

**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.

(each an "Applicant", and collectively, the "Applicants")

MOTION RECORD
(Motion for an order appointing the Retiree Committee for the RCA Trust,
returnable November 7, 2017)

November 3, 2017

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Tab 1

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

**ONTARIO
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(each an "Applicant", and collectively, the "Applicants")

**NOTICE OF MOTION
(For an order appointing the Retiree Committee for the RCA Trust,
returnable November 7, 2017)**

Representative Counsel to the Representatives of employees and retirees with pension and post-retirement benefit entitlements of the Applicants will make a motion to a Judge presiding over the Commercial List on November 7, 2017 at 10:00 a.m. at 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion shall be heard orally.

THIS MOTION IS FOR:

1. **AN ORDER** establishing a Retiree Committee composed of retirees Ken Eady, Brent Hollister, George Hughes, Larry Moore, Claude Sénéchal, and William Turner, for the purposes of the Amended and Restated Retirement Compensation Arrangement Trust Agreement (the "**RCA Trust Agreement**") between Sears Canada Inc. and CIBC Mellon Trust Company (the "**Trustee**") effective October 1, 2012, despite section 8.2 of the RCA Trust Agreement;
2. **AN ORDER** that any instructions from the Retiree Committee to the Trustee are to be communicated by Representative Counsel (Koskie Minsky LLP);
3. **A DECLARATION** that the members of the Retiree Committee shall not incur any liability as a result of their appointment or the fulfillment of their duties, save and except for any claims based on gross negligence or wilful misconduct on their part;
4. **AN ORDER** authorizing Representative Counsel, the Retiree Committee, and the Trustee to apply to this Court for advice and directions in the discharge or variation of their powers and duties, including with respect to the payment of costs, as the case may be;
5. **AN ORDER** authorizing that the reasonable legal, actuarial, and financial advisor costs, as the case may be, of the RCA Trust beneficiaries as incurred by Representative Counsel, to the extent such costs are not paid due to the exceeding of the fee cap of the Represented Parties in the applicable letter agreement between Sears Canada Inc. and Representative Counsel dated June 22, 2017, shall be paid out of the fund of the RCA Trust;
6. **A DECLARATION** that none of the Applicants shall have any liability, responsibilities or duties with respect to the RCA Trust or any actions taken by the Retiree Committee from and

after the appointment of the Retiree Committee, however, despite the foregoing, Sears Canada Inc. shall reasonably cooperate with respect to providing information and data in its possession or under its control to Representative Counsel as may be required for the administration or wind up of the RCA Trust. If the consent of the administrator of the Sears Canada Pension Plan is required for the provision of such information to Representative Counsel, Sears Canada shall seek the consent of the administrator;

7. **AN ORDER**, if necessary, abridging the time for service of this motion and dispensing with service on any person other than those served; and
8. Such further and other relief as counsel may request and as this Honourable Court deems just.

THE GROUNDS FOR THE MOTION ARE:

The Sears Canada Inc. Supplementary Retirement Plan

1. During their employment years with Sears Canada, eligible employees earned pension benefits that are to be paid to them from the Sears Canada Inc. Registered Retirement Plan (the "**Sears Canada Plan**") each month during their retirement for their lifetimes.
2. On March 29, 1974, Sears Canada established the Supplementary Retirement Plan ("**SRP**") to pay additional, supplemental pension benefits to certain employees on their retirement in an amount in excess of the pension benefits that are paid under the Sears Canada Plan since the benefits from the Sears Canada Plan are subject to maximum pension benefit limits under the *Income Tax Act* (Canada). The SRP pays benefits to certain retirees in excess of the limits in the Sears Canada Plan.

3. In 2006, Sears Canada established the Retirement Compensation Arrangement Trust fund (the "**RCA Trust**") as a separate trust fund to pay the monthly benefits to the eligible retirees under the SRP, which is classified as a "retirement compensation arrangement" under subsection 248(1) of the *Income Tax Act* (Canada) ("**RCA**").

4. In 2006, Sears Canada entered into a Trust Agreement with Royal Trust Corporation of Canada as the custodial trustee with respect to the funds for the RCA (the "**Royal Trust Agreement**").

5. For individuals entitled to an SRP benefit and whose active employment with Sears ended prior to January 1, 2010, the SRP benefit is paid to them from the RCA Trust. There are approximately 97 individuals who are entitled to SRP pension benefits payable from the RCA Trust. There are four other individuals who are entitled to supplementary benefits from Sears Canada Inc. which are not paid from the RCA Trust but are paid directly by Sears Canada Inc., and which Sears Canada suspended as of the end of September, 2017. The four individuals are not subject to this motion.

6. In 2012, Sears Canada replaced Royal Trust as the trustee of the RCA Trust with a new trustee, CIBC Mellon Trust Company ("**CIBC Mellon**"). Sears Canada entered into a new trust agreement with CIBC Mellon (the "**CIBC Mellon Trust Agreement**") which, among other things, (i) provides for the appointment and duties of CIBC Mellon as the trustee and custodian of the fund; and (ii) replaces and supersedes the Royal Trust Agreement.

The Retiree Committee

7. The SRP Plan text contemplates the establishment of an "SRP Committee" comprised of retirees eligible for a benefit from the SRP. To date, the company has not established an SRP Committee.

8. In the absence of the establishment of the SRP Committee, section 8.2 of the CIBC Mellon Trust Agreement states that a "Retiree Committee" be established for the RCA Trust by a vote of the majority of the beneficiaries of the RCA Trust comprised of five beneficiaries, failing which the Retiree Committee will be composed of the sole beneficiary who has the greatest value of benefits under the RCA Trust.

9. The Retiree Committee is intended to serve as a replacement for an absent SRP Committee.

10. In accordance with section 8.4 of the CIBC Mellon Trust Agreement, following an "Event of Default" by the company (i.e., Sears Canada Inc.) as defined therein, the Retiree Committee is entitled to exercise all the rights of Sears Canada (to the exclusion of Sears Canada) which are conferred upon Sears Canada under the Trust Agreement.

11. The formation of the Retiree Committee is critical where the company is being liquidated, as is the case for Sears Canada Inc. CIBC Mellon will rely on Representative Counsel and the Retiree Committee to provide directions and instructions, in accordance with the terms of the CIBC Mellon Trust Agreement.

12. The establishment of the Retiree Committee by holding a vote by mail of retirees located across Canada will be time-consuming and would delay the formation of the Retiree Committee. Accordingly, this motion is being brought for an order appointing the Retiree Committee.

Qualification of the Retiree Committee Members

13. Ken Eady, Brent Hollister, George Hughes, Larry Moore, Claude Sénéchal, and William Turner are the proposed members of the Retiree Committee. All of the proposed Retiree Committee Members, except for Ken Eady, are beneficiaries of the RCA Trust.

14. Ken Eady, Larry Moore, and William Turner are also the Court-appointed Representatives for all non-unionized retirees and employees in the CCAA proceedings of Sears Canada with respect to all pension and post-retirement benefit entitlements, including entitlements under the SRP.

15. Additionally, Ken Eady, Larry Moore, Claude Sénéchal, and William Turner are all directors of the Store and Catalogue Retiree Group (the "SCRG"). The SCRG is a volunteer organization dedicated to the protection of the company pensions and benefits of all Sears Canada retirees and their surviving beneficiaries.

16. All of the proposed Retiree Committee members are knowledgeable, professional individuals who are suitable for the role of Retiree Committee members.

17. *Rules of Civil Procedure*, R.R.O. 1990, Reg 194, Rule 37.01.

18. The *Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C-36, section 11.

19. Such further and other grounds as counsel may advise and of which this Honourable Court will permit.

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

- a) The Affidavit of William Turner, with exhibits, sworn on October 3, 2017;
- b) The Affidavit of Ken Eady, sworn on October 4, 2017;
- c) The Affidavit of Claude Sénéchal, sworn on October 4, 2017;
- d) The Affidavit of Larry Moore, sworn on October 12, 2017;
- e) The Affidavit of George Hughes, sworn on October 16, 2017;
- f) The Affidavit of Brent Hollister, sworn on October 16, 2017; and
- g) Such further and other evidence as counsel may advise and which this Honourable Court may permit.

November 3, 2017

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Representative Counsel to the Retirees of
Sears Canada

Tab 2

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

**ONTARIO
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(each an "**Applicant**", and collectively, the "**Applicants**")

**AFFIDAVIT OF WILLIAM R. TURNER
(Sworn on October 3, 2017)**

I, **WILLIAM R. TURNER**, of the City of Toronto, in the Province of Ontario,

MAKE OATH AND SAY:

1. I am a retiree of Sears Canada Inc. and a beneficiary of the Sears Canada Inc. Supplementary Retirement Plan (the "**SRP**" or the "**Plan**"). As such, I have knowledge of the matters to which I hereinafter depose.
2. Where I make statements in this affidavit which are not within my personal knowledge, I have indicated the source of that information and I believe such

information to be true. To the extent that any of the information set out in this affidavit is based on my review of the documents, I verily believe the information to be true, unless otherwise stated.

3. I swear this Affidavit in support of a motion by Representative Counsel for an Order appointing the Retiree Committee for the RCA Trust (defined below), and for no improper purpose.

Background

4. I started working at Simpsons-Sears Limited, the predecessor company of Sears Canada, in May 1996 as a Trainee in the Ottawa Carlingwood store. I was transferred shortly thereafter to the company headquarters in Toronto, where I spent the balance of my 36 year career in merchandising. From 1992 to 1997, I served on the Board of Directors of Sears Canada. I retired from Sears Canada in 2002 as the President of Merchandising, Marketing, and Logistics.

5. I am currently the President of the Store and Catalogue Retiree Group ("SCRG"), a retiree group formed to protect pension and health benefits of retired employees of Sears Canada. SCRG currently has over 6,000 Sears retirees as members. The total Sears retiree population is over 18,000 individuals.

6. On July 13, 2017, I was appointed as one of the Representatives in these CCAA proceedings to act in the interests of all non-unionized retirees and employees with pension and post-retirement benefit entitlements. The court also appointed the firm Koskie Minsky LLP as Representative Counsel.

7. I worked with Sears Canada for my entire professional career. As part of my compensation for my employment service for Sears Canada, I earned an entitlement to retiree benefits from Sears Canada, including registered and supplemental pension benefits to be paid to me during my retirement years. I receive pension benefits from the Sears Canada Inc. Registered Retirement Plan (the "**Registered Pension Plan**") and the SRP.

8. My monthly supplemental pension benefits are payable to me pursuant to the SRP. Attached hereto as Exhibit "A" is a copy of the SRP Plan text, as amended and restated as at July 1, 2008.

9. For individuals entitled to an SRP benefit and whose active service with Sears ended prior to January 1, 2010, the SRP benefit is paid to them from a Retirement Compensation Arrangement Trust fund (the "**RCA Trust**") established by Sears Canada in 2006. As such, I and the other eligible retirees are beneficiaries of the RCA Trust.

10. I have been advised by the firm of Koskie Minsky LLP, the Representative Counsel to the non-unionized retirees and employees in these CCAA proceedings, that there are approximately 97 individuals who are entitled to supplementary pension benefits under the SRP and paid from the RCA Trust. There are also 4 individuals who are entitled to supplementary benefits from Sears which are not paid from the RCA trust and which Sears Canada has said will be suspended as of the end of September, 2017. These individuals are not subject to this motion.

Purpose of the SRP and RCA Trust

11. Sears established the SRP on March 29, 1974 to pay supplemental pension benefits to certain employees on their retirement in an amount in excess of the pension benefits that paid under the Registered Pension Plan but which are subject to maximum amounts as a result of the maximum pension benefit limits under the *Income Tax Act (Canada)*.

12. The RCA Trust was established in 2006 by Sears Canada as a separate trust fund to pay the monthly benefits to eligible retirees under the SRP and is classified as a "retirement compensation arrangement" under subsection 248(1) of the *Income Tax Act (Canada)* ("**RCA**").

13. On or around February 17, 2006, Sears Canada entered into a Trust Agreement with Royal Trust Corporation of Canada as the custodial trustee with respect to the funds for the RCA. Attached hereto as Exhibit "**B**" is a copy of the Agreement between Sears Canada and Royal Trust dated February 17, 2006.

14. On or around December 31, 2012, Sears Canada replaced Royal Trust with a new trustee, CIBC Mellon Trust Company ("**CIBC Mellon**"). Sears Canada then entered into a new trust agreement with CIBC Mellon to, among other things, (i) provide for the appointment and duties of CIBC Mellon as the new trustee and custodian of the fund; and (ii) replace and supersede the Royal Trust Agreement. Attached hereto as Exhibit "**C**" is a copy of the Trust Agreement between Sears Canada and CIBC Mellon dated December 31, 2012 (the "**CIBC Mellon Trust Agreement**").

SRP Committee

15. Pursuant to section 2.19 of the SRP Plan text, an "SRP Committee" is a committee of SRP members established by the Company for the purposes of the Plan. I am advised by Representative Counsel that Sears Canada did not establish an SRP Committee. In the absence of the establishment of the SRP Committee, section 8.2 of the CIBC Mellon Trust Agreement requires a vote of the majority of the beneficiaries of the RCA Trust in order to establish a "Retiree Committee", which is to serve as a replacement for an absent SRP Committee. Section 8.2 also specifies that the Retiree Committee is not to exceed 5 members in number.

16. In accordance with section 8.4 of the CIBC Mellon Trust Agreement, following an "Event of Default" as defined therein, the Retiree Committee is entitled to exercise all the rights of Sears Canada (to the exclusion of Sears Canada) which are conferred upon Sears Canada under the Trust Agreement.

17. I am advised by Representative Counsel that the application by Sears Canada for CCAA protection on June 22, 2017 constitutes an "Event of Default" under the terms of the CIBC Mellon Trust Agreement. In these circumstances, I am also advised by Representative Counsel that Sears Canada would no longer be providing instructions and directions to CIBC Mellon. Instead, CIBC Mellon, as the trustee and custodian of the RCA Trust, is now entitled to rely upon the authorized instructions from the newly-formed Retiree Committee.

18. I have spoken with fellow retirees that Ken Eady, Brent Hollister, George Hughes, Larry Moore, and Claude Sénéchal who, along with me, agree to become

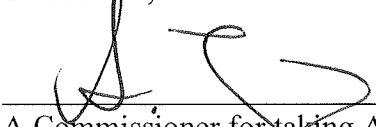
members of the Retiree Committee (the "**Retiree Committee Members**"). The committee members are volunteers who are not compensated.

19. I am advised by Representative Counsel and believe that it is appropriate to be appointed as a member of the Retiree Committee, as required by the CIBC Mellon Trust Agreement, and to obtain the appropriate protections.

20. I believe, as do the other proposed Committee members, that holding a vote by mail will be time-consuming and could delay the formation of the Retiree Committee. I am also advised by Representative Counsel and believe that they have had discussions with CIBC Mellon to bring a motion before the court and request the court to order the formation of the Retiree Committee instead of holding a vote of the beneficiaries of the RCA Trust and that CIBC Mellon is in support of such a motion.

21. I make this affidavit in support of a motion for an order forming the Retiree Committee and for no improper purpose.

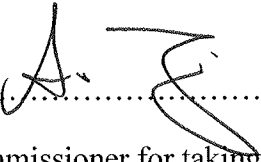
SWORN BEFORE ME at the City of Toronto, in the Province of Ontario on October 3rd, 2017.


A Commissioner for taking Affidavits, etc.

LSUC # 70164K


WILLIAM R. TURNER

This is **Exhibit "A"** referred to in the
affidavit of
William R. Turner
sworn before me, this 3rd
day of October, 2017


.....

A Commissioner for taking affidavits, etc.

LSUC# 70164K

SEARS CANADA INC.
SUPPLEMENTARY RETIREMENT PLAN
(as amended and restated at July 1, 2008)

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SECTION 1 INTRODUCTION

- 1.01 The Plan was established by resolution of the Board of Directors of the Company on March 29, 1976, pursuant to which Members of the Base Plan whose pensions are subject to the maximum imposed by the Income Tax Act receive additional amounts from the Company to provide a total pension in the amount defined by the Base Plan formula without the Income Tax Act maximum.
- 1.02 The Plan was amended, in February of 2006, with effect from January 1, 2006, to provide for a measure of funding with respect to certain of the Company's retirees.
- 1.03 The Plan was further amended with effect from three dates in 2006 to comply with employment separation agreements entered into by the Company.
- 1.04 A consolidated Plan text was created as of July 1, 2006 to reflect the Plan text, as originally adopted, and the first two of the three amendments described above. There was no intent to effect any substantive change from the Plan text, as it read immediately before July 1, 2006.
- 1.05 The Plan was amended effective December 18, 2006 with respect to Members whose employment transferred to JP Morgan Chase Bank N.A. (Toronto Branch) ("JPMorgan") to provide that their benefit determination under the Plan will occur upon termination of employment with JPMorgan, consistent with their treatment under the Base Plan.
- 1.06 This amended and restated Plan text implements the decision of the Board of Directors of the Company to amend the Base Plan effective July 1, 2008 so that Pensionable Service Years cease to accrue while Pensionable Earnings continue to

accrue, and to introduce a defined contribution component, and to amend the Plan to reflect these changes *mutatis mutandis* except that the defined contribution component shall not apply to the Plan.

- 1.07 Unless expressly stated to the contrary in this amended and restated Plan text, the terms of this Plan text applicable to the determination of Supplementary Pension, Supplementary Bridge Pension, Commuted Value of Supplementary Pension and death benefits from this Plan apply to Members for whom the earlier of:
- (1) Pension commencement;
 - (2) termination of Continuous Service pursuant to which an election to receive a Commuted Value transfer is made; or
 - (3) death

occurs on or after July 1, 2008. The determination of Supplementary Pension, Supplementary Bridge Pension, Commuted Value of Supplementary Pension and death benefits from the Plan with respect to Members for whom the earlier of the above events occurs before July 1, 2008 is made in accordance with the terms of the Plan in effect at the time of that event.

SECTION 2 DEFINITIONS

- 2.01 **Aggregate Valuation**, in relation to a calendar month, means the total of all Individual Valuations with respect to Members who become Retirees in that month, prepared in accordance with Section 5.04(2).
- 2.02 **Aggregate Wind-up Liability**, at any time, means the total of all amounts each of which is the Wind-up Liability in relation to a Retiree, as at that time.
- 2.03 **Annual Valuation** means the valuation prepared in accordance with Section 5.02(1).
- 2.04 **Base Plan** means the Sears Canada Inc. Registered Retirement Plan, as amended from time to time.
- 2.05 **Bridge Pension** means the annual bridge benefit payable to a Member from the DB Provisions of the Base Plan until the Member attains age 65.
- 2.06 **Commutated Value** has the meaning assigned to that expression in the Base Plan. For greater certainty, in no event shall the Commuted Value of any benefit under the Plan reflect the fact that the Plan and its beneficiaries do not benefit from the tax treatment afforded to pension plans registered under the Income Tax Act and their beneficiaries.
- 2.07 **Event of Default** means
- (1) the failure of the Company to deliver to the Trustee an Annual Valuation by July 31 of a Year, where the Trustee has notified the Company of such failure and no Annual Valuation has been received by the Trustee within sixty (60) days of such notification;

- (2) the failure of the Company to make the contributions described in Section 5.03 by December 31 of a Year, where the Trustee has notified the Company of such failure by February 28 of the immediately following Year and the contributions have not been received by the Trustee before June 30 of that immediately following Year;
- (3) the failure of the Company to provide proof to the Trustee of the payment of Refundable Tax in accordance with Section 5.06(2), where the Trustee has notified the Company of such failure and the Company fails to provide proof of such payment within sixty (60) days of the date of notification;
- (4) the occurrence of an Insolvent Date;
- (5) the termination of the Base Plan; and
- (6) the termination of the Plan.

2.08 **Funded Retiree** means a Retiree in respect of whom a contribution has been made by the Company to the Trust Fund in accordance with Section 5.03, 5.05 or 6.01(4) and includes a Retiree in respect of whom Surplus has been applied to reduce the Company's contribution under Section 5.05(1), in accordance with Section 5.05(2).

2.09 **Included Benefits** means:

- (1) with respect to a Retiree who terminates employment before 2006, all benefits payable under the Plan in respect of the Retiree; and
- (2) in any other case, all benefits payable under the Plan in respect of a Retiree other than benefits in respect of service while a United States resident or a United States citizen.

2.10 **Income Tax Act** means the *Income Tax Act* (Canada), as amended from time to time, the regulations made thereunder and the information circulars, interpretation bulletins

and administrative guidelines published by the Canada Revenue Agency in accordance with the *Income Tax Act* (Canada) and its regulations.

- 2.11 **Individual Valuation**, in relation to a Member, means a valuation prepared in accordance with Section 5.04(1).
- 2.12 **Insolvent Date** means the date on which the:
- (1) the Company is being wound up, dissolved or liquidated, whether pursuant to the provisions of the laws of a province or the federal laws of Canada applicable therein, or any other law or otherwise, or has become subject to the provisions of the Winding-up and Restructuring Act (Canada), or its existence is terminated or it has passed any resolution passed therefor;
 - (2) the Company has made a general assignment for the benefit of its creditors or filed a proposal or a notice of intention to make a proposal under the Bankruptcy and Insolvency Act (Canada) or otherwise acknowledged its insolvency or been declared or become bankrupt or insolvent;
 - (3) the Company has proposed a compromise or arrangement or otherwise brought proceedings under the Companies' Creditors Arrangement Act (Canada) or filed any petition or answer seeking any re-organization, arrangement, composition, re-adjustment, liquidation, dissolution or any other relief for itself under, or in any way taken the benefit of the Bankruptcy and Insolvency Act (Canada) or any other present or future law relative to bankruptcy, insolvency or other relief for debtors or for or against the benefit of creditors;
 - (4) a court of competent jurisdiction has entered an order, judgment or decree against the Company in respect of any re-organization, arrangement, composition, re-adjustment, liquidation, dissolution, winding-up, termination of existence, declaration of bankruptcy or insolvency, or similar relief under

any present or future law relative to bankruptcy, insolvency or other relief for debtors or for or against the benefit of creditors, whether or not the Company has acquiesced in the entry of such order, judgment or decree or such order, and such order, judgment or decree remains unvacated and unstayed for more than ten (10) days; or

- (5) any trustee in bankruptcy, receiver, receiver and manager, monitor or liquidator or any other officer with similar powers has been appointed over the Company's assets, or any portion thereof, with or without the consent or acquiescence of the Company, and such appointment remains unvacated and unstayed for more than ten (10) days.

- 2.13 **Pension** means the annual benefit payable to a Member from the DB Provisions of the Base Plan for the Member's lifetime.
- 2.14 **Plan** means this Sears Canada Inc. Supplementary Retirement Plan as amended from time to time.
- 2.15 **Plan Assets** means the assets held in the Trust Fund.
- 2.16 **Refundable Tax** has the meaning assigned to that expression in Part XI.3 of the Income Tax Act.
- 2.17 **Retiree**, at any time, means an individual who terminates employment with the Company, at or before that time, and who,
- (1) is in receipt of a Supplementary Pension at that time; or
 - (2) is at least age 55 at that time, terminated employment with the Company before age 55 and elected at the time of termination to receive a Supplementary Pension; or

- (3) terminated employment with the Company at or after age 55 and has provided the Company with any required instructions as to the form of Supplementary Pension that the individual is to receive.

For Members of the Base Plan whose employment was seconded to JPMorgan Chase Bank N.A. (Toronto Branch) ("JPMorgan") and whose employment was transferred to JP Morgan on December 18, 2005 or January 1, 2006, termination of employment with the Company means termination of employment with JPMorgan consistent with their treatment under the Base Plan.

Retiree includes, after an individual's death, any person entitled to an immediate pension under the Supplementary Plan in respect of the individual, where the person has provided the Company with any required instructions as to the form of pension that the person is to receive.

Retiree, at any time, does not include an individual who is, at that time, a United States citizen or a United States resident unless the individual terminated employment before 2006 and elected to be treated as a Funded Retiree by signifying his intention to the Company in a manner acceptable to the Company.

Retiree includes a Member who commences receipt of Pension while employed by an Employer pursuant to an election made under Section II.A.11.1 of the Base Plan as if the Member's employment with the Company had terminated when the Pension commenced or Commuted Value was transferred.

- 2.18 *Retirement Compensation Arrangement* has the meaning assigned to that expression under the Income Tax Act.
- 2.19 *SRP Committee* means a committee of Members established by the Company for the purposes of the Plan.

- 2.20 **Supplementary Bridge Pension** means the annual benefit payable under this Plan to a Member until the Member attains age 65.
- 2.21 **Supplementary Pension** means the annual pension payable under this Plan.
- 2.22 **Surplus**, in relation to an Annual Valuation, means the amount, if any, by which the value of the Plan Assets, as at the effective date of the valuation, exceeds the sum of the Aggregate Wind-up Liability, as at that same date, and the provision for wind-up expenses set out in the Annual Valuation.
- 2.23 **Trust Agreement** means any agreement in effect from time to time between the Company and the Trustee for the purposes of the Plan.
- 2.24 **Trust Fund** means the trust fund established and maintained in conjunction with the Plan.
- 2.25 **Trustee** means the trust company appointed by the Company to act as trustee of the Trust Fund pursuant to the terms of the Trust Agreement.
- 2.26 **Wind-up Administrator**, at any time after an Event of Default, means:
- (1) where the Event of Default is described in Section 2.07(1), (2), (3) or (4), the SRP Committee; and
 - (2) in any other case, the Company.
- 2.27 **Wind-up Liability** as at any particular time, in relation to a Retiree, means the value, as at the particular time, of all Included Benefits in respect of the Retiree, determined in accordance with the following assumptions:
- (1) the DB Provision of the Base Plan is terminated, as of the time immediately before that particular time;

- (2) all obligations under the DB Provision of the Base Plan in respect of the Retiree, are satisfied by the payment, at the time immediately before the particular time, of a lump sum amount;
- (3) any Retiree who has not commenced receipt of a Supplementary Pension, at the particular time, shall be assumed to have elected to commence receipt of a Supplementary Pension at the time immediately before the particular time, payable in the form selected by the Retiree and, if no election has been made, in the normal form of payment under the Plan;
- (4) the value of the benefits payable under the Plan shall be determined in accordance with the *Standard of Practice for Determining Pension Commuted Values* issued by the Canadian Institute of Actuaries, with an effective date of February 1, 2005, or any subsequent standard dealing with the same subject matter (the "Standard of Practice") for terminations occurring in the month that includes the particular time; and
- (5) no margin shall be allowed for adverse deviation.

For greater certainty, in no event shall the assumptions used for the purposes of determining value under paragraph (4) reflect the fact that the Plan and its beneficiaries do not benefit from the tax treatment afforded to pension plans registered under the Income Tax Act and their beneficiaries.

2.28 *Year* means a calendar year.

Capitalized terms not otherwise defined in the Plan shall have the meanings attributed thereto under the Base Plan. In this Plan, words importing the singular number include the plural and vice versa; and references to a Section or Sections means a Section or Sections in this instrument.

SECTION 3 SUPPLEMENTARY PENSION

3.01 *Supplementary Pension Commencing At or After Age 65*

Upon commencement of a Pension under the DB Provisions of the Base Plan applicable to retirement at normal retirement date or postponed retirement date, or upon commencement of a Pension to which a Member becomes entitled under the DB Provisions of the Base Plan applicable to benefits on termination at the Member's attainment of age 65, the Member is entitled to receive an annual amount of Supplementary Pension equal to the amount by which (1) exceeds (2), if any, where:

- (1) is the annual amount of the Member's Pension that would be payable from the Base Plan commencing at the Member's attainment of age 65 or postponed retirement date, as applicable, after adjustment for any optional form of payment elected by the Member, calculated without application of Sections II.A.9.2 and II.B.10.5 of the Base Plan; and
- (2) is the annual amount of the Member's Pension calculated as described in (1) but with the application of Sections II.A.9.2 and II.B.10.5 of the Base Plan.

3.02 *Supplementary Pension Commencing Before Age 65*

Upon commencement of payment of a Pension under the DB Provisions of the Base Plan applicable to retirement prior to normal retirement date, or under the DB Provisions of the Base Plan applicable to benefits on termination, to a Member before the Member attains age 65 the Member is entitled to receive an annual amount of Supplementary Pension equal to the amount by which (1) exceeds (2), if any, where:

- (1) is the annual amount of the Member's Pension that would be payable from the Base Plan on the Pension commencement date after adjustment for any optional form of payment elected by the Member and after any applicable

reduction of the Pension for early commencement, calculated without application of Sections II.A.9.2 and II.B.10.5 of the Base Plan; and

- (2) is the annual amount of the Member's Pension calculated as described in (1) but with the application of Sections II.A.9.2 and II.B.10.5 of the Base Plan.

3.03 *Commutated Supplementary Pension*

Where a Member becomes entitled to a Pension under the DB Provisions of the Base Plan applicable to benefits on termination and the Member elects to transfer the Pension entitlement from the Base Plan, the Member is entitled to receive the Commuted Value of the Supplementary Pension the annual amount of which is equal to the amount by which (1) exceeds (2), if any, where:

- (1) is the annual amount of the Member's Pension that would be payable from the Base Plan on the Pension commencement date that provides the Member with the greatest Commuted Value after adjustment of the annual amount payable according to any optional form of payment available to the Member and after any applicable reduction of the Pension for early commencement, calculated without application of Sections II.A.9.2 and II.B.10.5 of the Base Plan (but with the application of the excess contribution test in Section II.A.9.2 and II.B.10.5 of the Base Plan as if Sections II.A.9.2 and II.B.10.5 of the Base Plan had been applied); and
- (2) is the annual amount of the Member's Pension calculated as described in (1) but with the application of Sections II.A.9.2 and II.B.10.5 of the Base Plan.

3.04 *Supplementary Bridge Pension*

Where a Member becomes entitled to a Bridge Pension from the DB Provisions of the Base Plan, the Member is entitled to receive an annual amount of Supplementary Bridge Pension equal to the amount by which (1) exceeds (2) where:

- (1) is the annual amount of the Member's Bridge Pension that would be payable from the Base Plan without the application of Sections II.A.9.2 and II.B.10.5 of the Base Plan; and
- (2) is the annual amount of the Member's Bridge Pension with the application of Sections II.A.9.2 and II.B.10.5 of the Base Plan.

If the Member transfers the Bridge Pension entitlement from the Base Plan, then the Member will receive the Commuted Value of the Supplementary Bridge Pension.

3.05 *Terms of Payment*

- (1) Payment of a Supplementary Pension or Supplementary Bridge Pension will be made in accordance with the same commencement date and terms of payment applicable to the Member's Pension or Bridge Pension, so that any election made by the Member with respect to his Pension or Bridge Pension including an election to take a Commuted Value also applies to the Supplementary Pension or Supplementary Bridge Pension.
- (2) Payment of a Commuted Value to a Member shall be in full satisfaction of the entitlement of the Member to a Supplementary Pension or Supplementary Bridge Pension under this Plan.

3.06 *Benefits Determined Before January 1, 2003*

Notwithstanding Sections 3.01 and 3.02, Supplementary Pensions and Supplementary Bridge Pensions determined by the Company for Members whose employment ceased before January 1, 2003 are payable in the amounts and on the terms shown in the records of the Company.

3.07 *Post Retirement Inflation Adjustment*

Supplementary Pensions shall be increased in the same manner and on the same basis as the accompanying Pension is increased, where applicable, pursuant to the post retirement inflation adjustment provisions of the Base Plan.

3.08 *Special Provision for Certain Quebec Members*

Notwithstanding Section 3.05(1), for a Member who commences receipt of Pension while employed by an Employer or for whom the Commuted Value of their Pension is transferred out of the DB Provision of the Base Plan while employed by an Employer pursuant to an election under Section II.A.11.1 of the Base Plan, a Supplementary Pension or Supplementary Bridge Pension will also be paid before the Member's termination of Continuous Service.

SECTION 4 BENEFITS ON DEATH

4.01 *Death Benefit*

If a Member dies while actively employed by an Employer, or after employment has ceased and the Member retains an entitlement to Pension that has not commenced under the Base Plan:

- (1) if a death benefit is payable to the Member's Spouse under the Base Plan, the Member's Spouse shall also be paid a benefit equal to the Commuted Value of the Supplementary Pension the Member would have received under Section 3.01 or 3.02; or
- (2) if a death benefit is payable to the Member's Beneficiary under the Base Plan, the Member's Beneficiary shall also be paid a benefit equal to the Commuted Value of the Supplementary Pension the Member would have received under Section 3.01 or 3.02.

