

ASSET PURCHASE AND SALE AGREEMENT

This Asset Purchase and Sale Agreement (“**Agreement**”) is between [NAME], a [State] [Entity Type] (“**Buyer**”) and ONLINESHOES.COM INC., a Washington corporation, and SHOES.COM, INC., a Delaware corporation, acting by and through their Receiver (together, “**Sellers**”). Buyer and Sellers are sometimes individually referred to in this Agreement as a “**Party**” and collectively as the “**Parties**.”

RECITALS

WHEREAS, Sellers operated online retail sales businesses, generally focused on the sale of men’s and women’s quality dress, casual and athletic footwear into the United States market from their headquarters in Seattle, Washington (the “**Business**”);

WHEREAS, Sellers desire to sell, transfer, convey, assign and deliver the Purchased Assets (as defined below) and to assign the Assumed Liabilities (as defined below), and Buyer desires to purchase, take delivery of, and assume such Purchased Assets and Assumed Liabilities, upon the terms and subject to the conditions set forth in this Agreement;

WHEREAS, on February 2, 2017 (the “**Receivership Date**”), a receivership action was commenced against Sellers (the “**Receivership Case**”) captioned *Wells Fargo Bank, National Association v. Onlineshoes.com Inc., and Shoes.com, Inc.* (Case No. 17-2-02462-7SEA), pending in the Superior Court for King County, Washington (the “**Superior Court**”). Pursuant to the Stipulated Order Appointing General Receiver entered in the Receivership Case on February 2, 2017, Oswego Group LLC, doing business as Inverness Group (the “**Receiver**”) was appointed as General Receiver for Sellers; and

WHEREAS, the Transactions (as defined below) contemplated by this Agreement will be consummated pursuant to a Sale Approval Order (as defined below) to be entered in the Receivership Case under RCW 7.60.260 and other applicable provisions of RCW 7.60 and applicable law, and the Transactions and this Agreement are subject to the approval of the Superior Court.

NOW, THEREFORE, in consideration of the foregoing, and the mutual agreements, covenants, representations, warranties and promises set forth herein, and in order to prescribe the terms and conditions of such purchase and sale, intending to be legally bound the Parties agree as follows:

SECTION 1 DEFINITIONS

Unless defined elsewhere in this Agreement, capitalized terms used in this Agreement will have the meanings ascribed to them in the attached Appendix A.

SECTION 2 ASSETS AND LIABILITIES

- 2.1 Assets.** Subject to the terms and conditions set forth in this Agreement, at the Closing, Sellers agree to sell, transfer and deliver to Buyer, and Buyer agrees to purchase, acquire and accept from Sellers, those assets, property and rights of Sellers listed below, whether tangible or intangible, real, personal or mixed, wherever located and whether or not carried or reflected on the books and records of Sellers, but excluding, without limitation, the Retained Assets (the “**Purchased Assets**”). The Purchased Assets include all right, title and interest of Seller as of the Closing Date, to the extent owned by Sellers, free and clear of all Liens

and Claims (other than Permitted Liens and the Assumed Liabilities) to the maximum extent permitted by RCW 7.60.260 and applicable law, including the following:

- (a) Sellers' inventories, including finished goods, work-in-process, raw materials, packaging, supplies, parts and other inventories;
- (b) Sellers' intellectual property assets (the "**Intellectual Property Rights**"), including, but not limited to, the intellectual property assets listed on Schedule 2.1(b), and all rights under pending patent and copyright applications;
- (c) Those executory contracts and licenses that were executed or entered into on or prior to the Receivership Date and that are set forth on Schedule 2.1(c) as such may be amended (at the request of or with the consent of Buyer) up until the Closing Date (the "**Assumed Contracts**");
- (d) Sellers' licenses, permits, registrations, and other governmental authorizations, including but not limited to the governmental authorizations listed on Schedule 2.1(d), together with all applications for governmental authorizations;
- (e) Sellers' data and records containing information related to the Business, whether in hard copy or soft-copy formats, and including but not limited to all books of account and records, business models, customer and supplier lists, marketing plans, financial and technical information, trade secrets, know-how, ideas, designs, drawings, specifications, techniques, programs, systems, processes, and computer software;
- (f) All of Sellers' office equipment and fixed assets, including, but not limited to, all furniture, fixtures, equipment, machinery, tools, vehicles, point-of-presence displays, office equipment, supplies, computers, servers, monitors, printers, routers, cables, and all computer-related equipment and peripherals, phones, facsimile machines, and other tangible personal property;
- (g) All warranty claims assertable against third party manufacturers of the personal property included in the Purchased Assets;
- (h) Sellers' goodwill, trade names, Internet domain names, telephone numbers, fax numbers, e-mail addresses, and other similar items, together with associated listings and registrations; and
- (i) All claims and causes of action necessary to enforce Buyer's rights in and to the Purchased Assets.

2.2 Retained Assets. Sellers will not sell the following property to Buyer:

- (a) All of Sellers' real and personal property used or held for use exclusively in connection with any other business of Sellers other than the Business, whether tangible or intangible, wherever located;
- (b) Sellers' cash and cash equivalents;
- (c) Sellers' minute books and stock records;

- (d) All claims that Seller may have for tax refunds;
- (e) Sellers' personnel and other records that Seller is required by law to retain;
- (f) Sellers' rights under any Employee Benefit Plan, together with the assets of any Employee Benefit Plan;
- (g) All claims and causes of action other than those described in Section 2.1;
- (h) All insurance policies relating to the Business and all claims arising under such policies prior to the Closing, and all credits, proceeds, insurance premium refunds and all causes of action or rights thereunder;
- (i) All claims, actions, proceedings, damages, liabilities, and expenses of every kind that Seller may have against or be able to recover from Buyer relating to the Transactions;
- (j) All prepaid expenses;
- (k) All utility deposits, security deposits and other deposits of any kind or nature whatsoever;
- (l) All rights of Sellers under any executory contract or unexpired lease that are not Assumed Contracts;
- (m) All claims and causes of action that Sellers have against their former directors, officers and employees; and
- (n) Sellers' rights under this Agreement and the other agreements and documents relating to the Transactions.

