of the unfavourable retail market, changing consumer preferences and design choices inconsistent with those preferences, the NW U.S. Entities experienced significant losses in the operations related to their Nine West footwear and handbag businesses for the last three years, and accumulated an overleveraged balance sheet with approximately US\$1.6 billion in funded debt obligations, a portion of which was set to mature in 2019. On March 15, 2018, approximately US\$18.6 million in aggregate interest payments were due under certain of the NW U.S. Entities' unsecured notes. The indentures governing these interest payments each permitted the NW U.S. Entities a 30-day "grace period" before the failure to make payment would mature into an "Event of Default" under such indentures. To preserve liquidity, the NW U.S. Entities entered into a grace period with respect to each of these interest payments while they entered into restructuring negotiations with their main secured and unsecured term loan lender groups.



50. As noted, on April 6, 2018, the NW U.S. Entities, including NW Management and NW Holdings, commenced the Chapter 11 Proceedings in the Southern District of New York. In conjunction with the Chapter 11 Proceedings, the NW U.S. Entities have ceased all retail operations and all store locations were closed prior to the commencement of the proceedings. The NW U.S. Entities' e-commerce and wholesale operations will continue as the stalking horse process described below is implemented.

51. Prior to the filing, the NW U.S. Entities undertook a comprehensive marketing process of their Nine West and Bandolino brands to potential strategic and financial buyers. In the spring of 2017, the NW U.S. Entities retained Lazard Frères & Co LLC ("Lazard") as investment banker, to assist in a review of all strategic alternatives. Further Consensus Advisors LLC ("Consensus"), an investment banker, was approached by a third party in April 2017 expressing interest in purchasing the Nine West brand. Concurrently with engaging in negotiations, with the assistance of Lazard, with the creditors of their secured and unsecured debt to gauge support regarding a potential restructuring of their debt, the NW U.S. Entities started reaching out to potential Nine West brand purchasers. The NW U.S. Entities through Consensus ultimately reached out to more than fifty strategic buyers regarding the potential sale of the Nine West brand. Twenty of these buyers either executed confidentiality agreements or otherwise participated in additional diligence under another party's confidentiality agreements. In the fall of 2017, the NW U.S. Entities engaged in constructive negotiations with one of these parties regarding the terms of an asset purchase agreement. These discussions, however, did not result in agreement on a definitive agreement. By January 2018, the NW U.S. Entities had made additional progress not just with the first potential purchaser but also with ABG, and determined, with the advice of their advisors, that entry into the letter of intent with ABG was in the best interests of the NW U.S. Entities and their stakeholders.

52. On January 17, 2018 the NW U.S. Entities agreed to a letter of intent with ABG, with Marc Fisher Footwear as ABG's operating partner, which provided ABG with the exclusive right to negotiate for the purchase of the Nine West, Bandolino and associated brands and certain of the working capital assets related thereto. These negotiations ultimately resulted in an asset purchase agreement between certain of the NW U.S. Entities and certain entities affiliated with ABG and Marc Fisher as operating partner (the "Stalking Horse APA") which

commits those entities to pay USD\$123 million for the intellectual property associated with the Nine West and Bandolino brands and USD \$77 million for inventory. The Stalking Horse APA sets a minimum price for the sale of the purchased assets and ensures the continued viability of the Nine West brand to consumers, and allows the NW U.S. Entities to leave the footwear business.

53. During this extensive marketing process in the U.S., no party expressed any interest in the Canadian operations or in continuing to license the Nine West brands to the NW Canada Entities. ABG expressly excluded the Canadian assets and liabilities from the Stalking Horse APA and is not prepared to license the brands to the NW Canada Entities once it acquires the trademarks. As such, continuing the NW Canada Entities as a going concern is not an option and the NW Canada Entities elected to conduct an orderly liquidation of their inventory and wind-down of operations to maximize value for their stakeholders.

54. The Stalking Horse APA does not provide for ongoing wholesale operations in Canada. If an alternative buyer is identified in the Chapter 11 Proceedings, the alternative buyer has the right to determine whether it wants to continue wholesale operations in Canada. The Proposal Trustee and the Court will be advised should this occur.

55. Contemporaneously with the commencement of the Chapter 11 Proceedings, the NW U.S. Entities are seeking court approval of bidding procedures related to the sale of the assets covered by the Stalking Horse APA. In the First Day motions in the Chapter 11 Proceedings, the NW U.S. Entities are seeking an order which outlines a bidding procedure period of approximately 5 weeks. It is contemplated that if an auction is required in the U.S., it would be held approximately 4 days after the end of the bidding procedure period and a sale hearing would occur 2 days after the auction.

56. Following the completion of the sale of the Nine West brands in the U.S., it is anticipated that the Chapter 11 Proceedings will be focused on the execution of a turnaround strategy to enable the NW U.S. Entities to focus their operations exclusively on their wholesale business with respect to their jeanswear, women's apparel and fashion jewellery business lines.

## THE PROPOSAL PROCEEDINGS

57. As noted above, the Canadian operations historically experienced financial difficulties. The decisions made on a global basis in respect of the future of Nine West retail operations, the lack of any interest through the SISP process that had been run and ultimately the commencement of the Chapter 11 Proceedings resulted in the NW Canada Entities commencing the Proposal Proceedings. The Chapter 11 Proceedings eliminated the NW Canada Entities' ability to obtain further funding through the intercorporate advances described above. The continuing decline in sales and negative publicity generated by the reporting of the NW U.S. Entities' financial problems in the media also contributed to the Canadian operations commencing the Proposal Proceedings in Canada.

58. As a result, on April 6, 2018, each of Jones Canada and NW Canada LP filed an NOI under the BIA and commenced the Proposal Proceedings. Copies of the certificates of the NOIs are attached as Exhibits "J" and "K", respectively, to my affidavit. The NOI filings were necessary to provide stability to the NW Canada Entities and permit the implementation of the proposed liquidation, which is further described below.

59. The NOI filings were authorized by Jones Canada's board of directors.

60. On February 26, 2018, Richter was engaged as Financial Advisor to the NW Canada Entities. As part of the filing of the NOIs, Richter was appointed as the Proposal Trustee in the Proposal Proceedings.

### Cash Flows

61. The Proposal Trustee has assisted the NW Canada Entities in preparing a cash flow forecast which sets out projected cash flows for the 12 week period ending June 30, 2018, a copy of which I understand from the Proposal Trustee will be attached as an appendix to the First Report. As set out in the Cash Flow Forecast, the NW Canada Entities are expected to have sufficient liquidity to operate to the end of the Cash Flow Period, which coincides with the completion of the proposed Liquidation Sale (defined and described below). The NW Canada Entities' principal use of cash during this period will consist of regular course operating expenditures, including amounts to be paid to employees and landlords. These expenditures will decrease over time as store closures are effected.

62. Immediately prior to the commencement of the Proposal Proceedings, the NW Canada Entities set aside funds (the "D&O Trust") sufficient to cover the NW Canada Entities' estimated pre-filing GST/HST liability, employee source deduction, payroll and accrued vacation pay liabilities, such that the NW Canada Entities will have the funds to make these required payments. The D&O Trust was funded through secured intercompany advances.

#### Proposed Process for NOI Proceedings

63. As stated above, prior to commencing their Chapter 11 Proceedings, the NW U.S. Entities ran a thorough marketing process and no party was interested in acquiring the Canadian operations.

64. The NW Canada Entities, together with Richter as Financial Advisor and anticipating Richter's role as Proposal Trustee, determined that the manner in which to maximize the recovery on existing retail operations was through the appointment of a liquidator to assist with the orderly wind down of the retail operations.

65. I believe that the realizations under an orderly liquidation conducted by the NW Canada Entities, with the assistance of the Consultant, are likely to exceed the recoveries under a sale of the assets in a receivership or bankruptcy scenario. The NW Canada Entities will also pursue other asset recoveries including collection of outstanding receivables, and have started drafting a form of Proposal to their creditors, which will be updated as available proceeds and asset monetizations are further quantified.

#### Liquidator Selection Process

66. On March 12, 2018, the NW Canada Entities, with the assistance of Richter, commenced a request for proposal ("RFP") process to solicit proposals from third party liquidators to assist the NW Canada Entities in the orderly liquidation of the inventory, furniture, fixtures and other store equipment through the conduct of "going-out-of-business" or similar themed sales (the "Liquidation Sale"). The RFP was amended on March 19, 2018, to, among other things, extend the deadline for submitting proposals to March 26, 2018. I understand from the Proposal Trustee that more details in this regard will be provided in the First Report.

67. The RFP invited each of the liquidation firms to submit a single proposal with, among other things : (i) an offer to assist the NW Canada Entities in their disposition of the inventory as well as furniture, fixtures and equipment (“FF&E”) located in the closing locations; and (ii) a proposal in the form of the draft Consulting Agreement, with any changes to the Consulting Agreement highlighted. The RFP required all bidders to submit proposals by no later than March 26, 2018. Bidders were told to assume that the sale at the closing locations would begin as soon as possible after April 7, 2018 and conclude no later than June 30, 2018 or such earlier date as agreed upon by the parties.

68. On March 12, 2018, Richter, on behalf of the NW Canada Entities, contacted seven potential liquidators with prior experience handling large-scale liquidations, including large-scale liquidations in Canada, informing them of the RFP process and providing them with a form of non-disclosure agreement (the “NDA”). Subsequently, seven parties executed NDAs and were provided with access to a virtual data room on March 15, 2018, which included relevant financial and operational data concerning the inventory and FF&E, as well an overview of the RFP process and a form of the Consulting Agreement. Richter and the NW Canada Entities answered questions and provided follow-up information to the liquidators during the course of their due diligence.

69. Three proposals were received on March 26, 2018. Richter prepared a comparative analysis of the proposals (the “Comparative Analysis”), which I understand from the Proposal Trustee will be attached as a confidential appendix to the First Report. Following consideration of all of the proposals, the NW Canada Entities, in consultation with Richter, selected SB360 Capital Partners, LLC, as the successful bidder, or Consultant. I am advised that the Consultant has extensive experience conducting retail liquidations, including inventory dispositions for a wide variety of former retailers.

70. I understand from the Proposal Trustee that the First Report will further outline the efforts undertaken during this time to select a liquidator.

#### The Consulting Agreement

71. On April 3, 2018, the Consultant and the NW Canada Entities agreed to a final form of the Consulting Agreement, a copy of which is attached hereto as Exhibit “L”. It is intended that

the Consulting Agreement will be executed following the requested issuance of the Liquidation Process Order. The proposed Liquidation Sale under the Consulting Agreement would then be conducted in accordance with the Sale Guidelines attached to the Liquidation Process Order. The Consulting Agreement contemplates the Liquidation Sale will commence between April 14, 2018 and April 21, 2018 and will conclude no later than June 30, 2018, or such other dates agreed to by the NW Canada Entities and the Consultant. The Sale Guidelines provide, among other things, that subject to certain exceptions, the Liquidation Sale shall be conducted in accordance with the terms of the applicable leases for each of the closing stores. Further, the Liquidation Process Order grants the Consultant access to the closing stores in accordance with the applicable leases until July 30, 2018.

72. The Consulting Agreement provides that the Consultant will act as an exclusive independent consultant for the purpose of advising the NW Canada Entities with respect to the sale of the inventory and FF&E located at the retail store locations. The Consulting Agreement provides that the NW Canada Entities are responsible for all expenses incurred in connection with the sale of inventory and FF&E at the retail locations, including supervisor costs and advertising and sign expenses, subject to an agreed upon budget between the NW Canada Entities and the Consultant.

73. The Consulting Agreement provides that the Consultant will be paid a fee equal to 1.25% of the gross proceeds of the sale of inventory and 15% of the gross receipts (net of sales tax) from all sales or other dispositions of FF&E. In addition, the NW Canada Entities will reimburse the Consultant for the Consultant's reasonable out of pocket expenses incurred in connection with the sale or disposition of the FF&E per the terms of the Consulting Agreement, or which have been previously approved in writing by the NW Canada Entities.

74. Pursuant to the Consulting Agreement, the Consultant will provide the NW Canada Entities among others, with the following services, with respect to the liquidation:

- (a) full-time supervisors to supervise and conduct the liquidation, provided that the number of supervisors is determined by the Consultant following consultation with the NW Canada Entities;

- (b) the oversight, supervision and guidance with respect to the conduct of the liquidation and disposal of the inventory and FF&E as may be required in order to maximize gross proceeds;
- (c) recommend and implement appropriate point of purchase, point of sale and external advertising to effectively sell the inventory and FF&E;
- (d) advice as to appropriate pricing and discounting of the inventory and FF&E and appropriate staffing levels at the retail locations during the conduct of the liquidation; and
- (e) advice as to the appropriate closing date of individual closing stores and potential consolidation of inventory to remaining stores in order to maximize gross proceeds.

75. Some other key terms of the Consulting Agreement include:

- (a) the Consultant will not be considered an employer of the NW Canada Entities' employees and shall have no obligation whatsoever in that respect. Moreover, title to all inventory and FF&E shall remain with the NW Canada Entities at all times during the sale term until such inventory and FF&E is sold;
- (b) all sales of inventory and FF&E will be "final sales" and "as is" and no closing stores will honour returns with respect to any items;
- (c) all inventory must be sold through retail channels and if there is any remaining unsaleable inventory at the Sale Termination Date (as defined in the Consulting Agreement), the Consultant shall dispose of all such merchandise; and
- (d) the Consulting Agreement is conditional upon the NW Canada Entities having obtained the Liquidation Process Order.

