

District of Ontario  
Division No. 9 - Toronto  
Court File No: 31-2010608  
Estate File No. 31-2010608

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)  
IN BANKRUPTCY AND INSOLVENCY**

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF  
SHERSON GROUP INC.**

**MOTION RECORD**  
(Returnable August 20, 2015)

August 13, 2015

**AIRD & BERLIS LLP**

Brookfield Place  
Suite 1800, Box 754  
181 Bay Street  
Toronto, ON M5J 2T9

**Sam Babe** (LSUC # 49498B)

Tel: 416.865.7718

Fax: 416.863.1515

Email: [sbabe@airdberlis.com](mailto:sbabe@airdberlis.com)

*Lawyers for Sherson Group Inc.*

## SERVICE LIST

**TO: AIRD & BERLIS LLP**

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

**Sam Babe** (LSUC # 49498B)

Tel: 416.865.7718

Fax: 416.863.1515

Email: [sbabe@airdberlis.com](mailto:sbabe@airdberlis.com)

*Lawyers for Sherson Group Inc.*

**AND TO: RICHTER ADVISORY GROUP INC.**

3320 – 181 Bay Street  
Toronto, ON M5J 2T3

**Gilles Benchaya**

Tel: 514.934.3496

Email: [GBenchaya@richterconsulting.com](mailto:GBenchaya@richterconsulting.com)

**Adam Sherman**

Tel: 416.642.4836

Email: [asherman@richter.ca](mailto:asherman@richter.ca)

*Proposal Trustee*

**AND TO: CASSELS BROCK & BLACKWELL LLP**

Scotia Plaza  
2100 - 40 King Street West  
Toronto, ON M5H 3C2

**Jane Dietrich**

Tel: 416.860.5223

Fax: 416.640.3144

Email: [jdietrich@casselsbrock.com](mailto:jdietrich@casselsbrock.com)

**Larry Ellis**

Tel: 416.869.5406

Fax: 416.640.3004

Email: [lellis@casselsbrock.com](mailto:lellis@casselsbrock.com)

*Lawyers for Richter Advisory Group Inc.*

**AND TO: GOWLING LAFLEUR HENDERSON LLP**

First Canadian Place  
1600 – 100 King Street West  
Toronto, ON M5X 1G5

**David F.W. Cohen**

Tel: 416.369.6667  
Fax: 416.862.7661  
Email: [david.cohen@gowlings.com](mailto:david.cohen@gowlings.com)

**Alex L. MacFarlane**

Tel: 416.369.4631  
Fax: 416.862.7661  
Email: [alex.macfarlane@gowlings.com](mailto:alex.macfarlane@gowlings.com)

*Lawyers for Bank of Montreal*

**AND TO: CHAITONS LLP**

5000 Yonge Street, 10<sup>th</sup> Floor  
Toronto, ON M2N 7E9

**Harvey Chaiton**

Tel: 416.218.1129  
Fax: 416.218.1849  
Email: [harvey@chaitons.com](mailto:harvey@chaitons.com)

*Lawyers for BDC Capital Inc.*

**AND TO: STIKEMAN ELLIOTT LLP**

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

**Elizabeth Pillon**

Tel: 416.869.5623  
Fax: 416.947.0866  
Email: [lpillon@stikeman.com](mailto:lpillon@stikeman.com)

**Maria Konyukhova**

Tel: 416.869.5230  
Fax: 416.947.0866  
Email: [mkonyukhova@stikeman.com](mailto:mkonyukhova@stikeman.com)

*Lawyers for Jones Investment Co. Inc., Nine West Development Corporation, JAG Footwear, Accessories and Retail Corporation and Nine West Canada LP*

**AND TO: STEPHEN APPLEBAUM INC.**  
 and **STEPHEN APPLEBAUM**  
 1446 Don Mills Rd, Suite 100  
 Toronto, ON M3B 3N6

Email: [sapplebaum@sherson.com](mailto:sapplebaum@sherson.com)

**AND TO: BORDEN LADNER GERVAIS LLP**  
 Scotia Plaza  
 40 King Street West  
 Toronto, ON M5H 3Y4

**Kyle B. Plunkett**  
 Tel: 416.367.6314  
 Fax: 416.361.2557  
 Email: [kplunkett@blg.com](mailto:kplunkett@blg.com)

*Lawyers for 93 Bloor Street West Inc.*

**AND TO: 93 BLOOR STREET WEST INC.**  
 204 - 8525 McCowan Road  
 Markham, ON L3P 5E5  
**B. Livingston**

*Landlord*

**AND TO: DEPARTMENT OF JUSTICE CANADA**  
 3400 – 130 King Street West  
 Toronto, ON M5X 1K6

**Diane H.A. Winters**  
 Tel: 416.973.3172  
 Fax: 416.973.0810  
 Email: [diane.winters@justice.gc.ca](mailto:diane.winters@justice.gc.ca)

*Lawyers for Canada Revenue Agency*

**AND TO: CANADA REVENUE AGENCY**  
 Montreal Tax Service Office  
 Customs Collections  
 1<sup>st</sup> Floor – 305, René Lévesque West  
 Montreal, Québec H2Z 1A6

**Caroline Landry, Collections Officer**  
 Fax: 855.496.9698

**AND TO: MINISTRY OF FINANCE (ONTARIO)**

Legal Services Branch  
777 Bay Street, 11<sup>th</sup> Floor  
Toronto, ON M5G 2C8

**Kevin O'Hara**

Tel: 416.327.8463  
Fax: 416.325.1460  
Email: [kevin.ohara@ontario.ca](mailto:kevin.ohara@ontario.ca)

**AND TO: MINISTRY OF FINANCE (BRITISH COLUMBIA)  
c/o MINISTRY OF JUSTICE – LEGAL SERVICES BRANCH**

1675 Douglas Street, 4<sup>th</sup> Floor  
Victoria, BC V8W 9J7

**David Hatter**

Email: [david.hatter@gov.bc.ca](mailto:david.hatter@gov.bc.ca)

**Heather Wellman**

Email: [heather.wellman@gov.bc.ca](mailto:heather.wellman@gov.bc.ca)

**AND TO: MINISTRY OF FINANCE (SASKATCHEWAN)  
PROVINCIAL SALES TAX BRANCH**

2350 Albert Street, Regina  
Saskatchewan, SK S4P 4A6

**Nancy Perras**

Tel: 306.787.7785  
Fax: 306.798.4035  
Email: [nancy.perras@gov.sk.ca](mailto:nancy.perras@gov.sk.ca)

**AND TO: MANITOBA DEPARTMENT OF FINANCE/RETAIL  
SALES TAX BRANCH**

Room 115, Norquay Building  
401 York Avenue  
Winnipeg, MB R3C 0P8

**AND TO: TORYS LLP**  
 79 Wellington St. W., 30th Floor  
 TD South Tower  
 Toronto , ON M5K 1N2

**Davis Bish**  
 Tel: 416.865.7353  
 Fax: 416.865.7380  
 Email: [dbish@torys.com](mailto:dbish@torys.com)

*Lawyers for The Cadillac Fairview Corporation*

**AND TO: MCLEAN & KERR LLP**  
 130 Adelaide Street West, Suite 2800  
 Toronto, ON M5H 3P5

**Walter Stephenson**  
 Tel: 416.369.6602  
 Fax: 416.366.8571  
 Email: [wstephenson@mcleankerr.com](mailto:wstephenson@mcleankerr.com)

*Lawyers for Ivanhoe Cambridge and for Morguard Investments Limited*

#### **PPSR/RPMRR REGISTRANTS**

**AND TO: DE LAGE LANDEN FINANCIAL SERVICES CANADA INC.**  
 3450 Superior Court, Unit 1  
 Oakville, ON L6L 0C4

**AND TO: G.N. JOHNSTON EQUIPMENT CO. LTD.**  
 5990 Avebury Road  
 Mississauga, ON L5R 3R2

**AND TO: MERCEDES-BENZ FINANCIAL SERVICES CANADA CORPORATION**  
 500 - 2680 Matheson Blvd. East  
 Mississauga, ON L4W 0A5

**AND TO: HAV-A-KAR LEASING LTD.**  
 4077 Chesswood Drive  
 Toronto, ON M3J 2R8

**AND TO: VW CREDIT CANADA INC.**  
 300 - 4865 Marc-Blain Street  
 St. Laurent, QC H4R 3B2

- AND TO: XEROX CANADA LTD.**  
 33 Bloor Street East, 3<sup>rd</sup> Floor  
 Toronto, ON M4W 3H1  
**Stephanie A.F. Grace**  
 Tel: 416.413.2805  
 Email: [Stephanie.Grace@xerox.com](mailto:Stephanie.Grace@xerox.com)
- AND TO: PLACE STE-FOY LIMITED PARTNERSHIP**  
 1001 Square Victoria, Bureau C-500  
 Montreal, QC H2Z 2B5
- AND TO: GESTIONS RIOCAN (BROSSARD) INC.**  
 700 – 130 King Street West  
 P.O. Box 378  
 Toronto, ON M5X 1E2
- AND TO: BB REAL ESTATE INVESTMENT TRUST**  
 2590 Boulevard Laurier, Bureau 600  
 Quebec, QC G1V 4M6
- AND TO: 9224-1892 QUEBEC INC.**  
 600 Boulevard de Rome, Bureau 410  
 Brossard, QC J4Y 0B6
- AND TO: 9171-9922 QUEBEC INC.**  
 75 Boulevard Rene-Levesque Ouest, 6e etage  
 Montreal, QC H2Z 1A4

#### **UNREPRESENTED LANDLORDS**

- AND TO: COMINAR REAL EST. INVEST TRUST**  
 1250 South Service Road  
 Mississauga, ON L5E 1V4  
**Louella Reguirre**  
 Tel: 905.278.3494 x 223  
 Email: [louella.reguirre@cominar.com](mailto:louella.reguirre@cominar.com)  
[haremarta.oliveira@cominar.com](mailto:haremarta.oliveira@cominar.com)
- AND TO: RIO CAN HOLDINGS (QUEBEC) INC.**  
 Centre Carnaval-LaSalle  
 500 - 7475 Newman Blvd.  
 LaSalle, QC H8N 1X3  
**Avi Abecassis**  
 Tel: 514.364.8730

- AND TO: ORLANDO CORPORATION**  
 6205-B Airport Road, 5<sup>th</sup> Floor  
 Mississauga, ON L4V 1E3  
**Andy Pham**  
 Tel: 905.677.5480 x223  
 Email: [ramdhani@orlandocorp.com](mailto:ramdhani@orlandocorp.com)
- AND TO: TAURUS COOKSTOWN PARTNERS LTD.**  
 3311 Simcoe Road 89  
 Cookstown, ON L0L 1L0  
**Diane Carpenter**  
 Tel: 705.458.1371
- AND TO: OP TRUST RETAIL INC.**  
 c/o Bentall Retail Services LLP  
 Westmount Shopping Centre, Administration Office  
 785 Wonderland Road South  
 London, ON N6K 1M6  
**Cindy Paul**  
 Tel: 519.641.0976 x240  
 Email: [cpaul@bentallkennedy.com](mailto:cpaul@bentallkennedy.com)
- AND TO: LUNDY'S LANE PORTFOLIO INC.**  
 Primaris Management Inc. ITF Canada One  
 c/o Dufferin Mall Management Office  
 2 – 900 Dufferin Street  
 Toronto, ON M6H 4A9  
**G. Turner**  
 Tel: 905.356.8989 x221  
 Email: [gturner@primarisreit.com](mailto:gturner@primarisreit.com)
- AND TO: SIMON PROPERTY GROUP INC.**  
 Halton Hills Center Partnership  
 C/O T46079  
 P.O. Box 46079, Stn A  
 Toronto, ON M5W 4K9  
 Tel: 317.262.7066  
 Email: [salesreports@simon.com](mailto:salesreports@simon.com)



- AND TO: RMI-ITF-TANGER OUTLETS OTTAWA**  
Tanger Outlets-Ottawa, Management Office  
400 - 8555 Campeau Drive  
Ottawa, ON K2T 0K5  
**Eric Topolnisky**  
Tel: 613.435.0850  
Email: [etopolnisky@riocan.com](mailto:etopolnisky@riocan.com)
- AND TO: Partnership**  
P.O. Box 15627, Station A  
Toronto, ON M5W 1C1  
**David Adam**  
Tel: 317.464.8929  
Email: [adavid@simon.com](mailto:adavid@simon.com)
- AND TO: GANZ REALTY LIMITED**  
5705 Steeles Avenue West  
Toronto, ON M9L 1S7  
**John T. Watson**  
Tel: 905.850.2383
- AND TO: 401 CHAMPAGNE DRIVE LIMITED**  
29 Old Colony Road  
Toronto, ON M2L 2J7  
**Lynn Mallais**  
Email: [lynn.highfashion@bellnet.ca](mailto:lynn.highfashion@bellnet.ca)
- AND TO: OXFORD IN TRUST FOR SQUARE ONE**  
Management Office  
100 City Centre Drive  
Mississauga, ON L5B 2C9  
**Jane Currie**  
Tel: 905.270.7771 x2235  
Email: [jcurrie@oxfordproperties.com](mailto:jcurrie@oxfordproperties.com)
- AND TO: YORKDALE SHOPPING CENTRE HOLDING**  
500 - 1 Yorkdale Road  
Toronto, ON M6A 3A1  
Tel: 416.256.5084  
Email: [yorkdale\\_sales@oxfordproperties.com](mailto:yorkdale_sales@oxfordproperties.com)

- AND TO: ORLANDO CORPORATION**  
 c/o Bayview Village  
 Administration Office  
 2901 Bayview Avenue  
 Toronto, ON M2K 1E6  
**Jennifer Miller**  
 Tel: 416.226.2003  
 Email: [millerj@orlandocorp.com](mailto:millerj@orlandocorp.com)
- AND TO: VIKING RIDEAU CORPORATION**  
 Mall Administration Office  
 300 - 50 Rideau Street  
 Ottawa, ON K1N 9J7  
 Tel: 613.236.6565  
 Email: [tina.galarneau@rideaucentre.net](mailto:tina.galarneau@rideaucentre.net)
- AND TO: 20 VIC MANAGEMENT INC.**  
 1550 Home Oil Tower  
 324 - 8<sup>th</sup> Avenue SW  
 Calgary, AB T2P 2Z2  
**Yolanda Garay**  
 Tel: 403.441.4911  
 Email: [vgaray@20vic.com](mailto:vgaray@20vic.com)
- AND TO: BROOKFIELD PROPERTIES (PI) INC.**  
 P.O. Box 57198  
 Postal Station A  
 Toronto, ON M5W 5M5  
**David Naidu, Manager, A/R**  
 Tel: 416.369.8273  
 Email: [david.naidu@brookfieldproperties.com](mailto:david.naidu@brookfieldproperties.com)
- AND TO: RMI-ITF-OAKVILLE PLACE**  
 Oakville Place  
 240 Leighland Avenue  
 Oakville, ON L6H 3H6  
**Catharine Fiorillo**  
 Tel: 416.369.1274  
 Email: [cfiorillo@riocan.com](mailto:cfiorillo@riocan.com)
- AND TO: JUNBAR HOLDINGS INC.**  
 8 Knollview Crescent  
 North York, ON M2K 2E1  
**Barbara Verman**  
 Tel: 416.223.6531

- AND TO: PARK ROYAL SHOPPING CENTRE HOLDINGS LTD.**  
 2202 Park Royal South  
 West Vancouver, BC V7T 2W4  
**Gwen Smith**  
 Email: [gsmith@parkroyal.ca](mailto:gsmith@parkroyal.ca)  
 Tel: 604.922.3211  
**Jennifer Phan**  
 Email: [jphan@parkroyal.ca](mailto:jphan@parkroyal.ca)
- AND TO: WEST EDMONTON MALL**  
 3000 - 8882 – 170 Street  
 Edmonton, AB T5T 4M3  
**Colleen Melchert**  
 Tel: 780.444.8100  
 Email: [wemsales@wem.ca](mailto:wemsales@wem.ca)
- AND TO: GROUPE SARA KO INC.**  
 220 - 1440 Ste-Catherine Ouest  
 Montreal, QC H3G 1R8  
**Martine Azoulay**  
 Tel: 514.393.8899  
 Email: [martine@sidev.com](mailto:martine@sidev.com)
- AND TO: OXFORD PROPERTIES GROUP**  
 Oxford ITF ECC West  
 2000 - 10025 – 102A Avenue  
 Edmonton, AB T5J 2Z2  
**Arlene Wheeler**  
 Tel: 780.426.8440  
 Email: [edmontoncitycentre@oxfordproperties.com](mailto:edmontoncitycentre@oxfordproperties.com)
- AND TO: OXFORD PROPERTY GROUP**  
 26 - 300 Borough Drive  
 Scarborough, ON M1P 4P5  
 Email: [stcsales@oxfordproperties.com](mailto:stcsales@oxfordproperties.com)
- AND TO: OXFORD PROPERTY GROUP**  
 Oxford ITF Royal Bank Plaza  
 200 Bay Street, Box 25  
 Toronto, ON M5J 2J1  
 Email: [ddorsett@oxfordproperties.com](mailto:ddorsett@oxfordproperties.com)
- AND TO: REISGEORGE MANAGEMENT LIMITED**  
 120 Eglinton Avenue East  
 Toronto, ON M4P 1E2

**AND TO: ATLANTIS REALTY SERVICES INC.**  
 895 Don Mills Road, Tower 1  
 Suite #110  
 Toronto, ON M3C 1W3

**UNREPRESENTED CONTRACTING PARTIES**

**AND TO: ABS INFORMATION SYSTEMS INC.**  
 307 Lesmill Road  
 North York, ON M3B 2V1

**AND TO: ADP CANADA CO.**  
 3250 Bloor Street West, 15<sup>th</sup> Floor  
 Toronto, ON M8X 2X9  
**Mirriam Bulmer**  
 Tel: 416.207.7995 x7  
 Email: [mirriam\\_bulmer@adp.com](mailto:mirriam_bulmer@adp.com)

**AND TO: EDI GATEWAY INC.**  
 8355 Bougainville  
 Montreal, QC H4P 2G5

**AND TO: MTS INC.**  
 Box 7500  
 Winnipeg, MB R3C 3B5

**AND TO: GXS CANADA INC.**  
 500 - 2680 Skymark Avenue  
 Mississauga, ON L4W 5L6

**AND TO: MULTIDEV TECHNOLOGIES INC.**  
 1100 - 999 Boulevard de Maisonneuve Ouest  
 Montréal, QC H3A 3L4

**AND TO: MANULIFE FINANCIAL**  
 201 - 4 Lansing Square  
 Toronto, ON M2J 5A2  
 Email: [chris\\_gray@manulife.com](mailto:chris_gray@manulife.com)

**AND TO: ROGERS COMMUNICATION PARTNERSHIP**  
 P.O. Box 9100  
 Don Mills, ON

**AND TO: CANADA POST CORPORATION**  
**Jill Sourcie**, Credit Manager  
Email: [jill.soucic@canadapost.postescanada.ca](mailto:jill.soucic@canadapost.postescanada.ca)

**AND TO: NORTHWEST ATLANTIC**  
864 York Mills Road  
Toronto, ON M3B 1Y4

**AND TO: PURE ENERGY**  
27 - 172 Bullock Drive  
Markham, ON L3P 7M9

**AND TO: MONERIS**  
3300 Bloor Street West  
Toronto, ON M8X 2X2  
**Chris Smith**  
Email: [chris.smith@moneris.com](mailto:chris.smith@moneris.com)

**AND TO: STINGRAY 360 COMMERCIAL SOLUTIONS INC.**  
730 Wellington  
Montreal, QC H3C 1T4

**AND TO: SMARTPRINT INC.**  
44 Upjohn Road  
Toronto, ON M3B 2W1

**AND TO: LJP INTERNATIONAL LLC**  
104 - 105 Fieldcrest Avenue  
Edison, NJ  
Email: [lpaparo@lipintl.com](mailto:lpaparo@lipintl.com)

**AND TO: THE SILVERSTEIN COMPANY**  
260 West 39<sup>th</sup> Street  
New York, NY 10018-4410  
USA

**AND TO: WILL-RICH SHOE COMPANY LLC**  
24610 Industrial Blvd.  
Hayward, CA 94545-2234  
USA

**AND TO: JVB INTERNATIONAL, INC.**  
P.O. Box 146 Road Town  
Tortolia  
Tel: 212.764.6441  
Email: [francesca@jvb-inc.com](mailto:francesca@jvb-inc.com)

**AND TO: HUDSON BAY COMPANY**  
8925 Torbram Road  
Brampton, ON L6T 4G1  
**Jennifer Lindsay**  
Email: [jennifer.lindsay@hbc.com](mailto:jennifer.lindsay@hbc.com)

**AND TO: TOWN SHOES**  
44 Kodiak Crescent  
Toronto, ON M3J 3G5  
Email: [cabela@townshoes.com](mailto:cabela@townshoes.com)

# INDEX

***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**  
**IN BANKRUPTCY AND INSOLVENCY**

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF  
SHERSON GROUP INC.**

**INDEX**

**Tab    Document**

1.    Notice of Motion returnable August 20, 2015
  - (a)    Draft Approval and Vesting Order
  - (b)    Draft Assignment Order
2.    Blackline of Draft Approval and Vesting Order to Model Order
3.    Affidavit of Stephen Applebaum sworn August 13, 2015
  - Exhibits to Affidavit
  - (a)    June 30 Order
  - (b)    Chapter 15 Orders
  - (c)    Notice of Receivership Motion
  - (d)    Redacted Sale Agreement



- (e) July 28 Order
- (f) August 6 Endorsement
- (g) August 12 Endorsement

# Tab 1

District of Ontario  
Division No. 9 - Toronto  
Court File No: 31-2010608  
Estate File No. 31-2010608

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)  
IN BANKRUPTCY AND INSOLVENCY**

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF  
SHERSON GROUP INC.**

**NOTICE OF MOTION**

Sherson Group Inc. (“**Sherson**”) will make a motion to a judge presiding over the Commercial List on Thursday, August 20, 2015 at 10 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.

**1. THE MOTION IS FOR:**

- (a) an Order, substantially in the form attached hereto as **Schedule “A” (the “Approval and Vesting Order”)**, among other things:
  - (i) approving the First Report to the Court of Richter Advisory Group Inc. (“**Richter**”), in its capacity as proposal trustee (the “**Proposal Trustee**”) in Sherson’s *Bankruptcy and Insolvency Act* (the “**BIA**”) proposal proceedings (the “**Proposal Proceedings**”), dated July 27, 2015 (the “**First Report**”), and the Proposal Trustee’s activities set out therein;

- (ii) approving the Proposal Trustee's Second Report to the Court, to be filed (the "**Second Report**"), and the Proposal Trustee's activities set out therein;
  - (iii) approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale (the "**Sale Agreement**") between Sherson and Nine West Canada LP by its general partner, Jones Canada, Inc. on behalf of Nine West Canada LP (the "**Purchaser**"), dated August 6, 2015 and appended in redacted form to the Second Report and filed in unredacted form as a confidential appendix to the Second Report (together with the other confidential appendices to the Second Report, if any, the "**Confidential Appendices**");
  - (iv) vesting in the Purchaser Sherson's right, title and interest in and to the assets described in the Sale Agreement (the "**Purchased Assets**");
  - (v) approving payment of the balance of the purchase price for the Purchased Assets (the "**Purchase Price**") to the Proposal Trustee, the Bank of Montreal ("**BMO**"), BDC Capital Inc. ("**BDCC**") and Stephen Applebaum Inc. ("**SAI**") in accordance with the Sale Agreement;
  - (vi) sealing the Confidential Appendices; and
  - (vii) extending the time for Sherson to make a proposal to its creditors up to and including October 4, 2015; and
- (b) an Order, substantially in the form attached hereto as **Schedule "B"** (the "**Assignment Order**"), assigning to the Purchaser, the rights and obligations of Sherson under such contracts (collectively, the "**Assumed Contracts**") or leases (collectively, the "**Assumed Leases**") that the Purchaser may elect to assume in accordance with the Sale Agreement, including the lease agreements related to the

Stores, the Distribution Centre and the Head Office (as such terms are defined below),

and such further and other relief as counsel may advise and this Court may permit.