4.02 *Terms of Payment*

- (1) Payment of a death benefit under Section 4.01 will be made in accordance with the same commencement date and terms of payment applicable to the benefit payable to the Member's Spouse or Beneficiary under the Base Plan, so that any election made by the Member's Spouse or Beneficiary with respect to the Base Plan benefit also applies to the benefit payable under the Plan.
- (2) Payment of a Commuted Value to the Member's Spouse or Beneficiary shall be in full satisfaction of the entitlement of the Spouse or Beneficiary to benefits under this Plan.

SECTION 5 PAYMENT OF BENEFITS

5.01

- (1) The Company shall appoint a Trustee and shall establish and maintain a Trust Fund to be held by the Trustee pursuant to the terms of a written Trust Agreement between the Company and the Trustee, for the purposes of holding assets and paying benefits in respect of Retirees under this Plan. The Company shall have the sole right to select, appoint or remove the Trustee.
- (2) The Trust Fund shall be administered by the Trustee and invested in accordance with the statement of investment policies and procedures adopted by the Company and pursuant to the directions of any investment manager who may be appointed by the Company.
- (3) All benefits paid directly from the Trust Fund are subject to applicable withholding taxes. This Trust Fund is intended to be a Retirement Compensation Arrangement.

5.02

- (1) The Company shall cause the Actuary to prepare, for each Year after 2005, a valuation of the Plan with an effective date of December 31 of the calendar year immediately preceding the Year. The valuation shall value the Plan Assets, as at the effective date, and determine the Aggregate Wind-up Liability, as at that date. This valuation is herein referred to as an "Annual Valuation".
- (2) For greater certainty, the Aggregate Wind-up Liability, as of December 31 of a calendar year, shall include only those individuals who are Retirees as of that date.

- (3) The Company shall deliver a copy of the valuation to the Trustee on or before July 31 of the Year.

5.03

- (1) The Company shall contribute to the Trust Fund the amount, if any, disclosed in the Annual Valuation, by which
 - (a) the total of the Aggregate Wind-up Liability, as at the effective date of the Annual Valuation, and the amount estimated by the Actuary to be reasonably necessary to satisfy any expenses associated with the wind-up of the Trust Fund
exceeds
 - (b) the value of the Plan Assets, if any, as at that effective date.
- (2) The Company shall also contribute to the Trust Fund the amount, if any, by which
 - (a) the amount of Surplus that has been applied to reduce the Company's contributions under Section 5.05(1), in accordance with Section 5.05(2), with respect to Members who become Retirees after the effective date of the Annual Valuation,
exceeds
 - (b) the amount of Surplus, if any, shown in the Annual Valuation.
- (3) For greater certainty, where the Annual Valuation described in Section 5.03(2)(b) discloses no Surplus, the Company contribution required under Section 5.03(2) is the amount described in Section 5.03(2)(a).
- (4) The contributions described in Sections 5.03(1) and (2) shall be made no later than December 31 of the Year.

5.04

- (1) Where a Member becomes a Retiree at any time in a calendar month after 2005, the Company shall cause the Actuary to value, within sixty (60) days of the end of the month, the Wind-up Liability in relation to the Retiree, as at the end of the month. The Actuary shall value the liabilities using the assumptions that are appropriate as at the end of the month. This valuation is herein referred to as an "Individual Valuation", in relation to the Member.
- (2) The Company shall cause the Actuary to aggregate all Individual Valuations in relation to Members who become Retirees in a calendar month. This aggregate is herein referred to as the "Aggregate Valuation", in relation to the month.
- (3) The Company shall deliver a copy of the Aggregate Valuation, in relation to a calendar month, to the Trustee within ninety (90) days of the end of the month.

5.05

- (1) Subject to subsection (2), within sixty (60) days of the delivery to the Trustee of an Aggregate Valuation in relation to a calendar month, the Company shall contribute to the Trust Fund the amount, disclosed in the Aggregate Valuation, of the total of all amounts each of which is the Wind-up Liability in relation to a Member who becomes a Retiree in the month.
- (2) Subject to subsection (3), the Company's contribution under Section 5.05(1) may be reduced, upon notification to the Trustee that the Company will be applying the Surplus disclosed in the most recent Annual Valuation in the possession of the Trustee towards that contribution, except to the extent that such Surplus has previously been applied under this Section or has been withdrawn under Section 5.11.

- (3) No reduction of a contribution in respect of an amount disclosed in an Aggregate Valuation shall be made under Section 5.05(2) if, immediately before the reduction, the Trustee is in possession of another Aggregate Valuation and the Company has not contributed the amount, disclosed in the other Aggregate Valuation, that it is required to contribute in accordance with Section 5.05(1) or that it would be required to so contribute if the 60-day period referred to Section 5.05(1) had elapsed.

5.06

- (1) (The Company shall withhold from its contributions to the Trust Fund the Refundable Tax required to be withheld under the Income Tax Act with respect to contributions to a Retirement Compensation Arrangement and shall remit same to the Receiver General for Canada as required under the Income Tax Act.
- (2) The Company shall provide proof to the Trustee, within thirty (30) days of making a contribution to the Trust Fund, that it has remitted the Refundable Tax, with respect to the contribution, to the Receiver General for Canada.
- (3) The Plan Assets shall include the right to claim Refundable Tax in respect of contributions made to the Trust Fund.

5.07

- (1) Subject to Sections 5.06(1), 5.11, 5.14 and 6 and the provisions of the Trust Agreement providing for the payment of taxes and assessments in respect of the Trust Fund, the Plan Assets shall only be available to satisfy benefits under the Plan in respect of Funded Retirees.
- (2) The Company may pay benefits under the Plan in respect of Funded Retirees from its operating funds or it may direct the Trustee to make a payment of

benefits, otherwise payable under the Plan, in respect of Funded Retirees from the Trust Fund.

- (3) For the purposes of Section 5.07(2), the payment by the Trustee of benefits to an individual may be made by depositing the payment into an account held by the Company with a financial institution where the funds in the account may only be disbursed to that individual.
- (4) Any amount paid in respect of a Funded Retiree from the Trust Fund in accordance with this Plan discharges the Company from its obligation to make payments in respect of the Funded Retiree under the Plan, to the extent of that amount.

5.08 A Funded Retiree may enforce his or her claim for the payment of benefits under the Plan against the assets of the Company if, and to the extent that the Plan Assets are insufficient to pay such benefits at the time they become payable.

5.09 Subject to Section 6, benefits payable under this Plan, other than benefits payable in respect of Funded Retirees, shall be paid from the operating funds of the Company.

5.10 The Company may elect to provide an alternative arrangement for securing the payment of benefits in respect of Retirees. Such arrangement shall provide, in every material particular, the same level of security as would be provided by a trust fund holding assets permitted under the investment policy established in connection with the Trust Fund.

5.11

- (1) Subject to Sections 5.11(2) and 5.11(3), if the most recent Annual Valuation in the possession of the Trustee reveals an excess of the value of Plan Assets over 110% of the Aggregate Wind-up Liability, the Company may withdraw

Plan Assets, the value of which does not exceed that excess, where the excess is reduced by any previous withdrawal in the year and by any part of the Surplus used in accordance with Section 5.05(2). The Company shall not be obliged to obtain the consent of the Members to make such withdrawal, nor is the Company obliged to give any notice of such withdrawal to the Members.

- (2) No withdrawal under Section 5.11(1) may take place more than one year after the effective date of the most recent Annual Valuation described in that Section.
- (3) No withdrawal under Section 5.11(1) may take place if, at the time of withdrawal, the Trustee is in possession of an Aggregate Valuation and the Company has not contributed the amount, described in the Aggregate Valuation, that it is required to contribute in accordance with Section 5.05(1) or that it would be required to so contribute if the 60-day period referred to Section 5.05(1) had elapsed.

5.12

- (1) No person shall have any right to or interest in any part of the Plan Assets except as, and to the extent provided from time to time, under the Plan and the Trust Agreement. No liability shall attach to any officer, shareholder, director, or employee of the Company for payment of any benefits or claims hereunder.
- (2) Any Plan benefits paid directly by the Company hereunder shall cease to be an obligation of the Trust Fund once paid by the Company.
- (3) The Company may authorize the Trustee to borrow such funds as are required to pay the Plan benefits from the Trust Fund on such terms as the Company and Trustee deem appropriate.

- (4) Despite any other provision of this Section 5.12, if a Funded Retiree provides the Company and the Trustee with a written notice certifying that the Company has failed to make payment of benefits due in accordance with this Plan for a period of at least 30 days following the due date for such payment, then the Trustee, upon providing the Company with written notice of the Trustee's intended action, shall pay such benefits directly to the Funded Retiree unless within thirty (30) days following the Trustee's notice to the Company, the Trustee is notified in writing by a senior official of the Company that the requirement by the Company to pay such amount or amounts, or a portion thereof, is being disputed by the Company, in which case the Trustee shall only pay the undisputed amount or portion thereof directly to the Funded Retiree.

5.13 *Fiscal Year*

The fiscal year of the Trust Fund shall be the calendar year.

5.14 *Expenses*

All reasonable charges, fees, taxes and other expenses, including without limitation any internal expenses of the Company or the SRP Committee, and the usual and reasonable expenses of any agents of the Company or the SRP Committee, incurred in the administration, investment and wind-up of the Trust Fund, shall be paid from the Trust Fund unless paid directly by the Company.

5.15 *Investment*

The Company is responsible, through investment managers appointed by the Company, for the investment of the Trust Fund in accordance with the statement of investment policies and procedures referred to in Section 5.16.

5.16 *Statement of Investment Policies and Procedures*

The Company is responsible for establishing and adopting a written statement of investment policies and procedures for the Trust Fund.

SECTION 6 PROCEDURE ON EVENTS OF DEFAULT

6.01

- (1) As soon as practicable after the Trustee has become aware of the occurrence of an Event of Default, the Trustee shall give written notice to the Company and the Actuary of that Event of Default (the "Event of Default Notice"). In addition, the Trustee shall cause the Actuary to prepare an actuarial report effective as of the date of occurrence of such Event of Default (such report being referred to herein as the "Final Actuarial Report" and the date of occurrence of such Event of Default being the Valuation Date for such Final Actuarial Report and the effective date of the wind-up of the Trust Fund).
- (2) The Final Actuarial Report shall be completed within six (6) months of the date that the Trustee requires the Actuary to prepare such report. The Final Actuarial Report shall contain the following:
 - (a) a determination of the value of the Plan Assets;
 - (b) a determination of the Aggregate Wind-up Liability as at the Valuation Date;
 - (c) an identification of Funded Retirees and Retirees other than Funded Retirees; and
 - (d) a certification by the Actuary that such Final Actuarial Report has been prepared in accordance with the provisions of the Plan in effect as at the Valuation Date.
- (3) For greater certainty, the Aggregate Wind-up Liability shall include only those individuals who are Retirees as of the Valuation Date.
- (4) The Company shall contribute to the Trust Fund the amount, if any, required to settle all Included Benefits for Retirees and pay all expenses associated

with the wind-up of the Plan. In addition, subject to Section 6.02, all Plan Assets shall be distributed to those persons entitled to payment thereunder in accordance with Section 6.03.

6.02

- (1) As soon as practicable after the date on which the Trustee becomes aware of an Event of Default (the "Commencement Date") and during the one hundred and twenty (120) day period immediately after the Commencement Date, there shall only be paid to Funded Retirees from the Trust Fund the amounts described in Section 6.02(3).
- (2) If a formal application to wind-up the Base Plan is made within the one hundred and twenty (120) day period immediately after the Commencement Date, there shall only be paid to Funded Retirees from the Trust Fund the amounts described in Section 6.02(3), until the entitlement to surplus under the Base Plan is finally determined.
- (3) The payments described in this Section 6.02(3) are the periodic Plan benefits that are required to be paid to a Funded Retiree as and when they are otherwise due, to the extent that such benefits are not paid by the Company.
- (4) Despite any other provision of this Plan, where the entitlement to surplus under the Base Plan is finally determined at any time, the amount of surplus under the Base Plan to which any Funded Retiree is entitled shall reduce, on an Actuarially Equivalent basis, the amount otherwise payable to the Funded Retiree under the Plan.
- (5) If no formal application to wind-up the Base Plan is made within the one hundred and twenty (120) day period immediately after the Commencement Date, all Plan Assets shall be distributed to those Funded Retirees entitled to payment thereunder.

6.03

- (1) After the Commencement Date, the non-cash assets of the Trust Fund shall be disposed of and the proceeds realized from such disposition together with the cash in the Trust Fund, shall be applied by the Trustee as directed by the Wind-up Administrator. The assets of the Trust Fund shall be applied, subject to any requirement of a statute or court order, in priority of payment, on the basis set forth below:
 - (a) payments in respect of the following costs, expenses, charges and liabilities of the Trust Fund:
 - (i) the reasonable costs, expenses, charges and liabilities owing to the Trustee in accordance with the terms of the Trust Agreement to the extent that the Trustee has not been able to recover such fees, costs, expenses, charges and liabilities from the Company or from the Trust Fund in accordance with said Trust Agreement;
 - (ii) the reasonable outstanding expenses and fees of agents and other professional advisors appointed by the Trustee pursuant to the Trust Agreement to the extent that the advisors have not been able to recover such fees, costs, expenses, charges and liabilities from the Company or from the Trust Fund in accordance with said Trust Agreement;
 - (iii) the reasonable outstanding costs, expenses, charges and liabilities incurred by the SRP Committee to the extent that the SRP Committee has not been able to recover such costs, expenses, charges and liabilities from the Company or from the Trust Fund in accordance with said Trust Agreement;

- (iv) all the disbursements and expenses incurred and that may be incurred in the management, maintenance and wind-up of the Trust Fund, to the extent that the disbursements and expenses have not been paid by the Company or recovered from the Trust Fund;
 - (b) any other proper charges or taxes applicable to, or levied against the Trust Fund;
 - (c) payment by way of lump sum equal to the Wind-up Liability in relation to each Funded Retiree, as set out in the Final Actuarial Report (and where there are sufficient assets to make the payments required under paragraphs (a) and (b) of Section 6.03(1) but not sufficient assets to make payment in respect of all of the Wind-up Liabilities, in relation to Funded Retirees, in accordance with paragraph (c) of Section 6.03(1), then Section 6.04(1) shall apply);
 - (d) payment by way of lump sum equal to the Wind-up Liability in relation to each Retiree, other than a Funded Retiree, as set out in the Final Actuarial Report (and where there are sufficient assets to make the payments required under paragraphs (a), (b) and (c) of Section 6.03(1) but not sufficient assets to make payment in respect of all of the Wind-up Liabilities, then Section 6.04(2) shall apply);
 - (e) after making the payments required under paragraphs (a), (b), (c) and (d) of this Section 6.03(1), the remaining assets, if any, shall be paid to the Company.
- (2) It is understood and agreed that, in view of the fact that the Trust Fund will be comprised, in part, of non-cash assets including Refundable Tax, distribution of the assets of the Trust Fund in accordance with Section 6.03(1) (and, if applicable, Section 6.04) may be made in more than one instalment, it being

understood however, that no payment shall be made to the Company under paragraph (e) of Section 6.03(1) until all of the amounts owing under paragraphs (a), (b), (c) and (d) of that Section have been paid.

- (3) Upon distribution of the assets of the Trust Fund as provided in this Section 6.03 (and, if applicable, in Section 6.04), the Trust shall be terminated pursuant to the terms of the Trust Agreement.

6.04

- (1) If after making (or having made provision for) the payments required under paragraphs (a) and (b) of Section 6.03(1), there are insufficient assets to make payment in respect of all of the Wind-up Liabilities, in relation to Funded Retirees (as provided under paragraph (c) of Section 6.03(1) and as determined in the Final Actuarial Report), each Funded Retiree shall receive a proportionate share, as determined by the Wind-up Administrator, on the advice of its counsel, of the remaining assets in an amount that is equal to the ratio that the Wind-up Liability, in relation to the Funded Retiree, is to the aggregate of all such Wind-up Liabilities, and the result shall be multiplied by the total assets which remain in the Trust Fund.
- (2) If after making (or having made provision for) the payments required under paragraphs (a), (b) and (c) of Section 6.03(1), there are insufficient assets to make payment in respect of all of the Wind-up Liabilities (as provided under paragraph (d) of Section 6.03(1) and as determined in the Final Actuarial Report), each Retiree, other than a Funded Retiree, shall receive a proportionate share, as determined by the Wind-up Administrator, on the advice of its counsel, of the remaining assets in an amount that is equal to the ratio that the Wind-up Liability, in relation to the Retiree, is to the aggregate of all of the Wind-up Liabilities, in relation to all Retirees other than Funded

Retirees, and the result shall be multiplied by the total assets which remain in the Trust Fund.

SECTION 7 AMENDMENT OR DISCONTINUANCE OF THE PLAN

- 7.01 Subject to Section 7.02, the Company may amend the Plan at any time in any way, including to discontinue the Plan, provided that an amendment shall not reduce a Supplementary Pension in pay or an amount that becomes payable before the date on which the amendment is made, or reduce the Supplementary Pension to which a Member who is employed would be entitled if employment ceased, and using earnings and service, as of the date on which the amendment is made.
- 7.02 Subject to Section 5.10, no amendment to the Plan shall reduce the funding provided under the Trust Fund in respect of Retirees as at the date of such amendment.
- 7.03 If the Plan is discontinued for any reason, then for purposes of the Plan the employment of each Member who is employed shall be deemed to have terminated at the effective date of the discontinuance. The Supplementary Pension of each such Member shall be determined as of the effective date of the discontinuance based on entitlement under the DB Provision of the Base Plan as if employment terminated as of the date of discontinuance.

SECTION 8 ADMINISTRATION

8.01 *Records*

Wherever the records of an Employer or of the Base Plan are used for the purposes of the Plan, such records shall be conclusive of the facts with which they are concerned, unless and until they are proven to be in error.

8.02 *Responsibility for Administration*

The administrator of the Plan shall be the Company, which shall be responsible for all matters relating to the administration of the Plan and may delegate such matters as it deems appropriate. The Company shall conclusively decide all matters relating to the administration, interpretation and application of the Plan, consistently with the text of the Plan.

8.03 *Rules for Administration*

The Company may enact rules and regulations relating to the administration of the Plan to carry out the terms of the Plan and may amend such rules and regulations from time to time, provided that rules and regulations do not conflict with any provision of the Plan.

SECTION 9 GENERAL

9.01 *No Right to Employment*

The Plan shall not be construed to create or enlarge any right of any person to remain in the employment of the Company, nor shall it interfere in any manner with the right of the Company to discharge any person.

9.02 *Severability*

If any provision of this Plan is held to be invalid or unenforceable by a court of competent jurisdiction, its invalidity or unenforceability shall not affect any other provision of the Plan and the Plan shall be construed and enforced as if such provision had not been included therein.

9.03 *Construction*

This Plan shall be construed in accordance with the laws of the Province of Ontario.

9.04 *No Duplication of Benefits*

An Employer is not liable to pay in total any more than the Supplementary Pension or the Commuted Value of the Supplementary Pension determined under the applicable rules of the Plan, whether to either or both of a Member and any person who establishes a claim against the Member's entitlement hereunder. Without restricting the generality of the foregoing, if there is any requirement in law that a person other than the person identified by the terms of this Plan is entitled to all or part of a benefit payable under this Plan, then the lawful requirement shall prevail over the conflicting provision of this Plan. If there is a dispute as to the lawful requirement the Company may seek direction from a court.

SECTION 10 APPENDIX A

1. In this Appendix A, the following terms have the following meanings:

“**Designated Employee**” means Brent Hollister, the President and Chief Executive Officer of the Company as of May 8, 2006;

“**Pensionable Earnings**”, in relation to the Designated Employee, means:

- (a) with respect to Pensionable Service before 1987, the Designated Employee’s Final Average Earnings; and
 - (b) with respect to Pensionable Service Years after 1986, the Designated Employee’s Final Average 3-Year Pensionable Earnings.
2. The provisions of this Appendix A apply solely with respect to the Designated Employee and shall be applied and interpreted according to the terms of the Base Plan as it existed at May 8, 2006.
3. This Appendix A forms part of the Plan and is fully effective in accordance with its terms.
4. Section 3.01 of the Plan is deleted and the following substituted therefor:

“Upon commencement of a Pension under Section 8 or Section 10 of the Base Plan (retirement at normal retirement date or postponed retirement date), or upon

commencement of a Pension to which the Designated Employee becomes entitled under Section 13 of the Base Plan (benefits on termination) at the Designated Employee's attainment of age 65, the Designated Employee is entitled to receive an annual amount of Supplementary Pension equal to the amount, if any, by which (1) exceeds (2), where:

- (1) is the annual amount of the Designated Employee's Pension that would be payable from the Base Plan commencing at the Designated Employee's attainment of age 65 or postponed retirement date, as applicable, after adjustment for any optional form of payment elected by the Designated Employee, based on the assumption that:
 - (a) Sections 15.2 and 15.A.5 of the Base Plan did not apply,
 - (b) the Designated Employee's Pensionable Service Years were equal to the sum of the amount of the Designated Employee's Pensionable Service Years, determined without reference to this paragraph, and two (2), and
 - (c) the Designated Employee's Pensionable Earnings were equal to \$1,295,000; and
- (2) is the annual amount of the Designated Employee's Pension that is payable from the Base Plan commencing at the Designated Employee's attainment of age 65 or postponed retirement date, as applicable, after adjustment for any optional form of payment elected by the Designated Employee."

5. Section 3.02 of the Plan is deleted and the following substituted therefor:

“Upon commencement of a Pension under Section 9 of the Base Plan (retirement prior to normal retirement date), or under Section 13 of the Base Plan (benefits on termination), to the Designated Employee before the Designated Employee attains age 65, the Designated Employee is entitled to receive an annual amount of Supplementary Pension equal to the amount, if any, by which (1) exceeds (2), where:

- (1) is the annual amount of the Designated Employee’s Pension that would be payable from Base Plan commencing on the Pension commencement date, after adjustment for any optional form of payment elected by the Designated Employee and without any applicable reduction of the Pension for early commencement, based on the assumption that:
- (a) Sections 15.2 and 15.A.5 of the Base Plan did not apply,
 - (b) the Designated Employee’s Pensionable Service Years were equal to the sum of the amount of the Designated Employee’s Pensionable Service Years, determined without reference to this paragraph, and two (2), and
 - (c) the Designated Employee’s Pensionable Earnings were equal to \$1,295,000; and
- (2) is the annual amount of the Designated Employee’s Pension that is payable from the Base Plan commencing at the Designated Employee’s Pension commencement date, after adjustment for any optional form of payment

elected by the Designated Employee and after any applicable reduction of the Pension for early commencement.”

6. Section 3.04 of the Plan is deleted and the following substituted therefor:

“Where the Designated Employee becomes entitled to a Bridge Pension from the Base Plan, the Designated Employee is entitled to receive an annual amount of Supplementary Bridge Pension equal to the amount, if any, by which (1) exceeds (2), where:

- (1) is the annual amount of the Designated Employee’s Bridge Pension that would be payable from Base Plan, based on the assumption that:
- (a) Sections 15.2 and 15.A.5 of the Base Plan did not apply,
 - (b) the Designated Employee’s Pensionable Service Years were equal to the sum of the amount of the Designated Employee’s Pensionable Service Years, determined without reference to this paragraph, and two (2), and
 - (c) the Designated Employee’s Pensionable Earnings were equal to \$1,295,000; and
- (2) is the annual amount of the Designated Employee’s Pension that is payable from the Base Plan commencing at the Designated Employee’s Pension commencement date, after adjustment for any optional form of payment elected by the Designated Employee and after any applicable reduction of the Pension for early commencement.”

For greater certainty, the Designated Employee is considered to become a Retiree on any date, on or after May 9, 2006, that he provides the Company with instructions as to the form of Supplementary Pension that he is to receive.

SECTION 11 APPENDIX B

1. In this Appendix B, the following term has the following meaning:

“Former Employee” means John Butcher, the former Executive Vice-President and Chief Financial Officer of the Company;
2. For the purposes of Section 5 of the Plan, the Former Employee is deemed to have become a Retiree at the end of March, 2006.
3. For the Purposes of the Plan, the Former Employee’s benefits under the Plan shall be determined in accordance with the following assumptions:
 - (a) in applying Sections 3.01, 3.02, 3.03 and 3.04 of the Plan, as of and after the end of March, 2006, the Former Employee shall be considered to have accrued a Pensionable Service Year for each of 2005 and 2006;
 - (b) in applying Sections 3.01(2), 3.02(2), 3.03(2) and 3.04(2) of the Plan, as of and after the end of March, 2006, the Former Employee shall be considered to have received Earnings, in 2006, equal to the Earnings received by him in 2005;
 - (c) in applying Sections 3.01(1), 3.02(1), 3.03(1) and 3.04(1) of the Plan, as of and after the end of March, 2006, the Former Employee shall be considered to have received Earnings, in 2005, equal to the total of his Earnings otherwise determined and \$234,041; and

- (d) in applying Sections 3.01(1), 3.02(1), 3.03(1) and 3.04(1) of the Plan, as of and after the end of March, 2006, the Former Employee shall be considered to have received Earnings, in 2006, equal to the amount of Earnings considered, in accordance with this Section 3, to have been received by him in 2005.
4. The provisions of this Appendix B apply solely with respect to the Former Employee and shall be applied and interpreted according to the terms of the Base Plan as it existed at March 31, 2006.

This Appendix B forms part of the Plan and is fully effective in accordance with its terms.

SECTION 12 APPENDIX C

1. In this Appendix C, the following terms have the following meanings:

“**Designated Employee**” means Frances Magliocchi, Senior Vice President, Human Resources, as of October 31, 2006;

2. The provisions of this Appendix C apply solely with respect to the Designated Employee whose employment ceased by reason of retirement as of October 31, 2006. Appendix C reflects the Designated Employee’s election to commence receipt of her Pension immediately upon retirement and her entitlement to receive a Supplementary Pension from the Plan calculated with an additional three (3) years and three (3) months of Pensionable Service Years while the offsetting calculation of her Pension from the Base Plan remains based on actual Pensionable Service Years to October 31, 2006.
3. Section 3.02 of the Plan is deleted and the following substituted therefor:

“Upon commencement of a Pension under Section 9 of the Base Plan (retirement prior to normal retirement date) the Designated Employee is entitled to receive an annual amount of Supplementary Pension equal to the amount, if any, by which (1) exceeds (2), where:

- (1) is the annual amount of the Designated Employee’s Pension that would be payable from Base Plan commencing on the Pension commencement date, after adjustment for any optional form of payment elected by the Designated

Employee and after any applicable reduction of the Pension for early commencement, based on the assumption that:

- (a) Sections 15.2 and 15.A.5 of the Base Plan (maximum under the Income Tax Act) did not apply,
 - (b) the Designated Employee's Pensionable Service Years were equal to the actual amount of the Designated Employee's Pensionable Service Years under the Base Plan plus three (3) years and three (3) months, and
- (2) is the annual amount of the Designated Employee's Pension that is payable from the Base Plan commencing at the Designated Employee's Pension commencement date, after adjustment for any optional form of payment elected by the Designated Employee and after any applicable reduction of the Pension for early commencement."
4. This Appendix C forms part of the Plan and is fully effective in accordance with its terms and shall be applied and interpreted according to the terms of the Base Plan as it existed at October 31, 2006.

Amendment to the Sears Canada Inc. Supplementary Retirement Plan

December 21, 2009

WHEREAS Sears Canada Inc. (the "Company") maintains the Sears Canada Inc. Supplementary Retirement Plan (the "Plan") for the purpose of providing supplementary pension benefits to certain members of the Sears Canada Inc. Registered Retirement Plan;

AND WHEREAS the Company has reserved the right to amend the Plan in accordance with the provisions of Section 7.01 thereof;

AND WHEREAS the Investment Committee (the "Investment Committee") of the Company's Board of Directors (the "Board") at its meeting held November 19, 2009 resolved to cease the pre-funding of retirement benefits for future retirees under the Plan and move to fund on a pay-as-you-go basis for those future retirees and recommend such change to the Board for approval;

AND WHEREAS the Human Resources and Compensation Committee (the "HRCC") of the Board at its meeting held November 19, 2009 resolved to cease the pre-funding of retirement benefits for future retirees under the Plan and move to fund on a pay-as-you-go basis for those future retirees and recommend such change to the Board for approval;

AND WHEREAS the Board at its meeting held on November 20, 2009 agreed with the recommendation of the Investment Committee and the HRCC to move to fund on a pay-as-you-go basis for future retirees under the Plan and authorize the Company to execute such documentation as is necessary to effect the change in funding;

AND WHEREAS the Company has been authorized to amend the Plan in accordance with the resolution of the Board and to take all actions necessary in order to implement that amendment;

NOW THEREFORE the Plan is hereby amended as follows:

1. Section 2.17 of the Plan is deleted and the following substituted therefor:

"2.17 *Retiree*, at any time, means an individual who terminates employment with the Company, before 2010 and at or before that time, and who

- (1) is in receipt of a Supplementary Pension at that time; or
- (2) is at least age 55 at that time, terminated employment with the Company before age 55 and elected at the time of termination to receive a Supplementary Pension; or

- (3) terminated employment with the Company at or after age 55 and has provided the Company with any required instructions as to the form of Supplementary Pension that the individual is to receive.

For Members of the Base Plan whose employment was seconded to JPMorgan Chase Bank N.A. (Toronto Branch) ("JPMorgan") and whose employment was transferred to JP Morgan on December 18, 2005 or January 1, 2006, termination of employment with the Company means termination of employment with JPMorgan consistent with their treatment under the Base Plan.

Retiree includes, after an individual's death, any person entitled to an immediate pension under the Supplementary Plan in respect of the individual, where the person has provided the Company with any required instructions as to the form of pension that the person is to receive.

Retiree, at any time, does not include an individual who is, at that time, a United States citizen or a United States resident unless the individual terminated employment before 2006 and elected to be treated as a Funded Retiree by signifying his intention to the Company in a manner acceptable to the Company.

Retiree includes a Member who commences receipt of Pension while employed by an Employer pursuant to an election made under Section II.A.11.1 of the Base Plan as if the Member's employment with the Company had terminated when the Pension commenced or Commuted Value was transferred."

2. This amendment is effective as of December 21, 2009.

Executed this 21st day of December, by



Franco Perugini
Associate General Counsel and Corporate Secretary

Amendment to the Sears Canada Inc. Supplementary Retirement Plan

December 20, 2012

WHEREAS Sears Canada Inc. (the "Company") maintains the Sears Canada Inc. Supplementary Retirement Plan (the "Plan") for the purpose of providing supplementary pension benefits to certain members of the Sears Canada Inc. Registered Retirement Plan;

AND WHEREAS the Company has reserved the right to amend the Plan in accordance with the provisions of Section 7.01 of the Plan;

AND WHEREAS the Board of Directors of the Company (the "Board") established an investment committee for the purpose of assisting the Board with the oversight of the investment of the fund established for the Plan (the "Investment Committee");

AND WHEREAS the Investment Committee approved the use of a letter of credit as a means of securing the Company's obligations under the Plan;

AND WHEREAS the Company is authorized to make non-material amendments to the Plan;

NOW THEREFORE the Plan is hereby amended as follows:

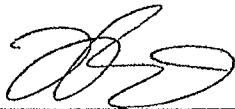
1. Effective December 20, 2012, Section 5.03 is amended by adding the following as subsection (5):

"(5) For the purposes of this Section, the Company's obligation to contribute shall be satisfied either by cash, or a letter of credit (as defined in the Trust Agreement), or a combination of the two, the value of such combination being the full amount of the contribution necessary in accordance with this Section."

2. Effective December 20, 2012, Section 5.05 is amended by adding the following as subsection (4):

"(4) For the purposes of this Section, the Company's obligation to contribute shall be satisfied either by cash, or a letter of credit (as defined in the Trust Agreement), or a combination of the two, the value of such combination being the full amount of the contribution necessary in accordance with this Section."