#### **Approval of the Liquidation Process and Consulting Agreement**

76. I believe that the proposed Liquidation Sale under the Liquidation Process Order, Sales Guidelines and Consulting Agreement is the best way to maximize the value of the NW Canada

Entities' inventory and FF&E for the benefit of all of the NW Canada Entities' stakeholders. The NW Canada Entities' retail stores operate at a loss, and the sooner the inventory and FF&E is liquidated, the more cash the NW Canada Entities will be able to preserve for their creditors.

77. The final determination in respect of future Canadian wholesale operations will not be finalized until the U.S. sales process is finalized and it is determined whether an alternative buyer will be named which wishes to continue with Canadian wholesale operations. In the interim, in order to monetize the current value of the NW Canada Entities for existing creditors, the inventory previously purchased for wholesale distribution will be monetized either through Canadian wholesale or retail distribution channels.

78. The NW Canada Entities' board of directors and management believe the liquidation is a fair and reasonable process for the sale of the assets and will result in the maximization of value for the NW Canada Entities' creditors. Further, the Liquidation Process Order and Sale Guidelines are supported by the NW U.S. Entities and the Proposal Trustee.

79. The NW Canada Entities believe that engaging a professional liquidator to undertake a sale of the inventory and FF&E in the closing retail locations will produce better results for the NW Canada Entities than an attempt to sell such inventory and FF&E without professional assistance. The Consultant has extensive experience conducting retail liquidations, including inventory dispositions for a wide variety of former retailers, and is experienced in dealing with the type of landlord and customer concerns that may arise in the type of process contemplated in the liquidation.

80. The NW Canada Entities, together with their advisors, have considered the potential value of seeking to market the real estate leases and have determined that the potential of canvassing the market for recovery from such locations does not warrant the extension to the Proposal Proceedings for purposes of these efforts and/or the potential disruption with their landlords.



#### D&O Charge and other Provisions

81. To ensure that the liquidation is carried out successfully and value is maximized for the NW Canada Entities' Creditors, the Applicants require the continued participation of their respective directors, officers, managers and employees.

82. I am advised by the NW Canada Entities' counsel, Stikeman Elliott LLP, that in certain circumstances directors can be held liable for certain obligations of a corporation owing to employees and government entities. As of April 5, 2018, the NW Canada Entities are potentially liable for accrued but unpaid vacation pay, wages, source deductions and sales tax in the aggregate amount of approximately \$1,000,000 which amount has been set aside in the D&O Trust.

83. The NW Canada Entities maintain directors' and officers' liability insurance (the "D&O Insurance") that benefit the directors and officers of the NW Canada Entities. The current D&O Insurance policy provides \$55 million in aggregate coverage for the NW Entities which is subject to various limitations and deductibles. The term of the policy is from October 1, 2017 to October 1, 2018. The directors and officers of the NW Canada Entities have indicated that, due to the potentially significant personal exposure arising going forward, they cannot continue their service with the NW Canada Entities unless they obtain a charge on all of the NW Canada Entities' property, assets and undertakings (the "Property") in the amount of \$700,000, being an estimate of potential post filing statutory obligations (the "D&O Charge").

84. The D&O Charge is proposed to rank second in priority on the Property after the Administration Charge (as defined herein) after any secured creditors without notice of this motion. NW Management and NW Holdings, as secured creditors of the NW Canada Entities, have agreed to the Administration Charge and D&O Charge ranking ahead of their secured debt position.

85. The D&O Charge will allow the NW Canada Entities to continue to benefit from the efforts and knowledge of their directors and officers. The NW Canada Entities and the Proposal Trustee believe that the D&O Charge is reasonable in the circumstances.

### **Administration Charge**

86. The NW Canada Entities seek an order granting a charge over the Property securing the fees and disbursements of counsel to the NW Canada Entities, the Proposal Trustee and its counsel in the amount of \$750,000 (the "Administration Charge"). The professionals whose fees are to be secured by the Administration Charge have taken on, and will continue to take on, a critical role in these proceedings and there will be no unwarranted duplication of roles.

87. The NW Canada Entities have worked with the Proposal Trustee and other insolvency professionals to estimate the proposed quantum of the Administration Charge and I believe it to be reasonable and appropriate in the circumstances. The amount of the Administration Charge contemplates that professionals are paid on a current basis during these proceedings.

88. The Administration Charge is proposed to rank first in priority on the Property after the interests of any secured creditors without notice of this motion.

### **KERA Approval**

89. Given the short timeframe of the retail operations wind-down, it is imperative that the NW Canada Entities maintain certain key employees to assist with the orderly wind down of the NW Canada Entities' operations and the liquidation of their inventory. The NW Canada Entities have worked with the Proposal Trustee to identify those key individuals and the amounts which are available to offer to assist with maintaining their ongoing involvement during key timeframes.

90. In an attempt to ensure the continued participation of employees identified as key employees during the Proposal Proceedings, the NW Canada Entities are seeking approval of the KERA.

91. In order for a KERA participant to receive payments under the KERA, such employee cannot have: (a) disclosed the terms of the KERA (other than to his or her legal, financial and tax advisors or as required by law); or (b) at any time on or before the date any portion of the funds contemplated under the KERA is paid (i) resign or (ii) be terminated for cause.

92. The NW Canada Entities are seeking a charge on the Property ranking behind the Administration Charge and the D&O Charge in the maximum amount of the KERA's value (the "KERA Charge") to secure the obligations under the KERA. The D&O Charge, the Administration Charge and the KERA Charge are to rank in priority to all other charges other than those of secured creditors without notice of this motion.

93. Without the KERA and the security provided by the KERA Charge, there is concern that key employees would leave prior to the closing of the transaction/completion of the liquidation, which would be of significant negative effect to the NW Canada Entities. I believe that the KERA and the KERA Charge are necessary in order to complete the sale contemplated by the Liquidation Process Order and Consulting Agreement and ensure the success of the Proposal Proceedings.

94. I understand that the Proposal Trustee supports the proposed KERA and KERA Charge.

95. I understand from the Proposal Trustee that a copy of the KERA will be attached as a confidential appendix to the First Report and requested to be sealed pending further order of the Court.

#### Substantive Consolidation

96. As noted above, the relationship between the NW Canada Entities is closely intertwined. The NW Canada Entities share common management and administrative support. The proposed liquidation involves the sale of all of the property of the NW Canada Entities. Jones Canada, the general partner of NW Canada LP, does not carry on business independently and has no assets or liabilities apart from those incurred in its role as the general partner of NW Canada LP.

97. The proposed substantive consolidation of the NW Canada Entities is appropriate, as it would allow the Proposal Trustee to avoid performing, *inter alia*, the following separate actions in respect of each of Jones Canada and NW Canada LP, thereby reducing certain administrative expenses:

- (a) issuing separate reports;
- (b) making, filing, advertising and distribution of all filings and notices required under the BIA in duplicate;
- (c) opening separate bank accounts;
- (d) conducting separate meetings for the voting on a proposal and determining and advising the creditors of Jones Canada and NW Canada LP separately in the making of distributions; and
- (e) conducting in duplicate all such other administrative duties and responsibilities to be carried out by a Proposal Trustee in the administration of proposal proceedings under the BIA.

98. The largest creditors of the NW Canada Entities, NW Management and NW Holdings, have no objections to the proposed consolidation. The proposed consolidation will not result in any prejudice to the creditors of the NW Canada Entities.

99. I believe that it would be in the best interest of all interested persons if the NW Canada Entities' Proposal Proceedings proceeded jointly. The consolidation of the Proposal Proceedings would prevent the duplication of efforts to file and maintain two separate sets of motion materials over the course of the Proposal Proceedings, which will reduce costs in the proceedings. This would be in furtherance of the principle of proportionality and will maximize the recovery for the NW Canada Entities' stakeholders.

#### Sealing Orders

100. The Comparative Analysis contains sensitive commercial and competitive information, the disclosure of which would cause harm to the NW Canada Entities, their stakeholders, and bidders in the RFP process if released. Further, the KERA contains sensitive personal information about certain of the NW Canada Entities' employees. As a result, the NW Canada Entities are seeking orders sealing the Comparative Analysis and the KERA.

Stay Extension

101. The Consulting Agreement contemplates the Liquidation Sale to commence between April 14, 2018 and April 21, 2018 and conclude no later than June 30, 2018, or such other dates agreed to by the NW Canada Entities and the Consultant. Leading up to this date, the NW Canada Entities, the Consultant, the Proposal Trustee and their advisors will be working together to complete the Liquidation Sale, deal with employees, suppliers, customers and other stakeholder issues, and otherwise advance the Proposal Proceedings.

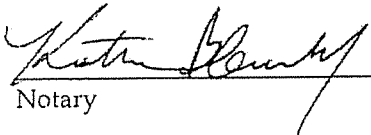
102. A 45-day extension of the Proposal Period would give the NW Canada Entities the time needed to move forward with the Liquidation Sale and make progress towards achieving the terms of a proposal for consideration of the NW Canada Entities' creditors. Thereafter, a further stay extension is anticipated to be needed to complete the Liquidation Sale and advance a proposal. We will return to court prior to June 20, 2018 with a further update and timeline.

103. I am not aware of any creditors who would be harmed by the extension of the Proposal Period to June 20, 2018.

CONCLUSION

104. I swear this affidavit in support of the orders sought in the Proposal Proceedings and for no improper purpose.

SWORN BEFORE ME at the City of New York, State of New York on April 6, 2018.

  
Notary

  
RALPH SCHIPANI

KATHERINE BLAUKOPF  
NOTARY PUBLIC, State of New York  
No. 01BL6024412  
Qualified in New York County  
Commission Expires May 10, 2019

# EXHIBIT "B"

*THIS IS EXHIBIT "B", referred to in the Affidavit of Ralph Schipani, sworn on June 12, 2018.*

*Jarita D. Whitfield*

JARITA D. WHITFIELD  
Notary Public, State of New York  
No. 01400000000000000000

*Commissioner for Taking Affidavits*  
06/12/2018

*Commissioner for Taking Affidavits*

**CONSULTING AGREEMENT**

This Consulting Agreement, dated as of April ●, 2018 (this "Agreement") is made by and between SB360 Capital Partners, LLC (the "Consultant"), as consultant, and Nine West Canada LP (the "Company" or the "Merchant"), and acknowledged by Richter Advisory Group Inc. ("Richter"), in its capacity as Court-appointed proposal trustee of the Company.

**RECITALS:**

**WHEREAS** the Merchant filed a Notice of Intention to Make a Proposal (the "NOI") under subsection 50.4(1) of *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended (the "BIA"), and appointed Richter as trustee for the proposal of the Merchant (the "Trustee"), on April ●, 2018;

**AND WHEREAS** the NOI will provide that the Company benefits from a stay of proceedings against the Company's business and property, as well as other protections in the proceedings under the BIA (the "NOI Proceedings");

**AND WHEREAS**, the Merchant operates 35 retail stores in Canada and the Merchant desires to retain the Consultant to act as exclusive consultant for the purpose of advising the Company, with respect to a sale of the Merchandise (as defined below) and the Merchant's owned furniture, fixtures and equipment (the "FF&E"), located at the Merchant's retail store locations identified on **Exhibit A** attached hereto (each individually, a "Closing Store", and collectively, the "Closing Stores", provided that the Company may elect to modify (by addition or removal) the Closing Stores listed on Exhibit A) as well as certain inventory currently located or to be located in the Merchant's distribution centers which the Merchant requires to be sold through the Sale (as defined herein), by means of a promotional "store closing", "everything must go" or similar themed sale, as approved in writing by the Merchant (the "Sale");

**AND WHEREAS**, the Consultant is willing to serve as the Merchant's consultant for the purpose of providing such consulting services, upon the terms and conditions and in the manner set forth in this Agreement and the Approval Order (defined below);

**AND WHEREAS** the Merchant believes that entering into this Agreement is in the best interest of the Merchant's stakeholders as a whole in order to maximize value;

**AND WHEREAS** the Consultant and the Company agree and acknowledge that the entering into of this Agreement by the Company is subject to the issuance of an Order of the Ontario Superior Court of Justice (Commercial List) the ("Court") in the NOI Proceedings, among other things, approving this Agreement and the Sale Guidelines (the "Approval Order") and that should the Approval Order not be obtained, this Agreement shall have no force or effect;

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Consultant and the Company hereto agree as follows:

**I. Definitions**

For the purposes of this Agreement, the terms listed below shall have the respective meanings indicated:

"Agreement" has the meaning set out in the Recitals hereto;

"Approval Order" has the meaning set out in the Recitals hereto;



"BIA" has the meaning set out in the Recitals hereto;

"Budget" shall mean the Consultant Controlled Expense Budget through June 30<sup>th</sup>, 2018, a copy of which is attached hereto as **Exhibit B**, which shall be modified as agreed to by the Company and the Consultant as a result of the increase or decrease in the number of Closing Stores;

"Closing Store or Closing Stores" has the meaning set out in the Recitals hereto;

