

*Ontario*  
**SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

IN THE MATTER OF THE *COMPANIES' CREDITORS  
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF SEARS CANADA INC., 9370-2751  
QUEBEC INC., 191020 CANADA INC., THE CUT INC., SEARS  
CONTACT SERVICES INC., INITIUM LOGISTICS SERVICES  
INC., INITIUM COMMERCE LABS INC., INITIUM TRADING  
AND SOURCING CORP., SEARS FLOOR COVERING  
CENTRES INC., 173470 CANADA INC., 2497089 ONTARIO  
INC., 6988741 CANADA INC., 10011711 CANADA INC.,  
1592580 ONTARIO LIMITED, 955041 ALBERTA LTD.,  
4201531 CANADA INC., 168886 CANADA INC., AND 3339611  
CANADA INC.

APPLICANTS

**MOTION RECORD OF THE APPLICANTS**  
**(Motion for Approval of Agreement of Purchase and Sale with**  
**Pan American Properties Inc. (Charlottetown, PEI))**

August 8, 2018

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**TO: SERVICE LIST**

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# Tab 1

Court File No. CV-17-11846-00CL

*Ontario*  
**SUPERIOR COURT OF JUSTICE  
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IN THE MATTER OF THE *COMPANIES' CREDITORS  
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APPLICANTS

**NOTICE OF MOTION**  
**(Motion for Approval of Agreement of Purchase and Sale with  
Pan American Properties Inc. (Charlottetown, PEI))**

The Applicants will make a motion before a judge of the Ontario Superior Court of Justice (Commercial List) on August 20, 2018, or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

**PROPOSED METHOD OF HEARING:** The motion is to be heard orally.

**THE MOTION IS FOR:**

1. An Order (the "**Approval and Vesting Order**") substantially in the form attached to the Motion Record, *inter alia*:
  - (a) if necessary, abridging the time for service of this Notice of Motion and the Motion Record and dispensing with service on any person other than those served;
  - (b) approving the Agreement of Purchase and Sale (the "**APS**") dated with effect as of July 26, 2018 between Sears Canada Inc. ("**Sears Canada**") and Pan American

Properties Inc. (the “**Purchaser**”) and vesting Sears Canada’s right, title and interest in and to the Subject Assets (as defined in the Approval and Vesting Order) in the Purchaser; and

- (c) sealing from the public record certain commercially-sensitive information and documents (as described below).

2. Such further and other relief as this Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

1. The Applicants were granted protection from their creditors under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985 c. C-36, as amended (the “**CCAA**”) pursuant to the Initial Order of the Ontario Superior Court of Justice (Commercial List) dated June 22, 2017, as amended and restated;

2. FTI Consulting Canada Inc. was appointed to act as the Monitor (the “**Monitor**”) in the CCAA proceeding;

**Approval and Vesting Order**

3. On July 13, 2017, the Court approved a process by which the Applicants’ Financial Advisor on behalf of Sears Canada and under the supervision of both the Special Committee of the Board of Directors of Sears Canada and the Monitor sought bids and proposals for a broad range of transaction alternatives with respect to the business, assets and/or leases of the Applicants;

4. Sears Canada entered into the APS dated with effect as of July 26, 2018 in which the Purchaser would purchase the former Sears department store location at 167 Malpeque Road, Charlottetown, PEI (the “**Property**”), in accordance with the terms and conditions set out in the APS (the “**Transaction**”);

5. Pursuant to the Approval and Vesting Order, the Monitor shall be entitled to retain the net proceeds from the Transaction on behalf of the Applicants to be dealt with by further Order of the Court.
6. The consideration to be received in the transaction is fair and reasonable;
7. The process leading to the APS was fair and reasonable in the circumstances and was approved by the Monitor;
8. The APS is in the best interests of the creditors and other stakeholders of the Applicants;
9. The relief sought on this motion is supported by the Monitor;

### **Sealing Order**

10. The Confidential Appendix to the Monitor's Report filed in connection with this motion contains confidential and commercially sensitive information which, if made public, would be materially prejudicial to Sears Canada and detrimental to any further marketing efforts for the Property if the proposed transaction is not completed;
11. There are no reasonable alternative measures to sealing this information from the public record;
12. The salutary effects of sealing this information outweigh the deleterious effects of doing so;
13. The provisions of the CCAA, including section 36, and the inherent and equitable jurisdiction of this Honourable Court;
14. Rules 1.04, 1.05, 2.03, 3.02, 16 and 37 of the Ontario *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended and section 106 of the Ontario *Courts of Justice Act*, R.S.O. 1990, c. C.43 as amended; and
15. Such further and other grounds as counsel may advise and this Court may permit.

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

1. The Affidavit of Philip Mohtadi affirmed August 8, 2018 and the exhibits attached thereto;
2. The Report of the Monitor to be served in connection with this Motion; and
3. Such further and other evidence as counsel may advise and this Court may permit.

August 8, 2018

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**TO: SERVICE LIST**



AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SEARS CANADA INC., 9370-2751 QUEBEC INC., 191020 CANADA INC., THE CUT INC., SEARS CONTACT SERVICES INC., INITIUM LOGISTICS SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM TRADING AND SOURCING CORP., SEARS FLOOR COVERING CENTRES INC., 173470 CANADA INC., 2497089 ONTARIO INC., 6988741 CANADA INC., 10011711 CANADA INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA LTD., 4201531 CANADA INC., 168886 CANADA INC., AND 3339611 CANADA INC.

Applicants

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**NOTICE OF MOTION**

(Motion for Approval of Agreement of Purchase and Sale with  
Pan American Properties Inc. (Charlottetown, PEI))

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Lawyers for the Applicants

## Tab 2

Court File No. CV-17-11846-00CL

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APPLICANTS

**AFFIDAVIT OF PHILIP MOHTADI**  
**(Affirmed August 8, 2018)**

**(Motion for Approval of Agreement of Purchase and Sale with Pan American Properties  
 Inc. (Charlottetown, PEI))**

I, Philip Mohtadi, of the City of Toronto, in the Province of Ontario, AFFIRM

AND SAY:

1. I am the General Counsel and Corporate Secretary of the Applicant Sears Canada Inc. (“**Sears Canada**”). I am also a director of each of the other Applicants. As such, I have personal knowledge of the matters deposed to in this Affidavit. Where I have relied on other sources for information, I have specifically referred to such sources and believe them to be true. In preparing this Affidavit, I have consulted with legal, financial and other advisors to Sears

Canada, members of the senior management team of Sears Canada, representatives of FTI Consulting Canada Inc. (“**FTI**” or the “**Monitor**”) and its counsel, and representatives of CBRE Limited (“**CBRE**” or the “**Sale Agent**”).

2. I affirm this affidavit in support of the motion brought by the Applicants seeking an Order, substantially in the form attached to the Motion Record, approving the Agreement of Purchase and Sale dated with effect as of July 26, 2018 (the “**APS**”) between Sears Canada and Pan American Properties Inc., (the “**Purchaser**”) relating to the Subject Assets (as defined in the APS), which include all of the right, title and interest of Sears Canada in and to the former Sears Canada department store located at 167 Malpeque Road, Charlottetown, PEI (the “**Property**” or the “**Charlottetown Store**”).

3. I understand from the Monitor that the consideration (the “**Purchase Price**”) that Sears Canada will receive in this proposed transaction, including the Deposit, will be included in a Confidential Appendix to the Monitor’s Report (the “**Confidential Appendix**”) that will be filed in connection with this motion. In the view of the Applicants and the Sale Agent, the Purchase Price and other sensitive financial information included in the APS is confidential information and the disclosure of such information could be materially prejudicial to the Applicants in connection with the sale process generally, and in connection with any further marketing of the Subject Assets in particular, should the proposed transaction not proceed to close as anticipated. As such, the Purchase Price and the amount of the Deposit in the APS, which is attached as Exhibit “A” to this Affidavit, have been redacted. The Applicants are requesting that a sealing order be granted with respect to the Confidential Appendix.

4. The Applicants believe that this transaction is in the best interests of the Applicants and their stakeholders, and, together with CBRE, as the exclusive sales listing agent for the Charlottetown Store, believe that the consideration to be paid is fair and reasonable. Moreover, the Applicants and the Sale Agent believe that the process leading to the transaction, as initially described in the SISP Affidavit (as defined below) and further described and elaborated upon herein, was reasonable in the circumstances.

5. It is my understanding that the Monitor approves the process that has been followed by Sears Canada and CBRE and supports the Applicants' motion seeking approval of the APS.

### **Background**

6. The Applicants were granted protection from their creditors under the CCAA pursuant to an initial order of the Ontario Superior Court of Justice (Commercial List) dated June 22, 2017, as amended and restated on July 13, 2017 (the "**Initial Order**"). FTI was appointed in the Initial Order to act as the Monitor in the CCAA proceedings.

7. Further details regarding these proceedings are set out in the Affidavits of Billy Wong sworn June 22, 2017, July 5, 2017, and July 12, 2017, and the Affidavits of Mark Caiger sworn September 28, 2017 (the "**SISP Affidavit**") and May 28, 2018. Except where so stated, capitalized terms not otherwise defined herein have the meaning ascribed to them in these affidavits. A copy of the SISP Affidavit (without exhibits) is attached to this Affidavit as Exhibit "B".

### **Re-Engagement of the Sale Process - Remaining Owned Real Estate Assets**

8. As outlined in my affidavit affirmed on May 2, 2018, at the time that the sale process was temporarily suspended for the owned real estate, the following nine real estate assets, among others, remained unsold: (i) Upper Canada Mall full-line store in Newmarket, Ontario; (ii) the distribution centre in Belleville, Ontario; (iii) the Fleur de Lys full-line store in Quebec City, Quebec; (iv) the Windsor full-line store in Windsor, Ontario; (v) the Peterborough full-line store in Peterborough, Ontario; (vi) the Barrie full-line store in Barrie, Ontario; (vii) the Trois-Rivieres full-line store in Trois Rivieres, Quebec; (viii) the Place Vertu liquidation store in Montreal, Quebec; and (ix) the Levis full-line store in Levis, Quebec<sup>1</sup>. Certain of these properties are or were subject to rights of first refusal, options to purchase and operating agreements with adjacent landowners.

9. In addition, the following four additional real estate assets also remained unsold: the Charlottetown Store and residual land in each of Chicoutimi, Quebec, Edmonton, Alberta, and Sainte-Agathe-des-Monts, Quebec (the “**Residual Land**”). None of these additional properties is subject to rights of first refusal or options to purchase.

10. As of January 2018, the Applicants’ Financial Advisor resumed the sale process for the remaining owned real estate assets other than the Charlottetown Store and the Residual Land, and on February 7, 2018 the Financial Advisor delivered an updated sale process letter (the “**Updated Sale Process Letter**”) to those parties who had previously expressed an interest in Sears Canada’s real estate assets which, among other things, advised that:

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<sup>1</sup> The Fleur de Lys, Trois Rivieres, Place Vertu and Levis stores have since been sold.

- (a) Sears Canada or its affiliates owned the Charlottetown Store and the Residual Land;<sup>2</sup>
- (b) Sears Canada would be selling the Charlottetown Store and the Residual Land assets under a separate sale process; and
- (c) parties interested in the Charlottetown Store and the Residual Land could provide their contact information with the Financial Advisor who would subsequently share that information with the team managing the separate sale process for those properties.

### **CBRE Sale Process – Charlottetown Store and Residual Lands**

11. Following discussions and consultation with the Financial Advisor, the Monitor and the Owned Real Estate Consultation Parties, Sears Canada accepted an alternative structure for the sale of the Charlottetown Store and the Residual Land on the basis that these assets could be sold more efficiently through a flexible stand-alone process without affecting bids for the other Remaining Owned Real Estate Assets.

12. In consultation with the Owned Real Estate Consultation Parties and the Monitor, Sears Canada conducted a competitive bid process to retain a sales agent, resulting in CBRE being chosen as the exclusive sales listing agent for the Charlottetown Store and the Residual Land for a period commencing February 6, 2018 and ending August 6, 2018.<sup>3</sup>

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<sup>2</sup> Excluding the Sainte-Agathe-des-Monts, Quebec residual land which Sears Canada had not yet identified as land to be sold.

<sup>3</sup> In May 2018, CBRE entered into a co-listing agreement with A H Decarie to aid in the efforts to sell the Sainte-Agathe-des-Monts, Quebec property.

13. Although initial expressions of interest and conditional offers were received for the Charlottetown Store and certain of the Residual Land at the outset of CBRE's engagement, Sears Canada determined, in consultation with the Monitor and the Owned Real Estate Consultation Parties, that better opportunities to monetize the Charlottetown Store and the Residual Land would be available after a formal marketing period and additional due diligence materials, in the form of environmental studies and (where applicable) geotechnical reports, were completed and made available to prospective purchasers.

14. As such, CBRE commenced a comprehensive marketing campaign in the Spring of 2018, consisting of the preparation and distribution of marketing materials and the solicitation of prospective purchasers. With respect to the Charlottetown Store in particular, I am advised by Brad Walford, Associate Vice President, Retail Investment Group at CBRE, and believe, that CBRE:

- (a) listed the property on the CBRE ([www.cbre.ca](http://www.cbre.ca)) website;
- (b) included the Charlottetown Store on email blasts to CBRE's list of users and investors active in Atlantic Canada (over 250) through CBRE's Campaign Logic software which allows CBRE to track views. These emails blasts resulted in 49 people requesting further information, and CBRE remained in contact with these groups to gauge their interest;
- (c) prepared a "teaser" document for potentially interested parties which was sent to 201 investors and users active in the area as well as targeted local businesses;



- (d) made direct calls and sent emails to likely users, businesses and high net-worth individuals in Atlantic Canada;
- (e) discussed the Charlottetown Store on bi-weekly CBRE national investment team conference calls;
- (f) included the Charlottetown Store in CBRE's April and May 2018 "Broker Updates" which CBRE sends to commercial brokers active in the region; and
- (g) prepared a confidential information memorandum setting out certain physical, locational and financial characteristics of the Property (the "**CIM**"), which was provided to certain interested parties (described in paragraph 19, below) who expressed interest in the Charlottetown Store.

15. In addition, the Applicants also engaged environmental consultants to complete environmental diligence for the Charlottetown Store and the Residual Land, including Phase I and II reports (where necessary) and other supplemental reports.

16. I am further advised by Brad Walford, and believe, that, during the marketing period, CBRE had discussions with potential purchasers regarding the various opportunities, including conducting follow-up calls with interested parties to address questions related to diligence and the sale process. In addition, CBRE prepared regular reporting letters which outlined the results of the marketing campaign which were shared with Sears Canada and its counsel, the Monitor and its counsel, and the Owned Real Estate Consultation Parties.

### **Oversight by the Monitor and Consultation with the Owned Real Estate Consultation Parties**

17. CBRE was in frequent contact with the Monitor and representatives of the Owned Real Estate Consultation Parties since CBRE's engagement in February 2018, including frequent reporting on the progress of the efforts to maximize value for the Charlottetown Store and the Residual Land.

18. The Monitor was closely involved in all material aspects of the design and implementation of the CBRE marketing campaign, including, among other things, reviewing and approving the use of the marketing materials, Draft Expression of Interest (defined below) and draft forms of APS, and participating in regular update calls along with the Owned Real Estate Consultation Parties.

### **Results of the CBRE Sale Process: Charlottetown Store**

19. I am advised by Mr. Walford, and believe, that CBRE contacted or was contacted by 18 unique interested parties who expressed interest in the Charlottetown Store, and who were provided the CIM. These parties included retailers, institutional retail investors, and strategic parties identified by CBRE as being potentially interested in the Charlottetown Store.

20. As of early May 2018, the additional required environmental due diligence information had been obtained in relation to the Charlottetown Store and Sears Canada, in consultation with CBRE, the Monitor and the Owned Real Estate Consultation Parties, determined that the Sale Agent should solicit expressions of interest for the Property from parties identified during the formal marketing campaign who had expressed interest in the Property.

21. To harmonize the form of offers that would be submitted by interested parties for the Charlottetown Store, CBRE, the Applicants and the Monitor agreed on a draft standard form expression of interest (the “**Draft Expression of Interest**”). The Draft Expression of Interest was finalized and made available by CBRE to potentially interested parties on May 13, 2018.

### **The Charlottetown Store**

22. On May 30, 2018, the Purchaser submitted an expression of interest to purchase the Subject Assets, including the Property, on the terms and conditions set out in its expression of interest. Other expressions of interest for the Subject Assets were also received.

23. Negotiations ensued with the Purchaser in respect of the financial and legal aspects of the expression of interest and follow up discussions were held. Negotiations were also ongoing at that time with other interested parties. On June 1, 2018, the Purchaser submitted an updated expression of interest which increased the proposed purchase price. Further negotiations ensued, and draft documents were exchanged by the parties.

24. As a result of those negotiations, and after considering the Purchaser’s offer, the ongoing occupancy costs of the Property of approximately \$60,000 per month, and alternatives available, CBRE recommended to the Board of Directors of Sears Canada that Sears Canada enter into a transaction with the Purchaser for the Subject Assets. After carefully considering the Purchaser’s offer, including being satisfied that the Purchase Price being offered was fair and reasonable, the Board of Directors determined that the Purchaser’s offer was in the best interests of the Applicants and their stakeholders and authorized Sears Canada to enter into the proposed transaction subject to Court approval.

**The Charlottetown Store APS**

25. Sears Canada and the Purchaser entered into the APS dated with effect as of July 26, 2018. Capitalized terms used in this section of the Affidavit that are not otherwise defined have the meaning given to them in the APS.

26. The APS provides for, among other things, the following:

- (a) Subject to the terms of the APS, the Initial Order and the SISP Order, Sears Canada agrees to sell, assign and transfer to the Purchaser, and the Purchaser agrees to purchase and assume from Sears Canada, the Subject Assets on the Closing Date in accordance with the terms and conditions set out in the APS.
- (b) The Purchaser will pay the Purchase Price, plus all applicable taxes. The Purchaser paid the Deposit, which is 5% of the Purchase Price, by wire transfer of immediately available funds to the Monitor, in trust. If the transaction is not completed by reason of a default of the Purchaser, the full amount of the Deposit shall be paid to Sears Canada as liquidated damages, without limitation to any other right or remedy Sears Canada may have against the Purchaser. If the Transaction is not completed by any reason other than by a default of the Purchaser, the full amount of the Deposit shall be repaid to the Purchaser and the Purchaser shall have no further recourse against Sears Canada.
- (c) The Purchaser will pay the balance of the Purchase Price by wire transfer of immediately available funds to the Monitor payable on the Closing Date. The Purchase Price is subject to certain closing adjustments as set out in the APS,

including realty taxes, which adjustments will be final and not subject to readjustment. This allows for final settlement of all of Sears Canada's obligations relating to the Subject Assets, giving certainty of result.

- (d) The APS and the Transaction contemplated therein are subject to the Court issuing the proposed Approval and Vesting Order on or before August 31, 2018, and the Monitor delivering the Monitor's Certificate on the Closing Date.
- (e) Closing will take place on the Business Day that is thirty Business Days following the issuance of the Approval and Vesting Order or such later date as Sears Canada (with the consent of the Monitor) may advise the Purchaser in writing, or as otherwise ordered by the Court, provided that the Closing Date shall be no later than October 31, 2018.
- (f) Subject to the terms of the APS and the Approval and Vesting Order, the Purchaser is purchasing the Subject Assets on an "as is, where is" basis. On Closing, the Subject Assets shall be subject to the Permitted Encumbrances.
- (g) There are no financing conditions to the APS.
- (h) During the Interim Period between the Execution Date and the Closing Date, Sears Canada shall not be obligated to (i) remove any Inventory, FF&E or Excluded Assets and Sears Canada shall have no liability for any removal or destruction costs relating thereto, or (ii) repair, renovate, alter, improve or upgrade the Property in any manner. Any Inventory, FF&E or Excluded Assets

left on the Property on the Closing Date shall become the property of the Purchaser without representation or warranty by Sears Canada. Additionally, Sears Canada covenants and agrees that the mezzanine storage fixtures (racking) located on the Property as of June 12, 2018 shall not be removed from the Building by Sears Canada and shall be included in the Subject Assets being conveyed to the Purchaser.