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

- (a) For almost 30 years, Sherson has been the Canadian wholesale and retail licensee of the “Nine West” brand, operating under a license (the “**License**”) from its U.S. licensors, Jones Investment Co. Inc., Nine West Development Corporation and JAG Footwear, Accessories and Retail Corporation (collectively, the “**Nine West Group**”);
- (b) Sherson operates 43 retail stores and 2 factory outlet stores in six Provinces (collectively, the “**Stores**”), operates the ninewest.ca e-commerce site and acts as wholesaler to all other Canadian retailers carrying Nine West products;
- (c) all the Store are located in leased premises, as are Sherson’s Toronto distribution centre (the “**Distribution Centre**”) and head office (the “**Head Office**”);
- (d) Nine West Group supplies the large majority of Sherson’s merchandise, under the Nine West brand and others, and Sherson would have essentially no business without the License;
- (e) Sherson has approximately 549 employees, all non-unionized;
- (f) Sherson has approximately 16 landlords with the two largest, Cadillac Fairview and Ivanhoe Cambridge, accounting for just over half of all its leases;
- (g) Sherson’s secured lenders, in descending priority, are:
  - (i) Bank of Montreal (“**BMO**”), owed approximately \$2,200,000 under an asset-based revolving operating line and a term facility;

- (ii) BDC Capital Inc. (“**BDC**”), owed approximately \$3,600,000 under a term facility; and
  - (iii) Sherson’s parent, Stephen Applebaum Inc. (“**SAI**”), and its principal, Stephen Applebaum, owed approximately \$3,400,000 and \$400,000, respectively;
- (h) the Nine West Group is by far Sherson’s largest unsecured creditor, owed approximately \$19,000,000 of Sherson’s approximate total \$21,000,000 unsecured debt;
- (i) the debt to Nine West Group arose as a result of an unsuccessful pricing and volume sales strategy paired with unsustainable revised License terms;
- (j) due to its outstanding debt to Nine West Group, Sherson is in default of the License, which default could, in the absence of the stays in the Proposal Proceedings and the Chapter 15 Proceedings (as defined below), give the Nine West Group the right to terminate the License;
- (k) Because of the arrears owing, Nine West Group would only ship merchandise to Sherson on a C.O.D. basis;
- (l) Sherson also suffered due to the sudden and sustained drop in value of the Canadian dollar in the Fall of 2014;
- (m) in response to Sherson’s financial difficulties, BMO implemented markedly increased availability reserves on Sherson’s operating facility;
- (n) due to its decreased operating credit and the absence of payment terms from Nine West Group, Sherson did not have sufficient funds to purchase the Fall inventory needed to maintain the business in the near term;

- (o) on June 29, 2015 (the “**Filing Date**”), Sherson filed a Notice of Intention to Make a Proposal (the “**NOI**”) pursuant to the BIA;
- (p) by order of the Honourable Justice Newbould made June 30, 2015, the Proposal Trustee was authorized to act as the Foreign Representative of Sherson for the purpose of commencing proceedings under Chapter 15 of the *United States Bankruptcy Code* to recognize and enforce the Proposal Proceedings in the U.S. (the “**Chapter 15 Proceeding**”);
- (q) Judge Lane of the United States Bankruptcy Court, Southern District of New York, made a provisional order in the Chapter 15 Proceeding on July 8, 2015 and then a recognition order on July 27, 2015;
- (r) Since the Filing Date, Sherson has taken a number of steps to rationalize its business, including reducing employee numbers, disclaiming leases and proceeding with previously-planned store closures;
- (s) negotiations were held with Nine West Group for the finance of the Fall inventory, but no arrangement could be reached that was acceptable to each of BMO, BDCC and the Proposal Trustee;
- (t) in the absence of Fall inventory, the secured creditors face rapid deterioration in their collateral coverage, to the point where SAI would soon be out of the money and BDCC would be facing a shortfall;
- (u) in the absence of Fall inventory, Sherson’s business itself would be greatly damaged as it would lose its wholesale customers and have no seasonal product for its own stores;
- (v) Sherson’s assets therefore have to be quickly sold either on a going concern or liquidation basis;

- (w) because Sherson's business is wholly dependent on the License, there can be no going-concern purchaser other than Nine West Group;
- (x) the only chance to save the business as a going concern is therefore to sell to Nine West Group;
- (y) the Proposal Trustee has conducted an analysis, based, in part, on an appraisal obtained by BMO, showing how the Purchase Price compares favourably to what would be obtained in a liquidation;
- (z) SAI and Stephen Applebaum have consented to the Transaction despite the fact that the net proceeds of the Transaction will not be sufficient to repay the secured indebtedness owing to them, and despite the fact that half the payment to SAI under the Sale Agreement will only be made 90 days post-closing (the "**Designation Deadline**"), and then only subject to possible negative adjustments;
- (aa) the Transaction also has the obvious advantage over a liquidation of preserving the business as a going concern for the benefit of all other stakeholders;
- (bb) as discussed further below, the Purchased Assets include the ability of the Purchaser to assume Sherson's leases (subject to landlord consent or the making of the Assignment Order) and contracts.
- (cc) the Purchaser is continuing its review of the leases and contracts to be assigned and has until the Designation Deadline to do so;
- (dd) the Purchaser will also be extending offers to an unspecified number of Sherson employees, and is continuing its review of the offers to be extended, and has until the Designation Deadline to do so;
- (ee) the Purchaser will also be ready to continue supply to Sherson's wholesale customers with little interruption;



- (ff) it also goes without saying that the Transaction has the support of Sherson's largest unsecured creditor, the Nine West Group, holding approximately 90% of Sherson's unsecured debt;
- (gg) the Transaction is reasonable in the circumstances, the Purchase Price is reasonable and fair, given the anticipated market value of Sherson's assets;
- (hh) Sherson's present and former employees will be paid all amounts to which they would be entitled under paragraph 136(1)(d) of the BIA;
- (ii) Sherson has no pension plan;
- (jj) the Proposal Trustee has approved the analysis and logic underlying the choice of the Transaction to the exclusion of a marketing process to liquidators;
- (kk) the Proposal Trustee is expected to file the Second Report stating, among other things, that, in its opinion, the Transaction will be more beneficial to the creditors than a sale or disposition under a bankruptcy;
- (ll) with regard to the payment of the bulk of the balance of the Purchase Price to BMO, BDCC and SAI, the Proposal Trustee has obtained independent legal opinions on the security held by these parties;
- (mm) under the terms of the Sale Agreement, the Purchaser has until the Designation Deadline to designate, by notice to Sherson, any contracts or leases it wishes to assume and take assignment of, and, upon receipt of such notice, Sherson will cooperate with the Purchaser to obtain any required consents, approval and waivers;
- (nn) given the timing of Closing, approvals or waivers to the assignment of the Assumed Contracts may not be attainable, and so the Sale Agreement requires Sherson, as a condition of Closing, to obtain an Order requiring assignment of the Assumed Contracts;

- (oo) during the period from the date of Closing (the “**Closing Date**”) until the earliest to occur of:
  - (i) the date on which a contract or lease becomes an Assigned Contract or Assigned Lease, pursuant to a consent or the Assignment Order;
  - (ii) the date the Purchaser has delivered notice to the Proposal Trustee stipulating the applicable lease or contract is rejected and will not be or become an Assigned Contract or Assigned Lease and the applicable 30 day notice period for the disclaimer of such contract or lease has expired;
  - (iii) the date the applicable contract or lease is terminated by Sherson or the counterparty thereto, or in accordance with its terms; and
  - (iv) if the Purchaser has not designated such contract or lease on or before the Designation Deadline, the Designation Deadline,

(the “**Interim Period**”), Sherson will continue to operate from the leased premises and provide the benefit of such contract or lease, and provide other services through to the Purchaser while it completes its review of documentation;
- (pp) During the Interim Period Sherson and the Purchaser therefore require the stay of proceedings in the Proposal Proceedings (under section 69 of the BIA) to continue to apply during this time period to ensure implementation of the Sale Agreement;
- (qq) the Confidential Appendices contain commercially sensitive information which could have a negative impact on the marketing of Sherson’s assets should the Transaction fail to close and thus need to sealed pending closing of the Transaction;
- (rr) by Order dated July 28, 2015, the Honourable Justice Hailey extended the time for Sherson to file a proposal up to and including August 6, 2015 to give Sherson

and the Nine West Group (though its designee, the Purchaser) opportunity to reach the Sale Agreement;

- (ss) BDCC then brought a motion for the appointment of a receiver (the “**Receivership Motion**”) in the fear that the Sale Agreement would not be reached and a liquidation would be required;
- (tt) when the Sale Agreement was executed, the Honourable Justice Penny extended, by endorsement dated August 6, 2015 (the “**August 6 Endorsement**”), the time for Sherson to file a proposal up to and including August 18, 2015, to give time for this motion to be brought;
- (uu) the August 6 Endorsement also adjourned the hearing of the Receivership Motion until August 18, 2015;
- (vv) by endorsement dated August 13, 2015 (the “**August 13 Endorsement**”), the Honourable Justice Penny extended the time for Sherson to file a proposal up to and including August 20, 2015, to allow for more fulsome service of this Motion of Motion by moving the return date to August 20;
- (ww) the August 13 Endorsement also adjourned the hearing of the Receivership Motion until August 20, 2015;
- (xx) granting an extension of time to file a proposal up to and including October 4, 2015 will give Sherson time to close the Transaction, and, if it chooses, permit it to begin to develop a viable proposal to its creditors;
- (yy) since the payment, if any, of the final portion of the Purchase Price will not occur until 90 days post-closing, Sherson will require a further extension of time to file a proposal;
- (zz) Sherson has been acting and continues to act in good faith and with due diligence in the Proposal Proceedings;

(ddd) 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

(eee) such further and other grounds as counsel may advise and this Court may permit.

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

(a) the Applebaum Affidavit;

(b) the Second Report of the Proposal Trustee; and

(c) such further and other material as counsel may submit and this Court may permit.

Date: August 13, 2015

**AIRD & BERLIS LLP**

Brookfield Place

181 Bay Street, Suite 1800

Toronto, ON M5J 2T9

**Sam Babe (LSUC # 49498B)**

Tel: (416) 865-7718

Fax: (416) 863-1515

E-mail: [sbabe@airdberlis.com](mailto:sbabe@airdberlis.com)

*Lawyers for Sherson Group Inc.*

**TO SERVICE LIST ATTACHED**

## SERVICE LIST

**TO: AIRD & BERLIS LLP**

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

**Sam Babe** (LSUC # 49498B)

Tel: 416.865.7718

Fax: 416.863.1515

Email: [sbabe@airdberlis.com](mailto:sbabe@airdberlis.com)

*Lawyers for Sherson Group Inc.*

**AND TO: RICHTER ADVISORY GROUP INC.**

3320 – 181 Bay Street  
Toronto, ON M5J 2T3

**Gilles Benchaya**

Tel: 514.934.3496

Email: [GBenchaya@richterconsulting.com](mailto:GBenchaya@richterconsulting.com)

**Adam Sherman**

Tel: 416.642.4836

Email: [asherman@richter.ca](mailto:asherman@richter.ca)

*Proposal Trustee*

**AND TO: CASSELS BROCK & BLACKWELL LLP**

Scotia Plaza  
2100 - 40 King Street West  
Toronto, ON M5H 3C2

**Jane Dietrich**

Tel: 416.860.5223

Fax: 416.640.3144

Email: [jdietrich@casselsbrock.com](mailto:jdietrich@casselsbrock.com)

**Larry Ellis**

Tel: 416.869.5406

Fax: 416.640.3004

Email: [lellis@casselsbrock.com](mailto:lellis@casselsbrock.com)

*Lawyers for Richter Advisory Group Inc.*

**AND TO: GOWLING LAFLEUR HENDERSON LLP**

First Canadian Place  
1600 – 100 King Street West  
Toronto, ON M5X 1G5

**David F.W. Cohen**

Tel: 416.369.6667  
Fax: 416.862.7661  
Email: [david.cohen@gowlings.com](mailto:david.cohen@gowlings.com)

**Alex L. MacFarlane**

Tel: 416.369.4631  
Fax: 416.862.7661  
Email: [alex.macfarlane@gowlings.com](mailto:alex.macfarlane@gowlings.com)

*Lawyers for Bank of Montreal*

**AND TO: CHAITONS LLP**

5000 Yonge Street, 10<sup>th</sup> Floor  
Toronto, ON M2N 7E9

**Harvey Chaiton**

Tel: 416.218.1129  
Fax: 416.218.1849  
Email: [harvey@chaitons.com](mailto:harvey@chaitons.com)

*Lawyers for BDC Capital Inc.*

**AND TO: STIKEMAN ELLIOTT LLP**

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

**Elizabeth Pillon**

Tel: 416.869.5623  
Fax: 416.947.0866  
Email: [lpillon@stikeman.com](mailto:lpillon@stikeman.com)

**Maria Konyukhova**

Tel: 416.869.5230  
Fax: 416.947.0866  
Email: [mkonyukhova@stikeman.com](mailto:mkonyukhova@stikeman.com)

*Lawyers for Jones Investment Co. Inc., Nine West Development Corporation, JAG Footwear, Accessories and Retail Corporation and Nine West Canada LP*

**AND TO: STEPHEN APPLEBAUM INC.**  
 and **STEPHEN APPLEBAUM**  
 1446 Don Mills Rd, Suite 100  
 Toronto, ON M3B 3N6

Email: [sapplebaum@sherson.com](mailto:sapplebaum@sherson.com)

**AND TO: BORDEN LADNER GERVAIS LLP**  
 Scotia Plaza  
 40 King Street West  
 Toronto, ON M5H 3Y4

**Kyle B. Plunkett**  
 Tel: 416.367.6314  
 Fax: 416.361.2557  
 Email: [kplunkett@blg.com](mailto:kplunkett@blg.com)

*Lawyers for 93 Bloor Street West Inc.*

**AND TO: 93 BLOOR STREET WEST INC.**  
 204 - 8525 McCowan Road  
 Markham, ON L3P 5E5  
**B. Livingston**

*Landlord*

**AND TO: DEPARTMENT OF JUSTICE CANADA**  
 3400 – 130 King Street West  
 Toronto, ON M5X 1K6

**Diane H.A. Winters**  
 Tel: 416.973.3172  
 Fax: 416.973.0810  
 Email: [diane.winters@justice.gc.ca](mailto:diane.winters@justice.gc.ca)

*Lawyers for Canada Revenue Agency*

**AND TO: CANADA REVENUE AGENCY**  
 Montreal Tax Service Office  
 Customs Collections  
 1<sup>st</sup> Floor – 305, René Lévesque West  
 Montreal, Québec H2Z 1A6

**Caroline Landry, Collections Officer**  
 Fax: 855.496.9698

**AND TO: MINISTRY OF FINANCE (ONTARIO)**

Legal Services Branch  
777 Bay Street, 11<sup>th</sup> Floor  
Toronto, ON M5G 2C8

**Kevin O'Hara**

Tel: 416.327.8463  
Fax: 416.325.1460  
Email: [kevin.ohara@ontario.ca](mailto:kevin.ohara@ontario.ca)

**AND TO: MINISTRY OF FINANCE (BRITISH COLUMBIA)**

c/o **MINISTRY OF JUSTICE – LEGAL SERVICES BRANCH**  
1675 Douglas Street, 4<sup>th</sup> Floor  
Victoria, BC V8W 9J7

**David Hatter**

Email: [david.hatter@gov.bc.ca](mailto:david.hatter@gov.bc.ca)

**Heather Wellman**

Email: [heather.wellman@gov.bc.ca](mailto:heather.wellman@gov.bc.ca)

**AND TO: MINISTRY OF FINANCE (SASKATCHEWAN)  
PROVINCIAL SALES TAX BRANCH**

2350 Albert Street, Regina  
Saskatchewan, SK S4P 4A6

**Nancy Perras**

Tel: 306.787.7785  
Fax: 306.798.4035  
Email: [nancy.perras@gov.sk.ca](mailto:nancy.perras@gov.sk.ca)

**AND TO: MANITOBA DEPARTMENT OF FINANCE/RETAIL  
SALES TAX BRANCH**

Room 115, Norquay Building  
401 York Avenue  
Winnipeg, MB R3C 0P8



**AND TO: TORYS LLP**  
 79 Wellington St. W., 30th Floor  
 TD South Tower  
 Toronto , ON M5K 1N2

**Davis Bish**  
 Tel: 416.865.7353  
 Fax: 416.865.7380  
 Email: [dbish@torys.com](mailto:dbish@torys.com)

*Lawyers for The Cadillac Fairview Corporation*

**AND TO: MCLEAN & KERR LLP**  
 130 Adelaide Street West, Suite 2800  
 Toronto, ON M5H 3P5

**Walter Stephenson**  
 Tel: 416.369.6602  
 Fax: 416.366.8571  
 Email: [wstephenson@mcleankerr.com](mailto:wstephenson@mcleankerr.com)

*Lawyers for Ivanhoe Cambridge and for Morguard Investments Limited*

#### **PPSR/RPMRR REGISTRANTS**

**AND TO: DE LAGE LANDEN FINANCIAL SERVICES CANADA INC.**  
 3450 Superior Court, Unit 1  
 Oakville, ON L6L 0C4

**AND TO: G.N. JOHNSTON EQUIPMENT CO. LTD.**  
 5990 Avebury Road  
 Mississauga, ON L5R 3R2

**AND TO: MERCEDES-BENZ FINANCIAL SERVICES CANADA CORPORATION**  
 500 - 2680 Matheson Blvd. East  
 Mississauga, ON L4W 0A5

**AND TO: HAV-A-KAR LEASING LTD.**  
 4077 Chesswood Drive  
 Toronto, ON M3J 2R8

**AND TO: VW CREDIT CANADA INC.**  
 300 - 4865 Marc-Blain Street  
 St. Laurent, QC H4R 3B2

- AND TO: XEROX CANADA LTD.**  
 33 Bloor Street East, 3<sup>rd</sup> Floor  
 Toronto, ON M4W 3H1  
**Stephanie A.F. Grace**  
 Tel: 416.413.2805  
 Email: [Stephanie.Grace@xerox.com](mailto:Stephanie.Grace@xerox.com)
- AND TO: PLACE STE-FOY LIMITED PARTNERSHIP**  
 1001 Square Victoria, Bureau C-500  
 Montreal, QC H2Z 2B5
- AND TO: GESTIONS RIOCAN (BROSSARD) INC.**  
 700 – 130 King Street West  
 P.O. Box 378  
 Toronto, ON M5X 1E2
- AND TO: BB REAL ESTATE INVESTMENT TRUST**  
 2590 Boulevard Laurier, Bureau 600  
 Quebec, QC G1V 4M6
- AND TO: 9224-1892 QUEBEC INC.**  
 600 Boulevard de Rome, Bureau 410  
 Brossard, QC J4Y 0B6
- AND TO: 9171-9922 QUEBEC INC.**  
 75 Boulevard Rene-Levesque Ouest, 6e etage  
 Montreal, QC H2Z 1A4

#### **UNREPRESENTED LANDLORDS**

- AND TO: COMINAR REAL EST. INVEST TRUST**  
 1250 South Service Road  
 Mississauga, ON L5E 1V4  
**Louella Reguirre**  
 Tel: 905.278.3494 x 223  
 Email: [louella.reguirre@cominar.com](mailto:louella.reguirre@cominar.com)  
[haremarta.oliveira@cominar.com](mailto:haremarta.oliveira@cominar.com)
- AND TO: RIO CAN HOLDINGS (QUEBEC) INC.**  
 Centre Carnaval-LaSalle  
 500 - 7475 Newman Blvd.  
 LaSalle, QC H8N 1X3  
**Avi Abecassis**  
 Tel: 514.364.8730

- AND TO: ORLANDO CORPORATION**  
 6205-B Airport Road, 5<sup>th</sup> Floor  
 Mississauga, ON L4V 1E3  
**Andy Pham**  
 Tel: 905.677.5480 x223  
 Email: [ramdhani@orlandocorp.com](mailto:ramdhani@orlandocorp.com)
- AND TO: TAURUS COOKSTOWN PARTNERS LTD.**  
 3311 Simcoe Road 89  
 Cookstown, ON L0L 1L0  
**Diane Carpenter**  
 Tel: 705.458.1371
- AND TO: OP TRUST RETAIL INC.**  
 c/o Bentall Retail Services LLP  
 Westmount Shopping Centre, Administration Office  
 785 Wonderland Road South  
 London, ON N6K 1M6  
**Cindy Paul**  
 Tel: 519.641.0976 x240  
 Email: [cpaul@bentallkenedy.com](mailto:cpaul@bentallkenedy.com)
- AND TO: LUNDY'S LANE PORTFOLIO INC.**  
 Primaris Management Inc. ITF Canada One  
 c/o Dufferin Mall Management Office  
 2 – 900 Dufferin Street  
 Toronto, ON M6H 4A9  
**G. Turner**  
 Tel: 905.356.8989 x221  
 Email: [gturner@primarisreit.com](mailto:gturner@primarisreit.com)
- AND TO: SIMON PROPERTY GROUP INC.**  
 Halton Hills Center Partnership  
 C/O T46079  
 P.O. Box 46079, Stn A  
 Toronto, ON M5W 4K9  
 Tel: 317.262.7066  
 Email: [salesreports@simon.com](mailto:salesreports@simon.com)

- AND TO: RMI-ITF-TANGER OUTLETS OTTAWA**  
 Tanger Outlets-Ottawa, Management Office  
 400 - 8555 Campeau Drive  
 Ottawa, ON K2T 0K5  
**Eric Topolnisky**  
 Tel: 613.435.0850  
 Email: [etopolnisky@riocan.com](mailto:etopolnisky@riocan.com)
- AND TO: Partnership**  
 P.O. Box 15627, Station A  
 Toronto, ON M5W 1C1  
**David Adam**  
 Tel: 317.464.8929  
 Email: [adavid@simon.com](mailto:adavid@simon.com)
- AND TO: GANZ REALTY LIMITED**  
 5705 Steeles Avenue West  
 Toronto, ON M9L 1S7  
**John T. Watson**  
 Tel: 905.850.2383
- AND TO: 401 CHAMPAGNE DRIVE LIMITED**  
 29 Old Colony Road  
 Toronto, ON M2L 2J7  
**Lynn Mallais**  
 Email: [lynn.highfashion@bellnet.ca](mailto:lynn.highfashion@bellnet.ca)
- AND TO: OXFORD IN TRUST FOR SQUARE ONE**  
 Management Office  
 100 City Centre Drive  
 Mississauga, ON L5B 2C9  
**Jane Currie**  
 Tel: 905.270.7771 x2235  
 Email: [jcurrie@oxfordproperties.com](mailto:jcurrie@oxfordproperties.com)
- AND TO: YORKDALE SHOPPING CENTRE HOLDING**  
 500 - 1 Yorkdale Road  
 Toronto, ON M6A 3A1  
 Tel: 416.256.5084  
 Email: [yorkdale\\_sales@oxfordproperties.com](mailto:yorkdale_sales@oxfordproperties.com)

**AND TO: ORLANDO CORPORATION**  
 c/o Bayview Village  
 Administration Office  
 2901 Bayview Avenue  
 Toronto, ON M2K 1E6  
**Jennifer Miller**  
 Tel: 416.226.2003  
 Email: [millerj@orlandocorp.com](mailto:millerj@orlandocorp.com)

**AND TO: VIKING RIDEAU CORPORATION**  
 Mall Administration Office  
 300 - 50 Rideau Street  
 Ottawa, ON K1N 9J7  
 Tel: 613.236.6565  
 Email: [tina.galarneau@rideaucentre.net](mailto:tina.galarneau@rideaucentre.net)

**AND TO: 20 VIC MANAGEMENT INC.**  
 1550 Home Oil Tower  
 324 - 8<sup>th</sup> Avenue SW  
 Calgary, AB T2P 2Z2  
**Yolanda Garay**  
 Tel: 403.441.4911  
 Email: [vgaray@20vic.com](mailto:vgaray@20vic.com)

**AND TO: BROOKFIELD PROPERTIES (PI) INC.**  
 P.O. Box 57198  
 Postal Station A  
 Toronto, ON M5W 5M5  
**David Naidu, Manager, A/R**  
 Tel: 416.369.8273  
 Email: [david.naidu@brookfieldproperties.com](mailto:david.naidu@brookfieldproperties.com)

**AND TO: RMI-ITF-OAKVILLE PLACE**  
 Oakville Place  
 240 Leighland Avenue  
 Oakville, ON L6H 3H6  
**Catharine Fiorillo**  
 Tel: 416.369.1274  
 Email: [cfiorillo@riocan.com](mailto:cfiorillo@riocan.com)

**AND TO: JUNBAR HOLDINGS INC.**  
 8 Knollview Crescent  
 North York, ON M2K 2E1  
**Barbara Verman**  
 Tel: 416.223.6531

**AND TO: PARK ROYAL SHOPPING CENTRE HOLDINGS LTD.**

2202 Park Royal South  
West Vancouver, BC V7T 2W4

**Gwen Smith**

Email: [gsmith@parkroyal.ca](mailto:gsmith@parkroyal.ca)

Tel: 604.922.3211

**Jennifer Phan**

Email: [jphan@parkroyal.ca](mailto:jphan@parkroyal.ca)

**AND TO: WEST EDMONTON MALL**

3000 - 8882 - 170 Street  
Edmonton, AB T5T 4M3

**Colleen Melchert**

Tel: 780.444.8100

Email: [wemsales@wem.ca](mailto:wemsales@wem.ca)

**AND TO: GROUPE SARA KO INC.**

220 - 1440 Ste-Catherine Ouest  
Montreal, QC H3G 1R8

**Martine Azoulay**

Tel: 514.393.8899

Email: [martine@sidev.com](mailto:martine@sidev.com)

**AND TO: OXFORD PROPERTIES GROUP**

Oxford ITF ECC West  
2000 - 10025 - 102A Avenue  
Edmonton, AB T5J 2Z2

**Arlene Wheeler**

Tel: 780.426.8440

Email: [edmontoncitycentre@oxfordproperties.com](mailto:edmontoncitycentre@oxfordproperties.com)

**AND TO: OXFORD PROPERTY GROUP**

26 - 300 Borough Drive  
Scarborough, ON M1P 4P5

Email: [stcsales@oxfordproperties.com](mailto:stcsales@oxfordproperties.com)

**AND TO: OXFORD PROPERTY GROUP**

Oxford ITF Royal Bank Plaza  
200 Bay Street, Box 25  
Toronto, ON M5J 2J1

Email: [ddorsett@oxfordproperties.com](mailto:ddorsett@oxfordproperties.com)

**AND TO: REISGEORGE MANAGEMENT LIMITED**

120 Eglinton Avenue East  
Toronto, ON M4P 1E2

**AND TO: ATLANTIS REALTY SERVICES INC.**  
 895 Don Mills Road, Tower 1  
 Suite #110  
 Toronto, ON M3C 1W3

**UNREPRESENTED CONTRACTING PARTIES**

**AND TO: ABS INFORMATION SYSTEMS INC.**  
 307 Lesmill Road  
 North York, ON M3B 2V1

**AND TO: ADP CANADA CO.**  
 3250 Bloor Street West, 15<sup>th</sup> Floor  
 Toronto, ON M8X 2X9  
**Mirriam Bulmer**  
 Tel: 416.207.7995 x7  
 Email: [mirriam\\_bulmer@adp.com](mailto:mirriam_bulmer@adp.com)

**AND TO: EDI GATEWAY INC.**  
 8355 Bougainville  
 Montreal, QC H4P 2G5

**AND TO: MTS INC.**  
 Box 7500  
 Winnipeg, MB R3C 3B5

**AND TO: GXS CANADA INC.**  
 500 - 2680 Skymark Avenue  
 Mississauga, ON L4W 5L6

**AND TO: MULTIDEV TECHNOLOGIES INC.**  
 1100 - 999 Boulevard de Maisonneuve Ouest  
 Montréal, QC H3A 3L4

**AND TO: MANULIFE FINANCIAL**  
 201 - 4 Lansing Square  
 Toronto, ON M2J 5A2  
 Email: [chris\\_gray@manulife.com](mailto:chris_gray@manulife.com)

**AND TO: ROGERS COMMUNICATION PARTNERSHIP**  
 P.O. Box 9100  
 Don Mills, ON

**AND TO: CANADA POST CORPORATION**  
**Jill Sourcie**, Credit Manager  
Email: [jill.soucie@canadapost.postescanada.ca](mailto:jill.soucie@canadapost.postescanada.ca)

**AND TO: NORTHWEST ATLANTIC**  
864 York Mills Road  
Toronto, ON M3B 1Y4

**AND TO: PURE ENERGY**  
27 - 172 Bullock Drive  
Markham, ON L3P 7M9

**AND TO: MONERIS**  
3300 Bloor Street West  
Toronto, ON M8X 2X2  
**Chris Smith**  
Email: [chris.smith@moneris.com](mailto:chris.smith@moneris.com)

**AND TO: STINGRAY 360 COMMERCIAL SOLUTIONS INC.**  
730 Wellington  
Montreal, QC H3C 1T4

**AND TO: SMARTPRINT INC.**  
44 Upjohn Road  
Toronto, ON M3B 2W1

**AND TO: LJP INTERNATIONAL LLC**  
104 - 105 Fieldcrest Avenue  
Edison, NJ  
Email: [lpaparo@lipintl.com](mailto:lpaparo@lipintl.com)

**AND TO: THE SILVERSTEIN COMPANY**  
260 West 39<sup>th</sup> Street  
New York, NY 10018-4410  
USA

**AND TO: WILL-RICH SHOE COMPANY LLC**  
24610 Industrial Blvd.  
Hayward, CA 94545-2234  
USA

**AND TO: JVB INTERNATIONAL, INC.**  
P.O. Box 146 Road Town  
Tortolia  
Tel: 212.764.6441  
Email: [francesca@jvb-inc.com](mailto:francesca@jvb-inc.com)



**AND TO: HUDSON BAY COMPANY**  
8925 Torbram Road  
Brampton, ON L6T 4G1  
**Jennifer Lindsay**  
Email: [jennifer.lindsay@hbc.com](mailto:jennifer.lindsay@hbc.com)

**AND TO: TOWN SHOES**  
44 Kodiak Crescent  
Toronto, ON M3J 3G5  
Email: [cabela@townshoes.com](mailto:cabela@townshoes.com)

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF SHERSON GROUP INC.**

District of Ontario  
Division No. 9 - Toronto  
Court File No: 31-2010608  
Estate File No. 31-2010608

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)  
(IN BANKRUPTCY AND INSOLVENCY)**

Proceedings commenced at Toronto

**NOTICE OF MOTION**

**AIRD & BERLIS LLP**  
Brookfield Place  
181 Bay Street, Suite 1800  
Toronto, ON M5J 2T9

**Sam Babe (LSUC # 49498B)**  
Tel: (416) 865-7718  
Fax: (416) 863-1515  
E-mail: [sbabe@airdberlis.com](mailto:sbabe@airdberlis.com)

*Lawyers for Sherson Group Inc.*

## **Tab 1(a)**

District of Ontario  
Division No. 9 - Toronto  
Court File No: 31-2010608  
Estate File No. 31-2010608

*ONTARIO*  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)  
IN BANKRUPTCY AND INSOLVENCY

THE HONOURABLE	)	THURSDAY, THE 20 <sup>TH</sup>
	)	DAY
JUSTICE	)	OF AUGUST, 2015

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF  
SHERSON GROUP INC.