"Closing Store Employees" shall mean those employees of the Merchant retained to conduct the Sale following consultation with the Consultant;

"Company" has the meaning set out in the Recitals hereto;

"Consultant" has the meaning set out in the Recitals hereto;

"Consultant Controlled Expenses" has the meaning set out in section 3.1 hereof;

"Consulting Fee" has the meaning set out in section 3.2 hereof;

"Consulting Services" has the meaning set out in section 2.2 hereof;

"Court" has the meaning set out in the Recitals hereto;

"Employee Discounts" has the meaning set out in section 5.2 hereof;

"Final Settlement" has the meaning set out in section 4.3 hereof;

"FF&E" has the meaning set out in the Recitals hereto;

"FF&E Fee" has the meaning set out in section 3.4 hereof;

"Gift Cards" shall mean all gift cards issued by the Company and outstanding prior to the commencement of the Sale;

"Gross Proceeds" shall mean all proceeds of sales of Merchandise (excluding applicable sales tax) derived from the Sale less credit card processing fees (at the Merchant's customary rates), provided, however, that it is expressly understood and agreed, that Gross Proceeds shall not include proceeds of sales made prior to the Sale Commencement Date or after the Sale Termination Date (including items which were sold prior to the Sale Commencement Date but delivered following the Sale Commencement Date);

"Leases" shall mean all leases, occupancy agreements, reciprocal easement or similar agreements pursuant to which Merchant has the right to occupy or utilize the Closing Stores;

"Merchandise" shall mean each item of saleable inventory at the Closing Stores as of the Sale Commencement or received in Closing Stores subsequently. Where additional inventory previously designated for wholesale may be made available for sale through the retail stores during the course of the Sale, the Merchant and Consultant shall agree upon a mutually agreed revised budget of the Consultant Controlled Expenses to address such additional inventory;

"Merchant" has the meaning set out in the Recitals hereto;

"Merchant Indemnified Parties" has the meaning set out in section 8.2 hereof;

"NOI" has the meaning set out in the Recitals hereto;

"NOI Proceedings" has the meaning set out in the Recitals hereto;

"Privacy Laws" shall include the *Personal Information Protection and Electronic Documents Act* (Canada), the *Freedom of Information and Protection of Privacy Act* (Canada) and any comparable law of any province or territory of Canada;

"Remaining Merchandise" has the meaning set out in section 3.3 hereof;

"Retail Price" shall mean the lowest ticketed file price as reflected in the Merchant's books and records as of the Sale Commencement Date, for such item of Merchandise excluding (i) any point of sale discounts or similar adjustments regardless of duration on the Sale Commencement Date; (ii) employee discounts; (iii) multi-unit purchase discounts; (iv) adjustments for damaged, defective or "as-is" items; (v) coupons (the Merchant's or competitors'), catalog, website, or circular prices, or "buy one get one" type discounts; or (vi) similar customer specific, temporary, or employee non-product specific discounts or pricing accommodations. The aggregate current retail price of the Merchandise as reflected in the Merchant's register system as of the Sale Commencement Date is estimated to be approximately \$29 million;

"Richter" has the meaning set out in the Recitals hereto;

"Sale" has the meaning set out in the Recitals hereto;

"Sales Accounts" has the meaning set out in section 4.1 hereof;

"Sale Commencement Date" shall mean, with respect to each Closing Store, the first calendar day after issuance and entry of the Approval Order, authorizing and approving this Agreement and the Merchant's and the Consultant's performance of their respective obligations arising hereunder, or such other date as shall be agreed by the Company and the Consultant, but in no event earlier than April 14<sup>th</sup>, 2018 or later than April 21<sup>st</sup>, 2018.

"Sale Expenses" shall mean all expenses incurred in connection with the Sale, including, without limitation the following: (i) advertising expenses (including direct media costs, agency fees and production costs) in an aggregate amount not to exceed the amounts set forth on the Budget; (ii) payroll for Closing Store-level employees utilized in connection with the Sale, and related employee benefits and payroll taxes; (iii) maintenance and store cleaning costs; (iv) security costs; (v) credit card processing fees (at the Merchant's customary rates); (vi) employee bonuses determined by the Merchant; (vii) all occupancy costs (e.g., rent, percentage rent, CAM charges, HVAC charges, real estate taxes, etc.) relative to the Closing Stores; (viii) insurance; (ix) telephone charges; and (x) all Supervisor Costs in accordance with Section 2.3 hereof;

"Sale Guidelines" has the meaning provided for in section 2.2(c) hereof;

"Sale Term" shall mean the period of time beginning with the Sale Commencement Date and ending on the Sale Termination Date;

"Sale Termination Date" shall mean the date determined by the Company and the Consultant to terminate the Sale at the Closing Stores, which shall be June 30<sup>th</sup>, 2018, subject to amendment by agreement of the Company and the Consultant;

"Supervisor(s)" shall mean the individual(s) whom Consultant shall directly engage to provide Consulting Services in the Closing Stores to Merchant in connection with the Sale in accordance with Section 2.3 below;

"Supervisor Costs" shall have the meaning set forth in Section 2.3 of this Agreement; and

"Trustee" has the meaning set out in the Recitals hereto.

## 2. Consulting Services

2.1 Subject to the entry of and the terms of the Approval Order, the Company hereby engages the Consultant and the Consultant hereby agrees to serve as an independent consultant to the Company for the limited purpose of providing the Consulting Services (as defined below), on an exclusive basis, in connection with the Sale, the whole in accordance with the terms and conditions of this Agreement. With respect to the Sale, the Consultant shall serve as the sole and exclusive consultant to the Company relative thereto throughout the Sale Term.

The Consultant hereby acknowledges that it will not hold itself out as consultant of the Company except as specifically provided for herein and that the Consultant's authority as Consultant of the Company is limited to the powers specifically provided for in this Agreement. Except as otherwise specifically provided for in this Agreement, the Consultant shall have no authority to enter into any contract, agreement or other arrangement or take any other action, by or on behalf of the Company that would have the effect of creating any obligation or liability, present or contingent, on behalf of or for the account of the Company without the prior written consent of the Company.

2.2 On the terms and conditions set forth herein, commencing as of the Sale Commencement Date, the Consultant shall provide the Company with the following services (the "Consulting Services") with respect to the conduct of the Sale:

- a) provision of full-time Supervisors to supervise and conduct the Sale as further described in Section 2.3 below; provided that the determination of the number of Supervisors supplied for the Sale shall be determined by the Consultant following consultation with the Merchant;
- b) provide the Merchant with such oversight, supervision and guidance with respect to the conduct of the Sale and the liquidation and disposal of the Merchandise from the Closing Stores, any associated storage facility as may be required in order to maximize Gross Proceeds;
- c) recommend and implement appropriate point of purchase, point of sale and external advertising to effectively sell the Merchandise during the Sale Term, consistent with the theme of the Sale, it being understood that the Sale will be advertised as a "store closing", "sale on everything" or similar sale themes throughout the term of the Sale subject to the Company's approval and in

accordance with the sale guidelines substantially in the form attached to the Approval Order (the "Sale Guidelines");

d) advise the Merchant as to appropriate pricing and discounting of the Merchandise, appropriate staffing levels for the Closing Stores (including Closing Store Employees) (and the Merchant agrees to take direction from the Consultant with regard to Closing Store Employee staffing levels), and appropriate bonus and incentive programs for Closing Store Employees;

e) advise the Merchant as to the appropriate closing date of individual Closing Stores, and potential consolidation of inventory to remaining stores, in order to maximize Gross Proceeds;

f) assist the Merchant in the formulation and implementation of a security program designed to protect the inventory from shortages;

g) advise and assist the Merchant in the development and implementation of programs for the handling of open customer orders and customer deposit issues, including, where appropriate, fulfillment of such orders as may be designated by the Company; and

h) provide such other related services deemed necessary or prudent by the Company and the Consultant under the circumstances giving rise to the Sale.

2.3 In connection with the Sale, the Consultant shall directly retain and engage the Supervisors for each Closing Store. The Supervisors are independent contractors engaged by the Consultant and are not and shall not be deemed to be employees or consultants of the Merchant in any manner whatsoever; nor do the Supervisors have any relationship with the Merchant by virtue of this Agreement or otherwise which creates any liability or responsibility on behalf of the Merchant for the Supervisors. During the Sale Term, the Supervisors shall perform Consulting Services during normal Closing Store operating hours and for the period of time prior to the Closing Stores opening and subsequent to the Closing Stores closing, as required in connection with the Sale, in the Consultant's discretion. The Consultant shall provide one full time qualified lead supervisor for the project and one full time qualified administrative supervisor for the project, the expense for which is included in the Budget. In consideration of Consultant's engagement of the Supervisors, the Merchant agrees to pay the Consultant, as a Sale Expense, the Supervisor-related costs, expenses and deferred compensation, in accordance with and subject to the Budget (collectively, the "Supervisor Costs"). The Merchant shall reimburse the Consultant for all Supervisor Costs weekly, based upon invoices or other documentation reasonably satisfactory to the Merchant.

2.4 Title to all Merchandise and FF&E shall remain with the Merchant at all times during the Sale Term until such Merchandise is sold in the Sale. Although the Consultant shall undertake its obligations under this Agreement in a manner designed to achieve the desired results of the Sale and to maximize the benefits to the Merchant's stakeholders, the Merchant expressly acknowledges that the Consultant is not guaranteeing the results of the Sale. All sales of Merchandise and FF&E in the Closing Stores shall be made on behalf of the Merchant, and all sales shall be final. The parties acknowledge and agree that no Closing Stores will honour returns with respect to any items whether or not purchased prior to the Sale. The Closing Stores shall accept loyalty points and Gift Cards issued by the Company prior to the Sale Commencement Date.

3. **Expenses: Consultant's Fees**

3.1 **Sale Expenses.** (a) To control expenses of the Sale, the Consultant and the Merchant have agreed on the Budget. In connection with the Sale, the Merchant shall be responsible for the payment of all expenses incurred in connection with the Sale, including all Sale Expenses. The Consultant shall not incur Supervisor Costs, advertising and sign expenses, legal expenses and corporate travel, or cause the Merchant to incur employee base payroll expenses (not inclusive of benefits or payroll taxes) (collectively the "Consultant Controlled Expenses") in aggregate amounts in excess of such amounts set forth in the Budget without the prior written consent of the Company. In the event that the Merchant shall not approve any such overage with respect to Consultant Controlled Expenses and the Consultant nevertheless causes such Consultant Controlled Expenses to be incurred, then the Consultant shall fund such Sale Expenses in excess of the Budget. It is anticipated that the Consultant may advance funds for certain categories of Sale Expenses (such as supervision and certain signage and advertising), and the Merchant shall reimburse the Consultant therefor (in connection with each weekly reconciliation provided for in Section 4.1 hereof) upon presentation of invoices and statements for such expenses, which reimbursement shall be in addition to any Consulting Fee and/or FF&E Fee earned and payable hereunder provided that such amounts don't exceed the amounts set forth in the Budget or otherwise approved by the Merchant in accordance with this Section 3.1. the Merchant shall reimburse the Consultant weekly, in connection with each weekly settlement as provided in Section 4.1 hereof, for all Sale Expenses incurred or paid directly by the Consultant subject to and in accordance with this Section 3.1.

As a condition to Consultant's obligations under this Agreement, Merchant shall fund to Consultant a deposit of \$65,000 (the "Deposit") which shall be held by Consultant until the Final Reconciliation on account of the Consulting Fee, FF&E Fee, and Expenses not remitted to Consultant pursuant to the Weekly Reconciliation. The amount of the Deposit not used to pay amounts owed to Consultant pursuant to this Agreement shall be returned to Merchant within three days following the Final Reconciliation.

3.2 **Consulting Fee.** In consideration of the Consulting Services provided hereunder in connection with the Sale, the Merchant shall pay to the Consultant a fee of one and one-quarter percent (1.25%) of Gross Proceeds.

3.3 **Remaining Merchandise.** The Consultant shall be responsible to sell all Merchandise through retail channels only. To the extent there is remaining unsaleable inventory at the Sale Termination Date (the "Remaining Merchandise"), the Consultant shall dispose of all such merchandise prior to the Sale Termination Date. All proceeds from such disposition shall constitute Gross Proceeds hereunder.

3.4 **Fixtures Disposition.** In addition to the Consulting Services provided for herein, with respect to FF&E located at the Closing Stores, the Consultant shall sell the FF&E so designated by the Company and in accordance with the Sale Guidelines, on an "as is where is" basis in any such Closing Stores for the Merchant's benefit. The Consultant shall advertise in the context of advertising for the Sale that items of FF&E at the Closing Stores are available for sale, and shall contact and solicit known purchasers and dealers of furniture and fixtures. In consideration of providing such services, the Consultant shall retain fifteen percent 15% of the gross receipts (net only of applicable sales taxes, if any) from all sales or other dispositions of FF&E (the "FF&E Fee"). In addition, the Merchant shall reimburse the Consultant for the Consultant's reasonable out of pocket expenses incurred in connection

with the sale or other disposition of the FF&E which have been previously approved in writing by the Merchant (including, without limitation, costs of commissions and advertising). Any remaining FF&E at the Sale Termination Date shall be dealt with in accordance with the Sale Guidelines. The Consultant shall have no liability to the Company or any third party for its failure to sell any or all of the FF&E.