Executed this 20th day of December, 2012, by



Franco Perugini
Associate General Counsel and Corporate Secretary

This is **Exhibit "B"** referred to in the
affidavit of
William R. Turner
sworn before me, this 3rd
day of October, 2017



.....

A Commissioner for taking affidavits, etc.

LSUC # 70164K

RCA TRUST AGREEMENT

made as of

the 17th day of February, 2006

between

SEARS CANADA INC.

and

ROYAL TRUST CORPORATION OF CANADA

governing the Trust Fund

in respect of the

Sears Canada Inc. Supplementary Retirement Plan

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RCA TRUST AGREEMENT

THIS RCA TRUST AGREEMENT is entered into as of the 17th day of February 2006 to take effect as from the 17th day of February, 2006.

BETWEEN:

SEARS CANADA INC., a company duly incorporated under the laws of Canada (hereinafter referred to as the "Company")

OF THE FIRST PART

AND

ROYAL TRUST CORPORATION OF CANADA, a trust company incorporated under the laws of Canada (hereinafter referred to as the "Trustee")

OF THE SECOND PART

WHEREAS the Company has adopted a retirement plan (the "Plan" as hereinafter defined) for the purpose of providing benefits to its employees, on or after retirement in recognition of long service of such employees with, or on termination of employment from, the Company;

AND WHEREAS the Plan provides that the Company is to fund benefits thereunder in respect of persons who retire under the Plan (individually the "Retiree" and collectively the "Retirees" as hereinafter defined);

AND WHEREAS in conjunction with the Plan, the Company wishes to establish a trust fund (the "Trust Fund" as hereinafter defined) and to appoint the Trustee to be the trustee of the Trust Fund;

AND WHEREAS the Company represents and warrants that (a) the Plan is, or will be, on funding, a retirement compensation arrangement, as that term is defined in the Income Tax Act (Canada), and is not subject to pension benefits standards legislation in Canada, (b) any Contribution, as that term is defined herein, paid or delivered to the Trustee is in an amount as is required to be made in accordance with the terms of the Plan, and (c) the terms of the Plan are not inconsistent in whole or in part with the terms of this Trust Agreement;

NOW THEREFORE the Company and the Trustee agree as follows:

ARTICLE I
DEFINITIONS

The following terms set out herein with initial capital letters shall have the meanings assigned below:

- Actuary:** shall mean the person or firm retained by the Company (or, following an Event of Default if it is necessary, the SRP Committee) to provide actuarial services as may be required from time to time for the purposes of the Trust Fund or the Plan, who is (or, in the case of a firm, one of whose employees or members is) a Fellow of the Canadian Institute of Actuaries.
- Aggregate Valuation:** shall mean the valuation prepared in accordance with paragraph 6.3.1(b).
- Aggregate Wind-up Liability:** at any time, shall mean the total of all amounts each of which is the Wind-up Liability in relation to a Retiree, as at that time.
- Annual Valuation:** shall mean the valuation prepared in accordance with subsection 6.1.1.
- Base Plan:** shall mean the Sears Canada Inc. Registered Retirement Plan, as amended from time to time.
- Commencement Date:** shall have the meaning ascribed thereto in subsection 7.2.1.
- Company:** shall mean Sears Canada Inc.
- Contribution:** shall mean the amount or amounts which are from time to time required to be contributed to the Trust Fund.
- Corporate Action:** shall mean any conversion privileges, subscription rights, warrants or other rights or options available in connection with any securities of the Trust Fund, including those relating to the reorganization, recapitalization, takeover, consolidation, amalgamation, merger, liquidation, filing for or declaration of bankruptcy, or plans of arrangement, of any corporation, association or other entity.
- Depository:** shall mean any domestic or foreign depository or clearing or settlement agency or system, including a transnational book-based system, and shall include The Canadian Depository for Securities Limited and The Depository Trust Company.
- Direction:** shall mean all written directions, notices, requests, instructions and objections given in accordance with Article IX by an authorized signatory so authorized to act on behalf of the Company.
- Event of Default:** shall mean:
- (a) the failure of the Company to deliver to the Trustee an Annual Valuation by July 31 of a Year, where the Trustee has notified the Company of such failure and no Annual Valuation has been received by the Trustee within sixty (60) days of such notification;
 - (b) the failure of the Company to make a Contribution as described in Section 6.2 by December 31 of a Year, where the Trustee has notified the Company of such

failure by February 28 of the immediately following Year and the Contribution have not been received by the Trustee before June 30 of that immediately following Year;

- (c) the failure of the Company to provide proof to the Trustee of the payment of Refundable Tax in accordance with subsection 6.4.2, where the Trustee has notified the Company of such failure and the Company fails to provide proof of such payment within sixty (60) days of the date of notification;
- (d) the occurrence of an Insolvent Date;
- (e) the date upon which the Trustee is provided with evidence satisfactory to it that the Base Plan is terminated; and
- (f) the termination of the Plan.

Event of Default Notice: shall have the meaning ascribed thereto in paragraph 7.1.1(a).

Final Actuarial Report: shall have the meaning ascribed thereto in paragraph 7.1.1(b).

Funded Retiree: shall mean a Retiree in respect of whom a Contribution has been made by the Company in accordance with Sections 6.2 or 6.3 or subsection 7.1.4. and includes a Retiree in respect of whom Surplus has been applied to reduce the Contribution under subsection 6.3.3, in accordance with subsection 6.3.4.

Included Benefits: shall mean:

- (a) with respect to a Retiree who terminates employment before 2006, all benefits payable under the Plan in respect of the Retiree; and
- (b) in any other case, all benefits payable under the Plan in respect of a Retiree other than benefits in respect of service while a United States resident or a United States citizen.

Insolvent Date: shall mean the date on which the Trustee is provided with evidence satisfactory to it that:

- (a) the Company is being wound up, dissolved or liquidated, whether pursuant to the provisions of the laws of a province or the federal laws of Canada applicable therein, or any other law or otherwise, or has become subject to the provisions of the Winding-up and Restructuring Act (Canada), or its existence is

- 4 -

terminated or it has passed any resolution passed therefor;

- (b) the Company has made a general assignment for the benefit of its creditors or filed a proposal or a notice of intention to make a proposal under the Bankruptcy and Insolvency Act (Canada) or otherwise acknowledged its insolvency or been declared or become bankrupt or insolvent;
- (c) the Company has proposed a compromise or arrangement or otherwise brought proceedings under the Companies' Creditors Arrangement Act (Canada) or filed any petition or answer seeking any re-organization, arrangement, composition, re-adjustment, liquidation, dissolution or any other relief for itself under, or in any way taken the benefit of the Bankruptcy and Insolvency Act (Canada) or any other present or future law relative to bankruptcy, insolvency or other relief for debtors or for or against the benefit of creditors;
- (d) a court of competent jurisdiction has entered an order, judgment or decree against the Company in respect of any re-organization, arrangement, composition, re-adjustment, liquidation, dissolution, winding-up, termination of existence, declaration of bankruptcy or insolvency, or similar relief under any present or future law relative to bankruptcy, insolvency or other relief for debtors or for or against the benefit of creditors, whether or not the Company has acquiesced in the entry of such order, judgment or decree or such order, and such order, judgment or decree remains unvacated and unstayed for more than ten (10) days; or
- (e) any trustee in bankruptcy, receiver, receiver and manager, monitor or liquidator or any other officer with similar powers has been appointed over the Company's assets, or any portion thereof, with or without the consent or acquiescence of the Company, and such appointment remains unvacated and unstayed for more than ten (10) days.

Investment Manager:

shall mean any person or firm appointed by the Company pursuant to subsection 5.2.1 to manage the investment of the whole or any portion of the Trust Fund, who may be, but shall not be limited to

one or more employees of the Company, or a subsidiary thereof, who is responsible for directing the Trustee with respect to all investments of that portion of the Trust Fund assigned to that Investment Manager. In the event that an Investment Manager has not been appointed to manage the investments of any portion of the Trust Fund, the Company shall be deemed to have assumed the responsibilities of an Investment Manager in respect of such portion of the Trust Fund.

Member: shall mean an individual entitled to benefits under the Base Plan in respect of that individual's employment.

Plan: shall mean the Sears Canada Inc. Supplementary Retirement Plan, as amended from time to time.

Plan Assets: shall mean the assets held in the Trust Fund.

Refundable Tax: shall have the meaning ascribed thereto in Part XI.3 of the Income Tax Act (Canada).

Retiree: at any time, shall mean an individual who terminates employment with the Company, at or before that time, and who, at that time:

- (a) is in receipt of a pension under the Plan;
- (b) is at least age fifty five (55), terminated employment with the Company prior to age fifty five (55) and elected at the time of termination to receive a pension under the Plan; or
- (c) terminated employment with the Company at or after age fifty five (55) and has provided the Company with any required instructions as to the form of pension that the individual is to receive under the Plan, and

includes, after a Retiree's death, any person entitled to an immediate pension under the Plan in respect of the Retiree, where that person has provided the Company with any required instructions as to the form of pension that the person is to receive, but shall not include an individual who is, at that time, a United States citizen or United States resident unless the individual terminated employment before 2006 and elected to be treated as a Funded Retiree by signifying his intention to the Company in a manner acceptable to the Company.

SRP Committee: shall mean a committee constituted in accordance with the Plan and includes the Retiree Committee appointed in accordance with Section 8.2.

Standard of Care: shall mean the meaning ascribed thereto in Section 3.2.

- Surplus:** in relation to an Annual Valuation, shall mean the amount, if any, by which the value of the Plan Assets, as at the effective date of the valuation, exceeds the sum of the Aggregate Wind-up Liability, as at that same date, and the provision for wind-up expenses set out in the Annual Valuation.
- Trust Agreement:** shall mean this trust agreement, as (hereby amended and restated and as may be further) amended from time to time.
- Trustee:** shall mean the Royal Trust Corporation of Canada or any successor trustee thereto appointed in accordance with this Trust Agreement.
- Trust Fund:** shall have the meaning ascribed thereto in Section 2.1.
- Voting Materials:** shall mean all proxies, proxy solicitation materials and other communications actually received by the Trustee relating to the securities of the Trust Fund that call for voting.
- Wind-up Administrator:** at any time after the issuance of an Event of Default Notice, shall mean:
- (a) where the Event of Default is described in paragraph (a), (b), (c) or (d) of the definition thereof, the SRP Committee; and
 - (b) in any other case, the Company.
- Wind-up Liability:** as at any particular time, in relation to a Retiree, shall mean the value, as at the particular time, of all Included Benefits in respect of the Retiree, determined in accordance with the following assumptions:
- (a) the Base Plan is terminated, as of the time immediately before that particular time;
 - (b) all obligations under the Base Plan, in respect of the Retiree, are satisfied by the payment, at the time immediately before the particular time, of a lump sum amount;
 - (c) any Retiree who has not commenced receipt of a pension, at the particular time, is assumed to have commenced receipt of a pension at the time immediately before the particular time, payable in the form selected by the Retiree and, if no election has been made, in the normal form of payment under the Plan; and
 - (d) the value of the benefits payable under the Plan are determined in accordance with the *Standard of Practice for Determining Pension Commuted Values*

issued by the Canadian Institute of Actuaries, with an effective date of February 1, 2005, or any subsequent standard dealing with the same subject matter (the "Standard of Practice") for terminations occurring in the month that includes the particular time.

In no event shall the assumptions used for the purposes of determining value under paragraph (d) reflect the fact that the Plan and its beneficiaries do not benefit from the tax treatment afforded to pension plans registered under the Income Tax Act (Canada) and their beneficiaries, and no margin shall be allowed for adverse deviation.

Year: shall mean a calendar year.

ARTICLE II

ESTABLISHMENT AND ACCEPTANCE OF TRUST

2.1 Establishment of Trust Fund

All assets paid or delivered or caused to be paid and delivered by the Company from time to time to the Trustee and acceptable to the Trustee, together with any earnings, profits and increments thereon and assets from time to time substituted therefor, net of Refundable Tax exigible, and the right to the Refundable Tax held by the Canada Revenue Agency in respect of the Plan, less all distributions and authorized payments therefrom, shall constitute the Trust Fund established in conjunction with the Plan and shall be held by the Trustee in trust and applied by the Trustee in the manner and for the purposes provided in this Trust Agreement.

Money paid or property distributed by the Trustee in accordance with the provisions of this Trust Agreement shall cease to form part of the Trust Fund upon the Trustee taking such action as is normally required for making payments or delivery of property.

2.2 Appointment and Acceptance of Trust

The Company hereby appoints the Trustee as trustee of, and the Trustee hereby accepts, the trust created by this Trust Agreement, and the Trustee agrees to hold, invest and administer the Trust Fund subject to the terms and conditions of this Trust Agreement.

2.3 Retirees

Subject to applicable laws, the Retirees shall not have any claim against the Trustee or bring an action against the Trust Fund or require an accounting of the Trust Fund except by or through the Company. In addition, any claim for or right to any benefit or payment of any amount, including a surplus amount, shall be governed solely by the terms of the Plan.

2.4 **Fiscal Year**

The fiscal year of the Trust Fund shall end on the 31st day of December of each year.

2.5 **No Implied Duty**

The Trustee shall have only such duties and responsibilities as are specifically set forth in this Trust Agreement.

**ARTICLE III
CONCERNING THE TRUSTEE**

3.1 **Responsibilities of the Trustee**

The Trustee shall:

- 3.1.1 Receive all Contributions made by the Company under this Trust Agreement;
- 3.1.2 Hold title to all assets comprising the Trust Fund, for the account of the Trust Fund;
- 3.1.3 Keep the Trust Fund distinct from its own assets and those of any other person in the accounts and records kept by the Trustee and should the assets of the Trust Fund for any reason become mixed with the assets of the Trustee, the entire resulting mixed fund shall be deemed to be held by the Trustee in trust hereunder to the extent necessary to satisfy the Trust Fund's claim on such mixed fund. The Trustee may, however, through the use of a Depository or subcustodian, commingle the Trust Fund with assets of other customers of the Trustee (but not with assets held for the Trustee's own account), in which case the Company shall be entitled, in common with those other customers, to its proportionate share of assets so held and/or the rights thereto;
- 3.1.4 In the event that the Company fails to deliver, or to cause to be delivered, to the Trustee the Annual Valuation as required under subsection 6.1.3 or provide to the Trustee evidence satisfactory to the Trustee of payment of Refundable Tax as required under subsection 6.4.2, provide written notice to the Company of such failure;
- 3.1.5 In the event that the Company fails to make a Contribution required to be made under Section 6.2, provide written notice to the Company of such failure;
- 3.1.6 In the event that the Trustee is provided by a Funded Retiree with the written notice described in subsection 6.5.4, provide to the Company the written notice required to be provided by the Trustee pursuant to subsection 6.5.4 and make any distributions from the Trust Fund in accordance with subsection 6.5.4;

- 3.1.7 Prior to the issuance of an Event of Default Notice and subject to subsection 3.1.6, make all distributions, disbursements and payments (including Surplus) out of the Trust Fund to such persons (including the Company) on the Direction of the Company. Each Direction of the Company to make a payment from the Trust Fund shall constitute a certification to the Trustee that the payment is in accordance with the provisions of this Trust Agreement, the Plan and applicable laws;
- 3.1.8 Subject to subsections 7.2.1 and 7.2.2 and Section 9.3, after the issuance of an Event of Default Notice, make all distributions, disbursements and payments out of the Trust Fund to such persons (including the Company) on the Direction of the Wind-up Administrator. Each Direction of the Wind-up Administrator to make a payment from the Trust Fund shall, together with the opinion required under Section 9.3, constitute a certification to the Trustee that the payment is in accordance with the provisions of this Trust Agreement, the Plan and applicable laws;
- 3.1.9 After all payments required to be made to the Retirees, in accordance with the Company's or the SRP Committee's Direction, have been made or provided for and the Retirees are not entitled to receive further payments from the Trust Fund, promptly pay, subject to Section 11.2, the balance of the Trust Fund to the Company or to any person duly authorized to administer the Company's assets following an Insolvent Date;
- 3.1.10 Notify the Company or, after the issuance of an Event of Default Notice, the Wind-up Administrator, upon receipt of any assignment or attempted assignment or notice thereof or of any involuntary assignment, seizure, garnishment or any process of law or execution or notice thereof in respect of any benefit payable out of the Trust Fund;
- 3.1.11 Take all reasonable steps to collect and receive all income, principal, dividends and other payments and distributions when due in respect of any assets of the Trust Fund and promptly credit all such receipts received by it to the Trust Fund;
- 3.1.12 Act in accordance with the Direction of the Company, the Investment Manager or the SRP Committee under this Trust Agreement, with respect to the exercise of its powers including, without limitation, the acquisition or disposition of any asset, the exercise of any voting rights, the processing of Corporate Actions, or with respect to any other matter pursuant to this Trust Agreement;
- 3.1.13 Keep accurate and detailed accounts and records of all assets and transactions with respect to the Trust Fund which shall be open to inspection and audit with reasonable notice at all reasonable times by any person duly authorized by the Company or, after the issuance of an Event of Default Notice, by any person duly authorized by the Wind-up Administrator;

- 3.1.14 Provide to the Company or to any other person upon the Company's Direction, or following the issuance of an Event of Default Notice, to the Wind-up Administrator, within ninety (90) days following the last day of the fiscal year of the Trust Fund, or such other accounting period as may be agreed upon by the Company or the Wind-up Administrator, as the case may be, and the Trustee, or following the resignation or the removal of the Trustee, or the distribution of the Trust Fund in full, a statement of account showing all assets, transactions, receipts and disbursements during the accounting period in such form as may, from time to time, be agreed by the Company or the Wind-up Administrator, as the case may be, and the Trustee. Where, however, the Company elects to participate in an investment program provided by the Trustee or any of its affiliates or an insurer, or an external investment broker or manager, the statement of account provided by the Trustee shall not show all assets, transactions, receipts and disbursements during the accounting period which shall, instead, be shown on the statement of account provided to the Company by the provider of the investment program;
- 3.1.15 Calculate the Refundable Tax of the Trust Fund at the end of each taxation year and remit out of the Trust Fund the amount of tax, if any, payable by it for the year or claim a refund of Refundable Tax owing to the Trust Fund, if applicable, withhold and remit from the Trust Fund all other taxes and assessments required by any applicable law to be so withheld and remitted and file any required tax returns or other filings;
- 3.1.16 Forward, or arrange to have forwarded, to the Company, or on Direction of the Company, to the Investment Manager of that portion of the Trust Fund in which the particular security is held, such Voting Materials as are actually received by the Trustee in respect of the securities held in the Trust Fund; and
- 3.1.17 With respect to Corporate Actions, promptly forward to the Company, or on Direction of the Company, to the Investment Manager of that portion of the Trust Fund in which the particular security is held, a summary of information that is actually received by the Trustee from sources believed by the Trustee to be reliable, and request Directions with respect to any such Corporation Action where required. For greater certainty, other than as described in this Trust Agreement, the Trustee shall not be obligated to forward or summarize any other shareholder communications, including shareholder mailings, notices, or reports and the Trustee shall have no responsibility or liability for ensuring the accuracy or adequacy of the summary of information.

3.2 Standard of Care

In exercising its powers and performing its duties hereunder, the Trustee shall act honestly and in good faith with the degree of care and diligence that a person of ordinary prudence would exercise in dealing with the property of another person and shall employ

all relevant knowledge and skill which the Trustee possesses or ought to possess by reason of its profession or business (the "Standard of Care").

3.3 Limitation of Liability

- 3.3.1 The Trustee shall not be liable for any loss to, or diminution of, the Trust Fund resulting from any act or omission in connection with the affairs of the trust, except to the extent that such loss or diminution is directly caused by the Trustee's breach of the Standard of Care.
- 3.3.2 The Trustee shall have no duty or responsibility with respect to the administration of the Plan, the collection of Contributions, or for the adequacy of the Trust Fund to meet and discharge any payments and liabilities under the Plan.
- 3.3.3 The Trustee shall not be responsible for any loss to or diminution of the Trust Fund resulting from the acquisition, retention, or sale of any assets of the Trust Fund made in accordance with the Direction of the Company or any Investment Manager.
- 3.3.4 The Trustee shall not be liable to any person for any action in accordance with the Direction of the Company or Investment Manager or failure to act in the absence of the Direction of the Company or Investment Manager.
- 3.3.5 Upon the expiration of ninety (90) days from the date of mailing of any statements provided under subsection 3.1.14, the Trustee shall be released and discharged from all liability and accountability to anyone with respect to its acts and transactions during the period covered by the statements, except with respect to those identified by the Company prior to that date under subsection 4.1.4 and those which are a breach of the Trustee's Standard of Care.
- 3.3.6 Subject to the Standard of Care, the Trustee shall be fully protected in acting in good faith on the opinion or advice of or information obtained from any such counsel, auditors, advisors, agents or other persons in relation to any matter arising in the administration of the Trust Fund.

3.4 Conflict of Interest

- 3.4.1 The Trustee's services to the Company are not exclusive and, subject to the limitations otherwise provided in this Trust Agreement on the power and authorities of the Trustee, the Trustee may for any purpose, and is hereby expressly authorized from time to time in its discretion to, appoint, employ, invest in, contract or deal with any individual, firm, partnership, association, trust or body corporate, including without limitation, itself and any partnership, trust or body corporate with which it may directly or indirectly be affiliated or in which it may be directly or indirectly interested, whether on its own account or for the account of another (in a

fiduciary capacity or otherwise), without being liable to account therefor and without being in breach of this Trust Agreement.

3.4.2 Without limiting the generality of the foregoing, the Company hereby authorizes the Trustee to act hereunder notwithstanding that the Trustee or any of its divisions, branches or affiliates may

- (a) have a material interest in the transaction or that circumstances are such that the Trustee may have a potential conflict of duty or interest including the fact that the Trustee or any of its affiliates may:
 - (i) purchase, hold, sell, invest in or otherwise deal with securities or other property of the same class and nature as may be held in the Trust Fund, whether on its own account or for the account of another (in a fiduciary capacity or otherwise);
 - (ii) act as a market maker in the securities that form part of the Trust Fund to which Directions relate;
 - (iii) act as financial advisor to the issuer of such securities;
 - (iv) provide brokerage services to other clients;
 - (v) act as agent for more than one (1) client with respect to the same transaction;
 - (vi) have a material interest in the issue of securities that form part of the Trust Fund;
 - (vii) use in other capacities, knowledge, procedures, systems, processes or other expertise gained in its capacity as Trustee hereunder, subject to the provisions of Section 9.4 hereof; provided that such use is not detrimental to the best interests of the Trust Fund; and
 - (viii) invest the assets of the Trust Fund in the securities or other assets of any of its affiliates; and
- (b) earn profits from any of the activities listed herein;

without being liable to account therefor and without being in breach of this Agreement.

3.5 Powers of the Trustee

The Trustee is hereby vested with every power, right and authority necessary or desirable to enable the Trustee to administer the Trust Fund and carry out its responsibilities in

accordance with this Trust Agreement. Where required under this Trust Agreement, the powers, rights and authorities shall only be exercised on Direction.

The Trustee may, on Direction of the Company or an Investment Manager (or, after the issuance of an Event of Default Notice, on Direction of the Wind-up Administrator):

- 3.5.1 Purchase, or otherwise acquire, any securities, currencies, or other assets and to purchase, hold and retain the same in trust hereunder;
- 3.5.2 Sell for cash or on credit, or partly for cash and partly on credit, convey, exchange for other securities, currencies or other assets, convert, transfer, or otherwise dispose of any securities, currencies or other assets held by it at any time, by any means considered reasonable by the Trustee, and to receive the consideration and grant discharges therefor;
- 3.5.3 Exercise any conversion privileges, subscription rights, warrants or other rights or options available in connection with any securities or other assets at any time held by the Trustee, and make any payments incidental thereto; consent to, or otherwise participate in or dissent from, the reorganization, consolidation, amalgamation or merger of any corporation, company or association, or to the sale, mortgage, pledge or lease of the property of any corporation, company or association, any of the securities of which may at any time be held by it, and do any act with reference thereto, including the delegation of discretionary powers, the exercise of options, the making of agreements or subscriptions and the payment of expenses, assessments or subscriptions which it may deem necessary or advisable in connection therewith;
- 3.5.4 Vote personally, or by general or by limited proxy, any securities or other assets which may be held by it at any time, and similarly exercise personally or by general or by limited power of attorney any right appurtenant to any securities or other assets held by it at any time;
- 3.5.5 Renew or extend or participate in the renewal or extension of any securities or other assets, upon such terms as it may deem advisable, and agree to a reduction in the rate of interest on any security or other asset or of any guarantee pertaining thereto, in any manner and to any extent that it may deem advisable; waive any default whether in the performance of any covenant or condition of any security or other asset, or in the performance of any guarantee, or enforce rights in respect of any such default in such manner and to such extent as it may deem advisable; exercise and enforce any and all rights of foreclosure, bid on property on sale or foreclosure, take a conveyance in lieu of foreclosure with or without paying a consideration therefor and in connection therewith to release the obligation on the covenant secured by such security and exercise and enforce in any action, suit or proceeding at law or in equity any rights or remedies in respect of any such security or guarantee pertaining thereto;

- 3.5.6 Make, execute, acknowledge and deliver any and all deeds, leases, mortgages, conveyances, contracts, waivers, releases or other documents of transfer and any and all other instruments in writing that may be necessary or proper for the accomplishment of any of the powers herein granted;
- 3.5.7 Process Corporate Actions, provided that the Company or the Investment Manager has provided Directions to the Trustee within the time frames specified by the Trustee in its notice relating to Corporate Actions. In the event that Directions have not been provided within such time frames, the Trustee shall use reasonable efforts to process such Corporate Actions but the Trustee shall have no liability for failure to process such Corporate Actions or for processing such Corporate Actions in the absence of Directions, where necessary;
- 3.5.8 Clearly record all assets of the Trust Fund in the books and records of the Trustee so as to show that the beneficial ownership of such assets is vested in the Trust Fund; and
- 3.5.9 In the event there is at any time insufficient assets in the Trust Fund (excluding the right to the Refundable Tax) to effect any distribution, disbursement or payment in accordance with subsection 3.1.7 pending receipt from the Canada Revenue Agency of Refundable Tax, borrow (including the right to borrow from an affiliate) money against the assets of the Trust Fund up to an amount of such Refundable Tax and on such other terms and conditions as the Trustee may determine. For greater certainty, the Trustee shall not be required, and may refuse, to so borrow. The Company shall bear the cost of such borrowing and shall, if requested, reasonably co-operate with the Trustee to the extent required to effect any such borrowing and ensure the co-operation of its own bank. Following an Event of Default, no further borrowing shall occur.

The Trustee shall have the power, in its discretion, to:

- 3.5.10 Commence, defend, adjust or settle suits, and administrative or legal proceedings in connection with the Trust Fund and represent the Trust Fund in any such suits and administrative or legal proceedings and keep the Company informed; provided, however, that the Trustee shall not be obliged or required to do so unless it has been indemnified to its satisfaction against all expenses and liabilities sustained or anticipated by the Trustee by reason thereof, except where such suits, administrative or legal proceedings directly result from a breach by the Trustee of the Standard of Care;
- 3.5.11 Hold in trust any securities, currencies or other assets which it may acquire hereunder and generally exercise any of the powers of an owner with respect to securities or other assets held in the Trust Fund;

- 3.5.12 Register the securities or other assets of the Trust Fund in its own name or in the names of its nominees or the nominees of any subcustodian or of any Depository, or in bearer form if the investment is not registrable or it would not be in the best interest of the Trust Fund to do otherwise;
- 3.5.13 Keep the assets of the Trust Fund wholly or partly, in its principal office or in any one or more of its branches in any Province of Canada or at the office of any financial institution that is authorized to act as a custodian of securities by the laws of any country, province, state or any other political subdivision of any country in which such financial institution is located;
- 3.5.14 Hold securities through the facilities of a domestic or foreign Depository or clearing agency which is duly authorized to operate a book-based system (including a transnational book-based system) in the country, province, state or other political subdivision of any country in which such Depository or clearing agency is located;
- 3.5.15 Deposit any assets forming part of the Trust Fund, including securities and documents of title held by it hereunder, with any bank or other Depository;
- 3.5.16 Retain uninvested cash balances from time to time on hand in the Trust Fund as may be deemed to be in the best interests of the Trust Fund and in its sole discretion hold such cash balances on deposit with a bank or such other deposit taking institution, including the Trustee or any of its affiliates, in any jurisdiction in such interest bearing account as the Trustee in its discretion may determine;
- 3.5.17 Employ such counsel, auditors, actuaries, advisors, agents or other persons (who may be employed by the Company) as the Trustee may deem necessary from time to time for the purpose of discharging its duties hereunder and pay out of the Trust Fund their reasonable expenses and compensation;
- 3.5.18 Make payments to the legal representative of any person who is legally incompetent to receive them. The receipt by such person's legal representative shall be a complete release and discharge to the Trustee;
- 3.5.19 Enter into and settle foreign exchange transactions for the purpose of facilitating the transactions of the Trust Fund with such counterparties as the Trustee may determine, including its affiliates;
- 3.5.20 Appoint subcustodians on such terms as the Trustee may in its sole discretion determine;
- 3.5.21 Appoint nominees;

- 3.5.22 Advance monies by overdraft to the Trust Fund, on such terms and conditions as the Trustee may determine. In order to secure the obligations of the Trust Fund to repay such borrowings, the principal and interest charged on such borrowing shall be paid out of the Trust Fund and shall constitute a charge against the Trust Fund until paid;
- 3.5.23 Dispose of any assets of the Trust Fund on such terms as the Trustee may determine, in order to pay any outstanding obligations imposed on the Trust Fund or repay any outstanding loan contemplated by this Agreement; and
- 3.5.24 Do all such acts, take all such proceedings and exercise all such rights and privileges, although not specifically mentioned herein, as the Trustee, may deem necessary to administer the Trust Fund, and to carry out the purposes of this trust.

3.6 **Power Inexhaustible**

The exercise of any one or more of the powers provided in Section 3.5 or any combination thereof from time to time shall not be deemed to exhaust the rights of the Trustee to exercise such power or powers or combination of them thereafter from time to time.

ARTICLE IV **CONCERNING THE COMPANY**

4.1 **Responsibilities of the Company**

The Company hereby represents and warrants that it has full power and authority to enter into this Agreement, and to perform all of its obligations hereunder, and more specifically and without limitation, the Company shall:

- 4.1.1 Ensure that any Direction of the Company is in accordance with the provisions of the Plan and all amendments thereto from time to time;
- 4.1.2 Manage the investment of the Plan Assets in accordance with this Trust Agreement, applicable laws and any investment policy or guidelines applicable to the Plan, including the appointment under Article V and supervision of one or more Investment Managers for all or any portion of the Plan Assets;
- 4.1.3 Immediately notify the Trustee of the appointment and termination of any Investment Manager and the allocation or re-allocation of the assets resulting therefrom;
- 4.1.4 Review any statement provided by the Trustee in accordance with subsection 3.1.14 and notify the Trustee of any errors, omissions or discrepancies contained in such statement;

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- 4.1.5 Provide the Trustee with such Directions, certificates or other documentation or information as may be required by the Trustee to fulfil its obligations under this Trust Agreement, including copies of information returns filed by the Company with the Canada Revenue Agency with respect to the Trust Fund, or as the Trustee may reasonably request;
- 4.1.6 From time to time, furnish the Trustee with a written list of the person or persons authorized to act on behalf of the Company and their specimen signatures, in a form similar to Schedule A attached hereto. The Company shall cause the Actuary to furnish the Trustee, upon the Actuary's appointment and from time to time, with a written list of the names and specimen signatures of all persons authorized to represent the Actuary in a form similar to Schedule A. The Company shall cause the Investment Manager, if any, to furnish the Trustee, upon the Investment Manager's appointment and from time to time, with a written list of the names and specimen signatures of all persons authorized to represent the Investment Manager in a form similar to Schedule A.
- 4.1.7 Acknowledges that the Trustee is and in the future may be subject to legislation, including but not limited to anti-money laundering legislation and privacy legislation, that requires that the Trustee collect information or obtain undertakings, agreements, documents or the like from the Company or its directors, officers and employees, and shall cooperate with the Trustee including delivery of information, agreements or documents or providing signatures or executing documents and to take all reasonable steps to cause its directors, officers and employees to do same, all to the maximum extent required to ensure that the Trustee satisfies applicable legislative requirements; and
- 4.1.8 Have full responsibility for compliance with unclaimed property legislation, as applicable, and shall direct the Trustee to provide information or remit unclaimed property as the case may be to the appropriate regulatory authority where required;

In addition to the foregoing responsibilities, the Company or the SRP Committee, as applicable, shall have the following obligations:

- 4.1.9 The SRP Committee shall from time to time furnish the Trustee with a written list of the names and specimen signatures of all persons authorized to direct the Trustee and otherwise act on behalf of the SRP Committee under the terms of this Trust Agreement, in a form similar to Schedule A attached hereto.
- 4.1.10 The Company or, after the issuance of an Event of Default Notice, the Wind-up Administrator shall file, or cause to be filed, any and all returns and forms required to be filed by it with respect to the Trust Fund under applicable laws. The Company shall also immediately following the date

first above written file Form T733, "Application for a Retirement Compensation Arrangement (RCA) Account Number", with the Canada Revenue Agency.