**APPROVAL AND VESTING ORDER**

**THIS MOTION**, made by Sherson Group Inc. ("**Sherson**") for orders, among other things: (i) approving the First Report to the Court of Richter Advisory Group Inc., in its capacity as proposal trustee (the "**Proposal Trustee**") in Sherson's *Bankruptcy and Insolvency Act* proposal proceedings (the "**Proposal Proceedings**"), dated July 27, 2015 (the "**First Report**"), and the Proposal Trustee's activities set out therein; (ii) approving the Proposal Trustee's Second Report to the Court dated August 12, 2015 (the "**Second Report**"), and the Proposal Trustee's activities set out therein; (iii) approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale (the "**Sale Agreement**") between Sherson and Nine West Canada LP, by its general partner Jones Canada, Inc. on behalf of Nine West Canada LP, (the "**Purchaser**") dated August 6, 2015 and appended in redacted form to the Second Report and filed in unredacted form as confidential Appendix "<\*>" to the Second Report (together with Confidential Appendix "<\*>" to the Report, the "**Confidential Appendices**"); (iv) vesting in the Purchaser Sherson's right, title and interest in and to the assets described in the Sale Agreement (the "**Purchased Assets**"); (v) approving payment of the balance of the purchase price for the Purchased Assets (the "**Purchase Price**") to the Proposal Trustee, the Bank of Montreal

(“**BMO**”), BDC Capital Inc. (“**BDCC**”) and Stephen Applebaum Inc. (“**SAI**”) in accordance with the Sale Agreement; (v) assigning to the Purchaser, the rights and obligations of Sherson under such contracts (collectively, the “**Assumed Contracts**”) and leases (collectively, the “**Assumed Leases**”) that the Purchaser may elect to assume in accordance with the Sale Agreement; (vi) sealing the Confidential Appendices; and (vii) extending the time for Sherson to make a proposal to its creditors up to and including October 4, 2015, was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Second Report and the Affidavit of Stephen Applebaum sworn August 12, 2015 (the “**Applebaum Affidavit**”) and on hearing the submissions of counsel for the Sherson, the Proposal Trustee, the Purchaser, BMO, BDCC, \_\_\_\_\_, and no one appearing for any other person on the service list, although properly served as appears from the affidavit of <\*> sworn August <\*>, 2015 filed:

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 the First Report and the Second Report be and are hereby approved and the activities of the Proposal Trustee described therein be and are hereby approved;
3. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Sale Agreement by Sherson is hereby authorized and approved, with such minor amendments as Sherson and the Purchaser may, with the Proposal Trustee’s consent, deem necessary or desirable. Sherson is hereby authorized and directed to take, with the Proposal Trustee’s consent, such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.
4. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Proposal Trustee’s certificate to the Purchaser substantially in the form attached as Schedule A

hereto (the “**Proposal Trustee’s Certificate**”), all of Sherson’s right, title and interest in and to the Purchased Assets described in the Sale Agreement shall vest absolutely in the Purchaser, or such party as designated by the Purchaser, free and clear of and from any means any mortgage, charge, pledge, hypothec, security interest, assignment, lien (statutory or otherwise), easement, license, right of first refusal or first offer, title retention agreement or arrangement, conditional sale, deemed or statutory trust, restrictive covenant, execution, levies, or other financial or monetary claims or encumbrances of any nature (whether at law or equity), and any contract, option, right or privilege (whether by law, contract or otherwise) capable of becoming any of the foregoing, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the “**Claims**”) including, without limiting the generality of the foregoing, all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal or moveable property registry system, (all of which are collectively referred to as the “**Encumbrances**”, which term shall not include the security or ownership interests, if any, registered by the registrations listed on **Error! Reference source not found.** hereto), conditional on the underlying assets related thereto being Assigned Contracts as defined the Sale Agreement, and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets and the Purchaser.

5. **THIS COURT ORDERS** that following the date of this Order and until the Designation Deadline (as defined in the Sale Agreement) the Purchaser may designate any agreement to which Sherson is a party to be assigned as an Assigned Contract pursuant to the Sale Agreement such that Sherson’s right, title and interest in and to such Assigned Contract becomes a Purchased Asset under the Sale Agreement. In respect of such Assigned Contracts, which do not require the counterparties’ consent, the vesting of such Assigned Contract(s) as a Purchased Asset in the Purchaser, in accordance with the terms of this Order, shall be completed by the Purchaser filing with the Proposal Trustee and serving, by courier or electronic notice to their counsel, if applicable, on the counterparties to the subject agreements a Notice of Assumption and Assignment (the “**Notice**”). In respect of agreements requiring the consent of the counterparty, the terms of the Assignment Order

granted in these proceedings on August 20, 2015 (the “**Assignment Order**”) will determine the timing of the proposed assignment. At the conclusion of the Designation Period (as defined in the Sale Agreement), the Proposal Trustee shall file with the Court a supplementary Proposal Trustee’s Certificate, in substantially the form scheduled to the Assignment Order, identifying all agreements vested in the Purchaser pursuant to this paragraph 5.

6. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Proposal Trustee’s Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.
7. **THIS COURT ORDERS AND DIRECTS** the Proposal Trustee to file with the Court a copy of the Proposal Trustee’s Certificate, forthwith after delivery thereof.
8. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, Sherson and the Proposal Trustee are authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Sherson’s records pertaining to the its past and current employees. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by Sherson and/or the Proposal Trustee.

9. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of Sherson and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made or deemed to be made in respect of Sherson;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of Sherson and shall not be void or voidable by creditors of Sherson, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

10. **THIS COURT ORDERS AND DECLARES** that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).

11. **THIS COURT ORDERS** that Sherson and the Purchaser are deemed to have obtained clearance certificates as required under the *Tax Administration and Miscellaneous Taxes Act* (Manitoba), the *Revenue and Financial Services Act* (Saskatchewan), and the *Provincial Sales Tax Act* (BC), and the Purchaser shall not be liable for any taxes or penalties based on or in respect of any of the Sherson's unpaid taxes.

12. **THIS COURT ORDERS AND DECLARES** that the payments of the balance of the Purchase Price due on closing of the Transaction ("**Closing**") or thereafter, under the direction of Sherson, to BMO, BDCC, the Proposal Trustee and SAI, in accordance with and in the amounts specified in subsection 5.1(2) and section 5.2 of the Sale Agreement and, as applicable, in accordance with the Payout Letters, as that terms is defined in the Applebaum Affidavit, are hereby approved, and the Purchaser is hereby authorized to



make the same and Sherson is hereby ordered and directed to execute the acknowledgment and release forming part of each Payout Letter, in favour of BMO or BDCC, as the case may be.

13. **THIS COURT DIRECTS** that on or before the Designation Deadline, or such earlier date as permitted pursuant to the Sale Agreement, for the purposes of implementing the Sale Agreement and its obligations thereunder, Sherson shall be entitled to remain in possession of the Leased Premises (as such term is defined in the Sale Agreement) and to avail itself of any and all services related to the Leased Premises, including, but not limited to, all occupancy rights, utilities, water, cleaning services, garbage removal, in each case to the extent required under the applicable lease; and take any and all actions as may be necessary or desirable to operate the Leased Premises and to otherwise implement the Sale Agreement, free of any interference from any entity or person, subject to compliance with this Order and the Sale Agreement.
14. **THIS COURT ORDERS** that all inventory sold from the Leased Premises and all proceeds therefrom shall be the sole property of the Purchaser and constitute part of the Purchased Assets for all purposes, including under the Sale Agreement, and shall be sold free and clear of any interest which any person may assert against such inventory or proceeds, including, without limitation, any landlord distraint remedies.
15. **THIS COURT ORDERS** that until the earlier of further Order of this Court or the filing of the Proposal Trustee's Certificate, the Confidential Appendices to the Report shall be sealed, kept confidential and not form part of the public record, but rather shall be placed, separate and apart from all other contents of the Court file, in a sealed envelope attached to a notice that sets out the title of these proceedings and a statement that the contents are subject to a sealing order.
16. **THIS COURT ORDERS** that the time for the filing of a proposal by Sherson is hereby extended in accordance with section 50.4(9) of the BIA up to and including October 4, 2015.

17. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist Sherson, 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 provide such assistance to Sherson 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 Sherson and the Proposal Trustee and their respective agents in carrying out the terms of this Order.
  18. **THIS COURT ORDERS** that each of Sherson and the Proposal Trustee be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, including, without limitation, the United States Bankruptcy Court, Southern District of New York, in the proceedings initiated by the Proposal Trustee (in its capacity as Foreign Representative of Sherson in the Proposal Proceedings) under Chapter 15 of the *United States Bankruptcy Code*, 11 U.S.C. §§ 101-1330 (Case No. 15-11765-SHL), for the recognition of this Order and for assistance in carrying out the terms of this Order, including the enforcement of any of the Charges established hereby.
-

**SCHEDULE A  
FORM OF PROPOSAL TRUSTEE'S CERTIFICATE**

District of Ontario  
Division No. 9 - Toronto  
Court File No: 31-2010608  
Estate File No. 31-2010608

*ONTARIO*  
**SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)  
IN BANKRUPTCY AND INSOLVENCY**

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF  
SHERSON GROUP INC.**

**PROPOSAL TRUSTEE'S CERTIFICATE**

**RECITALS**

- A. On June 29, 2015, Sherson Group Inc. ("**Sherson**") filed a Notice of Intention to Make a Proposal pursuant to the *Bankruptcy and Insolvency Act* Richter Advisory Group Inc. was appointed as Sherson's proposal trustee (the "**Proposal Trustee**").
- B. Pursuant to an Order of the Court dated August 20, 2015 (the "**Approval Order**"), the Court approved the Asset purchase agreement dated of August 6, 2015 (the "**Sale Agreement**") between the Sherson and Nine West Canada LP by its general partner, Jones Canada, Inc. acting on behalf of Nine West Canada LP (the "**Purchaser**") and provided for the vesting in the Purchaser of Sherson's right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Proposal Trustee to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in the Sale Agreement have been satisfied or waived by Sherson and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Proposal Trustee.

- C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

**THE PROPOSAL TRUSTEE CERTIFIES** the following:

1. The Purchaser has paid and the Proposal Trustee, Bank of Montreal, BDC Capital Inc. and Stephen Applebaum have received their respective portions of the Purchase Price for the Purchased Assets payable on the date of Closing pursuant to the Sale Agreement and the Approval Order;
2. The conditions to Closing as set out in the Sale Agreement have been satisfied or waived by Sherson, with the consent of the Proposal Trustee, and the Purchaser; and
3. The Transaction has been completed to the satisfaction of Sherson and the Proposal Trustee.
4. This Certificate was delivered by the Proposal Trustee at \_\_\_\_\_ on \_\_\_\_\_, 2015.

**RICHTER ADVISORY GROUP INC.**, in its  
capacity as Proposal Trustee of **SHERSON**  
**GROUP INC.**, and not in its personal capacity

Per: \_\_\_\_\_  
Name:  
Title:

**SCHEDULE B**  
**PERMITTED ENCUMBRANCES**

**(unaffected by the Vesting Order)**

- (1) Xerox Canada Ltd. Ontario Personal Property Registration System (“PPRS”) registration number 20110401 1701 1462 2657
- (2) G.N. Johnston Equipment Co. Ltd. PPRS registrations number 20120404 1139 1097 4529 and number 20140404 0910 1097 5179
- (3) V.W. Credit Canada Inc. PPRS registration number 20120910 1948 1531 8072
- (4) Hav-a-Kar Leasing Ltd. PPRS registrations number 20121218 1007 1462 2587, number 20130129 1002 1462 0861 and number 20130129 1002 1462 0862
- (5) Mercedes-Benz Financial Services Canada Corporation PPRS registration number 20130628 1934 1531 8228
- (6) De Lage Landen Financial Services Canada Inc. PPRS registration number 20150114 1435 1530 3013

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF  
SHERSON GROUP INC.**

District of Ontario  
Division No. 9 - Toronto  
Court File No: 31-2010608  
Estate File No. 31-2010608

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
IN BANKRUPTCY AND INSOLVENCY**

**ORDER**

**AIRD & BERLIS LLP**  
Barristers and Solicitors  
Brookfield Place  
Suite 1800, Box 754  
181 Bay Street  
Toronto, ON M5J 2T9

**Sam Babe (LSUC # 49498B)**  
Tel: 416.865.7718  
Fax: 416.863.1515  
Email: [sabe@airdberlis.com](mailto:sabe@airdberlis.com)

*Lawyers for Sherson Group Inc.*

**Tab 1(b)**

District of Ontario  
Division No. 9 - Toronto  
Court File No: 31-2010608  
Estate File No. 31-2010608

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)  
IN BANKRUPTCY AND INSOLVENCY

THE HONOURABLE ) THURSDAY, THE 20<sup>TH</sup> DAY  
)  
JUSTICE ) OF AUGUST, 2015

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL  
OF SHERSON GROUP INC.

ORDER  
(Re Assignment of Agreements)

**THIS MOTION**, made by Sherson Group Inc. ("**Sherson**"), for an order assigning the rights and obligations of Sherson under certain agreements was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Affidavit of Stephen Applebaum sworn August 12, 2015 and the Exhibits thereto, the Second Report of Richter Advisory Group Inc., in its capacity as proposal trustee (the "**Proposal Trustee**") dated August 9, 2015 and the Appendices thereto (the "**Second Report**"), the Affidavit of Ralph Schipani sworn August 9, 2015, and on hearing the submissions of counsel for Sherson, the Proposal Trustee, NineWest Canada LP, by its general partner Jones Canada, Inc. on behalf of Nine West Canada LP (the "**Purchaser**") and 9, no one appearing for any other



person on the service list, although properly served as appears from the affidavit of service, 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.

## **ASSIGNMENT OF AGREEMENTS**

2. **THIS COURT ORDERS** that following the date of this Order and until the Designation Deadline (as defined in the agreement of purchase and sale between Sherson and the Purchaser dated August 6, 2015 (the "**Sale Agreement**")), the Purchaser and Sherson may seek to assume and assign to the Purchaser any of the agreements to which Sherson is a party by filing with the Proposal Trustee and serving, by courier or electronic notice to their counsel, if applicable, on the counterparties to the subject agreements a Notice of Assumption and Assignment (the "**Notice**"), together with a copy of this Order.

3. **THIS COURT ORDERS** that for agreements requiring consent of the counterparty to assign the agreement, Sherson shall set forth in the Notice the total of all monetary defaults in relation to the applicable agreement, if any, other than those arising by reason of Sherson's insolvency, the commencement of these proceedings, or Sherson's failure to perform a non-monetary obligation (in each case, the "**Sherson Cure Amount**"). Where applicable, the Notice shall include a deadline of ten (10) days after the date of service of the Notice for the counterparties to file with the Proposal Trustee and serve upon the Purchaser and Sherson and any other necessary parties, their objections to the Notice, as it relates to the quantum of the cure amount. Any such objection must set forth (i) the basis for the objection and the exact amount

the party asserts as the correct cure amount, and (ii) sufficient documentation to support the cure amount asserted.

4. **THIS COURT ORDERS** that if a counterparty delivers an objection to the Sherson Cure Amount in accordance with paragraph 3 hereof, the Proposal Trustee, the Purchaser, Sherson and the counterparty shall attempt to consensually resolve the objection, failing which, the Proposal Trustee or any interested party, may schedule a 9:30 a.m. appointment with the Court for the purpose of scheduling a motion to resolve the objection.

5. **THIS COURT ORDERS** that with regard to agreements which require the counterparties' consent and in respect of which the Purchaser delivers a Notice:

(a) which a counterparty fails to file a timely objection to the Sherson Cure Amount; or

(b) where there is a consensual or Court resolution of an objection delivered by a counterparty,

the Proposal Trustee shall deliver to the Purchaser, and immediately thereafter to the counterparty, one or more Proposal Trustee's Assignment Certificate listing the applicable agreement(s) or to be assigned. Contemporaneous with the delivery of the Proposal Trustee's Assignment Certificate to the Purchaser, the Purchaser shall pay the Sherson Cure Amount as set out in the applicable Notice or as determined consensually by the parties or determined by the Court (as the case may be).

6. **THIS COURT ORDERS** that upon delivery of the Proposal Trustee's Assignment Certificate, as contemplated in paragraph 5 hereof, all of the rights and obligations of Sherson in and to the Assigned Agreements listed in the applicable Proposal Trustee's Assignment Certificate (in each case, the "**Assigned Agreements**") shall be assigned to and vested in the Purchaser pursuant to sections 66(1) and 84.1 of the *Bankruptcy and Insolvency Act* (Canada) ("**BIA**") and the

Approval and Vesting Order granted by this Court on August ●, 2015 (the “**Approval and Vesting Order**”).

7. **THIS COURT ORDERS** that the assignment to the Purchaser of the rights and obligations of Sherson under the Assigned Agreements pursuant to sections 66(1) and 84.1 of the BIA is valid and binding upon all of the counterparties to the Assigned Agreements notwithstanding any restriction or prohibition contained in any such Assigned Agreement relating to the assignment thereof, including any provision requiring the consent of any party to the assignment.

8. **THIS COURT ORDERS** that each counterparty to the Assigned Agreements is prohibited from exercising any right or remedy under the Assigned Agreements by reason of any defaults thereunder arising from these proceedings or the insolvency of Sherson or any failure of Sherson to perform a non-monetary obligation under the Assigned Agreements.

9. **THIS COURT ORDERS** that, with respect to the Assigned Agreements that are real property leases (the “**Real Property Leases**”), from and after the delivery of Proposal Trustee’s Assignment Certificate to the Purchaser, the Purchaser shall be entitled and subject to all of the rights and obligations as tenant pursuant to the terms of the Real Property Leases and may enter into and upon and hold and enjoy each premises contemplated by the Real Property Leases and, if applicable, any renewals thereof, for its own use and benefit, all in accordance with the terms of the Real Property Leases.

10. **THIS COURT ORDERS** that Sherson’s right, title and interest in the Assigned Agreements shall be Purchased Assets under the Approval and Vesting Order and shall vest absolutely in the Purchaser free and clear of all Encumbrances other than the Permitted Encumbrances (as such terms are defined in the Approval and Vesting Order) in accordance with the provisions of the Approval and Vesting Order.

11. **THIS COURT ORDERS** that the Purchaser shall advise Sherson and the Proposal Trustee if it concludes from time to time prior to the Designation Deadline not to take an assignment of any particular agreement.

12. **THIS COURT ORDERS** that Sherson and Proposal Trustee are hereby directed to take such additional steps and execute such additional documents as may be necessary or desirable for the assignment of the Assigned Agreements to the Purchaser.

13. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist Sherson, 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 Proposal Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Proposal Trustee and its agents in carrying out the terms of this Order.

---

**Schedule A**

**Proposal Trustee's Assignment Certificate**

District of Ontario  
Division No. 9 - Toronto  
Court File No: 31-2010608  
Estate File No. 31-2010608

*ONTARIO*  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)  
IN BANKRUPTCY AND INSOLVENCY

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF  
SHERSON GROUP INC.**

**PROPOSAL TRUSTEE'S ASSIGNMENT CERTIFICATE**

**RECITALS**

- A. On June 29, 2015, Sherson Group Inc. ("**Sherson**") filed a Notice of Intention to Make a Proposal pursuant to the *Bankruptcy and Insolvency Act* Richter Advisory Group Inc. was appointed as Sherson's proposal trustee (the "**Proposal Trustee**").
- B. Pursuant to an Order of the Court dated August 20, 2015 (the "**Approval Order**"), the Court approved the Asset purchase agreement dated of August 6, 2015 (the "**Sale Agreement**") between the Sherson and Nine West Canada LP, by its general partner Jones Canada, Inc. on behalf of Nine West Canada LP (the "**Purchaser**") and provided for the vesting in the Purchaser of Sherson's right, title and interest in and to the Purchased Assets.
- C. Pursuant to an Order of the Court dated August 20, 2015 (the "**Assignment Order**"), providing for the assignment of all of the rights and obligations Sherson in and to various agreements, which vesting and assignment is to be effective upon the delivery by the Proposal Trustee to the Purchaser of an Assignment Certificate.

- D. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement and Assignment Order.

**THE PROPOSAL TRUSTEE CERTIFIES** the following:

1. The Purchaser has satisfied any Sherson Cure Amount required to complete the assignment of the agreement specified herein (the “**Assigned Agreement**”)  
**[List Assigned Agreement]**
2. The assignment of the Assigned Agreement has been completed to the satisfaction of the Proposal Trustee, and in accordance with the terms of the Assignment Order.
3. This Certificate was delivered by the Proposal Trustee at \_\_\_\_\_ on \_\_\_\_\_, 2015.

**RICHTER ADVISORY GROUP INC.**, in its  
capacity as Proposal Trustee of **SHERSON  
GROUP INC.**, and not in its personal capacity

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

Name:

Title:



**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF  
SHERSON GROUP INC.**

District of Ontario  
Division No. 9 - Toronto  
Court File No: 31-2010608  
Estate File No. 31-2010608

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
IN BANKRUPTCY AND INSOLVENCY**

**MOTION RECORD**

**AIRD & BERLIS LLP**  
Barristers and Solicitors  
Brookfield Place  
Suite 1800, Box 754  
181 Bay Street  
Toronto, ON M5J 2T9

**Sam Babe (LSUC # 49498B)**  
Tel: 416.865.7718  
Fax: 416.863.1515  
Email: [sabe@airdberlis.com](mailto:sabe@airdberlis.com)

*Lawyers for Sherson Group Inc.*



## Tab 2

[MODEL APPROVAL AND VESTING ORDER] (May 11, 2010) District of Ontario  
Division No. 9 - Toronto  
Court File No. <\*>: 31-2010608  
Estate File No. 31-2010608

*ONTARIO*  
SUPERIOR COURT OF JUSTICE  
**(COMMERCIAL LIST)**  
**IN BANKRUPTCY AND INSOLVENCY**

THE HONOURABLE ) <\*> THURSDAY, THE  
 ) <\*> 20<sup>TH</sup> DAY  
JUSTICE <\*> )  
 ) OF <\*> AUGUST,  
 ) 20<\*> 2015

B E T W E E N:

<NAME OF PLAINTIFF>

Plaintiff

- and -

<NAME OF DEFENDANT>

Defendant

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF**  
**SHERSON GROUP INC.**

**APPROVAL AND VESTING ORDER**

**THIS MOTION**, made by <receiver> in its capacity as the Court-appointed receiver (the "Receiver") of the undertaking, property and assets of <debtor> (the "Debtor") for an order Sherison Group Inc. ("Sherison") for orders, among other things: (i) approving the First Report to the Court of Richter Advisory Group Inc., in its capacity as proposal trustee (the "Proposal Trustee") in Sherison's Bankruptcy and Insolvency Act proposal proceedings (the "Proposal Proceedings"), dated July 27, 2015 (the "First Report"), and the Proposal Trustee's

activities set out therein: (ii) approving the Proposal Trustee's Second Report to the Court dated August 12, 2015 (the "**Second Report**"), and the Proposal Trustee's activities set out therein: (ii) approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale (the "**Sale Agreement**") between the Receiver and ~~name of purchaser~~ Sherson and Nine West Canada LP, by its general partner Jones Canada, Inc. on behalf of Nine West Canada LP, (the "**Purchaser**") dated ~~\*, 20\*~~ August 6, 2015 and appended in redacted form to the Second Report of the Receiver dated ~~\*, 20\*~~ (the "Report"), and filed in unredacted form as confidential Appendix "~~\*, 20\*~~" to the Second Report (together with Confidential Appendix "~~\*, 20\*~~" to the Report, the "**Confidential Appendices**"); (iii) vesting in the Purchaser the Debtor Sherson's right, title and interest in and to the assets described in the Sale Agreement (the "**Purchased Assets**"); (iv) approving payment of the balance of the purchase price for the Purchased Assets (the "**Purchase Price**") to the Proposal Trustee, the Bank of Montreal ("**BMO**"), BDC Capital Inc. ("**BDCC**") and Stephen Applebaum Inc. ("**SAI**") in accordance with the Sale Agreement; (v) assigning to the Purchaser, the rights and obligations of Sherson under such contracts (collectively, the "**Assumed Contracts**") and leases (collectively, the "**Assumed Leases**") that the Purchaser may elect to assume in accordance with the Sale Agreement; (vi) sealing the Confidential Appendices; and (vii) extending the time for Sherson to make a proposal to its creditors up to and including October 4, 2015, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Report Second Report and the Affidavit of Stephen Applebaum sworn August 12, 2015 (the "**Applebaum Affidavit**") and on hearing the submissions of counsel for the Receiver, ~~name of other parties appearing~~, Sherson, the Proposal Trustee, the Purchaser, BMO, BDCC, \_\_\_\_\_, and no one appearing for any other person on the service list, although properly served as appears from the affidavit of ~~name\*~~ sworn August ~~\*, 20\*~~ 2015 filed<sup>+</sup>:

<sup>+</sup> This model order assumes that the time for service does not need to be abridged. The motion seeking a vesting order should be served on all persons having an economic interest in the Purchased Assets, unless circumstances warrant a different approach. Counsel should consider attaching the affidavit of service to this Order.

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 the First Report and the Second Report be and are hereby approved and the activities of the Proposal Trustee described therein be and are hereby approved;
3. ~~1.~~ **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved<sup>2</sup>, and the execution of the Sale Agreement by the ~~Receiver~~<sup>3</sup> Sherson is hereby authorized and approved, with such minor amendments as Sherson and the Receiver may Purchaser may, with the Proposal Trustee's consent, deem necessary. ~~The Receiver, or desirable.~~ Sherson is hereby authorized and directed to take, with the Proposal Trustee's consent, such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.
4. ~~2.~~ **THIS COURT ORDERS AND DECLARES** that upon the delivery of a ~~Receiver~~ Proposal Trustee's certificate to the Purchaser substantially in the form attached as Schedule A hereto (the "~~Receiver~~ Proposal Trustee's Certificate"), all of the ~~Debtor~~ Sherson's right, title and interest in and to the Purchased Assets described in the Sale Agreement ~~[and listed on Schedule B hereto]~~<sup>4</sup> shall vest absolutely in the Purchaser, or such party as designated by the Purchaser, free and clear of and from any ~~and all means any mortgage, charge, pledge, hypothec, security interests (whether contractual, interest, assignment, lien (statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or otherwise), easement, license, right of first refusal or first offer, title retention agreement~~

<sup>2</sup> In some cases, notably where this Order may be relied upon for proceedings in the United States, a finding that the Transaction is commercially reasonable and in the best interests of the Debtor and its stakeholders may be necessary. Evidence should be filed to support such a finding, which finding may then be included in the Court's endorsement.

<sup>3</sup> In some cases, the Debtor will be the vendor under the Sale Agreement, or otherwise actively involved in the Transaction. In those cases, care should be taken to ensure that this Order authorizes either or both of the Debtor and the Receiver to execute and deliver documents, and take other steps.

<sup>4</sup> To allow this Order to be free-standing (and not require reference to the Court record and/or the Sale Agreement), it may be preferable that the Purchased Assets be specifically described in a Schedule.

or arrangement, conditional sale, deemed or statutory trust, restrictive covenant, execution, levies, or other financial or monetary claims or encumbrances of any nature (whether at law or equity), and any contract, option, right or privilege (whether by law, contract or otherwise) capable of becoming any of the foregoing, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the “Claims”<sup>5</sup>) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice <name> dated <\*>, 20<\*>; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal or moveable property registry system; and (iii) those Claims listed on Schedule C hereto, (all of which are collectively referred to as the “Encumbrances”, which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule D) security or ownership interests, if any, registered by the registrations listed on Schedule B hereto), conditional on the underlying assets related thereto being Assigned Contracts as defined the Sale Agreement, and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets and the Purchaser.