**4. Sale Proceeds; Weekly Settlement**

4.1 Sale Proceeds; Sale Reconciliation. All proceeds of sales of Merchandise and FF&E through the Sale shall be collected by Merchant's Closing Store management personnel and deposited into Merchant's existing Closing Store-level deposit accounts (the "Sale Accounts"). The Merchant shall, upon request, deliver to the Consultant account statements and such other information relating to the Sale Accounts reasonably requested by the Merchant. On Wednesday of each week, commencing on the second Wednesday following the Sale Commencement Date, the Consultant and the Merchant shall reconcile the results of the Sale for the prior week, including, without limitation, Gross Proceeds of Merchandise, sales of FF&E, Sale Expenses, Supervisor Costs, and any Consulting Fee (subject to clause (iii) below), and FF&E Fee earned and payable hereunder, and the Merchant shall pay to the Consultant on a weekly basis, in connection with such weekly settlement, mutually agreed (i) Sale Expenses incurred or paid by the Consultant for such prior week, (ii) Supervisor Costs and Sale Expenses for advertising and signage incurred or paid by the Consultant for such prior week of the Sale, and (iii) the Consulting Fees on account of the prior week's sales of Merchandise and FF&E, and shall within 10 business days of completion of the Final Settlement pay the Consultant any remaining unpaid Consultant Fees and FF&E Fee and/or unreimbursed Consultant Controlled Expenses incurred or paid directly by the Consultant subject to and in accordance with Section 3.1 of this Agreement.

4.2 Credit Card Proceeds. Merchant shall have control over all Closing Store Employees and shall handle the cash, debit and charge card payments for all Merchandise in accordance with Merchant's customary cash management practices and procedures, subject to Consultant's right to audit any such items. Merchant shall provide throughout the Sale Term its current credit card systems and servicing arrangements (including the Merchant's credit card terminals and processor(s), credit card processor coding and bank accounts) and other central administrative services necessary for the Sale, including without limitation customary POS administration, sales, audit, cash reconciliation, accounting, payroll processing during the course of the Sale, all borne as a Sale Expense by Merchant.

4.3 Final Settlement. As soon as possible following the conclusion of the Sale and in no event later than thirty (30) calendar days following the end of the Sale Term, the parties shall complete a Final Settlement, subject to the Trustee's approval, of all amounts contemplated by this Agreement ("Final Settlement"), including, without limitation, the determination and payment of any fees due Consultant and all reimbursements contemplated hereby.

**5. Closing Store Employees**

5.1 Closing Store Employees. The Consultant and the Merchant shall cooperate to retain the employees of the Merchant, as reasonably designated by the Consultant, to be utilized to conduct the Sale at the Closing Stores during the Sale Term. To the extent commercially practicable, such employees shall remain employees of the Merchant, and subject to paragraph 8.2 hereof, the Consultant shall have no liability to the Closing Store Employees (including any of the Merchant's former employees) of any kind or nature

whatsoever, including, without limitation, with respect to severance pay, termination pay, vacation pay, pay in lieu of reasonable notice of termination, or any other expenses or liability arising from the Merchant's employment of such Closing Store Employees prior to, during, and subsequent to the Sale. Consultant shall not change the terms of employment of any Closing Store Employees and Merchant shall remain the sole employer thereof.

5.2 Employee Discounts. It is understood and agreed that, during the Sale Term, all active employees of the Company shall be entitled to take advantage of such employee discounts on Merchandise as may be available to them under the Company's policy in respect of same existing as a the Sale Commencement Date (the "Employee Discounts"), but shall not be entitled to accumulate Employee Discounts and the then-prevailing Sale discounts being offered. During the Sale Term, to the extent the employee elects the Employee discount, then any differential between the Employee Discount and the then-prevailing Sale discount being offered shall constitute Gross Proceeds hereunder.

**6. Representation and Warranties of Consultant**

6.1 The Consultant hereby represents warrants and covenants in favour of the Company as follows:

- a) The Consultant has taken all necessary action required to authorize the execution, performance and delivery of this agreement, and to consummate the transactions contemplated hereby;
- b) This Agreement is a valid and binding obligation of the Consultant enforceable in accordance with its terms;
- c) No action or proceeding has been instituted or, to Consultant's knowledge, threatened, affecting the consummation of this Agreement or the transactions contemplated herein; and
- d) The Consultant's HST number is ●.

**7. Representations and Warranties of the Merchant**

7.1 The Merchant hereby represents warrants and covenants in favour of the Consultant as follows:

- a) Subject to obtaining the Approval Order, the Company will have taken all necessary actions required to authorize its execution, performance and delivery of this Agreement, and to consummate the transactions contemplated hereby;
- b) Subject to obtaining the Approval Order, this Agreement is a valid and binding obligation of the Company enforceable in accordance with its terms, subject only to any applicable bankruptcy, insolvency or similar laws affecting the rights of creditors generally and the availability of equitable remedies; and
- c) No action or proceeding has been instituted or, to the Merchant's knowledge, threatened, affecting the consummation of this Agreement or the transactions contemplated herein.
- d)

8. **Affirmative Duties of Consultant**

8.1 Except as may be provided otherwise in any order of the Court, the Consultant shall assist the Merchant in obtaining all required permits and governmental consents required in order to conduct the Sale, and shall ensure that the Sale is conducted in accordance with all applicable laws, regulations and ordinances, in each case.

8.2 The Consultant, on a joint and several basis, shall indemnify and hold the Merchant and its affiliates, and their respective officers, directors, employees, agents and independent contractors (collectively, "Merchant Indemnified Parties"), harmless from and against all claims, demands, penalties, losses, liability or damage, including, without limitation, reasonable legal fees on a full indemnity basis and expenses, directly or indirectly asserted against, resulting from, or related to:

- i. the Consultant's breach of or failure to comply with any of its agreements, covenants, representations or warranties contained herein or in any written agreement entered into in connection herewith;
- ii. any harassment or any other unlawful, tortious or otherwise actionable treatment of any employees or agents of the Merchant by the Consultant or any of the Consultant's officers, directors, employees, agents or representatives;
- iii. any claims by any party engaged by the Consultant as an employee or independent contractor arising out of such employment; except where due to the gross negligence or willful misconduct of the Merchant or from a breach of the terms hereof by the Merchant; and
- iv. the gross negligence or willful misconduct of the Consultant or any of its officers, directors, employees, the agents or representatives, or any Supervisor.

9. **Affirmative Duties of Merchant**

9.1 The Merchant shall be solely liable for, and shall pay when due, (i) all expenses (including, without limitation, Sale Expenses) which are necessary to conduct the Sale, including, without limitation, all taxes, costs, expenses, accounts payable and other liabilities relating to the Sale, the Closing Stores, Closing Store Employees and any other consultants and representatives of the Merchant, and (ii) all Supervisor Costs, Consultant's Fees and FF&E Fees payable hereunder.

9.2 The Merchant shall prepare and process all reporting forms, certificates, reports and other documentation required in connection with the payment of all applicable taxes to the appropriate taxing authorities.

9.3 Without limiting any other term or provision of this Agreement, subject to the provisions of the NOI and the Approval Order, during the Sale Term, the Merchant shall provide the Consultant, at no cost or expense to the Consultant, with (i) central administrative services necessary to administer the Sale, (ii) employees at the Closing Stores (to the extent commercially reasonably agreed upon by the Company and the Consultant necessary to effect the Sale), and (iii) peaceful use and occupancy of, and reasonable access (including reasonable before and after hours access and normal utilities/phone service) to, the Closing



Stores and the Merchant's corporate, offices for the purpose of preparing for, conducting, and completing the Sale as contemplated hereby.

9.4 Unless otherwise directed by the Company, the Consultant and the Company shall honour Gift Cards and merchandise credits at the Closing Stores, in accordance with store operation procedures to be mutually agreed upon between the Merchant and the Consultant, with the full amount of such Gift Cards and merchandise credits constituting Gross Proceeds hereunder. No Gift Cards shall be sold from the Closing Stores or otherwise during the Sale Term.

9.5 The Merchant shall collect all sales taxes and shall be solely responsible for reporting and pay the same to the appropriate taxing authorities in accordance with applicable law.

**10. Insurance: Risk of Loss**

10.1 The Merchant shall maintain throughout the Sale Term, (i) its existing insurance with respect to the Merchandise at the Closing Stores in amounts and on such terms and conditions as are consistent with the Merchant's ordinary course operations and (ii) casualty and liability insurance policies (including, but not limited to, product liability, comprehensive public liability insurance and auto liability insurance) covering injuries to persons and property in or in connection with the operation of the Closing Stores.

10.2 The Consultant shall maintain throughout the Sale Term, liability insurance policies (including, but not limited to, comprehensive public liability and auto liability insurance) covering injuries to persons and property in or in connection with the Consultant's provision of Consulting Services at the Closing Stores.

10.3 Subject to section 8.2, but notwithstanding any other provision of this Agreement, the Merchant and the Consultant agree that the Merchant shall bear all responsibility for liability claims (product liability and otherwise) of customers, employees and other persons arising from events occurring at the Closing Stores before, during and after the Sale Term, except to the extent any such claim arises from the negligence, willful misconduct, or unlawful acts of the Consultant.

10.4 Subject to section 8.2, but notwithstanding any other provision of this Agreement, the Merchant and the Consultant agree that (i) the Consultant shall not be deemed to be in possession or control of the Closing Stores or the Merchandise or other assets located therein or associated therewith, or of the Merchant's employees located at the Closing Stores, and (ii) the Consultant does not assume any of the Merchant's obligations or liabilities with respect to any of the matters addressed in clause (i) above, except to the extent any such claim arises from the negligence, willful misconduct or unlawful acts of the Consultant.

**11. Miscellaneous**

11.1 Any notice or other communication under this Agreement shall be in writing and may be delivered personally or sent by facsimile or by prepaid registered or certified mail, by facsimile, email or courier delivery as follows:

## i. In the case of the Consultant:

SB360 Capital Partners LLC.  
1010 Northern Boulevard  
Suite 340  
Great Neck, NY  
11021

Attn: Ziggy Schaffer  
Aaron Miller  
Email: [Zschaffer@sbcapitalgroup.com](mailto:Zschaffer@sbcapitalgroup.com)  
[Amiller@360merchants.com](mailto:Amiller@360merchants.com)

with a copy to: Miller Thomson LLP

Attn.: Ken Rosenstein  
Email: [krosenstein@millerthomson.com](mailto:krosenstein@millerthomson.com)

## ii. In the case of the Merchant:

Nine West Canada LP  
1446 Don Mills Road  
Toronto, ON M3B 3N6

Attn.: Ralph Schipani  
Email: [rschipani@ninewestholdings.com](mailto:rschipani@ninewestholdings.com)

with a copy to Stikeman Elliott LLP:

5300 Commerce Court West  
199 Bay Street  
Toronto, ON M5L 1B9

Attn.: Elizabeth Pillon  
Email: [lpillon@stikeman.com](mailto:lpillon@stikeman.com)

with a copy to Richter Advisory Group Inc.:

Brookfield Place  
181 Bay Street, Suite 3320  
Toronto, ON M5J 2T3

Attn.: Gilles Benchaya/Adam Sherman  
Email: [gbenchaya@richterconsulting.com](mailto:gbenchaya@richterconsulting.com) / [asherman@richter.ca](mailto:asherman@richter.ca)

with a copy to Aird & Berlis LLP:

Brookfield Place  
181 Bay Street, Suite 1800  
Toronto, ON M5J 2T9

Attn.: Steven Graff  
Email: sgraff@airdberlis.com

11.2 Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein, without reference to any conflict of law provisions. The parties hereto agree that the Court shall retain exclusive jurisdiction to hear and finally determine any disputes arising from or under this Agreement, and by execution of this Agreement each party hereby irrevocably accepts and submits to the jurisdiction of such Court with respect to any such action or proceeding and to service of process by certified mail, return receipt requested to the address listed above for each party.

11.3 Severability. In the event any term or provision contained within this Agreement shall be deemed illegal or unenforceable, then such offending term or provision shall be considered deleted from this Agreement and the remaining terms shall continue to be in full force and effect.

11.4 No Waiver. No consent or waiver by any party, express or implied, to or of any breach or default by the other in the performance of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such other party of the same or any other obligation of such party. Failure on the part of any party to complain of any act or failure to act by the other party or to declare the other party in default, irrespective of how long such failure continues, shall not constitute a waiver by such party of its rights hereunder.

11.5 Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect of the subject matter hereof and supersedes all prior negotiations and understandings, and can only be modified by a writing signed by the Merchant and the Consultant.

11.6 Assignment. The parties hereto shall not assign this Agreement without the express written consent of the other. This Agreement shall inure to the benefit of, and be binding upon, the parties and their respective successors and permitted assigns.

11.7 Counterparts. This Agreement may be executed in several counterparts, each of which when so executed shall be deemed to be an original and such counterparts, together, shall constitute one and the same instrument. Delivery by facsimile or other electronic transmission including email of this Agreement or an executed counterpart hereof shall be deemed a good and valid execution and delivery hereof or thereof.