2.3 Assumed Liabilities. Upon the terms and subject to the conditions of this Agreement, from and after the Closing Date, Buyer will assume, pay, perform and discharge, promptly when payment or performance is due or required, the following liabilities and obligations of Sellers or the Business (the "**Assumed Liabilities**"):

- (a) All liabilities and obligations of Sellers arising under the Assumed Contracts, only to the extent that such liabilities first accrue and arise on or after the Closing Date;
- (b) All liabilities and obligations of Sellers arising under the Intellectual Property Rights, only to the extent that such liabilities first accrue and arise on or after the Closing Date; and
- (c) All liabilities first arising from the ownership of the Purchased Assets on and after the Closing Date.

2.4 Retained Liabilities. Except for the Assumed Liabilities, Buyer will not assume or be liable for any of Sellers' liabilities and obligations of any kind to any person, whether known or unknown, including, but not limited to:

- (a) Any Claims, liabilities or costs of the Sellers incident to, arising out of or incurred with respect to this Agreement and the Transactions contemplated hereby;

- (b) Any Claims, liabilities or costs arising under any contract that is not an Assumed Contract and which has not been expressly assumed by Buyer pursuant to Section 2.3.
- (c) Sellers' liabilities and obligations arising out of or resulting from the ownership of the Purchased Assets before the Closing, including, without limitation, any warranty claims or related liabilities;
- (d) Sellers' liabilities and obligations for taxes;
- (e) Sellers' liabilities and obligations arising out of or resulting from any failure by Sellers to comply with any applicable law, judgment, or order;
- (f) Sellers' liabilities and obligations arising out of or resulting from any legal proceeding;
- (g) Sellers' liabilities and obligations to any employee of Sellers arising out of or resulting from the employee's service as an employee of Sellers through the close of business on the Closing Date, whether or not the employee is hired by Buyer;
- (h) Sellers' liabilities and obligations under any Employee Benefit Plan;
- (i) Sellers' liabilities and obligations to any current or former shareholder, director, or officer of Sellers or of any of their affiliates;
- (j) Sellers' liabilities and obligations under this Agreement and the other agreements and documents relating to the Transactions; and
- (k) Sellers' liabilities and obligations arising out of or resulting from any act or omission of Seller after the Closing.

Any obligee of any such Retained Liability shall be permanently enjoined from commencing, continuing or otherwise pursuing or enforcing any Retained Liabilities against the Purchased Assets or the Buyer.

2.5. Assignment of Contracts and Rights. To the maximum extent permitted by RCW 7.60 and applicable law, the Assumed Contracts and Intellectual Property Rights shall be assumed by Sellers and assigned to Buyer at the Closing pursuant to RCW 7.60 and applicable law. Notwithstanding any other provision of this Agreement to the contrary, this Agreement shall not constitute an agreement to assign any Purchased Asset or any right thereunder if an attempted assignment, without the consent of a third party or order of the Superior Court, would constitute a breach or in any way adversely affect the rights of Buyer or Sellers thereunder. If such consent is not obtained or such assignment is not attainable pursuant to RCW 7.60, then such Purchased Asset shall not be transferred hereunder, and Buyer shall have the right to not proceed with Closing and/or to seek an adjustment to the Purchase Price.

SECTION 3 PURCHASE PRICE

3.1 Purchase Price. The Purchase Price for the Assets is:

- (a) _____ (\$_____);

PLUS

(b) the assumption of the Assumed Liabilities.

3.2 Payment. Buyer will pay the Purchase Price for the Assets as follows:

(a) at the Closing, Buyer will pay Seller _____ Dollars (\$_____) in immediately available funds; and

(b) at the Closing, Buyer will assume the Assumed Liabilities.

3.3 Prorated Expenses. Any utilities, rents, real and personal property taxes, wages, and other similar expenses with respect to the Assets or the Assumed Liabilities will be prorated between Sellers and Buyer as of the Closing Date. The proration will be made at the Closing to the extent possible. The proration of any remaining expenses will be made as soon as practicable after the Closing Date.

3.4 Good Faith Deposit.

(a) Within one (1) Business Day after Sellers' execution of this Agreement, Buyer will transfer, to an account specified by Seller, a deposit in the amount equal _____ (\$ _____) (the "**Good Faith Deposit**"), payable to the order of "Oswego Group, LLC, Receiver", to be applied as provided in Section 3.4(b). Sellers shall hold such Good Faith Deposit in a segregated interest-bearing account. The Good Faith Deposit shall not be deemed part of Sellers' estate in the Receivership Case unless and until the Good Faith Deposit is disbursed to Sellers pursuant to the terms of Section 3.4(b).

(b) The Good Faith Deposit, together with accrued interest, may be retained by Sellers only if (i) the Transactions are consummated, in which case the Good Faith Deposit plus accrued interest will be applied at the Closing as a credit against the Purchase Price, or (ii) the Transactions are not consummated solely as a result of (x) Buyer's failure to perform the obligations required of the Buyer hereunder at or prior to the Closing Date, or (y) the representations and warranties of Buyer contained in this Agreement fail to be true and correct in all material respects at and as of the Closing Date, as if made at and as of such date (or to the extent such representations and warranties speak as of an earlier date, they shall fail to be true and correct in all material respects as of such earlier date). If Sellers retain the Good Faith Deposit under either clause (x) or (y) above, the Superior Court shall retain jurisdiction to determine any dispute relating thereto. It is agreed that in any other circumstance Buyer is entitled to a return of the Good Faith Deposit plus accrued interest upon termination of this Agreement pursuant to Section 12. To the extent Buyer is entitled to a return of the Good Faith Deposit, the Good Faith Deposit, together with accrued interest, shall be returned to Buyer within five (5) Business Days after the date of the Auction authorized in the Receivership Case.

3.5 Allocation. The Purchase Price for the Assets will be allocated as set forth on Schedule 3.5. After the Closing, the Parties will use the allocations set forth on Schedule 3.5 on each applicable tax return and report filed with a taxing authority. Each of Sellers and Buyer will comply with Section 1060 of the Code and, if applicable, use commercially reasonable efforts to file a consistent Internal Revenue Service Form 8594. Notwithstanding the

foregoing, nothing herein shall be construed to require the Receiver to file tax returns for the Seller.