5. ~~3.~~ **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the [Registry Division of <location> of a Transfer/Deed of Land in the form prescribed by the *Land Registration Reform Act* duly executed by the Receiver][Land Titles Division of <location> of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*]<sup>6</sup>, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified in Schedule B hereto (the “Real Property”) in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in Schedule C hereto following the date of this Order and until the Designation Deadline (as defined in the Sale Agreement)

<sup>5</sup> The “Claims” being vested out may, in some cases, include ownership claims, where ownership is disputed and the dispute is brought to the attention of the Court. Such ownership claims would, in that case, still continue as against the net proceeds from the sale of the claimed asset. Similarly, other rights, titles or interests could also be vested out, if the Court is advised what rights are being affected, and the appropriate persons are served. It is the Subcommittee’s view that a non-specific vesting out of “rights, titles and interests” is vague and therefore undesirable.

<sup>6</sup> Elect the language appropriate to the land registry system (Registry vs. Land Titles).

the Purchaser may designate any agreement to which Sherson is a party to be assigned as an Assigned Contract pursuant to the Sale Agreement such that Sherson's right, title and interest in and to such Assigned Contract becomes a Purchased Asset under the Sale Agreement. In respect of such Assigned Contracts, which do not require the counterparties' consent, the vesting of such Assigned Contract(s) as a Purchased Asset in the Purchaser, in accordance with the terms of this Order, shall be completed by the Purchaser filing with the Proposal Trustee and serving, by courier or electronic notice to their counsel, if applicable, on the counterparties to the subject agreements a Notice of Assumption and Assignment (the "Notice"). In respect of agreements requiring the consent of the counterparty, the terms of the Assignment Order granted in these proceedings on August 20, 2015 (the "Assignment Order") will determine the timing of the proposed assignment. At the conclusion of the Designation Period (as defined in the Sale Agreement), the Proposal Trustee shall file with the Court a supplementary Proposal Trustee's Certificate, in substantially the form scheduled to the Assignment Order, identifying all agreements vested in the Purchaser pursuant to this paragraph 5.

6. ~~4.~~ **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds<sup>7</sup> from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the ~~Receiver~~Proposal Trustee's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale<sup>8</sup>, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.
7. ~~5.~~ **THIS COURT ORDERS AND DIRECTS** the ~~Receiver~~Proposal Trustee to file with the Court a copy of the ~~Receiver~~Proposal Trustee's Certificate, forthwith after delivery thereof.

<sup>7</sup> ~~The Report should identify the disposition costs and any other costs which should be paid from the gross sale proceeds, to arrive at "net proceeds".~~

<sup>8</sup> ~~This provision crystallizes the date as of which the Claims will be determined. If a sale occurs early in the insolvency process, or potentially secured claimants may not have had the time or the ability to register or perfect proper claims prior to the sale, this provision may not be appropriate, and should be amended to remove this crystallization concept.~~



8. ~~6.~~ **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, ~~the Receiver is~~ Sherson and the Proposal Trustee are authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the ~~Company~~ Sherson's records pertaining to the ~~Debtor's~~ sits past and current employees, ~~including personal information of those employees listed on Schedule "A" to the Sale Agreement.~~ The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by Sherson and/or the Debtor Proposal Trustee.

9. ~~7.~~ **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of ~~the Debtor~~ Sherson and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made or deemed to be made in respect of ~~the Debtor~~ Sherson;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of ~~the Debtor~~ Sherson and shall not be void or voidable by creditors of ~~the Debtor~~ Sherson, nor shall it constitute nor be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

10. ~~8.~~ **THIS COURT ORDERS AND DECLARES** that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).

11. **THIS COURT ORDERS** that Sherson and the Purchaser are deemed to have obtained clearance certificates as required under the *Tax Administration and Miscellaneous Taxes Act* (Manitoba), the *Revenue and Financial Services Act* (Saskatchewan), and the *Provincial Sales Tax Act* (BC), and the Purchaser shall not be liable for any taxes or penalties based on or in respect of any of the Sherson's unpaid taxes.
12. **THIS COURT ORDERS AND DECLARES** that the payments of the balance of the Purchase Price due on closing of the Transaction ("**Closing**") or thereafter, under the direction of Sherson, to BMO, BDCC, the Proposal Trustee and SAI, in accordance with and in the amounts specified in subsection 5.1(2) and section 5.2 of the Sale Agreement and, as applicable, in accordance with the Payout Letters, as that terms is defined in the Applebaum Affidavit, are hereby approved, and the Purchaser is hereby authorized to make the same and Sherson is hereby ordered and directed to execute the acknowledgment and release forming part of each Payout Letter, in favour of BMO or BDCC, as the case may be.
13. **THIS COURT DIRECTS** that on or before the Designation Deadline, or such earlier date as permitted pursuant to the Sale Agreement, for the purposes of implementing the Sale Agreement and its obligations thereunder, Sherson shall be entitled to remain in possession of the Leased Premises (as such term is defined in the Sale Agreement) and to avail itself of any and all services related to the Leased Premises, including, but not limited to, all occupancy rights, utilities, water, cleaning services, garbage removal, in each case to the extent required under the applicable lease; and take any and all actions as may be necessary or desirable to operate the Leased Premises and to otherwise implement the Sale Agreement, free of any interference from any entity or person, subject to compliance with this Order and the Sale Agreement.
14. **THIS COURT ORDERS** that all inventory sold from the Leased Premises and all proceeds therefrom shall be the sole property of the Purchaser and constitute part of the Purchased Assets for all purposes, including under the Sale Agreement, and shall be sold free and clear of any interest which any person may assert against such inventory or proceeds, including, without limitation, any landlord distraint remedies.



15. **THIS COURT ORDERS** that until the earlier of further Order of this Court or the filing of the Proposal Trustee's Certificate, the Confidential Appendices to the Report shall be sealed, kept confidential and not form part of the public record, but rather shall be placed, separate and apart from all other contents of the Court file, in a sealed envelope attached to a notice that sets out the title of these proceedings and a statement that the contents are subject to a sealing order.
16. **THIS COURT ORDERS** that the time for the filing of a proposal by Sherson is hereby extended in accordance with section 50.4(9) of the BIA up to and including October 4, 2015.
17. ~~9-~~**THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist Sherson, the Receiver~~Proposal Trustee~~ and ~~its~~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 Sherson and to the Receiver~~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 Sherson and the Receiver~~Proposal Trustee~~ and ~~its~~their respective agents in carrying out the terms of this Order.
18. **THIS COURT ORDERS** that each of Sherson and the Proposal Trustee be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, including, without limitation, the United States Bankruptcy Court, Southern District of New York, in the proceedings initiated by the Proposal Trustee (in its capacity as Foreign Representative of Sherson in the Proposal Proceedings) under Chapter 15 of the *United States Bankruptcy Code*, 11 U.S.C. §§ 101-1330 (Case No. 15-11765-SHL), for the recognition of this Order and for assistance in carrying out the terms of this Order, including the enforcement of any of the Charges established hereby.



**SCHEDULE A**  
**FORM OF ~~RECEIVER~~PROPOSAL TRUSTEE'S CERTIFICATE**

District of Ontario  
Division No. 9 - Toronto  
Court File No. ~~<\*>~~; 31-2010608  
Estate File No. 31-2010608

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

BETWEEN:

~~<NAME OF PLAINTIFF>~~

Plaintiff

- and -

~~<NAME OF DEFENDANT>~~

Defendant

**IN BANKRUPTCY AND INSOLVENCY**

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF**  
**SHERSON GROUP INC.**

**RECEIVERPROPOSAL TRUSTEE'S CERTIFICATE**

**RECITALS**

- A. Pursuant to an Order of the Honourable ~~<name of judge>~~ of the Ontario Superior Court of Justice (the "Court") dated ~~<date of order>~~, ~~<name of receiver>~~ was appointed as the receiver (the "Receiver") of the undertaking, property and assets of ~~<debtor>~~ (the "Debtor"). On June 29, 2015, Sherson Group Inc. ("Sherson") filed a Notice of Intention to Make a Proposal pursuant to the Bankruptcy and Insolvency Act Richter Advisory Group Inc. was appointed as Sherson's proposal trustee (the "Proposal Trustee").
- B. Pursuant to an Order of the Court dated ~~<date>~~ August 20, 2015 (the "Approval Order"), the Court approved the agreement of Asset purchase and sale made as of ~~<date of~~

agreement dated of August 6, 2015 (the "Sale Agreement") between the Receiver ~~debtor~~ and ~~name of purchaser~~ Sherson and Nine West Canada LP by its general partner, Jones Canada, Inc. acting on behalf of Nine West Canada LP (the "Purchaser") and provided for the vesting in the Purchaser of the Debtor Sherson's right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver Proposal Trustee to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in section \* of the Sale Agreement have been satisfied or waived by the Receiver Sherson and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver Proposal Trustee.

- C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

**THE RECEIVER PROPOSAL TRUSTEE CERTIFIES** the following:

1. The Purchaser has paid and the Receiver has received Proposal Trustee, Bank of Montreal, BDC Capital Inc. and Stephen Applebaum have received their respective portions of the Purchase Price for the Purchased Assets payable on the date of Closing Date pursuant to the Sale Agreement and the Approval Order;
2. The conditions to Closing as set out in section \* of the Sale Agreement have been satisfied or waived by the Receiver Sherson, with the consent of the Proposal Trustee, and the Purchaser; and
3. The Transaction has been completed to the satisfaction of Sherson and the Receiver Proposal Trustee.
4. This Certificate was delivered by the Receiver Proposal Trustee at ~~time~~ on ~~\*~~, 20~~\*~~, 2015.

~~Name of Receiver~~ **RICHTER ADVISORY**

GROUP INC., in its capacity as Receiver of the  
undertaking, property and assets of  
~~<Debtor>~~ Proposal Trustee of SHERSON GROUP  
INC., and not in its personal capacity

Per: \_\_\_\_\_  
Name:  
Title:

**SCHEDULE B**  
**PURCHASED ASSETS**

**SCHEDULE C**  
**~~CLAIMS TO BE DELETED AND EXPUNGED FROM TITLE TO REAL PROPERTY~~**

**SCHEDULE D**  
**~~PERMITTED ENCUMBRANCES, EASEMENTS AND RESTRICTIVE COVENANTS~~**  
**~~RELATED TO THE REAL PROPERTY~~**

**(unaffected by the Vesting Order)**

- (1) Xerox Canada Ltd. Ontario Personal Property Registration System ("PPRS") registration number 20110401 1701 1462 2657
- (2) G.N. Johnston Equipment Co. Ltd. PPRS registrations number 20120404 1139 1097 4529 and number 20140404 0910 1097 5179
- (3) V.W. Credit Canada Inc. PPRS registration number 20120910 1948 1531 8072
- (4) Hav-a-Kar Leasing Ltd. PPRS registrations number 20121218 1007 1462 2587, number 20130129 1002 1462 0861 and number 20130129 1002 1462 0862
- (5) Mercedes-Benz Financial Services Canada Corporation PPRS registration number 20130628 1934 1531 8228
- (6) De Lage Landen Financial Services Canada Inc. PPRS registration number 20150114 1435 1530 3013

Document comparison by Workshare Compare on August-13-15 2:37:30 PM

Input:	
Document 1 ID	interwovenSite://ab-ws1/cm/23582206/1
Description	#23582206v1<cm> - Model Approval and Vesting Order
Document 2 ID	interwovenSite://ab-ws1/cm/23582428/4
Description	#23582428v4<cm> - Sherson Approval and Vesting Order - 125341
Rendering set	Standard

Legend:	
<u>Insertion</u>	
<del>Deletion</del>	
<del>Moved from</del>	
<u>Moved to</u>	
Style change	
Format change	
<del>Moved deletion</del>	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	125
Deletions	116
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	241

## Tab 3



District of Ontario  
Division No. 9 - Toronto  
Court File No: 31-2010608  
Estate File No. 31-2010608

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)  
IN BANKRUPTCY AND INSOLVENCY**

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL  
OF SHERSON GROUP INC.**

**AFFIDAVIT OF STEPHEN APPLEBAUM  
(sworn August 13, 2015)**

I, STEPHEN APPLEBAUM, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY AS FOLLOWS:

1. I am the Chairman, Chief Executive Officer and sole director of Sherson Group Inc. (“**Sherson**”) and, as such, I have knowledge of the matters to which I hereinafter depose. Where information contained in this affidavit is based on information I have received from other sources, I have stated the source of that information, and in all such cases I believe that information to be true.

2. This affidavit is made in a support of a motion (the “**Motion**”) by Sherson for:

(a) an Order (the “**Approval and Vesting Order**”), among other things:

(i) approving the First Report to the Court of Richter Advisory Group Inc. (“**Richter**”), in its capacity as proposal trustee (the “**Proposal Trustee**”) in Sherson’s *Bankruptcy and Insolvency Act* (the “**BIA**”) proposal proceedings (the “**Proposal Proceedings**”), dated July 27, 2015 (the “**First Report**”), and the Proposal Trustee’s activities set out therein;

- (ii) approving the Proposal Trustee's Second Report to the Court, to be filed (the "**Second Report**"), and the Proposal Trustee's activities set out therein;
  - (iii) approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale (the "**Sale Agreement**") between Sherson and Nine West Canada LP by its general partner Jones Canada, Inc. on behalf of Nine West Canada LP (the "**Purchaser**") dated August 6, 2015;
  - (iv) vesting in the Purchaser Sherson's right, title and interest in and to the assets described in the Sale Agreement (the "**Purchased Assets**");
  - (v) approving payment of the balance of the purchase price for the Purchased Assets (the "**Purchase Price**") to the Proposal Trustee, the Bank of Montreal ("**BMO**"), BDC Capital Inc. ("**BDCC**") and Stephen Applebaum Inc. ("**SAI**") in accordance with the Sale Agreement;
  - (vi) sealing the confidential appendices to the Second Report (the "**Confidential Appendices**"); and
  - (vii) extending the time for Sherson to make a proposal to its creditors up to and including October 4, 2015; and
- (b) an Order (the "**Assignment Order**"), among other things, assigning to the Purchaser the rights and obligations of Sherson under such contracts or leases that the Purchaser may elect to assume in accordance with the Sale Agreement (collectively, the "**Assumed Contracts**"), including the lease agreements related to the Stores, the Distribution Centre and the Head Office, as such terms are described below (collectively, the "**Assumed Leases**").

## BACKGROUND ON SHERSON

3. Sherson is an Ontario corporation with head office at 1446 Don Mills Road, North York, Ontario. Sherson was formed by amalgamation on January 29, 2005.

4. Sherson is wholly-owned by Stephen Applebaum Inc. (“**SAI**”), a holding corporation owned by myself and my family.

5. Sherson and its corporate predecessors have been the Canadian wholesale and retail licensee of the “Nine West” brand for almost 30 years, operating under a license (the “**License**”) from its U.S. licensors, Jones Investment Co. Inc., Nine West Development Corporation and JAG Footwear, Accessories and Retail Corporation (collectively, the “**Nine West Group**”). Almost all of Sherson’s products are supplied by the Nine West Group.

6. Sherson operates 43 “Nine West” and “Nine West Studio” retail women’s shoe stores located in British Columbia, Alberta, Manitoba, Ontario, Quebec and Nova Scotia, as well as two factory outlet stores in Ontario (collectively, the “**Stores**”). In addition, Sherson operates the ninewest.ca e-commerce site and is the wholesaler to all other Canadian retailers carrying Nine West products, as well as a number of other shoe and handbag brands licensed from the Nine West Group including, without limitation, Anne Klein, Easy Spirit and Bandolino.

7. Sherson has a head office located at 1446 Don Mills Road, Toronto (the “**Head Office**”) and a distribution centre located at 150 Duncan Mills Road, Toronto (the “**Distribution Centre**”).

## **STAKEHOLDERS**

8. Sherson’s secured lenders are Bank of Montreal (“**BMO**”) and BDC Capital Inc. (“**BDC**”). BMO is currently owed approximately \$2,200,000 under an asset-based revolving operating line and a small term facility.

9. BDC, the second-ranking secured lender (on most collateral), is owed approximately \$3,600,000 under a term facility, pursuant to a credit letter agreement dated January 11, 2013.

10. I and SAI are also secured creditors of Sherson in the amounts of approximately \$400,000 and \$3,400,000, respectively.

11. The Nine West Group is by far Sherson’s largest unsecured creditor, owed approximately \$19,000,000 of Sherson’s approximate total \$21,000,000 unsecured debt.

12. Sherson presently has 549 employees, 66% of whom are part time and 34% of whom are full time. These numbers can be further broken down as follows:

- (a) 46 employees at head office, all of whom are full time;
- (b) 427 retail employees, 74% of whom are part time;
- (c) 21 e-commerce employees, 15 of whom are part time; and
- (d) 55 distribution centre employees, 33 of whom are part time.

13. Sherson uses ADP as its payroll provider. No Sherson employees are unionized and there is no pension plan.

14. Sherson has approximately 16 landlords. Sherson's two largest landlords, Cadillac Fairview and Ivanhoe Cambridge, account for just over half of all its leases.

#### **FINANCIAL DIFFICULTY AND FILING**

15. Sherson is in default of payment of certain accounts for product from Nine West Group and certain royalties under the License, totaling approximately \$19 million, which payables and royalties accrued, in part, as a result of a failed pricing and volume purchasing strategy. Sherson also suffered due to the sudden and sustained drop in value of the Canadian dollar in the fall of 2014.

16. Due to the large debt outstanding, Nine West Group was, prior to the commencement of the Proposal Proceedings, only prepared to ship to Sherson on a C.O.D. basis. Due to Sherson's financial performance, BMO implemented markedly increased availability reserves on Sherson's operating facility. As a result of its decreased operating credit and the absence of payment terms from Nine West Group, Sherson did not have sufficient funds to purchase the fall inventory needed to maintain the business in the near term.

17. On June 29, 2015 (the "**Filing Date**"), Sherson filed a Notice of Intention to Make a Proposal (the "**NOI**") pursuant to the BIA, and Richter was appointed as Proposal Trustee. By order of the Honourable Justice Newbould made June 30, 2015, the Proposal Trustee was

authorized to act as the Foreign Representative of Sherson for the purpose of commencing proceedings under Chapter 15 of the *United States Bankruptcy Code* to recognize and enforce the Proposal Proceedings in the U.S. (the “**Chapter 15 Proceeding**”). A copy of the Justice Newbould’s June 30 Order is attached as **Exhibit “A”** to this Affidavit.

18. Judge Lane of the United States Bankruptcy Court, Southern District of New York, made a provisional order in the Chapter 15 Proceeding on July 8, 2015 and then a recognition order on July 27, 2015, copies of which orders are, collectively, attached as **Exhibit “B”** to this Affidavit.

19. Commencing on the Filing Date, Sherson took a number of steps to rationalize its business, including reducing employee numbers, disclaiming a lease and proceeding with previously-planned store closures. The business therefore will be more profitable going forward.

#### **THE TRANSACTION**

20. Starting soon after the Filing Date, Sherson entered into negotiations with Nine West Group for the finance of the fall inventory, but no arrangement could be reached that was acceptable to each of BMO, BDCC and the Proposal Trustee.

21. Sherson and Nine West Group also attempted to negotiate the terms of a potential restructuring which would involve Sherson remaining in possession of its business but were unable to reach terms agreeable to Nine West Group, BMO, BDCC and Sherson.

22. The Proposal’s Trustee’s modelling has shown that, in the absence of fall inventory, the secured creditors face rapid deterioration in their collateral coverage, to the point where SAI would soon be out of the money and BDCC would be facing a shortfall. In the absence of fall inventory, Sherson’s business itself would be greatly damaged as there was significant risk it would lose its wholesale customers and have no seasonal product for its own stores. Sherson’s assets therefore have to be quickly sold either on a going concern or liquidation basis.

23. Because Sherson’s business is wholly dependent on the License, there can be no going-concern purchaser other than Nine West Group, and so the only chance to save the business as a going concern is to sell to Nine West Group.

24. The Proposal Trustee has provided analysis, based, in part, on an appraisal obtained by BMO, showing how the Purchase Price compares favourably to what would be obtained in a liquidation. The Transaction also has the obvious advantage over a liquidation of preserving the business as a going concern for the benefit of all other stakeholders. This includes opportunity of potentially preserving existing leased locations, employees and contracts with existing suppliers.

25. The only alternative to the Transaction is an immediate commencement of a liquidation sale process, as requested in a motion for the appointment of a receiver brought by BDCC, originally returnable August 6, 2015 (the “**Receivership Motion**”). BDCC served notice of the Receivership Motion out of concern that the Sale Agreement would not be finalized, but has agreed to its adjournment to allow the Transaction to close. If the Orders are not granted, and relief sought in the Receivership Motion is granted, Sherson’s going concern business would not survive, putting employees, customers and landlords in jeopardy. A copy of BDCC’s notice in respect of the Receivership Motion is attached as **Exhibit “C”** to this Affidavit.

26. SAI and Stephen Applebaum have consented to the Transaction despite the fact that the net proceeds of the Transaction will be payable only in respect of the secured indebtedness owing to SAI, and will not be sufficient to repay that SAI secured indebtedness, and despite the fact that half the payment to SAI under the Sale Agreement will only be made 90 days post-closing (the “**Designation Deadline**”), and then only subject to possible negative adjustments.

27. The Purchased Assets include the ability of the Purchaser to assume Sherson’s leases (subject to landlord consent or the making of the Assignment Order) and contracts. The Purchaser is presently reviewing the leases and contracts to be assigned. The Purchaser will also be extending offers to an unspecified number of Sherson employees, and is continuing its review of the offers to be extended. The Purchaser will also be ready to continue supply to Sherson’s wholesale customers with little interruption.

28. The Purchaser will have until the Designation Deadline to designate leases and contracts to which it will take assignment and to make offers of employment to Sherson employees. During the period from the date of Closing (the “**Closing Date**”) until the earliest to occur of:

- (a) the date on which a contract or lease becomes an Assigned Contract or Assigned Lease, pursuant to a consent or the Assignment Order;
- (b) the date the Purchaser has delivered notice to the Proposal Trustee stipulating the applicable lease or contract is rejected and will not be or become an Assigned Contract or Assigned Lease and the applicable 30 day notice period for the disclaimer of such contract or lease has expired;
- (c) the date the applicable contract or lease is terminated by Sherson or the counterparty thereto, or in accordance with its terms; and
- (d) if the Purchaser has not designated such lease on or before the Designation Deadline, the Designation Deadline,

(the “**Interim Period**”), Sherson will continue to retain employees, operate from the leased premises, provide the benefit of such contract or lease, and provide other services through to the Purchaser in order to implement the Sale Agreement, at costs to be reimbursed by the Purchaser, while the Purchaser completes its review of documentation. Sherson and the Purchaser therefore require the stay of proceedings in the Proposal Proceedings (under section 69 of the BIA) to continue to apply during the Interim Period to ensure implementation of the Sale Agreement.

29. The Sale Agreement provides for the Interim Period to balance between the secured creditors’ desire for an early closing and repayment, and the Purchaser’s need to conduct further review.

30. In addition to reimbursing Sherson for business services it provides during the Interim Period, the Purchaser will also pay certain of Sherson’s accrued post-filing liabilities as outline in the Sale Agreement, some of which are otherwise at risk of not being paid in a receivership and bankruptcy.

31. A copy of the Sale Agreement, with all pricing information redacted, attached as **Exhibit “D”** to this Affidavit. An un-redacted copy of the Sale Agreement will be included as a confidential appendix to the Second Report, which confidential appendix will be subject to a

request for a sealing order as part of the Motion due to the commercially sensitive information it will contain.

## **DISTRIBUTION**

32. The balance of the Purchase Price (net of the deposit already paid to the Proposal Trustee's counsel), will be paid, in part, directly to BMO, BDCC and SAI, with the remainder to the Proposal Trustee. The Proposal Trustee has obtained independent legal opinions on the security held by each of BMO, BDCC and SAI, details of which opinions are to be included in the Second Report. Prior to the Closing Date, BMO and BDCC will each deliver a payout letter (collectively, the "**Payout Letters**") setting out the amount they each require as full satisfaction of the debts owed to them, which amounts will include certain discounts on fees. In return for such reductions, BMO and BDCC will each receive from Sherson and SAI, an acknowledgement and full and final release, in forms appended to the Payout Letters. The terms of the Payout Letters and releases remain in discussion and final forms will be filed with the Court at the return of the hearing of the Motion.

33. Payment of proceeds on the Closing Date was a condition of BMO, BDCC and SAI agreeing to the Transaction and, therefore, of BDCC adjourning the Receivership Motion.

## **EXTENSION OF TIME FOR PROPOSAL**

34. The time for Sherson to file a proposal in the Proposal Proceedings would have expired on July 29, 2015. By Order dated July 28, 2015, the Honourable Justice Hainey extended the time for Sherson to file a proposal up to and including August 6, 2015 to give Sherson and the Nine West Group (through its designee, the Purchaser) opportunity to reach the Sale Agreement (the "**July 28 Order**"). A copy of the July 28 Order is attached as **Exhibit "E"** to this Affidavit.

35. When the Sale Agreement was executed, the Honourable Justice Penny then extended, by endorsement dated August 6, 2015 (the "**August 6 Endorsement**"), the time for Sherson to file a proposal up to and including August 18, 2015, to give time for Sherson to seek approval of the Sale Agreement. The August 6 Endorsement also adjourned the Receivership Motion until August 18, 2015. A copy of the August 6 Endorsement is attached as **Exhibit "F"** to this Affidavit.



36. By a further endorsement dated August 12, 2015 (the "**August 12 Endorsement**"), the Honourable Justice Penny extended the time for Sherson to file a proposal up to and including August 20, 2015, to allow for more fulsome service of the Motion by moving the return date to August 20. The August 12 Endorsement also adjourned the hearing of the Receivership Motion until August 20, 2015. A copy of the August 12 Endorsement is attached as **Exhibit "G"** to this Affidavit.

37. Granting an extension of time to file a proposal up to and including October 2, 2015 will give Sherson time to close the Transaction, and, if it chooses, permit it to begin to develop a viable proposal to its creditors. Sherson will, however, likely need to seek a further extension since the payment, if any, of the final portion of the Purchase Price will not occur until 90 days post-closing.

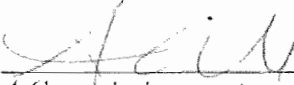
38. Sherson has been acting and continues to act in good faith and with due diligence in the Proposal Proceedings.

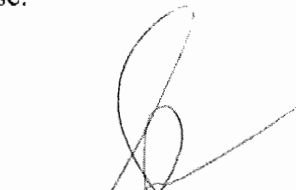
39. I believe that no creditor will be materially prejudiced by the extension requested, and that the stakeholders generally will be far better off if the business is preserved as a going concern through the Transaction than they would be in a bankruptcy liquidation.

40. The Proposal Trustee has advised Sherson that it supports the motion for the relief set out in paragraph 2 of this Affidavit.

41. I swear this affidavit in support of Sherson's motion for the relief set out in paragraph 2 of this Affidavit and for no other or improper purpose.

**SWORN BEFORE ME** in the City of )  
Toronto, Province of Ontario, )  
this 13<sup>th</sup> day of August, 2015. )

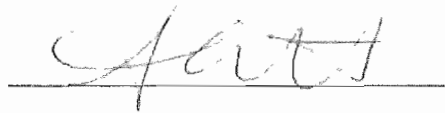
  
A Commissioner, etc.