- (i) It is a condition of closing that:
  - (i) the Purchaser shall have received approval to acquire the Property pursuant to the *Lands Protection Act* (Prince Edward Island). Accordingly, within ten (10) Business Days of the execution and delivery of the APS by Sears Canada, the Purchaser shall apply for all necessary approvals to acquire the Property pursuant to the *Lands Protection Act* (Prince Edward Island) and shall provide evidence of such application to Sears Canada concurrently with the filing thereof, failing which Sears Canada may terminate the APS by notice of the Purchaser. The Purchaser shall promptly furnish any additional information requested by, or material written communications provided to, the Executive Council, the Island Regulatory Appeals Commission of Prince Edward Island or other applicable Governmental Authority in connection with obtaining approval to acquire the Property pursuant to the *Lands Protection Act* (Prince Edward Island).

- (ii) the Purchaser entering into an assumption agreement in favour of Sears Canada and the counterparty to a mutual easement and operating agreement dated July 30, 2004 between Pan American Trust Company and Sears Canada, as amended and/or assigned (the “**Operating Agreement**”), whereby the Purchaser assumes the obligations of Sears Canada under the Operating Agreement in form and substance acceptable to Sears Canada and the counterparty to the Operating Agreement.
- (j) The Purchaser shall have the right, upon five (5) Business Days prior written notice to Sears Canada and before the Approval and Vesting Order is issued, to assign all of its rights and obligations pursuant to the APS to another Person which is controlled directly or indirectly by the Purchaser, provided in the case of such assignment the assignee executes and delivers an agreement in favour of Sears Canada (in a form approved by Sears Canada acting reasonably) agreeing to be bound by all of the obligations of the Purchaser under the APS, and the original Purchaser shall not be relieved of its obligations under the APS until Closing.

### **Distribution of Proceeds**

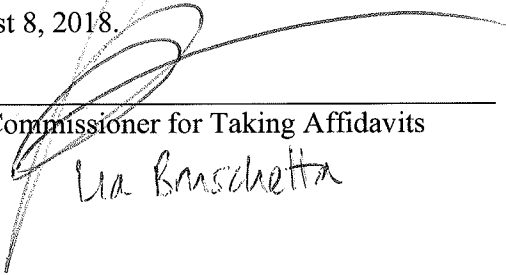
27. Under the terms of the APS, the Monitor is entitled to retain the net proceeds from the Transaction on behalf of the Applicants to be dealt with by further Order of the Court.

### **Conclusion**

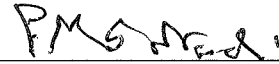
28. For all the foregoing reasons, the Applicants believe that approval of the APS is in the best interests of the Applicants and their stakeholders.

AFFIRMED BEFORE ME at the City of  
Toronto, in the Province of Ontario, on  
August 8, 2018.

Commissioner for Taking Affidavits



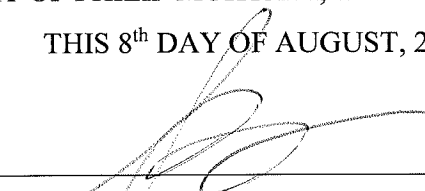
Lia Benschetta



Philip Mohtadi



THIS IS **EXHIBIT "A"** REFERRED TO IN THE  
AFFIDAVIT OF PHILIP MOHTADI, AFFIRMED BEFORE ME  
THIS 8<sup>th</sup> DAY OF AUGUST, 2018.



---

A Commissioner for taking Affidavits, etc.

*Lia Buschetta*

**AGREEMENT OF PURCHASE AND SALE**

**SEARS CANADA INC.**  
as the Vendor

- and -

**PAN AMERICAN PROPERTIES INC.**  
as the Purchaser

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**THIS AGREEMENT OF PURCHASE AND SALE** dated with effect as of July 26, 2018

**BETWEEN:**

**SEARS CANADA INC.**  
(the “**Vendor**”)

OF THE FIRST PART,

- and -

**PAN AMERICAN PROPERTIES INC.**  
(the “**Purchaser**”)

OF THE SECOND PART,

**RECITALS:**

- A. The Vendor operated a chain of retail department stores throughout Canada under the “Sears” banner.
- B. On the Filing Date, the Vendor and certain of its affiliates and subsidiaries (the “**Sears Group**”) applied for and were granted protection from their creditors under the CCAA pursuant to the Initial Order. Pursuant to the Initial Order, the Court appointed FTI Consulting Canada Inc. as Monitor in connection with the CCAA Proceedings.
- C. On the SISP Order Date, the Court granted the SISP Order which, among other things, approved the SISP. The SISP Order and the SISP govern the process for soliciting and selecting bids for the sale of, among other things, the Assets (as defined in the SISP) of the Sears Group.
- D. The Purchaser hereby offers to acquire from the Vendor, the Vendor’s right, title and interest in and to the Subject Assets on the terms and conditions set out herein (the “**Offer**”).
- E. This Agreement is subject to approval by the Court, and the completion of the Transaction is subject to the Court issuing the Approval and Vesting Order and the Monitor releasing the Monitor’s Certificate, all as more particularly described herein.

**NOW THEREFORE**, in consideration of the mutual covenants and agreements set forth in this Agreement and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the Vendor and the Purchaser (individually, a “**Party**” and collectively, the “**Parties**”) covenant and agree as follows:

## ARTICLE 1 DEFINITIONS

### 1.1 Definitions

Unless otherwise provided for herein, all capitalized terms set out below when used in this Agreement shall have the meaning ascribed thereto unless the context expressly or by necessary implication otherwise requires:

“**Agreement**” means this agreement constituted by the Vendor’s acceptance of the Offer together with all schedules and instruments in written amendment or confirmation of it and the expression “**Section**” followed by a number means and refers to the ascribed thereto Section of this Agreement.

“**Approval and Vesting Order**” means an order issued by the Court approving this Agreement and the transactions contemplated by this Agreement, and conveying to the Purchaser all of the Vendor’s right, title and interest in and to the Subject Assets free and clear of all Encumbrances other than the Permitted Encumbrances, which order shall be substantially in the form of Schedule “D” (with only such changes as the Parties shall approve in their reasonable discretion, but in all cases in form and substance acceptable to the Monitor).

“**Assignment and Assumption of Assumed Contracts and Permitted Encumbrances**” means an assignment by the Vendor and an assumption by the Purchaser of the Vendor’s right, title and interest and all liability, covenants and obligations in, to and under the Assumed Contracts and any Permitted Encumbrances. The agreement evidencing same shall include an indemnity given by the Purchaser in favour of the Vendor from and against any Claims arising pursuant to or in connection with any of the Assumed Contracts and Permitted Encumbrances, and shall be in substantially the form attached as Schedule “F”.

“**Assignment and Assumption of Realty Tax Appeals**” means an assignment by the Vendor and an assumption by the Purchaser of the Vendor’s right, title and interest and all liability, covenants and obligations, in respect of the Realty Tax Appeals to be delivered on Closing. The agreement shall be in substantially the form attached as Schedule “G”.

“**Assumed Contracts**” means the Contracts listed on Schedule “I”.

“**Authorization**” means, with respect to any Person, any order, permit, approval, waiver, licence or similar authorization of any Governmental Authority having jurisdiction over the Person.

“**Balance**” has the meaning ascribed thereto in Section 3.1(b).

“**Buildings**” means, individually or collectively, as the context requires, all of the buildings and structures, improvements, appurtenances and fixtures, located on, in or under the Lands, but, for greater certainty, excluding the Excluded Assets.

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

“**CCAA**” means the *Companies’ Creditors Arrangement Act* (Canada).

“**CCAA Proceedings**” means the proceedings commenced under the CCAA by the Sears Group pursuant to the Initial Order (Court File No. CV-17-11846-00CL).

“**Claims**” means any and all claims, demands, complaints, grievances, actions, applications, suits, causes of action, Orders, charges, indictments, prosecutions, informations or other similar processes, assessments or reassessments, equitable interests, options, preferential arrangements of any kind or nature, assignments, restrictions, financing statements, deposit arrangements, rights of others, leases, sub-leases, licences, rights of first refusal or similar restrictions, judgments, debts, liabilities, expenses, costs, damages or losses, contingent or otherwise, including loss of value, reasonable professional fees, including fees and disbursements of legal counsel on a full indemnity basis, and all actual and documented costs incurred in investigating or pursuing any of the foregoing or any proceeding relating to any of the foregoing.

“**Closing**” has the meaning ascribed thereto in Section 7.5(a).

“**Closing Date**” means the Business Day that is thirty (30) Business Days following the issuance of the Approval and Vesting Order or such later date as the Vendor (with the consent of the Monitor) may advise the Purchaser in writing, or as otherwise ordered by the Court.

“**Closing Documents**” means those documents and deliveries to be delivered in connection with the Closing as contemplated in this Agreement including those set out in Section 7.4.

“**Contract and/or PE Assumption Agreements**” has the meaning ascribed thereto in Section 5.3.

“**Contracts**” means, collectively, all of the Vendor’s contracts and agreements to enter into contracts with respect to the operation, fire protection, servicing, maintenance, repair and cleaning of the Subject Assets (and no other properties), or the furnishing of supplies or services to the Subject Assets, any property management or asset management contracts, any employment contracts and any insurance contracts entered into by the Vendor or any manager or agent on behalf of the Vendor, in each case solely with respect to the Subject Assets.

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

“**Deposit**” has the meaning ascribed thereto in Section 3.1(a).

“**Encumbrance**” means any security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise.

“**Environment**” means the environment or natural environment as defined in any Environmental Laws and includes air, surface water, ground water, land surface, soil and subsurface strata.

“**Environmental Laws**” means Laws relating to the protection of human health and the Environment, and includes Laws relating to the storage, generation, use, handling, manufacture, processing, transportation, treatment, Release, remediation, management and disposal of Hazardous Substances.

“**Excise Tax Act**” means the *Excise Tax Act*, R.S.C., 1985, c. E-15, as amended, restated, supplemented or substituted from time to time.

“**Excluded Assets**” means those assets (in each case, as of the Closing Date) described in Schedule “B”.

“**Execution Date**” means the date of this Agreement as set out on the top of page 1 hereof.

“**FF&E**” means all tools, signs, furniture, machinery, equipment, personal or moveable property, chattels, furnishings and fixtures including shelves, counters, video cameras and equipment, security systems, point-of-sales systems and related appurtenances, telecommunications systems and related appurtenances, electric light fixtures, elevating devices and equipment, in each case to the extent owned, leased or licensed by the Vendor, if any.

“**Filing Date**” means June 22, 2017.

“**Financial Advisor**” means BMO Nesbitt Burns Inc.

“**Governmental Authorities**” means governments, regulatory authorities, governmental departments, agencies, agents, commissions, bureaus, officials, ministers, Crown corporations, courts, bodies, boards, tribunals or dispute settlement panels or other law or regulation-making organizations or entities: (a) having or purporting to have jurisdiction on behalf of any nation, province, territory or state or any other geographic or political subdivision of any of them; or (b) exercising, or entitled or purporting to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power.

“**GST/HST Certificate, Undertaking and Indemnity**” mean the Purchaser’s certificate to be in substantially the form set out in Schedule “E”.

“**Hazardous Substances**” means pollutants, contaminants, wastes of any nature, hazardous substances, hazardous materials, toxic substances, prohibited substances, dangerous substances or dangerous goods regulated by or under Environmental Laws.

“**Holdings**” has the meaning ascribed thereto in Section 5.3.

“**Initial Order**” means the Initial Order granted by the Court on June 22, 2017 pursuant to which the Sears Group were granted protection from their creditors under the CCAA (as amended, restated, supplemented and/or modified from time to time).

“**Interim Period**” means the period between the close of business on the Execution Date and the Closing on the Closing Date.

“**Inventory**” includes all inventory, stock, supplies and all other items owned by the Vendor and located at the Property.

“**Joint Direction**” has the meaning ascribed thereto in Section 3.2(f).

“**Lands**” means the lands and premises legally described in Schedule “A”.

“**Laws**” means any and all applicable laws, including all statutes, codes, ordinances, decrees, rules, regulations, municipal by-laws, judicial or arbitral or administrative or ministerial or departmental or regulatory judgments, orders, decisions, ruling or awards, and general principles of common



and civil law and equity, binding on or affecting the Person referred to in the context in which the word is used.

“**Monitor**” means FTI Consulting Canada Inc., in its capacity as Court-appointed monitor of the Sears Group pursuant to the Initial Order and not in its personal capacity.

“**Monitor’s Certificate**” means the certificate to be filed with the Court by the Monitor certifying receipt of (i) confirmation from the Purchaser and the Vendor that all conditions of Closing in Sections 7.1, 7.2 and 7.3 of this Agreement have been satisfied or waived and (ii) the Purchase Price and any Taxes payable to the Vendor and that are not self-assessed and remitted by the Purchaser.

“**NDA**” means the confidentiality, non-disclosure and non-use agreement between the Vendor and the Purchaser dated June \_\_\_, 2018, as amended or supplemented in writing from time to time.

“**Notice**” has the meaning ascribed thereto in Section 8.15.

“**Off-Title Compliance Matters**” means open permits or files, work orders, deficiency notices, directives, notices of violation, non-compliance and/or complaint and/or other outstanding matters or matters of non-compliance with the zoning and/or other requirements of any Governmental Authorities or any open building permits and Orders relating to any of the foregoing.

“**Offer**” has the meaning ascribed thereto in Recital D.

“**Operating Agreement**” means the mutual easement and operating agreement dated July 30, 2004 between Pan American Trust Company and the Vendor, as amended by an amendment to mutual easement and operating agreement between Pan American Trust Company and the Vendor dated June 27, 2006, as assigned, further amended, restated, supplemented and/or modified from time to time.

“**Orders**” means orders, injunctions, judgments, administrative complaints, decrees, rulings, awards, assessments, directions, instructions, penalties or sanctions issued, filed or imposed by any Governmental Authority or arbitrator.

“**Outside Date**” means October 31, 2018.

“**Permitted Encumbrances**” means, collectively: (a) any Encumbrances resulting from the Purchaser’s actions or omissions; and (b) the items identified in Schedule “H” hereto.

“**Person**” means an individual, partnership, corporation, trust, unincorporated organization, company, government, or any department or agency thereof, and the successors and assigns thereof or the heirs, executors, administrators or other legal representatives of an individual.

“**Plans**” means all documentation in the Vendor’s possession and located on the Property on the Closing Date or located on the Execution Date in the electronic data room and monitored by the Financial Advisor relevant to the construction of the Buildings including, working drawings, detail drawings, shop drawings, approved municipal plans, structural, mechanical, electrical and engineering plans, site plans, other documentation prepared to illustrate or define a particular aspect of the Buildings, consultants' contracts, construction contracts, and plans submitted with all building permits issued for the Property.

“**Property**” means, collectively, the Lands and the Buildings.

“**Purchase Price**” has the meaning ascribed thereto in Section 3.1.

“**Purchaser**” has the meaning ascribed thereto on page 1 hereof.

“**Release**” has the meaning prescribed in any Environmental Laws and includes any release, spill, leak, pumping, pouring, emission, emptying, discharge, injection, escape, leaching, disposal, dumping, deposit, spraying, burial, abandonment, incineration, seepage, placement or introduction.

“**SISP**” means the Sale and Investment Solicitation Process approved by the SISP Order (as amended, restated, supplemented and/or modified from time to time).

“**SISP Order**” means the Order granted by the Court on the SISP Order Date (as amended, restated, supplemented and/or modified from time to time), which, among other things, approved the SISP.

“**SISP Order Date**” means July 13, 2017.

“**Subject Assets**” means all of the right, title and interest of the Vendor, if any, in and to: (a) the Property; (b) the Assumed Contracts; (c) the Warranties; and (d) all Inventory, FF&E and Excluded Assets left on the Property on the Closing Date, but excludes, the Vendor’s right, title and interest in and to each of the other Excluded Assets and any and all other assets of the Vendor relating to the Property not included in the foregoing, provided that the mezzanine storage fixtures (racking) located on the Property as of June 12, 2018 shall be included in the Subject Assets and shall not be removed from the Building.

“**Taxes**” means taxes, duties, fees, premiums, assessments, imposts, levies and other similar charges imposed by any Governmental Authority under applicable Laws, including all interest, penalties, fines, additions to tax or other additional amounts imposed by any Governmental Authority in respect thereof, and including those levied on, or measured by, or referred to as, income, gross receipts, profits, capital, transfer, land transfer, registration, sales, goods and services, harmonized sales, use, value-added, excise, stamp, withholding, business, franchising, property, development, occupancy, all surtaxes, all customs duties and import and export taxes, countervail and anti-dumping, and all licence, franchise and registration fees.

“**Transaction**” means collectively the transactions contemplated in this Agreement.

“**Vendor**” has the meaning ascribed thereto on page 1 hereof.

“**Warranties**” means any existing warranties and guarantees in favour of the Vendor in connection with the construction, condition or operation of the Buildings or any component thereof or any improvements made to the Buildings or any component thereof (other than the Excluded Assets) which are assignable without the consent of the counterparty thereto.

## ARTICLE 2 SALE TRANSACTION

### 2.1 Offer and Acceptance

- (a) Subject to the terms of this Agreement, the Initial Order and the SISP Order, the Vendor hereby agrees to sell, assign and transfer to the Purchaser, and the Purchaser hereby agrees to purchase and assume from the Vendor, the Subject Assets on the Closing Date in accordance with the terms and conditions of this Agreement.
- (b) The Offer shall be irrevocable by the Purchaser until 5:00 p.m. (Toronto time) on July 31, 2018.
- (c) Upon acceptance of this Offer by the Vendor, this Offer shall constitute a binding agreement to acquire the Subject Assets, on the terms of this Agreement.