11.8 Independent Contractor. Nothing contained herein shall be deemed to create any relationship between the Consultant and the Company other than that of an independent contractor.

11.9 Survival. All representations, warranties, covenants, agreements and indemnities made herein, by the parties hereto, shall be continuing, shall be considered to have been relied upon by the parties and shall survive the execution, delivery and performance of this Agreement.

11.10 Choice of Language. The parties have specifically required that this Agreement and all related documents be drafted and executed in English. *Les parties aux présentes ont formellement demandé à ce que la présente convention et tous les documents auxquels celle-ci réfère soient rédigés et signés en langue anglaise.*

11.11 Further Assurances. The parties hereto shall each execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, at the cost and expense of the requesting party, such instruments and take such other actions as may be necessary or advisable to carry out their obligations under this Agreement, or any document, certificate or other instrument delivered pursuant hereto or thereto or required by applicable law.

11.12 Termination. This Agreement shall terminate upon the completion and approval of the Final Settlement (as provided in Section 4.1 above); provided, however, that either party may terminate this Agreement in the event that the other commits a material breach of its obligations hereunder. If either party seeks to terminate this Agreement by reason of a claim of a material breach, such party shall provide the other party with not less than five (5) days' prior written notice stating with specificity the nature of the claimed material breach, and the party receiving such notice shall have three (3) business days in which to cure such material breach, failing which this Agreement shall be deemed terminated. In the event this Agreement is terminated, the Consultant shall be entitled to be paid any Consulting Fee and FF&E Fee earned and accrued through the date of termination.

[Signatures Appear Next Page]

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement or caused this Agreement to be executed by their respective officers thereunto duly authorized as of the date first written above.

SB360 Capital Partners LLC  
As Consultant

By: \_\_\_\_\_  
Name: Aaron Miller  
Its: Principal

**NINE WEST CANADA LP by its  
general partner JONES CANADA  
INC., as Merchant**

By: \_\_\_\_\_  
Name:  
Its:

Acknowledged by:  
**RICHTER ADVISORY GROUP  
INC.**, in its capacity as Proposal  
Trustee of Nine West Canada LP,  
and not in its personal or corporate  
capacity

By: \_\_\_\_\_  
Per:  
Its:

Exhibit A  
Closing Stores

Store Count	Store #	Center	Address	Prov	Landlord	Banner
1	1101	Cross Iron	261055 CROSS IRON BLVD. ROCKY VIEW	AB	Ivanhoe Cambridge	Shoe Studio
2	1103	Mega Ctre	2464 AUTORTE. CHOMEDEY. LAVAL, QC	QC	RioCan Holdings	Shoe Studio
3	1104	Vaughan Mills	1 BASS PRO MILLS DR. VAUGHAN, ON	ON	Ivanhoe Cambridge	Shoe Studio
4	1105	Heartland	6045 MAVIS RD. MISSISSAUGA, ON	ON	Orlando	Shoe Studio
5	1106	Cookstown	3311 SIMCOE 89. COOKSTOWN, ON	ON	Tanger	Shoe Studio
6	1107	Windsor Crossing	1555 TALBOT RD. WINDSOR, ON	ON	Royal Courtyards	Shoe Studio
7	1109	Don Mills	3 KARL FRASER RD. TORONTO, ON	ON	Cadillac Fairview	Shoe Studio
8	1110	Toronto Premium Outlet	13850 STEELES AVE W. HALTON HILLS, ON	ON	Simon	Shoe Studio
9	1112	Niagara-on-the-Lake	300 TAYLOR RD. NOTL, ON	ON	Ivanhoe Cambridge	Shoe Studio
10	1113	Ottawa	8555 CAMPEAU DR. #830, KANATA, ON	ON	Tanger	Shoe Studio
11	1114	Montreal	9001 CHEM. NOTRE-DAME, MIRABEL, QC	ON	Simon	Shoe Studio
12	1115	Mic Mac	21 MICMAC BLVD. DARTMOUTH, NS	NS	Ivanhoe Cambridge	Shoe Studio
13	1116	Tsawwassen	4799 NU LELUM WAY, TSAWWASSEN, BC	BC	Ivanhoe Cambridge	Shoe Studio
14	1117	WINNIPEG OUTLET	555 STERLINGLYON PKWY, WINNIPEG, MB	MB	Ivanhoe Cambridge	Shoe Studio
15	2105	Orfus 2	35 ORFUS ROAD UNIT B1, TORONTO, ON	ON	RHYL Realty	Outlet
16	3101	Square One	100 CITY CENTRE DR. MISSISSAGA, ON	ON	Oxford	Nine West
17	3103	Yorkdale	3401 DUFFERIN ST. TORONTO, ON	ON	Oxford	Nine West
18	3104	Richmond Ctre	6551 NO 3 RD. RICHMOND, BC	BC	Cadillac Fairview	Nine West
19	3105	Metrotown	4700 KINGSWAY, BURNABY, BC	BC	Ivanhoe Cambridge	Nine West
20	3106	Sherway Gardens	25 THE WEST MALL, ETOBICOKE, ON	ON	Cadillac Fairview	Nine West
21	3107	Eaton Ctre	220 YONGE ST. TORONTO, ON	ON	Cadillac Fairview	Nine West
22	3108	Pacific Ctre	700 W GEORGIA ST. VANCOUVER, BC	BC	Cadillac Fairview	Nine West
23	3109	Bayview	2901 BAYVIEW AVE. NORTH YORK, ON	ON	Bentall Kennedy	Nine West
24	3112	Calgary Eaton Ctre	751 3 ST. SW. CALGARY, AB	AB	Ivanhoe Cambridge	Nine West
25	3113	Fairview-Pte Claire	6801 TRANS-CANADA HWY, PC, QC	QC	Cadillac Fairview	Nine West
26	3114	First Cdn Place	130 KING ST W. TORONTO, ON	ON	Brookfield Place	Nine West
27	3115	Oakville Place	240 LEIGHLAND AVE. OAKVILLE, ON	ON	RioCan Holdings	Nine West
28	3117	Market Mall	3625 SHAGANAPPI TR. CALGARY, AB	AB	Cadillac Fairview	Nine West
29	3119	Promenade	1 PROMENADE CIRC. THORNHILL, ON	ON	Cadillac Fairview	Nine West
30	3120	Fairview	1800 SHEPPARD AVE E. TORONTO, ON	ON	Cadillac Fairview	Nine West
31	3133	Scarborough Town	300 BOROUGH DR. SCARBOROUGH, ON	ON	Oxford	Nine West
32	3136	Masonville	1680 RICHMOND ST N. LONDON, ON	ON	Cadillac Fairview	Nine West
33	3137	Chinook	6455 MACLEOD TRAIL SW. CALGARY, AB	AB	Cadillac Fairview	Nine West
34	3138	Mapleview	9000 MAPLE AVE. BURLINGTON, ON	ON	Ivanhoe Cambridge	Nine West
35	3139	Polo Park	1485 PORTAGE AVE. WINNIPEG, MB	MB	Cadillac Fairview	Nine West

Exhibit B  
Budget



Nine West Canada LP  
Monday, April 2, 2018  
Expense Budget

Exhibit B-Expense Budget

# of Stores	34
Sale Start Date	Saturday, April 14, 2018
Sale End Date	Saturday, June 30, 2018
# of Weeks	11.1
# of Days	78.0

Inventory Supervision	# of Supervisors	Weeks	Weekly Base Fee	Total Base Fee	Total Deferred Compensation	Total Travel	Total Supervision Expense
Store Supervisor	4	11.1	\$ 3,731	\$ 166,207	\$ 83,148.48	\$ 31,896	\$ 281,331
Lead Supervisor	1	12.1	\$ 4,320	\$ 52,459	\$ 28,229.35	\$ 7,271	\$ 85,956
Finance & Administration (Note 1)	1	12.1	\$ 2,095	\$ 25,435	\$ 12,717.26	\$ 2,200	\$ 40,352
<b>Total Inventory Supervision</b>				<b>\$ 344,100</b>	<b>\$ 124,095</b>	<b>\$ 41,367</b>	<b>\$ 469,562</b>

Advertising	\$ / Store	Ad Program
Sign Package		
TIB / Store Closing signs, banners, and shipping	\$ 1,537	\$ 68,402
<b>Total Advertising Expenses</b>		<b>\$ 68,402</b>

Legal and Corporate Travel	
Legal & Corporate Travel	\$ 15,000
<b>Total Legal &amp; Corporate Travel</b>	<b>\$ 15,000</b>
<b>Grand Total Expense Budget</b>	<b>\$ 491,964</b>

Notes:

1. F&A is reflected as 50% and the respective share of the Merchant.

Fee Structure	SB360 Fee	Deferred Compensation %	Deferred Compensation \$
SB360 Base Fee	1.25%	50.00%	\$ 122,085

Payroll Budget	\$
Total Store Employee Base Payroll (Excludes taxes and benefits)	\$1,060,481
Employee Incentive Bonus (up to)	\$150,000
<b>Total Store Payroll Budget (Excludes taxes and benefits)</b>	<b>\$1,210,481</b>

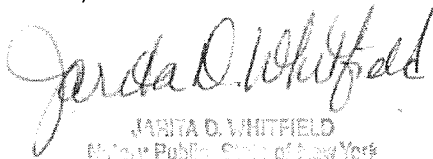
Notes:

1. Store Employee base payroll only includes base payroll and does not account for any commissions accrued and/or paid during the sale term.
2. The above total employee payroll is only for store locations (not e-commerce) and excludes taxes and benefits.
3. The above employee incentive bonus is separate from any other bonus offered by Nine West.

# EXHIBIT "C"



*THIS IS EXHIBIT "C", referred to in the  
Affidavit of Ralph Schipani, sworn on  
June 12, 2018.*



JANITA D. WHITFIELD  
Notary Public, State of New York

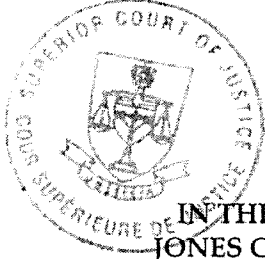
Notary Public, State of New York  
Commission Expires: 06/12/2021  
19

---

*Commissioner for Taking Affidavits*

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

THE HONOURABLE ) WEDNESDAY, THE 11<sup>TH</sup>  
JUSTICE *Hainey* ) DAY OF APRIL, 2018



Estate/Court File No. 31-2363758  
Estate/Court File No. 31-2363759

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF  
JONES CANADA, INC., A CORPORATION WITH A HEAD OFFICE IN THE CITY OF  
TORONTO IN THE PROVINCE OF ONTARIO, AND NINE WEST CANADA LP, A  
PARTNERSHIP WITH A HEAD OFFICE IN THE CITY OF TORONTO IN THE  
PROVINCE OF ONTARIO

Applicants

LIQUIDATION PROCESS ORDER

THIS MOTION made by Jones Canada, Inc. and Nine West Canada LP ("NW Canada" and, together with Jones Canada, Inc., the "Applicants") pursuant to the *Bankruptcy and Insolvency Act* R.S.C., 1985, c. B-3, as amended (the "BIA") for an order, among other things, approving the consulting agreement entered into between NW Canada and SB360 Capital Partners LLC (the "Consultant") made as of April 11, 2018 (the "Consulting Agreement") and the transactions contemplated thereby, and certain related relief was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion of the Applicants, the affidavit of Ralph Schipani sworn April 6, 2018 and exhibits thereto (the "Affidavit"), the First Report (the "First Report") of Richter Advisory Group Inc. in its capacity as proposal trustee of the Applicants (in such capacity, the "Trustee"), filed, and on hearing the submissions of respective counsel for the Applicants, the Trustee, the Consultant, Riocan Management, Ivanhoe Cambridge, CEC Leaseholds Inc., 20 Vic Management, Brookfield Properties, The Cadillac Fairview Corporation Limited and the Oxford Properties Group and such other counsel as were present, no one else appearing although duly served as appears from the

Affidavits of Service of Elizabeth Pillon sworn April 9, 2018 and Sanja Sopic sworn April 10, 2018, filed;

#### **SERVICE**

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

2. **THIS COURT ORDERS** that capitalized terms used and not defined herein have the same meaning ascribed to them in the Consulting Agreement.

#### **APPROVAL OF THE CONSULTING AGREEMENT**

3. **THIS COURT ORDERS** that the Consulting Agreement, including the Sale Guidelines attached hereto as Schedule "A" (the "**Sale Guidelines**"), and the transactions contemplated under the Consulting Agreement, including the Sale Guidelines, are hereby approved with such minor amendments (to the Consulting Agreement, but not the Sale Guidelines) as NW Canada, with the consent of the Trustee, and the Consultant may deem necessary and agree to in writing. Subject to the provisions of this Order, NW Canada, and the Trustee are hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable to implement the Consulting Agreement and the Sale Guidelines and each of the transactions contemplated therein.

#### **THE SALE**

4. **THIS COURT ORDERS** that NW Canada, with the assistance of the Consultant, is authorized and directed to conduct the Sale in accordance with this Order, the Consulting Agreement and the Sale Guidelines and to advertise and promote the Sale within the Closing Stores, all in accordance with the Sale Guidelines. If there is a conflict between this Order, the Consulting Agreement and the Sale Guidelines, the order of priority of documents to resolve each conflict is as follows: (1) this Order; (2) the Sale Guidelines; and (3) the Consulting Agreement.