  
\_\_\_\_\_  
**Stephen Applebaum**

ALYSSA ELAINE GEBERT, a  
Commissioner, etc., Province of Ontario,  
while a Student-at-Law,  
Expires May 1, 2018.

## **Tab 3(a)**

Attached is Exhibit "A" Referred to in the  
AFFIDAVIT OF STEPHEN APPLEBAUM  
Sworn before me this 13<sup>th</sup> day of August, 2015

A handwritten signature in dark ink, appearing to read "A. Gebert", is written over a horizontal line.

A Commissioner, etc.

ALYSSA ELAINE GEBERT, a  
Commissioner, etc., Province of Ontario,  
while a Student-at-Law.  
Expires May 1, 2016.

District of Ontario  
Division No. 9 - Toronto  
Court File No: 31-2010608  
Estate File No. 31-2010608

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)  
IN BANKRUPTCY AND INSOLVENCY**

THE HONOURABLE

JUSTICE

*NEWMAN*

)  
)  
)

TUESDAY, THE 30<sup>TH</sup> DAY

OF JUNE, 2015

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF  
SHERSON GROUP INC.**



**ORDER**

**THIS MOTION**, made by Sherson Group Inc. ("**Sherson**") for an Order, *inter alia*:

~~(a) abridging the time for service of Sherson's Notice of Motion so that the motion is properly returnable on June 30, 2015;~~ *2015*

(b) authorizing and empowering Richter Advisory Group Inc., in its capacity as proposal trustee (the "**Proposal Trustee**") in Sherson's *Bankruptcy and Insolvency Act* proposal proceedings (the "**Proposal Proceedings**") to act as a foreign representative of Sherson and the Proposal Proceedings (the "**Foreign Representative**") for the purpose of having the Proposal Proceedings recognized in a jurisdiction outside of Canada; and

(c) authorizing and empowering the Proposal Trustee, as Foreign Representative, to apply to the United States Bankruptcy Court for relief pursuant to Chapter 15 of the *United States Bankruptcy Code*, 11 U.S.C. §§ 101-1330, as amended (the "**United States Bankruptcy Code**") and any other provision of the *United States Bankruptcy Code*,

was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Motion Record of Sherson, including the Affidavit of Stephen Applebaum sworn June 29, 2015 and the exhibits thereto, and on hearing the submissions of counsel for Sherson,

**SERVICE**

~~1. **THIS COURT ORDERS** that the time for service and filing 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.~~ WT-

**FOREIGN REPRESENTATIVE**

2. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist Sherson, 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 provide such assistance to Sherson 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 Sherson and the Proposal Trustee and their respective agents in carrying out the terms of this Order.

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


4. **THIS COURT ORDERS** that the Proposal Trustee is authorized and empowered, as a foreign representative of Sherson and the Proposal Proceedings, to apply to the United States

Bankruptcy Court for relief pursuant to Chapter 15 of the *United States Bankruptcy Code*, and any other provisions of the *United States Bankruptcy Code*.

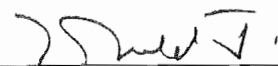
**GENERAL**

5. **THIS COURT ORDERS** that any interested party (including Sherson 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.

ENTERED AT / INSCRIT A TORONTO  
ON / BOOK NO: .  
LE / DANS LE REGISTRE NO.



JUN 3 - J 2015

  
\_\_\_\_\_

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF SHERSON GROUP INC.

District of Ontario  
Division No. 9 - Toronto  
Court File No: 31-2010608  
Estate File No. 31-2010608

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**  
**IN BANKRUPTCY AND INSOLVENCY**

Proceedings commenced at Toronto

**ORDER**

**AIRD & BERLIS LLP**  
Barristers and Solicitors  
Brookfield Place  
Suite 1800, Box 754  
181 Bay Street  
Toronto, ON M5J 2T9

**Sam Babe (LSUC # 49498B)**  
Tel: (416) 865-7718  
Fax: (416) 863-1515  
E-mail: [sbabe@airdberlis.com](mailto:sbabe@airdberlis.com)

*Lawyers for Sherson Marketing Corporation*



**Tab 3(b)**



Attached is Exhibit "B" Referred to in the  
AFFIDAVIT OF STEPHEN APPLEBAUM  
Sworn before me this 13<sup>th</sup> day of August, 2015

A handwritten signature in dark ink, appearing to read 'Alyssa', written over a horizontal line.

A Commissioner, etc.

ALYSSA ELAINE GEBERT, a  
Commissioner, etc., Province of Ontario,  
while a Student-at-Law.  
Expires May 1, 2016.

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X	
In re:	: Chapter 15
<b>SHERSON GROUP, INC.</b>	: Case No. 15-11765 (SHL)
	: <b>Hearing (if necessary):</b>
Debtor in a Foreign Proceeding.	: <b>July 16, 2015 at 11:00 a.m.</b>
	: <b>Objections Due:</b>
	: <b>July 14, 2015 by 5:00 p.m.</b>
-----X	

**ORDER TO SHOW CAUSE WITH FIRST PROVISIONAL ORDER GRANTING STAY**

Upon the motion (the “Motion”)<sup>1</sup> of Richter Advisory Group Inc., in its capacity as the proposal trustee (“Trustee”) and foreign representative of Sherson Group, Inc. (the “Debtor”) in the Matter of Intention to Make a Proposal (the “Canadian Matter”) under Canada’s *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, (“BIA”) filed in the Office of the Superintendent of Bankruptcy (“Superintendent”) and in this case pursuant to chapter 15 of title 11 of the United States Code (the “Bankruptcy Code”), and pursuant to Rule 65 of the Federal Rules of Civil Procedure (the “Federal Rules”), made applicable to these proceedings through Rule 7065 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and sections 105(a), 1507, 1519, and 1521 of the Bankruptcy Code, for a provisional order to show cause with temporary restraining order and a preliminary injunction; and upon the *Verified Petition Under Chapter 15 for Recognition of a Foreign Main Proceeding* (and all exhibits appended thereto) (the “Verified Petition”); the Court finds and concludes solely for the purposes of this Order pending a

1 Any capitalized term not otherwise defined in this order will have the meaning ascribed to such term in the Motion.

hearing on the preliminary injunction if an objection is filed to this Motion by the deadline set forth herein, as follows:

1. The Trustee commenced a case ancillary to a foreign proceeding on behalf of the Debtor with this Court pursuant to chapter 15 of the Bankruptcy Code;

2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157 and venue is proper pursuant to 28 U.S.C. § 1410;

3. This Court, pursuant to sections 105(a), 1507, 1519 and 1521 of the Bankruptcy Code, Rule 7065 of the Bankruptcy Rules, and Rule 65 of the Federal Rules, may issue any order as may be necessary or appropriate to carry out the provisions of the Bankruptcy Code, including but not limited to issuing a temporary restraining order; and

4. From specific facts in the Verified Petition and by the Motion, it appears that

- a. immediate and irreparable injury, loss or damage would result to the Debtor before the adverse parties or those parties' attorneys can be heard in opposition;
- b. without the relief sought the Debtor will suffer litigation prejudice, distraction of key personnel, and diminution of property from the loss of key licensing and product sourcing rights; and
- c. the relief requested is in the best interests of the Debtor, its creditors and other parties in interest.

NOW THEREFORE, IT IS HEREBY ORDERED that a temporary restraining order is issued herefrom, on this 7th day of July, 2015 at 11:40 a.m., without notice, enjoining all Persons (as defined below), and all those acting for or on their behalf, from taking the following actions in the United States and its territories:

- (i) Taking any action or proceeding, directly or indirectly, to: (x) enforce rights to payment, claims, offsets, liens, charges, encumbrances, or interests against the Debtor, the Trustee, the Debtor's directors, or Debtor property or its estate or business, (y) obtain possession of property of the Debtor or property from the Debtor or (z) exercise control over the Debtor, its property or its business, pending further order of the Court;

- (ii) Discontinuing, failing to honor, altering, interfering with, repudiating, terminating or ceasing to perform any right, renewal right, contract, agreement, license or permit in favor of or held by the Debtor, including, without limitation, the License Agreement, pending further order of the Court;
- (iii) Discontinuing, altering, interfering with or terminating any oral or written agreement with the Debtor or statutory or regulatory mandate for the supply of goods and/or services, including without limitation all licensing, distribution, product supply, computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor's business or the Debtor, and the Debtor shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names; provided, in each case, that the contractual prices or charges for all such goods or services received after the Canadian Commencement Date are paid by the Debtor in accordance with ordinary payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider, the Debtor and the Trustee, or as may be ordered by the Canadian Court or as provided for expressly under the BIA; and
- (iv) Taking any action that would be in violation of any order of the Canadian Court or this Court,

until either (x) in the event an objection is filed in respect of the preliminary injunction and the Second Provisional Order, the conclusion of the Preliminary Injunction Hearing (defined below) or any adjournment thereof, or (y) if no objection is filed in respect of the preliminary injunction and the Second Provisional Order and the Preliminary Injunction Hearing is cancelled, the conclusion of the hearing on recognition scheduled for July 27, 2015 at 11:00 a.m. or any adjournment thereof; and it is further

ORDERED, that pursuant to Rule 7065 of the Bankruptcy Rules, the security provisions of Rule 65(c) of the Federal Rules be, and the same hereby are, waived; and it is further

ORDERED, that service of the Motion, Verified Petition, and this Order on July 7, 2015 by (a) hand delivery on the Office of the United States Trustee, Attn: Brian S. Masumoto; and (b) by overnight delivery service or email if pdf (if such addresses are known), on (i) all parties against whom injunctive relief is being sought pursuant to the relief herein, (ii) BOM and BDC, and (iii) all parties to litigation pending in the United States in which a Debtor is a party at the time of filing

of the chapter 15 petitions, shall constitute good and sufficient service and adequate notice of this Order; and it is further

ORDERED that, if an objection has been filed as contemplated by this order, pursuant to Rule 65 of the Federal Rules and Bankruptcy Rule 7065, a hearing on the Trustee's request for a preliminary injunction will be held before the Honorable Sean H. Lane, United States Bankruptcy Judge, in Room 701 of the United States Bankruptcy Court, Alexander Hamilton Custom House, One Bowling Green, New York, New York, 10004-1408, on July 16, 2015 (the "Preliminary Injunction Hearing") at 11:00 a.m., or as soon thereafter as counsel may be heard; and it is further

ORDERED, that objections, if any, to the Trustee's request for a preliminary injunction must be made in writing, shall conform to the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules for the Southern District of New York, shall set forth the basis for the objection and the specific grounds therefor, and shall be filed with the Court with a copy to Chambers, together with proof of service thereof, and shall be served in a manner so as to be received by 5:00 p.m. on July 14, 2015 by Blank Rome LLP, attorneys for the Trustee, The Chrysler Building, 405 Lexington Avenue, New York, New York 10174, and One Logan Square, 130 N. 18<sup>th</sup> Street, Philadelphia, PA 19103, Attention: Michael B. Schaedle.

Dated: July 8, 2015  
New York, New York

/s/ Sean H. Lane  
HON. SEAN H. LANE  
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----	X
In re:	: Chapter 15
	:
SHERSON GROUP INC.,	: Case No. 15-11765-shl
	:
	:
Debtor in a Foreign Proceeding	:
-----	X

**AMENDED ORDER GRANTING RECOGNITION AND  
RELIEF IN AID OF A FOREIGN MAIN PROCEEDING  
PURSUANT TO 11 U.S.C. §§ 105(a), 1517, 1520 AND 1521**

A hearing having been held before the Court on July 27, 2015 (the “Hearing”) to consider the *Verified Petition Under Chapter 15 for Recognition of a Foreign Main Proceeding* and the *Official Form Petition* (collectively, with all exhibits attached thereto, the “Petition”)<sup>1</sup> (i) commencing this chapter 15 case and (ii) seeking recognition of the Canadian Matter commenced by Sherson Group Inc. (the “Company”) under the Canadian Bankruptcy & Insolvency Act (the “BIA”) as a “foreign main proceeding” under chapter 15 of the Bankruptcy Code; and the Court having considered and reviewed all pleadings, exhibits, affidavits and other documents filed in connection with and in support of the Petition (collectively the “Supporting Documents”) submitted by Richter Advisory Group Inc., the proposal trustee and foreign representative of the Company in the Canadian Matter (the “Trustee”); and it appearing that due and timely notice of the filing of the Petition and the Hearing and Trustee’s intent to rely on the BIA and related Canadian insolvency law has been given by Trustee consistent with this Court’s previous *Order Scheduling Hearing on Verified Chapter 15 Petition and Specifying Form and Manner of Notice of Hearing*, dated July 8, 2015 [Dkt. 17]; and such notice appearing to be adequate for all purposes

---

<sup>1</sup> Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Petition.

such that no other or further notice thereof need be given; and this Court having reviewed and considered any objection or other response; and all interested parties having had due and proper notice and an opportunity to be heard; and the Court having heard argument by counsel appearing at the Hearing; and after due deliberation and sufficient cause appearing therefore, the Court makes the following findings of fact and conclusions of law:

A. Pursuant to 11 U.S.C. § 1514, appropriate and timely notice of the filing of the Petition and the Hearing was given by Trustee, and such notice is sufficient for all purposes, and no other or further notice is necessary or required.

B. All interested parties had an opportunity to be heard at the Hearing.

C. Any objection or other responses that have not been withdrawn or otherwise resolved are hereby overruled.

D. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, and 11 U.S.C. §§ 109 and 1501.

E. Venue of this proceeding is proper in this judicial district pursuant to 28 U.S.C. § 1410.

F. This is a core proceeding under 28 U.S.C. §§ 157(b)(2)(P).

G. Trustee has satisfied the requirements of 11 U.S.C. § 1515 and Fed. R. Bank. P. 1007(a)(4) and demonstrated that:

(i) the Company is subject to a pending foreign proceeding within the meaning of 11 U.S.C. § 101(23);

(ii) the Canadian Matter is pending in Toronto, Canada, the country where the Company's center of main interests is located, and, accordingly, the Canadian Matter is a "foreign main proceeding" pursuant to 11 U.S.C. § 1502(4) and is entitled to recognition as a foreign main

proceeding pursuant to 11 U.S.C. §1517(b)(1);

(iii) Trustee is the foreign representative of the Company within the meaning of 11 U.S.C § 101(24);

(iv) the chapter 15 case was properly commenced pursuant to 11 U.S.C. §§ 1504 and 1515; and

(v) the Petition satisfies the requirements of 11 U.S.C. § 1515 and Trustee is entitled to all relief provided pursuant to 11 U.S.C. §§ 1507, 1520, and 1521, without limitation, and as ordered by this Court;

(vi) the relief granted hereby is necessary and appropriate and in the interests of public and international comity, consistent with the public policy of the United States, warranted pursuant to 11 U.S.C. §§ 1507, 1517, 1520 and 1521 to avoid irreparable harm, and will not cause hardship to any plaintiffs in litigation against the Company or its assets in the United States or other parties in interest that is not outweighed by the benefits of granting that relief.

(vii) the interest of the public will be served by this Court's granting the relief requested by Trustee.

**NOW, THEREFORE, IT IS HEREBY:**

1. ORDERED, that the Canadian proceeding respecting the Company under the BIA is granted recognition pursuant to 11 U.S.C. § 1517(a); and it is further

2. ORDERED, that the Canadian proceeding respecting the Company under the BIA is granted recognition as a foreign main proceeding pursuant to 11 U.S.C. §1517(b)(1); and it is further

3. ORDERED, that all relief afforded a foreign main proceeding pursuant to 11 U.S.C. §§ 1507 and 1520 is granted; and it is further



4. ORDERED, that the Notice of Intention, Authorizing Order and any other orders entered by the Canadian Bankruptcy Court are recognized by this Court; and it is further

5. ORDERED, that 11 U.S.C. §§ 361 and 362 apply with respect to the Company and the property of the Company that is currently within, or may be brought in, the territorial jurisdiction of the United States (the “Assets”); and it is further

6. ORDERED, that consistent with 11 U.S.C. § 1520(a)(1) all persons and entities are hereby enjoined from:

- (a) executing against or attaching any Assets;
- (b) discontinuing, failing to honor, altering, interfering with, repudiating, terminating or ceasing to perform any right, renewal right, contract, agreement, license or permit in favor of or held by the Debtor specifically including, without limitation, the License Agreement;
- (c) commencing or continuing any litigation or any actions to undertake the enforcement in the United States of any legal proceeding (including, without limitation arbitration, or any judicial, quasi-judicial, administrative or regulatory action, assessment, proceeding or process or any actions related thereto including discovery) (“Actions”), or taking any other Actions against or involving Trustee (in Trustee’s capacity as foreign representative of the Company) and any Assets or any rights, obligations or liabilities of the Company;
- (d) securing or enforcing any judicial, quasi-judicial, administrative or regulatory judgment, assessment, attachment, order or arbitration award against the Company or Trustee (with respect to the Company), or any

Assets;

- (e) commencing or continuing any Action to create, perfect or enforce any lien, setoff, attachment, or other claim against the Company, Trustee (with respect to the Company), or any of the Assets;
- (f) continuing any Action or commencing any additional Action, including discovery, involving the Company, its Assets, or Trustee (with respect to the Company); or
- (g) enforcing any judicial, quasi-judicial, administrative or regulatory judgment, assessment or order or arbitration award against the Company or its Assets; and it is further;

7. ORDERED that any further orders of the Canadian Bankruptcy Court, including, without limitation, in respect of the BIA Proposal, any Proposal Approval Orders and any other orders relating to the administration of claims and interests in the Company and its assets, shall be recognized; and it is further

8. ORDERED, that this Order shall be served upon all known parties in interest (or their counsel) as identified in the Company's Lists attached to the Petition, by electronic mail or by facsimile transmission, or by courier or in the event service by electronic mail or facsimile cannot be accomplished, then by either United States mail, first class postage prepaid or overnight delivery service, **on or before 10:00 p.m.** on July 27, 2015; and upon any other interested party that becomes known to Trustee at such time as they are sufficiently identified, by United States mail, first class postage prepaid or by courier or by email within three (3) business days following the time any such party is identified by Trustee; and it is further

9. ORDERED, that service in accordance with this Order shall constitute adequate

and sufficient service and notice; and it is further

10. ORDERED, that the Petition and the Supporting Documents shall be made available with the Court Clerk, and electronically to registered court filing system users and will be made available from Trustee upon request to counsel: Blank Rome LLP, 405 Lexington Avenue, New York, New York 10174 (Attn: Michael B. Schaedle, Esq.); and it is further

11. ORDERED, that, pursuant to 11 U.S.C. § 1521(a), the Trustee shall, unless otherwise ordered by this Court, retain the right at any point (either before or after a change in circumstances under 11 U.S.C. § 1518) to seek any further and other relief from this Court that may be necessary to implement the Canadian Matter and/or to effectuate the purposes of chapter 15, including, without limitation, seeking to enforce the Canadian stay and implement and effectuate the BIA Proposal and any Proposal Approval Orders.

Dated: New York, New York  
July 27, 2015

/s/ Sean H. Lane  
HONORABLE SEAN H. LANE  
UNITED STATES BANKRUPTCY JUDGE

Issued at 5:30 p.m.

**Tab 3(c)**

Attached is Exhibit "C" Referred to in the  
AFFIDAVIT OF STEPHEN APPLEBAUM  
Sworn before me this 13<sup>th</sup> day of August, 2015

A handwritten signature in dark ink, appearing to read 'Alyssa', is written over a horizontal line.

A Commissioner, etc.

ALYSSA ELAINE GEBERT, a  
Commissioner, etc., Province of Ontario,  
while a Student-at-Law.  
~~Expires~~ May 1, 2016.

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF  
SHERSON GROUP INC.

NOTICE OF MOTION  
(Returnable August 6, 2015)

**BDC Capital Inc. ("BDCC")** will make a motion to a Judge of the Commercial List on Thursday August 6, 2015, 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** an order:

1. abridging the time for service of this notice of motion so that the motion is properly returnable on August 6, 2015;
2. in necessary, pursuant to section 50.4(11) of the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3 (the "**BIA**"), declaring that the period for filing a proposal by Sherson Group Inc. (the "**Debtor**") be terminated;
3. appointing Richter Advisory Group Inc/Richter Groupe Conseil Inc. ("**Richter**") as receiver over the property, assets and undertaking of the Debtor (the "**Receiver**");
4. approving a sale process for the liquidation of the Debtor's assets by the Receiver (the "**Sale Process**") attached as Exhibit F to the Affidavit of Melanie Finlayson sworn August 4, 2014 (the "**Finlayson Affidavit**"); and
5. granting such further and other relief as this Honourable Court may deem just.

**THE GROUNDS FOR THE MOTION ARE:**

6. The Debtor, as licensee, is a wholesale distributor and retailer of Nine West Shoes in Canada. Pursuant to a license agreement, as amended, among Jones Apparel Group Holdings, Inc., Nine West Development Corporation, Nine West Footwear Corporation (collectively, the “**Nine West Group**”) and the Debtor (the “**License Agreement**”) the Debtor, as licensee, was granted the exclusive right to distribute and sell licensed Nine West products in Canada. The License Agreement is the primary contract under which the Debtor operates its business and is vital to the continued business operation of the Debtor.
7. The terms of the License Agreement, including the minimum purchase requirements and royalty payment obligations, together with changes in the retail market conditions and the weakening of the Canadian dollar have materially negatively impacted the Debtor’s viability and profitability. The Debtor defaulted on certain payment obligations under the License Agreement and did not have sufficient cash or available credit to cure the default.
8. Over the last seven months the Debtor attempted to negotiate amendments to the License Agreement without success. On June 29, 2015, the Debtor filed a Notice of Intention to Make a Proposal (the “**NOI Proceeding**”) pursuant to section 50.4(1) of the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c.B-3 (the “**BIA**”) to, among other things, prevent the termination of the License Agreement. Richter was named as trustee of the Debtor in the Notice of Intention (the “**NOI Trustee**”).
9. BDCC is the second ranking secured creditor of the Debtor and is owed approximately \$3.9 million. Bank of Montreal (“**BMO**”) and Stephen Applebaum and the Applebaum family (collectively, “**Applebaum**”) are respectively the first and third ranking secured creditors of the Debtor. As at the date of the commencement of this proceeding, BMO and Applebaum were owed approximately \$3.4 million and \$3.9 million, respectively.
10. The Nine West Group is the largest unsecured creditor of the Debtor, holding approximately \$19 million out of the Debtor’s approximately \$21 million total unsecured

debt. As a result, the Nine West Group holds a veto over any vote of the Debtor's creditors on any proposal put forth by the Debtor.

11. Absent substantial concessions on the terms of the License Agreement and compromise of the pre-filing debt, the Debtor will not be able to continue to carry on business or make a viable proposal.
12. Over the past approximately seven months, the Debtor has not been able to negotiate the necessary concessions with the Nine West Group. Following unsuccessful negotiation of amendments of the License Agreement, the Nine West Group and the Debtor entered into negotiations for the purchase by the Nine West Group of the business and assets of the Debtor on a going concern basis.
13. The initial 30 day period within which the Debtor had to file its proposal expired on July 29, 2015. On July 28, 2015, the Debtor obtained a short extension to August 6, 2015 to enable the Nine West Group to prepare and deliver a term sheet by July 31, 2015 for the proposed purchase of the business and assets of the Debtor on a going concern basis for a purchase price in excess of the amounts required to pay out BMO and BDCC and, if such term sheet is acceptable to the stakeholders, to prepare, negotiate and execute a definitive asset purchase agreement by August 6, 2015.
14. On July 31, 2015, the Nine West Group delivered a signed term sheet which was not on terms acceptable to the secured creditors or the Debtor.
15. Absent a going concern sale of the business to the Nine West Group, the only viable alternative to maximize recovery for BDCC and the Debtor's other stakeholders is an orderly liquidation of the Debtor's assets.
16. Based on an appraisal of the Debtor's inventory obtained by BMO and the advice of the NOI Trustee, there would appear to be sufficient collateral currently available to fully repay BDCC on a liquidation basis, provided that such liquidation commences by approximately August 22, 2015. Any delay in the commencement of the liquidation will erode BDCC's collateral position and impair its recovery. Accordingly, any further extension of the time period to file a proposal would materially prejudice BDCC.



17. BDCC therefore seeks an order terminating the NOI Proceeding, appointing Richter as Receiver and authorizing the Receiver to immediately commence a liquidation sale process for the Debtor's assets for the benefit of all economic stakeholders. BMO does not oppose BDCC's motion for the termination of the NOI Proceedings and the appointment of the Receiver.
18. If the order terminating the NOI Proceeding and appointing Richter as receiver is granted, BDCC will also seek an order approving the Sale Process.
19. Sections 50.4(11) and 243(1) of the BIA.
20. Such further and other grounds as counsel may advise and this Honourable Court may permit.

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

21. The Finlayson Affidavit and the Exhibits thereto; and
22. Such other material as counsel may advise and this Honourable Court may permit.

August 4, 2015

**CHAITONS LLP**  
Barristers and Solicitors  
5000 Yonge Street, 10<sup>th</sup> Floor  
Toronto, ON M2N 7E9

**Harvey Chaiton LSUC# 21592F**  
Tel: (416) 218-1129  
Fax: (416) 218-1849

**Maya Poliak LSUC# 54100A**  
Tel: (416) 218-1161  
Fax: (416) 218-1844

**Lawyers for BDC Capital Inc.**

**TO: THE SERVICE LIST**

**ONTARIO  
SUPERIOR COURT OF ONTARIO  
IN BANKRUPTCY**

Proceedings commenced at TORONTO

**NOTICE OF MOTION**  
(Motion Returnable August 6, 2015)

**CHAITONS LLP**  
Barristers and Solicitors  
5000 Yonge Street, 10<sup>th</sup> Floor  
Toronto, ON M2N 7E9

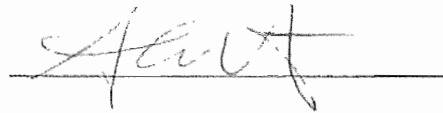
**Harvey Chaiton (LSUC #21592F)**  
Tel: (416) 218-1129  
Fax: (416) 218-1849

**Maya Poliak (LSUC #54100A)**  
Tel: (416) 218-1161  
Fax: (416) 218-1844

**Lawyers for BDC Capital Inc.**

**Tab 3(d)**

Attached is Exhibit "D" Referred to in the  
AFFIDAVIT OF STEPHEN APPLEBAUM  
Sworn before me this 13<sup>th</sup> day of August, 2015

A handwritten signature in dark ink, appearing to read 'Elaine Gebert', is written over a horizontal line.

A Commissioner, etc.

SSA ELAINE GEBERT, a  
Commissioner, etc., Province of Ontario,  
while a Student-at-Law.  
Expires May 1, 2016.