- 3.6 Closing.** The Closing of the purchase and sale of the Purchased Assets and the assumption of the Assumed Liabilities shall take place at the offices of Schwabe, Williamson & Wyatt, PC, 1420 Fifth Avenue, Suite 3400, Seattle, Washington 98101 no later than [REDACTED], 2017, or at such other time or place as Buyer and Sellers may mutually agree in writing.
- 3.7 Deliveries by Seller.** At the Closing, Sellers will deliver or cause to be delivered to Buyer (unless delivered previously) a Bill of Sale with respect to the Purchased Assets substantially in the form attached hereto as Schedule 3.7, duly executed by Sellers, and all other documents, certificates, instruments or writings reasonably requested by Buyer in connection herewith.
- 3.8 Deliveries by Buyer.** At the Closing, Buyer will deliver or cause to be delivered to Sellers the Purchase Price, less the Good Faith Deposit.

SECTION 4 REPRESENTATIONS AND WARRANTIES OF SELLER

Except for the express representations and warranties in this Agreement, Sellers expressly exclude all warranties with respect to the Transactions, express and implied, including, but not limited to, the warranty of merchantability, the warranty of fitness for a particular purpose, and any warranties that may have arisen from course of dealing or usage of trade. Sellers represent and warrant to Buyer as follows:

- 4.1 Authority.** Subject to the limitations imposed on and authorities granted to Sellers as a result of the Receivership Case, Sellers have the requisite power and authority to sell the Purchased Assets.
- 4.2 Binding Obligation.** This Agreement is the legal, valid, and binding obligation of Sellers, enforceable against Sellers in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, or other similar laws of general application or by general principles of equity.
- 4.3 “AS IS, WHERE IS” TRANSACTION.** BUYER HEREBY ACKNOWLEDGES AND AGREES THAT, NOTWITHSTANDING THE REPRESENTATIONS AND WARRANTIES EXPRESSLY PROVIDED IN THIS SECTION 4, THE CONSENT OF A PARTY TO THE CLOSING SHALL CONSTITUTE A WAIVER BY SUCH PARTY OF ANY CONDITIONS TO CLOSING NOT SATISFIED AS OF THE CLOSING DATE, AND FOLLOWING CLOSING SELLERS MAKE NO REPRESENTATIONS OR WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO ANY MATTER RELATING TO THE PURCHASED ASSETS OR THE BUSINESS, INCLUDING INCOME TO BE DERIVED OR EXPENSES TO BE INCURRED IN CONNECTION WITH THE PURCHASED ASSETS OR THE BUSINESS, THE PHYSICAL CONDITION OF ANY PERSONAL PROPERTY COMPRISING A PART OF THE PURCHASED ASSETS OR THE BUSINESS OR WHICH IS THE SUBJECT OF ANY LEASE OR CONTRACT TO BE ASSIGNED TO BUYER AT THE CLOSING, THE ENVIRONMENTAL CONDITION OR ANY OTHER MATTER RELATING TO THE PHYSICAL CONDITION OF ANY REAL PROPERTY OR IMPROVEMENTS, THE VALUE OF THE PURCHASED ASSETS OR THE BUSINESS (OR ANY PORTION

THEREOF), THE TRANSFERABILITY OF THE PURCHASED ASSETS, THE TERMS, AMOUNT, VALIDITY OR ENFORCEABILITY OF ANY ASSUMED LIABILITIES, THE TITLE OF THE PURCHASED ASSETS OR THE BUSINESS (OR ANY PORTION THEREOF), THE MERCHANTABILITY OR FITNESS OF THE PERSONAL PROPERTY OR ANY OTHER PORTION OF THE PURCHASED ASSETS OR THE BUSINESS FOR ANY PARTICULAR PURPOSE, OR ANY OTHER MATTER OR THING RELATING TO THE PURCHASED ASSETS OR THE BUSINESS OR ANY PORTION THEREOF. WITHOUT IN ANY WAY LIMITING THE FOREGOING, SELLERS HEREBY DISCLAIM ANY WARRANTY, EXPRESS OR IMPLIED, OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE AS TO ANY PORTION OF THE PURCHASED ASSETS OR THE BUSINESS. BUYER FURTHER ACKNOWLEDGES THAT BUYER HAS CONDUCTED AN INDEPENDENT INSPECTION AND INVESTIGATION OF THE PHYSICAL CONDITION OF THE PURCHASED ASSETS AND THE BUSINESS AND ALL SUCH OTHER MATTERS RELATING TO OR AFFECTING THE PURCHASED ASSETS AND THE BUSINESS AS BUYER DEEMED NECESSARY OR APPROPRIATE AND THAT IN PROCEEDING WITH ITS ACQUISITION OF THE PURCHASED ASSETS AND THE BUSINESS, EXCEPT FOR ANY REPRESENTATIONS AND WARRANTIES EXPRESSLY SET FORTH IN SECTION 4, BUYER IS DOING SO BASED SOLELY UPON SUCH INDEPENDENT INSPECTIONS AND INVESTIGATIONS. ACCORDINGLY, UPON THE CLOSING DATE, BUYER WILL ACCEPT THE PURCHASED ASSETS AND THE BUSINESS AT THE CLOSING “AS IS,” “WHERE IS,” AND “WITH ALL FAULTS.”

SECTION 5 REPRESENTATIONS AND WARRANTIES OF BUYER

Except for the express representations and warranties in this Agreement, Buyer expressly excludes all warranties with respect to the Transactions, express and implied. Buyer represents to Sellers as follows:

- 5.1 Organization.** Buyer is a [Entity Type] duly organized and validly existing under the laws of the State of [], and has the requisite power and authority to carry on in all material respects its business as now conducted.
- 5.2 Authority.** The execution, delivery and performance by Buyer of this Agreement and the consummation of the Transactions are within the powers of Buyer and have been duly authorized by all necessary action on the part of Buyer. This Agreement constitutes a valid and binding agreement of the Buyer that is enforceable in accordance with its terms.
- 5.3 Governmental Authorization.** The execution, delivery and performance by Buyer of this Agreement and the consummation of the Transactions by Buyer does not require Buyer to make any filing with, or to obtain any permit, authorization, license, consent or approval of, any Governmental Authority, except where the failure to so make or obtain would not have a Material Adverse Effect.
- 5.4 Binding Obligation.** This Agreement is the legal, valid, and binding obligation of Buyer, enforceable against Buyer in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, or other similar laws of general application or by general principles of equity.