4.2 Indemnity

4.2.1 The Company shall indemnify and save harmless the Trustee on its own behalf and in trust for the Trust Fund and the officers, directors, employees, successors and assigns of the Trustee against any costs, expenses (including reasonable costs of litigation and reasonable legal fees and expenses), damages, claims, actions, demands and liabilities to which any of them may be subject, as a result of any act or omission in connection with this Trust Agreement, except to the extent such costs, expenses, losses, damages, claims, actions, demands or liabilities are incurred as a result of the Trustee having breached the Standard of Care. This provision shall survive the termination of this Trust Agreement.

For greater certainty, the commencement of formal legal proceedings shall not be a precondition for indemnification hereunder. Further, none of the provisions of this Agreement shall require the Trustee to expend or risk its own funds, appear in, prosecute or defend proceedings, or otherwise incur financial liability in the performance of any of its duties or in the exercise of any of its rights or powers hereunder, unless the Trustee is first indemnified to its satisfaction.

ARTICLE V INVESTMENTS

5.1 Investment of Trust Fund

Subject to Section 5.4, the Trustee shall hold, invest and reinvest the Trust Fund strictly in accordance with Directions of the Company or any Investment Manager appointed by the Company hereunder with respect to such portion of the Trust Fund under the Company's or such Investment Manager's management. The investment of the assets of the Plan shall not be limited in any way to investments authorized for trustees under, or to the criteria in planning or the requirements for diversifying the investment of the assets of the Plan as may be prescribed for trustees by, any applicable federal, provincial or territorial legislation. For greater certainty, it is hereby confirmed that the Trustee shall have no responsibility for the investment management of the Trust Fund nor for any investment decisions except for carrying out Directions.

5.2 Appointment of Investment Manager

5.2.1 The Company shall have sole responsibility for the investment management of the Trust Fund but may appoint from time to time one or more Investment Managers to manage the investment of the whole or any portion or portions of the Trust Fund. The appointment of any such Investment Manager shall be deemed to be effective upon the later of the

date of receipt by the Trustee of a Direction notifying the Trustee of such appointment or the effective date specified therein and such appointment shall continue in force until the earlier of the receipt by the Trustee of a Direction containing notice to the contrary or upon the occurrence of an Event of Default. The Trustee shall also be entitled to rely conclusively on and shall be fully protected in acting in accordance with the Directions of the Investment Manager in the exercise of powers conferred by this Trust Agreement. Notwithstanding any investment authority given to an Investment Manager, the Trustee may dispose of any assets of the Trust Fund on such terms as the Trustee may determine, upon notification of the Company, in order to pay any obligations imposed on the Trust Fund or to repay any loan authorized by this Trust Agreement.

- 5.2.2 Unless the Company instructs the Trustee otherwise, any such Investment Manager shall, with respect to such whole or any portion or portions of the Trust Fund, direct the Trustee in the exercise of the powers enumerated in subsections 1, 2, 3, 4, 5, and 6 of Section 3.5 otherwise conferred by this Trust Agreement, or as the Company by Direction may specify that the Investment Manager may direct.

5.3 Termination of Investment Manager

The Company may at any time terminate the appointment of any Investment Manager, in which event the Trust Fund, or the portion thereof managed by such Investment Manager, shall be invested and reinvested by the Trustee as directed by the Company in accordance with Section 5.1 hereof, until a successor Investment Manager is appointed by the Company with respect to all or any such portion of the Trust Fund. In addition, following an Event of Default the appointment of any Investment Manager shall terminate for the purposes of this Trust Agreement.

5.4 Occurrence of an Event of Default

In the event of the occurrence of an Event of Default:

- 5.4.1 the Trustee shall liquidate the investments of the Trust Fund, other than any investment described in subsection 5.4.2, whether or not the investments are under the management of the Investment Manager; and
- 5.4.2 the Trustee shall invest the assets of the Trust Fund in Government of Canada Treasury Bills or other money market investments of high quality.

ARTICLE VI **ACTUARIAL REPORTS**

6.1 Annual Valuation

- 6.1.1 The Company shall cause the Actuary to prepare, for each Year after 2005, a valuation of the Plan with an effective date of December 31 of the

Year immediately preceding the relevant Year (the "Annual Valuation"). The Annual Valuation shall value the Plan Assets and determine the Aggregate Wind-up Liability as at the Annual Valuation's effective date.

- 6.1.2 For greater certainty, the determination of the Aggregate Wind-up Liability shall include only those individuals who are Retirees as of the effective date of the Annual Valuation.
- 6.1.3 The Company shall deliver, or cause to be delivered, a copy of the Annual Valuation to the Trustee on or before July 31 of the relevant Year. The Trustee shall be fully protected in relying upon the contents of the Annual Valuation.

6.2 Annual Company Contributions

- 6.2.1 The Company shall contribute in a Year to the Trust Fund the amount, if any, disclosed in the Annual Valuation for the Year, by which
- (a) the total of the Aggregate Wind-up Liability, as at the effective date of the Annual Valuation, and the amount estimated by the Actuary to be reasonably necessary to satisfy any expenses associated with the wind-up of the Trust Fund,
exceeds
 - (b) the value of the Plan Assets, if any, as at the effective date of the Annual Valuation.
- 6.2.2 The Company shall also contribute in a Year to the Trust Fund the amount, if any, by which
- (a) the amount of Surplus that has been applied to reduce the Contribution under subsection 6.3.3, in accordance with subsection 6.3.4, with respect to a Member who becomes a Retiree after the effective date of the Annual Valuation for the Year,
exceeds
 - (b) the amount of Surplus, if any, shown in the Annual Valuation for the Year.
- 6.2.3 For greater certainty, where the Annual Valuation for a given Year discloses no Surplus, the Contribution required under subsection 6.2.2 is equal to the amount described in paragraph 6.2.2(a).
- 6.2.4 The Contributions described in subsections 6.2.1 and 6.2.2 shall be made no later than December 31 of the relevant Year.

6.3 Periodic Contributions

- 6.3.1 Where a Member becomes a Retiree at any time after 2005, the Company shall cause the Actuary to:
- (a) value within sixty (60) days of the end of the calendar month during which the Member becomes a Retiree, the Wind-up Liability in respect of the Retiree, as at the end of such month, using the assumptions that are appropriate as at the end of the month; and
 - (b) prepare a valuation, which aggregates the Wind-up Liabilities in respect of all Members who become Retirees during the month (the "Aggregate Valuation"), in respect of such month.
- 6.3.2 The Company shall deliver, or cause to be delivered, a copy of the Aggregate Valuation, in relation to a calendar month, to the Trustee within ninety (90) days after the end of the month.
- 6.3.3 Subject to subsection 6.3.4, within sixty (60) days of the delivery to the Trustee of an Aggregate Valuation in relation to a calendar month, the Company shall contribute to the Trust Fund the amount disclosed in the Aggregate Valuation (which, for greater certainty, is equal to the total of all amounts each of which is the Wind-up Liability in relation to a Member who becomes a Retiree during the relevant month).
- 6.3.4 Subject to subsection 6.3.5, the Contribution under subsection 6.3.3 may be reduced, upon written notification to the Trustee by the Company, that the Company will be applying the Surplus disclosed in the Annual Valuation most recently delivered to the Trustee towards the Contribution, except to the extent that such Surplus has previously been applied under this subsection 6.3.4 or withdrawn under Section 6.7.
- 6.3.5 The Company may not provide at any time the notification described in subsection 6.3.4 in respect of an Aggregate Valuation if another Aggregate Valuation has been delivered to the Trustee before that time and the Company has not, as of that time, either made the Contribution described in subsection 6.3.4 in respect of the other Aggregate Valuation or provided the notification described in subsection 6.3.4. in respect of the other Aggregate Valuation.
- 6.3.6 The Trustee shall not seek to provide notice thereof to the Members of any breach by the Company of subsections 6.3.3, 6.3.4 or 6.3.5.

6.4 Refundable Tax

- 6.4.1 The Company shall withhold from each Contribution the Refundable Tax required to be withheld under the Income Tax Act (Canada) with respect

to contributions to a Retirement Compensation Arrangement and shall remit same to the Receiver General for Canada as required under the Income Tax Act (Canada).

- 6.4.2 The Company shall provide to the Trustee evidence satisfactory to the Trustee, within thirty (30) days of making a Contribution to the Trust Fund, that it has remitted the Refundable Tax, with respect to the Contribution, to the Receiver General for Canada.

6.5 **Use of Plan Assets**

- 6.5.1 Subject to subsection 3.1.15, Article VII and Sections 6.7 and 10.6, the Plan Assets shall only be available to satisfy benefits under the Plan in respect of Funded Retirees. No person shall have any right to or interest in any part of the Plan Assets except as, and to the extent provided from time to time, under the Plan and the Trust Agreement. No liability shall attach to any officer, shareholder, director, or employee of the Company for payment of any benefits or claims hereunder.
- 6.5.2 The Company may pay benefits under the Plan in respect of Funded Retirees from its operating funds or it may direct the Trustee to make a payment of benefits, otherwise payable under the Plan, in respect of Funded Retirees from the Trust Fund. Any Plan benefits paid directly by the Company to a Funded Retiree shall cease to be an obligation of the Trust Fund, and shall discharge the Trustee from any obligation to make such payment to the Funded Retiree, upon provision by the Company to the Trustee of evidence satisfactory to the Trustee of such payment. Any amount paid by the Trustee in respect of a Funded Retiree from the Trust Fund shall discharge the Company from its obligation to make payments in respect of the Funded Retiree under the Plan, to the extent of that amount.
- 6.5.3 For the purposes of subsection 6.5.2, the payment by the Trustee of benefits to an individual may be made by depositing the payment into an account with a financial institution where the funds in the account may be disbursed to, on behalf of or with the concurrence of that individual.
- 6.5.4 If a Funded Retiree provides the Trustee with a written notice certifying that the Company has failed to make payment of benefits due in accordance with the Plan for a period of at least thirty (30) days following the due date for such payment, the Trustee shall provide written notice to the Company of the Funded Retiree's notice. The Trustee shall pay the benefits directly to the Funded Retiree no sooner than thirty (30) days following provision of its written notice to the Company unless:
- (a) the Company had previously provided the evidence required under subsection 6.5.2 of such payment;

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- (b) prior to such payment, the Company pays the benefit to the Funded Retiree and provides the evidence required under subsection 6.5.2 of such payment; or
- (c) notifies the Trustee in writing that the requirement by the Company to pay such amount, or a portion thereof, is disputed by the Company, in which case the Trustee shall pay only the undisputed amount or portion thereof directly to the Funded Retiree.

6.6 **Benefits Payable Under Plan**

- 6.6.1 Subject to Article VII, benefits payable under the Plan, other than benefits payable in respect of Funded Retirees, shall be paid from the operating funds of the Company.

6.7 **Refund to Company**

- 6.7.1 Subject to subsections 6.7.2 and 6.7.3, where the Annual Valuation most recently delivered to the Trustee reveals a Surplus where the value of Plan Assets are in excess of one hundred and ten per cent (110%) of the Aggregate Wind-up Liability, the Company may request a withdrawal of Plan Assets the value of which does not exceed that excess less any part of the Surplus used in accordance with subsection 6.3.4. The Company shall not be obliged to obtain the consent of the Members to make such withdrawal or give any notice of such withdrawal to the Members. The Trustee shall not seek to obtain the consent of the Members in respect of such withdrawal nor to give notice thereof to the Members.
- 6.7.2 A request for withdrawal under subsection 6.7.1 may occur only during the Year in respect of which the Annual Valuation was prepared, and payment of the Surplus described in subsection 6.7.1 may be made in more than one withdrawal.
- 6.7.3 No withdrawal under subsection 6.7.1 may take place if the Company has, pursuant to subsection 6.3.2, delivered to the Trustee during the relevant Year a copy of an Aggregate Valuation and the Company has not, at the time of the withdrawal request, contributed to the Trust Fund the amount disclosed in the Aggregate Valuation less any Surplus that the Company has applied against that amount in accordance with subsection 6.3.4.

ARTICLE VII **EVENTS OF DEFAULT**

7.1 **Final Actuarial Report**

- 7.1.1 As soon as practicable after the date on which the Trustee becomes aware of an Event of Default, the Trustee shall:

- (a) give written notice to the Company and the SRP Committee of the Event of Default (the "Event of Default Notice"); and
- (b) cause the Actuary to prepare an actuarial report (the "Final Actuarial Report"), effective as of the date of occurrence of such Event of Default which shall also be the effective date of the wind-up of the Trust Fund.

7.1.2 The Final Actuarial Report shall contain the following:

- (a) a determination of the value of the Plan Assets as of the effective date of the Final Actuarial Report;
- (b) a determination of the Aggregate Wind-up Liability as at the effective date of the Final Actuarial Report. For greater certainty, the Aggregate Wind-up Liability shall include only those individuals who are Retirees as at the effective date of the Final Actuarial Report;
- (c) an identification of Funded Retirees and Retirees other than Funded Retirees; and
- (d) a certification by the Actuary that such Final Actuarial Report has been prepared in accordance with the provisions of the Plan in effect as at the effective date of the Final Actuarial Report.

7.1.3 Unless an Insolvent Date has occurred, the Trustee shall deliver to the Company a copy of the Final Actuarial Report. The Company shall make a Contribution to the Trust Fund in the amount as may be required to settle all Included Benefits for Retirees and pay all expenses associated with the wind-up of the Plan. For greater certainty, failure by the Company to make such payment within ninety (90) days of the delivery of the Final Actuarial Report by the Trustee or to provide to the Trustee evidence satisfactory to the Trustee of the payment of the Refundable Tax in respect of any such Contribution shall not constitute an Event of Default and the Trustee shall not seek to give notice thereof to the Members.

7.1.4 Subject to Section 7.2, all Plan Assets shall be distributed to those persons entitled to payment thereunder in accordance with Section 7.3.

7.2 Wind-up of Base Plan

7.2.1 Following the date on which the Trustee becomes aware of an Event of Default (the "Commencement Date") and during the one hundred and twenty (120) day period immediately following the Commencement Date, the Trustee shall, subject to subsection 6.5.2, make payment only to Funded Retirees of the periodic Plan benefits that have previously been the subject of a Direction by the Company or which may become the

subject of a Direction by the Wind-up Administrator. The Trustee shall not follow any Direction to pay amounts from the Trust Fund other than a Direction to make periodic Plan benefit payments to Funded Retirees.

7.2.2 If the Trustee is provided, within the one hundred and twenty (120) day period following the Commencement Date, with evidence satisfactory to it of a formal application to wind-up the Base Plan the Trustee shall continue, following the one hundred and twenty (120) day period, to make payment only to Funded Retirees of the periodic Plan benefits that have previously been the subject of a Direction by the Company, or which may become the subject of a Direction by the Wind-up Administrator, until it is provided with evidence satisfactory to it that the entitlement to surplus under the Base Plan has been determined. Until it is provided with evidence satisfactory to it that the entitlement to surplus under the Base Plan has been determined, the Trustee shall not follow any Direction to pay amounts from the Trust Fund other than a Direction to make periodic Plan benefit payments to Funded Retirees.

7.2.3 If the Trustee is not provided, within the one hundred and twenty (120) day period following the Commencement Date, with evidence satisfactory to it of a formal application to wind-up the Base Plan, the Trustee shall, following the one hundred and twenty (120) day period, distribute the Plan Assets in accordance with the Direction of the Wind-up Administrator.

7.3 Distribution of Assets

Following the Commencement Date, the non-cash assets of the Trust Fund shall be disposed of and the proceeds realized from such disposition together with the cash in the Trust Fund shall be applied by the Trustee as directed by the Wind-up Administrator subject to Section 7.2. The Plan Assets shall be applied, subject to any requirement of a statute or court order, in priority of payment, on the basis set forth below:

- 7.3.1 payments in respect of the following costs, expenses, charges and liabilities of the Trust Fund:
- (a) the compensation, disbursements and expenses owing to the Trustee to the extent that the Trustee has not been able to recover such compensation, disbursements and expenses from the Company or from the Trust Fund in accordance with Section 10.6;
 - (b) the disbursements and expenses owing to the SRP Committee to the extent that the SRP Committee has not been able to recover such disbursements and expenses from the Company or from the Trust Fund in accordance with Section 10.6;
- 7.3.2 any other proper charges or taxes applicable to, or levied against the Trust Fund that are not referred to in subsection 7.3.1;

- 7.3.3 payment by way of lump sum equal to the Wind-up Liability in relation to each Funded Retiree, as set out in the Final Actuarial Report (and where there are sufficient assets to make the payments required under subsections 7.3.1 and 7.3.2 but not sufficient assets to make payment in respect of all of the Wind-up Liabilities in relation to the Funded Retirees, then subsection 7.4.1 shall apply);
- 7.3.4 payment by way of lump sum equal to the Wind-up Liability in relation to each Retiree other than a Funded Retiree, as set out in the Final Actuarial Report (and where there are sufficient assets to make the payments required under subsections 7.3.1, 7.3.2 and 7.3.3 but not sufficient assets to make payment in respect of all of the Wind-up Liabilities in relation to the Retirees other than the Funded Retirees, then subsection 7.4.2 shall apply);
- 7.3.5 after making the payments required under subsections 7.3.1, 7.3.2, 7.3.3 and 7.3.4, the remaining assets, if any, shall be paid to the Company.

It is understood and agreed that, in view of the fact that the Trust Fund will be comprised in part of Refundable Tax, distribution of the assets of the Trust Fund in accordance with this Section 7.3 (and, if applicable, Section 7.4) may be made in more than one instalment, it being understood however that no payment shall be made to the Company under subsection 7.3.5 until all of the amounts owing under subsections 7.3.1, 7.3.2, 7.3.3, and 7.3.4 have been paid.

Upon distribution of the assets of the Trust Fund as provided in this Section 7.3 (and, if applicable, in Section 7.4), the Trust shall be terminated pursuant to the terms of the Trust Agreement.

7.4 Insufficient Assets

- 7.4.1 If, after making (or having made provision for) the payments required under subsections 7.3.1 and 7.3.2, there are insufficient assets to make payment in respect of all of the Wind-up Liabilities in relation to Funded Retirees (as provided under 7.3.3 and as determined in the Final Actuarial Report), each Funded Retiree shall receive a proportionate share, as determined by the Wind-up Administrator, of the remaining Plan Assets in an amount that is equal to the ratio that the Wind-up Liability in relation to the Funded Retiree is to the aggregate of the Wind-up Liabilities in relation to all Funded Retirees, and the result shall be multiplied by the total Plan Assets which remain in the Trust Fund.
- 7.4.2 If, after making (or having made provision for) the payments required under subsections 7.3.1, 7.3.2 and 7.3.3, there are insufficient assets to make payment in respect of all of the Wind-up Liabilities (as provided under subsection 7.3.4 and as determined in the Final Actuarial Report), in relation to Retirees other than Funded Retirees, each Retiree other than a Funded Retiree shall receive a proportionate share, as determined by the

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Wind-up Administrator, of the remaining Plan Assets in an amount that is equal to the ratio that the Wind-up Liability in relation to the Retiree is to the aggregate of all of the Wind-up Liabilities in relation to all Retirees other than Funded Retirees, and the result shall be multiplied by the total assets which remain in the Trust Fund.

ARTICLE VIII
ADMINISTRATION OF THE PLAN

8.1 Responsibility for Administration

Subject to Section 8.3, the Plan shall be administered by the Company which shall have the exclusive right and obligation to determine the rights of any person to participate in the benefits from the Trust Fund under the terms of the Plan and this Trust Agreement.

8.2 If No SRP Committee

In the event that, at any time following an Event of Default as described in paragraph (a), (b), (c) or (d) of the definition thereof, there are no members of the SRP Committee, the Trustee shall, as soon as is reasonably possible, provide to all Retirees a notice requiring them to appoint a committee of Retirees ("Retiree Committee"), to represent them in matters relating to the Trust Fund. Such Retiree Committee shall be comprised of such person or persons (not to exceed five (5) in number) as are elected by a majority of them within sixty (60) days of the issuance of such notice and failing that will be the Retiree who the Actuary advises the Trustee has, at such time, the greatest present value of benefits payable hereunder (and, in such event, the Trustee shall provide notice to the Retirees of the identity of such individual who is to comprise the Retiree Committee). The Retiree Committee shall serve as a replacement for the SRP Committee and thereafter such Retiree Committee shall have all the rights and duties of the SRP Committee as provided in this Trust Agreement and in the Plan and all Directions and actions of the Retiree Committee shall, for all purposes of this Trust Agreement and the Plan, be deemed to be Directions and actions of the SRP Committee.

8.3 Administration of the Plan Following an Event of Default

Following an Event of Default as described in paragraph (a), (b), (c) or (d) of the definition thereof, and notwithstanding Article V:

- 8.3.1 with respect to each matter under this Trust Agreement where, in the absence of an Event of Default Notice, the Company would be providing Directions to the Trustee, the Trustee shall be entitled to rely conclusively upon Directions from the SRP Committee;
- 8.3.2 the SRP Committee shall be responsible for ensuring that no Directions or other directions given to the Trustee shall require the Trustee to use or divert any part of the Trust Fund for purposes other than those which are in accordance with the terms of the Plan and this Trust Agreement;

- 8.3.3 with respect to each matter under this Trust Agreement where, in the absence of the issuance of an Event of Default Notice, the Trustee would be issuing a notice to the Company, the Trustee shall provide such notice to the SRP Committee (with a copy of each such notice to the Company);
- 8.3.4 the SRP Committee shall use its best efforts to fulfil the obligations of the Company under this Trust Agreement to provide information to the Actuary to assist it in making valuations, should the Company fail to do so; and
- 8.3.5 the SRP Committee (and not the Trustee) shall be responsible for ensuring that the assets of the Trust Fund are distributed in accordance with Section 7.3 (and, if applicable, Section 7.4) and, in that regard, the SRP Committee shall be entitled to rely upon the advice of its counsel and other professional advisors.
- 8.4 **Powers of the SRP Committee Following an Event of Default**
- 8.4.1 Upon the issuance of an Event of Default Notice by the Trustee following an Event of Default as described in paragraph (a), (b), (c) or (d) of the definition thereof, the SRP Committee shall be entitled to exercise all the rights of the Company (to the exclusion of the Company) which are conferred upon the Company under this Trust Agreement with respect to the period prior to an Event of Default.

ARTICLE IX **COMMUNICATIONS**

- 9.1 **Directions and Authorized Signatories**
- 9.1.1 All Directions given to the Trustee pursuant to any of the provisions of this Trust Agreement shall be in writing and given by an authorized signatory, and the Trustee shall be fully protected in acting in accordance with such Direction. The Company agrees that the Trustee shall be entitled to rely conclusively on the identification of the authorized signatories set out in Schedule A as the persons entitled to act on behalf of the Company for the purposes of this Trust Agreement until a later certificate respecting the same is delivered to the Trustee.
- 9.1.2 Notwithstanding subsection 9.1.1, the Trustee is authorized to act on telephone instructions. Written Directions shall be provided to the Trustee confirming telephone instructions on the same day that such telephone instructions are given to the Trustee. The fact that such confirming Directions are not received or that contrary Directions are later received by the Trustee shall in no way affect the validity of transactions effected by the Trustee on the basis of such telephone instructions. The Trustee shall be protected in relying on such telephone instructions as if they were

Directions, and when so given shall be deemed to have been effectively and sufficiently given for all purposes of this Trust Agreement.

The Company agrees that some or all telephone conversations between the parties may be recorded by the Trustee and that, in the event of any disagreement as to the content of any instructions given by telephone, such recording will be conclusive and determinative of the content of the instructions.

- 9.1.3 Without limiting the foregoing, in the case of Directions sent through the internet, the parties acknowledge that it may not be possible for such Directions to be executed, however the Trustee shall nevertheless be protected in relying on such Directions as if they were written Directions executed by an authorized signatory. The Trustee shall be entitled, without further inquiry or investigation, to assume that such Directions have been duly and properly issued, and that the sender(s) is/are duly authorized to act, and to provide Directions.

9.2 **Directions from Investment Manager, Actuary or SRP Committee**

Any Direction, including Direction from an Investment Manager, the Actuary or the SRP Committee, is deemed to be a Direction to the Trustee from the Company given in accordance with this Article IX. The Trustee shall be entitled to rely conclusively on the authority of any individual providing such Direction as a person entitled to act on behalf of the Investment Manager, Actuary or SRP Committee, respectively, and such individual shall be deemed to be an authorized signatory without further investigation or verification by the Trustee.

9.3 **Directions Following an Event of Default**

Any Directions referred to in subsection 3.1.8 from the Wind-up Administrator shall be accompanied by the opinion of an actuary that the Directions are in accordance with the provisions of this Trust Agreement and the Plan. The Directions shall not be acted upon by the Trustee in the absence of such an opinion and the Trustee shall have no obligation to make any inquiries in respect of, or to question, any such opinion.

9.4 **Addresses for Directions**

All Directions and notices required or permitted hereunder shall be given personally, or if sent by pre-paid ordinary mail or if transmitted by facsimile as follows, or at such other address and number as the party to whom such communication is to be given shall have last notified to the party giving the same in the manner provided in this Section:

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9.4.1 in the case of the Trustee:

Royal Trust Corporation of Canada
 Royal Trust Tower, 4th Floor
 77 King Street West
 P.O. Box 7500, Station "A"
 Toronto, ON M5W 1P9

Attention: Trust Services

Telephone: (416) 955-5068
 Telefax: (416) 955-3268

9.4.2 in the case of the Company:

Sears Canada Inc.
 222 Jarvis St.
 Toronto, ON M5B 2B8

Attention: Corporate Secretary

Telephone: (416) 941-4417
 Telefax: (416) 941-9100

9.4.3 in the case of the SRP Committee, to the address provided in Schedule A.

9.4.4 in the case of the Actuary:

Mercer Human Resource Consulting
 BCE Place, 161 Bay Street
 P.O. Box 501
 Toronto, ON M5J 2S5

Attention: Retirement Principal for Sears Canada

Telephone: (416) 868-2222
 Telefax: (416) 868-7695

9.5 **Deemed Delivery**

Any Direction or notice delivered personally shall be deemed to have been given on the day it is so given. Subject to disruptions in the postal service, any Direction or notice mailed shall be deemed to have been given and received on the fifth (5) business date following the date of mailing. Any Direction or notice given by facsimile shall be deemed to have been given and received on the day it is brought to the attention of the Trustee's employee to whom it is addressed without thereby creating an obligation for the Trustee to constantly monitor its communication equipment provided however that a reasonable surveillance is performed within the normal business hours of the Trustee

where such Direction is sent. The sender of a Direction shall have the obligation of ensuring that the Direction sent by him has been received by the Trustee and the Trustee shall not be held liable for an omission to act resulting from not receiving a Direction.

9.6 **Proof of Content**

The Trustee shall be entirely protected when relying on a Direction received pursuant to this Article IX and in case of discrepancies between the copy or material representation of a Direction held or produced by the Trustee and such copy or representation held or produced by any person, the copy or material representation held or produced by the Trustee shall be deemed to constitute conclusive evidence of the content of such Direction.

9.7 **Limitation in Respect of Directions**

The Trustee shall act in accordance with Directions, and shall be fully protected and absolved from any liability arising therefrom. Further, notwithstanding anything else in this Trust Agreement, the Trustee shall not be required to comply with Directions to settle the purchase of any securities on behalf of the Trust Fund unless there is sufficient cash in the Trust Fund at the time, nor shall the Trustee be required to comply with Directions to settle the purchase of any securities on behalf of the Trust Fund unless such securities are in deliverable form. If the Trustee is not provided with Directions when required hereunder, then the Trustee shall be fully protected and absolved from any liability arising from the failure to act in the absence of Directions.

9.8 **Internet**

The Company agrees that Directions and notices given through the internet or any other electronic means of communication which is not secure may only be validly given hereunder if the Company has first entered into an agreement with the Trustee that is satisfactory to the Trustee.

ARTICLE X
RESIGNATION, REMOVAL, APPOINTMENT
AND REMUNERATION OF TRUSTEE

10.1 **Resignation**

The Trustee may resign at any time after giving one hundred and twenty (120) days' notice in writing to the Company or, following the issuance of an Event of Default Notice, the SRP Committee.

10.2 **Removal**

The Company or, following an Event of Default, the SRP Committee shall have power to remove the Trustee exercisable in writing without notice, at any time that:

10.2.1 the Trustee shall be declared bankrupt or shall be insolvent;

10.2.2 the assets or the business of the Trustee shall become liable to seizure or confiscation by any public or governmental authority; or

10.2.3 the Trustee shall cease to have the qualifications set out in Section 10.5.

The Company or, following the issuance of an Event of Default Notice, the SRP Committee may remove the Trustee for any reason at any time upon ninety (90) days' notice in writing or upon such shorter notice as may be mutually agreed by the Trustee and the Company or, following the issuance of an Event of Default Notice, the SRP Committee.

10.3 **Appointment of Successor**

In the event of resignation or removal of the Trustee under this Trust Agreement or in the case a vacancy shall arise in trusteeship of the Trust Fund, the Company or, following the issuance of an Event of Default Notice, the SRP Committee shall appoint a trustee as successor to the Trustee and shall ensure that such successor has the qualifications set out in Section 10.5.

Notwithstanding the foregoing, any trust company resulting from the merger or amalgamation of the Trustee with one or more trust companies and any trust company which succeeds to substantially all of the trust business of the Trustee shall thereupon become the successor trustee hereunder without further act or formality.

In the event the Company or the SRP Committee, as the case may be, fails to appoint a successor Trustee within sixty (60) days of the resignation or removal, the Trustee, at the expense of the Trust Fund, shall have the right to seek appointment of a successor Trustee from a court of competent jurisdiction.

10.4 **Obligations Upon Resignation or Removal**

In the event of the resignation or removal of the Trustee, the Trustee shall, upon Direction of the Company or, following the issuance of an Event of Default Notice, upon Direction of the SRP Committee transfer title to all assets comprising the Trust Fund and all books and records (which shall not, for greater certainty, include correspondence with the Company or other persons except the Canada Revenue Agency) maintained by the Trustee for the purpose of its responsibilities under this Trust Agreement to the successor appointed under Section 10.3. Upon such transfer the Trustee shall be relieved of all responsibilities under this Trust Agreement. The Trustee is authorized to reserve such fees and expenses reasonably incurred to the date of the resignation or removal of the Trustee and any balance of such reserve remaining after the payment of such fees and expenses shall be paid over to the successor Trustee.

10.5 **Qualifications of Trustee**

The successor Trustee shall be a duly licensed and qualified trust company to carry on trust activities in Canada and in any province thereof, or one or more individuals other than a single Retiree.

10.6 Fees and Expenses

Prior to the issuance of an Event of Default Notice, the Trustee shall be entitled to such compensation as may from time to time be mutually agreed upon in writing by the Trustee and the Company. Following the issuance of an Event of Default Notice, the Trustee shall be entitled to such compensation as was mutually agreed upon in writing by the Trustee and the Company prior to the Event of Default and as may be mutually agreed upon in writing by the Trustee and the SRP Committee thereafter. Such compensation and all other disbursements made and expenses incurred in the creation of the Trust Fund and performance of the duties of the Trustee hereunder or arising out of this trust shall constitute a charge upon the Trust Fund and shall be paid out of the Trust Fund unless such compensation, disbursements and expenses shall be paid by the Company within thirty (30) days of the date the Trustee sends an invoice or account for same by any means described in Section 9.4 for the giving of notice. The Trustee is authorized to pay out of the Trust Fund the compensation, disbursements and expenses (including any applicable value added tax payable) of others.