**SHERSON GROUP INC.**

as Vendor

and

**NINE WEST CANADA LP**

as Purchaser

and

THE OTHER PARTIES HERETO

---

**ASSET PURCHASE AGREEMENT**

August 6, 2015

---

## TABLE OF CONTENTS

### ARTICLE 1 INTERPRETATION

Section 1.1	Definitions.....	1
Section 1.2	Other Defined Terms.....	5
Section 1.3	Date for Any Action. ....	5
Section 1.4	Gender and Number. ....	6
Section 1.5	Headings, etc. ....	6
Section 1.6	Currency.....	6
Section 1.7	Certain Phrases, etc.....	6
Section 1.8	Schedules. ....	6

### ARTICLE 2 PURCHASED ASSETS

Section 2.1	Purchased Assets. ....	6
Section 2.2	Excluded Assets. ....	8

### ARTICLE 3 ASSUMED LIABILITIES

Section 3.1	Assumed Liabilities. ....	9
Section 3.2	Excluded Liabilities. ....	9

### ARTICLE 4 ASSIGNMENT AND ASSUMPTION OF CONTRACTS AND LEASES

Section 4.1	Assignment of Assigned Contracts and Assigned Leases. ....	10
Section 4.2	Responsibility for Contracts During Interim Period. ....	10
Section 4.3	Consent Required Contracts. ....	11
Section 4.4	Certain Covenants. ....	12
Section 4.5	Cooperation to Amend. ....	13

### ARTICLE 5 PURCHASE PRICE

Section 5.1	Purchase Price and Deposit.....	13
Section 5.2	Payment of Purchase Price. ....	14
Section 5.3	Post-Filing Liabilities.....	15
Section 5.4	Allocation of Purchase Price.....	16

### ARTICLE 6 TAX MATTERS

Section 6.1	ETA/QSTA Elections. ....	16
Section 6.2	Provincial Sales Taxes. ....	16
Section 6.3	Transfer Taxes. ....	16
Section 6.4	Indemnity for Transfer Taxes.....	16
Section 6.5	Income Tax Elections.....	17

**ARTICLE 7  
EMPLOYEE MATTERS**

Section 7.1	Offer to Employees.....	17
Section 7.2	Employee Plans.....	17
Section 7.3	Employee Liability.....	18

**ARTICLE 8  
REPRESENTATIONS AND WARRANTIES**

Section 8.1	Vendor Representations and Warranties. ....	18
Section 8.2	Purchaser's Representations and Warranties. ....	20
Section 8.3	Survival. ....	21
Section 8.4	No Other Representations or Warranties of the Vendor; "As Is, Where Is" ...	21

**ARTICLE 9  
COVENANTS**

Section 9.1	Conduct of Business in the Ordinary Course. ....	22
Section 9.2	Exclusive Dealing.....	22
Section 9.3	Bankruptcy Filings.....	22
Section 9.4	Actions to Satisfy Closing Conditions. ....	22
Section 9.5	Access. ....	23
Section 9.6	Access to Books and Records. ....	23
Section 9.7	Use of Business Name.....	23
Section 9.8	Post-Closing Accounts Receivable. ....	23

**ARTICLE 10  
CONDITIONS OF CLOSING**

Section 10.1	Conditions for the Benefit of both Parties. ....	24
Section 10.2	Conditions for the Benefit of the Purchaser. ....	24
Section 10.3	Conditions for the Benefit of the Vendor. ....	25

**ARTICLE 11  
CLOSING**

Section 11.1	General. ....	25
Section 11.2	Vendor's Closing Deliveries.....	26
Section 11.3	Purchaser's Closing Deliveries. ....	26

**ARTICLE 12  
TERMINATION**

Section 12.1	Termination of Agreement.....	27
Section 12.2	Effect of Termination.....	27

**ARTICLE 13  
MISCELLANEOUS**

Section 13.1	Notices.....	28
--------------	--------------	----

Section 13.2	Assignment.....	29
Section 13.3	Setoff.....	29
Section 13.4	Survival.....	29
Section 13.5	Time of the Essence.....	30
Section 13.6	Enurement.....	30
Section 13.7	Entire Agreement.....	30
Section 13.8	Waiver.....	30
Section 13.9	Amendments.....	30
Section 13.10	Further Assurances.....	30
Section 13.11	Severability.....	31
Section 13.12	Governing Law.....	31
Section 13.13	Counterparts.....	31



## ASSET PURCHASE AGREEMENT

This asset purchase agreement is dated August 6, 2015 between Sherson Group Inc. (the "**Vendor**"), Nine West Canada LP, a new Ontario limited partnership (or its assignee, the "**Purchaser**") and Stephen Applebaum Inc. and Stephen Applebaum (in his personal capacity) (the "**Guarantors**").

### RECITALS:

- (a) The Vendor filed a notice of intention to make a proposal (the "**NOI**") under the *Bankruptcy and Insolvency Act* (the "**BIA**") on June 29, 2015; and
- (b) The Vendor wishes to sell substantially all of the assets used in the Business and to assign certain liabilities and the Purchaser has agreed to purchase such assets and assume such liabilities upon the terms and conditions contained in this Agreement.

In consideration of the above and for other good and valuable consideration, the parties agree as follows.

## ARTICLE 1 INTERPRETATION

### Section 1.1 Definitions.

As used in this Agreement, the following terms have the following meanings:

**"Agreement"** means this asset purchase agreement, including all schedules annexed hereto, as the same may be amended, supplemented or otherwise modified from time to time in accordance with the terms hereof.

**"Approval and Vesting Order"** means an approval and vesting order of the Court approving this Agreement and the transactions contemplated hereby, vesting in and to the Purchaser the Purchased Assets free and clear of and from any and all Encumbrances other than Permitted Encumbrances and waiving compliance with the applicable provisions of the *Bulk Sales Act* (Ontario).

**"Assigned Contract"** means a contract (other than a lease of real or immovable property) to which the Vendor is a party that is the subject of an Assignment Notice and the benefit of which is assigned to the Purchaser in accordance with Article 4 or by way of an Assignment Order.

**"Assigned Lease"** means a lease for real (or immovable) property to which the Vendor is a party as tenant that is the subject of an Assignment Notice and the benefit of which is assigned to the Purchaser in accordance with Article 4 or by way of an Assignment Order.

**"Assignment Order"** means an order of the Court requiring the assignment of contracts and leases designated by the Purchaser to which the Vendor is a party to the Purchaser, in form and substance satisfactory to the Purchaser and the Proposal Trustee, acting reasonably.

**"Business"** means the businesses operated by the Vendor, which consists of the importation, wholesale and retail of footwear and accessories for women in Canada.

**"Business Day"** means any day of the year, other than a Saturday, Sunday or any day on which Canadian chartered banks are closed for business in Toronto, Ontario.

**"Closing Date"** means the date that is three Business Days after the later of (a) the date the Approval and Vesting Order is obtained and (b) the date the Assignment Order is obtained, but no later than August 20, 2015.

**"Consent Required Agreements"** means the contracts and leases to which the Vendor is a party which are the subject of an Assignment Notice and which are not, other than by Assignment Order, assignable in whole or in part without the consent, approval or waiver of the party or parties thereto other than the Vendor.

**"Court"** means the Ontario Superior Court of Justice (Commercial List).

**"Cure Payment"** means a payment required to cure any existing monetary default or breach of the Vendor under any contract or lease which is to become an Assigned Contract or Assigned Lease as at the date such contract or lease, respectively, becomes an Assigned Contract or Assigned Lease.

**"Designation Deadline"** means the date that is 90 days after the Closing Date.

**"Employee Plans"** means all the employee benefit, fringe benefit, supplemental unemployment benefit, bonus, incentive, profit sharing, termination, change of control, retirement, health, welfare, medical, dental, disability, life insurance and similar plans, programmes, arrangements or practices relating to the current or former directors, officers or employees of the Vendor maintained, sponsored or funded by the Vendor, whether written or oral, funded or unfunded, insured or self-insured, registered or unregistered.

**"Encumbrances"** means any mortgage, charge, pledge, hypothec, security interest, assignment, lien (statutory or otherwise), easement, license, right of first refusal or first offer, title retention agreement or arrangement, conditional sale, deemed or statutory trust, restrictive covenant, execution, levies, or other financial or monetary claims or encumbrances of any nature (whether at law or equity), and any contract, option, right or privilege (whether by Law, contract or otherwise) capable of becoming any of the foregoing.

**"Governmental Entity"** means: (i) any governmental or public department, central bank, court, minister, governor-in-council, cabinet, commission, tribunal, board, bureau, agency, commissioner or instrumentality, whether international,

multinational, national, federal, provincial, state, county, municipal, local, or other; (ii) any subdivision or authority of any of the above; and (iii) any quasi-governmental or private body exercising any regulatory, expropriation or taxing authority under or for the account of any of the above.

**"Intellectual Property"** means domestic and foreign: (i) patents, applications for patents and reissues, divisions, continuations, renewals, extensions and continuations-in-part of patents or patent applications; (ii) proprietary and non-public business information, including inventions (whether patentable or not), invention disclosures, improvements, discoveries, trade secrets, confidential information, know-how, methods, processes, designs, technology, technical data, schematics, formulae and customer lists, and documentation relating to any of the foregoing; (iii) copyrights, copyright registrations and applications for copyright registration; (iv) mask works, mask work registrations and applications for mask work registrations; (v) designs, design registrations, design registration applications and integrated circuit topographies; (vi) trade names, business names, corporate names, domain names, website names and world wide web addresses, common law trade-marks, trade-mark registrations, trade mark applications, trade dress and logos, and the goodwill associated with any of the foregoing; (vii) computer software and programs (both source code and object code form), all proprietary rights in the computer software and programs and all documentation and other materials related to the computer software and programs; and (viii) any other intellectual property and industrial property.

**"Laws"** means any principle of common law and all applicable: (i) laws, constitutions, treaties, statutes, codes, ordinances, orders, decrees, rules, regulations and by-laws; (ii) judgments, orders, writs, injunctions, decisions, awards and directives of any Governmental Entity; and (iii) to the extent that they are treated as binding by the Governmental Entity, have the force of law, policies, guidelines, notices and protocols of any Governmental Entity.

**"Leased Premises"** means those lands and premises that are subject to the leases for real property to which the Vendor is a party as tenant.

**"License Agreement"** means the distribution and license agreement dated as of January 1, 2004 between the Vendor and Jones Apparel Group Holdings, Inc., Nine West Development Corporation and Nine West Footwear Corporation, as amended from time to time.

**"Ordinary Course"** means, with respect to the Vendor, an action consistent with the past practices of the Vendor prior to the filing of the NOI and taken in the ordinary course of the normal day-to-day business and operations of the Vendor, provided that such action is in compliance, in all material respects, with applicable Laws (provided that it is acknowledged that the Vendor will not be purchasing inventory and is required to comply with the requirements of the NOI proceedings).

**"Outside Date"** means August 20, 2015.

**"Permitted Encumbrances"** means those Encumbrances listed on Schedule A.

**"Person"** includes an individual, partnership, association, body corporate, trustee, executor, administrator, legal representative, government (including any Governmental Entity) or any other entity, whether or not having legal status.

**"Post-Filing Liabilities"** means those obligations and liabilities incurred by the Vendor during the course of the NOI proceedings from June 29, 2015 through to the Closing Date in respect of: (i) wages and benefits incurred in respect of the employment of its employees during the NOI Proceedings (excluding for termination or severance); (ii) royalties and other payments owing to Nine West by the Vendor under the License Agreement; (iii) unrecoverable sales Taxes incurred in respect of goods acquired for which the Vendor is not entitled to claim a credit or refund; (iv) duty incurred in respect of goods acquired; (v) reasonable professional fees incurred by the Vendor or for the account of the Vendor, including reasonable professional fees incurred by the Proposal Trustee in each case with respect to the NOI proceedings of the Vendor; (vi) amounts owing under section 81.3 of the BIA, save and except amounts owing to the Vendors, Guarantors and related parties, to a maximum of \$[REDACTED]; and (vii) other amounts reasonably incurred in the Ordinary Course during such period, namely: sales taxes owing on post filing Sales net of input tax credits incurred post filing; travel, auto, meals and other employee expenses incurred; supplies, signage, and marketing expenses; post-NOI filing Amex, Mastercard liabilities relating to business expenses; post-NOI filing expenses owing to temporary labor agencies; warehouse supplies; utilities, telephone, computer, and lease consultant expenses; credit card fees; bank fees and charges in relation to the operation of bank accounts; and software licensing costs. **"Post-Filing Liabilities"** shall not include any payments to either Guarantor or to Persons not at arm's length to the Vendor or the Guarantors, other than base salaries and benefits, without the prior written consent of the Purchaser.

**"Proposal Trustee"** means Richter Advisory Group Inc., pursuant to its proposed appointment as proposal trustee of the Vendor under the BIA.

**"Tax"** means: (i) any and all taxes, duties, fees, excises, premiums, assessments, imposts, levies and other charges or assessments of any kind whatsoever imposed by any Governmental Entity, whether computed on a separate, consolidated, unitary, combined or other basis, including those levied on, or measured by, or described with respect to, income, gross receipts, profits, gains, windfalls, capital, capital stock, production, recapture, transfer, land transfer, license, gift, occupation, wealth, environment, net worth, indebtedness, surplus, sales, goods and services, harmonized sales, use, value-added, excise, special assessment, stamp, withholding, business, franchising, real or personal property, health, employee health, payroll, workers' compensation, employment or unemployment, severance, social services, social security, education, utility, surtaxes, customs, import or export, and including all license and registration fees and all employment insurance, health insurance and government pension plan premiums or contributions; (ii) all interest, penalties, fines, additions to tax or other additional amounts imposed by any Governmental Entity

on or in respect of amounts of the type described in clause (i) above or this clause (ii); (iii) any liability for the payment of any amounts of the type described in clauses (i) or (ii) as a result of being a member of an affiliated, consolidated, combined or unitary group for any period; and (iv) any liability for the payment of any amounts of the type described in clauses (i) or (ii) as a result of any express or implied obligation to indemnify any other Person or as a result of being a transferee or successor in interest to any party.

**"Time of Closing"** means 8:30 a.m. (Toronto time) on the Closing Date.

**"Transferred Employees"** means those employees of the Vendor who accept the Purchaser's offer of employment given in accordance with this Agreement.

## **Section 1.2 Other Defined Terms.**

In addition to the defined terms in Section 1.1, each of the following capitalized terms shall have the meaning ascribed thereto in the corresponding Section:

<b>TERM</b>	<b>REFERENCE</b>
Accounts Receivable.....	Section 2.1(d)
Assignment Notice .....	Section 4.1(1)
Assumed Liabilities .....	Section 3.1
BIA .....	Recitals
Closing.....	Section 11.1
Contract Assumed Liabilities .....	Section 4.1(2)
ETA .....	Section 6.1
Excluded Assets .....	Section 2.2
Guarantors .....	Appearances
NOI .....	Recitals
Notice.....	Section 13.1
Proposal Trustee's Certificate .....	Section 11.1(3)
Purchase Assets.....	Section 2.1
Purchase Price .....	Section 5.1
Purchaser.....	Appearances
QSTA .....	Section 6.1
Start Date.....	Section 7.1
Transfer Taxes .....	Section 6.3
Vendor .....	Appearances

## **Section 1.3 Date for Any Action.**

If the date on which any action is required to be taken hereunder by a party is not a Business Day, such action shall be required to be taken on the next succeeding day which is a Business Day.

#### **Section 1.4 Gender and Number.**

Any reference in this Agreement to gender includes all genders. Words importing the singular number only shall include the plural and vice versa.

#### **Section 1.5 Headings, etc.**

The provision of a Table of Contents, the division of this Agreement into Articles and Sections and the insertion of headings are for convenient reference only and are not to affect its interpretation.

#### **Section 1.6 Currency.**

All references in this Agreement to dollars or to \$ are expressed in Canadian currency unless otherwise specifically indicated.

#### **Section 1.7 Certain Phrases, etc.**

In this Agreement (i) the words "including", "includes" and "include" mean "including (or includes or include) without limitation", and (ii) the phrase "the aggregate of", "the total of", "the sum of", or a phrase of similar meaning means "the aggregate (or total or sum), without duplication, of". Unless otherwise specified, the words "Article" and "Section" followed by a number mean and refer to the specified Article or Section of this Agreement.

#### **Section 1.8 Schedules.**

The schedules attached to this Agreement form an integral part of this Agreement for all purposes of it.

### **ARTICLE 2 PURCHASED ASSETS**

#### **Section 2.1 Purchased Assets.**

Subject to the terms and conditions of this Agreement, except for the Excluded Assets, the Vendor agrees to sell, assign and transfer to the Purchaser and the Purchaser agrees to purchase from the Vendor, on the Closing Date, effective as of the Time of Closing, or such later time as is contemplated by this Agreement, all undertakings, property and assets of the Vendor, including any and all assets that relate to or are used in connection with the operation of the Business (collectively, the "**Purchased Assets**"), including but not limited to the following assets, all free and clear of all Encumbrances (other than Permitted Encumbrances):

- (a) all cash on hand, cash equivalents and bank deposits;
- (b) all inventory and supplies;

- (c) all personal or movable property, leasehold improvements, furniture fixtures and equipment, and racking;
- (d) all accounts receivable, credit card and debit card receivables, notes receivable and other debts due or accruing due to the Vendor (the "**Accounts Receivable**");
- (e) all prepaid expenses and deposits;
- (f) all client files, point-of-sale and computer equipment and other equipment;
- (g) all trucks, cars and other vehicles owned by the Vendor;
- (h) the benefit of all of the Assigned Contracts and Assigned Leases, provided that such benefit shall not be sold, transferred and assigned until the relevant Assigned Contract or Assigned Lease becomes an Assigned Contract or Assigned Lease in accordance with Article 4 or pursuant to an Assignment Order;
- (i) all Intellectual Property owned or licensed by the Vendor trademarks, trade names, domain names, website names, and world wide web addresses and logos owned by the Vendor;
- (j) to the extent transferable, the proceeds of any and all refunds that may be due to the Vendor from Canada Revenue Agency and from any provincial tax authorities;
- (k) all telephone and facsimile numbers, internet domain names and social media accounts used in connection with the Business and the Vendor's right, title and benefit to any and all consents, whether express or implied, granted in favour of the Vendor in accordance with *An Act to promote the efficiency and adaptability of the Canadian economy by regulating certain activities that discourage reliance on electronic means of carrying out commercial activities, and to amend the Canadian Radio-television and Telecommunications Commission Act, the Competition Act, the Personal Information Protection and Electronic Documents Act and the Telecommunications Act* (Canada) (commonly known as "Canada's Anti-Spam Law" or "CASL");
- (l) all orders, authorizations, approvals, licenses or permits of a Governmental Entity, owned, held or used by the Vendor;
- (m) all information in any form relating to, or used in connection with, the Business, including books of account, financial and accounting information and records, personnel records, sales and purchase records, customer and supplier lists, business reports, operating guides and manuals, plans and projections, marketing and advertising materials and all other documents, files, correspondence and other information (whether in written, printed,

electronic or computer printout form, or stored on computer discs or other data and software storage and media devices);

- (n) to the extent transferrable, all customer guarantees, customer notes, security agreements, financing statements under applicable personal property security legislation, customer deposits or collateral, filings or property securing customer obligations;
- (o) to the extent transferable, all claims, actions, causes of action, indemnities, warranties, guarantees, rights of recovery, rights of set-off and rights of recoupment of the Vendor (excluding against the Bank of Montreal or BDC Capital Inc.);
- (p) all proceeds payable to the Vendor upon any policies of insurance; and
- (q) the goodwill of the Business, including the exclusive right of the Purchaser to (i) represent itself as carrying on the Business in continuation of and in succession to the Vendor, and (ii) use any words indicating that the Business is carried on, together with the rights, if any, to telephone and facsimile numbers used in connection with the Business.

## **Section 2.2 Excluded Assets.**

The Purchased Assets shall not include any of the following (collectively, the “Excluded Assets”):

- (a) \$672,395.00 owing by Stephen Applebaum (in his personal capacity) to the Vendor as a result of a loan by the Vendor;
- (b) any claim, action, cause of action, indemnity, warranty, guarantee, right of recovery, right of set-off or right of recoupment of the Vendor against the Bank of Montreal or BDC Capital Inc.;
- (c) the benefit of any secured loan or credit agreement, or of any related security agreement, between the Vendor and any of the Bank of Montreal or BDC Capital Inc.; and
- (d) the benefit of any contracts, agreements and understandings to which the Vendor is a party other than those contracts and leases that are assigned to the Purchaser pursuant to Article 4 or to an Assignment Order.

For greater certainty, the Purchase Price will not be adjusted or set off against for Excluded Assets.



### ARTICLE 3 ASSUMED LIABILITIES

#### Section 3.1 Assumed Liabilities.

Subject to the Closing, and except for the Excluded Liabilities, the Purchaser agrees to assume, as of the Time of Closing or such other later time as is stipulated below, all of the Vendor's obligations and liabilities (and no other obligations or liabilities) relating to (collectively, the "**Assumed Liabilities**");

- (a) the Purchased Assets arising and accruing in respect of the period after the Time of Closing and not related to any default existing at, prior to or as a consequence of Closing (which, for greater certainty, excludes all obligations and liabilities in connection with the Assigned Contracts and Assigned Leases, the assumption of obligations and liabilities of which is dealt with pursuant to Article 4);
- (b) the costs and expenses incurred by the Vendor for which the Purchaser is responsible pursuant to Section 4.2(2);
- (c) the obligations and liabilities of the Vendor arising under each of the Assigned Contracts and Assigned Leases, from and after the date each respective Assigned Contract and Assigned Lease becomes an Assigned Contract or Assigned Lease and not related to any default existing at, prior to or as a consequence of the assignment of such Assigned Contract or Assigned Lease to the Purchaser;
- (d) the obligation and liability of the Vendor to pay Cure Payments in respect of any contract or lease to which the Vendor is a party which becomes an Assigned Contract or Assigned Lease;
- (e) the obligations and liabilities of the Vendor with respect to the Transferred Employees that are expressly assumed by the Purchaser pursuant to this Agreement; and
- (f) any other liability which the Purchaser agrees in writing to assume on or before the Designation Deadline.

#### Section 3.2 Excluded Liabilities.

- (1) Other than the Assumed Liabilities and the Contract Assumed Liabilities, the Purchaser shall not assume and shall have no obligation to discharge, perform or fulfill any liability or obligation of the Vendor or in connection with the Purchased Assets, whether known, unknown, direct, indirect, absolute, contingent or otherwise or arising out of facts, circumstances or events, in existence on or prior to the Time of Closing (with respect to the Assumed Liabilities) or, subject to Article 4, on or prior to the date on which the Assigned Contract or Assigned Lease becomes an Assigned

Contract or Assigned Lease, respectively (with respect to the Contract Assumed Liabilities).

- (2) Without limiting the generality of Section 3.2(1), the Purchaser shall not assume and shall have no obligation in respect of (i) any of the Excluded Assets or (ii) except as expressly provided herein, any liabilities of the Vendor for Taxes other than Transfer Taxes payable by the Purchaser pursuant to Section 6.3.

#### ARTICLE 4 ASSIGNMENT AND ASSUMPTION OF CONTRACTS AND LEASES

##### Section 4.1 Assignment of Assigned Contracts and Assigned Leases.

- (1) On or prior to the Designation Deadline, the Purchaser may, in its sole discretion, designate any contract to which the Vendor is a party (other than a lease for real property) to become an Assigned Contract and any lease for real property to which the Vendor is a party as tenant to become an Assigned Lease by providing one or more written notices to the Vendor (each an "**Assignment Notice**"), which notices shall specify the contract or lease so designated and a date no earlier than 10 Business Days following delivery of the relevant notice on which the benefit of contract or lease specified in such notice will (subject to Section 4.3) be assigned to the Purchaser and which shall not be earlier than the Closing Date (such date, with respect to an Assignment Notice, the "**Assignment Date**").
- (2) Subject to Section 4.3, the Vendor shall be deemed to have assigned the benefit of any contract or lease specified in each Assignment Notice (together with the benefit of all security deposits related thereto) on the Assignment Date and the Purchaser shall be deemed to have assumed, on the Assignment Date, all of the Vendor's obligations and liabilities relating to such contract or lease arising and accruing in respect of the period after the Assignment Date and not related to any default existing at, prior to or as a consequence of the Closing or of the assignment of such Assigned Contract or Assigned Lease (collectively, the "**Contract Assumed Liabilities**"), in each case without payment of any additional consideration. Such contract or lease shall become an Assigned Contract or Assigned Lease, respectively, on the date such contract or lease is assigned to the Purchaser in accordance with this Article 4.

##### Section 4.2 Responsibility for Contracts During Interim Period.

- (1) From and after the Closing Date until the earliest to occur of (w) the date on which the applicable contract or lease becomes an Assigned Contract or an Assigned Lease, respectively, pursuant to an Assignment Notice or Assignment Order, (x) the date the Purchaser has delivered notice to the Vendor stipulating the applicable contract or lease is rejected and will not be or become an Assigned Contract or Assigned Lease and the applicable 30 day notice period for the disclaimer of such contract or lease has expired, (y) the applicable contract or lease is terminated by the Vendor or the counterparty thereto, or in accordance with its terms, and (z) if an Assignment Notice has not been issued with respect to such contract or lease on or before the

Designation Deadline, the Designation Deadline (the period from the Closing Date until such earliest date, the "Interim Period"); the Vendor will with respect to each contract or lease to which it is a party use commercially reasonable efforts during the term of such contract or lease to (i) provide to the Purchaser the benefit of each such contract and lease (including, without limitation, the right to use and occupy any premises subject to such a lease and otherwise operate the premises subject to such a lease), (ii) cooperate in any reasonable and lawful arrangement (including holding such contract or lease in trust for the Purchaser pending receipt of any required consent, approval or waiver to the assignment of such contract or lease pursuant to an Assignment Notice) designed to provide such benefits to the Purchaser, and (iii) enforce for the account of the Purchaser any rights of the Vendor under such contract and leases (including the right to elect to terminate such contract or lease in accordance with the terms thereof upon the written direction of the Purchaser), in each case subject to the prior approval of the Purchaser. The Purchaser will cooperate with the Vendor in order to enable the Vendor to provide to the Purchaser the benefits of the contracts and leases contemplated by this Section 4.2(1), and the Purchaser shall promptly upon demand pay any and all reasonable costs and expenses incurred by the Vendor in connection with the performance by the Vendor of its obligations under this Section 4.2(1).

- (2) The Purchaser shall pay the Vendor the amount incurred by the Vendor (plus applicable sales Taxes) in respect of any and all reasonable obligations and liabilities arising under contracts and leases to which the Vendor is a party during the Interim Period for each such contract and lease that are approved in advance by the Purchaser. The Purchaser shall also pay the Vendor (plus applicable sales Taxes) in respect of reasonable costs incurred by the Vendor and Proposal Trustee in respect of their necessary involvement, if any, during the Interim Period. In addition, the Purchaser shall pay the Vendor for its reasonable wage or salary and benefit costs (excluding for termination or severance) incurred in respect of the Interim Period. Such payments shall be made in consideration of the services performed by the Vendor for the benefit of the Purchaser pursuant to this Section 4.2.

#### **Section 4.3      Consent Required Contracts.**

- (1) Nothing in this Agreement shall be construed as an agreement to assign any Consent Required Contract, unless the consent, approval or waiver required to assign such Consent Required Contract has been given or an Assignment Order has been made with respect to such Consent Required Agreement.
- (2) From the date the relevant Assignment Notice is delivered, the Vendor and the Purchaser shall use reasonable commercial efforts to obtain the consents, approvals and waivers required for the assignment of the Consent Required Agreements that are the subject of such Assignment Notice. Other than the payment of Cure Payments in accordance with this Agreement and payment of reasonable legal costs incurred by any landlord in connection with the assignment of a lease that becomes an Assigned Lease, the Purchaser shall be under no obligation to pay any money, incur any obligations, commence any legal proceedings, or offer or grant any

accommodation (financial or otherwise) to any third party in order to obtain any consent, approval or waiver for any Consent Required Contract.

- (3) At the time of obtaining the Approval and Vesting Order, the Vendor shall obtain the Assignment Order, which shall be effective as of the assignment date of each Assumed Lease or Assumed Contract, should the Purchaser not otherwise obtain any of the consents provided for in Section 4.3(2) above.
- (4) With respect to the Consent Required Agreements, subject to Closing and to either (i) the consent of the other parties thereto to the assignment thereof, or (ii) in the absence of such consent, the obtaining of an Assignment Order, the Purchaser shall pay the applicable Cure Payments related to the applicable Consent Required Agreements on the relevant Assignment Date to the applicable counterparties thereto.