- 5.5 No Conflicts.** The signing and delivery of this Agreement by Buyer and the performance by Buyer of all of Buyer's obligations under this Agreement will not:
- (a) conflict with Buyer's operating agreement;
 - (b) breach any agreement to which Buyer is a party, or give any person the right to accelerate any obligation of Buyer; or
 - (c) violate any law, judgment, or order to which Buyer is subject.
- 5.6 Litigation.** There is no action, suit, investigation or proceeding pending against, or to the Knowledge of Buyer, threatened against or affecting, Buyer before any court or arbitrator or any Governmental Authority which in any manner challenges or seeks to prevent, enjoin, alter or materially delay the Transactions.
- 5.7 No Brokers or Finders.** Buyer has not employed any broker, finder, investment banker or other intermediary or incurred any liability for any investment banking fees, financial advisory fees, brokerage fees, finders' fees, or other similar fees in connection with this Agreement or the Transactions

SECTION 6 COVENANTS OF SELLERS

Sellers covenant to Buyer as follows:

- 6.1 Buyer's Investigation.** Until the Closing and upon reasonable advance notice from Buyer and during normal business hours, Sellers shall afford to Buyer and its representatives reasonable access to Sellers' former personnel, to the extent that they are available, for the purposes of evaluating the Purchased Assets and the Assumed Liabilities, and all properties, books, accounts, records and documents of, or relating to, the Purchased Assets.
- 6.2 Sellers' Business.** Except (1) as may be required by the Superior Court, (2) for the consequences resulting from the commencement and continuation of the Receivership Case, and (3) as may be required or contemplated by this Agreement, from the date of this Agreement until the sooner of the Closing Date or the date of termination of this Agreement, Sellers will not:
- (a) with respect to the Business, acquire a material amount of assets from any other person;
 - (b) sell, lease, mortgage, encumber, license or otherwise dispose of any of the Purchased Assets;
 - (c) agree or commit to do any of the foregoing;
 - (d) fail to maintain the Purchased Assets in good working order and condition in all material respects; or
 - (e) materially alter any Assumed Contract.
- 6.3 Insurance.** To the extent that any insurance policies of Sellers cover any Assumed Liabilities or loss, liability, claim, damage or expense relating to any Purchased Assets with respect to events occurring on or after the Closing Date, Sellers shall, at the request of Buyer,

cooperate with Buyer in submitting and pursuing such claims on behalf of Buyer and any insurance recoveries resulting therefrom shall belong to Buyer.

6.4 Notification. Until the Closing, Sellers will promptly notify Buyer if Sellers obtain Knowledge of:

- (a) any notice or other written communication from any person alleging that the consent of such person is or may be required in connection with the consummation of the Transactions;
- (b) any material written communication from any Governmental Authority in connection with or relating to the Transactions;
- (c) the commencement of any actions, suits, investigations or proceedings relating to Sellers or the Business that are material to the Transactions or that could constitute, or result in, a Material Adverse Effect; and
- (d) the occurrence or existence of any other matter following the date of this Agreement that would have been required to have been disclosed pursuant to Section 4 or might otherwise constitute, or result in, a Material Adverse Effect.

SECTION 7 COVENANTS OF BUYER

Buyer covenants to Sellers as follows:

- 7.1 Confidentiality.** Prior to the Closing Date and after any termination of this Agreement, the Confidentiality Agreement shall remain in full force and effect. After the Closing has occurred, the Confidentiality Agreement shall be terminated to the extent relating to the Purchased Assets and Assumed Liabilities, and shall, with respect to any of the Retained Assets and Retained Liabilities, remain in full force and effect.
- 7.2 Access.** On and after the Closing Date and until the Receivership Case is dismissed or closed, or any time during which the Receivership Case is opened or reopened, upon reasonable notice, Buyer will afford promptly to Sellers and their agents reasonable access during normal business hours to its properties, books, records, employees, auditors and counsel to the extent necessary for financial reporting and accounting matters, employee benefits matters, the preparation and filing of any Tax returns, reports or forms, the defense of any Tax audit, claim or assessment or the reconciliation of Claims in the Receivership Case or to permit Sellers to determine any matter relating to its rights and obligations hereunder or any other reasonable business purpose related to the Retained Assets or Retained Liabilities; *provided* that any such access by Sellers shall not unreasonably interfere with the conduct of the business by Buyer.
- 7.3 Insurance.** To the extent that any insurance policies of Sellers cover any Retained Liabilities or loss, liability, claim, damage or expense relating to any Purchased Assets and such insurance policies continue after the Closing Date to permit claims to be made thereunder with respect to events occurring prior to the Closing Date, Buyer shall cooperate with Sellers in submitting and pursuing such claims on behalf of Sellers, and any insurance recoveries resulting therefrom shall belong to Sellers.

SECTION 8 COVENANTS OF BUYER AND SELLERS

Buyer and Sellers agree that:

- 8.1 Efforts and Further Assurances.** Subject to the terms and conditions of this Agreement, Buyer and Sellers will use their respective commercially reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary or desirable under applicable laws and regulations to consummate the transactions contemplated by this Agreement; *provided, however*, Sellers and Receiver shall be entitled to take such actions as are required in connection with the discharge of their fiduciary duties in the Receivership Case (including soliciting higher or better offers for the Purchased Assets). Sellers and Buyer agree to execute and deliver such other documents, certificates, agreements and other writings and to take such other actions as may be necessary or desirable in order to vest in Buyer good title to the Purchased Assets or to evidence the assumption by the Buyer of the Assumed Liabilities.
- 8.2 Certain Filings.** Sellers and Buyer shall cooperate with one another (a) in determining whether any action by or in respect of, or filing with, any Governmental Authority is required, or any actions, consents, approval or waivers are required to be obtained from parties to Assumed Contracts or Intellectual Property Rights, in connection with the consummation of the Transactions, and (b) in taking such actions or making such filings, furnishing information required in connection therewith and seeking timely to obtain any such actions, consents, approvals or waivers.
- 8.3 Public Announcements.** Prior to the Closing, neither Buyer nor Sellers shall make any public announcements or statements concerning the Transactions without the prior written consent of all Parties hereto except to the extent required by applicable law, ordered or requested by the Superior Court, or otherwise reasonably necessary to the sale process. Buyer acknowledges and agrees that Sellers may provide copies of this Agreement to its employees and agents, to parties in interest in the Receivership Case, and those parties to whom Sellers determine it is necessary to provide copies in connection with soliciting higher and better bids for the Purchased Assets or as otherwise necessary in connection with the Receivership Case. Sellers also shall be entitled to file copies with the Superior Court or as otherwise required by law and shall be entitled to publish notice of the contemplated Transactions. Sellers acknowledge and agree that Buyer is entitled to provide copies of this Agreement to its Representatives, as that term is defined in the Confidentiality Agreement. After the Closing, Buyer may make any public announcement or statements concerning the Transactions without the prior written consent of Sellers.
- 8.4 Tax Matters.**
- (a) **Tax Cooperation.** Without limiting Section 7.2, Buyer and Sellers agree to furnish or cause to be furnished to each other, upon request, as promptly as practicable, such information and assistance relating to the Business and the Purchased Assets (including access to books and records) as is reasonably necessary for the preparation and filing of all Tax returns, the making of any election relating to Taxes, the preparation for any audit by any Taxing Authority, and the prosecution or defense of any claim, suit or proceeding relating to any Tax. Sellers and Buyer shall cooperate with each other in the conduct of any audit or other proceeding relating to Taxes involving the Purchased Assets or the Business.