5. **THIS COURT ORDERS** that NW Canada, with the assistance of the Consultant, is authorized to market and sell the Merchandise and the FF&E, free and clear of all liens, claims, encumbrances, security interests, mortgages, charges, trusts, deemed trusts, executions, levies, financial, monetary or other claims, whether or not such claims have attached or been perfected, registered or filed and whether secured, unsecured, quantified or unquantified, contingent or otherwise, whensoever and howsoever arising, and whether such claims arose or came into existence prior to the date of this Order or arise or come into existence following the date of this Order (in each case, whether contractual, statutory, arising by operation of law, in equity or otherwise) (all of the foregoing, collectively "Claims"), including, without limiting the generality of the foregoing: (a) any encumbrances or charges created by this Order and any other charges hereinafter granted by this Court in these proceedings; and (b) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system (all of which are collectively referred to as the "Encumbrances"), which Claims will attach instead to the proceeds received from the Merchandise and the FF&E, other than amounts due and payable to the Consultant by NW Canada under the Consulting Agreement, in the same order and priority as the Claims existed as at the date hereof.

6. **THIS COURT ORDERS** that, subject to the terms of this Order and the Sale Guidelines, the Consultant shall have the right to use the Closing Stores and all related store services, furniture, trade fixtures and equipment, including the FF&E, located at the Closing Stores, and other assets of NW Canada as designated under the Consulting Agreement for the purpose of conducting the Sale, and for such purposes, the Consultant shall be entitled to the benefit of the Applicants' stay of proceedings provided under section 69 or section 69.1 of the BIA, as applicable.

7. **THIS COURT ORDERS** that until July 31, 2018 or such earlier date as a lease is disclaimed in accordance with the BIA, the Consultant shall have access to the Closing Stores in accordance with the applicable leases and the Sale Guidelines on the basis that the Consultant is assisting the Applicants and the Applicants have granted the right of access to the applicable Closing Store to the Consultant. To the extent that the terms of the applicable leases are in conflict with any term of this Order or the Sale Guidelines, the terms of this Order and the Sale Guidelines shall govern.

8. **THIS COURT ORDERS** that until a real property lease is disclaimed or resiliated in accordance with the BIA, the Applicants shall pay amounts constituting rent or payable as rent under real property leases (including for greater certainty, common area maintenance charges, utilities, and realty taxes and any other amounts payable to the landlord under the lease) (collectively, "**Rent**") or as otherwise may be negotiated between the Applicants and the landlord from time to time in accordance with the terms of the applicable real property on the first business day of each month, in advance (but not in arrears). Upon delivery of a notice of disclaimer or resiliation, the Applicants shall pay all Rent owing by the Applicants to the applicable landlord in respect of such lease due for the notice period stipulated in the BIA to the extent that Rent for such period has not already been paid.

9. **THIS COURT ORDERS** that nothing in this Order shall amend or vary, or be deemed to amend or vary, the terms of the leases for the Closing Stores. Nothing contained in this Order or the Sale Guidelines shall be construed to create or impose upon NW Canada or the Consultant any additional restrictions not contained in the applicable lease.

10. **THIS COURT ORDERS** that nothing herein is, or shall be deemed to be a consent by any Landlord to the sale, assignment or transfer of any Lease, or to grant to the Landlord any greater rights than already exist under the terms of any applicable Lease.

11. **THIS COURT ORDERS** that until the Sale Termination Date, the Consultant shall have the right to use, without interference by any intellectual property licensor, the Applicants' trademarks, trade names and logos, customer/marketing lists, website and social media accounts as well as all licenses and rights granted to the Applicants to use the trade names, trademarks and logos of third parties, relating to and used in connection with the operation of the Closing Stores solely for the purpose of advertising and conducting the Sale in accordance with the terms of the Consulting Agreement, the Sale Guidelines and this Order, provided that the Consultant provides NW Canada with a copy of any proposed advertising five days prior to its use in the Sale.

#### **CONSULTANT LIABILITY**

12. **THIS COURT ORDERS** that the Consultant shall act solely as an independent consultant to NW Canada and that it shall not be liable for any claims against NW Canada

other than as expressly provided in the Consulting Agreement or the Sale Guidelines. More specifically:

- (a) The Consultant shall not be deemed to be an owner or in possession, care, control or management of the Closing Stores or the assets located therein or associated therewith or of NW Canada's employees located at the Closing Stores;
- (b) The Consultant shall not be deemed to be an employer, or a joint or successor employer or a related or common employer or payor within the meaning of any legislation governing employment or labour standards or pension benefits or health and safety or other statute, regulation or rule of law or equity for any purpose whatsoever, and shall not incur any successorship liabilities whatsoever; and
- (c) NW Canada shall bear all responsibility for any liability whatsoever (including without limitation losses, costs, damages, fines, or awards) relating to claims of customers, employees and any other persons arising from events and closings occurring at the Stores during and after the term of the Consulting Agreement, except in accordance with the Consulting Agreement.

13. **THIS COURT ORDERS** to the extent any of the Applicants' landlords may have a claim against the Applicants arising solely out of the conduct of the Consultant in conducting the sale pursuant to this Order for which the Applicants have claims against the Consultant under the Consulting Agreement, the Applicants shall be deemed to have assigned free and clear such claims to the applicable landlord (the "Assigned Landlord Rights").

#### **CONSULTANT AS UNAFFECTED CREDITOR**

14. **THIS COURT ORDERS** that, in accordance with section 69.4 of the BIA, and subject only to paragraph 6 of this Order, the Consultant shall not be affected by the stay of proceedings in respect of NW Canada and shall be entitled to exercise its remedies under the Consulting Agreement in respect of claims of the Consultant pursuant to the Consulting

Agreement (collectively, the "Consultant's Claims"), the Consultant shall be treated as an unaffected creditor in the context of the present proceedings and in any proposal.

15. **THIS COURT ORDERS** that notwithstanding the terms of any order issued by this Court in the context of the present proceedings or the terms of the BIA, NW Canada shall not be entitled to disclaim or resiliate the Consulting Agreement or any of the agreements, contracts or arrangements in relation thereto entered into with the Consultant.

16. **THIS COURT ORDERS** that NW Canada is hereby authorized to remit, in accordance with the Consulting Agreement, all amounts that become due to the Consultant thereunder.

17. **THIS COURT ORDERS** that no Claims shall attach to any amounts payable by NW Canada to the Consultant pursuant to the Consulting Agreement, including any amounts that must be reimbursed by NW Canada to the Consultant, and NW Canada shall pay any such amounts to the Consultant free and clear of all Claims, notwithstanding any enforcement or other process, all in accordance with the Consulting Agreement.

18. **THIS COURT ORDERS** that notwithstanding (a) the pendency of these proceedings; (b) any application for a bankruptcy order now or hereafter issued pursuant to the BIA in respect of Applicants or any bankruptcy order made pursuant to any such applications; (c) any assignment in bankruptcy made in respect of the Applicants; (d) the provisions of any federal or provincial statute; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of encumbrances, contained in any existing loan documents, lease, mortgage, security agreement, debenture, sublease, offer to lease or other document or agreement (collectively, the "Agreement") which binds the Applicants:

- (a) the Consulting Agreement and the transactions and actions provided for and contemplated therein (including the Sale Guidelines), including, without limitation, the payment of amounts due to the Consultant; and
- (b) Assigned Landlord Rights,

shall be binding on any trustee in bankruptcy that may be appointed in respect to the Applicants and shall not be void or voidable by any Person (as defined in the BIA), including any creditor of Applicants, nor shall they, or any of them, constitute or be deemed to be a preference, fraudulent conveyance, transfer at undervalue or other challengeable reviewable transaction, under the BIA or any applicable law, nor shall they constitute oppressive or unfairly prejudicial conduct under any applicable law.

19. **THIS COURT ORDERS** that notwithstanding (a) the pendency of these proceedings; (b) any application for a bankruptcy order now or hereafter issued pursuant to the BIA in respect of Applicants or any bankruptcy order made pursuant to any such applications; (c) any assignment in bankruptcy made in respect of the Applicants; (d) the provisions of any federal or provincial statute; or (e) any Agreements which binds the Applicants, any obligation to clean up or repair any of the leased premises contained in this Order or the Sale Guidelines, shall be binding on any trustee in bankruptcy that may be appointed in respect to the Applicants and shall not be void or voidable by any Person (as defined in the BIA), including any creditor of Applicants, nor shall they, or any of them, constitute or be deemed to be a preference, fraudulent conveyance, transfer at undervalue or other challengeable reviewable transaction, under the BIA or any applicable law, nor shall they constitute oppressive or unfairly prejudicial conduct under any applicable law.

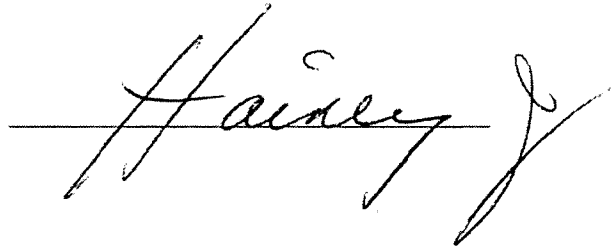
#### **GENERAL**

20. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.

21. **THIS COURT HEREBY REQUESTS** the aid and recognition of any Court, tribunal, regulatory or administrative bodies, having jurisdiction in Canada or in the United States of America, to give effects to this Order and to assist NW Canada, the Trustee and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to NW Canada and to the Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Trustee in any foreign proceeding, or to assist NW Canada and the Trustee and their respective agents in carrying out the terms of this Order.



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

A handwritten signature in cursive script, appearing to read "Hainey", is written over a horizontal line. The signature is fluid and extends to the right of the line.

SCHEDULE A  
SALE GUIDELINES

The following procedures shall apply to the Sale to be conducted at the Closing Stores of Nine West Canada LP (the "Merchant"). All terms not herein defined shall have the meaning set forth in the Consulting Agreement by and between SB360 Capital Partners, LLC (the "Consultant") and the Merchant dated as of April 11, 2018 (the "Consulting Agreement").

1. Except as otherwise expressly set out herein, and subject to: (i) the Approval Order or any further Order of the Ontario Superior Court of Justice (Commercial List) (the "Court"); or (ii) any subsequent written agreement between the Merchant and the applicable landlord(s) (individually, a "Landlord" and, collectively, the "Landlords") and approved by the Consultant, or (iii) as otherwise set forth herein, the Sale shall be conducted in accordance with the terms of the applicable leases/or other occupancy agreements to which the affected Landlords are privy for each of the affected Closing Stores (individually, a "Lease" and, collectively, the "Leases"). However, nothing contained herein shall be construed to create or impose upon the Merchant or the Consultant any additional restrictions not contained in the applicable Lease or other occupancy agreement.
2. The Sale shall be conducted so that each of the Closing Stores remains open during its normal hours of operation provided for in its respective Lease until the respective Sale Termination Date for such Closing Store. The Sale at the Closing Stores shall end by no later than the Sale Termination Date. With the consent of the Merchant and the Consultant, the Sale Termination Date may be extended to no later than July 31, 2018. Rent payable under the respective Leases shall be paid in accordance with the terms of the Approval Order.
3. The Sale shall be conducted in accordance with applicable federal, provincial and municipal laws and regulations, unless otherwise ordered by the Court.
4. All display and hanging signs used by the Consultant in connection with the Sale shall be professionally produced and all hanging signs shall be hung in a professional manner. The Consultant may advertise the Sale at the Closing Stores as an "everything on sale", an "everything must go", a "store closing" or similar theme sale at the Closing Stores (provided however that no signs shall advertise the Sale as a "bankruptcy", a "going out of business" or a "liquidation" sale it being understood that the French equivalent of "clearance" is "liquidation" and is permitted to be used). Forthwith upon request from a Landlord, the Landlord's counsel, the Merchant or the Monitor, the Consultant shall provide the proposed signage packages along with the proposed dimensions and number of signs (as approved by the Merchant pursuant to the Consulting Agreement) by e-mail or facsimile to the applicable Landlords or to their counsel of record. The Consultant shall not use neon or day-glow or handwritten signage (unless otherwise contained in the sign package, including "you pay" or "topper" signs). In addition, the Consultant shall be permitted to utilize exterior banners/signs at stand alone or strip mall Closing Stores or enclosed mall Closing Stores with a separate entrance from the exterior of the enclosed mall, provided, however, that where such banners are not explicitly

permitted by the applicable Lease and the Landlord requests in writing that the banners are not to be used, no banners shall be used absent further Order of the Court, which may be sought on an expedited basis on notice to the service list in the NOI proceedings (the "Service List"). Any banners used shall be located or hung so as to make clear that the Sale is being conducted only at the affected Closing Store and shall not be wider than the premises occupied by the affected Closing Store. All exterior banners shall be professionally hung and to the extent that there is any damage to the façade of the premises of a Closing Store as a result of the hanging or removal of the exterior banner, such damage shall be professionally repaired at the expense of the Consultant. If a Landlord is concerned with "store closing" signs being placed in the front window of a Closing Store or with the number or size of the signs in the front window, the Consultant and the Landlord will discuss the Landlord's concerns and work to resolve the dispute. The Consultant shall not utilize any commercial trucks to advertise the Sale on the mall premises.