### 2.2 As Is, Where Is

Notwithstanding the foregoing or anything else contained herein or elsewhere, the Purchaser acknowledges and agrees in favour of the Vendor that as of the Execution Date and the Closing Date:

- (a) the Purchaser is purchasing the Subject Assets (including the state of title thereto and/or the state of any Encumbrances and Permitted Encumbrances) and accepting and assuming the Subject Assets on an “as is, where is” basis, without any written or oral statements, representations, warranties, promises or guaranties of any nature or kind whatsoever, either legal or conventional, express or implied (by operation of law or otherwise), as to the condition of any of the Subject Assets, the Permitted Encumbrances, the rentable area of the Buildings, the existence of any default on the part of the Vendor, the physical, environmental or other condition of, in, on, under or in the vicinity of the Property, the use permitted at the Property, the existence of any Encumbrance and/or Off-Title Compliance Matters affecting the Subject Assets, or any other aspects of any of the Subject Assets and the Permitted Encumbrances, the structural integrity or any other aspect of the physical condition of any Subject Assets, the conformity of any Building to any Plans or specifications (including, but not limited to, any Plans and specifications that may have been or which may be provided to the Purchaser), compliance with Environmental Laws, the conformity of the Property to past, current or future applicable zoning or building code requirements or other applicable Laws, the existence of soil instability, past soil repairs, soil additions or conditions of soil fill or any other matter affecting the stability or integrity of the Lands, or any Building situated on or as part of the Property, the sufficiency of any drainage, whether the Property is located wholly or partially in a flood plain or a flood hazard boundary or similar area, the existence or non-existence of underground and/or above ground storage tanks, the availability of public utilities, access, parking and/or services for the Property, the fitness or suitability of the Property for occupancy or any intended use (including matters relating to health and safety), the potential for further development of the Property, the existence of land use, zoning or building entitlements affecting the Property, the presence, release or use of wastes of any

nature, Hazardous Substances, pollutants, contaminants or other regulated substances in, under, on or about the Property or any neighbouring lands; and without limiting the foregoing, any and all conditions or warranties expressed or implied pursuant to the *Sale of Goods Act* (Ontario) or similar legislation in other jurisdictions will not apply and are hereby waived by the Purchaser and the Parties agree to exclude the effect of the legal warranty provided for by Article 1716 of the Civil Code of Québec and that the Purchaser is purchasing the Subject Assets at its own risk within the meaning of Article 1733 of the Civil Code of Québec;

- (b) on Closing, the Subject Assets shall be subject to, without limitation, the Permitted Encumbrances;
- (c) any disclosure in respect of any of the Subject Assets was made available to the Purchaser solely as a courtesy but the Purchaser is not entitled to rely on such disclosure, and it is expressly acknowledged by the Purchaser that no written or oral statement, representation, warranty, promise or guarantee of any nature or kind whatsoever, either legal or conventional, express or implied (by operation of law or otherwise), is made by the Vendor and/or the Monitor and/or their respective legal counsel, the Financial Advisor, CBRE Limited or other advisors or representatives as to the accuracy, currency or completeness of any such disclosure, and each of them expressly disclaims any and all liabilities with respect to such disclosure and any and all errors therein or omissions therefrom;
- (d) the Purchaser hereby unconditionally and irrevocably waives any and all actual or potential rights or Claims the Purchaser might have against the Vendor pursuant to any warranty, legal or conventional, express or implied, of any kind or type relating to the Subject Assets or any other assets or any other aspect of the Transaction. Such waiver is absolute, unlimited and includes, but is not limited to, waiver of express warranties, implied warranties, any warranties at law and/or in equity, warranties of fitness for a particular use, warranties of merchantability, warranties of occupancy, strict liability and Claims of every kind and type, including, but not limited to, Claims regarding defects, whether or not discoverable, product liability Claims, or similar Claims, and to all other extent or later created or conceived of strict liability or strict liability type Claims and rights;
- (e) the Purchaser conducted its own independent review, inspection, diligence and investigations and forming its own independent opinions and conclusions in respect of the Subject Assets. The Purchaser's decision to make this Offer and enter into this Agreement was made of its own accord without reference to or reliance upon any disclosure in respect of any of the Subject Assets. The Purchaser acknowledges having been given a reasonable and adequate opportunity to conduct its own independent diligence prior to entering in this Agreement;
- (f) the Vendor shall not be responsible for making any repairs, replacements, renovations, alterations, improvements or upgrades or undertaking any remediation to address a Release in or to the Property or any part thereof, and it shall be the sole responsibility of the Purchaser to make, at the Purchaser's sole cost, any repairs, replacements, renovations, alterations, improvements and upgrades in or to the Property following Closing as may be required by the Purchaser to make the

Property suitable for its purposes and to undertake any required, necessary, or desired remediation to address a Release at, on, under or migrating from the Property or any part thereof;

- (g) the Subject Assets may be subject to certain Off-Title Compliance Matters, municipal requirements, including building or zoning by-laws and regulations, easements or servitudes for hydro, gas, telephone affecting the Subject Assets, and like services to the Property, and restrictions and covenants which run with the land, including but not limited to the Permitted Encumbrances. Without limiting the foregoing, the Vendor shall not be responsible for rectification of any matters disclosed by any Governmental Authority or quasi-governmental authority having jurisdiction and the Purchaser shall accept the Subject Assets subject to such matters;
- (h) the Purchaser shall accept full responsibility for all conditions related to the Property, and the Purchaser shall comply with all orders relating to the condition of the Property issued by any competent Governmental Authority, including any order issued against the Vendor including without limitation, any non-compliance with Environmental Laws or relating to the existence of any Hazardous Substance; and
- (i) if any statement, error or omission shall be found in the particulars of the legal and/or the Subject Assets' description, the same shall not annul the sale or entitle the Purchaser to be relieved of any obligation hereunder, nor shall any compensation be allowed to the Purchaser in respect thereof.

The Vendor has no and shall have no obligations or responsibility to the Purchaser after Closing with respect to any matter relating to the Subject Assets or the condition thereof save and only to the extent expressly provided in this Agreement. The Purchaser shall be responsible for and hereby indemnifies and saves harmless the Vendor and its employees, directors, officers, appointees and agents from any costs, including legal and witness costs, claims, demands, civil actions, prosecutions, or administrative hearings, fines, judgments, awards, including awards of costs, that may arise as a result of the condition of the Property, any order issued by any competent Governmental Authority in connection with the condition of the Property, or any loss, damage, or injury caused either directly or indirectly as a result of the condition of the Property including, without limitation, non-compliance with Environmental Laws or the existence of any Hazardous Substances. This Section 2.2 shall survive and not merge on Closing and all Closing Documents shall incorporate this Section 2.2 by reference.

### **ARTICLE 3 PURCHASE PRICE**

#### **3.1 Purchase Price**

The Purchase Price for the Subject Assets shall be [REDACTED] (the "**Purchase Price**") exclusive of all Taxes. Subject only to adjustment in accordance with this Agreement, the Purchase Price shall be paid to the Vendor as follows:

- (a) as to the sum of [REDACTED] (the “**Deposit**”), by wire transfer of immediately available funds payable to or to the order of the Monitor, in trust, or as it may otherwise direct in writing, on or prior to 3:00 p.m. (Toronto time) on the Business Day following the date of execution and delivery of this Agreement by the Vendor to the Purchaser, to be held in trust as a deposit and invested in accordance with the provisions of Section 3.2 below pending the completion or other termination of this Agreement, provided that if the Deposit is not delivered to the Monitor, in trust, on or prior to 3:00 p.m. (Toronto time) on the Business Day following the date of execution and delivery of this Agreement by the Vendor to the Purchaser, the Vendor may terminate this Agreement by notice to the Purchaser; and
- (b) as to the balance of the Purchase Price (the “**Balance**”), subject only to the adjustments made in accordance with this Agreement, by wire transfer of immediately available funds payable to the Monitor or as it may direct on the Closing Date.

### 3.2 Deposit

- (a) Following receipt, the Deposit shall be invested by the Monitor, in trust, in an interest bearing account or term deposit or guaranteed investment certificate pending completion of the Transaction or earlier termination or non-completion of this Agreement. In holding and dealing with the Deposit and any interest earned thereon pursuant to this Agreement, the Monitor is not bound in any way by any agreement other than this Section 3.2, and the Monitor shall not and shall not be considered to assume any duty, liability or responsibility other than to hold the Deposit, and any interest earned thereon, in accordance with the provisions of this Section 3.2, and to pay the Deposit, and any interest earned thereon, to the Person becoming entitled thereto in accordance with the terms of this Agreement, except in the event of a dispute between the Parties as to entitlement to the Deposit. In the case of such dispute, the Monitor may, in its sole, subjective and unreviewable discretion, or shall, if requested by any of the Parties, pay the Deposit and any and all interest earned thereon into Court, whereupon the Monitor shall have no further obligations relating to the Deposit or any interest earned thereon. The Monitor shall not, under any circumstances, be required to verify or determine the validity of any notice or other document whatsoever delivered to the Monitor and the Monitor is hereby relieved of any liability or responsibility for any Claims which may arise as a result of the acceptance by the Monitor of any such notice or other document.
- (b) If the Transaction is completed, the Deposit shall be paid to the Vendor forthwith on Closing and applied to the Purchase Price. Interest on the Deposit shall accrue from the date of deposit with the Monitor until the Closing or other termination or non-completion of this Agreement. If the Transaction is successfully completed, all interest earned on the Deposit until Closing shall be paid to the Purchaser following Closing or applied to the Purchase Price.
- (c) If the Transaction is not completed by reason of a default of the Purchaser, the full amount of the Deposit together with all accrued interest earned thereon shall be paid to the Vendor as liquidated damages (and not as a penalty) to compensate the

Vendor for the expenses incurred and the delay caused and opportunities foregone as a result of the failure of the Transaction to close. The entitlement of the Vendor to receive and retain the Deposit together with all accrued interest earned thereon, if any, in such circumstances shall not limit the Vendor's right to exercise any other rights or remedies which the Vendor may have against the Purchaser in respect of such breach or default.

- (d) If the Transaction is not completed by reason of the default of the Vendor, the full amount of the Deposit together with all accrued interest earned thereon shall be paid to the Purchaser as full and final settlement and the Purchaser shall have no further recourse against the Vendor.
- (e) If the Transaction is not completed for any other reason, the full amount of the Deposit together with all accrued interest earned thereon shall be paid to the Purchaser.
- (f) In holding and dealing with the Deposit and any interest earned thereon pursuant to this Agreement, the Monitor shall release the Deposit and any interest earned thereon to the Persons becoming entitled thereto in accordance with the provisions of (i) Section 7.7(c); or (ii) this Section 3.2 as evidenced by a joint direction in writing executed by the Vendor and the Purchaser (the "**Joint Direction**") except in the event of a dispute between the Parties as to entitlement to the Deposit and any interest earned thereon in which event the Monitor may, in its sole, unfettered and unreviewable discretion, pay the Deposit and any interest earned thereon into Court, whereupon the Monitor shall have no further obligations relating to the Deposit and any interest earned thereon or otherwise hereunder.
- (g) The Monitor shall not, under any circumstances, be required to verify or determine the validity of the Joint Direction or any written confirmation received pursuant to Section 7.8(b) and the Monitor is hereby relieved of any liability or responsibility for any loss or damage which may arise as the result of the acceptance by the Monitor of the Joint Direction.
- (h) Notwithstanding the foregoing or anything else contained herein or elsewhere, each of the Vendor and the Purchaser acknowledges and agrees that: (i) the Monitor's obligations hereunder are and shall remain limited to those specifically set out in this Section 3.2; and (ii) FTI Consulting Canada Inc. is acting solely in its capacity as the Court-appointed Monitor of the Vendor in the CCAA Proceedings and not in its personal or corporate capacity, and the Monitor has no liability in connection with this Agreement whatsoever, in its personal or corporate capacity or otherwise.
- (i) The Parties acknowledge that the Monitor may rely upon the provisions of this Section 3.2 notwithstanding that the Monitor is not a party to this Agreement. The provisions of this Section 3.2 shall survive the termination or non-completion of the Transaction.

### **3.3 Purchase Price Allocation**

- (a) The allocation of the Purchase Price as between the Subject Assets is as set out on Schedule "C". The Vendor and the Purchaser shall adopt such allocations for the purposes of all tax returns, elections and filings respectively made by them or on their behalf.

### **3.4 Trade-Marks**

Notwithstanding the foregoing or anything else contained herein or elsewhere, the Purchaser acknowledges and agrees that: (a) no signs, trade-marks, trade-names, logos, commercial symbols, business names or other intellectual property rights identifying "Sears" are conveyed or intended to be conveyed to the Purchaser as part of the Subject Assets; and (b) all right, title and interest of the Vendor in and to all of its existing signs, trade-marks, trade-names, logos, commercial symbols, business names or other intellectual property rights identifying "Sears" or containing the words "Sears" are hereby specifically reserved and excluded from the Subject Assets. Notwithstanding the foregoing or anything to the contrary, the Vendor shall not be obligated to remove any interior or exterior signs located at the Property, including those identifying "Sears" and the Vendor shall have no liability for any removal or destruction costs relating thereto and any such signs left on the Property on the Closing Date shall become the property of the Purchaser without a bill of sale, representation, warranty or other title documentation. This Section shall survive and not merge on Closing.

## **ARTICLE 4 ADJUSTMENTS**

### **4.1 Statement of Adjustments and Absence of Post-Closing Adjustments**

The Vendor shall prepare a statement of adjustments and deliver same with supporting documentation to the Purchaser no later than two (2) Business Days prior to the Closing Date. If the amount of any adjustments required to be made pursuant to this Agreement cannot be reasonably determined as of the Closing Date, an estimate shall be made by the Vendor as of the Closing Date based upon the best information available to the Parties at such time, each Party acting reasonably and such estimate shall serve as a final determination. The final form of statement of adjustments shall be satisfactory to the Monitor, acting reasonably. There shall be no further adjustments or readjustments after Closing of any amounts adjusted or intended to be adjusted on the statement of adjustments pursuant to this Agreement and the amounts set out on the statement of adjustments shall be final.

### **4.2 General Adjustments**

- (a) The adjustments shall include realty taxes, local improvement rates and charges and, except as set out in this Agreement, other adjustments established by usual practice in the municipality in which the Property is located for the purchase and sale of similar properties. In addition, the adjustments shall include the other matters referred to in this Agreement which are stated to be the subject of adjustment and shall exclude the other matters in this Agreement which are stated not to be the subject of adjustment.



- (b) From and after the Closing Date, the Purchaser shall be responsible for all expenses and shall be entitled to all revenue from the Subject Assets. The Vendor shall be responsible for all expenses and entitled to all revenue from the Subject Assets for that period prior to the Closing Date.
- (c) The Purchaser shall be responsible for and pay all applicable Taxes payable in connection with the transfer of any of the Subject Assets by the Vendor to the Purchaser.

### **4.3 Utilities**

- (a) The Purchaser shall not assume any contracts or agreements entered into by or on behalf of the Vendor for the supply of any utilities (including electricity, gas, water, fuel, telephone service, internet services, security and surveillance services or otherwise) at the Property. On or before the Closing Date, the Vendor shall terminate all of its contracts and agreements for the supply of any utilities to the Property. For the avoidance of doubt, there shall be no adjustment at Closing in respect of the payment of any utilities. The provisions of this Section 4.3(a) shall survive and not merge on Closing.
- (b) From and after the Closing Date, any and all utility charges and other related fees payable for any of the Property, pursuant to any invoice or statement issued on or after the Closing Date, shall be the sole responsibility of the Purchaser, and there shall be no adjustments between the Vendor and the Purchaser of any utility charges or related fees paid by the Purchaser pursuant to any such invoice or statement issued on or after the Closing Date.

## **ARTICLE 5 INTERIM PERIOD**

### **5.1 Interim Period**

- (a) The Vendor shall not be obligated to (i) remove any Inventory, FF&E or Excluded Assets and the Vendor shall have no liability for any removal or destruction costs relating thereto, or (ii) repair, renovate, alter, improve or upgrade the Property in any manner. Any Inventory, FF&E or Excluded Assets left on the Property on the Closing Date shall become the property of the Purchaser without a bill of sale, representation, warranty or other title documentation. This Section shall survive and not merge on Closing. The Vendor covenants and agrees that the mezzanine storage fixtures (racking) located on the Property as of June 12, 2018 shall not be removed from the Building by the Vendor and shall be included in the Subject Assets being conveyed to the Purchaser.
- (b) In the event that prior to the Closing Date all or a part of the Lands is expropriated or notice of expropriation or intent to expropriate all or a part of the Lands is issued by any Governmental Authority, the Vendor shall immediately advise the Purchaser thereof by Notice in writing. Notwithstanding the occurrence of any of the foregoing, the Purchaser shall complete the Transaction contemplated herein in accordance with the terms hereof without reduction of the Purchase Price and all

compensation for expropriation shall be payable to the Purchaser and all right, title and interest of the Vendor to such amounts, if any, shall be assigned to the Purchaser on a without recourse basis.

- (c) The Subject Assets shall be and remain until Closing at the risk of the Vendor. In the event of material damage by fire or other hazard to the Subject Assets or any part thereof occurring before the Closing Date, the Vendor shall immediately advise the Purchaser thereof by Notice in writing. Notwithstanding the occurrence of any of the foregoing, the Purchaser shall complete the Transaction contemplated herein in accordance with the terms hereof without reduction of the Purchase Price and the proceeds of any insurance available or actually paid or payable to the Vendor shall be paid and/or assigned to the Purchaser.

## 5.2 Contracts

The Vendor covenants to terminate effective as of the Closing Date, at its sole cost and expense, all Contracts other than the Assumed Contracts and Permitted Encumbrances.

## 5.3 Permitted Encumbrances and Assumed Contracts

The Purchaser shall provide such financial, business, organizational, managerial and other information and enter into such assumption agreements or deeds of re-hypothecation as the relevant party to an Assumed Contract or Permitted Encumbrance (the relevant party being a “**Holder**”) shall require to effect the assumption of the Assumed Contracts or the Permitted Encumbrances, as applicable, by the Purchaser (collectively, the “**Contract and/or PE Assumption Agreements**”). The Purchaser shall use reasonable efforts to assist the Vendor and shall co-operate with the Vendor, as reasonably requested, to obtain from third parties a full release of the Vendor’s obligations under the Assumed Contracts and Permitted Encumbrances, and shall provide such financial and other information and enter into such assumption agreements as such third parties may reasonably require, in form and substance acceptable to each of the parties thereto acting reasonably and without delay.

# ARTICLE 6 REPRESENTATIONS, WARRANTIES & COVENANTS

## 6.1 Vendor’s Representations and Warranties

The Vendor represents and warrants to and in favour of the Purchaser that as of the Execution Date and as of Closing as to the following and acknowledges and confirms that the Purchaser is relying upon such representations and warranties in connection with the entering into of this Agreement:

- (a) the execution, delivery and performance by the Vendor of this Agreement has been duly authorized by all necessary corporate action on the part of the Vendor subject to the Approval and Vesting Order and authorization as is required by the Court;
- (b) the Vendor is not a non-resident of Canada within the meaning of the *Income Tax Act* (Canada); and

- (c) the Vendor is a registrant for the purposes of the tax imposed under Part IX of the *Excise Tax Act*.

## 6.2 Purchaser's Representations and Warranties

The Purchaser represents and warrants to and in favour of the Vendor that as of the Execution Date and as of Closing as to the following and acknowledges and confirms that the Vendor is relying upon such representations and warranties in connection with the entering into of this Agreement:

- (a) the Purchaser has been duly formed or incorporated and is validly subsisting under the Laws of the jurisdiction of its formation or incorporation, and has all requisite corporate or other capacity, power and authority to carry on its business as now conducted by it and to own its properties and assets and is qualified to carry on business under the Laws of the jurisdictions where it carries on a material portion of its business;
- (b) the Purchaser is not a non-resident of Canada within the meaning of the *Income Tax Act* (Canada);
- (c) the Purchaser is a registrant for the purposes of the tax imposed under Part IX of the *Excise Tax Act*;
- (d) the execution, delivery and performance by the Purchaser of this Agreement:
  - (i) has been duly authorized by all necessary corporate or other action on the part of the Purchaser;
  - (ii) does not (or would not with the giving of notice, the lapse of time or the happening of any other event or condition) require any consent or approval under, result in a breach or a violation of, or conflict with, any of the terms or provisions of its constating documents or by-laws or any contracts or instruments to which it is a party or pursuant to which any of its assets or property may be affected; and
  - (iii) will not result in the violation of any Laws;
- (e) this Agreement has been duly executed and delivered by the Purchaser and constitutes legal, valid and binding obligations of the Purchaser, enforceable against it in accordance with their respective terms subject only to any limitation under applicable Laws relating to (i) bankruptcy, winding-up, insolvency, arrangement 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
- (f) the Purchaser has, and will have at Closing, all funds on hand necessary to pay the Purchase Price and any Taxes payable and that are not self-assessed and remitted by the Purchaser.