- (b) Property Taxes. All Property Taxes for a Tax period which includes (but does not end on) the Closing Date (collectively, the “**Apportioned Obligations**”) shall be apportioned between Sellers, on the one hand, and Buyer, on the other hand, based on the number of days of such Tax period included in the Pre-Closing Tax Period and the number of days of such Tax period after the Closing Date (with respect to any such Tax period, the “**Post-Closing Tax Period**”). Sellers shall be liable for the proportionate amount of such Property Taxes that is attributable to the Pre-Closing Tax Period, and Buyer shall be liable for the proportionate amount of such Property Taxes that is attributable to the Post-Closing Tax Period. The Apportioned Obligations of Sellers shall be estimated based on property valuation and levy rates from the preceding Tax period (unless the valuation and levy rates for the current Tax period exists) and agreed to in good faith by the Parties as of the Closing Date. Sellers will adjust or credit Buyer at Closing with Sellers’ pro rata share of the estimated obligations, and Buyer shall bear the responsibility of paying the actual Property Tax liabilities for the current tax periods in full when billed, and Buyer shall be entitled to post-Closing adjustment payment from Seller to accurately prorate the Apportioned Obligations between Buyer and Sellers after the Property Tax liabilities are billed.

SECTION 9 CLOSING CONDITIONS

9.1 Conditions to Obligations of Buyer and Seller. The obligations of Buyer and Sellers to consummate the Closing are subject to the satisfaction of the following conditions:

- (a) The Superior Court shall have entered the Sale Approval Order in the Receivership Case, authorizing the Transactions and approving this Agreement under RCW 7.60.260 and applicable law, and as of the Closing Date the Sale Approval Order shall be in full force and effect and shall not have been stayed, vacated or reversed. The Sale Approval Order shall be in a form acceptable to Buyer, and substantially in the form attached hereto as Exhibit 9.1.
- (b) The Sale Approval Order must not contain any language modifying or limiting Buyer’s status as a good faith purchaser, purchasing free and clear of all Liens, encumbrances and rights of redemption. The Sale Approval Order also must not impose any conditions or obligations on Buyer that are materially different or additional to Buyer’s obligations under this Agreement, including any monetary conditions to assumption and assignment of any executory contracts or leases, unless Buyer consents to being bound by such additional or different condition or obligation.
- (c) No injunction, stay or similar order or decree, issued by any court, tribunal or governmental entity, shall be in effect that restrains, enjoins, stays or prohibits consummation of the Transactions.

9.2 Conditions to Obligations of Buyer. The obligation of Buyer to consummate the Closing is subject to the satisfaction (or waiver by Buyer) of the following further conditions:

- (a) Sellers shall have performed in all material respects all of its obligations hereunder required to be performed by Sellers on or prior to the Closing Date;
- (b) All of the conditions set forth in this Section 9.2 shall be satisfied and Seller shall be ready, willing, and able to Close no later than [REDACTED], 2017, unless Buyer and

Sellers expressly agree in writing that Closing may occur at a later date in accordance with Section 3.6;

- (c) The representations and warranties of Sellers contained in this Agreement shall be true and correct at and as of the Closing Date, as if made at and as of such date (or to the extent such representations and warranties speak as of an earlier date, they shall be true and correct as of such earlier date).
- (d) Buyer shall have received all documents it may reasonably request relating to the Closing (as set forth in Section 3.7).
- (e) There shall be no pending appeal, motion for reconsideration, motion for revision, or any similar challenge to any court order relating to this Agreement or the Transactions that might, if granted, have a Material Adverse Effect.
- (f) There shall be no stay of any court order relating to this Agreement or the Transactions.
- (g) Entry of a Sale Approval Order in accordance with Section 9.1 and Schedule 9.1.

9.3 Conditions to Obligations of Seller. The obligation of Sellers to consummate the Closing is subject to the satisfaction (or waiver by Sellers) of the following further conditions:

- (a) (i) Buyer shall have performed in all material respects all of its obligations hereunder required to be performed by it at or prior to the Closing Date, and (ii) the representations and warranties of Buyer contained in this Agreement shall be true and correct in all respects at and as of the Closing Date with the same effect as though made at and as of the Closing Date (other than any representation or warranty that expressly relates to a specific date, which representations and warranties shall be true and correct in all respects on the date so specified).
- (b) Sellers shall have received all documents it may reasonably request relating to the existence of Buyer and the authority of Buyer for this Agreement, all in form and substance reasonably satisfactory to Sellers.

SECTION 10 SURVIVAL

The Parties agree that all representations and warranties contained in this Agreement or in any certificate or other writing delivered by Sellers or Buyer in connection herewith or covenants and agreements contained in this Agreement or in any certificate or other writing delivered by Sellers to Buyer in connection herewith that by their terms are to be performed before Closing, shall terminate upon Closing, and neither Sellers nor Buyer shall have any liability to the other for any alleged breach of such warranties and representations or pre-Closing covenants or agreements if the Closing occurs. The covenants and agreements contained in this Agreement or in any certificate or other writing delivered by Sellers or Buyer in connection herewith that by their terms are to be performed after Closing, shall terminate upon lapse of the applicable statute of limitations. Notwithstanding the foregoing, if any representation or warranty is later determined to be false and made by either Party with knowledge of such falsity, the aggrieved Party shall retain all rights and remedies that it would have under applicable law for such breach. The Parties hereto agree that the covenants and agreements contained in this Agreement to be performed at or after the Closing shall survive the

Closing hereunder, and each party hereto shall be liable to the other after the Closing for any breach thereof.