Prior to the issuance of an Event of Default Notice, the expenses and disbursements of the SRP Committee in carrying out its responsibilities under this Trust Agreement and under the Plan (including the expenses and fees, if any, of agents and other professional advisors appointed by the SRP Committee in accordance with the Plan) shall be paid by the Company. Any expenses and disbursements that are not paid by the Company, as required under this Section 10.6, within forty-five (45) days of the date of a supporting account rendered to the Company by the SRP Committee, shall be paid out of the Trust Fund upon certification to the Trustee by the authorized representative of the SRP Committee that the expenses or disbursements have not been so paid. Following the issuance of an Event of Default Notice, the aforesaid expenses or disbursements shall be paid out of the Trust Fund upon the rendering of a supporting account to the Trustee by the authorized representative of the SRP Committee and a certification, as applicable, that said expenses or disbursements have not been so paid.

ARTICLE XI

AMENDMENT AND TERMINATION OF TRUST AGREEMENT

11.1 Amendment of Trust Agreement

The Company, prior to an Event of Default, and the Trustee reserve the right at any time and from time to time to amend, in whole or in part, any or all of the provisions of this Trust Agreement by notice thereof in writing delivered to the other party, provided that no such amendment which affects the rights, duties or responsibilities of the other party may be made without its consent and that no such amendment shall authorize or permit any part of the Trust Fund to be used for or diverted to purposes other than those provided for under the terms of this Trust Agreement and for the payment of taxes and other assessments pursuant to subsection 3.1.15. Following an Event of Default, the Trustee may at any time and from time to time amend in whole or in part any or all of the provisions of this Trust Agreement by notice thereof in writing delivered to the SRP Committee, provided that no such amendment shall authorize or permit any part of the Trust Fund to be used for or diverted to purposes other than those provided for under the

terms of this Trust Agreement and for the payment of taxes and other assessments pursuant to subsection 3.1.15.

11.2 Termination of Trust Agreement

At any time prior to an Event of Default, this Trust Agreement may only be terminated at any time by an instrument in writing executed by the Company and the Trustee; provided that, if this Trust Agreement is terminated prior to the date all payments required by the Plan to be made out of the Trust Fund to all Retirees are made, it may only be terminated with the prior written consent of all of the Retirees. Following an Event of Default, this Trust Agreement may be terminated on the Direction of the SRP Committee.

Upon such termination, the Trust Fund shall be paid out by the Trustee, prior to an Event of Default, on Direction of the Company subject to subsection 4.1.5 and, following an Event of Default, as directed by the SRP Committee provided:

- 11.2.1 any fees and expenses payable under this Trust Agreement from the Trust Fund, shall first be deducted and paid; and
- 11.2.2 subject to subsection 4.2.1, the provisions of this Trust Agreement shall survive any termination until all assets comprising the Trust Fund have been paid out or distributed.

11.3 Automatic Termination

Notwithstanding Section 11.2, this Trust Agreement shall automatically terminate if, at any time, following an Event of Default, the value of the Trust Fund falls below \$100,000. In this circumstance, the Trustee shall obtain from the Actuary an actuarial report setting out

- 11.3.1 the present value of the benefits accrued to each Retiree;
- 11.3.2 the funded ratio of the Trust, being the ratio of the value of the assets of the Trust Fund, including Refundable Tax, to the aggregate present value of the benefits accrued to the Retirees plus expenses of the Trust Fund as estimated by the Trustee to complete the distribution of the Trust Fund;
- 11.3.3 each amount in subsection 11.3.1 multiplied by the funded ratio.

The Trustee shall forthwith pay to each Retiree the relevant amount in subsection 11.3.3 adjusted by any gains or losses of the Trust Fund and reduced, if necessary, by the Trustee's compensation, fees and expenses first from the assets of the Trust Fund on hand and, following receipt of the Refundable Tax, the balance if any of such amount, increased by any excess assets in the Trust Fund.

11.4 Alternative Arrangement

Despite any other provision of this Trust Agreement, prior to an Event of Default this Trust Agreement may be amended in order to provide an alternative arrangement for

securing the payment of benefits in respect of Retirees or may be terminated and replaced with an alternative arrangement for securing the payment of such benefits. Such arrangement shall provide, in every material particular, the same level of security as would be provided by the Trust Fund, and the Trust Agreement shall not be so amended or terminated and replaced unless the Trustee is satisfied, which may require application for direction from a Court of competent jurisdiction the expenses in respect of which are payable entirely and without reservation from the Trust Fund, that such alternative so provides.

ARTICLE XII **MISCELLANEOUS**

12.1 Representations and Warranties

The Company confirms that the recitals to this Trust Agreement are true and correct and acknowledges that

- 12.1.1 where the terms of this Trust Agreement and the Plan are inconsistent in whole or in part, the terms of this Trust Agreement shall prevail over the terms of the Plan,
- 12.1.2 the Trustee shall not be obligated to review the terms of the Plan, and
- 12.1.3 the Trustee's acceptance of the trust pursuant to Section 2.2 shall not be taken as an expression by the Trustee as to the suitability of this Trust Agreement in respect of the Plan.

12.2 Severance of Illegal or Invalid Provision

If any provision of this Trust Agreement shall be held illegal or invalid for any reason by a Court of competent jurisdiction, such illegality or invalidity shall not affect the remaining provisions of this Trust Agreement but this Trust Agreement shall be construed and enforced as if such illegal or invalid provision had never been inserted herein.

12.3 Assignment

This Trust Agreement may not be assigned by the Trustee without the consent in writing of the Company but may be assigned by the Company to a successor in the business of the Company or to a corporation with which the Company may amalgamate or merge or a corporation resulting from any reconstruction or reorganization of the Company.

12.4 Confidentiality

The Trustee shall not disclose to third parties any confidential or proprietary information relating to the Trust Fund and may only release such information to others where required by applicable laws or pursuant to a Direction of the Company.

12.5 Interpretation

Unless the context requires otherwise, any terms or provisions importing the plural shall include the singular and vice versa and any terms or provisions importing the masculine gender shall include the feminine gender.

12.6 Governing Law

This Trust Agreement shall be construed, administered and enforced according to the laws of the Province of Ontario and the laws of Canada applicable therein and the Trustee shall be liable to account only in the Courts of that Province.

12.7 Force Majeure

The Trustee shall not be liable or responsible any loss or damages, whatsoever, resulting from official action (including nationalisation and expropriation), currency restrictions or devaluations, acts or threat of war or terrorism, insurrection, revolution or civil disturbance, acts of God, strikes or work stoppages, inability of any settlement system to settle transactions, interruptions in postal, telephone, telex and/or other communication systems or in power supply, or any other event or factor beyond the reasonable control of the Trustee.

12.8 Entire Agreement

This Trust Agreement and any schedules or exhibits hereto constitute the whole and entire agreement between the parties in respect of the subject matter hereof and cancel and supersede any prior written or verbal agreements including undertakings, declarations or representations made with respect thereto.

12.9 Execution in Counterpart

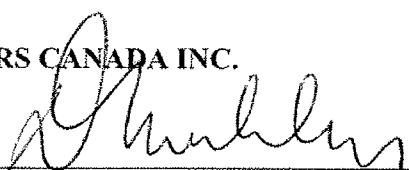
This Trust Agreement may be executed in counterparts each of which when so executed shall be deemed to be an original and all counterparts together shall constitute one agreement.

12.10 Binding Effect

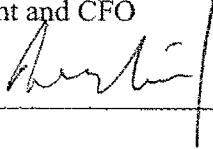
This Trust Agreement shall enure to the benefit of and be binding upon the Company, the Trustee and their respective successors and assigns.

IN WITNESS WHEREOF the parties have caused this Trust Agreement to be executed by their respective duly authorized officers effective as of the date first above written.

SEARS CANADA INC.



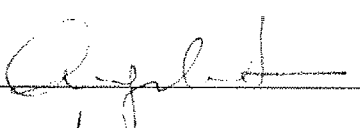
Dave Merkley,
Senior Vice-President and CFO



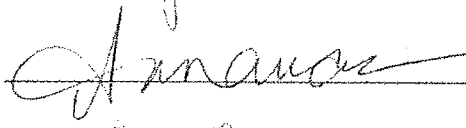
Rudolph R. Vezér
Secretary

We have authority to bind the Company.

ROYAL TRUST CORPORATION OF CANADA



Angela Lai
Senior Trust Officer



VP Specialized Trust Services

SCHEDULE A TO THE TRUST AGREEMENT

DATED AS OF THE 17th DAY OF FEBRUARY, 2006

CERTIFICATE OF COMPANY'S AUTHORIZED SIGNATORIES

The following are specimen signatures of persons, duly authorized to give all communications, notices and corrections from **Sears Canada Inc.** (the "Company") to the **Royal Trust Corporation of Canada** pursuant to the Trust Agreement. The Company assumes responsibility for amending this list from time to time.

Any two of:

Signature: _____

Name: _____

Title: _____

Signature: _____

Name: _____

Title: _____

Signature: _____

Name: _____

Title: _____

Signature: _____

Name: _____

Title: _____

I _____, in my capacity as secretary of the Company, hereby do certify the above to be true and correct.

SCHEDULE A TO THE TRUST AGREEMENT**DATED AS OF THE 17th DAY OF FEBRUARY, 2006****CERTIFICATE OF ACTUARY'S AUTHORIZED SIGNING OFFICERS**

The following are specimen signatures of persons, duly authorized to give all communications, notices and corrections from the Actuary to the Royal Trust Corporation of Canada pursuant to the Trust Agreement. The Actuary assumes responsibility for amending this list from time to time.

Any two of:

Signature: _____

Name: _____

Title: Principal

Signature: _____

Name: _____

Title: Principal

Signature: _____

Name: _____

Title: Principal

Signature: _____

Name: _____

Title: Principal

SCHEDULE A TO THE TRUST AGREEMENT**DATED AS OF THE 17th DAY OF FEBRUARY, 2006****CERTIFICATE OF INVESTMENT MANAGER'S AUTHORIZED SIGNING OFFICERS**

The following are specimen signatures of persons, duly authorized to give all communications, notices and corrections from the Investment Manager to the Royal Trust Corporation of Canada pursuant to the Trust Agreement. The Investment Manager assumes responsibility for amending this list from time to time.

Any two of:

Signature: _____

Name: _____

Title: _____

Signature: _____

Name: _____

Title: _____

Signature: _____

Name: _____

Title: _____

Signature: _____

Name: _____

Title: _____

SCHEDULE A TO THE TRUST AGREEMENT

DATED AS OF THE 17th DAY OF FEBRUARY, 2006

CERTIFICATE OF SRP COMMITTEE'S SIGNING OFFICERS

The following are specimen signatures of persons, duly authorized to give all communications, notices and corrections from the **SRP Committee**, situated at the address indicated below, to the **Royal Trust Corporation of Canada** pursuant to the Trust Agreement.

222 Jarvis St.
Toronto, ON M5B 2B8

Attention: Corporate Secretary

The SRP Committee assumes responsibility for amending this list from time to time.

Any two of:

Signature: _____

Name: _____

Title: _____

Signature: _____

Name: _____

Title: _____

Signature: _____

Name: _____

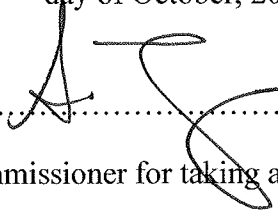
Title: _____

Signature: _____

Name: _____

Title: _____

This is **Exhibit "C"** referred to in the
affidavit of
William R. Turner
sworn before me, this 3rd
day of October, 2017


.....
A Commissioner for taking affidavits, etc.

LSUC # 7016tk

**AMENDED AND RESTATED
RETIREMENT COMPENSATION ARRANGEMENT
TRUST AGREEMENT**

BETWEEN

SEARS CANADA INC.

- and -

CIBC MELLON TRUST COMPANY

Sears Canada Inc. Supplementary Retirement Plan

**Executed on the 31st day of December, 2012 and
effective as of the 1st day of October, 2012.**

THIS AMENDED AND RESTATED RETIREMENT COMPENSATION ARRANGEMENT TRUST AGREEMENT executed on the 31st day of December, 2012 and effective as of the 1st day of October, 2012.

BETWEEN:

Sears Canada Inc., a company incorporated under the laws of Canada (the "Company")

- and -

CIBC Mellon Trust Company, a trust company existing under the laws of Canada (the "Trustee")

WHEREAS:

- a) the Company has established a retirement compensation arrangement as defined in Section 248(1) of the *Income Tax Act* (Canada) called Sears Canada Inc. Supplementary Retirement Plan (which plan, as amended from time to time, is hereinafter referred to as the "Plan");
- b) the Company appointed Royal Trust Corporation of Canada (the "Prior Trustee") as trustee of the trust fund established in connection with the Plan pursuant to an agreement dated February 17, 2006, as amended from time to time (the "Former Trust Agreement");
- c) the Company has removed the Prior Trustee as trustee and the Company wishes to appoint the Trustee as trustee and custodian of the Fund (as herein defined) established in connection with the Plan as transferred to it by the Prior Trustee and the Trustee has agreed to act in such capacities subject to the terms and conditions hereof; and
- d) the Company and the Trustee have agreed to enter into this Agreement to: (i) provide for the appointment and duties of the Trustee as trustee and custodian of the Fund; and (ii) replace and supersede the Former Trust Agreement.

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties hereto the parties each intending to be legally bound, agree as follows:

SECTION 1 INTERPRETATION

1.1 Definitions.

The terms used herein shall have the following meanings:

- (a) **“Actuary”** means the person or firm retained by the Company (or, following an Event of Default, the SRP Committee) to provide actuarial services as may be required from time to time for the purposes of the Fund or the Plan, who is (or in the case of a firm, one of the employees or a member is) a Fellow of the Canadian Institute of Actuaries.
- (b) **“Affiliate”** means with respect to a party that party’s affiliated companies within the meaning of the *Business Corporations Act* (Ontario) (“OBCA”); and with respect to the Trustee only, Affiliate shall be deemed, for the purposes of this Agreement only, to include Canadian Imperial Bank of Commerce, CIBC Mellon Global Securities Services Company and The Bank of New York Mellon and each of their affiliates within the meaning of the OBCA.
- (c) **“Aggregate Wind-up Liability”** means at any time, the total of all amounts each of which is the Wind-up Liability in relation to a Retiree, as at that time.
- (d) **“Agreement”** means this agreement, including any and all amendments and schedules hereto and thereto.
- (e) **“Annual Valuation”** has the meaning of that term outlined in Section 5.1(a).
- (f) **“Applicable Laws”** means any domestic or foreign tax or other legislation and any regulations, policies or administrative practices of any domestic or foreign regulatory authority, as may from time to time apply to the Fund or the Plan.
- (g) **“Authorized Instructions”** means all directions and instructions from an Authorized Party provided in accordance with Section 3.2.
- (h) **“Authorized Party”** means any person or entity properly identified to the Trustee in accordance with Section 3.1.
- (i) **“Bank”** means a Schedule I or Schedule II Bank in Canada.
- (j) **“Base Plan”** means the Sears Canada Inc. Registered Retirement Plan, as amended from time to time.
- (k) **“Business Day”** means each day other than a Saturday, Sunday, a statutory holiday in Ontario or any day on which the principal chartered banks located in Toronto are not open for business during normal banking hours.

- (l) **“Contribution”** means the amount or amounts which are from time to time required to be contributed to the Fund.
- (m) **“Event of Default”** shall mean:
- (i) the failure of the Company to deliver to the Trustee an Annual Valuation by July 31 of a Year, where the Trustee has notified the Company of such failure and no Annual Valuation has been received by the Trustee within sixty (60) days of such notification;
 - (ii) the failure of the Company to make a Contribution as described in Section 5.2 by December 31 of a Year, where the Trustee has notified the Company of such failure by February 28th of the immediately following Year and the Contribution has not been received by the Trustee before June 30 of that immediately following Year;
 - (iii) the failure of the Company to provide proof to the Trustee of the payment of Refundable Tax in accordance with Section 2.2(a), where the Trustee has notified the Company of such failure and the Company fails to provide proof of such payment within sixty (60) days of the date of notification;
 - (iv) the occurrence of an Insolvent Date;
 - (v) the date upon which the Trustee is provided with evidence satisfactory to it that the Base Plan is terminated;
 - (vi) the termination of the Plan; or
 - (vii) subject to 7.1(e) and (f), prior to the expiry date of a Letter of Credit, (A) the Company has failed, on or before the fifteenth day prior to such expiry date, to pay to the Trustee the Renewal Fee or to provide the Trustee with the written evidence of the Bank’s willingness to renew the Letter of Credit as described in Section 7.1(c); (B) the Company has failed, on or before the fifteenth day prior to such expiry date, to pay to the Trustee the Replacement Fee, or the Replacement Letter of Credit is not received by the Trustee on or before the tenth day prior to such expiry or the Replacement Letter of Credit does not satisfy the requirements of Section 7.1(e); and (C) based on the Annual Valuation in which the Actuary calculates the Aggregate Wind-up Liability as of such expiry date, the amount of the Aggregate Wind-up Liability, less any amounts existing in the Fund, is greater than nil;
- (n) **“Event of Default Notice”** has the meaning ascribed to that term in Section 6.1(a)(i).
- (o) **“Final Actuarial Report”** has the meaning ascribed to that term in Section 6.1(a)(ii).

- (p) **"Fiscal Year"** means, with respect to the Fund, the period commencing on the day and year first written above and ending on the immediately following December 31 and thereafter the same as a calendar year.
- (q) **"Fund"** means the Property held pursuant to this Agreement, including for greater certainty, the Refundable Tax, as such shall exist from time to time together with any earnings, profits, increments and accruals arising therefrom, including all amounts delivered to and accepted by the Trustee from any prior trustee or other funding agent, less any payments and disbursements.
- (r) **"Funded Retiree"** means a Retiree in respect of whom a contribution has been made by the Company in accordance with Sections 5.2, 5.3 or 6.1(d) and includes a Retiree in respect of whom Surplus has been applied to reduce the contribution under 5.3(c) in accordance with 5.3(d).
- (s) **"Included Benefits"** means:
- (i) with respect to a Retiree who terminates employment before 2006, all benefits payable under the Plan in respect of the Retiree; and
 - (ii) in any other case, all benefits payable under the Plan in respect of a Retiree other than benefits in respect of service while a United States resident or a United States citizen.
- (t) **"Initial Fees"** means the amount or amounts related to the initial contribution less the applicable Refundable Tax.
- (u) **"Initial Letter of Credit"** has the meaning ascribed thereto in Section 7.1.
- (v) **"Insolvent Date"** shall mean the date on which the Trustee is provided with evidence satisfactory to it that:
- (i) the Company is being wound up, dissolved or liquidated, whether pursuant to the provisions of the laws of a province or the federal laws of Canada applicable therein, or any other law or otherwise, or has become subject to the provisions of the *Winding-up and Restructuring Act* (Canada), or its existence is terminated or it has passed any resolution therefore;
 - (ii) the Company has made a general assignment for the benefit of its creditors or filed a proposal or a notice of intention to make a proposal under the *Bankruptcy and Insolvency Act* (Canada) or otherwise acknowledged its insolvency or been declared or become bankrupt or insolvent;
 - (iii) the Company has proposed a compromise or arrangement or otherwise brought proceedings under the Companies' Creditors Arrangement Act (Canada) or filed any petition or answer seeking any reorganization, arrangement, composition, re-adjustment, liquidation, dissolution or any other relief for itself under, or in any way

taken the benefit of the *Bankruptcy and Insolvency Act* (Canada) or any other present or future law relative to bankruptcy, insolvency or other relief for debtors or for or against the benefit of creditors;

- (iv) a court of competent jurisdiction has entered an order, judgment or decree against the Company in respect of any re-organization, arrangement, composition, re-adjustment, liquidation, dissolution, winding-up, termination of existence, declaration of bankruptcy or insolvency, or similar relief under any present or future law relative to bankruptcy, insolvency or other relief for debtors or for or against the benefit of creditors, whether or not the Company has acquiesced in the entry of such order, judgment or decree or such order, and such order, judgment or decree remains unvacated and unstayed for more than ten (10) days; or
 - (v) any trustee in bankruptcy, receiver, receiver and manager, monitor or liquidator or any other officer with similar powers has been appointed over the Company's assets, or any portion thereof, with or without the consent or acquiescence of the Company, and such appointment remains unvacated and unstayed for more than ten (10) days.
- (w) **“Investment Manager”** means an investment manager with respect to the Fund which has been appointed by the Company as provided in Section 9.2. For greater certainty, an Affiliate of the Trustee may be an Investment Manager.
- (x) **“Letter of Credit”** means:
- (i) the Initial Letter of Credit;
 - (ii) any Replacement Letter of Credit; or
 - (iii) any renewal of the Initial Letter of Credit or Replacement Letter of Credit in force from time to time during the term of this Agreement.
- The Company shall ensure that each Letter of Credit shall: (i) be issued by the Bank in favour of the Trustee, (ii) expire on the first anniversary of the date of issuance or renewal (as the case may be), (iii) be unsecured, (iv) permit partial drawings thereunder, (v) be an irrevocable “standby” letter of credit which obligates the Bank to pay any demand for payment made by the Trustee upon the occurrence of an Event of Default, and (vi) provide that the Bank notify the Trustee prior to the expiry of the Letter of Credit.
- (y) **“Member”** means an individual entitled to benefits under the Base Plan in respect of that individual’s employment.
- (z) **“Property”** means all tangible and intangible assets and property of the Fund of any nature or type and includes cash, Securities, any Letter of Credit and Real Estate.

- (aa) **“Real Estate”** means direct or indirect investments or interests in real property, leaseholds, mineral interests or participation in real estate investment trusts or corporations, provided that investments in shares or ownership interests that, at the time of acquisition by the Fund, are traded on a public securities exchange shall be deemed not to constitute “Real Estate”.
- (bb) **“Refundable Tax”** means the tax required to be withheld on contributions under a retirement compensation arrangement pursuant to paragraph 153(1)(p) of the Tax Act and the regulations thereunder.
- (cc) **“Replacement Letter of Credit”** has the meaning ascribed to that terms in Section 7.1(e).
- (dd) **“Retiree”** means at any time, an individual who terminates employment with the Company before 2010, at or before that time, and who, at that time:
- (i) is in receipt of a pension under the Plan;
 - (ii) is at least age fifty-five (55), terminated employment with the Company prior to age fifty five (55) and elected at the time of termination to receive a pension under the Plan;
 - (iii) terminated employment with the Company at or after age fifty five (55) and has provided the Company with any required instructions as to the form of pension that the individual is to receive under the Plan;
- includes, after a Retiree’s death, any person entitled to an immediate pension under the Plan in respect of the Retiree, where that person has provided the Company with any required instructions as to the form of pension that the person is to received, but shall not include an individual who is, at that time, a United States citizen or United States resident unless the individual terminated employment before 2006 and elected to be treated as a Funded Retiree by signifying his intention to the Company in a manner acceptable to the Company.
- (ee) **“Security”** has the meaning ascribed to that term in the *Securities Act* (Ontario).
- (ff) **“Standard of Care”** has the meaning ascribed to that term in Section 18.1.
- (gg) **“Surplus”** means in relation to an Annual Valuation, that amount, if any, by which the value of the Fund, as of the effective date of the valuation, exceeds the sum of the Aggregate Wind-up Liability, as at that same date, and the provision for wind-up expenses set out in the Annual Valuation.
- (hh) **“SRP Committee”** means a committee constituted in accordance with the Plan and includes the Retiree Committee appointed in accordance with Section 8.

- (ii) **“Tax Act”** means the *Income Tax Act* (Canada) and all regulations and policies thereto, as amended and/or restated from time to time. Any reference in this Agreement to a provision of the Tax Act includes any successor provision thereto.
- (jj) **“Tax Obligations”** means the responsibility for payment of taxes (including related interest and penalties), withholding of taxes, certification, reporting and filing requirements, claims for exemptions or refunds and other related expenses of the Fund.
- (kk) **“Valuation Date”** means the last day in each calendar month, the day of termination of the Fund and such additional days as the Company and the Trustee may determine from time to time.
- (ll) **“Wind-up Administrator”** means at any time after the issuance of an Event of Default Notice (i) where the Event of Default is described in paragraph (i), (ii), (iii) or (iv) of the definition thereof, the SRP Committee; and (ii) in any other case, the Company.
- (mm) **“Wind-up Liability”** means as at any particular time, in relation to a Retiree, the value, as at the particular time, of all Included Benefits in respect of the Retiree, determined in accordance with the following assumptions:
 - (i) the Base Plan is terminated, as of the time immediately before that particular time;
 - (ii) all obligations under the Base Plan, in respect of the Retiree, are satisfied by the payment, at the time immediately before the particular time, of a lump sum amount;
 - (iii) any Retiree who has not commenced receipt of a pension, at the particular time, is assumed to have commenced receipt of a pension at the time immediately before the particular time, payable in the form selected by the Retiree and, if no election has been made, in the normal form of payment under the Plan; and
 - (iv) the value of the benefits payable under the Plan are determined in accordance with the *Standard of Practice for Determining Pension Commuted Values* issued by the Canadian Institute of Actuaries, with an effective date of February 1, 2005, or any subsequent standard dealing with the same subject matter (the “Standard of Practice”) for terminations occurring in the month that includes the particular time.

In no event shall the assumptions used for the purposes of determining value under paragraph (iv) reflect the fact that the Plan and its beneficiaries do not benefit from the tax treatment afforded to pension plans registered under the Tax Act and their beneficiaries, and no margin shall be allowed for adverse deviation.
- (nn) **“Year”** shall mean a calendar year.

1.2 Interpretation.

Words importing the singular number shall include the plural and vice-versa. All references to sections and schedules are to sections and schedules to, and forming part of, this Agreement.

SECTION 2 ESTABLISHMENT AND ACCEPTANCE OF TRUST FUND; APPOINTMENT OF TRUSTEE AND CUSTODIAN

2.1 Appointment of Trustee and Custodian and Acceptance of Fund.

The Company hereby appoints the Trustee as trustee of the Fund consisting solely of such Property acceptable to the Trustee as shall from time to time be paid or delivered to the Trustee. The Company continues with the Trustee the trust fund established in connection with the Plan as transferred by the Prior Trustee to the Trustee. Such appointment shall be effective immediately following the removal or resignation of the Prior Trustee. The Trustee hereby accepts the trusts herein set out and agrees to hold, invest, distribute and administer the Fund upon the terms and conditions of this Agreement. The Trustee hereby acknowledges that it is the custodian of the Plan as that term is defined in the definition of retirement compensation arrangement in Section 248(1) of the Tax Act. The Trustee shall have no liability or responsibility for any Property until it in fact is received by it or any sub-custodian.

Except as otherwise directed by the Company, the Trustee shall establish a custody account in the name of the Trustee for the account of the Fund in which the Trustee shall deposit or cause to be deposited the assets of the Fund as the Trustee may from time to time determine.

Subject to Applicable Laws, the Retirees shall not have any claim against the Trustee or bring an action against the Fund or require an accounting of the Fund except by or through the Company. In addition, any claim for or right to any benefit or payment of any amount, including a surplus amount, shall be governed solely by the terms of the Plan.

2.2 Tax on Contributions.

(a) The Company shall withhold from its contributions to the Fund all taxes required by any law or by the administration thereof to be withheld including, without limitation, any applicable Refundable Tax, and shall remit such taxes to the appropriate taxing authority as so required. The Company shall provide to the Trustee evidence satisfactory to the Trustee, within thirty (30) days of making a contribution to the Fund, that it has remitted the refundable tax, with respect to the contribution, to the Receiver General for Canada.

(b) In the event that the Company fails provide evidence satisfactory to the Trustee of payment of Refundable Tax as required in Section 2.2(a), the Trustee shall provide written notice to the Company of such failure.

2.3 Replacement of Former Trust Agreement.

This Agreement replaces and supersedes in its entirety the Former Trust Agreement. For greater certainty, if there is a conflict between the terms of this Agreement and the Former Trust Agreement, the terms of this Agreement shall prevail.

SECTION 3 AUTHORIZED INSTRUCTIONS

3.1 Authorized Parties.

(a) The Company shall from time to time furnish the Trustee with a written list of the names, signatures and extent of authority of all persons authorized to direct the Trustee and otherwise act on behalf of the Company under the terms of this Agreement. The Company shall cause each Investment Manager appointed in accordance with Section 9.2 to furnish the Trustee upon such appointment and from time to time with a written list of the names and signatures of the person or persons who are authorized to represent the Investment Manager. The Trustee shall be entitled to rely on, and shall be fully protected in giving effect to, instructions from persons or entities so identified until it has been notified in writing by the Company or an Investment Manager as appropriate, of a change of the identity or authority of such person or entities.

(b) Any Authorized Instruction, including from an Investment Manager, the Actuary or the SRP Committee, as permitted to be given in accordance with this Agreement, is deemed to be an Authorized Instruction to the Trustee from the Company given in accordance with this Section 3.1. The Trustee shall be entitled to rely conclusively on the authority of any individual providing such Authorized Instruction as a person entitled to act on behalf of the Investment Manager, Actuary or SRP Committee, respectively, and such individual shall be deemed to be an Authorized Party without further investigation or verification by the Trustee.

(c) Any Authorized Instruction referred to in Section 4.1 from the Wind-up Administrator shall be accompanied by the opinion of an Actuary that the Authorized Instructions are in accordance with the provisions of this Agreement and the Plan. The Authorized Instructions shall not be acted upon by the Trustee in the absence of such an opinion and the Trustee shall have no obligation to make any inquiries in respect of, or to question, any such opinion.

(d) The SRP Committee shall from time to time furnish the Trustee with a written list of names and signatures of all persons authorized to direct the Trustee and otherwise on behalf of the SRP Committee under the terms of this Agreement.

3.2 Authorized Instructions.

All directions and instructions to the Trustee given pursuant to this Agreement from an Authorized Party shall be forwarded in writing, by facsimile transmission, electronic transmission or such other means of transmission as may be agreed upon by the Trustee and the Company, provided that the Trustee may in its discretion act upon receipt of telephone instructions. The Company agrees to forward to the Trustee written confirmation of any telephone instructions on the same day that they are given, however, any such written confirmation shall in no way affect any action taken by the

Trustee in reliance upon the telephone instructions. The Trustee shall use reasonable efforts to monitor its facsimile communication and electronic transmission facilities but Authorized Instructions are deemed not to be received until they are brought to the attention of the officers of the Trustee to which they are addressed.

Unless otherwise expressly provided, each Authorized Instruction shall continue in full force and effect until superseded or cancelled by another Authorized Instruction.

3.3 Errors, Omissions in Authorized Instructions.

Any Authorized Instructions shall, as against the Company and in favour of the Trustee, be conclusively deemed to be Authorized Instructions for the purposes of this Agreement, notwithstanding any error in the transmission thereof or that such Authorized Instructions may not be genuine, if believed by the Trustee acting in accordance with the Standard of Care to be genuine. Provided however that the Trustee may in its discretion decline to act upon any Authorized Instructions:

- (a) that are insufficient or incomplete;
- (b) that are not received by the Trustee in sufficient time to give effect to such Authorized Instructions; or
- (c) where the Trustee has reasonable grounds for concluding that the same have not been accurately transmitted or are not genuine.

If the Trustee declines to give effect to any Authorized Instructions for any reason set out in the preceding sentence, it shall notify the Company or the Investment Manager forthwith after it so declines.

3.4 No Duty.

The Trustee shall be under no duty or obligation to question any Authorized Instruction, to review any Securities or other Property held in the Fund, to make any suggestions with respect to the investment and reinvestment of the assets in the Fund, or to evaluate or question the performance of any Authorized Party. The Trustee shall be fully protected in acting in accordance with Authorized Instructions or for failing to act in the absence of Authorized Instructions.