The Purchaser's representations and warranties shall survive Closing for a period of one (1) year thereafter.

### 6.3 Purchaser's Covenants

- (a) The Purchaser shall use commercially reasonable efforts to take all such actions as are within its power or control, and to cause other actions to be taken which are not within its power or control, so as to ensure compliance with each of the conditions and covenants set forth in Article 7 which are for the benefit of the Purchaser and/or any other Party. In addition, within ten (10) Business Days of the execution and delivery of this Agreement by the Vendor, the Purchaser shall apply for all necessary approvals to acquire the Property pursuant to the *Lands Protection Act* (Prince Edward Island) and shall provide evidence of such application to the Vendor concurrently with the filing thereof, failing which the Vendor may terminate this Agreement by notice to the Purchaser. The Purchaser shall promptly furnish any additional information requested by, or material written communications provided to, the Executive Council, the Island Regulatory and Appeals Commission of Prince Edward Island or other applicable Governmental Authority in connection with obtaining approval to acquire the Property pursuant to the *Lands Protection Act* (Prince Edward Island).
- (b) The Purchaser shall take any and all steps in order to avoid the filing of an application for, or the issuance of any interim Order or other Order which would have the effect of delaying or preventing the Closing, and if any such interim Order or other Order is issued, the Purchaser shall take any and all steps to have it rescinded, revoked or set aside as soon as possible. For greater certainty, "any and all steps" shall include, committing to or effecting undertakings, a consent agreement, a hold separate arrangement, a consent Order, a hold separate Order, a sale, a divestiture, a disposition or other action, in any such case without any reduction of the Purchase Price.
- (c) The Purchaser will promptly notify the Vendor and the Vendor will promptly notify the Purchaser upon:
  - (i) becoming aware of any Order or any complaint requesting an Order restraining or enjoining the execution of this Agreement or the consummation of the Transactions; or
  - (ii) receiving any notice from any Governmental Authority of its intention:
    - (A) to institute a suit or proceeding to restrain or enjoin the execution of this Agreement or the consummation of the Transaction; or
    - (B) to nullify or render ineffective this Agreement or such Transaction.

### 6.4 Vendor's Covenants

The Vendor agrees, that subject to the Initial Order, the SISP Order and the Approval and Vesting Order, to thereafter take all commercially reasonable actions as are within its power to control, and to use its commercially reasonable efforts to cause other actions to be taken which are not within its power to control, so as to fulfill the conditions set forth in Article 7 which are for the benefit of the Vendor or the mutual benefit of the Parties.

## 6.5 Tax Matters

In addition to the representations and warranties set forth in Section 6.2, the Purchaser further warrants, represents and covenants to the Vendor, and acknowledges and confirms that the Vendor is relying on such representations and warranties, indemnities and covenants in connection with the entering into of this Agreement, that:

- (a) the Purchaser is duly registered under Subdivision (d) of Division V of Part IX of the *Excise Tax Act* with respect to the goods and services tax and harmonized sales tax, and that its registration number is: **[insert]**, which registration shall be in full force and effect and shall not have been cancelled or revoked on the Closing Date;
- (b) the Purchaser has entered into this Agreement and is purchasing the Subject Assets on the Closing Date, as principal for its own account and not as an agent, nominee, trustee or otherwise on behalf of another Person;
- (c) to the extent permitted under subsection 221(2) of the *Excise Tax Act* and any equivalent or corresponding provision under any applicable provincial or territorial legislation, the Purchaser shall self-assess and remit directly to the appropriate Governmental Authority any Taxes including goods and services tax or harmonized sales tax, as the case may be, imposed under the *Excise Tax Act* and any similar value added or multi-staged tax or sales tax imposed by any applicable provincial or territorial legislation payable in connection with the purchase and sale transaction of the Subject Assets, including the transfer of the Vendor's real or immovable property interests in the corresponding Subject Assets;
- (d) on Closing, the Purchaser will pay, in addition to the Purchase Price, and the Vendor will collect, any Taxes including transfer taxes as well as goods and services tax or harmonized sales tax, as the case may be, imposed under the *Excise Tax Act* and any similar value added or multi-staged tax or sales tax exigible on the purchase and sale transaction of the Subject Assets, except to the extent that the Purchaser is permitted under subsection 221(2) of the *Excise Tax Act* and any equivalent or corresponding provision under any applicable provincial or territorial legislation to self-assess and remit such Taxes directly to the appropriate Governmental Authority, and the Purchaser shall have executed and delivered a certificate, undertaking and indemnity which includes its certification of its registration number issued under the *Excise Tax Act*, and incorporates the provisions of this Section 6.5 (the “**GST/HST Certificate, Undertaking and Indemnity**”);
- (e) the Purchaser shall make and file all required return(s) in accordance with the requirements of subsection 228(4) of the *Excise Tax Act* and any equivalent or corresponding provision under any applicable provincial or territorial legislation; and
- (f) the Purchaser shall indemnify and save the Vendor harmless from and against any and all Taxes including, transfer taxes and goods and services tax or harmonized sales tax, as the case may be, imposed under the *Excise Tax Act* and any similar value added or multi-staged tax or sales tax, penalties, costs and/or interest which

may become payable by or assessed against the Vendor as a result of any failure by the Vendor to collect and remit any goods and services tax or harmonized sales tax payable under the *Excise Tax Act* or any similar value added or multi-staged tax or sales tax and applicable on the sale and conveyance of the Subject Assets by the Vendor to the Purchaser or as a result of any inaccuracy, misstatement, or misrepresentation made by the Purchaser in connection with any matter raised in this Section 6.5 or in the GST/HST Certificate, Undertaking and Indemnity or any failure by the Purchaser to comply with the provisions of this Section 6.5 or the GST/HST Certificate, Undertaking and Indemnity.

The provisions of this Section 6.5 shall survive and not merge on Closing.

## **6.6 Survival of Covenants,**

Except as otherwise expressly provided in this Agreement to the contrary, no representations, warranties, covenants or agreements of the Vendor or the Purchaser in this Agreement shall survive the Closing.

## **ARTICLE 7 CLOSING**

### **7.1 Conditions of Closing for the Benefit of the Purchaser**

The Purchaser's obligation to complete the purchase and sale of the Subject 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:

- (a) the representations and warranties of the Vendor in Section 6.1 shall be true and correct as of the Closing Date with the same force and effect as if such representations and warranties were made on and as of such date;
- (b) the Vendor shall have performed and complied with all of the other terms and conditions in this Agreement on its part to be performed or complied with at or before Closing in all material respects and shall have executed and delivered or caused to have been executed and delivered to the Purchaser at Closing all the Closing Documents contemplated or required to be so executed and delivered in this Agreement;
- (c) the Purchaser shall have received approval to acquire the Property pursuant to the *Lands Protection Act* (Prince Edward Island); and
- (d) the Purchaser shall have received the Closing Documents.

### **7.2 Conditions of Closing for the Benefit of the Vendor**

The Vendor's obligation to complete the purchase and sale of the Subject 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 Vendor and may be waived, in whole or in part, by the Vendor:

- (a) the representations and warranties of the Purchaser in Section 6.2 shall be true and correct as of the Closing Date with the same force and effect as if such representations and warranties were made on and as of such date;
- (b) the Purchaser shall have paid the Balance in its entirety to the Monitor and shall have performed and complied with all of the terms and conditions in this Agreement on its part to be performed or complied with at or before Closing in all material respects and shall have executed and delivered or caused to have been executed and delivered to the Vendor at Closing all the documents contemplated required to be so executed and delivered in this Agreement; and
- (c) the Vendor shall have received the Closing Documents.

### **7.3 Conditions of Closing for the Mutual Benefit of the Parties**

The obligations of either the Vendor or the Purchaser to complete the purchase and sale of the Subject Assets are subject to the following conditions to be fulfilled or performed, on or before the applicable date, which conditions are for the mutual benefit of each of the parties and may only be waived, in whole or in part, by agreement of the parties to this Agreement:

- (a) on or before August 31, 2018, the Approval and Vesting Order, substantially in the form attached hereto as Schedule “D”, shall have been issued and entered by the Court; and
- (b) on or before the Closing Date, the Monitor shall have delivered the Monitor’s Certificate.

### **7.4 Closing Documents**

On or before Closing, subject to the provisions of this Agreement, the Vendor and the Purchaser shall, execute or cause to be executed and shall deliver or cause to be delivered into escrow (in a sufficient number of copies or counterparts for the Purchaser and the Vendor and, where applicable, in registerable form), the following, which shall be in form and substance reasonably satisfactory to the Purchaser and the Vendor and their respective solicitors:

- (a) By the Vendor and the Purchaser:
  - (i) the Assignment and Assumption of Assumed Contracts and Permitted Encumbrances; and
  - (ii) such other documents as each Party or each Party’s solicitors shall reasonably require in good faith in accordance with this Agreement or as may be required under applicable Laws.
- (b) By the Vendor:
  - (i) the Approval and Vesting Order;
  - (ii) the statement of adjustments evidencing the adjustments made at Closing;

- (iii) an assignment of Warranties, to the extent there are any and are in the Vendor's possession and located on the Property and to the further extent that they are assignable without cost or consent;
  - (iv) all master keys relating to the Buildings, if any, all security cards and access cards relating to the Buildings, if any, and all combinations and passwords to vaults and combination locks and other security features located in the Buildings, if any, in each case, to the extent in the possession of the Vendor; and
  - (v) such other documents as the Purchaser or the Purchaser's solicitors shall reasonably require in good faith in accordance with this Agreement or as may be required under applicable Laws.
- (c) By the Purchaser:
- (i) the Balance plus all Taxes thereon;
  - (ii) GST/HST Certificate, Undertaking and Indemnity;
  - (iii) an assumption agreement in favour of the Vendor and the counterparty to the Operating Agreement whereby the Purchaser assumes the obligations of the Vendor under the Operating Agreement, in form and substance acceptable to the Vendor and the counterparty to the Operating Agreement;
  - (iv) the Contract and/or PE Assumption Agreements along with any deliveries to the Holders required in respect of the Assumed Contracts or Permitted Encumbrances; and
  - (v) such other documents as the Vendor or the Vendor's solicitors shall reasonably require in good faith in accordance with this Agreement or as may be required under applicable Laws.

## 7.5 Closing Date

- (a) The completion of the Transaction contemplated by this Agreement (the "**Closing**") shall take place at 10:00 a.m. (Toronto time) on the Closing Date at the Toronto office of Osler, Hoskin and Harcourt LLP, or at such other place as may be agreed upon by the Vendor and the Purchaser in writing.
- (b) Subject to satisfaction or waiver by the relevant Party or Parties, as applicable, of the conditions of closing in its favour contained in this Article 7, at Closing, the Purchaser will pay or satisfy the Purchase Price in accordance with Article 3, and the Closing of the Transaction will take effect, pursuant to the Approval and Vesting Order, upon delivery of the Monitor's Certificate.

## 7.6 Confirmation of Satisfaction of Conditions

On the Closing Date, subject to satisfaction or waiver by the relevant Party or Parties, as applicable, of the conditions of Closing in its favour contained in Article 7, the parties or their respective



solicitors shall confirm to the Monitor the satisfaction of all conditions to Closing and upon the Monitor receiving the Balance and any Taxes payable to the Vendor and that are not self-assessed and remitted by the Purchaser, the Monitor shall deliver copies of the Monitor's Certificate to the Parties hereto and release the Deposit and the Balance and any Taxes payable to the Vendor and that are not self-assessed and remitted by the Purchaser to the Vendor and following Closing file the Monitor's Certificate with the Court.

## 7.7 Closing

- (a) Subject always to Section 3.2 hereof, the Deposit and the Balance and any Taxes payable to the Vendor and that are not self-assessed and remitted by the Purchaser shall be held by the Monitor, in trust in a separate interest bearing account, pending completion of the Transaction or earlier termination of this Agreement. In holding and dealing with the funds paid to the Monitor in trust and any interest earned thereon pursuant to this Agreement, the Monitor is not bound in any way by any agreement other than Section 3.2 and this Section 7.7 and the Monitor shall not assume or be deemed to assume any duty, liability or responsibility other than to hold the trust funds and any interest earned thereon in accordance with the provisions of this Section 7.7 and to pay the funds, and any interest earned thereon, to the Party becoming entitled thereto in accordance with the terms of this Agreement, except in the event of a dispute between the parties as to entitlement to the trust funds, of which the Monitor has been given notice in writing, the Monitor may, in its sole, subjective and unreviewable discretion, or shall, if requested by either of the parties, pay the trust funds and any and all interest earned thereon into court, whereupon the Monitor shall have no further obligations relating to the trust funds or any interest earned thereon or otherwise hereunder.
- (b) The Monitor shall not, under any circumstances, be required to verify or determine the validity of any written notice or other document whatsoever delivered to the Monitor in connection with the trust funds and the Monitor is hereby relieved of any liability or responsibility for any loss or damage which may arise as a result of the acceptance by the Monitor of any such written notice or other document.
- (c) On or before Closing, the parties' respective solicitors shall exchange the Closing Documents in escrow and the Balance and any Taxes payable to the Vendor and that are not self-assessed and remitted by the Purchaser shall be delivered to or paid to the order of the Monitor, in trust, and the Deposit and the Balance and any Taxes payable to the Vendor and that are not self-assessed and remitted by the Purchaser shall remain in escrow with the Monitor until the Monitor has delivered the Monitor's Certificate to the Vendor and the Purchaser, upon the occurrence of which the escrow shall be lifted, the Closing Documents shall take effect as of the date and time set out in the Monitor's Certificate, the entire amount of the Deposit and the Balance and any Taxes payable to the Vendor and that are not self-assessed and remitted by the Purchaser shall be forthwith released to the Vendor and the Closing shall be deemed to have occurred as of such date and time set out in the Monitor's Certificate and fully signed Closing Documents shall be released to each of the Vendor and Purchaser.

- (d) The parties acknowledge that, notwithstanding that the Monitor is not a party to this Agreement, the Monitor may rely upon the provisions of Section 3.2 hereof and this Section 7.7.
- (e) This Section 7.7 shall survive the Closing or termination of this Agreement.

## **7.8 Filings and Authorizations**

- (a) Each of the Vendor and the Purchaser, as promptly as practicable after the execution of this Agreement, will make, or cause to be made, all such filings and submissions under all Laws applicable to it, as may be required for it to consummate the purchase and sale of the Subject Assets in accordance with the terms of this Agreement (other than the motion seeking approval of the Transaction and the issuance of the Approval and Vesting Order). The Vendor and the Purchaser shall co-ordinate and cooperate with one another in exchanging such information and supplying such assistance as may be reasonably requested by each in connection with the foregoing including, providing each other with all notices and information supplied to or filed with any Governmental Authority (except for notices and information which the Vendor or the Purchaser, in each case acting reasonably, considers highly confidential and sensitive which may be filed on a confidential basis), and all notices and correspondence received from any Governmental Authority.
- (b) The Parties acknowledge and agree that the Monitor shall be entitled to deliver to the parties and file the Monitor's Certificate with the Court, without independent investigation, upon receiving written confirmation from the Vendor and the Purchaser or their respective solicitors that all conditions of Closing have been satisfied or waived and upon receipt of the Balance and any Taxes payable to the Vendor and that are not self-assessed and remitted by the Purchaser, and the Monitor shall have no liability to the Vendor or the Purchaser or any other Person as a result of filing the Monitor's Certificate.

## **7.9 Court Matters**

- (a) The Vendor shall consult and co-ordinate with the Purchaser and their respective legal advisors regarding the parties upon whom the motion seeking the Approval and Vesting Order will be served.
- (b) The Purchaser shall provide such information and take such actions as may be reasonably requested by the Vendor to assist the Vendor in obtaining the Approval and Vesting Order and any other order of the Court reasonably necessary to consummate the transactions contemplated by this Agreement, including, any Court ordered assignment of the Contracts.
- (c) Notwithstanding anything else contained in this Agreement or elsewhere, the Purchaser acknowledges and agrees that the Vendor cannot guarantee that it will obtain the Approval and Vesting Order and the Approval and Vesting Order may or may not be granted by the Court.

## **7.10 Termination**

This Agreement may, by notice in writing given at or prior to Closing, be terminated:

- (a) by mutual consent of the Purchaser and the Vendor (in respect of which the Vendor shall require the consent of the Monitor to provide its consent) or on further order of the Court;
- (b) by the Purchaser if any of the conditions in Section 7.1 have not been satisfied on or before the Closing Date and the Purchaser has not waived such condition;
- (c) by the Vendor with the consent of the Monitor if any of the conditions in Section 7.2 have not been satisfied on or before the Closing Date and the Vendor has not waived such condition; or
- (d) by either Party if any of the conditions precedent in Section 7.3 have not been satisfied on or before the applicable date set out therein and the parties have not waived such condition; or
- (e) by the Vendor (with the consent of the Monitor) or the Purchaser if Closing has not occurred on or before the Outside Date, provided that the Vendor or the Purchaser may not terminate this Agreement pursuant to this Section 7.10(e) if it has failed to perform any one or more of its respective obligations or covenants under this Agreement and the Closing has not occurred because of such failure.

## **ARTICLE 8 OTHER PROVISIONS**

### **8.1 Confidentiality**

The Vendor shall be entitled to disclose this Agreement and all information provided by the Purchaser in connection herewith to the Court, the Monitor, and parties in interest to the CCAA Proceedings. The NDA shall survive and not merge on Closing.

### **8.2 Time of the Essence**

Time shall be of the essence of this Agreement.

### **8.3 Entire Agreement**

This Agreement and the NDA constitute the entire agreement between the parties with respect to the Transaction and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the parties with respect to the subject matter of this Agreement. There are no representations, warranties, covenants, conditions or other agreements, legal or conventional, 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 Transaction.

#### **8.4 Waiver**

- (a) No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other provision (whether or not similar), nor shall such waiver be binding unless executed in writing by the Party to be bound by the waiver.
- (b) No failure on the part of the Vendor or the Purchaser to exercise, and no delay in exercising any right under this Agreement shall operate as a waiver of such right; nor shall any single or partial exercise of any such right preclude any other or further exercise of such right or the exercise of any other right.

#### **8.5 Further Assurances**

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 Subject Assets to the Purchaser and carry out the terms and conditions of this Agreement in accordance with their true intent. The provisions of this Section 8.5 shall survive and shall not merge on Closing.

#### **8.6 Severability**

If any provision of this Agreement shall be determined by a court of competent jurisdiction to be illegal, invalid or unenforceable, that provision shall be severed from this Agreement and the remaining provisions shall continue in full force and effect.

#### **8.7 Governing Law**

This Agreement shall be governed by and interpreted and enforced in accordance with the laws of the Province in which the Property is located and the federal laws of Canada applicable therein. Each Party irrevocably and unconditionally waives, to the fullest extent permitted by applicable Laws, any objection that it may now or hereafter have to the venue of any action or proceeding arising out of or relating to this Agreement or the Transaction in any court of the Province of Ontario. Each of the Parties hereby irrevocably waives, to the fullest extent permitted by applicable Laws, the defence of an inconvenient forum to the maintenance of such action or proceeding in any such court.

#### **8.8 English Language**

The parties hereto have requested that this Agreement be drafted in English only. *Les parties aux présentes ont demandé à ce que la présente convention soit rédigée en anglais seulement.*

#### **8.9 Statute References**

Any reference in this Agreement to any statute or any section thereof shall, unless otherwise expressly stated, be deemed to be a reference to such statute or section as amended, restated or re-enacted from time to time.