5. The Consultant shall be permitted to utilize sign walkers and street signage; provided, however, such sign walkers and street signage shall not be located on the shopping centre or mall premises.
6. The Consultant shall not make any alterations to interior or exterior Closing Store lighting, except as authorized pursuant to the applicable Lease. The hanging of exterior banners or other signage, where permitted in accordance with the terms of these guidelines, shall not constitute an alteration to a Closing Store.
7. Conspicuous signs shall be posted in the cash register areas of each Closing Store to the effect that all sales are "final".
8. The Consultant shall not distribute handbills, leaflets or other written materials to customers outside of any of the Closing Stores on any Landlord's property, unless permitted by the applicable Lease or, if distribution is customary in the shopping centre in which the Closing Store is located. Otherwise, the Consultant may solicit customers in the Closing Stores themselves. The Consultant shall not use any giant balloons, flashing lights or amplified sound to advertise the Sale or solicit customers, except as permitted under the applicable Lease, or agreed to by the Landlord.
9. At the conclusion of the Sale in each Closing Store, the Merchant shall arrange that the premises for each Closing Store are in "broom-swept" and clean condition, and shall arrange that the Closing Stores are in the same condition as on the commencement of the Sale, ordinary wear and tear excepted. No property of any Landlord of a Closing Store shall be removed or sold during the Sale. No permanent fixtures (other than FF&E which for clarity is owned by the Merchant) may be removed without the applicable Landlord's written consent unless otherwise provided by the applicable Lease. Any fixtures or personal property left in a Closing Store after the Sale Termination Date in respect of which the applicable Lease has been disclaimed by the Merchant shall be deemed abandoned, with the applicable Landlord having the right to dispose of the same as the Landlord chooses, without any liability whatsoever on the part of the Landlord.

10. Subject to the terms of paragraph 9 above, the Consultant may sell FF&E which is located in the Closing Stores during the Sale. The Merchant and the Consultant may advertise the sale of FF&E consistent with these guidelines on the understanding that any applicable Landlord may require that such signs be placed in discreet locations acceptable to the applicable Landlord, acting reasonably. Additionally, the purchasers of any FF&E sold during the Sale shall only be permitted to remove the FF&E either through the back shipping areas designated by the applicable Landlord, or through other areas after regular store business hours, or through the front door of the Closing Store during store business hours if the FF&E can fit in a shopping bag, with applicable Landlord's supervision as required by the applicable Landlord. The Consultant shall repair any damage to the Closing Stores resulting from the removal of any FF&E by Consultant or by third party purchasers of FF&E from Consultant.
11. The Merchant hereby provides notice to the Landlords of the Merchant and the Consultant's intention to sell and remove FF&E from the Closing Stores. The Consultant will arrange with each Landlord represented by counsel on the Service List and with any other applicable Landlord that so requests, a walk through with the Consultant to identify the FF&E subject to the sale. The relevant Landlord shall be entitled to have a representative present in the Closing Store to observe such removal. If the Landlord disputes the Consultant's entitlement to sell or remove any FF&E under the provisions of the Lease, such FF&E shall remain on the premises and shall be dealt with as agreed between the Merchant, the Consultant and such Landlord, or by further Order of the Court upon application by the Merchant on at least two (2) days' notice to such Landlord. If the Merchant has disclaimed or resiliated the Lease governing such Closing Store in accordance with the BIA, it shall not be required to pay rent under such Lease pending resolution of any such dispute (other than rent payable for the notice period provided for in the BIA), and the disclaimer or resiliation of the Lease shall be without prejudice to the Merchant's or Consultant's claim to the FF&E in dispute.
12. If a notice of disclaimer or resiliation is delivered pursuant to the BIA to a Landlord while the Sale is ongoing and the Closing Store in question has not yet been vacated, then: (a) during the notice period prior to the effective time of the disclaimer or resiliation, the applicable Landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Merchant and the Consultant 24 hours' prior written notice; and (b) at the effective time of the disclaimer or resiliation, the relevant Landlord shall be entitled to take possession of any such Closing Store without waiver of or prejudice to any claims or rights such Landlord may have against the Merchant in respect of such Lease or Closing Store, provided that nothing herein shall relieve such Landlord of its obligation to mitigate any damages claimed in connection therewith.
13. The Consultant and its agents and representatives shall have the same access rights to the Closing Stores as the Merchant under the terms of the applicable Lease, and the applicable Landlords shall have the rights of access to the Closing Stores during the Sale provided for in the applicable Lease (subject, for greater certainty, to any applicable stay of proceedings).

14. The Merchant and the Consultant shall not conduct any auctions of Merchandise or FF&E at any of the Closing Stores.
15. The Consultant shall be entitled to include additional merchandise in the Sale; provided that (a) the additional merchandise is currently in the possession of the Applicants (including in its warehouse located in Ontario) or has previously been ordered by the Applicants and is currently in transit to the Applicants; and (b) the additional merchandise is of like kind and category and no lesser quality to the Merchandise, and consistent with any restriction on usage of the Closing Stores set out in the applicable Leases.
16. The Consultant shall designate a party to be contacted by the Landlords should a dispute arise concerning the conduct of the Sale. The initial contact person for Consultant shall be Aaron Miller who may be reached by phone at 781-439-5119 or email at amiller@360merchants.com. If the parties are unable to resolve the dispute between themselves, the Landlord or Merchant shall have the right to schedule a "status hearing" before the Court on no less than two (2) days written notice to the other party or parties, during which time the Consultant shall cease all activity in dispute other than activity expressly permitted herein, pending the determination of the matter by the Court; provided, however, that if a banner has been hung in accordance with these Sale Guidelines and is thereafter the subject of a dispute, the Consultant shall not be required to take any such banner down pending determination of the dispute.
17. Nothing herein is, or shall be deemed to be a consent by any Landlord to the sale, assignment or transfer of any Lease, or to grant to the Landlord any greater rights than already exist under the terms of any applicable Lease.
18. These Sale Guidelines may be amended by written agreement between the Merchant, the Consultant and any applicable Landlord (provided that such amended Sale Guidelines shall not affect or bind any other Landlord not privy thereto without further Order of the Court approving the amended Sale Guidelines).

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF  
JONES CANADA, INC. AND NINE WEST CANADA LP

Estate/Court File No. 31-2363758  
Estate/Court File No. 31-2363759

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)  
Proceeding commenced at Toronto

LIQUIDATION PROCESS ORDER

STIKEMAN ELLIOTT LLP  
Barristers & Solicitors  
5300 Commerce Court West  
199 Bay Street  
Toronto, Canada M5L 1B9

Elizabeth Pillon LSUC#: 35638M  
Tel: (416) 869-5236

Maria Konyukhova LSUC #: 52880V  
Tel: (416) 869-5230

Sanja Sopic LSUC#: 66487P  
Tel: (416) 869-6825

Patrick Corney LSUC#: 65462N  
Tel: (416) 869-5668  
Fax: (416) 947-0866

Lawyers for the Applicants

# EXHIBIT "D"

*THIS IS EXHIBIT "D", referred to in the  
Affidavit of Ralph Schipani, sworn on  
June 12, 2018.*



JARITA D. WHITFIELD  
Notary Public, State of New York  
No. 00167130247  
Madison, Hamilton County  
Qualified to expire Feb. 05, 20 *11*

---

*Commissioner for Taking Affidavits*



ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

THE HONOURABLE ) WEDNESDAY, THE 11<sup>TH</sup>  
JUSTICE HAINES ) DAY OF APRIL, 2018  
)



Estate/Court File No.31-2363758

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF JONES CANADA, INC., A CORPORATION WITH A HEAD OFFICE IN THE CITY OF TORONTO IN THE PROVINCE OF ONTARIO

Applicant

Estate/Court File No.31-2363759

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF NINE WEST CANADA LP, A PARTNERSHIP WITH A HEAD OFFICE IN THE CITY OF TORONTO IN THE PROVINCE OF ONTARIO

Applicant

ADMINISTRATION ORDER

THIS MOTION made by Jones Canada, Inc. ("Jones Canada") and Nine West Canada LP ("NW Canada" and, together with Jones Canada, the "Applicants") pursuant to the *Bankruptcy and Insolvency Act* R.S.C. 1985, c. B-3 (the "BIA") for an order, among other things, extending the time for filing a proposal (the "Proposal Period") pursuant to s. 50.4(9) of the BIA, approving the substantive consolidation of the Applicants' proposal proceedings and certain related relief was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion of the Applicants, the affidavit of Ralph Schipani sworn April 6, 2018 and exhibits thereto (the "Schipani Affidavit"), the First Report (the "First Report") of Richter Advisory Group Inc. ("Richter") in its capacity as proposal trustee of the Applicants (in such capacity, the "Proposal Trustee"), and the confidential appendices thereto, filed, and on hearing the submissions of respective counsel for the Applicants, the Proposal Trustee, Riocan Management, Ivanhoe Cambridge, CEC Leaseholds Inc., 20 Vic

Management, Brookfield Properties, The Cadillac Fairview Corporation Limited and the Oxford Properties Group and such other counsel as were present, no one else appearing although duly served as appears from the Affidavits of Service of Elizabeth Pillon sworn April 9, 2018 and Sanja Sopic sworn April 10, 2018, filed;

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion, the Motion Record and the First Report is hereby abridged and validated so that this motion is properly returnable today and that service, including the form, manner and time that such service was actually effected on all parties, is hereby validated, and where such service was not effected such service is hereby dispensed with.

#### **SUBSTANTIVE CONSOLIDATION**

2. **THIS COURT ORDERS** that the proposal proceedings of Jones Canada (Estate Number 31-2363758) and NW Canada (Estate Number 31-2363759) (collectively, the “**Proposal Proceedings**”) are hereby administratively and substantively consolidated and the Proposal Proceedings are hereby authorized and directed to continue under the following joint title of proceedings, *nunc pro tunc*:

Estate/Court File No. 31-2363758  
Estate/Court File No. 31-2363759

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF JONES CANADA, INC., A CORPORATION WITH A HEAD OFFICE IN THE CITY OF TORONTO IN THE PROVINCE OF ONTARIO, AND NINE WEST CANADA LP, A PARTNERSHIP WITH A HEAD OFFICE IN THE CITY OF TORONTO IN THE PROVINCE OF ONTARIO**

3. **THIS COURT ORDERS** that all further materials in the Proposal Proceedings shall be filed with the Court only in the NW Canada Estate and Court file, being Estate / Court File No. 31-2363759.

4. **THIS COURT ORDERS** that Richter, in its capacity as the Proposal Trustee of the consolidated Proposal Proceedings may administer the Proposal Proceedings on a consolidated basis, as follows:

- (a) the Proposal Trustee is authorized to administer the Proposal Proceedings as if they were a single proposal proceeding for the purpose of carrying out its administrative duties and responsibilities as proposal trustee under the BIA with respect to the administration of proposal proceedings generally, including without limitation:
  - i. the Proposal Trustee is authorized to issue consolidated reports in respect of the Proposal Proceedings; and
  - ii. the Proposal Trustee is authorized to perform a consolidated making, filing, advertising and distribution of all filings and notices in the Proposal Proceedings required under the BIA;
- (b) the Proposal Trustee is authorized to combine the pool of assets and liabilities of the Proposal Proceedings into one;
- (c) the Proposal Trustee is authorized to file a joint proposal for Jones Canada and NW Canada and convene a single meeting of the creditors of Jones Canada and NW Canada for the purpose of voting on the proposal; and
- (d) the Proposal Trustee is authorized to pay its reasonable fees out of the combined pool of assets of the Proposal Proceedings.

**CASH MANAGEMENT**

5. **THIS COURT ORDERS** that the Applicants shall be entitled to continue to utilize the cash management system currently in place as described in the Schipani Affidavit or replace it with another substantially similar central cash management system (the “Cash Management System”) provided that any cash currently in NW Canada’s Canadian or U.S. dollar accounts and any amounts received into those accounts following the date of this Order shall not be directed to the NW U.S. Entities (as defined and described in the Schipani Affidavit) without the prior approval of the Proposal Trustee.

#### APPROVAL OF THE D&O CHARGE

6. **THIS COURT ORDERS** that the Applicants shall indemnify their current and future directors and officers (the "Directors and Officers") against obligations and liabilities that they may incur as directors or officers of the Applicants after the commencement of the within proceedings, including, without limitation, in respect of any failure to pay wages and source deductions and vacation pay, except to the extent that, with respect to any director or officer, the obligation or liability was incurred as a result of the director's or officer's gross negligence or willful misconduct.

7. **THIS COURT ORDERS** that the Directors and Officers shall be entitled to the benefit of and are hereby granted a charge (the "D&O Charge") on all assets, rights, undertakings and properties of the Applicants, of every nature and kind whatsoever, and wherever situated including all proceeds thereof (the "Property"), which charge shall not exceed an aggregate amount of \$700,000, as security for the indemnity provided in paragraph 6 of this Order. The D&O Charge shall have the priority set out in paragraphs 13 and 14 herein.

8. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the D&O Charge, and (b) the Directors and Officers shall only be entitled to the benefit of the D&O Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 6 of this Order.