SECTION 4 PAYMENTS FROM THE TRUST FUND

4.1 Payments from the Fund.

Except as otherwise provided in this Agreement, and prior to the issuance of an Event of Default Notice and subject to Section 5.4(b), the Trustee shall make all distributions, disbursements and payments (including Surplus) out of the Fund (including to the Company) on the Authorized Instructions of the Company. Each Authorized Instruction of the Company to make a payment from

the Fund shall constitute a certification to the Trustee that the payment is in accordance with the provisions of this Agreement, the Plan and Applicable Laws.

Subject to Sections 6.2(a) and (b) and Section 3.1(c), after the issuance of an Event of Default Notice, the Trustee shall make all distributions, disbursements and payments out of the Fund to such persons (including the Company) on the Authorized Instructions of the Wind-up Administrator. Each Authorized Instruction of the Wind-up Administrator to make a payment from the Fund shall, together with the opinion required under Section 3.1(c), constitute a certification to the Trustee that the payment is in accordance with the provisions of this Agreement, the Plan and Applicable Laws.

Upon any such payments being made by the Trustee, the amount thereof shall no longer constitute a part of the Fund.

4.2 Payments of Taxes and Expenses.

The Fund shall be responsible for and the Trustee may pay out of the Fund (with or without any Authorized Instructions from the Company), all Tax Obligations and financial obligations for environmental or other liability and financial obligations for any liability imposed by a government or a governmental body which are levied or assessed and are legally enforceable against the Trustee in respect of the Fund, or any part thereof, or directly against the Fund or any part thereof, and may withhold from payments out of the Fund, all Tax Obligations required by law or by the administration thereof to be so withheld.

SECTION 5 ACTUARIAL REPORTS

5.1 Annual Valuation.

(a) The Company shall cause the Actuary to prepare a valuation of the assets of the Plan with an effective date of December 31 of the Year immediately preceding the relevant Year (the "Annual Valuation"). The Annual Valuation shall value the Fund and determine the Aggregate Wind-up Liability as at the Annual Valuation's effective date.

(b) For greater certainty, the determination of the Aggregate Wind-up Liability shall include only those individuals who are Retirees as of the effective date of the Annual Valuation.

(c) The Company shall deliver, or cause to be delivered, a copy of the Annual Valuation to the Trustee on or before July 31 of the relevant Year. The Trustee shall be fully protected in relying upon the contents of the Annual Valuation.

(d) In the event that the Company fails to deliver, or cause to be delivered, to the Trustee the Annual valuation as required under Section 5.1(c), the Trustee shall provide written notice to the Company of such failure.

5.2 Annual Company Contributions.

(a) The Company shall contribute in a Year to the Fund the amount, if any, disclosed in the Annual Valuation for the Year, by which:

- (i) the total of the Aggregate Wind-up Liability, as at the effective date of the Annual Valuation, and the amount estimated by the Actuary to be reasonably necessary to satisfy any expenses associated with the wind-up of the Fund, exceeds
 - (ii) the value of the assets of the Fund, if any, as at the effective date of the Annual Valuation.
- (b) The Company shall also contribute in a Year to the Fund the amount, if any, by which
- (i) the amount of Surplus that has been applied to reduce the contribution under Section 5.3(c), in accordance with Section 5.3(d), with respect to a Member who becomes a Retiree after the effective date of the Annual Valuation for the Year, exceeds
 - (ii) the amount of Surplus, if any, shown in the Annual Valuation for the Year.
- (c) For greater certainty, where the Annual Valuation for a given Year discloses no Surplus, the contribution required under Section 5.2(b) is equal to the amount described in 5.2(b)(i).
- (d) The contributions described in Sections 5.2(a) and 5.2(b) shall be made no later than December 31 of the relevant Year.
- (e) Where the Company fails to make a contribution as required under this Section 5.2, the Trustee shall provide written notice to the Company of such failure.
- (f) For the purposes of this Section, the Company's obligation to contribute shall be satisfied either by cash, or a Letter of Credit, or a combination of the two, the value of such combination being the full amount of the contribution necessary in accordance with this Section.

5.3 Periodic contributions.

- (a) Where a Member becomes a Retiree at any time, the Company shall cause the Actuary to:
- (i) value within sixty (60) days of the end of the calendar month during which the Member becomes a Retiree, the Wind-up Liability in respect of the Retiree, as at the end of such month, using the assumptions that are appropriate as at the end of the month; and
 - (ii) prepare a valuation, which aggregates the Wind-up Liabilities in respect of all Members who become Retirees during the month (the "Aggregate Valuation"), in respect of such month.
- (b) The Company shall deliver, or cause to be delivered, a copy of the Aggregate Valuation, in relation to a calendar month, to the Trustee within ninety (90) days after the end of the month.
- (c) Subject to Section 5.3(d), within sixty (60) days of the delivery to the Trustee of an Aggregate Valuation in relation to a calendar month, the Company shall contribute to the

Fund the amount disclosed in the Aggregate Valuation (which, for greater certainty, shall be equal to the total of all amounts each of which is the Wind-up Liability in relation to a Member who becomes a Retiree during the relevant month).

- (d) Subject to Section 5.3(e), the contribution under Section 5.3(c) may be reduced, upon written notification to the Trustee by the Company, that the Company will be applying the Surplus disclosed in the Annual Valuation most recently delivered to the Trustee towards the contribution, except to the extent that such Surplus has previously been applied under this Section 5.3(d) or withdrawn under Section 5.4.
- (e) The Company may not provide at any time the notification described in Section 5.3(d) in respect of an Aggregate Valuation if another Aggregate Valuation has been delivered to the Trustee before that time and the Company has not, as of that time, either made the contribution described in Section 5.3(d) in respect of the other Aggregate Valuation or provided the notification described in Section 5.3(d) in respect of the other Aggregate Valuation.
- (f) The Trustee shall not seek to provide notice thereof to the Members of any breach by the Company of Sections 5.3(c), (d) or (e).
- (g) For the purposes of this Section, the Company's obligation to contribute shall be satisfied either by cash, or a Letter of Credit, or a combination of the two, the value of such combination being the full amount of the contribution necessary in accordance with this Section.

5.4 Use of Assets of the Fund.

- (a) Subject to Sections 5.6, 6, 12.1, 16.1 and 18.2, the Fund shall only be available to satisfy benefits under the Plan in respect of Funded Retirees. No person shall have any right to or interest in any part of the assets of the Fund except as, and to the extent provided from time to time, under the Plan and the Agreement. No liability shall attach to any officer, shareholder, director, or employee of the Company for payment of any benefits or claims hereunder.
- (b) The Company may pay benefits under the Plan in respect of Funded Retirees from its operating funds or it may direct the Trustee to make a payment of benefits, otherwise payable under the Plan, in respect of Funded Retirees from the Fund. Any Plan benefits paid directly by the Company to a Funded Retiree shall cease to be an obligation of the Fund, and shall discharge the Trustee and the Company from any obligation to make such payment to the Funded Retiree, upon provision by the Company to the Trustee of evidence satisfactory to the Trustee of such payment. Any amount paid by the Trustee in respect of a Funded Retiree from the Fund shall discharge the Company from its obligation to make payments in respect of the Funded Retiree under the Plan, to the extent of that amount.
- (c) For the purposes of Section 5.4(b), the payment by the Trustee of benefits to an individual may be made by depositing the payment into an account with a financial institution where the

funds in the account may be disbursed to, on behalf of or with the concurrence of that individual.

- (d) If a Funded Retiree provides the Trustee with a written notice certifying that the Company has failed to make payment of benefits due in accordance with the Plan for a period of at least thirty (30) days following the due date for such payment, the Trustee shall provide written notice to the Company of the Funded Retiree's notice. The Trustee shall pay the benefits directly to the Funded Retiree no sooner than thirty (30) days following provision of its written notice to the Company unless:
- (i) the Company had previously provided the evidence required under Section 5.4(b) of such payment;
 - (ii) prior to such payment, the Company pays the benefit to the Funded Retiree and provides the evidence required under Section 5.4(b) of such payment; or
 - (iii) notifies the Trustee in writing that the requirement by the Company to pay such amount, or a portion thereof, is disputed by the Company, in which case the Trustee shall pay only the undisputed amount or portion thereof directly to the Funded Retiree.

5.5 Benefits Payable Under Plan.

Subject to Section 6, benefits payable under the Plan, other than benefits payable in respect of Funded Retirees, shall be paid from the operating funds of the Company.

After all payments required to be made to the Retirees, in accordance with the Company's or the SRP Committee's Authorized Instructions, have been made or provided for and the Retirees are not entitled to receive further payments from the Fund, promptly pay, subject to Section 12.2, the balance of the Fund to the Company or to any person duly authorized to administer the Company's assets following an Insolvent Date.

5.6 Refund to Company.

- (a) Subject to Sections 5.6(b) and (c), where the Annual Valuation most recently delivered to the Trustee reveals a Surplus where the value of the Fund is in excess of one hundred and ten per cent (110%) of the Aggregate Wind-up Liability, the Company may direct, by the provision of an Authorized Instruction to the Trustee, a withdrawal of assets from the Fund the value of which does not exceed that excess less any part of the Surplus used in accordance with Section 5.3(d). Notwithstanding the foregoing, the Company shall not be entitled to direct the Trustee to draw down on any Letter of Credit for the payment of any such Surplus. The Company shall not be obliged to obtain the consent of the Members to make such withdrawal or give any notice of such withdrawal to the Members and the Company shall provide a certificate at the time of such Authorized Instruction that such consent is not necessary. The Trustee shall not seek to obtain the consent of the Members in respect of such withdrawal nor to give notice thereof to the Members and the Trustee may rely upon the Authorization and the certificate of the Company described above without further inquiry.

- (b) The Company may only make a request for withdrawal under Section 5.6(a) during the Year in respect of which the Annual Valuation was prepared, and payment of the Surplus described in Section 5.6(a) may be made in more than one withdrawal.
- (c) No withdrawal under Section 5.6(a) may take place if the Company has, pursuant to Section 5.3(b), delivered to the Trustee during the relevant Year a copy of an Aggregate Valuation and the Company, has not, at the time of the withdrawal request, contributed to the Fund the amount disclosed in the Aggregate Valuation less any Surplus that the Company has applied against that amount in accordance with Section 5.3(d).

5.7 List of Beneficiaries.

On the Effective Date and on each anniversary thereof, the Company shall provide to the Trustee a list of the Member, Retirees and Funded Retirees of the Plan. Such list shall contain each such person's full name, Social Insurance Number, current address and other information which the Trustee may reasonably require for the purposes herein.

The Company shall forthwith advise the Trustee in writing of any additions, deletions or changes to such list. The Trustee shall be entitled to rely on the information provided in such list for all purposes of this Agreement including, without limitation, the payment of any amounts by the Trustee to Retirees and the Trustee shall not be under any duty to make enquiries with respect to the accuracy of the information provided in such list.

SECTION 6 EVENTS OF DEFAULT

6.1 Final Actuarial Report.

- (a) As soon as practicable after the date on which the Trustee becomes aware of an Event of Default, the Trustee shall:
 - (i) give written notice to the Company and the SRP Committee of the Event of Default (the "Event of Default Notice"); and
 - (ii) cause the Actuary to prepare an actuarial report (the "Final Actuarial Report"), effective as of the date of occurrence of such Event of Default which shall also be the effective date of the windup of the Fund.
- (b) The Final Actuarial Report shall contain the following:
 - (i) a determination of the value of the assets of the Fund as of the effective date of the Final Actuarial Report;
 - (ii) a determination of the Aggregate Wind-up Liability as at the effective date of the Final Actuarial Report. For greater certainty, the Aggregate Wind-up Liability shall include only those individuals who are Retirees as at the effective date of the Final Actuarial Report;

- (iii) an identification of Funded Retirees and Retirees other than Funded Retirees; and
- (iv) a certification by the Actuary that such Final Actuarial Report has been prepared in accordance with the provisions of the Plan in effect as at the effective date of the Final Actuarial Report.

(c) Unless an Insolvent Date has occurred, the Trustee shall deliver to the Company a copy of the Final Actuarial Report. The Company shall make a Contribution to the Fund in the amount as may be required to settle all Included Benefits for Retirees and pay all expenses associated with the wind-up of the Plan. For greater certainty, failure by the Company to make such payment within ninety (90) days of the delivery of the Final Actuarial Report by the Trustee or to provide to the Trustee evidence satisfactory to the Trustee of the payment of the Refundable Tax in respect of any such Contribution shall not constitute an Event of Default and the Trustee shall not seek to give notice thereof to the Members.

(d) Subject to Section 6.2, all assets of the Fund shall be distributed to those persons entitled to payment thereunder in accordance with Section 6.3.

6.2 Wind-up of Base Plan.

(a) Following the date on which the Trustee becomes aware of an Event of Default (the "Commencement Date") and during the one hundred and twenty (120) day period immediately following the Commencement Date, the Trustee shall, subject to Section 5.4(b), make payment only to Funded Retirees of the periodic Plan benefits that have previously been the subject of an Authorized Instruction by the Company or which may become the subject of an Authorized Instruction by the Wind-up Administrator. The Trustee shall not follow any Authorized Instruction to pay amounts from the Fund other than an Authorized Instruction to make periodic Plan benefit payments to Funded Retirees.

(b) If the Trustee is provided, within the one hundred and twenty (120) day period following the Commencement Date, with evidence satisfactory to it of a formal application to wind-up the Base Plan the Trustee shall continue, following the one hundred and twenty (120) day period, to make payment only to Funded Retirees of the periodic Plan benefits that have previously been the subject of an Authorized Instruction by the Company, or which may become the subject of an Authorized Instruction by the Wind-up Administrator, until it is provided with evidence satisfactory to it that the entitlement to surplus under the Base Plan has been determined. Until it is provided with evidence satisfactory to it that the entitlement to surplus under the Base Plan has been determined, the Trustee shall not follow any Authorized Instruction to pay amounts from the Fund other than an Authorized Instruction to make periodic Plan benefit payments to Funded Retirees.

(c) If the Trustee is not provided, within the one hundred and twenty (120) day period following the Commencement Date, with evidence satisfactory to it of a formal application to wind-up the Base Plan, the Trustee shall, following the one hundred and twenty (120) day period, distribute the assets of the Fund in accordance with the Authorized Instruction of the Wind-up Administrator.

6.3 Distribution of Assets.

(a) Following the Commencement Date, the non-cash assets of the Fund shall be disposed of and the proceeds realized from such disposition together with the cash in the Fund shall be applied by the Trustee as directed by the Wind-up Administrator subject to Section 8.2. The assets of the Fund shall be applied, subject to any requirement of a statute or court order, in priority of payment, on the basis set forth below:

(b) payments in respect of the following costs, expenses, charges and liabilities of the Fund, which shall include the compensation, disbursements and expenses owing to the Trustee to the extent that the Trustee has not been able to recover such compensation, disbursements and expenses from the Company or from the Fund in accordance with Section 16.1;

(c) any other proper charges or taxes applicable to, or levied against the Fund that are not referred to in Section 6.3(b);

(d) the disbursements and expenses owing to the SRP Committee to the extent that the SRP Committee has not been able to recover such disbursements and expenses from the Company or from the Fund in accordance with Section 16.1;

(e) payment by way of lump sum equal to the Wind-up Liability in relation to each Funded Retiree, as set out in the Final Actuarial Report (and where there are sufficient assets to make the payments required under Sections 6.3(a) and (b) but not sufficient assets to make payment in respect of all of the Wind-up Liabilities in relation to the Funded Retirees, then Section 6.4(a) shall apply);

(f) payment by way of lump sum equal to the Wind-up Liability in relation to each Retiree other than a Funded Retiree, as set out in the Final Actuarial Report (and where there are sufficient assets to make the payments required under Sections 6.3(b), (c) and (d) but not sufficient assets to make payment in respect of all of the Wind-up Liabilities in relation to the Retirees other than the Funded Retirees, then Section 6.4(b) shall apply); and

(g) after making the payments required under Sections 6.3(b), (c), (d), (e) and (f), the remaining assets, if any, shall be paid to the Company.

It is understood and agreed that, in view of the fact that the Fund will be comprised in part of Refundable Tax, distribution of the assets of the Fund in accordance with this Section 6.3 (and, if applicable, Section 6.4) may be made in more than one instalment, it being understood however that no payment shall be made to the Company under Section 6.3(g) until all of the amounts owing under Sections 6.3(b), (c), (d), (e) and (f), have been paid.

Upon distribution of the assets of the Fund as provided in this Section 6.3 (and, if applicable, in Section 6.4), the Trust shall be terminated pursuant to the terms of the Agreement.

6.4 Insufficient Assets.

(a) If, after making (or having made provision for) the payments required under Sections 6.3(b) and (c), there are insufficient assets to make payment in respect of all of the Wind-up Liabilities in relation to Funded Retirees (as provided under 6.3(d) and as determined in the Final Actuarial

Report), each Funded Retiree shall receive a proportionate share, as determined by the Wind-up Administrator, of the remaining assets of the Fund in an amount that is equal to the ratio that the Wind-up Liability in relation to the Funded Retiree is to the aggregate of the Wind-up Liabilities in relation to all Funded Retirees, and the result shall be multiplied by the total assets of the Fund which remain in the Fund.

(b) If, after making (or having made provision for) the payments required under Sections 6.3(b), (c) and (d), there are insufficient assets to make payment in respect of all of the Wind-up Liabilities (as provided under Section 6.3(e) and as determined in the Final Actuarial Report), in relation to Retirees other than Funded Retirees, each Retiree other than a Funded Retiree shall receive a proportionate share, as determined by the Wind-up Administrator, of the remaining assets of the Fund in an amount that is equal to the ratio that the Wind-up Liability in relation to the Retiree is to the aggregate of all of the Wind-up Liabilities in relation to all Retirees other than Funded Retirees, and the result shall be multiplied by the total assets which remain in the Fund.

SECTION 7 LETTERS OF CREDIT

7.1 Letters of Credit.

(a) The Company shall pay any Initial Fees to the Trustee. The Trustee agrees to apply such Initial Fees to purchase from a Bank a letter of credit (the "Initial Letter of Credit") as directed by the Company pursuant to an Authorized Instruction. The amount of the Initial Letter of Credit shall, in combination with any non Letter of Credit Contribution from the Company, not be less than the required Contribution outlined in Section 5.2.

(b) The Company shall take all steps necessary to cause any Letter of Credit to be issued as of December 31, 2012. The Trustee's sole obligation shall be to pay to the Bank the Initial Fees which are received by the Trustee.

(c) Not less than fifteen days prior to the expiry date of the Letter of Credit, the Company shall pay to the Trustee additional contributions, the after-tax amount of which is not less than the amount of any applicable renewal fee (the "Renewal Fee") for the Letter of Credit, and shall provide to the Trustee written evidence of the Bank's willingness, upon receipt of the Renewal Fee, to renew the Letter of Credit as of such expiry date in an amount equal to the required contributions outlined in Section 5.2.

(d) The Company shall take all steps to ensure that the Letter of Credit is renewed on a timely basis. The Trustee's sole obligation shall be to pay to the applicable Bank the Renewal Fee which is received by the Trustee.

(e) In lieu of complying with Sections (c) and (d) and not less than fifteen days prior to the expiry date of the Letter of Credit, the Company may notify the Trustee of its intention to allow such Letter of Credit to expire and to cause a new letter of credit (the "Replacement Letter of Credit") to be issued by a Bank as of such expiry date in an amount equal to the Aggregate Wind-up Liability, less any amounts existing in the Fund, as of such date. At the time of so notifying the Trustee, the

Company shall pay to the Trustee additional contributions, the after-tax amount of which is not less than the amount of the fee for the Replacement Letter of Credit (the "Replacement Fee"). The Company shall take all steps to ensure that any Replacement Letter of Credit is received by the Trustee not less than ten days prior to such expiry date. Such Letter of Credit shall have an effective date which is the date of such expiry. The Trustee's sole obligation shall be to pay to the applicable Bank the Replacement Fee which is received by the Trustee.

(f) In lieu of complying with Sections (c) and (d) and not less than fifteen days prior to the expiry date of the Letter of Credit, the Company may notify the Trustee of its intention to allow such Letter of Credit to expire and to make a contribution to the Fund in an amount equal to the Aggregate Wind-up Liability, less any amounts existing in the Fund, no later than five (5) Business Day's prior to such expiry date.

(g) In the event of the occurrence of an Event of Default the Trustee shall demand payment under the Letter of Credit of the balance of the face amount thereof and shall credit the amount received from the Bank to the Fund and disburse the Fund in accordance with Section 6.3.

(h) In the event of the occurrence of an Event of Default described in paragraph (iii) of such definition, the Trustee shall demand payment under the Letter of Credit of such amount that, after deduction of any applicable Refundable Tax, shall approximate the amount that the Trustee may be required to pay on the account of tax, interest and penalties as a result of the failure to withhold and remit described in that paragraph. The Trustee shall pay all or any portion of the amount received from the Bank to the taxation authorities and shall pay the balance, if any, as instructed by the Company.

SECTION 8 ADMINISTRATION OF THE PLAN

8.1 If No SRP Committee.

Subject to Section 8.3, the Plan shall be administered by the Company which shall have the exclusive right and obligation to determine the rights of any person to participate in the benefits from the Fund under the terms of the Plan and this Agreement.

8.2 If No SRP Committee.

In the event that, at any time following an Event of Default as described in paragraph (i), (ii), (iii) or (iv) of the definition thereof, there are no members of the SRP Committee, the Trustee shall, as soon as is reasonably possible, provide to all Retirees a notice requiring them to appoint a committee of Retirees ("Retiree Committee"), to represent them in matters relating to the Fund. Such Retiree Committee shall be comprised of such person or persons (not to exceed five (5) in number) as are elected by a majority of them within sixty (60) days of the issuance of such notice and failing that will be the Retiree who the Actuary advises the Trustee has, at such time, the greatest present value of benefits payable hereunder (and, in such event, the Trustee shall provide notice to the Retirees of the identity of such individual who is to comprise the Retiree Committee). The Retiree Committee shall serve as a replacement for the SRP Committee and thereafter such Retiree Committee shall

have all the rights and duties of the SRP Committee as provided in this Agreement and in the Plan and all Authorized Instructions and actions of the Retiree Committee shall, for all purposes of this Agreement and the Plan, be deemed to be Authorized Instructions and actions of the SRP Committee.

8.3 Administration of the Plan Following an Event of Default.

(a) Following an Event of Default as described in paragraph (i), (ii), (iii) or (iv) of the definition thereof, and notwithstanding Section 9:

(i) with respect to each matter under this Agreement where, in the absence of an Event of Default Notice, the Company would be providing Authorized Instructions to the Trustee, the Trustee shall be entitled to rely conclusively upon Authorized Instructions from the SRP Committee;

(ii) the SRP Committee shall be responsible for ensuring that no Authorized Instructions or other directions given to the Trustee shall require the Trustee to use or divert any part of the Fund for purposes other than those which are in accordance with the terms of the Plan and this Agreement;

(iii) with respect to each matter under this Agreement where, in the absence of the issuance of an Event of Default Notice, the Trustee would be issuing a notice to the Company, the Trustee shall provide such notice to the SRP Committee (with a copy of each such notice to the Company);

(iv) the SRP Committee shall use its best efforts to fulfil the obligations of the Company under this Agreement to provide information to the Actuary to assist it in making valuations, should the Company fail to do so; and

(v) the SRP Committee (and not the Trustee) shall be responsible for ensuring that the assets of the Fund are distributed in accordance with Section 6.3 (and, if applicable, Section 6.4) and, in that regard, the SRP Committee shall be entitled to rely upon the advice of its counsel and other professional advisors.

8.4 Powers of the SRP Committee Following an Event of Default.

Upon the issuance of an Event of Default Notice by the Trustee following an Event of Default as described in paragraph (i), (ii), (iii) or (iv) of the definition thereof, the SRP Committee shall be entitled to exercise all the rights of the Company (to the exclusion of the Company) which are conferred upon the Company under this Agreement with respect to the period prior to an Event of Default.

SECTION 9 INVESTMENT

9.1 Investment of the Fund.

Subject to Section 9.6, the Trustee shall have no responsibility for the investment or reinvestment of the Fund, or for failure to reinvest the Fund and shall have no responsibility for any investment decisions, which shall be the sole responsibility of the Company unless otherwise delegated by the Company to an Investment Manager in accordance with Section 9.2. The Fund shall be held, invested and reinvested by the Trustee in accordance with Authorized Instructions, whether or not any such investment is of a character authorized by laws concerning investments by trustees. The Trustee shall invest the principal and income of the Fund without distinction between principal and income in such investments as may be directed by Authorized Instructions. The Trustee shall not be responsible for the title, validity or genuineness of any Property or evidence of title thereto received or delivered by it or any defect in ownership or title.

Notwithstanding an investment authority given to an Investment Manager, the Trustee may dispose of any assets of the Fund on such terms as the Trustee may determine, upon notification of the Company, in order to pay any obligations imposed on the Fund or to repay any loan authorized by this Agreement.

9.2 Investment Managers.

The Company may from time to time appoint one or more Investment Managers to manage the investment of any portion of the Fund and, with respect to such portion, to direct the Trustee with respect to settling investment transactions on behalf of the Fund and exercising such other powers as may be granted to Investment Managers. The Company shall give prompt written notice of any such appointment, upon which the Trustee shall rely until it receives from the Company written notice of the termination of such appointment. In each case where such an appointment is made, the Company shall determine the assets of the Fund to be allocated to the applicable Investment Manager from time to time and shall issue Authorized Instructions to the Trustee with respect thereto.

Following an Event of Default the appointment of any Investment Manager shall terminate for the purposes of this Agreement.

9.3 Investment Monitoring.

It shall be solely the responsibility of the Company to determine that all transactions entered into by the Trustee pursuant to Authorized Instructions are authorized by and in compliance with Applicable Laws and that any transaction relating to, or investment of, the Fund's assets if made or retained does not attract any tax or penalty under Applicable Laws (including tax under section 207.1(5) of the Tax Act).

9.4 Fund to be Segregated.

In carrying out its duties and obligations hereunder, the Trustee shall ensure that the Fund shall always be kept separate and distinct from the general assets of the Trustee.

9.5 Cash Balances.

The Trustee may retain any cash balance in the Fund and may, but need not, invest same in Authorized Investments; or hold the same in its deposit department or in the deposit department of one of the Trustee's Affiliates; but the Trustee and its Affiliates shall not be liable to account for any profit to the Company other than at a rate established from time to time by the Trustee or its Affiliates. For the purposes of this Section 9.5, "Authorized Investments" means short term interest bearing or discount debt obligations issued or guaranteed by the Government of Canada or a Province or a Canadian chartered bank or trust company (which may include the Trustee or an Affiliate or related party or restricted party of the Trustee), provided that each such obligation is rated at least R1 (middle) by Dominion Bond Rating Service Limited or an equivalent rating by an equivalent rating service.

9.6 Occurrence of an Event of Default.

In the event of the occurrence of an Event of Default:

- (a) the Trustee shall liquidate or cause to be liquidated the investments of the Fund, other than any investments described in 9.6(b), whether or not the investments are under the management of an Investment Manager;
- (b) the Trustee shall invest or cause to be invested the assets of the Fund in Government of Canada Treasury Bill or other money market investments of high quality.

SECTION 10 CONCERNING THE TRUSTEE

10.1 General Powers and Duties.

In administering and investing the Fund, the Trustee shall be specifically authorized to:

- (a) **Appointment of Sub-Custodians.** Appoint or cause to be appointed domestic or foreign sub-custodians (including Affiliates of the Trustee) as to part or all of the Fund.
- (b) **Holding Investments.** Hold or cause to be held Property in nominee name, in bearer form, or in book entry form, in a clearinghouse corporation or in a depository (including an Affiliate of the Trustee), provided that the Trustee's records clearly indicate that the assets held are a part of the Fund and provided that the Trustee shall not be responsible for any losses resulting from the deposit or maintenance of Securities or other Property (in accordance with market practice, custom or regulation) with any recognized foreign or domestic clearing facility, book entry system, centralized custodial depository, or similar organization.
- (c) **Collection of Income and Proceeds.** Collect income payable to and distributions due to the Fund and sign on behalf of the Fund any declarations, affidavits, certificates of ownership and other documents required to collect income and principal payments, including but not limited to, tax reclamations, rebates and other withheld amounts and collect proceeds from Securities or other Property, which may mature, provided that

whenever a Security or other Property offers the Trustee the option of receiving dividends in shares or cash, the Trustee is authorized to select the cash option unless the Trustee receives Authorized Instructions to the contrary provided that the Trustee shall not be responsible for the failure to receive payment of (or late payment of) distributions with respect to Securities or other Property held in the Fund.

- (d) **Redemption of Securities.** Present for redemption or exchange any Securities or other Property which may be called, redeemed, withdrawn or retired provided that timely receipt of written notice of the same is received by the Trustee from the issuer.
- (e) **Employment of Agents, Advisors and Counsel.** Employ agents, advisors and legal counsel, who may be counsel for the Company, and, as a part of its reimbursable expenses under this Agreement, pay their reasonable fees and expenses.
- (f) **Executing Instruments.** Make, execute and deliver any and all documents, agreements or other instruments in writing as are necessary or desirable for the accomplishment of any of the powers and duties in this Agreement.
- (g) **Determine Value.** Determine the fair market value of the Fund on each Valuation Date, in accordance with methods consistently followed and uniformly applied provided that in determining fair market value of the Fund, the Trustee shall be entitled to rely on and shall be protected in relying on values provided by Authorized Parties and other pricing sources.
- (h) **Borrowing.** Borrow (including borrowing from the Trustee), but only to the extent necessary to carry out Authorized Instructions.
- (i) **Delivery of Securities.** Accept delivery of Securities and other Property free of payment. With respect to any Authorized Instruction to receive Securities or other Property for transactions not placed through the Trustee, the Trustee shall have no duty or responsibility to take any steps to obtain delivery of the Securities or other Property from brokers or others either against payment or free of payment except that the Trustee shall accept delivery of Securities or other Property in good, deliverable form in accordance with the Authorized Instructions when presented by a delivering party.
- (j) **Power to do any Necessary Act.** Generally take all action, whether or not expressly authorized, which the Trustee may deem necessary or desirable for the fulfillment of its duties hereunder.
- (k) **Self Dealing.** Deal with any person which is an Affiliate of the Trustee, in which event neither the Trustee nor the Affiliate shall be accountable for any profit earned in the course of such dealing.

The powers described in this Section 10.1 may be exercised by the Trustee with or without Authorized Instructions, but where the Trustee acts on Authorized Instructions, the Trustee shall be

fully protected as described in Section 17.1. Without limiting the generality of the foregoing, the Trustee shall not be liable for the acts of any person appointed under paragraphs (a) and (e) of this Section 10.1 pursuant to Authorized Instructions.

10.2 Proxies.

The Trustee shall use reasonable efforts to submit or cause to be submitted to the Company or such Investment Manager, as designated by the Company pursuant to Authorized Instructions, or, in the absence of Authorized Instructions, to the person or entity charged with the investment responsibility for the asset to which the communication relates, as the case may be, for appropriate action any and all proxies, proxy statements, notices, requests, advice or other communications actually received by the Trustee (or its nominees) as the record owner of Securities or other Property forming part of the Fund. Notwithstanding the foregoing, the Trustee shall be under no duty to investigate, participate in or take affirmative action concerning attendance at meetings, voting, subscription, conversion or other rights attaching to or derived from Securities or other Property comprising the Fund or concerning any merger, consolidation, reorganization, receivership, bankruptcy or insolvency proceedings, compromise or arrangement or the deposit of any Securities or other Property in connection therewith or otherwise, except in accordance with Authorized Instructions, and upon such indemnity and provision for fees and expenses as the Trustee may reasonably require.