## 8.10 Headings

The division of this Agreement into Sections, the insertion of headings is for convenience of reference only and are not to be considered in, and shall not affect, the construction or interpretation of any provision of this Agreement.

## 8.11 References

Where in this Agreement reference is made to an article or section, the reference is to an article or section in this Agreement unless the context indicates the reference is to some other agreement. The terms “this Agreement”, “hereof”, “hereunder” and similar expressions refer to this Agreement and not to any particular Article, Section or other portion hereof and include any agreement supplemental hereto. The word “includes” or “including” shall mean “includes without limitation” or “including without limitation”, respectively. The word “or” is not exclusive.

## 8.12 Number and Gender

Unless the context requires otherwise, words importing the singular include the plural and vice versa and words importing gender include all genders.

## 8.13 Business Days

If any payment is required to be made or other action is required to be taken pursuant to this Agreement on a day which is not a Business Day, then such payment or action shall be made or taken on the next Business Day. All actions to be made or taken by a particular Business Day must be made or taken by no later than 5:00 p.m. (Toronto time) on a Business Day and any action made or taken thereafter shall be deemed to have been made and received on the next Business Day.

## 8.14 Currency and Payment Obligations

Except as otherwise expressly provided in this Agreement all dollar amounts referred to in this Agreement are stated in Canadian Dollars.

## 8.15 Notice

Any notice, consent or approval required or permitted to be given in connection with this Agreement (a “**Notice**”) shall be in writing and shall be sufficiently given if delivered (whether in person, by courier service or other personal method of delivery), or if transmitted by facsimile or e-mail:

- (a) in the case of a Notice to the Vendor at:

Sears Canada Inc.  
82 Peter Street  
Toronto, ON M5V 2G5

Attn: Philip Mohtadi  
Email: pmohtad@sears.ca

With a copy to:

Osler, Hoskin & Harcourt LLP  
 100 King Street West  
 1 First Canadian Place  
 Suite 6200, P.O. Box 50  
 Toronto, ON M5X 1B8

Attn: Marc Wasserman & Tracy Sandler  
 Email: mwasserman@osler.com & tsandler@osler.com

With a copy to:

FTI Consulting Canada Inc.  
 TD South Tower  
 Suite 2010, P.O. Box 104  
 Toronto, ON M5K 1G8

Attn: Paul Bishop  
 Email: paul.bishop@fticonsulting.com

With a copy to:

Norton Rose Fulbright Canada LLP  
 Suite 3800, Royal Bank Plaza, South Tower  
 200 Bay Street, P.O. Box 84  
 Toronto, ON M5J 2Z4

Attn: Orestes Pasparakis & Virginie Gauthier  
 Email: orestes.pasparakis@nortonrosefulbright.com &  
 virginie.gauthier@nortonrosefulbright.com

(b) in the case of a Notice to the Purchaser at:

Pan American Properties Inc.  
 16 McCarville Street  
 PO Box 2859  
 Charlottetown, PE C1A 8C4

Attn: Tim Banks  
 Email: tim@apm.ca

with a copy to:

Stewart McKelvey  
 65 Grafton Street  
 Charlottetown, PE C1A 1K8

Attn: James C. Travers, Q.C.  
Email: jtravers@stewartmckelvey.com

A Notice is deemed to be given and received (i) if sent by personal delivery or same day courier, on the date of delivery if it is a Business Day and the delivery was made prior to 5:00 p.m. (local time in the place of receipt) and otherwise on the next Business Day, (ii) if sent by overnight courier, on the next Business Day, or (iii) if transmitted by facsimile, on the Business Day following the date of confirmation of transmission by the originating facsimile, or (iv) if sent by email, when the sender receives an email from the recipient acknowledging receipt, provided that an automatic “read receipt” does not constitute acknowledgment of an email for purposes of this section. Any 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. Subject to Section 8.17, 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.

#### **8.16 Subdivision Control Legislation**

This Agreement and the Transaction are subject to compliance with the applicable subdivision control legislation to the extent applicable.

#### **8.17 Solicitors as Agent and Tender**

Any Notice, approval, waiver, agreement, instrument, document or communication permitted, required or contemplated in this Agreement (including, without limitation, any agreement to amend this Agreement) may be given or delivered and accepted or received by the Purchaser’s solicitors on behalf of the Purchaser and by the Vendor’s solicitors on behalf of the Vendor and any tender of Closing Documents may be made upon the Vendor’s solicitors and the Purchaser’s solicitors, as the case may be.

#### **8.18 No Registration of Agreement**

The Purchaser covenants and agrees not to register or cause or permit to be registered this Agreement or any notice of this Agreement on title to any of the Subject Assets and that no reference to or notice of it or any caution, certificate of pending litigation or other similar court process in respect thereof shall be registered on title to the Subject Assets and/or any part thereof and the Purchaser shall be deemed to be in material default under this Agreement if it makes, or causes or permits, any registration to be made on title to the Subject Assets and/or any part thereof prior to the successful completion of the Transaction contemplated herein on the Closing Date. The Purchaser shall indemnify and save the Vendor harmless from and against any and all Claims whatsoever arising from or with respect to any such registration, including, all the legal fees, on a full indemnity basis, including those incurred by the Vendor with respect to obtaining the removal of such registration. This indemnity shall survive and not merge on the expiration, non-completion and/or termination of this Agreement for any reason.

### **8.19 Third Party Costs**

Each of the Parties hereto shall be responsible for the costs of their own solicitors, respectively, in respect of the Transaction. The Purchaser shall be solely responsible for and shall pay, in addition to the Purchase Price, any land transfer taxes and transfer duties payable on the transfer of the Subject Assets, all registration taxes, fees and other costs payable in respect of registration of any documents to be registered by the Purchaser at Closing and all federal and provincial sales and other taxes payable upon or in connection with the conveyance or transfer of the Subject Assets, including, goods and services tax, harmonized sales tax or other similar value added or multi-staged tax imposed by any applicable provincial or territorial legislation, as the case may be, and any other provincial sales taxes. This Section 8.19 shall survive the Closing or the termination of this Agreement. The Purchaser acknowledges that, subject to the limitations contained in Section 2.2, the Vendor has provided, or may provide, to the Purchaser, solely as a courtesy an updated environmental report prepared by OHE Consultants dated March 3, 2018 in respect of the Lands and an updated building condition report prepared in respect of the Buildings and reliance letters for such reports, and that the costs and expenses incurred by the Vendor in obtaining such reports and reliance letters will be paid by the Purchaser to the Vendor on Closing and will be shown on the statement of adjustments as an additional adjustment in favour of the Vendor. This Section 8.19 shall survive the Closing or the termination of this Agreement.

### **8.20 Interpretation**

The parties hereto acknowledge and agree that: (a) each Party and its counsel reviewed and negotiated the terms and provisions of this Agreement and have contributed to their revision, (b) the rule of construction to the effect that any ambiguities are resolved against the drafting Party shall not be employed in the interpretation of this Agreement, and (c) the terms and provisions of this Agreement shall be construed fairly as to all parties hereto and not in favour of or against any Party, regardless of which Party was generally responsible for the preparation of this Agreement.

### **8.21 No Third Party Beneficiaries**

Each Party hereto intends that this Agreement shall not benefit or create any right or cause of action in or on behalf of any Person, other than the Parties hereto and the Monitor, and no Person, other than the Parties hereto and the Monitor, shall be entitled to rely on the provisions hereof in any Claim, proceeding, hearing or other forum. The Parties acknowledge and agree that the Monitor, acting in its capacity as the Monitor, will have no liability in connection with this Agreement whatsoever, in its capacity as Monitor, in its personal capacity or otherwise.

### **8.22 Enurement**

This Agreement shall become effective when executed by the Vendor and the Purchaser and after that time shall be binding upon and enure to the benefit of the parties and their respective heirs, executors, personal legal representatives, successors and permitted assigns. The Purchaser has and shall have no right to assign, convey and/or transfer its rights and/or obligations hereunder or to direct title to any of the Subject Assets to any other Person or to effect a "change of control" so as to indirectly effect the foregoing, without in each case first obtaining the prior written consent of the Vendor, which consent may be arbitrarily and unreasonably withheld by the Vendor. Notwithstanding the foregoing, the Purchaser shall have the right, upon five (5) Business Days' prior written notice to the Vendor and before the Approval and Vesting Order is issued, to assign



all of its rights and obligations pursuant to this Agreement, to another Person which is controlled, directly or indirectly, by the Purchaser, provided in the case of such assignment the assignee executes and delivers an agreement in favour of the Vendor (in a form approved by Vendor acting reasonably) agreeing to be bound by all obligations of the Purchaser hereunder and the original Purchaser shall not be relieved of its obligations hereunder, until the occurrence of Closing.

### **8.23 Amendments**

This Agreement may only be amended, supplemented or otherwise modified by written agreement signed by the Vendor and the Purchaser, except that the time for doing or completing of any matter provided for herein may be extended or abridged by an agreement in writing signed by the Vendor or the Vendor's solicitors on one hand and the Purchaser or the Purchaser's solicitors on the other.

### **8.24 Counterparts and Delivery**

All Parties agree that this Agreement and any amendments hereto (and any other agreements, Notices, or documents contemplated hereby) may be executed in counterpart and transmitted by facsimile or e-mail (PDF) and that the reproduction of signatures in counterpart by way of facsimile or e-mail (PDF) will be treated as though such reproduction were executed originals.

**[Remainder of Page Intentionally Left Blank]**

IN WITNESS WHEREOF the parties have executed this Agreement.

**SEARS CANADA INC.**

By: P. MANTADI  
 Name: P. MANTADI  
 Title: Secretary

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

**PAN AMERICAN PROPERTIES INC.**

By: [Signature]  
 Name: Tim Banks  
 Title: President

**SCHEDULE "A"**  
**LANDS**

167 Malpeque Road, Charlottetown, Prince Edward Island.

PID: 388207

ALL THAT TRACT, PIECE OR PARCEL OF LAND situate, lying and being in Charlottetown, in Queens County, Province of Prince Edward Island, bounded and described as follows, that is to say:

COMMENCING at a survey marker (5687) set in the West side of the Malpeque or Route 2 which survey marker has co-ordinates East 460769.150 feet and North 344563.276 feet:

THENCE on an azimuth  $155^{\circ} 29' 13''$ , a distance of 250 feet to calculated point 5682;

THENCE on an azimuth  $155^{\circ} 27' 59''$ , a distance of 163.87 feet to survey marker 5681;

THENCE on an azimuth  $186^{\circ} 15' 16''$ , a distance of 81.71 feet to calculated point 4695;

THENCE on an azimuth  $186^{\circ} 15' 21''$ , a distance of 104.42 feet to survey marker 4696;

THENCE in a Southwestwardly direction on an arc of a curve having a radius of 90.96 feet for an arc distance of 103.57 feet to survey marker 4697;

THENCE on an azimuth  $251^{\circ} 29' 25''$ , a distance of 664.65 feet to survey marker 4698;

THENCE on an azimuth  $248^{\circ} 05' 50''$ , a distance of 441.65 feet to survey marker 4699;

THENCE on an azimuth  $335^{\circ} 23' 41''$ , a distance of 276.52 feet to calculated point 4705;

THENCE on an azimuth  $335^{\circ} 28' 15''$ , a distance of 169.69 feet to survey marker 5644;

THENCE on an azimuth  $65^{\circ} 28' 15''$ , a distance of 852.00 feet to survey marker 5689;

THENCE on an azimuth  $335^{\circ} 29' 04''$ , a distance of 82.02 feet to survey marker 5679;

THENCE on an azimuth  $65^{\circ} 32' 06''$ , a distance of 433.53 feet through survey marker 5680 and calculated point 5678 to the point at the place of commencement.

CONTAINING 15.05 acres of land a little more or less and being Lot 04-1 as shown on a "Plan of Survey Showing Lots 04-1 Being Comprised of Lands of Pan-American Trust Company" as prepared by Locus Surveys Ltd. on July 15, 2004 and being Drawing No. 03672L3 together with a full, free and uninterrupted right-of-way for the Grantee, its successors and assigns and their invitees, customers and guests over ALL THAT TRACT, PIECE OR PARCEL OF LAND situate, lying and being in Charlottetown, in Queens County, Province of Prince Edward Island, bounded and described as follows, that is to say:

COMMENCING at a calculated point set in the West side of Route 2 or the Malpeque Road which calculated point 5685 has co-ordinates East 460629.735 feet and North 344869.010 feet;

THENCE on an azimuth  $245^{\circ} 32' 07''$  a distance of 367.54 feet through survey marker 5664 to survey marker 5690;

THENCE on an azimuth  $155^{\circ} 29' 04''$  a distance of 336.02 feet to survey marker 5680;

THENCE on an azimuth  $245^{\circ} 32' 06''$  ad distance of 66 feet to survey marker 5679;

THENCE on an azimuth  $335^{\circ} 29' 04''$  a distance of 416.02 feet to survey marker 5688;

THENCE on an azimuth  $65^{\circ} 32' 07''$  a distance of 433.52 feet through survey marker 5653 to calculated point 5307 in the West side of Route 2 or the Malpeque Road having co-ordinates East 460596.54 feet and North 344941.80 feet, as shown on a plan of survey by I S E Lid., dated July 27, 2004, Drawing number 4130;

THENCE on an azimuth  $155^{\circ} 29' 13''$  a distance of 66 feet along the West side of the Malepque Road to the place of commencement;

BEING Parcels R1 and Parcel C as set out on the above-mentioned plan, less that portion conveyed to the Government of Prince Edward Island for the widening of Route 2 or the Malpeque Road.

**SCHEDULE “B”  
EXCLUDED ASSETS**

1. All intellectual property or proprietary rights, whether registered or not, and any intangible property, owned, used or held by the Vendor.
2. All items, materials and signs bearing the logo, trade-mark, trade-name or business name or other mark or design of the Vendor.
3. All FF&E and Inventory which have been removed from the Property by or on behalf of the Vendor or its agents or their respective representatives prior to the Closing Date, save and except that the mezzanine storage fixtures (racking) located on the Property as of June 12, 2018 shall not be removed from the Building by the Vendor.
4. All insurance policies of the Vendor.
5. All rights and interests in trade-marks, trade-names, logos, commercial symbols and business names containing “Sears” or any other proprietary wording or intellectual property rights of the Vendor or any of its affiliates (including, the websites).
6. All rights of the Vendor against the Purchaser pursuant to this Agreement.
7. All (i) computers and related systems and information storage media and other IT equipment, (ii) video cameras and equipment, and (iii) point-of-sales systems and all appurtenances thereto.

**SCHEDULE "C"**  
**PURCHASE PRICE ALLOCATION**

100% to Lands and Buildings.

**SCHEDULE “D”  
FORM OF APPROVAL AND VESTING ORDER**

Court File No. CV-17-11846-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR. ) ●, THE ●<sup>TH</sup>  
JUSTICE HAINEY ) DAY OF ●, 2018

IN THE MATTER OF THE *COMPANIES’ CREDITORS  
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF SEARS CANADA INC., 9370-2751  
QUEBEC INC., 191020 CANADA INC., THE CUT INC., SEARS  
CONTACT SERVICES INC., INITIUM LOGISTICS SERVICES  
INC., INITIUM COMMERCE LABS INC., INITIUM TRADING  
AND SOURCING CORP., SEARS FLOOR COVERING  
CENTRES INC., 173470 CANADA INC., 2497089 ONTARIO  
INC., 6988741 CANADA INC., 10011711 CANADA INC.,  
1592580 ONTARIO LIMITED, 955041 ALBERTA LTD.,  
4201531 CANADA INC., 168886 CANADA INC., AND 3339611  
CANADA INC.  
(each, an “**Applicant**”, and collectively, the “**Applicants**”)

**APPROVAL AND VESTING ORDER – ●**

THIS MOTION, made by the Applicants, pursuant to the *Companies’ Creditors  
Arrangement Act*, R.S.C. 1985, c. c-36, as amended (the “**CCAA**”) for an order, *inter alia*,  
approving: the sale of lands and buildings located at ●, together with certain ancillary assets (the  
“**Transaction**”) contemplated by an Agreement of Purchase and Sale between Sears Canada Inc.  
 (“**Sears Canada**”), as vendor, and ● (the “**Purchaser**”) as purchaser dated ●, 2018 (the “**APA**”) and certain related relief, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion of the Applicants, the Affidavit of ● sworn on ●,  
2018 including the exhibits thereto (the “**● Affidavit**”), and the ● Report of FTI Consulting

Canada Inc., in its capacity as Monitor (the “**Monitor**”), filed, and on hearing the submissions of respective counsel for the Applicants, the Monitor, the Purchaser and such other counsel as were present, no one else appearing although duly served as appears from the Affidavit of Service of ● sworn ●, 2018, filed:

### **SERVICE AND DEFINITIONS**

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion Record herein 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 any capitalized term used and not defined herein shall have the meaning ascribed thereto in the Amended and Restated Initial Order in these proceedings dated June 22, 2017 (the “**Initial Order**”), or in the APA, as applicable.

### **APPROVAL OF THE APA**

3. THIS COURT ORDERS AND DECLARES that the entering into of the Transaction by Sears Canada is hereby approved and ratified and that the execution of the APA by Sears Canada is hereby authorized, approved and ratified with such minor amendments as Sears Canada (with the consent of the Monitor) and the Purchaser may agree to in writing. Sears Canada is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction, including the sale, assignment and transfer by Sears Canada of its right, title and interest in and to the Subject Assets to the Purchaser and the Monitor shall be authorized to take such additional steps in furtherance of its responsibilities under the APA and this Order, and shall not incur any liability as a result thereof. The legal descriptions and applicable land registry offices with respect to the Subject Assets are as set out on Schedule “B” hereto.
4. THIS COURT ORDERS AND DECLARES that upon the delivery of a Monitor’s certificate to the Purchaser substantially in the form attached as Schedule “A” hereto (the “**Monitor’s Certificate**”), all of Sears Canada’s right, title and interest in and to the Subject Assets shall be sold, assigned and transferred to the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, charges, or other



financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise in respect of the Subject Assets (collectively, the “**Claims**”), including, without limiting the generality of the foregoing:

- (a) the Administration Charge, the FA Charge, the KERP Priority Charge, the Directors’ Priority Charge, the KERP Subordinated Charge and the Directors’ Subordinated Charge (as such terms are defined in the Initial Order) and any other charges hereafter granted by this Court in these proceedings (collectively, the “**CCAA Charges**”);
- (b) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (●) or any other personal property registry system; and
- (c) those Claims listed on Schedule “B” hereto;

(all of which are collectively referred to as the “**Encumbrances**”, which term shall not include the Permitted Encumbrances listed on Schedule “C” hereto), and, for greater certainty, this Court orders that all of the Claims and Encumbrances affecting or relating to Sears Canada’s right, title and interest in and to the Subject Assets are hereby expunged and discharged as against Sears Canada’s right, title and interest in and to the Subject Assets including the real or immoveable property identified in Schedule “B”.

5. THIS COURT ORDERS that upon the registration in the applicable land registry office of a certified copy of this Order in the manner prescribed by the applicable land registry office, the applicable land registrar is hereby directed to specifically discharge, cancel, delete and expunge from title to the applicable real or immovable property described in Schedule “B” all of the Encumbrances listed in Schedule “B” hereto.

6. THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the net proceeds received on the Closing of the Transaction shall stand in the place and stead of the Subject Assets, and that from and after the delivery of the Monitor’s Certificate all Claims and Encumbrances shall attach to the net proceeds from the Transaction (the “**Net Proceeds**”) with the same priority as they had with respect to the Subject Assets immediately prior to the Closing of the Transaction, as if the Transaction had not been completed.

7. THIS COURT ORDERS that the Monitor shall be entitled to retain the Net Proceeds on behalf of the Applicants to be dealt with by further Order of the Court.

8. THIS COURT ORDERS AND DIRECTS the Monitor to file with the Court a copy of the Monitor's Certificate, forthwith after delivery thereof in accordance with the terms of the APA.

### **SEALING**

9. THIS COURT ORDERS that Confidential Appendix "●" to the ● Report of the Monitor shall be and is hereby sealed, kept confidential and shall not form part of the public record pending further Order of this Court.

### **GENERAL PROVISIONS**

10. 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 any of the Applicants and any bankruptcy order issued pursuant to any such applications; or
- (c) any assignment in bankruptcy made in respect of any of the Applicants;

the sale, assignment and transfer of the Subject Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy or receiver that may be appointed in respect of any of the Applicants and shall not be void or voidable by creditors of any of the Applicants, 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.

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

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

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**SCHEDULE “A”**

Court File No. CV-17-11846-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

IN THE MATTER OF THE *COMPANIES’ CREDITORS  
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF SEARS CANADA INC., 9370-2751  
QUEBEC INC., 191020 CANADA INC., THE CUT INC., SEARS  
CONTACT SERVICES INC., INITIUM LOGISTICS SERVICES  
INC., INITIUM COMMERCE LABS INC., INITIUM TRADING  
AND SOURCING CORP., SEARS FLOOR COVERING  
CENTRES INC., 173470 CANADA INC., 2497089 ONTARIO  
INC., 6988741 CANADA INC., 10011711 CANADA INC.,  
1592580 ONTARIO LIMITED, 955041 ALBERTA LTD.,  
4201531 CANADA INC., 168886 CANADA INC., AND 3339611  
CANADA INC.  
(each, an “**Applicant**”, and collectively, the “**Applicants**”)

**MONITOR’S CERTIFICATE**

**RECITALS**

A. All undefined terms in this Monitor’s Certificate have the meanings ascribed to them in the Order of the Court dated ●, 2018 (the “**Approval and Vesting Order**”) approving the Agreement of Purchase and Sale between Sears Canada Inc. (“**Sears Canada**”), as vendor, and ● (the “**Purchaser**”) as purchaser dated ●, 2018 (the “**APA**”), a copy of which is attached as Exhibit ● to the Affidavit of ● dated ●, 2018.

B. Pursuant to the Approval and Vesting Order the Court approved the APA and provided for the sale, assignment and transfer to the Purchaser of Sears Canada’s right, title and interest in and to the Subject Assets (as defined in the APA), which sale, assignment and transfer is to be effective with respect to the Subject Assets upon the delivery by the Monitor to the Purchaser and Sears Canada of a certificate confirming that (i) the conditions to Closing as set out in sections 7.1, 7.2 and 7.3 of the APA have been satisfied or waived by the Purchaser and Sears Canada, as applicable,

- 2 -

and (ii) the Purchase Price and any Taxes payable (each as defined in the APA) to Sears Canada that are not self-assessed and remitted by the Purchaser have been received by the Monitor.

THE MONITOR CERTIFIES the following:

1. The conditions to Closing as set out in sections 7.1, 7.2 and 7.3 of the APA have been satisfied or waived by the Purchaser and Sears Canada, as applicable; and
2. The Purchase Price and any Taxes payable to Sears Canada that are not self-assessed and remitted by the Purchaser have been received by the Monitor.

This Monitor's Certificate was delivered by the Monitor at \_\_\_\_\_ [TIME] on \_\_\_\_\_ [DATE].

**FTI CONSULTING CANADA INC.**, in its capacity as Court-appointed Monitor of Sears Canada Inc., et al. and not in its personal or corporate capacity

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

Name:

Title:

SCHEDULE "B"

No .	Location / Address	Provi nce	Land Registr y Office	Legal Description	Encumbrances to be Expunged/ Deleted
Sect	●	●	●	●	[NIL]

**SCHEDULE “C”  
PERMITTED ENCUMBRANCES**

**“Permitted Encumbrances”** means, collectively, (a) any Encumbrances resulting from the Purchaser’s actions or omissions; and (b) the items identified in Schedule “H” of the APA.

**SCHEDULE “E”  
PURCHASER’S GST/HST CERTIFICATE, UNDERTAKING AND INDEMNITY**

**[NTD: to be revised for applicable Property]**

TO: Sears Canada Inc. (the “Vendor”)

AND TO: Osler, Hoskin & Harcourt LLP, the Vendor’s solicitors

RE: Agreement of Purchase and Sale dated ●, 2018, made between the Vendor, as Vendor, and ●, as Purchaser, (the “Purchaser”), as amended from time to time (the “Purchase Agreement”), for the purchase and sale of the Property and other Subject Assets (as such terms are defined in the Purchase Agreement)

In consideration of the completion of the transaction set out in the Agreement, the Purchaser hereby certifies and agrees as follows:

- a) the Subject Assets are being purchased by the Purchaser as principal for its own account and not as an agent, nominee, trustee or otherwise on behalf of or for another Person;
- b) the Purchaser is registered under Subdivision (d) of Division V of Part IX of the *Excise Tax Act* (Canada) (the “*Excise Tax Act*”) for the collection and remittance of goods and services tax and harmonized sales tax (“GST/HST”) and its registration number is ● and such registration is in good standing and has not been varied, cancelled or revoked;
- c) the Purchaser shall be liable for, shall self-assess and shall remit to the appropriate governmental authority, all GST/HST which is payable under the *Excise Tax Act* in connection with the transfer of the Subject Assets, all in accordance with the *Excise Tax Act*;
- d) the Purchaser shall indemnify and save harmless the Vendor from and against any and all GST/HST, penalties, interest and/or other costs which may become payable by or be assessed against the Vendor as a result of any failure by the Vendor to collect and remit any GST/HST applicable on the sale and conveyance of the Subject Assets by the Vendor to the Purchaser or as a result of any inaccuracy, misstatement or misrepresentation by the Purchaser in this GST/HST Certificate, Undertaking and Indemnity or any failure by the Purchaser to comply with the provisions of this GST/HST Certificate, Undertaking and Indemnity; and
- e) this GST/HST Certificate, Undertaking and Indemnity shall survive and not merge upon closing of the above-noted transaction.

This GST/HST Certificate, Undertaking and Indemnity may be executed in counterpart and transmitted by facsimile or e-mail (PDF) and that the reproduction of signatures in counterpart by way of facsimile or e-mail (PDF) will be treated as though such reproduction were executed originals.

DATED \_\_\_\_\_, 2018.



[PURCHASER]

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

**SCHEDULE “F”**

**FORM OF ASSIGNMENT AND ASSUMPTION OF ASSUMED CONTRACTS AND  
PERMITTED ENCUMBRANCES**

THIS AGREEMENT is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 2018 (the “**Effective Date**”)

**B E T W E E N:**

**SEARS CANADA INC.**

(the “**Vendor**”)

- and -

●

(the “**Purchaser**”)

**RECITALS:**

A. The Vendor and certain of its affiliates and subsidiaries applied for and were granted protection from their creditors under the CCAA pursuant to the Initial Order of the Court. Pursuant to the Initial Order, the Court appointed FTI Consulting Canada Inc. as Monitor in connection with the CCAA Proceedings.

B. The Vendor and the Purchaser entered into an agreement of purchase and sale dated ●, 2018 (the “**Purchase Agreement**”), whereby, among other things, the Vendor agreed to assign to the Purchaser all of the Vendor’s right, title and interest in and to the Permitted Encumbrances.

C. The Purchase Agreement was approved by the Court pursuant to the Order dated ● (the “**Approval and Vesting Order**”).

D. The Vendor and the Purchaser are entering into this Agreement to provide for the assignment and assumption of the Assumed Contracts and the Permitted Encumbrances by the Vendor to the Purchaser in accordance with the Purchase Agreement and the Approval and Vesting Order.

E. Unless otherwise expressly provided for herein, all capitalized terms when used in this Agreement have the same meaning given to such terms in the Purchase Agreement.

**THEREFORE**, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

## **ARTICLE 1 ASSIGNMENT**

### **1.1 Assignment by Vendor**

The Vendor assigns and transfers to the Purchaser, as of the Effective Date, all of the Vendor's obligations, rights, title and interest, both at law and at equity, in and to the Assumed Contracts and the Permitted Encumbrances and all related rights, benefits and advantages thereto (collectively, the "Assigned Interest").

### **1.2 Assumption by Purchaser**

The Purchaser hereby accepts the assignment of the Assigned Interest provided for in this Agreement and assumes all of the Vendor's obligations, right, title and interest in and to the Assigned Interest from and after the Effective Date.

### **1.3 Indemnity**

The Purchaser hereby covenants with the Vendor, as of and from the Effective Date to indemnify and save the Vendor harmless from any and all Claims arising from, relating to or in connection with any non-payment of amounts payable on the part of the Purchaser to be paid from time to time under the Assumed Contracts and the Permitted Encumbrances, or any non-observance or non-performance of any of the terms, agreements, covenants, obligations and conditions on the part of the Purchaser under the Assumed Contracts and the Permitted Encumbrances to be paid, observed or performed from time to time, in respect of the period on or after the Effective Date, or otherwise arising, incurred or accrued on or after the Effective Date whether in respect of the period before or after the Effective Date, including, without limitation, any default as a consequence of the closing of the Transaction contemplated by the Purchase Agreement.

### **1.4 Paramourty**

The rights and obligations of the parties respectively with respect to the Assumed Contracts and the Permitted Encumbrances and any other Subject Assets shall be governed by the Purchase Agreement. In the event of any conflict, inconsistency, ambiguity or difference between the provisions of this Agreement and of the Purchase Agreement, then the provisions of the Purchase Agreement shall govern and be paramount, and any such provision in this Agreement shall be deemed to be amended, to the extent necessary to eliminate any such conflict, inconsistency, ambiguity or difference.

## **ARTICLE 2 GENERAL**

### **2.1 Time of the Essence**

Time shall be of the essence of this Agreement.

### **2.2 Enurement**

This Agreement shall become effective when executed by the Vendor and the Purchaser and after that time shall be binding upon and enure to the benefit of the parties and their respective heirs,

executors, personal legal representatives, successors and permitted assigns. Neither this Agreement nor any of the rights or obligations under this Agreement shall be assignable or transferable by either party without the consent of the other party.

### **2.3 Entire Agreement**

This Agreement and the Purchase Agreement constitute the entire agreement between the parties with respect to the assignment and assumption of the Assumed Contracts and the Permitted Encumbrances contemplated in the Purchase Agreement and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, of the parties with respect to the subject matter of this Agreement. There are no representations, warranties, covenants, conditions or other agreements, legal or conventional, 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 and the Purchase 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 and the Purchase Agreement.

### **2.4 Waiver**

- (a) No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other provision (whether or not similar), nor shall such waiver be binding unless executed in writing by the party to be bound by the waiver.
- (b) No failure on the part of the Vendor or the Purchaser to exercise, and no delay in exercising any right under this Agreement shall operate as a waiver of such right; nor shall any single or partial exercise of any such right preclude any other or further exercise of such right or the exercise of any other right.

### **2.5 Further Assurances**

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 Subject Assets to the Purchaser and carry out the terms and conditions of this Agreement in accordance with their true intent.

### **2.6 Severability**

If any provision of this Agreement shall be determined to be illegal, invalid or unenforceable, that provision shall be severed from this Agreement and the remaining provisions shall continue in full force and effect.

### **2.7 Governing Law**

This Agreement shall be governed by and interpreted and enforced in accordance with the laws of the Province in which the Property is located [NTD: to be revised if multiple Properties] and the federal laws of Canada applicable therein.

## **2.8 CCAA Proceedings**

Each party to this Agreement submits to the exclusive jurisdiction of the Court in any action, application, reference or other proceeding arising out of or related to this Agreement or the Purchase Agreement and agrees that all claims in respect of any such actions, application, reference or other proceeding shall be heard and determined in the CCAA Proceedings before the Court.

## **2.9 English Language**

The parties hereto have requested that this Agreement be drafted in English only. *Les parties aux présentes ont demandé à ce que la présente convention soit rédigée en anglais seulement.*

## **2.10 Statute References**

Any reference in this Agreement to any statute or any section thereof shall, unless otherwise expressly stated, be deemed to be a reference to such statute or section as amended, restated or re-enacted from time to time.

## **2.11 Headings**

The division of this Agreement into Sections, the insertion of headings is for convenience of reference only and are not to be considered in, and shall not affect, the construction or interpretation of any provision of this Agreement.

## **2.12 References**

Where in this Agreement reference is made to an article or section, the reference is to an article or section in this Agreement unless the context indicates the reference is to some other agreement. The terms “this Agreement”, “hereof”, “hereunder” and similar expressions refer to this Agreement and not to any particular Article, Section or other portion hereof and include any agreement supplemental hereto. The word “includes” or “including” shall mean “includes without limitation” or “including without limitation”, respectively. The word “or” is not exclusive.

## **2.13 Number and Gender**

Unless the context requires otherwise, words importing the singular include the plural and vice versa and words importing gender include all genders.

## **2.14 Business Days**

If any payment is required to be made or other action is required to be taken pursuant to this Agreement on a day which is not a Business Day, then such payment or action shall be made or taken on the next Business Day. All actions to be made or taken by a particular Business Day must be made or taken by no later than 4:30 p.m. (Toronto time) on a Business Day and any action made or taken thereafter shall be deemed to have been made and received on the next Business Day.

## **2.15 Notice**

Any notice, consent or approval required or permitted to be given in connection with this Agreement (a “**Notice**”) shall be in writing and shall be sufficiently given if delivered or

transmitted in accordance with the Purchase Agreement.

## **2.16 Counterparts and Delivery**

All parties agree that this Agreement may be executed in counterpart and transmitted by facsimile or e-mail (PDF) and that the reproduction of signatures in counterpart by way of facsimile or e-mail (PDF) will be treated as though such reproduction were executed originals.

*[Signature pages follow.]*

**IN WITNESS WHEREOF** the Vendor has executed this Agreement.

**SEARS CANADA INC.**

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

**IN WITNESS WHEREOF** the Purchaser has executed this Agreement.

●

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



**SCHEDULE “H”****PERMITTED ENCUMBRANCES****GENERAL ENCUMBRANCES**

- (a) The reservations, limitations, exceptions, provisos and conditions, if any, expressed in any original grants from the Crown including, without limitation, the reservation of any royalties, mines and minerals in the Crown or in any other person.
- (b) Subdivision agreements, site plan control agreements, development agreements, heritage easements and agreements relating thereto, servicing agreements, utility agreements, permits, licenses, airport zoning regulations and other similar agreements with Governmental Authorities or private or public utilities affecting the development or use of any Property.
- (c) Rail siding agreements or facility, cost sharing, servicing, reciprocal use or other similar agreements.
- (d) Any easements, servitudes, or rights-of-way in favour of any Governmental Authority, any private or public utility, any railway company or any adjoining owner.
- (e) Any unregistered easements, servitudes, rights-of-way or other unregistered interests or claims not disclosed by registered title in respect of the provision of utilities to the Property.
- (f) Any rights of expropriation, access or use or any other similar rights conferred or reserved by applicable Law.
- (g) Encumbrances for real or immovable property taxes (which term includes charges, rates and assessments) or charges for electricity, power, gas, water and other services and utilities in connection with the Property that have accrued but are not yet due and owing or, if due and owing, are adjusted for on Closing.
- (h) Restrictive covenants, private deed restrictions and other similar land use control agreements.
- (i) Minor encroachments by the Property over neighbouring lands and/or permitted under agreements with neighbouring landowners and minor encroachments over the Property by improvements of neighbouring landowners and/or permitted under agreements with neighbouring landowners.
- (j) The provisions of all applicable Laws, including by-laws, regulations, ordinances and similar instruments relating to development and zoning of the Property.

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- (k) The exceptions and qualifications contained in Section 44(1) of the *Land Titles Act* (Ontario) (other than paragraphs 4, 6 and 11) or the *Land Titles Act* (Alberta).
- (l) Security given to a public utility or any municipality or governmental or other public authority when required by the operations of the Property in the ordinary course of business, including, without limitation, the right of the municipality to acquire portions of the Property for road widening or interchange construction and the right of the municipality to complete improvements, landscaping or remedy deficiencies in any pedestrian walkways or traffic control or monitoring to be provided to the Property.
- (m) Any minor title defects, irregularities, easements, servitudes, encroachments, rights-of-way or other discrepancies in title or possession relating to the Property which would be disclosed by an up-to-date plan of survey, real property report, certificate of location, or technical description.
- (n) Permits, licenses, agreements, servitudes, easements, (including, without limitation, heritage easements and agreements relating thereto), restrictions, restrictive covenants, options, rights-of-way, public ways, rights in the nature of an easement or servitude and other similar rights in land granted to or reserved by other persons (including, without in any way limiting the generality of the foregoing, permits, licenses, agreements, easements, rights-of-way, sidewalks, public ways, and rights in the nature of easements or servitudes for sewers, drains, steam, gas and water mains or electric light and power or telephone and telegraph conduits, poles, wires and cables) (other than those described in paragraph (d) and (e) of this Schedule) which do not materially impair the current use, operation or marketability of the Property.
- (o) Undetermined or inchoate liens incidental to construction, renovations or current operations, a claim for which shall not at the time have been registered against the Property or of which notice in writing shall not at the time have been given to the Vendor pursuant to the *Construction Lien Act* (Ontario) or similar legislation, and in respect of any of the foregoing cases, the Vendor has, where applicable, complied with the holdback or other similar provisions or requirements of the relevant construction contracts.
- (p) Any reference plans or plans registered pursuant to the *Boundaries Act* (Ontario).
- (q) All Off-Title Compliance Matters.
- (r) Any unregistered interests in the Property of which the Purchaser has actual notice.
- (s) All rights of first refusal, option to purchase or similar rights relating to the Property.
- (t) All instruments which are registered against title to a Property: (i) as of the date that is one (1) Business Days prior to the Execution Date; or (ii) otherwise agreed

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to by the Purchaser; or (iii) permitted by this Agreement, except for those Encumbrances to be vested off pursuant to the Approval and Vesting Order.

**SPECIFIC ENCUMBRANCES**

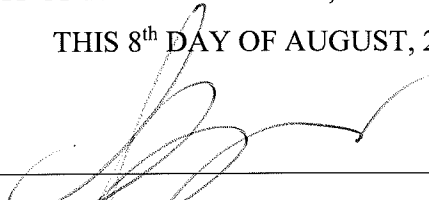
The characterization or descriptions of those items on the balance of this Schedule "H" is prepared for purposes of convenience only and for accurate reference, recourse should be had to the registration itself.

Operating Agreement.

**SCHEDULE "F"**  
**ASSUMED CONTRACTS**

Operating Agreement.

THIS IS **EXHIBIT "B"** REFERRED TO IN THE  
AFFIDAVIT OF PHILIP MOHTADI, AFFIRMED BEFORE ME  
THIS 8<sup>th</sup> DAY OF AUGUST, 2018.



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A Commissioner for taking Affidavits, etc.