#### APPROVAL OF THE KERA AND KERA CHARGE

9. **THIS COURT ORDERS** that the KERA attached as Confidential Appendix "2" to the First Report is hereby approved and the Applicants are authorized and directed to make the payments contemplated thereunder in accordance with the terms and conditions of the KERA.

10. **THIS COURT ORDERS** that the employees who are the beneficiaries of the KERA (the "KERA Beneficiaries") shall be entitled to the benefit of and are hereby granted a charge (the "KERA Charge") on the Property as security of all amounts now or hereafter owing under the

KERA to the KERA Beneficiaries, before and after the making of this Order. The KERA Charge shall have the priority set out in paragraphs 13 and 14 herein.

#### **APPROVAL OF THE ADMINISTRATION CHARGE**

11. **THIS COURT ORDERS** that the Proposal Trustee, Aird & Berlis LLP as counsel for the Proposal Trustee (the "**Proposal Trustee's Counsel**") and Stikeman Elliott LLP as counsel to the Applicants in connection with these proceedings (the "**Company's Counsel**") shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the accounts of the Proposal Trustee, the Proposal Trustee's Counsel and the Company's Counsel (for work performed in connection with these BIA proceedings) on a weekly basis.

12. **THIS COURT ORDERS** that the Proposal Trustee, the Proposal Trustee's Counsel and the Company's Counsel shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which Administration Charge shall not exceed an aggregate amount of \$750,000, as security for their professional fees and disbursements incurred at their standard rates and charges, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 13 and 14 herein.

#### **PRIORITY OF CHARGES**

13. **THIS COURT ORDERS** that the priorities of the D&O Charge, the KERA Charge and the Administration Charge (together, the "**Charges**"), as among them, be as follows:

First - the Administration Charge (to the maximum amount of \$750,000);

Second - the D&O Charge (to the maximum amount of \$700,000); and

Third - the KERA Charge.

14. **THIS COURT ORDERS** that each of the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts (including constructive trusts), liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, the "Encumbrances") in favour of any individual, firm, corporation, governmental body or agency or any other entity (each of the foregoing being a "Person"), other than any secured creditors who have not been served with the Applicants' Motion Record dated April 6, 2018, perfected purchase money security interest under the Ontario Personal Property Registry or such other applicable provincial legislation unless otherwise provided herein.

15. **THIS COURT ORDERS** that the filing, registration or perfection of the Charges shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

16. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges unless the Applicants also obtain the prior written consent of the Proposal Trustee and the other beneficiaries of the Charges, or further Order of this Court.

17. **THIS COURT ORDERS** that the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "Chargees") thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents,

lease, sublease, offer to lease or other agreement (collectively, an “Agreement”) which binds the Applicants, and notwithstanding any provision to the contrary in any Agreement:

- (a) the creation of the Charges shall not create or be deemed to constitute a breach by the Applicants of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by the creation of the Charges; and
- (c) the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

18. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicants’ interest in such real property leases.

#### SEALING

19. **THIS COURT ORDERS** that Confidential Appendix “1” and Confidential Appendix “2” to the First Report are hereby sealed and shall not form part of the public record pending further order of the Court.

#### STAY EXTENSION

20. **THIS COURT ORDERS** that the Proposal Period is hereby extended in accordance with subsection 50.4(9) of the BIA, to and including June 20, 2018.

#### SERVICE AND NOTICE

21. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the “Protocol”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice->

commercial/) shall be valid and effective service. Subject to Rule 17.05 of the Rules of Civil Procedure (Ontario) (the "Rules"), this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules. Subject to Rule 3.01(d) of the Rules and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: <http://www.richter.ca/Folder/Insolvency-Cases/N/Nine-West-Canada-LP>.

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

23. **THIS COURT ORDERS** that the Applicants, the Proposal Trustee and their counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Applicants' creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

24. **THIS COURT ORDERS** that the Proposal Trustee continues to be and is hereby authorized to take all steps required to fulfill its duties under the BIA or as an officer of the Court, including, without limitation, to:

- (a) monitor the Applicants' receipts and disbursements;



- 9 -

- (b) report to this Court at such times and intervals as the Proposal Trustee may deem appropriate with respect to matters relating to the Property, and such other matters as may be relevant to the proceedings herein;
- (c) assist the Applicants in their preparation of the Applicants' cash flow statements, which information shall be reviewed with the Proposal Trustee;
- (d) assist the Applicants in their development of a proposal to their creditors and any amendments to such proposal;
- (e) assist the Applicants, to the extent required by the Applicants, with the holding and administering of creditors' or shareholders' meetings for voting on a proposal;
- (f) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicants, to the extent that is necessary to adequately assess the Applicants' business and financial affairs or to perform its duties arising under the BIA or this Order;
- (g) be at liberty to engage such Persons as the Proposal Trustee deems necessary or advisable respecting the exercise of its powers and performance of its obligations under the BIA or this Order; and
- (h) perform such other duties as are required by the BIA, this Order or by this Court from time to time.

25. **THIS COURT ORDERS** that the Proposal Trustee shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Applicants' business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Applicants' business or the Property, or any part thereof.

26. **THIS COURT ORDERS** that, in addition to the rights and protections afforded to the Proposal Trustee under the BIA or as an officer of this Court, the Proposal Trustee shall incur no

liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded to the Proposal Trustee under the BIA or any applicable legislation.

#### GENERAL

27. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.

28. **THIS COURT HEREBY REQUESTS** the aid and recognition of any Court, tribunal, regulatory or administrative bodies, having jurisdiction in Canada or in the United States of America, to give effect to this Order and to assist the Applicants, the Proposal Trustee and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Proposal Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Proposal Trustee in any foreign proceeding, or to assist the Applicants and the Proposal Trustee and their respective agents in carrying out the terms of this Order.

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

A handwritten signature in cursive script, appearing to read "Hainey", is written over a horizontal line. The signature is fluid and extends slightly to the right of the line.

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF  
JONES CANADA, INC. AND NINE WEST CANADA LP

Estate/Court File No. 31-2363758  
Estate/Court File No. 31-2363759

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**  
Proceeding commenced at Toronto

**ADMINISTRATION ORDER**

**STIKEMAN ELLIOTT LLP**  
Barristers & Solicitors  
5300 Commerce Court West  
199 Bay Street  
Toronto, Canada M5L 1B9

**Elizabeth Pillon** LSUC#: 35638M  
Tel: (416) 869-5236

**Maria Konyukhova** LSUC #: 52880V  
Tel: (416) 869-5230

**Sanja Sopic** LSUC#: 66487P  
Tel: (416) 869-6825

**Patrick Corney** LSUC#: 65462N  
Tel: (416) 869-5668  
Fax: (416) 947-0866

**Lawyers for the Applicants**

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF JONES  
CANADA, INC. AND NINE WEST CANADA LP

Estate/Court File No. 31-2363758  
Estate/Court File No. 31-2363759

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**  
Proceeding commenced at Toronto

**AFFIDAVIT OF RALPH SCHIPANI**  
**(SWORN JUNE 12, 2018)**

**STIKEMAN ELLIOTT LLP**  
Barristers & Solicitors  
5300 Commerce Court West  
199 Bay Street  
Toronto, Canada M5L 1B9

**Elizabeth Pillon** LSUC#: 35638M  
Tel: (416) 869-5623  
Email: [lpillon@stikeman.com](mailto:lpillon@stikeman.com)

**Maria Konyukhova** LSUC #:52880V  
Tel: (416) 869-5230  
Email: [mkonyukhova@stikeman.com](mailto:mkonyukhova@stikeman.com)

**Sanja Sopic** LSUC#: 66487P  
Tel: (416) 869-6825  
Email: [ssopic@stikeman.com](mailto:ssopic@stikeman.com)  
Fax: (416) 947-0866

**Lawyers for the Applicants**

TAB 3

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

THE HONOURABLE  
JUSTICE

)  
)  
)

TUESDAY, THE 19<sup>TH</sup>  
DAY OF JUNE, 2018

Estate/Court File No. 31-2363758  
Estate/Court File No. 31-2363759

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF JONES CANADA, INC., A CORPORATION WITH A HEAD OFFICE IN THE CITY OF TORONTO IN THE PROVINCE OF ONTARIO, AND NINE WEST CANADA LP, A PARTNERSHIP WITH A HEAD OFFICE IN THE CITY OF TORONTO IN THE PROVINCE OF ONTARIO**

**Applicants**

**ORDER  
(Re Stay Extension et al.)**

**THIS MOTION** made by Jones Canada, Inc. ("**Jones Canada**") and Nine West Canada LP ("**NW Canada**" and, together with Jones Canada, the "**Applicants**") pursuant to the *Bankruptcy and Insolvency Act* R.S.C. 1985, c. B-3 (the "**BIA**") for an order, among other things, extending the time for filing a proposal (the "**Proposal Period**") pursuant to s. 50.4(9) of the BIA, and certain related relief was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Notice of Motion of the Applicants, the affidavit of Ralph Schipani sworn June 12, 2018 and exhibits thereto (the "**Schipani Affidavit**"), the First Report dated April 9, 2018 (the "**First Report**") of Richter Advisory Group Inc. in its capacity as proposal trustee of the Applicants (in such capacity, the "**Proposal Trustee**"), and the confidential appendices thereto, filed, the Second Report (the "**Second Report**") of the Proposal Trustee dated June 12, 2018 and the appendices thereto, filed, and on hearing the submissions of respective counsel for the Applicants, the Proposal Trustee, and such other counsel as were

present, no one else appearing although duly served as appears from the Affidavits of Service of Sanja Sopic sworn June ●, 2018, filed;

**SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion, the Motion Record and the Second Report is hereby abridged and validated so that this motion is properly returnable today and that service, including the form, manner and time that such service was actually effected on all parties, is hereby validated, and where such service was not effected such service is hereby dispensed with.

**STAY EXTENSION**

2. **THIS COURT ORDERS** that the Proposal Period is hereby extended in accordance with subsection 50.4(9) of the BIA, to and including August 3, 2018.

**APPROVAL OF PROPOSAL TRUSTEE'S REPORTS**

3. **THIS COURT ORDERS** that the First Report and the Second Report and the activities of the Proposal Trustee described therein are hereby approved.

**APPROVAL OF FEES**

4. **THIS COURT ORDERS** that the fees and disbursements of the Proposal Trustee for the period from February 21, 2018 to June 2, 2018 and those of the Proposal Trustee's counsel, Aird & Berlis LLP, for the period from February 23, 2018 to June 10, 2018 are hereby approved.

**GENERAL**

5. **THIS COURT HEREBY REQUESTS** the aid and recognition of any Court, tribunal, regulatory or administrative bodies, having jurisdiction in Canada or in the United States of America, to give effect to this Order and to assist the Applicants, the Proposal Trustee and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and

administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Proposal Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Proposal Trustee in any foreign proceeding, or to assist the Applicants and the Proposal Trustee and their respective agents in carrying out the terms of this Order.

---



IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF JONES CANADA, INC., A CORPORATION WITH A HEAD OFFICE IN THE CITY OF TORONTO IN THE PROVINCE OF ONTARIO, AND NINE WEST CANADA LP, A PARTNERSHIP WITH A HEAD OFFICE IN THE CITY OF TORONTO IN THE PROVINCE OF ONTARIO

Estate/Court File No. 31-2363758  
Estate/Court File No. 31-2363759

---

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**  
Proceeding commenced at Toronto

---

**ORDER**  
**(Re Stay Extension et al.)**

---

**STIKEMAN ELLIOTT LLP**  
Barristers & Solicitors  
5300 Commerce Court West  
199 Bay Street  
Toronto, Canada M5L 1B9

**Elizabeth Pillon** LSUC#: 35638M  
Tel: (416) 869-5236

**Maria Konyukhova** LSUC #: 52880V  
Tel: (416) 869-5230

**Sanja Sopic** LSUC#: 66487P  
Tel: (416) 869-6825

**Lawyers for the Applicants**

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF JONES CANADA, INC., A CORPORATION WITH A HEAD OFFICE IN THE CITY OF TORONTO IN THE PROVINCE OF ONTARIO, AND NINE WEST CANADA LP, A PARTNERSHIP WITH A HEAD OFFICE IN THE CITY OF TORONTO IN THE PROVINCE OF ONTARIO

Estate/Court File No. 31-2363758  
Estate/Court File No. 31-2363759

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**  
Proceeding commenced at Toronto

**MOTION RECORD**  
**RETURNABLE JUNE 19, 2018**  
**(Re Extension of Proposal Period)**

**Stikeman Elliott LLP**  
Barristers & Solicitors  
5300 Commerce Court West  
199 Bay Street  
Toronto, Canada M5L 1B9

**Elizabeth Pillon** LSUC#: 35638M  
Tel: (416) 869-5623  
Email: [lpillon@stikeman.com](mailto:lpillon@stikeman.com)

**Maria Konyukhova** LSUC#: 52880V  
Tel: (416) 869-5230  
Email: [mkonyukhova@stikeman.com](mailto:mkonyukhova@stikeman.com)

**Sanja Sopic** LSUC#: 66487P  
Tel: (416) 869-6825  
Email: [ssopic@stikeman.com](mailto:ssopic@stikeman.com)  
Fax: (416) 947-0866

**Lawyers for the Applicants**