SECTION 11 LIMITATION OF LIABILITY

Neither Party will be liable to the other Party under any cause of action, whether in contract, tort, or otherwise, for any indirect, special, incidental, consequential, or punitive damages, even if the Party has been advised of the possibility of such damages.

SECTION 12 TERMINATION

12.1 Termination. This Agreement will terminate upon the earliest to occur of the following:

- (a) upon the written agreement of Buyer and Sellers before the Closing;
- (b) unless waived by Buyer, upon notice by Buyer to Sellers before the Closing, if Sellers have breached any of its obligations under this Agreement, provided that if such breach is capable of being cured, Buyer shall have given Sellers not less than five (5) Business Days written notice to cure such breach and Sellers shall have failed to cure such breach within such period;
- (c) unless waived by Sellers, upon notice by Sellers to Buyer before the Closing, if Buyer has breached any of its obligations under this Agreement, provided that if such breach is capable of being cured, Sellers shall have given Buyer not less than five (5) Business Days written notice to cure such breach and Buyer shall have failed to cure such breach within such period; and
- (d) if the Closing has not occurred on or before [REDACTED], 2017, or such later date as may be mutually agreed to by the parties, in writing.

12.2 Effect of Termination. If this Agreement is terminated under Section 12.1:

- (a) the provisions described in Section 10 will survive the termination of this Agreement (the “**Surviving Provisions**”);
- (b) Sellers shall promptly (and in no event later than five (5) Business Days from Buyer’s demand) refund to Buyer its Good Faith Deposit in its entirety; and
- (c) all other obligations of the parties under this Agreement will terminate, except that the obligations of the parties under the Surviving Provisions will survive the termination of this Agreement.

12.3 Sole and Exclusive Remedy. **If this Agreement is terminated under Section 12.1, neither Party will be liable to the other Party for a breach of this Agreement or otherwise, except that the Parties will be liable for breaches of the Surviving Provisions, regardless of whether such breaches occur before or after the termination of this Agreement.**

SECTION 13 EQUITABLE RELIEF

The Parties acknowledge that the remedies available at law for any breach of this Agreement will, by their nature, be inadequate. Accordingly, each party may obtain injunctive relief or other equitable relief to restrain a breach or threatened breach of this Agreement or to specifically enforce this Agreement, without proving that any monetary damages have been sustained.

SECTION 14 EXPENSES

Except as otherwise provided in this Agreement, each party will bear the party's own fees, costs, and expenses incurred in connection with the Transactions, including but not limited to the preparation, negotiation, signing, and performance of this Agreement and the other agreements and documents relating to the Transactions.

SECTION 15 GENERAL

- 15.1 Time of Essence.** Time is of the essence with respect to all dates and time periods in this Agreement.
- 15.2 Assignment.** Neither party may assign or delegate any of the party's rights or obligations under this Agreement to any person without the prior written consent of the other party, which the other party may not withhold unreasonably, *except that* Sellers acknowledge and agree that:
- (a) Buyer may form a new entity for purposes of acquiring the assets and consummating the Transactions contemplated hereunder; and
 - (b) Provided that such new entity is majority owned and controlled by Buyer, Buyer may assign this Agreement and all rights and obligations of Buyer hereunder to such newly-formed acquisition entity without any additional consent or permission of Sellers being required.
- 15.3 Binding Effect.** This Agreement will be binding on the parties and their respective heirs, personal representatives, successors, and permitted assigns, and will inure to their benefit.
- 15.4 Amendment.** This Agreement may be amended only by a written agreement signed by each party.
- 15.5 Notices.** All notices or other communications required or permitted by this Agreement:
- (a) must be in writing;
 - (b) must be delivered to the parties at the addresses set forth below, or any other address that a party may designate by notice to the other parties; and
 - (c) are considered delivered:
 - (1) upon actual receipt if delivered personally, by fax, email, or by a nationally recognized overnight delivery service; or

(2) at the end of the third business day after the date of deposit in the United States mail, postage pre-paid, certified, return receipt requested.

To Buyer:

Fax: _____
Attn: _____
Email: _____

With a copy to:

Fax: _____
Attn: _____
Email: _____

To Seller:

Oswego Group LLC
PO Box 861
Lake Oswego, OR 97034
Fax: 503.922.1220
Attn: John L. Davidson
Email: jdavidson@inverness.us

With a copy to:

Alex Poust
Schwabe, Williamson & Wyatt, PC
1211 SW Fifth Avenue
Suites 1500-1900
Portland, OR 97204
Fax: 503.796.2900
Email: apoust@schwabe.com

- 15.6 Waiver.** No waiver will be binding on a party unless it is in writing and signed by the party making the waiver. A party’s waiver of a breach of a provision of this Agreement will not be a waiver of any other provision or a waiver of a subsequent breach of the same provision.
- 15.7 Severability.** If a provision of this Agreement is determined to be unenforceable in any respect, the enforceability of the provision in any other respect and of the remaining provisions of this Agreement will not be impaired.
- 15.8 Further Assurances.** The parties will sign other documents and take other actions reasonably necessary to further effect and evidence this Agreement.
- 15.9 No Third-Party Beneficiaries.** The parties do not intend to confer any right or remedy on any third party.
- 15.10 Attachments.** Any exhibits, schedules, and other attachments referenced in this Agreement are part of this Agreement and are incorporated herein by reference.
- 15.11 Remedies.** Subject to the terms and conditions of this Agreement, the parties will have all remedies available to them at law or in equity. All available remedies are cumulative and may be exercised singularly or concurrently.
- 15.12 Governing Law.** This Agreement is governed by the laws of the State of Washington, without giving effect to any conflict-of-law principle that would result in the laws of any other jurisdiction governing this Agreement.
- 15.13 Venue.** Any action or proceeding arising out of this Agreement will be litigated in courts located in King County, Washington. Each party consents and submits to the jurisdiction of any local, state, or federal court located in King County, Washington.