*Lea Banechetta*

Court File No. CV-17-11846-00CL

*Ontario*  
**SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

IN THE MATTER OF THE *COMPANIES' CREDITORS  
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF SEARS CANADA INC., CORBEIL  
ÉLECTRIQUE INC., S.L.H. TRANSPORT INC., THE CUT INC.,  
SEARS CONTACT SERVICES INC., INITIUM LOGISTICS  
SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM  
TRADING AND SOURCING CORP., SEARS FLOOR  
COVERING CENTRES INC., 173470 CANADA INC., 2497089  
ONTARIO INC., 6988741 CANADA INC., 10011711 CANADA  
INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA LTD.,  
4201531 CANADA INC., 168886 CANADA INC., AND 3339611  
CANADA INC.

APPLICANTS

**AFFIDAVIT OF MARK CAIGER  
(Sworn September 28, 2017)**

**(General Sale Process Affidavit)**

I, Mark Caiger, of the City of Toronto, in the Province of Ontario, MAKE OATH

AND SAY:

1. I am a Managing Director of Mergers and Acquisitions at BMO Nesbitt Burns Inc. operating as BMO Capital Markets (“**BMO CM**” or the “**Sale Advisor**”) and have been with BMO CM for the past 17 years. I have a broad range of mergers and acquisitions and restructuring experience, including the recapitalization/restructuring of Postmedia, MEG Energy, Connacher Oil & Gas, Yellow Media, AbitibiBowater, Bell Canada International, Ivaco Inc., and

Lightstream Resources. I am a Chartered Professional Accountant, a CFA Charterholder, and a member of the Board of Directors of the Insolvency Institute of Canada. I have been directly involved in planning, managing and implementing (together with the rest of the Sale Advisor team) the Applicants' court-approved sale process (the "SISP"). As such, I have personal knowledge of the matters deposed to in this affidavit. Where I have relied on other sources for information, I have specifically referred to such sources and believe them to be true. In preparing this Affidavit, I have consulted with members of my team, members of the senior management team of Sears Canada Inc. ("**Sears Canada**" or the "**Company**"), legal, financial and other advisors of the Applicants, and representatives of FTI Consulting Canada Inc. ("**FTI**" or the "**Monitor**").

2. I swear this Affidavit in support of various motions to be brought by the Applicants seeking Approval and Vesting Orders in respect of transactions arising from the SISP. Additional affidavits will be filed describing the various individual transactions. The Sale Advisor continues to pursue bids and proposals for other assets of the Applicants in order to generate additional value for the Applicants' stakeholders.

### **Background**

3. The Applicants were granted protection from their creditors under the CCAA pursuant to an initial order of the Ontario Superior Court of Justice (Commercial List) dated June 22, 2017, as amended and restated on July 13, 2017 (the "**Initial Order**"). FTI was appointed in the Initial Order to act as the Monitor in the CCAA proceedings. Further details regarding the background to these proceedings are set out in the Affidavit of Billy Wong sworn June 22, 2017 (the "**Initial Order Affidavit**"), the Affidavit of Billy Wong sworn July 5, 2017 and the

Affidavit of Billy Wong, sworn July 12, 2017 (the “**Third Wong Affidavit**”). Except where so stated, capitalized terms not otherwise defined herein have the meaning ascribed to them in these affidavits.

### **The SISP**

4. On July 13, 2017, the Court issued an order (the “**SISP Approval Order**”) approving the SISP whereby BMO CM on behalf of Sears Canada and under the supervision of both the Special Committee of the Board of Directors of Sears Canada (the “**Special Committee**”) and the Monitor would seek bids and proposals for a broad range of transaction alternatives with respect to the Business, Property, Assets and/or Leases of the Applicants (each as defined in the SISP). A copy of the SISP Approval Order is attached to this Affidavit as Exhibit “A”.

5. The SISP was designed to be flexible in order to maximize the realization of the value of the Applicants’ assets for the benefit of their stakeholders. The Applicants and the Sale Advisor, in conjunction with the Monitor, contemplated that the process may result in multiple transactions in a variety of forms, including potentially selling the Sears Canada business as a going concern, selling other ancillary businesses owned by Sears Canada, selling owned real estate and other assets, assigning leases to third parties and surrendering leases to landlords. It also provided for the possibility that certain Leases and/or Assets may be withdrawn from the SISP in certain circumstances.

6. The design of the SISP was informed in part by discussions with Sears Canada’s management regarding previous expressions of interest received from third parties in respect of



all or part of the Applicants' business and assets. In addition, the Sale Advisor spent a significant amount of time familiarizing itself with the real property, leases and other assets of the Company.

7. The following sections of this Affidavit describe the extensive efforts that the Applicants and the members of the Sale Advisor's team have undertaken to implement the court-approved SISP as part of these CCAA proceedings under the supervision of the Monitor and the Special Committee, in order to maximize value for the benefit of all stakeholders.

### **Implementation of the SISP**

8. Following the approval of the SISP on July 13, 2017, the Sale Advisor began soliciting indications of interest to acquire some or all of the Business, Property, Assets and/or Leases of the Applicants from a wide array of prospective parties. The Sale Advisor contacted or was contacted by approximately 145 unique parties and provided interested parties with a form of non-disclosure agreement ("NDA") in accordance with paragraph 6(a)(i) of the SISP. These parties included other major North American retailers, landlords, institutional real estate investors, direct competitors and strategic parties identified as being potentially interested in specific business lines or assets (such as SLH and Corbeil), financial sponsors and brokers. These parties were identified, in part, based on the Sale Advisor's experience in the market as well as prior expressions of interest received by Sears Canada. During the time leading up to the Applicants' CCAA filing, Sears Canada received certain unsolicited offers with respect to various business lines and assets. These expressions of interest were ultimately subsumed by the Court-approved SISP.

9. Sears Canada entered into NDAs with 92 different parties. In accordance with paragraph 6(a)(v) of the SISP, each interested party that executed an NDA received access to due diligence materials in a data room (the “**Diligence Data Room**”) based on its expressed interest in select assets. Of those parties who signed an NDA and were granted access to the Diligence Data Room, 74 entered the Diligence Data Room in order to conduct due diligence. A breakdown of these numbers is as follows:

	<b># Potentially Interested Parties Contacted</b>	<b># Signed NDA</b>	<b># Accessed Diligence Data Room</b>
Going-concern	7	6	3
Corbeil	21	18	18
SLH	25	17	17
Owned Real Estate	40	24	21
Leases	31	16	12
Prime Loan Book	13	6	6
Other	25	21	13
<b>TOTAL UNIQUE<sup>1</sup></b>	<b>145</b>	<b>92</b>	<b>74</b>

10. In accordance with paragraph 6(a)(ii) of the SISP and in an effort to harmonize the form of bids that would ultimately be submitted by interested parties, several standard form draft agreements were prepared by counsel for the Applicants (in a form acceptable to the Monitor and after consultation with the DIP Lenders) (the “**Transaction Agreements**”). The Transaction Agreements included an asset purchase agreement for a full line retail going-concern bid, an asset purchase agreement for other standalone business lines (e.g. Corbeil, SLH, and Sears Canada’s home service businesses), an agreement of purchase and sale for owned

<sup>1</sup> Certain parties were interested in opportunities in multiple asset categories. The “Total Unique” figures refer to the number of unique parties who were contacted, signed NDAs, and accessed the data room without double-counting individual parties who participated in multiple asset categories.

stores/properties, a lease surrender agreement, a lease transfer agreement, and a lease amending agreement. The Transaction Agreements were finalized and made available to bidders from August 3<sup>rd</sup> and 4<sup>th</sup>, 2017 onwards.

11. On July 18, 2017, a “Landlord Process Letter” was sent to Sears Canada’s designated contact for 51 unique parties that were, based on information available to Sears Canada, either Sears Canada’s landlord (or its property manager), or an owner (or its property manager) of a property adjacent to a property owned by Sears Canada. The Landlord Process Letter advised these parties of the upcoming August 31<sup>st</sup> deadline (the “**Binding Bid Deadline**”) set out in the SISP for interested parties to submit a binding proposal for any of the following:

- (a) the purchase of one or more of the Assets of the Applicants (a “**Binding Bid**”);
- (b) the surrender of one or more of the Leases of the Applicants (a “**Binding Lease Surrender Proposal**”); or
- (c) a modification of one or more of the existing Leases of the Company, conditioned on the acquirer of the Company’s Business which operates in such premises continuing to do so on the basis of such modified lease terms (a “**Binding Lease Modification Proposal**” and, together with Binding Lease Surrender Proposals, “**Binding Lease Proposals**”).

A copy of the Landlord Process Letter, which was reviewed and approved by the Monitor and the DIP Lenders, is attached as Exhibit “B”.

12. On or about July 18, 2017, the Sale Advisor sent out a separate “Process Letter” to other interested parties that had fully executed an NDA with Sears Canada. Following this date, additional Process Letters were sent to interested parties, in most cases once an NDA was fully executed. A total of 81 process letters were sent to unique, potentially interested parties advising them of the August 31<sup>st</sup> deadline for submitting Binding Bids. Of the potentially interested parties who received a process letter, 5 had expressed interest in a potential going-concern transaction, 18 had expressed interest in Corbeil, 17 had expressed interest in SLH, 28 had expressed interest in the owned real estate, 18 were third parties (i.e. non-landlords) who had expressed interest in the Applicants’ leases, and 20 had expressed interest in other business lines or assets.<sup>2</sup> A copy of the Process Letter, which was reviewed and approved by the Monitor and the DIP Lenders, is attached as Exhibit “C”. An addendum to the Process Letter with respect to the SLH business was also made available in the SLH folder in the Diligence Data Room. A copy of the SLH addendum is attached as Exhibit “D”.

13. The Sale Advisor devoted an extensive amount of time during the solicitation period discussing the various opportunities with potential purchasers, including conducting numerous follow-up calls with interested parties to address questions related to diligence and the sale process.

14. At the inception of the SISP, the Sears Canada management team developed a potential operating plan for the Sears Canada full-line business on a going concern basis. This plan was to form the basis for the Management Bid (as discussed below). Certain materials reflecting the operating plan were prepared and provided to credible parties who were interested

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<sup>2</sup> In certain circumstances, a Process Letter was sent to parties that expressed an interest in the opportunity to submit a bid but did not sign an NDA.

in a potential going-concern bid. These parties were offered the opportunity to have an in-person discussion with the Sale Advisor and/or certain members of Sears Canada management to review the materials and discuss the business opportunity.

15. As Corbeil and SLH are distinct business units with their own management teams, Sears Canada and the Sale Advisor created unique management presentations for these business units. In-person management presentations were made to parties interested in these business units who executed NDAs and requested such presentations.

### **Communications with ESL and Fairholme**

16. As set out in the Initial Order Affidavit, I understand that ESL Partners, L.P., Edward S. Lampert and certain affiliated entities (collectively, “**ESL**”) form the largest shareholder of Sears Canada, both directly through ownership in Sears Canada, and indirectly through shareholdings in Sears Holdings Corporation (“**Sears Holdings**”), a U.S. public company. ESL and Sears Holdings collectively own 57% of Sears Canada’s outstanding common shares. Additionally, Fairholme Capital Management LLC (“**Fairholme**”) held 20% of Sears Canada’s outstanding common shares as of the date of the SISP Approval Order.

17. On July 10, 2017, ESL announced that ESL and Fairholme had retained Canadian legal counsel and were considering a potential negotiated transaction with Sears Canada (including, without limitation, financing transactions, purchase and sale transactions, or restructuring transactions). On July 28, 2017, ESL announced that ESL and Fairholme had terminated their joint engagement of Canadian legal counsel, but that ESL continued to evaluate Sears Canada and consider potential transactions.

18. Following the approval of the SISP, ESL's legal and financial advisors signed NDAs and sent an information request to the Sale Advisor. The Sale Advisor responded to these requests for due diligence information and also granted ESL access to the Diligence Data Room.

19. On July 13, 2017, I spoke with both ESL and Fairholme to discuss the SISP and provide information regarding how they could participate. The call was attended by the Monitor. I also spoke with counsel for ESL and Fairholme before the joint retainer was terminated. Further, I sent separate follow up emails on August 3, 2017 to both ESL and Fairholme setting out how they could participate in the SISP (including by way of putting forward a transaction proposal or by participating as a potential sponsor of a going concern proposal for the Sears Canada business being developed by others), advising them of the August 31<sup>st</sup> Binding Bid Deadline, and inviting them to contact me if they were interested in a potential transaction and needed any further information.

20. Based on a subsequent conversation with ESL in mid-August, further information was provided in response to ESL's expressed interest in evaluating opportunities to provide financing. Ultimately, neither ESL nor Fairholme submitted any bids in the process. To the best of my knowledge, ESL is not providing financing in the context of a potential going concern bid.

### **ROFRs**

21. I am informed by Ryan Nielsen, a partner at Osler, Hoskin & Harcourt LLP, and believe that some of Sears Canada's lease agreements and operating agreements (the "**Property Agreements**") contain language that provide a right of first refusal, option to purchase or similar right ("**ROFR**") to the counterparty to the Property Agreement. Protections were accorded to the

potential beneficiaries of such ROFRs in the SISP Approval Order and in the SISP itself, including requirements that certain communications be made (i) to prospective bidders interested in bidding on Property Agreements that may be subject to a ROFR and (ii) to potential ROFR beneficiaries in the event that the Applicants take the position that the ROFR is not in force or is not triggered by a Binding Bid received as part of the SISP.

22. Paragraph 6(e) of the SISP requires that the Sale Advisor advise prospective bidders that the beneficiaries of any agreements containing a ROFR reserve all rights and remedies with respect to such agreements. In accordance with paragraph 6(e) of the SISP, a copy of the SISP was placed in the Diligence Data Room for all assets that are subject to a ROFR.

23. Pursuant to paragraph 6(a) of the SISP Approval Order, on August 4, 2017, I am informed by Tracy Sandler, a partner at Osler, Hoskin & Harcourt LLP, and believe that the Applicants responded to the requests of all holders of Property Agreements (as defined in the SISP Approval Order) who requested such a response and advised them that the Applicants did not intend to take the position that the ROFRs are no longer in force in respect of the properties described in those letters.

24. Paragraph 6(b) of the SISP Order required that, should a Binding Bid (as defined in the SISP) be received for an asset that is the subject of a ROFR under a Property Agreement from a bidder (a “**ROFR Bidder**”) and the Applicants take the position that the ROFR will not be triggered by such Binding Bid, the Applicants must provide written notice of this fact with sufficient particulars to the relevant holder of such a Property Agreement as follows:

- (a) if such holder is not a bidder in the SISP for such Asset, by September 8, 2017; or

- (b) if such holder is a bidder in the SISP for such Asset, then once the Applicants have elected to proceed with the transaction with the ROFR Bidder, and in any event, no later than September 25, 2017.

25. I am informed by Ms. Sandler and believe that the Applicants have not provided any notices to such holders in the SISP pursuant to this provision.

### **Communications Protocol**

26. Pursuant to the terms of the SISP, members of Sears Canada's management team that were involved in connection with the submission of any bid or proposal were not to be provided with Confidential Information or Bid Information (both as defined in the SISP), including information about any Binding Bids or Binding Lease Proposals that third parties made (other than lease modification proposals that were intended to be opportunities available to going concern bidders as prospective counterparties to the modified leases) or information about whether any particular party made a Binding Bid or Binding Lease Proposal.

27. To the best of my knowledge, at all times the communication protocol set out in the SISP was adhered to, no Confidential Information or Bid Information (other than proposed lease terms in lease modification proposals) was provided to any member of management at the time they were involved in connection with the submission of any bid or proposal, and interested parties only communicated with management of Sears Canada when one of the Sale Advisor, the Monitor or Osler was present. After the August 31<sup>st</sup> bid submission deadline, I understand that certain members of management who had assisted with providing information to facilitate a potential bid were given Confidential Information or Bid Information on an as-needed basis, on



the condition that this information would not be shared with any members of management who submitted a bid. All communications relating to potential bids were required to be addressed to the Sale Advisor, and members of Sears Canada's management and outside advisory teams were instructed to direct any and all inquiries from prospective bidders to the Sale Advisor.

28. In addition, the Monitor, the Sale Advisor and the Applicants developed and implemented a detailed management protocol to preserve the integrity and fairness of the SISP for all participants in view of a potential bid by Management.

#### **Consultation with DIP Lenders, PBGF, Employee and Pension Representative Counsel**

29. Paragraph 18 of the SISP requires that the Sale Advisor provide regular updates to the DIP Lenders and their advisors with respect to matters related to the SISP. Additionally, confidential Bid Information would be shared with Restricted Process Observers (as defined in the SISP), including specific personnel of the financial and legal advisors to the DIP Lenders. In accordance with these requirements, the Sale Advisor attended update calls with the DIP Lenders and provided the Restricted Process Observers with access to a data room containing Bid Information (the "**Bid Results Data Room**") following the receipt of the bids on August 31, 2017.

30. I understand that on July 5, 2017, the Applicants served a motion returnable July 13, 2017 seeking, among other things, an order authorizing the suspension of (i) special payments with respect to the defined benefit portion of the Sears Pension Plan; (ii) payments with respect to the Supplemental Plan; and (iii) payments with respect to other post-retirement benefits under the PRB Plan. The Pension Benefits Guarantee Fund (the "**PBGF**"), Pension

Representative Counsel, and Employee Representative Counsel raised certain objections to this motion, which were ultimately resolved with the assistance of the Monitor and in consultation with the DIP Lenders. The resolution of these objections was reflected in a term sheet attached to the Supplement to the First Report of the Monitor dated July 12, 2017 as Appendix “A” (the “**Term Sheet**”).

31. Pursuant to the Term Sheet, the PBGF’s legal counsel and financial advisor, as well as specified individual representatives of the PBGF (collectively the “**Permitted PBGF Recipients**”), were to be provided with the same updates with respect to the SISP as those updates provided to representatives of the DIP Lenders who have been designated as Restricted Process Observers. As such, the Sale Advisor attended update calls with the Permitted PBGF Recipients and provided the Permitted PBGF Recipients with access to the Bid Results Data Room following the receipt of the bids on August 31, 2017.

32. Additionally, in accordance with the Term Sheet and their respective NDAs, Pension and Employee Representative Counsel attended update calls with the Sale Advisor with respect to the implementation of the SISP. Further information on the results of the SISP was provided to Pension and Employee Representative Counsel through their Financial Advisor.

### **Oversight by the Monitor and Special Committee**

33. The Sale Advisor was in frequent contact with the Monitor and the Special Committee throughout the sale process, including regularly reporting on the progress of the SISP to members of the Special Committee.

34. The Monitor was closely involved in the SISP implementation. Among other things:

- (a) the Monitor reviewed and approved the Landlord Process Letter and the Process Letter, was granted full access to the data room, approved the form of NDA sent to the interested parties, commented on and approved the template Transaction Agreements used in the SISP, attended SISP update calls with the DIP Lenders, the representatives of the PBGF, and Representative Counsel and attended management presentations;
- (b) the Monitor was also actively involved and consulted in the development of the detailed management protocol referred to above;
- (c) during the period leading up to the Binding Bid Deadline, I understand that the Monitor and its counsel responded to inquiries on the status and progress of the SISP from various stakeholder groups including landlords; and
- (d) in accordance with the SISP, I understand the Monitor maintained and updated a list of Restricted Process Observers.

### **Results of the SISP**

35. On August 31, 2017, the Sale Advisor received 69 bids and proposals, including bids for the acquisition of the full-line business as a going-concern, for the Corbeil and SLH business lines, for the home services business, for the prime loan book, for various trademarks and licenses, and for various owned and leased properties. Bids and proposal documentation

were uploaded to the Bid Results Data Room maintained by the Sale Advisor. The Monitor and its counsel, the Restricted Process Observers and the Permitted PBGF Recipients were granted access to the Bid Results Data Room.