SECTION 11 DIRECTED POWERS

11.1 Directed Powers.

In addition to the powers enumerated in Section 10.1, the Trustee shall have and exercise the following powers and authority in the administration of the Fund, only upon Authorized Instructions:

- (a) **Purchase and Sale of Property.** Purchase and sell and engage in other transactions, including receipts and deliveries, exchanges, exercises, conversions, subscriptions, and other voluntary corporate actions, with respect to Securities or other Property, whether income producing or not.
- (b) **Exercise of Owner's Rights.** Vote upon any Securities or other Property; to give general or special proxies or powers of attorney with or without power of substitution; to exercise any conversion privileges, subscription rights, or other options, and to make any payments incidental thereto; to oppose, or to consent to, or otherwise participate in, corporate reorganizations or other changes affecting corporate securities, and to delegate discretionary powers, and to pay any assessments or charges in connection therewith; and generally to exercise any of the powers of an owner with respect to all Securities or other Property held as part of the Fund provided that the Trustee shall not be required to take any such actions until it has first been indemnified, as applicable, by the Company to its reasonable satisfaction against any fees and expenses or liabilities which it may incur as a result thereof.

- (c) **Lending.** After the Company and the Trustee and/or one of its Affiliates have executed an agreement with respect thereto, enter into securities lending agreements on behalf of the Fund in accordance with the agreement.
- (d) **Derivatives.** Purchase, hold, issue, exchange or write derivative products, including without limitation, options and enter into derivative contracts and transactions, including without limitation futures contracts and take any and all actions, including the appointment of agents, necessary to enter into and settle transactions in futures and/or options contracts, short-selling programs, foreign exchange or foreign exchange contracts, swaps and other derivative investments, products or transactions and execute any documents as directed pursuant to Authorized Instructions to give effect to the foregoing including sub-custodial agreements with broker/dealers to hold collateral. Nothing herein shall prevent the Trustee from investing in offsetting positions in options and future contracts.
- (e) **Cash Deposits.** Deposit cash in interest bearing accounts in the deposit department of the Trustee, or any banking Affiliate of the Trustee.
- (f) **Mortgages.** Renew or extend or participate in the renewal or extension of any mortgage, amend the rate of interest on any mortgage or agree to any other modification or change in the terms of any mortgage or of any guarantee pertaining thereto, waive any default whether in the performance of any covenant or condition of any mortgage, or in the performance of any guarantee, or enforce any rights in respect of any such default; exercise and enforce any and all rights of foreclosure, bid on property for sale or foreclosure, take a conveyance in lieu of foreclosure with or without paying consideration therefore and in connection therewith release the obligation on the covenant secured by such mortgage and exercise and enforce in any action, suit, or proceeding at law or in equity any rights or remedies in respect of any such mortgage or guarantee.
- (g) **Pooled Funds.** Invest in any pooled or common investment fund, including a pooled or common investment fund maintained by the Trustee or any of its Affiliates.
- (h) **Real Estate.** Invest in Real Estate and exercise such other powers as may be required in connection with the Fund's investments in Real Estate.
- (i) **Nominate Directors.** Nominate members of the boards of directors of corporations, and appoint representatives or trustees in connection with investments of the Fund whenever or wherever such right of nomination or appointment is available.
- (j) **Insurance Contracts.** Enter into an insurance contract or contracts for the purpose of funding the benefits under the Plan in whole or in part.
- (k) **Dealing with Claims.** Settle, compromise or submit to arbitration any claims, debts or damages due or owing to or from the Fund and commence or defend suits or legal or

administrative proceedings and represent the Fund in all suits and legal and administrative proceedings in any court or before any other body or tribunal as the Trustee shall deem necessary to protect the Fund provided that the Trustee shall not be obligated to do so until it has first been indemnified by the Company to its reasonable satisfaction against any fees and expenses or liabilities which it may incur as a result thereof.

11.2 Contractual Income.

The Trustee shall credit the Fund with income and maturity proceeds on Securities or other Property on contractual payment date net of any taxes or upon actual receipt as agreed between the Company and the Trustee. To the extent the Company and the Trustee have agreed to credit income on contractual payment date, the Trustee may reverse such accounting entries with back value to the contractual payment date if the Trustee reasonably believes that such amount shall not be received by it.

11.3 Contractual Settlement.

The Trustee shall attend to the settlement of Securities or other Property transactions on the basis of either contractual settlement day accounting or actual settlement day accounting as agreed between the Company and the Trustee. To the extent the Company and the Trustee have agreed to settle certain Securities or other Property transactions on the basis of contractual settlement date accounting, the Trustee shall be entitled to reverse with back value to the contractual settlement day any entry relating to such contractual settlement where the related transaction remains unsettled in accordance with established procedures.

11.4 Real Estate Acquisitions.

Notwithstanding Section 10.1(h), the Company shall give the Trustee at least fourteen (14) Business Days' prior notice of any acquisition of Real Estate. Authorized Instructions for the acquisition of Real Estate shall be accompanied by sufficient written material to describe the Real Estate, the nature of the activities carried out on such Real Estate and shall include a phase 1 environmental assessment of such Real Estate.

The Authorized Instructions shall instruct the Trustee to acquire any Real Estate, other than a mortgage, only through a special purpose corporation, or other entity which limits the liability of the Trustee to the investment by the Fund in the entity, of which the Trustee, in its capacity as Trustee of the Fund, shall be an investor and in respect of which the Trustee shall not be required to provide nominees as directors or officers. The Company shall be solely responsible for the establishment and ongoing maintenance of any such special purpose corporation or other entity and for all tax and other filings with respect thereto.

The Company shall comply with the preceding requirements of this Section 11.4 before foreclosing or otherwise taking title to property which is subject to a mortgage in favour of the Trustee, as if the property were a new investment by the Trustee.

11.5 Settlement of Transactions.

Settlements of transactions may be effected in trading and processing practices customary in the jurisdiction or market where the transaction occurs. The Company acknowledges that this may, in certain circumstances, require the delivery of cash or Securities (or other Property) without the concurrent receipt of Securities (or other Property) or cash and, in such circumstances, the Company shall have sole responsibility for non-delivery (or late delivery) of Securities or other Property, or for non-receipt of payment (or late payment) by the counterparty.

**SECTION 12
OVERDRAFTS****12.1 Overdrafts.**

If an Authorized Instruction would create a debt owing, overdraft or short position in a portion of the Fund (an "Overdraft"), then the Trustee is authorized to, but not obliged to, act on the Authorized Instructions provided, however, that, if the Trustee so acts, and the Fund fails to repay or redeliver on demand any cash or Securities advanced by or through the Trustee or its Affiliates, the Trustee shall be entitled to apply any cash held in the Fund against any amount owing under this Section 8 and/or dispose of any assets of the Company or the Fund and to apply any proceeds of such disposal to the payment of any amount due from the Company or the Fund to the Trustee or its Affiliates against any amount owing under this Section. The Trustee shall have a security interest in the Fund in an amount not to exceed the amount of the Overdraft.

Interest on any Overdraft in a Canadian dollar account shall be calculated on the daily balance of the amount owing (before and after demand, default and judgment) at a rate established by the Trustee or an Affiliate as applicable as determined from time to time, subject to such minimum charges as declared from time to time, with interest on overdue interest at the same rate. Interest is payable monthly and shall form part of the Overdraft. Charges on certain foreign currency accounts shall be established by the relevant sub-custodian from time to time using the rates or charges applicable to the relevant foreign market.

12.2 Spot or Forward Contracts.

For the purpose of setting off cash balances of the Fund against Overdrafts outstanding under Section 12.1, the Trustee is authorized to enter into spot or forward foreign exchange contracts, as principal or agent, with or for the Company or the Fund.

**SECTION 13
TAX OBLIGATIONS****13.1 Tax Obligations.**

The Trustee shall prepare and file or issue on a timely basis all income tax returns and forms which, by virtue of the Tax Act, a trustee of a retirement compensation arrangement is required to file or issue and, if requested by the Company and upon such terms as the Trustee may agree to, such other returns and forms as may be required under Applicable Laws. The Trustee shall make such elections

as the Tax Act permits trusts governed by retirement compensation arrangements to make only pursuant to Authorized Instructions of the Company. Where a tax return or form is required to be filed or issued or tax is payable as a result of any action of the Company, an employee or former employee of the Company or an Investment Manager, the Company shall inform the Trustee by means of Authorized Instructions that such return or form must be filed or issued or that such tax is payable. To the extent the Trustee is responsible under any Applicable Law for any Tax Obligation and the Trustee does not have the necessary information for the performance of its obligations hereunder, the Company shall cause an Authorized Party to provide the Trustee with all information required by the Trustee in respect of such Tax Obligations. The Trustee shall not be required to prepare, file or issue any return or form unless it has the information necessary to prepare, file or issue such return or form.

The Trustee shall calculate the Refundable Tax of the Fund at the end of each taxation year and remit out of the Fund the amount of tax, if any, payable by it for the year or claim a refund of Refundable Tax owing to the Fund, if applicable, withhold and remit from the Fund all other taxes and assessments required by any Applicable Law to be so withheld and remitted.

The Trustee shall use reasonable efforts, based upon available information, to assist the Authorized Party, to the extent the Authorized Party has necessary information, with respect to any Tax Obligations imposed on the Fund, both domestic and international. The Trustee shall have no responsibility or liability for and shall be indemnified and held harmless by the Company for any assistance provided to the Authorized Party and for any Tax Obligations now or hereafter imposed on the Company or the Fund or the Trustee in respect of the Fund by any taxing authorities, domestic or international.

SECTION 14 REPORTING AND RECORDKEEPING

14.1 Accounts and Records.

(a) The Trustee shall keep records with respect to the Fund and such records as directly relate to the Fund shall be open to inspection during reasonable business hours by persons duly authorized by the Company (or after an Event of Default, the Wind-up Administrator) provided that prior written notice is given to the Trustee and the Trustee may require that such inspection be conducted in the presence of a representative of the Trustee. To the extent the Trustee is legally obligated to permit any persons other than those authorized by the Company to have such access, the Company agrees, upon notice from the Trustee, that the Trustee shall provide such persons with access to such records. No persons other than those authorized by the Company or those otherwise entitled thereto by Applicable Laws shall have the right to demand or be entitled to any accounting from the Trustee. Except as required by Applicable Laws, no person, except by and through the Company may require an accounting or bring any action against the Trustee with respect thereto.

(b) Provide to the Company or to any other person upon the Company's Authorized Instruction, or following the issuance of an Event of Default Notice, to the Wind-up Administrator, within ninety (90) days following the last day of the fiscal year of the Fund, or such other accounting period as

may be agreed upon by the Company or the Wind-up Administrator, as the case may be, and the Trustee, or following the resignation or the removal of the Trustee, or the distribution of the Fund in full, a statement of account showing all assets, transactions, receipts and disbursements during the accounting period in such form as may, from time to time, be agreed by the Company or the Wind-up Administrator, as the case may be, and the Trustee. Where, however, the Company elects to participate in an investment program provided by the Trustee or any of its affiliates or an insurer, or an external investment broker or manager, the statement of account provided by the Trustee shall not show all assets, transactions, receipts and disbursements during the accounting period which shall, instead, be shown on the statement of account provided to the Company by the provider of the investment program;

14.2 Reports.

The Trustee shall furnish to the Company within ninety (90) days following the close of each Fiscal Year of the Fund or such other period as may be agreed upon between the Trustee and the Company, and within ninety (90) days after the removal or resignation of the Trustee or termination of the Fund, a written statement of account setting forth all investments, receipts, disbursements and other transactions effected by it during such period.

14.3 Review of Reports.

If, within ninety (90) days after the Trustee sends to the Company a statement with respect to the Fund, the Company has not given the Trustee written notice of any exception or objection thereto, the statement shall be deemed to have been approved, and in such case, the Trustee shall not be liable for any matters contained in such statement.

14.4 Non-Fund Assets.

The duties of the Trustee shall be limited to the Property held in the Fund, and the Trustee shall have no duties or obligations with respect to property held by any other person including, without limitation, the Prior Trustee or any other trustee or funding agent for the Plan. The Company hereby agrees that the Trustee shall not serve as, and shall not be deemed to be, a co-trustee under any circumstances.

SECTION 15 FORCE MAJEURE

15.1 Force Majeure.

Notwithstanding anything in this Agreement to the contrary, the Trustee shall not be responsible or liable for its failure to perform under this Agreement or for any losses to the Fund resulting from any event beyond the reasonable control of the Trustee, its agents or sub-custodians, including but not limited to nationalization, strikes, expropriation, devaluation, seizure, or similar action by any governmental authority, de facto or de jure; or enactment, promulgation, imposition or enforcement by any such governmental authority of currency restrictions, exchange controls, levies or other charges affecting the Fund's Property; or the breakdown, failure or malfunction of any utilities or telecommunications systems; or any order or regulation of any banking or securities industry including changes in market rules and market conditions affecting the execution or settlement of

transactions; or acts of war, terrorism, insurrection or revolution; or acts of God; or any similar or third party event. This Section shall survive the termination of this Agreement.

15.2 Business Recovery.

The Trustee agrees to maintain a commercially reasonable business recovery programme for the duration of this Agreement.

**SECTION 16
COMPENSATION AND EXPENSES**

16.1 Fees and Expenses.

Prior to the issuance of an Event of Default Notice, the Trustee shall be entitled to such compensation as may from time to time be mutually agreed upon in writing by the Trustee and the Company. Following the issuance of an Event of Default Notice, the Trustee shall be entitled to such compensation as was mutually agreed upon in writing by the Trustee and the Company prior to the Event of Default and as may be mutually agreed upon in writing by the Trustee and the SRP Committee thereafter. Such compensation and all other disbursements made and expenses incurred in the creation of the Fund and performance of the duties of the Trustee hereunder or arising out of this trust shall constitute a charge upon the Fund and shall be paid out of the Fund unless such compensation, disbursements and expenses shall be paid by the Company within thirty (30) days of the date the Trustee sends an invoice or account for same by any means described in Section 20 for the giving of notice. The Trustee is authorized to payout of the Fund the compensation, disbursements and expenses (including any applicable value added tax payable) of others.

Prior to the issuance of an Event of Default Notice, the expenses and disbursements of the SRP Committee in carrying out its responsibilities under this Agreement and under the Plan (including the expenses and fees, if any, of agents and other professional advisors appointed by the SRP Committee in accordance with the Plan) shall be paid by the Company. Any expenses and disbursements that are not paid by the Company, as required under this Section, within forty-five (45) days of the date of a supporting account rendered to the Company by the SRP Committee, shall be paid out of the Fund upon certification to the Trustee by the authorized representative of the SRP Committee that the expenses or disbursements have not been so paid. Following the issuance of an Event of Default Notice, the aforesaid expenses or disbursements shall be paid out of the Fund upon the rendering of a supporting account to the Trustee by the authorized representative of the SRP Committee and a certification, as applicable, that said expenses or disbursements have not been so paid.

16.2 Right to Fees and Expenses.

The Trustee is authorized to charge for and collect from the Fund any and all fees and expenses in connection with services provided hereunder or other amounts owing to the Trustee hereunder, unless such fees and expenses are paid directly by the Company (including any amount previously paid to the Company and for which the Trustee does not receive final payment from the issuer of a Security, and any amounts paid or expenses incurred by the Trustee to settle Securities transactions).

SECTION 17 RESPONSIBILITIES OF THE TRUSTEE

17.1 Reliance on Authorized Instructions.

The Trustee shall be fully protected and is hereby indemnified and held harmless by the Company, to the extent not paid by the Fund, in relying and acting upon an Authorized Instruction which it believes, in accordance with the Standard of Care, to have been given by an Authorized Party or in failing to act in the absence thereof and shall be under no liability for any application or any actions in respect of the Fund made by it pursuant to such Authorized Instructions and shall not be under any duty of making enquiries with respect to whether any application or any actions in respect of the Fund as directed complies with the terms of the Plan or Applicable Laws.

17.2 Investment.

The Trustee shall not be responsible for any loss or diminution of the Fund resulting from the making, retention or sale of any investment or reinvestment made by it in accordance with the Authorized Instructions of the Investment Manager, or the Company if no Investment Manager has been appointed, or as herein provided.

17.3 Administration.

The Trustee shall have no duty or responsibility with respect to administration of the Plan and shall not be responsible for the determination of the accuracy or sufficiency of, or the collection from the Company of, or any contribution to the Fund or the compliance of the same with Applicable Laws or for the sufficiency of the Fund to meet and discharge any payments and liabilities under the Plan. The Company shall have the exclusive right and obligation to determine the rights of any person to participate in the benefits from the Fund under the terms of the Plan. The Company shall be responsible for ensuring that no Authorized Instructions or other directions given to the Trustee shall require the Trustee to use or divert any part of the Fund for purposes other than those which are in accordance with the terms of the Plan.

The Company, or after the issuance of an Event of Default Notice, the Wind-up Administrator, shall file, or cause to be filed, any and all returns and forms required to be files by it with respect to the Fund under Applicable Laws.

17.4 Real Estate Indemnity.

The Trustee shall have no responsibility or discretion with respect to the ownership, management, administration, operation, care or control of any Real Estate. The Trustee is hereby indemnified by the Company, to the extent not paid by the Fund, from all claims, liabilities, losses, damages, and expenses, including reasonable legal and expert's fees and expenses, arising from or in connection with any matter relating to: (i) any violation of any applicable environmental or health or safety law, ordinance, regulation or ruling; or (ii) the presence, use, generation, storage, release, threatened release, or containment, treatment or disposal of any petroleum, including crude oil or any fraction thereof, hazardous substances, pollutants or contaminants or hazardous, toxic or dangerous substances or materials as any of these terms may be defined under any law in the broadest sense from time to time.

17.5 Reliance on Advisors.

The Trustee shall be permitted to rely upon and shall not be liable for actions taken or omitted to be taken on the advice or information of any counsel, advisors, experts, agents or others employed as herein provided.

17.6 Prior Trustees.

The Trustee shall have no duties, responsibilities or liability with respect to the acts or omissions of the Prior Trustee or any other prior trustee, or other funding agent or custodian, or their agents.

17.7 Survival.

The provisions of this Section 17 shall survive the termination of this Agreement and the Fund.

SECTION 18 INDEMNIFICATION

18.1 Standard of Care.

Except as otherwise provided in any other general or particular provision of this Agreement, in performing its obligations and duties hereunder, the Trustee shall exercise the care, diligence and skill that a prudent financial institution acting in like capacity would exercise in dealing with the property of another person; and further provided that the Trustee shall not be responsible or liable for any losses or damages suffered by the Fund arising as a result of the insolvency of any sub-custodian, except to the extent the Trustee has breached the Standard of Care in the selection or continued retention of such sub-custodian.

18.2 Indemnification.

The Trustee and its respective officers, directors, employees and agents (the "Indemnified Parties") are hereby indemnified and held harmless by the Company, to the extent not paid by the Fund, from any and all taxes, claims, liabilities, damages, costs and expenses of any kind, including reasonable legal and expert's fees and expenses (but excluding consequential losses) arising out of the performance of its or their obligations, as applicable, under this Agreement, except as a result of a breach of the standard of care set forth in Section 18.1.

The Trustee hereby indemnifies and holds harmless the Fund and the Company and its respective officers, directors and employees from any and all claims, liabilities, damages, costs and expenses of any kind, including reasonable legal and expert's fees and expenses (but excluding consequential losses) arising out of a breach of the standard of care set out in Section 18.1.

The indemnifications set out in this Section 18 shall survive the termination of this Agreement and the Fund.

**SECTION 19
AMENDMENT, TERMINATION, RESIGNATION, REMOVAL**

19.1 Amendment.

The Company, prior to an Event of Default, and the Trustee reserve the right at any time and from time to time to amend, in whole or in part, any or all of the provisions of this Agreement by notice thereof in writing delivered to the other party, provided that no such amendment which affects the rights, duties or responsibilities of the other party may be made without its consent, which shall not be unreasonably withheld or delayed, and that no such amendment shall authorize or permit any part of the Fund to be used for or diverted to purposes other than those provided for under the terms of this Agreement and for the payment of taxes and other assessments.

Following an Event of Default, the Trustee may at any time and from time to time amend in whole or in part any or all of the provisions of this Agreement by notice thereof in writing delivered to the SRP Committee, provided that no such amendment shall authorize or permit any part of the Fund to be used for or diverted to purposes other than those provided for under the terms of this Agreement and for the payment of taxes and other assessments.

19.2 Termination of Agreement

At any time prior to an Event of Default, this Agreement may only be terminated at any time by an instrument in writing executed by the Company and the Trustee; provided that, if this Agreement is terminated prior to the date all payments required by the Plan to be made out of the Fund to all Retirees are made, it may only be terminated with the prior written consent of all of the Retirees. Following an Event of Default, this Agreement may be terminated on the Authorized Instruction of the SRP Committee, if an SRP Committee is established subsequent to such Event of Default.

Upon such termination, the Fund shall be paid out by the Trustee, prior to an Event of Default, on Authorized Instruction of the Company and, following an Event of Default, as directed by the SRP Committee provided:

- (a) expenses payable under this Agreement from the Fund, shall first be deducted and paid; and
- (b) subject to Section 18, the provisions of this Agreement shall survive any termination until all assets comprising the Fund have been paid out or distributed.

19.3 Alternative Arrangement

Despite any other provision of this Agreement, prior to an Event of Default this Agreement may be amended in order to provide an alternative arrangement for securing the payment of benefits in respect of Retirees or may be terminated and replaced with an alternative arrangement for securing the payment of such benefits.

Such arrangement shall provide, in every material particular, the same level of security as would be provided by the Fund, and the Agreement shall not be so amended or terminated and replaced unless the Trustee is satisfied, which may require application for direction from a Court of competent

jurisdiction the expenses in respect of which are payable entirely and without reservation from the Fund, that such alternative so provides.

19.4 Removal or Resignation of Trustee.

The Trustee may be removed with respect to all or part of the Fund upon receipt of sixty (60) days' written notice (unless a shorter or longer period is agreed to between the parties hereto) from the Company. The Trustee may resign upon sixty (60) days' written notice (unless a shorter or longer period is agreed to between the parties hereto) delivered to the Company. In the event of the removal or resignation of the Trustee, a successor trustee or other funding agent permitted under Applicable Laws shall be appointed by the Company and shall have the same powers and duties as those conferred upon the Trustee by this Agreement and the retiring Trustee shall transfer the Fund, less such amounts as may be reasonable and necessary to cover its compensation, expenses and any other amount owing hereunder in accordance with Section 16. In the event the Company fails to appoint a successor trustee within sixty (60) days of receipt of the written notice of resignation, the Trustee, at the expense of the Fund shall have the right to seek appointment of a successor trustee from a court of competent jurisdiction. The Trustee shall have no duties, responsibilities or liability with respect to the acts or omissions of any successor trustee or custodian.

19.5 Binding on Successor Company.

Any corporation resulting from any merger or consolidation to which the Company may be a party or which succeeds to the business of the Company, or to which substantially all the assets of the Company may be transferred and which becomes administrator of the Plan while the Company continues as a party to this Agreement, shall be the successor to the Company hereunder without any further act or formality with like effect as if such successor company had originally been named as the Company herein.

19.6 Successor Trustee or Custodian.

Notwithstanding Section 19.7, the Trustee may assign this Agreement in its entirety, or the Trustee in its capacity only as trustee or custodian may assign only the provisions of the Agreement applicable to the trustee or the custodian, as the case may be, without the consent of the Company to any entity which directly or indirectly controls, or is controlled by, or is under common control with the Trustee. Any corporation which shall by merger, consolidation, purchase, or otherwise, succeed to substantially all of the business relevant to this Agreement of the Trustee, as either or both the trustee or the custodian, or to which substantially all of the assets relevant to this Agreement of the Trustee, as either or both the trustee or the custodian, may be transferred, shall be the successor to the Trustee as the trustee or the custodian, as the case may be, hereunder, without any further act or formality with like effect as if such successor trustee or custodian had originally been named as the trustee or custodian herein.

19.7 No Assignment.

Except as provided in Sections 19.5 and 19.6, neither party may assign this Agreement without the prior written consent of the other party hereto. This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

SECTION 20
NOTICE

20.1 Notices to the Company.

Any notice, demand or other communication (other than an Authorized Instruction) under this Agreement to the Company shall be in writing addressed to the Company as follows:

Sears Canada Inc
290 Yonge St., Suite 700
Toronto, Ontario
M5B 2C3

Attention: The Secretary
Tel: (416) 941-4419
Facsimile: (416) 941-2321

20.2 Notices to Trustee.

Any notice, demand or other communication (other than an Authorized Instruction) under this Agreement to the Trustee shall be in writing addressed to the Trustee as follows:

c/o CIBC Mellon Global Securities Services Company
320 Bay Street
P.O. Box 1
Toronto, Ontario
M5H 4A6

Attention: Senior Vice President, Client Relationship Management
Facsimile: (416) 643-6360

20.3 Notices to the Actuary.

Any notice, demand or other communication under this Agreement to the Actuary shall be in writing addressed as follows:

Aon Hewitt
225 King Street West, Suite 1600
Toronto, ON
M5V 3M2

Tel: 416-225-5001
Facsimile: 416-227-5750

20.4 Notices to the SRP Committee.

Any notice, demand or other communication under this Agreement to the SRP Committee shall be in writing addressed to the Company as follows:

SRP Committee
 c/o Sears Canada Inc
 290 Yonge St., Suite 700
 Toronto, Ontario
 M5B 2C3

Attention: The Secretary
 Tel: (416) 941-4419
 Facsimile: (416) 941-2321

20.5 Delivery.

Notices, demands or other communications given pursuant to this Section 20 may be sent by personal delivery (including courier) during business hours or may be sent by ordinary mail or by facsimile. Such notice shall be deemed to have been delivered at the time of personal delivery, or on the fifth (5th) Business Day following the day of mailing (unless delivery by mail is likely to be delayed by strike or slowdown of postal workers, in which case it shall be deemed to have been given when it would be delivered in the ordinary course of the mail allowing for such strike or slowdown), or if sent by facsimile, on the day of receipt if sent before 5 p.m. (local time of the recipient) on a Business Day or on the next Business Day if sent after 5 p.m. or not on a Business Day. Any party may change its address by giving notice to the other party in the manner set forth in this Section.

**SECTION 21
 MISCELLANEOUS**

21.1 Representation.

Each party represents that it has the power and authority to enter into and perform its obligations under this Agreement, that the person or persons signing this Agreement on behalf of the named party are properly authorized and empowered to sign it and that the Agreement is valid and binding on the party and enforceable against the party in accordance with its terms.

The Company confirms that:

- (i) where the terms of this Agreement and the Plan are inconsistent in whole or in part, the terms of this Agreement shall prevail over the terms of the Plan;
- (ii) the Trustee shall not be obligated to review the terms of the Plan; and
- (iii) the Trustee's acceptance of the trust shall not be taken as an expression by the Trustee as to the suitability of this Agreement in respect of the Plan.

21.2 Residency.

The Company represents that it is a resident of Canada within the meaning of the Tax Act.

21.3 Confidentiality.

The parties hereto acknowledge that in connection with this Agreement they may receive disclosure of certain confidential information (the "Confidential Information") and each party agrees to maintain, the confidentiality of such Confidential Information subject to:

- (a) such disclosure as may be explicitly authorized by the Company or the Trustee;
- (b) such disclosure to employees of the Trustee or its Affiliates as may be necessary in order for the Trustee to provide the services and discharge its obligations as described in this Agreement; and
- (c) such disclosure as may be required by Applicable Law, including an order of a court or administrative tribunal of competent jurisdiction.

For greater certainty, Confidential Information shall not include information which has become generally available to the public other than as a result of a disclosure by one of the parties hereto, which is or becomes generally known to the public, has been obtained by either party in good faith by a third party or was in the possession of, or was rightfully known by either party without an obligation to maintain confidentiality prior to its receipt. This Section 21.3 shall survive termination of the Agreement."

21.4 Entire Agreement.

This Agreement shall constitute the entire agreement between the parties as of the date hereof with respect to all matters herein and its execution has not been induced by, nor do any of the parties hereto rely upon or regard as material, any representations or promises whatsoever not incorporated herein or made by a party hereto.

21.5 Invalidity/Unenforceability.

If any of the provisions of this Agreement becomes invalid, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions shall not be affected or impaired.

21.6 Necessary Parties.

The Trustee reserves the right to seek a judicial or administrative determination as to its proper course of action under this Agreement. To the extent permitted by Applicable Laws, only the Trustee and the Company shall be necessary parties in any application to the courts for an interpretation of this Agreement, and no participant under the Plan or other person having any interest in the Fund shall be entitled to any notice or service of process. Any final judgment entered in such an action or proceeding shall, to the extent permitted by law, be conclusive upon all persons.

21.7 No Third Party Beneficiaries.

The provisions of this Agreement are intended to benefit only the parties hereto and their respective successors and assigns. No person entitled to benefits under the Plan shall have any claim against the Trustee except by or through the Company.

21.8 Garnishment.

The Trustee shall notify the Company or, after the issuance of an Event of Default Notice, the Wind-up Administrator, upon receipt of any assignment or attempted assignment or notice thereof or of any involuntary assignment, seizure, garnishment or any process of law or execution or notice thereof in respect of any benefit payable out of the Fund;

21.9 Anti-money laundering.

The Company acknowledges that the Trustee is and in the future may be subject to legislation, including but not limited to anti-money laundering legislation and privacy legislation, that requires that the Trustee collect information or obtain undertakings, agreements, documents or the like from the Company or its directors, officers and employees, and shall cooperate with the Trustee including delivery of information, agreements or documents or providing signatures or executing documents and to take all reasonable steps to cause its directors, officers and employees to do same, all to the maximum extent required to ensure that the Trustee satisfies applicable legislative requirements.

21.10 Unclaimed property.

The Company shall have full responsibility for compliance with unclaimed property legislation, as applicable, and shall direct the Trustee to provide information or remit unclaimed property as the case may be to the appropriate regulatory authority where required;

21.11 Execution in Counterparts.

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and said counterparts shall constitute but one and the same instrument.

21.12 Governing Law.

This Agreement shall be construed in accordance with and governed by the laws of the Province of Ontario and any actions, proceedings or claims relating to the Fund shall be commenced in the courts of the Province of Ontario.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first set forth above by their duly authorized officers.

SEARS CANADA INC.
By: [Signature]
Name: TISS DALGLISH
Title: TREASURER

CIBC MELLON TRUST COMPANY
By: _____
Name: _____
Title: _____

By: [Signature]
Name: F. Perusin.
Title: Secretary

By: _____
Name: _____
Title: _____


IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first set forth above by their duly authorized officers.

SEARS CANADA INC.

By: _____
Name:
Title:

By: _____
Name:
Title:

CIBC MELLON TRUST COMPANY

By: 
Name: Kevin C. Rowe
Title: AUTHORIZED SIGNATORY


By: 
Name: PHYLLIS HELLER
Title: AUTHORIZED SIGNATORY

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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.

(each an "Applicant", and collectively, the "Applicants")

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

Proceeding commenced at TORONTO

**AFFIDAVIT OF WILLIAM R. TURNER
(SWORN ON OCTOBER 3, 2017)**

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Representative Counsel for the Non-Unionized
Retirees and Non-Unionized Active and Former
Employees of the Sears Canada Entities

Tab 3

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.

(each an "**Applicant**", and collectively, the "**Applicants**")

**AFFIDAVIT OF KEN EADY
(Sworn on October 4, 2017)**

I, **KEN EADY**, of the Town of Milton, in the Province of Ontario, **MAKE OATH AND SAY:**

My Background

1. I am a retiree of Sears Canada and one of the court-appointed Representatives to all non-unionized retirees and employees with pension and post-retirement benefits in this proceeding. As such, I have knowledge of the matters to which I hereinafter depose.

2. Where I make statements in this affidavit which are not within my personal knowledge, I have indicated the source of that information and I believe such information to be true. To the extent that any of the information set out in this affidavit is based on my review of the documents, I verily believe the information to be true, unless otherwise stated.

3. I swear this Affidavit in support of a motion by Representative Counsel for an Order appointing the Retiree Committee (defined below), and for no improper purpose.

Background

4. I started working with Sears Canada in 1973 and retired at the end of 2003. During my 30 year career at Sears, I held a variety of management positions and at the time of my retirement I was the National Manager of Human Resources for Sales and Service.

5. I am currently the Vice-President of the Store and Catalogue Retiree Group ("**SCRG**") and a member of the Pension and Benefits Committee of SCRG. SCRG was formed to protect pension benefits and health benefits of retired employees of Sears Canada. SCRG is the organization of Sears Canada retirees with currently over 6,000 Sears retirees as members. The total Sears retiree population is over 18,000 individuals.