- 15.14 Attorney's Fees.** If any arbitration or litigation is instituted to interpret, enforce, or rescind this Agreement, including but not limited to any proceeding brought under the United States Bankruptcy Code, the prevailing party on a claim will be entitled to recover with respect to the claim, in addition to any other relief awarded, the prevailing party's reasonable attorney's fees and other fees, costs, and expenses of every kind incurred in connection with the arbitration, the litigation, any appeal or petition for review, the collection of any award, or the enforcement of any order, as determined by the arbitrator or court.
- 15.15 Entire Agreement.** This Agreement contains the entire understanding of the parties regarding the subject matter of this Agreement and supersedes all prior and contemporaneous negotiations and agreements, whether written or oral, between the parties with respect to the subject matter of this Agreement.
- 15.16 Signatures.** This Agreement may be signed in counterparts. A fax transmission of a signature page will be considered an original signature page. At the request of a party, the other party will confirm a fax-transmitted signature page by delivering an original signature page to the requesting party.

[signature page to follow]

Dated effective: March ____, 2017.

BUYER:

[____ **NAME** ____], a [**STATE**] [**ENTITY TYPE**]

By: _____

Its: _____

SELLERS:

SHOES.COM, INC., a Delaware corporation

By: Oswego Group LLC, an Oregon limited liability
company

Its: General Receiver

By: John L. Davidson
Its: Managing Member

ONLINESHOES.COM INC., a Washington
corporation

By: Oswego Group LLC, an Oregon limited liability
company

Its: General Receiver

By: John L. Davidson
Its: Managing Member

APPENDIX A

Definitions

“**Purchased Assets**” means the assets described in Section 2.1.

“**Assumed Liabilities**” meaning the liabilities described in Section 2.3.

“**Business Day**” means a day other than Saturday, Sunday or other day on which commercial banks in Washington are authorized or required by law to close.

“**Claim**” means a “claim” as defined in Section 101 of the United States Bankruptcy Code (11 USC § 101 et seq. (as amended from time to time)), including any claim for successor liability.

“**Closing**” means the closing of the Transactions.

“**Closing Date**” means the date on which the Closing takes place.

“**Code**” means the Internal Revenue Code of 1986.

“**Confidentiality Agreement**” means the Confidentiality and Non-Disclosure Agreement dated _____, 2017, between Buyer and Seller.

“**Employee Benefit Plan**” means any “employee benefit plan” under Section 3(3) of ERISA and any other bonus, deferred compensation, incentive, profit sharing, stock option, stock appreciation rights, employee stock ownership, pension, retirement, severance, savings, salary continuation, supplemental unemployment, welfare, health, disability, life insurance, fringe benefit, vacation, sick leave, holiday, or benefit plan, policy, practice, or agreement:

- (a) to which Seller or any ERISA Affiliate has contributed during the 6-year period before the date of this Agreement;
- (b) to which Seller or any ERISA Affiliate has been a party during the 6-year period before the date of this Agreement;
- (c) under which Seller or any ERISA Affiliate may have had any liability or obligation during the 6-year period before the date of this Agreement; or
- (d) that provided benefits or described policies applicable to any director, employee, or independent contractor of Seller or any ERISA Affiliate during the 6-year period before the date of this Agreement.

“**ERISA**” means the Employee Retirement Income Security Act of 1974.

“**ERISA Affiliate**” means any person that during the 6-year period before the date of this Agreement:

- (a) has been under “common control” with Seller under Section 4001(a)(14) of ERISA or Section 4001(b) of ERISA; or
- (b) has been treated as a single employer with Seller under Section 414 of the Code.

“Governmental Authority” means any government or governmental or regulatory body thereof, or political subdivision thereof, whether foreign, federal, state, or local, or any agency, instrumentality or authority thereof, or any court or arbitrator (public or private).

“Knowledge” means:

- (a) with respect to Seller, the actual knowledge of John L. Davidson, Managing Member of the Receiver, and any knowledge that he would have obtained if he had conducted a reasonably comprehensive investigation of the relevant matter;
- (b) with respect to Buyer, the actual knowledge of _____, and any knowledge that [he/she/they] would have obtained if [he/she/they] had conducted a reasonably comprehensive investigation of the relevant matter.

“Lien” means any statutory lien claims, encumbrance, pledge, mortgage, deed of trust, security interest, claim, lease, charge, option, right of first refusal, easement, servitude, proxy, voting trust agreement, right of setoff, recoupment or warranty, transfer restriction under any shareholder or similar agreement or encumbrance of any other right of a third party in respect of an asset.

“Material Adverse Effect” means a material adverse change in or effect on the Business, the Purchased Assets or financial condition of the Business, taken as a whole, excluding any such change or effect to the extent resulting from or arising in connection with (i) the Transactions or the public announcement thereof, (ii) changes or condition affecting the industries generally in which Seller operates, or (iii) in economic, regulatory or political conditions generally.

“Property Taxes” means all real property Taxes, personal property Taxes, and similar ad valorem obligations levied with respect to the Purchased Assets for any Tax period.

“Receiver” means Oswego Group LLC, an Oregon limited liability company, doing business as Inverness Group.

“Retained Assets” means the assets described in Section 2.2.

“Retained Liabilities” means the liabilities described in Section 2.4.

“Sale Approval Order” means that certain order, in form mutually acceptable to Seller and Buyer, to be entered in the Receivership Case approving of the Agreement and the Transactions.

“Taxes” means (i) any and all federal, state, local and foreign taxes, assessments, and any other governmental charges, fees, duties or other like assessment or charges of any kind whatsoever (including withholding on amounts paid to or by any person and taxes based upon or measured by gross receipts, income, profits, sales, use and occupation and value added, ad valorem, transfer, franchise, withholding, payroll, recapture, employment, excise and property taxes), together with all interest, penalty, addition to tax or additional amount imposed by any Governmental Authority (a **“Taxing Authority”**) responsible for the imposition of any such tax (domestic or foreign), and (ii) any liability for the payment of any amounts or the type described in clause (i) as a result of being or ceasing to be a member of an affiliated, consolidated, combined or unitary group for any period (including without limitation any liability under Treasury Regulation section 1.15026 or any comparable provision of foreign, state or local law); or (iii) liability for the payment of any amounts of the type described in (i) or (ii) as a result of being party to any agreement or any express or implied obligation to indemnify any other person or as a result of any obligations under any agreements or arrangements with any other person with respect to such amounts.