#### **Section 4.4 Certain Covenants.**

- (1) From the date of this Agreement, the Vendor shall and the Guarantors shall cause the Vendor to:
  - (a) until the Designation Date, use its commercially reasonable efforts to preserve intact its current business organization, keep available the services of its agents and employees and maintain good relations with, and the goodwill of, suppliers, customers, landlords, creditors, distributors and all other Persons having business relationships with the Vendor, subject in all cases to the obligations of the Vendor under this Agreement;
  - (b) until the end of the Interim Period for the applicable lease, remain in possession of the Leased Premises for such lease in accordance with its terms and to the extent the such lease is not validly disclaimed by the counterparty thereto prior to the end of the Interim Period;
  - (c) continue to abide by the terms of the contracts to which it is a party, to the extent the applicable contract is not validly disclaimed by the counterparty thereto prior to the end of the Interim Period (except for the terms of the License Agreement until the earlier of the Closing Date or the date of termination of this Agreement);
  - (d) subject to applicable Laws, confer with the Purchaser concerning operational matters of a material nature relating to the Business; and
  - (e) use its commercially reasonable efforts to retain possession and control of the Purchased Assets until sold, transferred and assigned to the Purchaser.
- (2) Without derogating from the obligation of the Vendor and Guarantors in Section 4.4(1) but subject to applicable Laws, from there date hereof the Vendor shall not, and the Guarantors shall cause the Vendor not to:

- (a) terminate, amend, supplement, modify, waive any rights under, or suffer, create or allow to exist any Encumbrance (other than Permitted Encumbrances) with respect to any contract or lease to which the Vendor is a party, or take any affirmative action not required by the terms thereof, except, in each case, as required by this Agreement or with the prior written consent of the Purchaser;
- (b) amend, compromise or enter into any agreements or arrangements relating to any Purchased Assets or which may reduce the value of such assets;
- (c) terminate any employee of the Vendor without the prior written consent of the Purchaser;
- (d) make any bonus or profit sharing distribution or similar payment of any kind to any Person in connection with the Business except to an employee of the Vendor in accordance with a *bona fide* written employment contract with such employee that has been delivered to the Purchaser;
- (e) grant any general increase in the rate of wages, salaries, bonuses or other remuneration of any employee;
- (f) increase the benefits to which any employee is entitled under any Employee Plan;
- (g) cancel, reduce or otherwise impair any of its insurance coverage, including taking any action or omitting to take any action that would enable the insurers under Vendor's policies to avoid liability for claims arising out of occurrences prior to Closing; or
- (h) authorize, agree or otherwise commit, whether or not in writing, to do any of the foregoing.

#### **Section 4.5 Cooperation to Amend.**

At the Purchaser's request, and at the Purchaser's cost and expense, until the earlier of the Designation Deadline and the date the relevant contract or lease becomes an Assigned Contract or Assigned Lease, respectively, the Vendor shall cooperate with the Purchaser as reasonably requested by the Purchaser to amend any contract or lease to which the Vendor is a party and negotiate with the counterparty of any such contract or lease to cause such amendment.

### **ARTICLE 5 PURCHASE PRICE**

#### **Section 5.1 Purchase Price and Deposit.**

- (1) The Purchaser shall immediately upon execution of this Agreement deposit the amount of \$[REDACTED] with the Proposal Trustee's counsel, in trust. The deposit will be

applied on Closing in satisfaction of an equivalent amount of the Purchase Price. If the Closing does not occur by the Outside Date due to either a breach by the Vendor or the failure of the Court to issue the Approval and Vesting Order and/or (unless waived by the Purchaser) the Assignment Order, the full amount of the deposit together with all accrued interest accrued thereon shall be immediately returned to the Purchaser. In all other cases, the deposit will be able to be retained as liquidated damages and used by the Proposal Trustee in accordance with a Court order. Such liquidated damages shall be the Vendor's sole and exclusive remedy for any such breach by the Purchaser of its representations, warranties or covenants under this Agreement.

- (2) The consideration payable by the Purchaser to the Vendor for the Purchased Assets is the sum of the following (the "**Purchase Price**"), exclusive of Transfer Taxes:
- (a) the amount required to satisfy the obligations of the Vendor owing to the Bank of Montreal as at the Closing Date pursuant to the payout letter to the Vendor from the Bank of Montreal delivered by the Vendor pursuant to Section 11.2(b), including any per diem amounts; plus
  - (b) the amount required to satisfy the obligations of the Vendor owing to BDC Capital Inc. as at the Closing Date pursuant to the payout letter to the Vendor from BDC Capital Inc. delivered by the Vendor pursuant to Section 11.2(b), including any per diem amounts; plus
  - (c) \$ [REDACTED], being the amount required for the Proposal Trustee to complete the bankruptcy and wind up of the Vendor after the Designation Deadline, and applicable HST (for greater certainty, which amount shall be exclusive of current retainers held by the Proposal Trustee, its Canadian and US counsel); and
  - (d) \$ [REDACTED], to Stephen Applebaum Inc. or as it may direct.

In addition, the Purchaser will assume the Assumed Liabilities.

## **Section 5.2 Payment of Purchase Price.**

The Purchase Price shall be satisfied by the Purchaser as follows, and the Vendor hereby directs the Purchaser to make the payments of the Purchase Price in accordance with this Section 5.2 and this shall be the Purchaser's good and sufficient authority for so doing:

- (a) as to the dollar value of the Assumed Liabilities, by the Purchaser assuming the Assumed Liabilities;
- (b) as to the amount referred to in Section 5.1(2)(a), by payment by the Purchaser to the Bank of Montreal or as the Bank of Montreal may otherwise direct, on behalf of the Vendor, of such amount by wire transfer of immediately available funds on the Closing Date (inclusive of the deposit);

- (c) as to the amount referred to in Section 5.1(2)(b), by payment by the Purchaser to BDC Capital Inc. or as BDC Capital Inc. may otherwise direct, on behalf of the Vendor, of such amount by wire transfer of immediately available funds on the Closing Date;
- (d) as to the amount referred to in Section 5.1(2)(c), by payment by the Purchaser to the Proposal Trustee, in trust for the Vendor, of such amount by wire transfer of immediately available funds on the Closing Date, to be applied by the Proposal Trustee on account of costs and expenses incurred by the Vendor in connection with its insolvency and winding up following the Designation Date;
- (e) as to \$ [REDACTED] of the amount referred to in Section 5.1(2)(d), by payment by the Purchaser to Stephen Applebaum Inc. or as Stephen Applebaum Inc. may otherwise direct, on behalf of the Vendor, of such amount by wire transfer of immediately available funds on the Closing Date; and
- (f) as to the balance of the amount referred to in Section 5.1(2)(d), being \$ [REDACTED], by payment by the Purchaser to Stephen Applebaum Inc. or as Stephen Applebaum Inc. may otherwise direct, on behalf of the Vendor, of such amount by wire transfer of immediately available funds on the Designation Deadline or, if the Designation Deadline is not a Business Day, on the first Business Day immediately following the Designation Deadline.

### **Section 5.3 Post-Filing Liabilities.**

- (1) From and after the Closing Date, the Purchaser shall pay, on behalf of the Vendor, or reimburse the Vendor, and as an increase to the Purchase Price, Post-Filing Liabilities, subject to receipt of *bona fide* invoices or other evidence satisfactory to the Purchaser and the Proposal Trustee, acting reasonably, as and when due.
- (2) At Closing, the Purchaser shall prepay \$ [REDACTED] to the Proposal Trustee, without prejudice to the obligations of the Purchaser hereunder to pay any additional amounts required, to be applied only against *bona fide* invoices or other evidence of such Post-Filing Liabilities in accordance with a Court order, provided that if any part of such prepayment is not applied to Post-Filing Liabilities in accordance with a Court order on or before the Designation Date, such part shall be returned to the Purchaser within three Business Days after the Designation Date or such other date as may be agreed upon between the Purchaser and the Proposal Trustee, acting reasonably.

**Section 5.4 Allocation of Purchase Price.** The Vendor agrees to allocate the Purchase Price (plus the dollar value of the Assumed Liabilities) in accordance with any allocation delivered by the Purchaser to the Vendor at any time. The Vendor shall not make any filing or registration of any allocation of such amount among the Purchased Assets, whether in a Tax return, financial statement or otherwise, unless such allocation has been approved in advance in writing by the Purchaser.

## **ARTICLE 6 TAX MATTERS**

### **Section 6.1 ETA/QSTA Elections.**

The Purchaser and the Vendor shall jointly elect under subsection 167(1) of the *Excise Tax Act* (Canada) (the "ETA"), section 75 of An Act Respecting the Quebec Sales Tax (the "QSTA") and any other comparable provincial Tax legislation, in the form prescribed for the purposes of each such provision, in respect of the sale and transfer of the Purchased Assets and the Purchaser shall file such elections with the applicable tax authorities within the time and in the manner required by the applicable Law.

### **Section 6.2 Provincial Sales Taxes.**

The Purchaser shall self-assess and remit to the appropriate provincial tax authority all applicable provincial sales taxes payable in respect of the transfer to the Purchaser of the Purchased Assets. Where applicable, the Purchaser will provide purchase exemption certificates (or their equivalents) to the Vendor to support an exemption from provincial sales taxes.

### **Section 6.3 Transfer Taxes.**

Subject to any available elections or exemptions contemplated by Section 6.1 and Section 6.2, the Purchaser shall be liable for and shall pay all federal and provincial sales taxes and all other similar Taxes or other like charges of any jurisdiction ("**Transfer Taxes**") (for greater certainty, excluding all income or capital taxes of the Vendor) properly payable by the Purchaser in connection with the transfer of the Purchased Assets by the Vendor to the Purchaser.

### **Section 6.4 Indemnity for Transfer Taxes.**

The Purchaser shall indemnify and hold the Vendor (and its shareholders, directors, officers and employees) harmless from and against any taxes payable under the ETA and QSTA or any applicable provincial legislation and in any case any penalty or interest in respect thereof which may be payable by or assessed against the Vendor as a result of or in connection with the Vendor's failure to collect the applicable taxes payable under the ETA and QSTA or applicable provincial legislation on the sale of the Purchased Assets to the Purchaser, including any Transfer Taxes assessed as a result of any failure or refusal by the responsible tax authority to accept any election made under Section 6.1 or on the basis that such election was inapplicable, invalid or not properly made.



## **Section 6.5      Income Tax Elections.**

- (1) The Purchaser and the Vendor shall elect jointly in the prescribed form under section 22 of the *Income Tax Act* (Canada) and the corresponding provisions of any other applicable provincial Tax statute as to the sale of the Accounts Receivable forming part of the Purchased Assets and designate in such election an amount equal to the portion of the Purchase Price allocated to the Accounts Receivable pursuant to Section 5.4. This election, or these elections, shall be made within the time prescribed for such elections.
- (2) The Purchaser and the Vendor shall, if applicable, jointly execute and file an election under subsection 20(24) of the *Income Tax Act* (Canada) in the manner required by subsection 20(25) of the *Income Tax Act* (Canada) and under the equivalent or corresponding provisions of any other applicable provincial statute, in the prescribed forms and within the time period permitted under the *Income Tax Act* (Canada) and under any other applicable provincial statute as to such amount paid by the Vendor to the Purchaser for assuming future obligations. In this regard, the Purchaser and the Vendor acknowledge that a portion of the Purchased Assets transferred by the Vendor pursuant to this Agreement and having a value equal to the amount elected under subsection 20(24) of the *Income Tax Act* (Canada) and the equivalent provisions of any applicable provincial or territorial statute, is being transferred by the Vendor as a payment for the assumption of such future obligations by the Purchaser.

## **ARTICLE 7 EMPLOYEE MATTERS**

### **Section 7.1      Offer to Employees.**

Prior to the Designation Deadline, the Purchaser shall determine the employees of the Vendor to whom it desires to offer employment, conditional on the Closing and effective in each case as at a time determined by the Purchaser (for each such employee, that employee's "**Start Date**") in its sole discretion but which will not in any case be prior to the Time of Closing. Any offer of employment made by the Purchaser shall be on terms and conditions determined by the Purchaser in its sole discretion. The Vendor shall not attempt in any way to discourage any employees from accepting the offer of employment made by the Purchaser.

### **Section 7.2      Employee Plans.**

The Purchaser shall not assume any of the Employee Plans or liability for accrued benefits or any other liability under or in respect of any of the Employee Plans. The Employees who accept the Purchaser's offer of employment shall, as of the Closing Date, cease to accrue further benefits under the Employee Plans.

### Section 7.3 Employee Liability.

- (1) Without limiting the Purchaser's obligations in respect of the Transferred Employees, the Purchaser shall be responsible for:
  - (a) All liabilities for salary, wages, bonuses, commissions, vacation pay, and other compensation relating to employment of the Transferred Employees in accordance with the offer made to such Transferred Employees by the Purchaser for the period on or after the respective Employee's Start Date; and
  - (b) All statutory notice of termination or payment in lieu of notice obligations and statutory severance obligations in respect of the termination by the Purchaser of the employment of any Transferred Employee arising on or after such Transferred Employee's Start Date.
- (2) Without limiting the Vendor's obligations in respect of Persons employed in the Business prior to the Designation Date, but subject to the Purchaser's obligations under Section 4.2(2), the Vendor shall be responsible for all liabilities related to the employees who do not become Transferred Employees and for all liabilities of the Transferred Employees accruing or arising prior or as a consequence of Closing.

## ARTICLE 8 REPRESENTATIONS AND WARRANTIES

### Section 8.1 Vendor Representations and Warranties.

The Vendor and the Guarantors, jointly and severally, represent and warrant as follows to the Purchaser at the date of this Agreement and at the Closing Date and acknowledge and confirm that the Purchaser is relying upon such representations and warranties in connection with the purchase of the Purchased Assets and the assumption of the Assumed Liabilities:

- (1) **Incorporation and Qualification.** The Vendor is a corporation duly incorporated and existing under the laws of its jurisdiction of incorporation and has the corporate power to enter into and perform its obligations under this Agreement.
- (2) **Authorization.** The execution and delivery of and performance by the Vendor of this Agreement and the consummation of the transactions contemplated by it have been authorized by all necessary corporate action on the part of the Vendor.
- (3) **Execution and Binding Obligation.** This Agreement has been duly executed and delivered by the Vendor and constitutes a legal, valid and binding agreement of the Vendor, enforceable against it in accordance with its terms subject only to (A) as of the date hereof, any limitation under applicable laws relating to (i) bankruptcy, winding-up, insolvency, arrangement, fraudulent preference and conveyance, assignment and preference and other similar laws of general application affecting the enforcement of creditors' rights, and (ii) the discretion that a court may exercise

in the granting of equitable remedies such as specific performance and injunction and (B) as of the Closing Date, the issuance of the Approval and Vesting Order.

- (4) **No Options, etc.** Except for the Purchaser's right under this Agreement, no person has any written or oral agreement, option, understanding or commitment, or any right or privilege capable of becoming such for the purchase from the Vendor of any of the Purchased Assets other than inventory sold in the Ordinary Course.
- (5) **Residence.** The Vendor is not a non-resident of Canada for purposes of the *Income Tax Act* (Canada).
- (6) **Registration.** The Vendor is a registrant under Part IX of the ETA and its registration number is \_\_\_\_\_, under the QSTA and its registration number is \_\_\_\_\_, under the *Provincial Sales Tax Act* (British Columbia) and its registration number is \_\_\_\_\_, and under any other comparable provincial legislation in each other province where the nature of the Vendor's business requires such registration.
- (7) **Brokers and Finders.** There are no claims for brokerage commissions, finders' fees or similar compensation in connection with the transactions contemplated by this Agreement based on any arrangement or agreement made by or on behalf of the Vendor.
- (8) **Collective Agreement.** There is no collective agreement in force with respect to the Business or any of the employees of the Business nor is there any contract or agreement with any employee association in respect of the Business or the employees of the Business.
- (9) **Remittance to Governmental Entities.** With the exception of pre-NOI filing sales Taxes in the amount of \$ 1,400,000 and post-NOI filing sales Taxes in the amount of \$879,000, the Vendor has withheld from each payment made to any Person, including any of its present or former employees and all Persons who are or are deemed to be non-residents of Canada for purposes of the *Income Tax Act* (Canada), all amounts required by applicable Law to be withheld, and has remitted such withheld amounts within the prescribed periods to the appropriate Governmental Entity. The Vendor has remitted all Canada Pension Plan contributions, Quebec Pension Plan contributions, employment insurance premiums, employer health taxes and other Taxes payable by it in respect of its employees to the proper Governmental Entity within the time required under applicable Law. The Vendor has charged, collected and remitted on a timely basis all Taxes as required under applicable Law on any sale, supply or delivery whatsoever, made by the Vendor
- (10) **Contracts and Leases.** Attached as Schedule 8.1(10) is a list of all contracts and leases to which the Vendor is a party, true and accurate copies of which have been provided to the Purchaser. There are no material defaults under any such contracts or leases except as disclosed in Schedule 8.1(10).

- (11) **Cure Payments.** As of the date hereof, there are no Cure Payments due or payable under any contract or lease to which the Vendor is a party in excess of \$100,000 in the aggregate.
- (12) **Investment Canada Act.**
  - (a) The Vendor is, and is controlled by, a resident of Canada for purposes of the *Investment Canada Act*.
  - (b) The Vendor does not provide any of the services, or engage in any of the activities of a "cultural business" within the meaning of the *Investment Canada Act*.
  - (c) The value of the Purchased Assets, calculated in accordance with the *Investment Canada Act*, are each less than the applicable amount at which an application for review pursuant to Part IV of the *Investment Canada Act* would be required in respect of the transactions contemplated by this Agreement.
- (13) **Competition Act.** For the purposes of section 110(3) of the *Competition Act* (Canada), each of (A) the total value of the Purchased Assets, and (B) the gross revenues from sales in or from Canada generated from the assets referred to in (A) above, measured in accordance with the *Competition Act* (Canada), is less than the review threshold amount as determined pursuant to sections 110(8) and 110(9) of the *Competition Act* (Canada).

## **Section 8.2 Purchaser's Representations and Warranties.**

The Purchaser represents and warrants as follows to the Vendor at the date of this Agreement and at the Closing Date and acknowledges and confirms that the Vendor is relying on such representations and warranties in connection with the sale by the Vendor of the Purchased Assets:

- (1) **Incorporation and Qualification.** The Purchaser is a limited partnership under the laws of Ontario, and its general partner is a corporation duly incorporated and existing under the laws of its jurisdiction of incorporation. The Purchaser has the partnership power to enter into and perform its obligations under this Agreement.
- (2) **Corporate Authority.** The execution and delivery of and performance by the Purchaser of this Agreement and the consummation of the transactions contemplated by it have been authorized by all necessary partnership and corporate action on the part of the Purchaser and its general partner.
- (3) **Execution and Binding Obligation.** This Agreement has been duly executed and delivered by the Purchaser and constitutes a legal, valid and binding agreement of the Purchaser enforceable against it in accordance with its terms subject only to the Approval and Vesting Order and any limitation under applicable laws relating to (i) bankruptcy, winding-up, insolvency, arrangement, fraudulent preference and conveyance, assignment and preference and other similar laws of general application

affecting the enforcement of creditors' rights, and (ii) the discretion that a court may exercise in the granting of equitable remedies such as specific performance and injunction.

- (4) **Registration.** The Purchaser is, or prior to Closing will be, registered under Part IX of the ETA, under the QSTA and under comparable provincial legislation in each other province where the Purchaser is required to be registered for purposes of any election to be made pursuant to Section 6.1.
- (5) **Brokers and Finders.** There are no claims for brokerage commissions, finders' fees or similar compensation in connection with the transactions contemplated by this Agreement based on any arrangement or agreement made by or on behalf of the Purchaser.

### **Section 8.3 Survival.**

The representations and warranties contained in this Agreement survive the Closing and continue in full force and effect for a period of one year.

### **Section 8.4 No Other Representations or Warranties of the Vendor; "As Is, Where Is".**

- (1) This Section 8.4 shall not apply to limit or affect the representations and warranties of the Guarantors.
- (2) The representations and warranties given by the Vendor in Article 8 are the sole and exclusive representations and warranties of the Vendor in connection with this Agreement and the transactions contemplated by it. Except for the representations and warranties given by the Vendor in Article 8, the Purchaser did not rely upon any statements, representations, promises, warranties, conditions or guarantees whatsoever, whether express or implied (by operation of law or otherwise), oral or written, legal, equitable, conventional, collateral or otherwise, regarding the assets to be acquired or liabilities to be assumed or the completeness of any information provided in connection therewith.
- (3) The Purchaser hereby acknowledges and agrees as follows:
  - (a) Except as expressly provided herein, the Purchased Assets are being purchased on an "as is, where is" basis; and
  - (b) Except as expressly set forth in this Agreement, the Vendor and the Proposal Trustee make no representations, or warranties in favour of the Purchaser concerning the Purchased Assets, which the Purchaser acknowledges are being acquired on an "as is, where is" basis, whether express or implied, statutory or collateral, arising by operation of Laws or otherwise, including express or implied warranties of merchantability, fitness for a particular purpose, title, description, quantity, condition or quality, and that any and all conditions and warranties expressed or implied by the *Sale of Goods Act*

(Ontario) or other Laws do not apply to the Transaction and are hereby waived by the Purchaser.

## **ARTICLE 9 COVENANTS**

### **Section 9.1 Conduct of Business in the Ordinary Course.**

The Vendor and the Guarantors shall use commercially reasonable efforts to conduct the Business in the Ordinary Course except to the extent required to allow the Vendor to comply with any of its obligations under this Agreement, subject in all cases to any limitation imposed by being subject to the commercial proposal process under the BIA and any Court order relating thereto. In addition, until the Closing Date, the Vendor shall, and the Guarantors shall cause the Vendor to, operate along the lines of the cash flow budget attached as Schedule 9.1, with any variances to be under 10% therefrom except with the written consent of the Purchaser. Except as expressly provided herein, the Vendor shall make no contractual commitment. Further, except as provided herein, the Vendor shall not make any payments to or to Persons not at arm's length (including to any affiliate of the Vendor or a Guarantor, to a Guarantor, or to any family member of Stephen Applebaum) to the Vendor or the Guarantors, without the prior written consent of the Purchaser.

### **Section 9.2 Exclusive Dealing.**

From the date hereof until the Closing Date, neither the Vendor nor the Guarantors shall, directly or indirectly, solicit, initiate, or encourage any inquiries or proposals from, discuss or negotiate with, provide any non-public information to, or consider the merits of any inquiries or proposals from, or enter into any agreement with, any Person (other than Purchaser) relating to any transaction involving the sale of any shares of the Vendor or the sale of any assets of the Vendor (other than as permitted in this Agreement) or any other business combination.

### **Section 9.3 Bankruptcy Filings.**

From the date hereof until the later of the Designation Date and the date the last contract or lease to which the Vendor is a party that is the subject of an Assignment Notice issued before the Designation Date becomes an Assigned Contract or Assigned Lease, as the case may be, neither the Vendor nor any Guarantor, nor any Person acting for or on behalf of any of them, shall petition or apply to have the Vendor noted a bankrupt whether pursuant to the BIA or any other applicable insolvency legislation.

### **Section 9.4 Actions to Satisfy Closing Conditions.**

The Vendor and the Purchaser agree to take all such actions as are within their respective control and shall use their respective commercially reasonable efforts to take, or cause to be taken, all other actions and make all such other filings and submissions, and obtain such authorizations, which are necessary or advisable in order to fulfil their respective obligations under this Agreement.

#### **Section 9.5      Access.**

Subject to applicable Laws, the Vendor shall (i) upon reasonable notice, permit the Purchaser and its employees, agents, counsel, accountants or other representatives, to have reasonable access during normal business hours to (A) the Purchased Assets, including all books and records whether retained by the Vendor or otherwise, (B) all contracts and leases to which any of the Vendor is a party, (C) personnel files relating to the employees of the Vendor (which shall be maintained in strict confidence by the Purchaser and only used for the purpose of considering and/or making employment offers to employees), and (D) the senior personnel of the Vendor, so long as the access does not unduly interfere with the ordinary conduct of the Business; and (ii) furnish to the Purchaser or its employees, agents, counsel, accountants or other such representatives such financial and operating data and other information with respect to the Purchased Assets as the Purchaser from time to time reasonably requests.

#### **Section 9.6      Access to Books and Records.**

For a period of 6 years from the Closing Date or for such longer period as may be required by Law, the Purchaser will use its reasonable commercial effects, without any liability to the Vendor, to retain all original books and records relating to the Purchased Assets that are transferred to the Purchaser under this Agreement. So long as any such books and records are retained by the Purchaser pursuant to this Agreement, the Vendor, the Guarantors, the Proposal Trustee, any receiver or bankruptcy trustee appointed in respect of the Vendor and their respective representatives shall have the right to inspect and to make copies (at its own expense) of them at any time upon reasonable request during normal business hours and upon reasonable notice for any proper purpose and without undue interference to the business operations of the Purchaser. The Purchaser has the right to have its representatives present during any such inspection.

#### **Section 9.7      Use of Business Name.**

As soon as practicable following the Designation Date, and prior to any assignment in bankruptcy, the Vendor shall discontinue use of business names in which the words "Nine West", or either of them.

#### **Section 9.8      Post-Closing Accounts Receivable.**

Within one Business Day following the Closing Date, and prior to any assignment in bankruptcy, the Vendor shall deliver a notice, in a form satisfactory to the Purchaser and duly executed by the Vendor, to the account debtors of the Accounts Receivable included in the Purchased Assets regarding the transfer of the accounts receivable and directing that all further payments thereunder be made to the Purchaser. Any Accounts Receivable forming part of the Purchased Assets collected by the Vendor or any trustee-in-bankruptcy appointed with respect to the Vendor (or other proceeds collected or derived from a Purchase Asset by the Vendor or such trustee-in-bankruptcy), other than the Purchase Price paid hereunder, from and after the Closing Date shall be held in trust for the benefit of the Purchaser, and such funds shall not form part of the Vendor's estate or otherwise made available to the Vendor's stakeholders, and, upon receipt following the Closing, shall

promptly be paid to, and for the benefit of, the Purchaser in accordance with its rights under this Agreement.

## ARTICLE 10 CONDITIONS OF CLOSING

### Section 10.1 Conditions for the Benefit of both Parties.

The purchase and sale of the Purchased Assets is subject to the following conditions to be fulfilled or performed on or before the Closing Date:

- (1) **No Court Orders.** No provision of any applicable Law and no judgment, injunction, order or decree that prohibits the consummation of the purchase of the Purchased Assets pursuant to this Agreement shall be in effect;
- (2) **Approval and Vesting Order.** The Approval and Vesting Order shall have been issued and entered and shall not have been stayed, amended, appealed, modified, reversed or dismissed as at the Closing Date; and
- (3) **Assignment Order.** The Assignment Order shall have been issued and entered and shall not have been stayed, amended, appealed, modified, reversed or dismissed as at the Closing Date.

### Section 10.2 Conditions for the Benefit of the Purchaser.

The purchase and sale of the Purchased Assets is subject to the following conditions to be fulfilled or performed on or before the Closing Date, which conditions are for the exclusive benefit of the Purchaser and may be waived, in whole or in part, by the Purchaser in its sole discretion:

- (1) **Covenants.** The Vendor shall have fulfilled or complied with all covenants contained in this Agreement required to be fulfilled or complied with by it in all material respects at or prior to the Closing Date, including delivery by the Vendor of the documents and instruments contemplated by Section 11.2, save and except that there is no condition in favour of the Purchaser with respect to the compliance of the Vendor with the covenants required under Section 9.1 should the Vendor (a) fail to make any purchases of inventory that would have otherwise been made in the Ordinary Course, (b) fail to operate along the lines of the cash flow budget attached as Schedule 9.1, with any variances under 10%, unless the Vendor has failed to operate along the lines of the cash flow budget attached as Schedule 9.1 with any variances under 20%, or (c) enter into any new contractual commitment contrary to Section 9.1 or make any payment contrary to Section 9.1.
- (2) **No Bankruptcy.** Other than as a direct result of any action or inaction of any Person related to the Purchaser, the Vendor shall not be and shall not have become a bankrupt under the BIA.