6. On July 13, 2017, I was appointed as one of the Representatives in these CCAA proceedings to act in the best interests of all non-unionized retirees and employees with pension and post-retirement benefit entitlements. The court also appointed the firm Koskie Minsky LLP as Representative Counsel.

7. In my role as a court-appointed Representative, I have been advised by Representative Counsel of the issues that arise in respect of all post-employment benefits from Sears Canada, including a registered and supplemental pension benefits. I am aware that the company provided supplemental pension benefits to certain former employees under the Sears Canada Inc. Supplementary Retirement Plan (the "**SRP**"). I am also aware that the SRP benefit is independently funded pursuant to a Retirement Compensation Arrangement Trust fund (the "**RCA Trust**") established by Sears Canada in 2006.

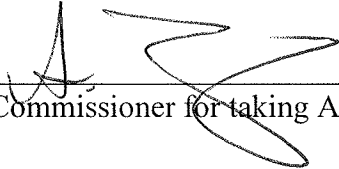
8. As a result of my role as a court-appointed Representative and my involvement as the Vice-President of SCRG, I have been asked by the other proposed members of the Retiree Committee namely, Brent Hollister, George Hughes, Larry Moore, Claude Sénéchal, and William Turner (the "**Retiree Committee Members**"), to be appointed along with them as a member of the Retiree Committee pertaining to the RCA Trust. In this regard, I have been asked to assist with coordinating meetings and calls amongst the Retiree Committee Members and with Representative Counsel.

9. Given my proposed role as facilitator in the Retiree Committee, I am advised by Representative Counsel and believe that it is appropriate to obtain the protections in the Retiree Committee Order applicable to the Retiree Committee Members.

10. I have discussed my appointment with the Retiree Committee Members and I believe they support my appointment. I am also advised by Representative Counsel that CIBC Mellon is in support of the motion by Representative Counsel to appoint me as a member of the Retiree Committee.

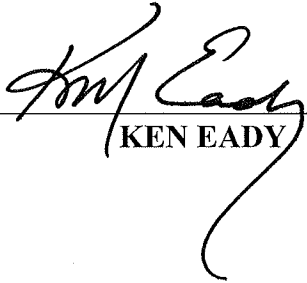
11. I make this affidavit in good faith and in support of a motion for an order forming the Retiree Committee and for no improper purpose.

SWORN BEFORE ME at the City of Toronto, in the Province of Ontario on October 4th, 2017.



A Commissioner for taking Affidavits, etc.

LSUC # 70164K



KEN EADY

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.

(each an "Applicant", and collectively, the "Applicants")

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

Proceeding commenced at TORONTO

**AFFIDAVIT OF KEN EADY
(SWORN ON OCTOBER 4, 2017)**

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Representative Counsel for the Non-Unionized
Retirees and Non-Unionized Active and Former
Employees of the Sears Canada Entities

Tab 4

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.

(each an "**Applicant**", and collectively, the "**Applicants**")

**AFFIDAVIT OF CLAUDE SÉNÉCHAL
(Sworn on October 4, 2017)**

I, **CLAUDE SÉNÉCHAL**, of the City of Rosemère, in the Province of Quebec,

MAKE OATH AND SAY:

1. I am a retiree of Sears Canada Inc. and a beneficiary of the Sears Canada Inc. Supplementary Retirement Plan (the "**SRP**" or the "**Plan**"). As such, I have knowledge of the matters to which I hereinafter depose.
2. Where I make statements in this affidavit which are not within my personal knowledge, I have indicated the source of that information and I believe such

information to be true. To the extent that any of the information set out in this affidavit is based on my review of the documents, I verily believe the information to be true, unless otherwise stated.

3. I swear this Affidavit in support of a motion by Representative Counsel for an Order appointing the Retiree Committee for the RCA Trust (defined below), and for no improper purpose.

Background

4. I started working with Sears Canada in 1972 and retired in 2005 as the President of the Cantrex Group, which was acquired by Sears in the same year. During my 33 year career at Sears, I held a variety of positions with Sears Canada in the Québec region, including as the store manager, General Manager of Catalogue Operations, and General Manager of Retail Stores.

5. I currently sit on the Board of Directors of the Store and Catalogue Retiree Group ("SCRG"), a retiree group formed to protect pension and health benefits of retired employees of Sears Canada. SCRG currently has over 6,000 Sears retirees as members. The total Sears retiree population is over 18,000 individuals.

6. As part of my compensation for my employment service for Sears Canada, I earned an entitlement to retiree benefits from Sears Canada, including registered and supplemental pension benefits to be paid to me during my retirement years. I receive pension benefits from the Sears Canada Inc. Registered Retirement Plan (the "**Registered Pension Plan**") and the SRP.

7. My monthly supplemental pension benefits are payable to me pursuant to the SRP.

8. For individuals entitled to an SRP benefit and whose active service with Sears ended prior to January 1, 2010, the SRP benefit is paid to them from a Retirement Compensation Arrangement Trust fund (the "RCA Trust") established by Sears Canada in 2006. As such, I and the other eligible retirees are beneficiaries of the RCA Trust.

9. I have been advised by the firm of Koskie Minsky LLP, the Representative Counsel to the non-unionized retirees and employees in these CCAA proceedings, that there are approximately 97 individuals who are entitled to supplementary pension benefits under the SRP and paid from the RCA Trust. There are also 4 individuals who are entitled to supplementary benefits from Sears which are not paid from the RCA trust and which Sears Canada has said will be suspended as of the end of September, 2017. These individuals are not subject to this motion.

Purpose of the SRP and RCA Trust

10. Sears established the SRP on March 29, 1974 to pay supplemental pension benefits to certain employees on their retirement in an amount in excess of the pension benefits that paid under the Registered Pension Plan but which are subject to maximum amounts as a result of the maximum pension benefit limits under the *Income Tax Act (Canada)*.

11. The RCA Trust was established in 2006 by Sears Canada as a separate trust fund to pay the monthly benefits to eligible retirees under the SRP and is classified as a

"retirement compensation arrangement" under subsection 248(1) of the *Income Tax Act* (Canada) ("**RCA**").

12. On or around February 17, 2006, Sears Canada entered into a Trust Agreement with Royal Trust Corporation of Canada as the custodial trustee with respect to the funds for the RCA.

13. On or around December 31, 2012, Sears Canada replaced Royal Trust with a new trustee, CIBC Mellon Trust Company ("**CIBC Mellon**"). Sears Canada then entered into a new trust agreement with CIBC Mellon (the "**CIBC Mellon Trust Agreement**") to, among other things, (i) provide for the appointment and duties of CIBC Mellon as the trustee and custodian of the fund; and (ii) replace and supersede the Royal Trust Agreement.

SRP Committee

14. Pursuant to section 2.19 of the SRP Plan text, an "SRP Committee" is a committee of SRP members established by the Company for the purposes of the Plan. I am advised by Representative Counsel that Sears Canada did not establish an SRP Committee. In the absence of the establishment of the SRP Committee, section 8.2 of the CIBC Mellon Trust Agreement requires a vote of the majority of the beneficiaries of the RCA Trust in order to establish a "Retiree Committee", which is to serve as a replacement for an absent SRP Committee. Section 8.2 also specifies that the Retiree Committee is not to exceed 5 members in number.

15. In accordance with section 8.4 of the CIBC Mellon Trust Agreement, following an "Event of Default" as defined therein, the Retiree Committee is entitled to exercise all

the rights of Sears Canada (to the exclusion of Sears Canada) which are conferred upon Sears Canada under the Trust Agreement.

16. I am advised by Representative Counsel that the application by Sears Canada for CCAA protection on June 22, 2017 constitutes an "Event of Default" under the terms of the CIBC Mellon Trust Agreement. In these circumstances, I am also advised by Representative Counsel that Sears Canada would no longer be providing instructions and directions to CIBC Mellon. Instead, CIBC Mellon, as the trustee and custodian of the RCA Trust, is now entitled to rely upon the authorized instructions from the newly-formed Retiree Committee.

17. I have spoken with fellow retirees that Ken Eady, William Turner, Brent Hollister, George Hughes, and Larry Moore who, along with me, agree to become members of the Retiree Committee (the "**Retiree Committee Members**"). The committee members are volunteers who are not compensated.

18. I am advised by Representative Counsel and believe that it is appropriate to be appointed as a member of the Retiree Committee, as required by the CIBC Mellon Trust Agreement, and to obtain the appropriate protections.

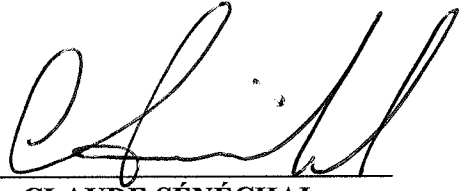
19. I believe, as do the other proposed Committee members, that holding a vote by mail will be time-consuming and could delay the formation of the Retiree Committee. I am also advised by Representative Counsel and believe that they have had discussions with CIBC Mellon to bring a motion before the court and request the court to order the formation of the Retiree Committee instead of holding a vote of the beneficiaries of the RCA Trust and that CIBC Mellon is in support of such a motion.

20. I make this affidavit in support of a motion for an order forming the Retiree Committee and for no improper purpose.

SWORN BEFORE ME at the City of Rosemère, in the Province of Quebec on October 4, 2017.

Louise C. Masson
A Commissioner for taking Affidavits, etc.

130720



CLAUDE SÉNÉCHAL

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., 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.

(each an "Applicant", and collectively, the "Applicants")

ONTARIO
SUPERIOR COURT OF JUSTICE -
COMMERCIAL LIST

Proceeding commenced at TORONTO

AFFIDAVIT OF CLAUDE SÉNÉCHAL
(SWORN ON OCTOBER 4, 2017)

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Representative Counsel for the Non-Unionized
Retirees and Non-Unionized Active and Former
Employees of the Sears Canada Entities

Tab 5

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.

(each an "**Applicant**", and collectively, the "**Applicants**")

**AFFIDAVIT OF LARRY MOORE
(Sworn on October 12, 2017)**

I, **LARRY MOORE**, of the City of Ottawa, in the Province of Ontario, **MAKE**

OATH AND SAY:

1. I am a retiree of Sears Canada Inc. and a beneficiary of the Sears Canada Inc. Supplementary Retirement Plan (the "**SRP**"). As such, I have knowledge of the matters to which I hereinafter depose.
2. Where I make statements in this affidavit which are not within my personal knowledge, I have indicated the source of that information and I believe such

information to be true. To the extent that any of the information set out in this affidavit is based on my review of the documents, I verily believe the information to be true, unless otherwise stated.

3. I swear this Affidavit in support of a motion by Representative Counsel for an Order appointing the Retiree Committee for the RCA Trust (defined below), and for no improper purpose.

Background

4. I started working with Sears Canada in 1971 and retired in 2005 as the Senior Vice-President of Sears Canada. During my 34 year career at Sears, I held a variety of positions with Sears Canada in the retail store operations, credit card division, real estate, personnel and specialty business. Prior to becoming the Senior Vice President, I was a Store Manager, Regional Personnel Superintendent, and the General Manager of the Quebec Stores.
5. I currently sit on the Board of Directors of the Store and Catalogue Retiree Group ("SCRG"), a retiree group formed to protect pension and health benefits of retired employees of Sears Canada. SCRG currently has over 6,000 Sears retirees as members. The total Sears retiree population is over 18,000 individuals.
6. On July 13, 2017, I was appointed as one of the Representatives in these CCAA proceedings to act in the interests of all non-unionized retirees and employees with pension and post-retirement benefit entitlements. The court also appointed the firm Koskie Minsky LLP as Representative Counsel.

7. I worked with Sears Canada for my entire professional career. As part of my compensation for my employment service for Sears Canada, I earned an entitlement to retiree benefits from Sears Canada, including registered and supplemental pension benefits to be paid to me during my retirement years. I receive pension benefits from the Sears Canada Inc. Registered Retirement Plan (the "**Registered Pension Plan**") and the SRP.
8. My monthly supplemental pension benefits are payable to me pursuant to the SRP.
9. For individuals entitled to an SRP benefit and whose active service with Sears ended prior to January 1, 2010, the SRP benefit is paid to them from a Retirement Compensation Arrangement Trust fund (the "**RCA Trust**") established by Sears Canada in 2006. As such, I and the other eligible retirees are beneficiaries of the RCA Trust.
10. I have been advised by the firm of Koskie Minsky LLP, the Representative Counsel to the non-unionized retirees and employees in these CCAA proceedings, that there are approximately 97 individuals who are entitled to supplementary pension benefits under the SRP and paid from the RCA Trust. There are also 4 individuals who are entitled to supplementary benefits from Sears which are not paid from the RCA trust and which Sears Canada has said will be suspended as of the end of September, 2017. These individuals are not subject to this motion.

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11. Sears established the SRP on March 29, 1974 to pay supplemental pension benefits to certain employees on their retirement in an amount in excess of the pension benefits that paid under the Registered Pension Plan but which are subject to maximum amounts as a result of the maximum pension benefit limits under the *Income Tax Act (Canada)*.
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13. On or around February 17, 2006, Sears Canada entered into a Trust Agreement with Royal Trust Corporation of Canada as the custodial trustee with respect to the funds for the RCA (the "**Royal Trust Agreement**").
14. On or around December 31, 2012, Sears Canada replaced Royal Trust with a new trustee, CIBC Mellon Trust Company ("**CIBC Mellon**"). Sears Canada then entered into a new trust agreement with CIBC Mellon (the "**CIBC Mellon Trust Agreement**") to, among other things, (i) provide for the appointment and duties of CIBC Mellon as the new trustee and custodian of the fund; and (ii) replace and supersede the Royal Trust Agreement.

SRP Committee

15. Pursuant to section 2.19 of the SRP Plan text, an "SRP Committee" is a committee of SRP members established by the Company for the purposes of the

Plan. I am advised by Representative Counsel that Sears Canada did not establish an SRP Committee. In the absence of the establishment of the SRP Committee, section 8.2 of the CIBC Mellon Trust Agreement requires a vote of the majority of the beneficiaries of the RCA Trust in order to establish a "Retiree Committee", which is to serve as a replacement for an absent SRP Committee. Section 8.2 also specifies that the Retiree Committee is not to exceed 5 members in number.

16. In accordance with section 8.4 of the CIBC Mellon Trust Agreement, following an "Event of Default" as defined therein, the Retiree Committee is entitled to exercise all the rights of Sears Canada (to the exclusion of Sears Canada) which are conferred upon Sears Canada under the Trust Agreement.

17. I am advised by Representative Counsel that the application by Sears Canada for CCAA protection on June 22, 2017 constitutes an "Event of Default" under the terms of the CIBC Mellon Trust Agreement. In these circumstances, I am also advised by Representative Counsel that Sears Canada would no longer be providing instructions and directions to CIBC Mellon. Instead, CIBC Mellon, as the trustee and custodian of the RCA Trust, is now entitled to rely upon the authorized instructions from the newly-formed Retiree Committee.

18. I have spoken with fellow retirees that Ken Eady, William Turner, Brent Hollister, George Hughes, and Claude Sénéchal who, along with me, agree to become members of the Retiree Committee (the "**Retiree Committee Members**"). The committee members are volunteers who are not compensated.

- 19. I am advised by Representative Counsel and believe that it is appropriate to be appointed as a member of the Retiree Committee, as required by the CIBC Mellon Trust Agreement, and to obtain the appropriate protections.

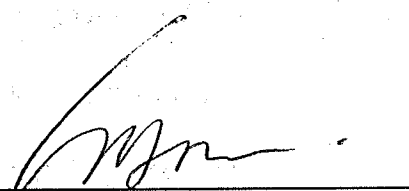
- 20. I believe, as do the other proposed Committee members, that holding a vote by mail will be time-consuming and could delay the formation of the Retiree Committee. I am also advised by Representative Counsel and believe that they have had discussions with CIBC Mellon to bring a motion before the court and request the court to order the formation of the Retiree Committee instead of holding a vote of the beneficiaries of the RCA Trust and that CIBC Mellon is in support of such a motion.

- 21. I make this affidavit in support of a motion for an order forming the Retiree Committee and for no improper purpose.

SWORN BEFORE ME at the City of
 Ottawa, in the Province of Ontario on
 October 2nd 2017

 A Commissioner for taking Affidavits, etc.

DAVID BRADLEY EVANS
 A Notary Public in and for the
 Province of Ontario



LARRY MOORE

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.

(each an "Applicant", and collectively, the "Applicants")

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

Proceeding commenced at TORONTO

**AFFIDAVIT OF LARRY MOORE
(SWORN ON OCTOBER 12, 2017)**

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Representative Counsel for the Non-Unionized
Retirees and Non-Unionized Active and Former
Employees of the Sears Canada Entities

Tab 6

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.

(each an "**Applicant**", and collectively, the "**Applicants**")

AFFIDAVIT OF BRENT HOLLISTER
(Sworn on October 16, 2017)

I, **BRENT HOLLISTER**, of the City of Toronto, in the Province of Ontario,

MAKE OATH AND SAY:

1. I am a retiree of Sears Canada Inc. and a beneficiary of the Sears Canada Inc. Supplementary Retirement Plan (the "**SRP**" or the "**Plan**"). As such, I have knowledge of the matters to which I hereinafter depose.
2. Where I make statements in this affidavit which are not within my personal knowledge, I have indicated the source of that information and I believe such

information to be true. To the extent that any of the information set out in this affidavit is based on my review of the documents, I verily believe the information to be true, unless otherwise stated.

3. I swear this Affidavit in support of a motion by Representative Counsel for an Order appointing the Retiree Committee for the RCA Trust (defined below), and for no improper purpose.

Background

4. After graduating from then Ryerson Polytechnic Institute in retail administration in 1969, I joined the Sears Management Training Program in the Kitchener, Ontario retail store. In 1972, I was transferred to the company headquarters in Toronto and spent 10 years serving as a buyer for Sears. From 1981 to 1991, I served as both the National Manager and Group General Manager of Home and Hardlines categories and was subsequently appointed as the Executive General Manager of Planning and Distribution. In 1999, I became the President of Sales and Services for Sears Canada. Three years later, in 2002, I became the President and Chief Operating Officer of Sears Canada. In 2004, I became the President and Chief Executive Officer of Sears Canada until I stepped down in June, 2006. From 2004 to 2006, I also served on the Board of Directors of Sears Canada.

5. As part of my compensation for my employment service for Sears Canada, I earned an entitlement to retiree benefits from Sears Canada, including registered and supplemental pension benefits to be paid to me during my retirement years. I receive

pension benefits from the Sears Canada Inc. Registered Retirement Plan (the "**Registered Pension Plan**") and the SRP.

6. My monthly supplemental pension benefits are payable to me pursuant to the SRP.

7. For individuals entitled to an SRP benefit and whose active service with Sears ended prior to January 1, 2010, the SRP benefit is paid to them from a Retirement Compensation Arrangement Trust fund (the "**RCA Trust**") established by Sears Canada in 2006. As such, I and the other eligible retirees are beneficiaries of the RCA Trust.

8. I have been advised by the firm of Koskie Minsky LLP, the Representative Counsel to the non-unionized retirees and employees in these CCAA proceedings, that there are approximately 97 individuals who are entitled to supplementary pension benefits under the SRP and paid from the RCA Trust. There are also 4 individuals who are entitled to supplementary benefits from Sears which are not paid from the RCA trust and which Sears Canada has said will be suspended as of the end of September, 2017. These individuals are not subject to this motion.

Purpose of the SRP and RCA Trust

9. Sears established the SRP on March 29, 1974 to pay supplemental pension benefits to certain employees on their retirement in an amount in excess of the pension benefits that are paid under the Registered Pension Plan but which are subject to maximum amounts as a result of the maximum pension benefit limits under the *Income Tax Act (Canada)*.

10. The RCA Trust was established in 2006 by Sears Canada as a separate trust fund to pay the monthly benefits to eligible retirees under the SRP and is classified as a "retirement compensation arrangement" under subsection 248(1) of the *Income Tax Act* (Canada) ("**RCA**").

11. On or around February 17, 2006, Sears Canada entered into a Trust Agreement with Royal Trust Corporation of Canada as the custodial trustee with respect to the funds for the RCA (the "**Royal Trust Agreement**").

12. On or around December 31, 2012, Sears Canada replaced Royal Trust with a new trustee, CIBC Mellon Trust Company ("**CIBC Mellon**"). Sears Canada then entered into a new trust agreement with CIBC Mellon (the "**CIBC Mellon Trust Agreement**") to, among other things, (i) provide for the appointment and duties of CIBC Mellon as the trustee and custodian of the fund; and (ii) replace and supersede the Royal Trust Agreement.

SRP Committee

13. Pursuant to section 2.19 of the SRP Plan text, an "SRP Committee" is a committee of SRP members established by the Company for the purposes of the Plan. I am advised by Representative Counsel that Sears Canada did not establish an SRP Committee. In the absence of the establishment of the SRP Committee, section 8.2 of the CIBC Mellon Trust Agreement requires a vote of the majority of the beneficiaries of the RCA Trust in order to establish a "Retiree Committee", which is to serve as a replacement for an absent SRP Committee. Section 8.2 also specifies that the Retiree Committee is not to exceed 5 members in number.

14. In accordance with section 8.4 of the CIBC Mellon Trust Agreement, following an "Event of Default" as defined therein, the Retiree Committee is entitled to exercise all the rights of Sears Canada (to the exclusion of Sears Canada) which are conferred upon Sears Canada under the Trust Agreement.

15. I am advised by Representative Counsel that the application by Sears Canada for CCAA protection on June 22, 2017 constitutes an "Event of Default" under the terms of the CIBC Mellon Trust Agreement. In these circumstances, I am also advised by Representative Counsel that Sears Canada would no longer be providing instructions and directions to CIBC Mellon. Instead, CIBC Mellon, as the trustee and custodian of the RCA Trust, is now entitled to rely upon the authorized instructions from the newly-formed Retiree Committee.

16. I have spoken with fellow retirees, Ken Eady, William Turner, George Hughes, Larry Moore, and Claude Sénéchal who, along with me, agree to become members of the Retiree Committee (the "**Retiree Committee Members**").

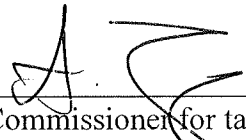
17. I am advised by Representative Counsel and believe that it is appropriate to be appointed as a member of the Retiree Committee, as required by the CIBC Mellon Trust Agreement, and to obtain the appropriate protections.

18. I believe, as do the other proposed Committee members, that holding a vote by mail will be time-consuming and could delay the formation of the Retiree Committee. I am also advised by Representative Counsel and believe that they have had discussions with CIBC Mellon to bring a motion before the court and request the court to order the

formation of the Retiree Committee instead of holding a vote of the beneficiaries of the RCA Trust and that CIBC Mellon is in support of such a motion.

19. I make this affidavit in support of a motion for an order forming the Retiree Committee and for no improper purpose.

SWORN BEFORE ME at the City of Toronto, in the Province of Ontario on October 16, 2017.



A Commissioner for taking Affidavits, etc.

LSUC # 70164K



BRENT HOLLISTER

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.

(each an "Applicant", and collectively, the "Applicants")

ONTARIO
SUPERIOR COURT OF JUSTICE -
COMMERCIAL LIST

Proceeding commenced at TORONTO

AFFIDAVIT OF BRENT HOLLISTER
(SWORN ON OCTOBER 16, 2017)

KOSKIE MINSKY LLP

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Representative Counsel for the Non-Unionized
Retirees and Non-Unionized Active and Former
Employees of the Sears Canada Entities

Tab 7

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.

(each an "**Applicant**", and collectively, the "**Applicants**")

**AFFIDAVIT OF GEORGE HUGHES
(Sworn on October 16, 2017)**

I, **GEORGE HUGHES**, of the City of Guelph, in the Province of Ontario,
MAKE OATH AND SAY:

1. I am a retiree of Sears Canada Inc. and a beneficiary of the Sears Canada Inc. Supplementary Retirement Plan (the "**SRP**" or the "**Plan**"). As such, I have knowledge of the matters to which I hereinafter depose.
2. Where I make statements in this affidavit which are not within my personal knowledge, I have indicated the source of that information and I believe such

information to be true. To the extent that any of the information set out in this affidavit is based on my review of the documents, I verily believe the information to be true, unless otherwise stated.

3. I swear this Affidavit in support of a motion by Representative Counsel for an Order appointing the Retiree Committee for the RCA Trust (defined below), and for no improper purpose.

Background

4. I retired from Sears Canada in September, 2002 after 35 years of service. During my long working career with Sears, I held a variety of managerial positions with the company including as the National Manager of Compensation, the National Manager of Field Personnel, the Personnel Superintendent for Western Canada, and Credit Manager for the Eastern Area of Canada for Credit.

5. In my retirement in Guelph, I have been active in the community and have served on the Board of Directors of a number of organizations and have volunteered with the Evergreen Senior Association for over 10 years.

6. As part of my compensation for my employment service for Sears Canada, I earned an entitlement to retiree benefits from Sears Canada, including registered and supplemental pension benefits to be paid to me during my retirement years. I receive pension benefits from the Sears Canada Inc. Registered Retirement Plan (the "**Registered Pension Plan**") and the SRP.

7. My monthly supplemental pension benefits are payable to me pursuant to the SRP.

8. For individuals entitled to an SRP benefit and whose active service with Sears ended prior to January 1, 2010, the SRP benefit is paid to them from a Retirement Compensation Arrangement Trust fund (the "**RCA Trust**") established by Sears Canada in 2006. As such, I and the other eligible retirees are beneficiaries of the RCA Trust.

9. I have been advised by the firm of Koskie Minsky LLP, the Representative Counsel to the non-unionized retirees and employees in these CCAA proceedings, that there are approximately 97 individuals who are entitled to supplementary pension benefits under the SRP and paid from the RCA Trust. There are also 4 individuals who are entitled to supplementary benefits from Sears which are not paid from the RCA trust and which Sears Canada has said will be suspended as of the end of September, 2017. These individuals are not subject to this motion.

Purpose of the SRP and RCA Trust

10. Sears established the SRP on March 29, 1974 to pay supplemental pension benefits to certain employees on their retirement in an amount in excess of the pension benefits that paid under the Registered Pension Plan but which are subject to maximum amounts as a result of the maximum pension benefit limits under the *Income Tax Act (Canada)*.

11. The RCA Trust was established in 2006 by Sears Canada as a separate trust fund to pay the monthly benefits to eligible retirees under the SRP and is classified as a

"retirement compensation arrangement" under subsection 248(1) of the *Income Tax Act* (Canada) ("**RCA**").

12. On or around February 17, 2006, Sears Canada entered into a Trust Agreement with Royal Trust Corporation of Canada as the custodial trustee with respect to the funds for the RCA (the "**Royal Trust Agreement**").

13. On or around December 31, 2012, Sears Canada replaced Royal Trust with a new trustee, CIBC Mellon Trust Company ("**CIBC Mellon**"). Sears Canada then entered into a new trust agreement with CIBC Mellon (the "**CIBC Mellon Trust Agreement**") to, among other things, (i) provide for the appointment and duties of CIBC Mellon as the trustee and custodian of the fund; and (ii) replace and supersede the Royal Trust Agreement.

SRP Committee

14. Pursuant to section 2.19 of the SRP Plan text, an "SRP Committee" is a committee of SRP members established by the Company for the purposes of the Plan. I am advised by Representative Counsel that Sears Canada did not establish an SRP Committee. In the absence of the establishment of the SRP Committee, section 8.2 of the CIBC Mellon Trust Agreement requires a vote of the majority of the beneficiaries of the RCA Trust in order to establish a "Retiree Committee", which is to serve as a replacement for an absent SRP Committee. Section 8.2 also specifies that the Retiree Committee is not to exceed 5 members in number.

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the rights of Sears Canada (to the exclusion of Sears Canada) which are conferred upon Sears Canada under the Trust Agreement.

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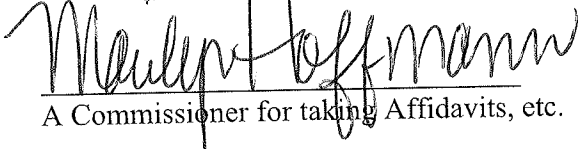
17. I have spoken with fellow retirees, Ken Eady, William Turner, Brent Hollister, Larry Moore, and Claude Sénéchal who, along with me, agree to become members of the Retiree Committee (the "**Retiree Committee Members**"). The committee members are volunteers who are not compensated.

18. I am advised by Representative Counsel and believe that it is appropriate to be appointed as a member of the Retiree Committee, as required by the CIBC Mellon Trust Agreement, and to obtain the appropriate protections.

19. I believe, as do the other proposed Committee members, that holding a vote by mail will be time-consuming and could delay the formation of the Retiree Committee. I am also advised by Representative Counsel and believe that they have had discussions with CIBC Mellon to bring a motion before the court and request the court to order the formation of the Retiree Committee instead of holding a vote of the beneficiaries of the RCA Trust and that CIBC Mellon is in support of such a motion.

20. I make this affidavit in support of a motion for an order forming the Retiree Committee and for no improper purpose.

SWORN BEFORE ME at the City of Guelph, in the Province of Ontario on October 16, 2017.


A Commissioner for taking Affidavits, etc.


GEORGE HUGHES

MARILYN HOFFMANN, a Commissioner while Deputy Clerk of the City of Guelph

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SEARS CANADA INC., CORBEL 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.

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ONTARIO
SUPERIOR COURT OF JUSTICE -
COMMERCIAL LIST

Proceeding commenced at TORONTO

AFFIDAVIT OF GEORGE HUGHES
(SWORN ON OCTOBER __, 2017)

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Representative Counsel for the Non-Unionized
Retirees and Non-Unionized Active and Former
Employees of the Sears Canada Entities

Tab 8

and counsel to such other parties as were present, and having read the consent of the Trustee (defined below) dated November , 2017.

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

SRP Retiree Committee

2. **THIS COURT ORDERS** that despite the terms of section 8.2 of the Amended and Restated Retirement Compensation Arrangement Trust Agreement (the "**RCA Trust Agreement**") between Sears Canada Inc. and CIBC Mellon Trust Company (the "**Trustee**") effective October 1, 2012, the Retiree Committee for the purposes of the RCA Trust Agreement is hereby established and composed of Brent Hollister, George Hughes, Larry Moore, Claude Sénéchal, William Turner, and Ken Eady (the "**Retiree Committee Members**"), subject to further order of the court.

3. **THIS COURT ORDERS** that any instructions from the Retiree Committee to the Trustee shall be communicated to the Trustee by Representative Counsel (Koskie Minsky LLP).

4. **THIS COURT ORDERS** that the Retiree Committee Members shall have no liability as a result of their appointment or the fulfilment of their duties, as such, save and except for any claims based on gross negligence or wilful misconduct on their part.

5. **THIS COURT ORDERS** that Representative Counsel, the Retiree Committee Members and the Trustee shall be at liberty and are authorized at any time to apply to this Court for advice and directions in the discharge or variation of their powers and duties hereunder, including with respect to the payment of costs, as the case may be.

6. **THIS COURT ORDERS** that the reasonable legal, actuarial, and financial advisor costs, as the case may be, of the RCA Trust beneficiaries as incurred by Representative Counsel, to the extent such costs are not paid due to the exceeding of the fee cap of the

Represented Parties in the applicable letter agreement between Sears Canada Inc. and Representative Counsel dated June 22, 2017, shall be paid out of the fund of the RCA Trust.

7. **THIS COURT ORDERS** that none of the Applicants shall have any liability, responsibilities or duties with respect to the RCA Trust or any actions taken by the Retiree Committee from and after the appointment of the Retiree Committee, however, despite the foregoing, Sears Canada Inc. shall reasonably cooperate with respect to providing information and data in its possession or under its control to Representative Counsel as may be required for the administration or wind up of the RCA Trust. If the consent of the administrator of the Sears Canada Pension Plan is required for the provision of such information to Representative Counsel, Sears Canada shall seek the consent of the administrator.

HAINY, J.

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., 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.

(each an "Applicant", and collectively, the "Applicants")

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

Proceeding commenced at Toronto

ORDER

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Representative Counsel for the Retirees of
Sears Canada

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., CORBEIL ELECTRIQUE 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.

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ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

MOTION RECORD

(Motion for Appointment of Retiree Committee for the
RCA Trust, returnable NOVEMBER 7, 2017)

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Sears Canada