“Transactions” means the purchase and sale of the Purchased Assets and the assignment and assumption of the Assumed Liabilities provided for in this Agreement.

EXHIBIT 3.7

Bill of Sale

This Bill of Sale is made and given in connection with that certain King County, Washington Superior Court Order (Case No. 17-2-02462-7SEA) dated [REDACTED], 2017, and that certain Asset Purchase and Sale Agreement (“**Agreement**”) by and between Shoes.com, Inc., and Onlineshoes.com Inc., by and through Oswego Group LLC, their duly appointed General Receiver (together, “**Sellers**”), and [REDACTED], or its assign (“**Buyer**”)

1. **Transfer.** Sellers hereby transfer and assign to Buyer (“**Buyer**”) Sellers’ entire interest in the Purchased Assets, as that term is defined in the Agreement.
2. **No Warranties.** Buyer acknowledges that Sellers make no representation or warranty with respect to the Purchased Assets, except as specifically set forth in the Agreement, and Buyer accepts the Purchased Assets subject to, without limitation, Section 4 of the Agreement.
3. **Attachments.** Any exhibits, schedules, or other attachments attached to or referenced in this Bill of Sale are part of this Bill of Sale.
4. **Governing Law.** This Bill of Sale is governed by the laws of the State of Washington, without giving effect to any conflict-of-law principle that would result in the laws of any other jurisdiction governing this Bill of Sale.
5. **Venue.** Any action, suit, or proceeding arising out of the subject matter of this Bill of Sale will be litigated in courts located in King County, Washington. Each party consents and submits to the jurisdiction of any local, state, or federal court located in King County, Washington.
6. **Attorney’s Fees.** If any arbitration, action, suit, or proceeding is instituted to interpret, enforce, or rescind this Bill of Sale, or otherwise in connection with the subject matter of this Bill of Sale, including but not limited to any proceeding brought under the United States Bankruptcy Code, the prevailing party on a claim will be entitled to recover with respect to the claim, in addition to any other relief awarded, the prevailing party’s reasonable attorney’s fees and other fees, costs, and expenses of every kind incurred in connection with the arbitration, action, suit, or proceeding, any appeal or petition for review, the collection of any award, or the enforcement of any order, as determined by the arbitrator or court.

[Remainder of Page Blank]

7. **Buyer's Acceptance.** Buyer accepts the Purchased Assets subject to the terms and conditions in this Bill of Sale.

Dated effective: _____, 2017.

BUYER:

[____ **NAME** ____], a [**STATE**] [**ENTITY TYPE**]

By: _____

Its: _____

SELLERS:

SHOES.COM, INC., a Delaware corporation

By: Oswego Group LLC, an Oregon limited liability company

Its: General Receiver

By: John L. Davidson

Its: Managing Member

ONLINESHOES.COM INC., a Washington corporation

By: Oswego Group LLC, an Oregon limited liability company

Its: General Receiver

By: John L. Davidson

Its: Managing Member

SCHEDULE 2.1(b)

Intellectual Property Rights

Buyer shall purchase all of Sellers' Intellectual Property Assets, including, without limitation, all Intellectual Property listed on Exhibit 2.1(b) hereto.

For purposes of this Schedule 2.1(b), the following terms shall have the meanings set forth below:

“Intellectual Property Assets” means all Intellectual Property that is owned by Sellers and used in or necessary for the conduct of the Business as currently conducted. Intellectual Property Assets does not include either the domain name “www.shoes.com” or the tradename “shoes.com”.

“Intellectual Property” means all of the following and similar intangible property and related proprietary rights, interests and protections, however arising, pursuant to the Laws of any jurisdiction throughout the world: (a) trademarks, service marks, trade names, brand names, logos, trade dress and other proprietary indicia of goods and services, whether registered or unregistered, and all registrations and applications for registration of such trademarks, including intent-to-use applications, all issuances, extensions and renewals of such registrations and applications and the goodwill connected with the use of and symbolized by any of the foregoing; (b) internet domain names, whether or not trademarks, registered in any top-level domain by any authorized private registrar or Governmental Authority; (c) original works of authorship in any medium of expression, whether or not published, all copyrights (whether registered or unregistered), all registrations and applications for registration of such copyrights, and all issuances, extensions and renewals of such registrations and applications; (d) confidential information, formulas, designs, devices, technology, know-how, research and development, inventions, methods, processes, compositions and other trade secrets, whether or not patentable; (e) patented and patentable designs and inventions, all design, plant and utility patents, letters patent, utility models, pending patent applications and provisional applications and all issuances, divisions, continuations, continuations-in-part, reissues, extensions, reexaminations and renewals of such patents and applications; and (f) all legal and equitable and remedies, including rights to enjoin future infringement and all rights to sue and recover and retain damages, costs and attorneys' fees for past, present and future infringement and any other rights relating to any of the foregoing.

“Law” means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, other requirement or rule of law of any Governmental Authority.

“Governmental Authority” means any federal, state, local or foreign government or political subdivision thereof, or any agency or instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations or orders of such organization or authority have the force of Law), or any arbitrator, court or tribunal of competent jurisdiction.

EXHIBIT 2.1(b)

Intellectual Property

SCHEDULE 2.1(c)

Assumed Contracts

SCHEDULE 2.1(d)

Licenses and Permits

SCHEDULE 3.5

Allocation

Buyer and Sellers agree this that the allocation of the Purchase Price for the Purchased Assets is as follows:

BUYER:

[____ **NAME** ____], a [**STATE**] [**ENTITY TYPE**]

By: _____
Its: _____

SELLERS:

SHOES.COM, INC., a Delaware corporation

By: Oswego Group LLC, an Oregon limited liability company
Its: General Receiver

By: John L. Davidson
Its: Managing Member

ONLINESHOES.COM INC., a Washington corporation

By: Oswego Group LLC, an Oregon limited liability company
Its: General Receiver

By: John L. Davidson
Its: Managing Member

EXHIBIT 9.1

Sale Approval Order

(Not Attached)