- (3) **Vesting and Assignment Order.** Each of the Approval and Vesting Order and (unless waived by the Purchaser) the Assignment Order shall have been issued and entered in form and substance satisfactory to the Purchaser.

### **Section 10.3 Conditions for the Benefit of the Vendor.**

The purchase and sale of the Purchased Assets is subject to the following conditions to be fulfilled or performed on or before the Closing Date, which are for the exclusive benefit of the Vendor and which may be waived, in whole or in part, by the Vendor in its sole discretion:

- (1) **Representations and Warranties.** The representations and warranties of the Purchaser contained in this Agreement shall be true and correct as of the Closing Date in all material respects, with the same force and effect as if such representations and warranties had been made on and as of such date; and
- (2) **Covenants.** The Purchaser shall have fulfilled or complied with all covenants contained in this Agreement required to be fulfilled or complied with by it in all material respects at or prior to the Closing Date, including delivery by the Purchaser of the documents and instruments contemplated by Section 11.3.

## **ARTICLE 11 CLOSING**

### **Section 11.1 General.**

- (1) The completion of the transactions of purchase, sale and assumption contemplated by this Agreement (the "**Closing**") shall take place at the offices of Aird & Berlis LLP, 181 Bay Street, Suite 1800, Toronto, ON, on the Closing Date, at the Time of Closing, or at such other place as may be agreed upon in writing by the parties.
- (2) As soon as practicable following execution of this Agreement, the Vendor shall file motion materials seeking the issuance of the Approval and Vesting Order and the Assignment Order, provided that the Purchaser has had a reasonable opportunity to review such materials in advance of filing with the Court. The Vendor shall serve notice of the motion seeking the issuance and entry of the Approval and Vesting Order and the Assignment Order on all Persons determined reasonably necessary by the Purchaser and shall provide reasonable advance notice of any Court appearances so that the Purchaser may make arrangements to attend if it so desires.
- (3) The parties hereby acknowledge and agree that the Proposal Trustee shall be entitled in accordance with the Approval and Vesting Order to file a certificate, substantially in the form attached to the Approval and Vesting Order (the "**Proposal Trustee's Certificate**"), with the Court upon receiving written confirmation from the Vendor and the Purchaser that all conditions of Closing have been satisfied or waived.

### **Section 11.2 Vendor's Closing Deliveries.**

At the Closing, the Vendor shall execute and/or deliver or cause to be delivered to the Purchaser the following:

- (a) the Purchased Assets, which shall be delivered *in situ* wherever located as of the Closing;
- (b) a payout letter to the Vendor from the Bank of Montreal in form and substance satisfactory to the Purchaser and the Bank of Montreal, acting reasonably, confirming the amount required to satisfy the obligations of the Vendor owing to the Bank of Montreal as at the Closing Date (including any applicable per diem rate) pursuant to the credit agreement between the Vendor, as borrower, and the Bank of Montreal, as lender, dated as of January 18, 2013, as amended and supplemented to the date hereof, and together with a payout letter to the Vendor from BDC Capital Inc. in form and substance satisfactory to the Purchaser and BDC Capital Inc., acting reasonably, confirming the amount required to satisfy the obligations of the Vendor owing to BDC Capital Inc. as at the Closing Date (including any applicable per diem rate) by virtue of its credit arrangements with the Vendor;
- (c) a release from the Vendor and the Guarantors to the Bank of Montreal in form and substance satisfactory to the Bank of Montreal, acting reasonably, and a release from the Vendor and the Guarantors to BDC Capital Inc. in form and substance satisfactory to BDC Capital Inc., acting reasonably;
- (d) a true and complete copy of the Approval and Vesting Order, as entered by the Court;
- (e) (unless waived by the Purchaser) a true and complete copy of the Assignment Order, as entered by the Court;
- (f) true and complete copies of all contracts and leases to which the Vendor is a party, to the extent not delivered prior to Closing;
- (g) such executed Tax elections as are required pursuant to Article 6; and
- (h) a true and complete copy of the Proposal Trustee's Certificate executed by the Proposal Trustee (such Proposal Trustee's Certificate to be filed with the Court by the Proposal Trustee following Closing and a copy of such filed Proposal Trustee's Certificate shall be delivered to the Purchaser promptly thereafter).

### **Section 11.3 Purchaser's Closing Deliveries.**

At the Closing, the Purchaser shall execute and/or deliver or cause to be delivered to the Vendor the following:

- (a) subject to Section 13.3, the payments contemplated by Section 5.2(b), Section 5.2(c), Section 5.2(d), Section 5.2(e) and Section 5.3;
- (b) payment of any applicable Transfer Taxes; and
- (c) such executed Tax elections as are required pursuant to Article 6.

## **ARTICLE 12 TERMINATION**

### **Section 12.1 Termination of Agreement.**

This Agreement may by notice in writing given prior to or on the Closing Date be terminated:

- (a) by mutual consent of the Vendor and the Purchaser;
- (b) by the Purchaser or the Vendor if the Approval and Vesting Order shall fail, once granted, to be in full force and effect or shall have been amended, appealed, modified, reversed or dismissed without the prior written consent of the Purchaser;
- (c) by the Purchaser (unless waived by the Purchaser) if the Assignment Order shall fail, once granted, to be in full force and effect or shall have been amended, appealed, modified, reversed or dismissed without the prior written consent of the Purchaser;
- (d) by the Purchaser if the Vendor shall have failed to operate in compliance with the cash flow budget attached as Schedule 9.1, with any adverse variances of actual net cash flow to budgeted net cash flow to be less than 20% except with the written consent of the Purchaser;
- (e) by the Purchaser if an event has occurred as a result of which the conditions in Section 10.2 are not capable of being satisfied by the Outside Date, as reasonably determined by the Purchaser; or
- (f) automatically if the Closing has not occurred by the end of the day on the Outside Date.

### **Section 12.2 Effect of Termination.**

In the event that the Agreement is terminated in accordance with Section 12.1, then each of the parties shall be relieved of its duties and obligations arising under this Agreement effective as of the date of such termination and such termination shall be without liability to the Purchaser and the Vendor; provided however that in no event shall any termination of this Agreement relieve any party hereto of any liability for any willful or intentional breach of this Agreement by such party or affect the treatment of the deposit as provided in Section 5.1.

**ARTICLE 13  
MISCELLANEOUS**

**Section 13.1 Notices.**

Any notice, direction or other communication given regarding the matters contemplated by this Agreement (each a "Notice") must be in writing, sent by personal delivery, courier or electronic mail and addressed:

(a) to the Vendor or any Guarantor at:

Sherson Group Inc.  
1446 Don Mills Road  
North York, Ontario M3B 3N6

Attention: Stephen Applebaum  
Fax:

with a copy to:

Aird & Berlis LLP  
Brookfield Place  
181 Bay Street, Suite 1800  
Toronto, Ontario M5J 2T9

Attention: Ken Rosenstein  
Fax: (416) 863-1515

with a copy to:

Richter Advisory Group Inc.  
2345 Yonge St., Suite 300  
Toronto, Ontario M4P 2E5

Attention:  
Fax:

(b) to the Purchaser at:

Nine West Holdings, Inc.  
1411 Broadway  
Floor 15  
New York NY 10018  
United States of America

Attention: Ralph Schipani

with a copy to:

Stikeman Elliott LLP  
5300 Commerce Court West  
199 Bay Street  
Toronto, Ontario M5L 1B9  
Attention: Simon Romano and Elizabeth Pillon  
Fax: (416) 947-0866

A Notice is deemed to be given and received if sent by personal delivery, courier or electronic mail, on the date of delivery if it is a Business Day and the delivery was made prior to 4:00 p.m. (local time in place of receipt) and otherwise on the next Business Day. A party may change its address for service from time to time by providing a Notice in accordance with the foregoing. Any subsequent Notice must be sent to the party at its changed address. Any element of a party's address that is not specifically changed in a Notice will be assumed not to be changed. Sending a copy of a Notice to a party's legal counsel as contemplated above is for information purposes only and does not constitute delivery of the Notice to that party. The failure to send a copy of a Notice to legal counsel does not invalidate delivery of that Notice to a party.

#### **Section 13.2 Assignment.**

- (1) Except as provided in this Section 13.2, neither this Agreement nor any of the rights or obligations under this Agreement may be assigned or transferred, in whole or in part, by any party without the prior written consent of the other parties.
- (2) Upon giving notice to the Vendor at any time on or prior to one Business Day prior to the date of the hearing for the Approval and Vesting Order, the Purchaser is entitled to assign this Agreement or any of its rights under this Agreement to any of its affiliates (as such term is defined in *National Instrument 45-106*).

#### **Section 13.3 Setoff.**

Without prejudice to its rights under this Agreement or otherwise at law or in equity, the Purchaser shall be entitled to set off against the Purchase Price due under Section 5.2(e) and Section 5.2(f) any damages or losses suffered or incurred by the Purchaser to the extent resulting from any breach of any representation or warranty, or failure to perform any covenant, of the Vendor or any Guarantor under this Agreement.

#### **Section 13.4 Survival.**

Any provision of this Agreement which contemplates performance or the existence of obligations after the Closing Date shall not be deemed to be merged into or waived by the execution, delivery or performance of this Agreement or documents delivered in connection herewith or Closing, but shall expressly survive the execution, delivery and performance of this Agreement, Closing and the execution, delivery and performance of any and all documents delivered in connection with this Agreement and shall be binding upon the party or parties obligated thereby (including any trustee-in-bankruptcy appointed in respect of such party) in accordance with the terms of this Agreement.

**Section 13.5 Time of the Essence.**

Time is of the essence in this Agreement.

**Section 13.6 Enurement.**

This Agreement becomes effective when executed by the Vendor and the Purchaser. After that time, it will be binding upon and enure to the benefit of the parties and their respective successors, legal representatives and permitted assigns. Neither this Agreement nor any of the rights or obligations under this Agreement, including any right to payment, may be assigned or transferred, in whole or in part, by either party without the prior written consent of the other party.

**Section 13.7 Entire Agreement.**

This Agreement and the other documents executed in connection herewith constitutes the entire agreement between the parties with respect to the transactions contemplated in this Agreement and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, of the parties with respect to such transactions. There are no representations, warranties, covenants, conditions or other agreements, express or implied, collateral, statutory or otherwise, between the parties in connection with the subject matter of this Agreement, except as specifically set forth in this Agreement. The parties have not relied and are not relying on any other information, discussion or understanding in entering into and completing the transactions contemplated by this Agreement.

**Section 13.8 Waiver.**

No waiver of any of the provisions of this Agreement will constitute a waiver of any other provision (whether or not similar). No waiver will be binding unless executed in writing by the party to be bound by the waiver. A party's failure or delay in exercising any right under this Agreement will not operate as a waiver of that right. A single or partial exercise of any right will not preclude a party from any other or further exercise of that right or the exercise of any other right it may have.

**Section 13.9 Amendments.**

This Agreement may only be amended, supplemented or otherwise modified by written agreement signed by the Vendor and the Purchaser.

**Section 13.10 Further Assurances.**

From and after the Closing Date, each of the parties covenants and agrees to do such things, to attend such meetings and to execute such further conveyances, transfers, documents and assurances as may be deemed necessary or advisable from time to time in order to effectively transfer the Purchased Assets and the Assumed Liabilities to the Purchaser and carry out the terms and conditions of this Agreement in accordance with their true intent.

**Section 13.11 Severability.**

If any provision of this Agreement is determined to be illegal, invalid or unenforceable, by any court of competent jurisdiction from which no appeal exists or is taken, that provision will be severed from this Agreement and the remaining provisions will remain in full force and effect.

**Section 13.12 Governing Law.**

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

**Section 13.13 Counterparts.**

This Agreement may be executed in any number of counterparts, each of which is deemed to be an original, and such counterparts together constitute one and the same instrument. Transmission of an executed signature page by facsimile, email or other electronic means is as effective as a manually executed counterpart of this Agreement.

**[signature page follows]**

SHERSON GROUP INC.

By: 

Name: STEPHEN APPLEBAUM

Title: PRESIDENT + CEO

By: \_\_\_\_\_

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

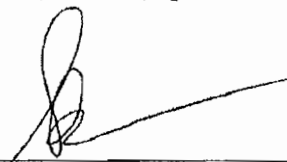
Title: \_\_\_\_\_

STEPHEN APPLEBAUM INC.

By: 

Name: STEPHEN APPLEBAUM

Title: PRESIDENT



\_\_\_\_\_  
Witness

\_\_\_\_\_  
STEPHEN APPLEBAUM

NINE WEST CANADA LP, BY ITS  
GENERAL PARTNER

By: \_\_\_\_\_

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

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

By: \_\_\_\_\_

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

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



**SHERSON GROUP INC.**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

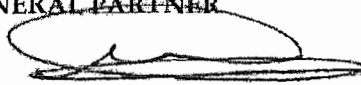
**STEPHEN APPLEBAUM INC.**

By: \_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
**STEPHEN APPLEBAUM**

**NINE WEST CANADA LP, BY ITS  
GENERAL PARTNER**

By:  \_\_\_\_\_  
Name: *Ralph Schipani*  
Title: *Vice President*

By: \_\_\_\_\_  
Name:  
Title:

## Schedule 8.1(10) – Contracts and Leases and Defaults Thereunder

Based on Unaudited Information Provided by Company

Sherson Group Inc.  
Contract Summary

Contracting Party	Description	Pre-filing Payable <sup>(1)</sup>
<b>Landlords</b>		
Ivanhoe Cambridge	Cross Iron Mills	\$ -
Ivanhoe Cambridge	Dixie Value Mall	-
Rio Can	Mega Centre Notre Dame	-
Ivanhoe Cambridge	Nw Ss - Vaughan Mills	-
Orlando	Heartland Town Centre	-
Tanger Outlets	Cookstown Manufacturer Outlet	-
OP Trust Retail	Windsor Crossing	-
Ivanhoe Cambridge	Niagara Factory Outlet	-
Cadillac Fairview	Shop On Don Mills	-
Simon	Toronto Premium Outlets	-
Morguard	Bramalea City Centre	-
Ivanhoe Cambridge	The Outlet Collection Niagara	-
Tanger	Ottawa Tanger Outlets	-
Simon	Montreal Prime Outlets	-
Ivanhoe Cambridge	Mic Mac Mall	-
Ganz Realty	Orfus Road	-
Oxford	Square One Shopping Centre	-
Oxford	Hillcrest	-
Oxford	Yorkdale Shopping Centre	-
Cadillac Fairview	Richmond Centre	-
Ivanhoe Cambridge	Metropolis At Metrotown	-
Cadillac Fairview	Sherway Gardens	-
Cadillac Fairview	Toronto Eaton Centre	-
Cadillac Fairview	Pacific Centre	-
Orlando	Bayview Village	-
Cadillac Fairview	Le Carrefour Laval	-
Ivanhoe Cambridge	Calgary Eaton Centre	-
Cadillac Fairview	Fairview Pointe Claire	-
Brookfield Place	First Canadian Place	-
RioCan Holdings	Oakville Place Shopping	-
Cadillac Fairview	Market Mall	-
Cadillac Fairview	The Promenade Shopping	-
Cadillac Fairview	Fairview Mall	-
Ivanhoe Cambridge	Oakridge Centre	-
Oxford	Southcentre Mall	-
Park Royal SC Holdings	Park Royal Shopping	-
West Edmonton Mall	West Edmonton Mall	-
Ivanhoe Cambridge	Place Ste-Foy	-
Groupe Sarako	Ste-Catherine Street	-
Oxford	Edmonton City Centre West	-
Oxford	Scarborough Town Centre	-
Cadillac Fairview	Masonville Place	-
Cadillac Fairview	Chinook	-
Ivanhoe Cambridge	Mapleview Centre	-
Cadillac Fairview	Polo Park	-
Atlantis Realty Services Inc.	Head Office	-
Reisgeorge Management Limited	DC	-
<b>Services</b>		
ABS Information Systems Inc	IT Outsourcing	31,871
ADP Canada Co.	Payroll Services	-
EDI Gateway Inc.	Electronic Data Interfacing	-
MTS Inc	Internet Services in stores	90
GXS Canada Inc.	EDI Pricing Solution	849
Multidev Technologies Inc	ERP Maintenance Services	9,839
Manulife Financial	Health and Dental Services	31,932
Rogers Communication Partnership	Voice and Data Lines	598
Canada Post Corporation	Mail Services	13,560
Northwest Atlantic	Real Estate Broker	4,520
Pure Energy	Alarm Monitoring	-
Moneris	Credit Card Transaction Services	-
Stringray	Music Agreement	621
<b>Equipment</b>		
SmartPrint Inc.	Printer Leases & Photocopying Contract	-
Audi Downtown Toronto	Audi Vehicle	-
Mercedes Benz Midtown	Mercedes Vehicle	-
Havacar Leasing	Truck in the DC	-
GN Johnson Equipment	Equipment in the DC	1,560
<b>Customer</b>		
Hudson's Bay Company and Zellers Inc.	Merchandise Vendor Agreement	-
Town Shoes Limited	Merchandise Vendor Agreement	-
<b>Distribution &amp; Buying Agreements</b>		
LJP International, LLC	Mootsie Tootsie Mark in Canada	-
LJP International, LLC	Nine West Kids in Canada	-
LJP International, LLC	Buying Agent Agreement	-
The Silverstein Company	Papell Studio Women's Footwear in Canada	-
The Silverstein Company	Adrianna Papell Women's Footwear in Canada	-
The Silverstein Company	Buying Agent Agreement	-
Will-Rich Shoe Company LLC	Taryn Rose Mark in Canada	-
Will-Rich Shoe Company LLC	Adrienne Vittadini Mark in Canada	3,062
Will-Rich Shoe Company LLC	Buying Agent Agreement	-
JVB International, Inc.	Buying Agent Agreement	520
<b>Employees<sup>(2)</sup></b>		<b>\$ 99,897</b>

<sup>(1)</sup> USD Amounts converted to CAD at a rate of 1.3.

<sup>(2)</sup> Employee contracts previously provided.

## Schedule 9.1 – Cash Flow Budget

[REDACTED]

## **Schedule A - Permitted Encumbrances**

## **Schedule A – Permitted Encumbrances**

Xerox Canada Ltd. Ontario Personal Property Registration System ("PPRS") registration number 20110401 1701 1462 2657

G.N. Johnston Equipment Co. Ltd. PPRS registrations number 20120404 1139 1097 4529 and number 20140404 0910 1097 5179

V.W. Credit Canada Inc. PPRS registration number 20120910 1948 1531 8072

Hav-a-Kar Leasing Ltd. PPRS registrations number 20121218 1007 1462 2587, number 20130129 1002 1462 0861 and number 20130129 1002 1462 0862

Mercedes-Benz Financial Services Canada Corporation PPRS registration number 20130628 1934 1531 8228

De Lage Landen Financial Services Canada Inc. PPRS registration number 20150114 1435 1530 3013

**Tab 3(e)**

Attached is Exhibit "E" Referred to in the  
AFFIDAVIT OF STEPHEN APPLEBAUM  
Sworn before me this 13<sup>th</sup> day of August, 2015

A handwritten signature in cursive script, appearing to read 'Alyssa', written over a horizontal line.

A Commissioner, etc.

ALYSSA ELAINE GEBERT, a  
Commissioner, etc., Province of Ontario,  
while a Student-at-Law.  
Expires May 1, 2016.



District of Ontario  
Division No. 9 - Toronto  
Court File No: 31-2010608  
Estate File No. 31-2010608

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)  
IN BANKRUPTCY AND INSOLVENCY**

THE HONOURABLE ) TUESDAY, THE 28<sup>th</sup> DAY  
JUSTICE HAINES ) OF JULY, 2015



**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF  
SHERSON GROUP INC.**

**ORDER**

**THIS MOTION**, made by Sherson Group Inc. ("**Sherson**"), was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Motion Record of Sherson, including the Affidavit of Stephen Applebaum sworn July 27, 2015 and the exhibits thereto, on reading the First Report to the Court of Richter Advisory Group Inc., in its capacity as proposal trustee (the "**Proposal Trustee**") in Sherson's *Bankruptcy and Insolvency Act* (the "**BIA**") proposal proceedings (the "**Proposal Proceedings**") dated July 27, 2015, and on hearing the submissions of counsel for Sherson, counsel for the Proposal Trustee, counsel for Bank of Montreal, counsel for BDC Capital Inc. and counsel for Jones Investment Co. Inc., Nine West Development Corporation and JAG Footwear, Accessories and Retail Corporation, no one else appearing although properly served as appears from the affidavit of Daphne Porter, sworn July 27, 2014, filed,

## SERVICE

1. **THIS COURT ORDERS** that the time for service and filing 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.

## EXTENSION OF TIME

2. **THIS COURT ORDERS** that the time for the filing of a proposal by Sherson is hereby extended in accordance with section 50.4(9) of the BIA up to and including ~~July 31~~ <sup>August 6</sup>, 2015.



## SERVICE AND NOTICE

3. **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 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL ‘<http://www.richter.ca/en/folder/insolvency-cases/s/sherson-group-inc>’.

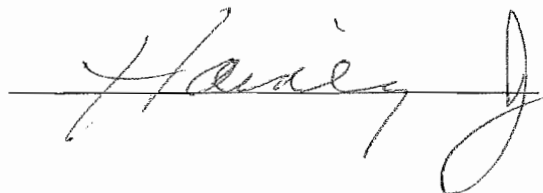
4. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, Sherson and the Proposal Trustee are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by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

**GENERAL**

5. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist Sherson, 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 provide such assistance to Sherson 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 Sherson and the Proposal Trustee and their respective agents in carrying out the terms of this Order.

6. **THIS COURT ORDERS** that each of Sherson and the Proposal Trustee be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, including, without limitation, the United States Bankruptcy Court, Southern District of New York, in the proceedings initiated by the Proposal Trustee (in its capacity as Foreign Representative of Sherson in the Proposal Proceedings) under Chapter 15 of the *United States Bankruptcy Code*, 11 U.S.C. §§ 101-1330 (Case No. 15-11765-SHL), for the recognition of this Order and for assistance in carrying out the terms of this Order, including the enforcement of the Administration Charge.

7. **THIS COURT ORDERS** that any interested party (including Sherson 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 black ink, appearing to read "Haniy J.", is written over a horizontal line. The signature is fluid and cursive, with a large, stylized initial 'H' and a long, sweeping tail that extends to the right.

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF SHERSON GROUP INC.

District of Ontario  
Division No. 9 - Toronto  
Court File No: 31-2010608  
Estate File No. 31-2010608

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**  
**IN BANKRUPTCY AND INSOLVENCY**

Proceedings commenced at Toronto

**ORDER**

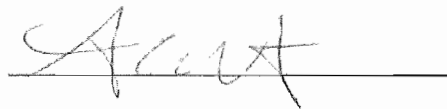
**AIRD & BERLIS LLP**  
Barristers and Solicitors  
Brookfield Place  
Suite 1800, Box 754  
181 Bay Street  
Toronto, ON M5J 2T9

**Sam Babe (LSUC # 49498B)**  
Tel: (416) 865-7718  
Fax: (416) 863-1515  
E-mail: [sbabe@airdberlis.com](mailto:sbabe@airdberlis.com)

*Lawyers for Sherson Group Inc.*

**Tab 3(f)**

Attached is Exhibit "F" Referred to in the  
AFFIDAVIT OF STEPHEN APPLEBAUM  
Sworn before me this 13<sup>th</sup> day of August, 2015

A handwritten signature in cursive script, appearing to read 'Alyssa', is written over a horizontal line.

A Commissioner, etc.

ALYSSA ELAINE GEBERT, a  
Commissioner, etc., Province of Ontario,  
while a Student-at-Law.  
Expires May 1, 2016.

August 6, 2015  
H. Chaiton for the Debtor BRC

Adjourned to August 18, 2015 at  
9:30.

Pending the return the  
stay under the Proposal shall  
be extended to August 18, 2015.  
One hour scheduled for August 7, 2015  
is vacated. *[Signature]*

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(BANKRUPTCY & INSOLVENCY)  
Proceedings commenced at TORONTO

MOTION RECORD  
(Motion Returnable August 6, 2015)

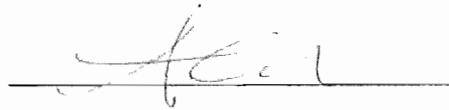
CHAITONS LLP  
5000 Yonge Street, 10th Floor  
Toronto, ON M2N 7E9  
Harvey Chaiton (LSUC #21592F)  
Tel: (416) 218-1129  
Fax: (416) 218-1849  
Maya Poliak (LSUC #54100A)  
Tel: (416) 218-1611  
Fax: (416) 218-1844  
Lawyers for BDC Capital Inc.



**Tab 3(g)**



Attached is Exhibit "G" Referred to in the  
AFFIDAVIT OF STEPHEN APPLEBAUM  
Sworn before me this 13<sup>th</sup> day of August, 2015

A handwritten signature in dark ink, appearing to read 'Alyssa', is written over a horizontal line.

A Commissioner, etc.

ALYSSA ELAINE GEBERT, a  
Commissioner, etc., Province of Ontario,  
while a Student-at-Law.  
Expires May 1, 2016.

23592137.3

Court File Number: 31 - 2010608

Superior Court of Justice  
Commercial List

FILE/DIRECTION/ORDER

Shelton Group Inc.

Plaintiff(s)

AND

Defendant(s)

Case Management ☐ Yes ☐ No by Judge: \_\_\_\_\_

Counsel	Telephone No:	Facsimile No:

- ☐ Order ☐ Direction for Registrar (No formal order need be taken out)  
☐ Above action transferred to the Commercial List at Toronto (No formal order need be taken out)

- ☐ Adjourned to: \_\_\_\_\_  
☐ Time Table approved (as follows):

My August 6, 2015 Endorsement is
varied to provide that the
matter is adjourned to August
20, 2015 at 9:30 a.m. The time
for filing a proposal is also
<del>extended</del> extended to August 20, 2015.
The BDC Leaseship motion is
also adjourned to August 20, 2015.

August 12, 2015

Date

- [Signature] J.

Judge's Signature

☐ Additional Pages \_\_\_\_\_

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF  
SHERSON GROUP INC.**

District of Ontario  
Division No. 9 - Toronto  
Court File No: 31-2010608  
Estate File No. 31-2010608

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
IN BANKRUPTCY AND INSOLVENCY**

**AFFIDAVIT OF STEPHEN APPLEBAUM**

**AIRD & BERLIS LLP**  
Barristers and Solicitors  
Brookfield Place  
Suite 1800, Box 754  
181 Bay Street  
Toronto, ON M5J 2T9

**Sam Babe (LSUC # 49498B)**  
Tel: 416.865.7718  
Fax: 416.863.1515  
Email: [sabe@airdberlis.com](mailto:sabe@airdberlis.com)

*Lawyers for Sherson Group Inc.*

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF  
SHERSON GROUP INC.**

District of Ontario  
Division No. 9 - Toronto  
Court File No: 31-2010608  
Estate File No. 31-2010608

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
IN BANKRUPTCY AND INSOLVENCY**

**MOTION RECORD**

**AIRD & BERLIS LLP**  
Barristers and Solicitors  
Brookfield Place  
Suite 1800, Box 754  
181 Bay Street  
Toronto, ON M5J 2T9

**Sam Babe (LSUC # 49498B)**  
Tel: 416.865.7718  
Fax: 416.863.1515  
Email: [sabe@airdberlis.com](mailto:sabe@airdberlis.com)

*Lawyers for Sherson Group Inc.*