36. The Sale Advisor and counsel for the Applicants immediately commenced a comprehensive review of the bids and proposals that had been submitted to identify different potential combinations of bids and proposals that would maximize value for all of the Applicants' stakeholders. The Monitor also reviewed the bids and proposals received. In accordance with paragraph 11 of the SISP, the Sale Advisor met with both the Special Committee and the Monitor on several occasions in early September to assess the bids that had been received and to determine, among other things, which bids and proposals should be pursued. The Sale Advisor also met with the DIP Lenders and representatives of the PBGF.

37. The Sale Advisor, on behalf of the Applicants and in consultation with the Monitor and the DIP Lenders, engaged in negotiations with a number of bidders that submitted bids or proposals, with a view to selecting one or more non-overlapping Successful Bid(s) (as defined in the SISP) upon approval of the Board of Directors of Sears Canada.

38. The Applicants and their advisors, in consultation with the Monitor and the DIP Lenders, also took steps to settle definitive agreements with bidders. The Monitor and the DIP Lenders were consulted by the Applicants on revisions to the transaction documents provided by bidders. During the negotiation process, revised agreements were posted to the Bid Results Data Room as they were prepared or received from counterparties.

### Potential Going Concern Bids

39. As noted above, the SISP contemplated a potential bid from certain members of Sears Canada's management with respect to the Applicants' business. On August 31, 2017, the Sale Advisor and the Monitor received a potential going concern bid (the "**Initial Management Bid**") put forward by Brandon Stranzl, Sears Canada's executive chairman (the "**Stranzl Group**"). The Initial Management Bid was a going concern bid for Sears Canada's full-line business that could, if successfully implemented, preserve several thousand jobs and result in the assumption of significant liabilities. It did not include the Corbeil or SLH business lines. The Initial Management Bid had numerous conditions, including financing and due diligence conditions, and was therefore not SISP compliant.

40. After consultation with the Sale Advisor and the Monitor, the Special Committee determined that it would continue to pursue the Initial Management Bid, recognizing the potential benefits of a going-concern bid and that the SISP provides flexibility to accept a bid that was initially non-compliant with the consent of the Monitor and the DIP Lenders. At the same time, the Sale Advisor continued to pursue other non-overlapping transactions for different business lines as well as real estate transactions that would potentially overlap with a going-concern bid.

41. Throughout the month of September, the Stranzl Group participated in several calls as well as email exchanges with the Sale Advisor and the Monitor in relation to, among other things:

- (a) the potential need to remove certain assets from the going concern bid in order to maximize recovery for the Applicants' stakeholders;

- (b) the due diligence requests of the Stranzl Group in order to remove any conditions (including financing conditions) in the Initial Management Bid; and
- (c) the timeframe in which the Initial Management Bid would have to be revised in view of timing and liquidity constraints affecting the Company.

42. On September 25, 2017, the Sale Advisor and the Monitor received an amended management bid from the Stranzl Group (the “**Amended Management Bid**”) which addressed certain but not all of the issues presented by the Initial Management Bid. On September 26, 2017, the Stranzl Group provided financing terms sheets in support of the Amended Management Bid. The financing term sheets are subject to the fulfillment of certain conditions.

43. In light of the receipt of the Amended Management Bid, the Applicants’ advisors continue to engage in discussions with, and provide information to, the Stranzl Group. The goal of these discussions is to enhance the value and reduce the conditionality of the proposed transaction.

### **Conclusion**

44. As set out above, the Applicants will be serving a number of motions seeking approval of certain proposed transactions. In recommending that Sears Canada consummate other transactions at this time, the Sale Advisor has, where applicable, weighed the Applicants’ need to realize cash value from assets in the near term against the potential impact of removing these assets from the Amended Management Bid.


45. In addition to ongoing discussions regarding the Amended Management Bid, the Sale Advisor is continuing to pursue other bids and proposals with the goal of realizing value for the Applicants' estate, including liquidation bids and bids with respect to certain owned property. In order to maximize value for the Applicants' stakeholders, the Applicants will require an extension of the current stay period.

SWORN BEFORE ME at the City of Toronto, on the 28<sup>th</sup> day of September, 2017.



Commissioner for taking Affidavits

*Karen Sachar*

  
\_\_\_\_\_  
Mark Caiger

IN THE MATTER OF the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended  
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SEARS CANADA INC., CORBEIL ÉLECTRIQUE INC., S.L.H. TRANSPORT INC., THE CUT INC., SEARS CONTACT SERVICES INC., INITIUM LOGISTICS SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM TRADING AND SOURCING CORP., SEARS FLOOR COVERING CENTRES INC., 173470 CANADA INC., 2497089 ONTARIO INC., 6988741 CANADA INC., 10011711 CANADA INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA LTD., 4201531 CANADA INC., 168886 CANADA INC., AND 3339611 CANADA INC.

Court File No: CV-17-11846-00CL

Applicants

*Ontario*

**SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**AFFIDAVIT OF MARK CAIGER**  
(General Sales Process Affidavit)

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Lawyers for the Applicants



IN THE MATTER OF the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended

Court File No: CV-17-11846-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SEARS CANADA INC., 9370-2751 QUEBEC INC., 191020 CANADA INC., THE CUT INC., SEARS CONTACT SERVICES INC., INITIUM LOGISTICS SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM TRADING AND SOURCING CORP., SEARS FLOOR COVERING CENTRES INC., 173470 CANADA INC., 2497089 ONTARIO INC., 6988741 CANADA INC., 10011711 CANADA INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA LTD., 4201531 CANADA INC., 168886 CANADA INC., AND 3339611 CANADA INC.

Applicants

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

Proceeding commenced at Toronto

**AFFIDAVIT OF PHILIP MOHTADI**

Affirmed August 8, 2018

(Motion for Approval of Agreement of Purchase and Sale with  
Pan American Properties Inc. (Charlottetown, PEI))

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## Tab 3

Court File No. CV-17-11846-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR.	)	MONDAY, THE 20 <sup>TH</sup>
	)	
JUSTICE HAINEY	)	DAY OF AUGUST, 2018

IN THE MATTER OF THE *COMPANIES' CREDITORS*  
*ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SEARS CANADA INC., 9370-2751 QUEBEC INC., 191020 CANADA INC., THE CUT INC., SEARS CONTACT SERVICES INC., INITIUM LOGISTICS SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM TRADING AND SOURCING CORP., SEARS FLOOR COVERING CENTRES INC., 173470 CANADA INC., 2497089 ONTARIO INC., 6988741 CANADA INC., 10011711 CANADA INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA LTD., 4201531 CANADA INC., 168886 CANADA INC., AND 3339611 CANADA INC.

(each, an “**Applicant**”, and collectively, the “**Applicants**”)

**APPROVAL AND VESTING ORDER  
(Charlottetown)**

THIS MOTION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. c-36, as amended (the “**CCAA**”) for an order, *inter alia*, approving: the sale of lands and buildings located at 167 Malpeque Road, Charlottetown, Prince Edward Island, together with certain ancillary assets (the “**Transaction**”) contemplated by an Agreement of Purchase and Sale between Sears Canada Inc. (“**Sears Canada**”), as vendor, and Pan American Properties Inc. (the “**Purchaser**”) as purchaser dated with effect as of July 26, 2018 (the “**APS**”) and certain related relief, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion of the Applicants, the Affidavit of Philip Mohtadi affirmed August 8, 2018 including the exhibits thereto, and the ● Report of FTI Consulting Canada Inc., in its capacity as Monitor (the “**Monitor**”), filed, and on hearing the submissions of respective

counsel for the Applicants, the Monitor, the Purchaser and such other counsel as were present, no one else appearing although duly served as appears from the Affidavit of Service of ● sworn ●, 2018, filed:

### **SERVICE AND DEFINITIONS**

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion Record herein 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 any capitalized term used and not defined herein shall have the meaning ascribed thereto in the Amended and Restated Initial Order in these proceedings dated June 22, 2017 (the “**Initial Order**”), or in the APS, as applicable.

### **APPROVAL OF THE APS**

3. THIS COURT ORDERS AND DECLARES that the entering into of the Transaction by Sears Canada is hereby approved and ratified and that the execution of the APS by Sears Canada is hereby authorized, approved and ratified with such minor amendments as Sears Canada (with the consent of the Monitor) and the Purchaser may agree to in writing. Sears Canada is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction, including the sale, assignment and transfer by Sears Canada of its right, title and interest in and to the Subject Assets to the Purchaser and the Monitor shall be authorized to take such additional steps in furtherance of its responsibilities under the APS and this Order, and shall not incur any liability as a result thereof. The legal descriptions and applicable land registry offices with respect to the Subject Assets are as set out on Schedule “B” hereto.
4. THIS COURT ORDERS AND DECLARES that upon the delivery of a Monitor’s certificate to the Purchaser substantially in the form attached as Schedule “A” hereto (the “**Monitor’s Certificate**”), all of Sears Canada’s right, title and interest in and to the Subject Assets shall be sold, assigned and transferred to the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or

filed and whether secured, unsecured or otherwise in respect of the Subject Assets (collectively, the “**Claims**”), including, without limiting the generality of the foregoing:

- (a) the Administration Charge, the FA Charge, the KERP Priority Charge, the Directors’ Priority Charge, the KERP Subordinated Charge and the Directors’ Subordinated Charge (as such terms are defined in the Initial Order) and any other charges hereafter granted by this Court in these proceedings (collectively, the “**CCAA Charges**”);
- (b) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Prince Edward Island) or any other personal property registry system; and
- (c) those Claims listed on Schedule “B” hereto;

(all of which are collectively referred to as the “**Encumbrances**”, which term shall not include the Permitted Encumbrances listed on Schedule “C” hereto), and, for greater certainty, this Court orders that all of the Claims and Encumbrances affecting or relating to Sears Canada’s right, title and interest in and to the Subject Assets are hereby expunged and discharged as against Sears Canada’s right, title and interest in and to the Subject Assets including the real or immoveable property identified in Schedule “B”.

5. THIS COURT ORDERS that upon the registration in the applicable land registry office of a certified copy of this Order in the manner prescribed by the applicable land registry office, the applicable land registrar is hereby directed to specifically discharge, cancel, delete and expunge from title to the applicable real or immovable property described in Schedule “B” all of the Encumbrances listed in Schedule “B” hereto.

6. THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the net proceeds received on the Closing of the Transaction shall stand in the place and stead of the Subject Assets, and that from and after the delivery of the Monitor’s Certificate all Claims and Encumbrances shall attach to the net proceeds from the Transaction (the “**Net Proceeds**”) with the same priority as they had with respect to the Subject Assets immediately prior to the Closing of the Transaction, as if the Transaction had not been completed.

7. THIS COURT ORDERS that the Monitor shall be entitled to retain the Net Proceeds on behalf of the Applicants to be dealt with by further Order of the Court.

8. THIS COURT ORDERS AND DIRECTS the Monitor to file with the Court a copy of the Monitor's Certificate, forthwith after delivery thereof in accordance with the terms of the APS.

### **SEALING**

9. THIS COURT ORDERS that Confidential Appendix "●" to the ● Report of the Monitor shall be and is hereby sealed, kept confidential and shall not form part of the public record pending further Order of this Court.

### **GENERAL PROVISIONS**

10. 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 any of the Applicants and any bankruptcy order issued pursuant to any such applications; or
- (c) any assignment in bankruptcy made in respect of any of the Applicants;

the sale, assignment and transfer of the Subject Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy or receiver that may be appointed in respect of any of the Applicants and shall not be void or voidable by creditors of any of the Applicants, 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.

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

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

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**SCHEDULE “A”**

Court File No. CV-17-11846-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

IN THE MATTER OF THE *COMPANIES’ CREDITORS  
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF SEARS CANADA INC., 9370-2751  
QUEBEC INC., 191020 CANADA INC., THE CUT INC., SEARS  
CONTACT SERVICES INC., INITIUM LOGISTICS SERVICES  
INC., INITIUM COMMERCE LABS INC., INITIUM TRADING  
AND SOURCING CORP., SEARS FLOOR COVERING  
CENTRES INC., 173470 CANADA INC., 2497089 ONTARIO  
INC., 6988741 CANADA INC., 10011711 CANADA INC.,  
1592580 ONTARIO LIMITED, 955041 ALBERTA LTD.,  
4201531 CANADA INC., 168886 CANADA INC., AND 3339611  
CANADA INC.  
(each, an “**Applicant**”, and collectively, the “**Applicants**”)

**MONITOR’S CERTIFICATE****RECITALS**

A. All undefined terms in this Monitor’s Certificate have the meanings ascribed to them in the Order of the Court dated ●, 2018 (the “**Approval and Vesting Order**”) approving the Agreement of Purchase and Sale between Sears Canada Inc. (“**Sears Canada**”), as vendor, and Pan American Properties Inc. (the “**Purchaser**”) as purchaser dated with effect as of July 26, 2018 (the “**APS**”), a copy of which is attached as Exhibit “A” to the Affidavit of Philip Mohtadi dated August 8, 2018.

B. Pursuant to the Approval and Vesting Order the Court approved the APS and provided for the sale, assignment and transfer to the Purchaser of Sears Canada’s right, title and interest in and to the Subject Assets (as defined in the APS), which sale, assignment and transfer is to be effective with respect to the Subject Assets upon the delivery by the Monitor to the Purchaser and Sears Canada of a certificate confirming that (i) the conditions to Closing as set out in sections 7.1, 7.2 and 7.3 of the APS have been satisfied or waived by the Purchaser and Sears Canada, as applicable,



- 2 -

and (ii) the Purchase Price and any Taxes payable (each as defined in the APS) to Sears Canada that are not self-assessed and remitted by the Purchaser have been received by the Monitor.

THE MONITOR CERTIFIES the following:

1. The conditions to Closing as set out in sections 7.1, 7.2 and 7.3 of the APS have been satisfied or waived by the Purchaser and Sears Canada, as applicable; and
2. The Purchase Price and any Taxes payable to Sears Canada that are not self-assessed and remitted by the Purchaser have been received by the Monitor.

This Monitor's Certificate was delivered by the Monitor at \_\_\_\_\_ [TIME] on \_\_\_\_\_ [DATE].

**FTI CONSULTING CANADA INC.**, in its capacity as Court-appointed Monitor of Sears Canada Inc., et al. and not in its personal or corporate capacity

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

Name:

Title:

## SCHEDULE "B"

No.	Location / Address	Province	Land Registry Office	Legal Description	Encumbrances to be Expunged/ Deleted
1	167 Malpeque Road, Charlottetown, Prince Edward Island	PE	Charlottetown Registry of Deeds	<p>167 Malpeque Road, Charlottetown, Prince Edward Island.</p> <p>PID: 388207</p> <p>ALL THAT TRACT, PIECE OR PARCEL OF LAND situate, lying and being in Charlottetown, in Queens County, Province of Prince Edward Island, bounded and described as follows, that is to say:</p> <p>COMMENCING at a survey marker (5687) set in the West side of the Malpeque or Route 2 which survey marker has co-ordinates East 460769.150 feet and North 344563.276 feet:</p> <p>THENCE on an azimuth 155° 29' 13", a distance of 250 feet to calculated point 5682;</p> <p>THENCE on an azimuth 155° 27' 59", a distance of 163.87 feet to survey marker 5681;</p> <p>THENCE on an azimuth 186° 15' 16", a distance of 81.71 feet to calculated point 4695;</p> <p>THENCE on an azimuth 186° 15' 21", a distance of 104.42 feet to survey marker 4696;</p> <p>THENCE in a Southwestwardly direction on an arc of a curve having a radius of 90.96 feet for an arc distance of 103.57 feet to survey marker 4697;</p> <p>THENCE on an azimuth 251° 29' 25", a distance of 664.65 feet to survey marker 4698;</p> <p>THENCE on an azimuth 248° 05' 50", a distance of 441.65 feet to survey marker 4699;</p> <p>THENCE on an azimuth 335° 23' 41", a distance of 276.52 feet to calculated point 4705;</p> <p>THENCE on an azimuth 335° 28' 15", a distance of 169.69 feet to survey marker 5644;</p> <p>THENCE on an azimuth 65° 28' 15", a distance of 852.00 feet to survey marker 5689;</p>	NIL

No.	Location / Address	Province	Land Registry Office	Legal Description	Encumbrances to be Expunged/ Deleted
				<p>THENCE on an azimuth 335° 29' 04", a distance of 82.02 feet to survey marker 5679;</p> <p>THENCE on an azimuth 65° 32' 06", a distance of 433.53 feet through survey marker 5680 and calculated point 5678 to the point at the place of commencement.</p> <p>CONTAINING 15.05 acres of land a little more or less and being Lot 04-1 as shown on a "Plan of Survey Showing Lots 04-1 Being Comprised of Lands of Pan-American Trust Company" as prepared by Locus Surveys Ltd. on July 15, 2004 and being Drawing No. 03672L3 together with a full, free and uninterrupted right-of-way for the Grantee, its successors and assigns and their invitees, customers and guests over ALL THAT TRACT, PIECE OR PARCEL OF LAND situate, lying and being in Charlottetown, in Queens County, Province of Prince Edward Island, bounded and described as follows, that is to say:</p> <p>COMMENCING at a calculated point set in the West side of Route 2 or the Malpeque Road which calculated point 5685 has co-ordinates East 460629.735 feet and North 344869.010 feet;</p> <p>THENCE on an azimuth 245° 32' 07" a distance of 367.54 feet through survey marker 5664 to survey marker 5690;</p> <p>THENCE on an azimuth 155° 29' 04" a distance of 336.02 feet to survey marker 5680;</p> <p>THENCE on an azimuth 245° 32' 06" ad distance of 66 feet to survey marker 5679;</p> <p>THENCE on an azimuth 335° 29' 04" a distance of 416.02 feet to survey marker 5688;</p> <p>THENCE on an azimuth 65° 32' 07" a distance of 433.52 feet through survey marker 5653 to calculated point 5307 in the West side of Route 2 or the Malpeque Road having co-ordinates East 460596.54 feet and North 344941.80 feet, as shown on a plan of survey by I S E Lid., dated July 27, 2004, Drawing number 4130;</p>	

No .	Location / Address	Provi nce	Land Registr y Office	Legal Description	Encumbr ances to be Expunged/ Deleted
				<p>THENCE on an azimuth 155° 29' 13" a distance of 66 feet along the West side of the Malepque Road to the place of commencement;</p> <p>BEING Parcels R1 and Parcel C as set out on the above-mentioned plan, less that portion conveyed to the Government of Prince Edward Island for the widening of Route 2 or the Malpeque Road.</p>	

**SCHEDULE “C”  
PERMITTED ENCUMBRANCES**

**“Permitted Encumbrances”** means, collectively, (a) any Encumbrances resulting from the Purchaser’s actions or omissions; and (b) the items identified in Schedule “H” of the APS.

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SEARS CANADA INC., 9370-2751 QUEBEC INC., 191020 CANADA INC., THE CUT INC., SEARS CONTACT SERVICES INC., INITIUM LOGISTICS SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM TRADING AND SOURCING CORP., SEARS FLOOR COVERING CENTRES INC., 173470 CANADA INC., 2497089 ONTARIO INC., 6988741 CANADA INC., 10011711 CANADA INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA LTD., 4201531 CANADA INC., 168886 CANADA INC., AND 3339611 CANADA INC.

Applicants

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**MOTION RECORD OF THE APPLICANTS**

(Motion for Approval of Agreement of Purchase and Sale with  
Pan American Properties Inc. (Charlottetown, PEI))

**OSLER, HOSKIN & HARCOURT, LLP**

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