

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

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

APPLICANTS

**MOTION RECORD OF THE APPLICANTS
(Motion for Approval of Lease Transfer Agreement with Indigo Books & Music Inc. and
Certain Ancillary Assets – Calgary DC
returnable October 4, 2017)**

September 29, 2017

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TO: SERVICE LIST

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TAB 1

**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

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ARRANGEMENT OF SEARS CANADA INC., CORBEIL
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SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM
TRADING AND SOURCING CORP., SEARS FLOOR
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INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA LTD.,
4201531 CANADA INC., 168886 CANADA INC., AND 3339611
CANADA INC.

Applicants

NOTICE OF MOTION

**(Motion for Approval of Lease Transfer Agreement with Indigo Books & Music Inc.
and Certain Ancillary Assets – Calgary DC)**

The Applicants will make a motion before a judge of the Ontario Superior Court of Justice (Commercial List) on October 4, 2017 at 10:00 a.m., or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

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

THE MOTION IS FOR:

1. An Order (the “**Approval and Vesting Order**”) substantially in the form attached to the Motion Record, *inter alia*:
 - (a) if necessary, abridging the time for service of this Notice of Motion and the Motion Record and dispensing with service on any person other than those served;

- (b) approving the Lease Transfer Agreement entered into as of September 28, 2017 between Sears Canada Inc. (“**Sears Canada**”) and Indigo Books & Music Inc. (“**Indigo**”), and vesting Sears Canada’s right, title and interest in and to the Subject Assets (as defined in the Approval and Vesting Order) in Indigo; and
 - (c) sealing from the public record certain commercially-sensitive information and documents (as described below).
2. Such further and other relief as this Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

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

Approval and Vesting Order

- 3. On July 13, 2017, the Court approved a process (the “**SISP**”) by which BMO Nesbitt Burns Inc. (the “**Sale Advisor**”) on behalf of Sears Canada and under the supervision of both the Special Committee of the Board of Directors of Sears Canada and the Monitor sought bids and proposals for a broad range of transaction alternatives with respect to the business, assets and/or leases of the Applicants;
- 4. On September 28, 2017, Sears Canada entered into the Lease Transfer Agreement in which Sears Canada has agreed to sell to Indigo all of Sears Canada’s rights, title and interest in the Lease for Sears Canada’s distribution center located at 79th Avenue SE in Calgary, Alberta;

5. The consideration to be received in the transaction is fair and reasonable;
6. The process leading to the Lease Transfer Agreement was fair and reasonable in the circumstances and was approved by the Monitor;
7. The Lease Transfer Agreement is in the best interests of the creditors and other stakeholders of the Applicants;
8. The relief sought on this motion is supported by the Monitor and the Sale Advisor;
9. The debtor-in-possession credit agreements (“**DIP Agreements**”) require that the Net Proceeds of any Disposition (both as defined in the DIP Agreements) shall be applied promptly, and in any event no later than three business days after receipt thereof, to prepay the Obligations (as defined in the DIP Agreements) in the priority provided for in the DIP Agreements;

Sealing Order

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

15. Such further and other grounds as counsel may advise and this Court may permit.

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

1. The Affidavit of Mark Caiger sworn September 28, 2017 and the exhibits attached thereto;
2. The Affidavit of Billy Wong sworn September 28, 2017 and the exhibits attached thereto;
3. The Affidavit of Billy Wong sworn June 22, 2017 and exhibit K attached thereto;
4. The Third Report of the Monitor; and
5. Such further and other evidence as counsel may advise and this Court may permit.

September 29, 2017

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TO: SERVICE LIST

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.

Applicants

Ontario
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceeding commenced at Toronto

NOTICE OF MOTION

(Motion for Approval of Lease Transfer Agreement with Indigo Books & Music Inc. and Certain Ancillary Assets – Calgary DC)

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TAB 2

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

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CANADA INC.

APPLICANTS

**AFFIDAVIT OF BILLY WONG
(Sworn September 28, 2017)**

**(Motion for Approval of Lease Transfer Agreement with
Indigo Books & Music Inc.
Calgary Distribution Centre)**

I, Billy Wong, of the City of Toronto, in the Province of Ontario, MAKE OATH

AND SAY:

1. I am the Executive Vice-President and Chief Financial Officer of the Applicant Sears Canada Inc. ("**Sears Canada**"). I am also a director of each of the other Applicants. As such, I have personal knowledge of the matters deposed to herein. Where I have relied on other sources for information, I have specifically referred to such sources and believe them to be true. In preparing this Affidavit, I have consulted with members of the senior management team of Sears Canada, legal, financial and other advisors of Sears Canada, and representatives of FTI Consulting Canada Inc. (the "**Monitor**").

2. I swear this Affidavit in support of the motion brought by the Applicants seeking an Order, substantially in the form attached to the Motion Record, approving the Lease Transfer Agreement executed on September 28, 2017 (the “**Lease Transfer Agreement**”) between Sears Canada, as assignor, and Indigo Books & Music Inc. (“**Indigo**”), as assignee, relating to the lease held by Sears Canada (the “**Lease**”) for Sears Canada’s distribution center located at 79th Avenue SE in Calgary, Alberta (the “**Calgary Distribution Centre**”), the details of which are summarized in the following chart:

Property	City	Landlord	Size (square feet)	Lease Expiration	Options Remaining, Outside Expiration
Calgary DC	Calgary, AB	I.G. Investment Management, Ltd. as Trustee for Investors Real Property Fund	243,947	2024	1 option, 2029

3. Capitalized terms used in this Affidavit that are not otherwise defined have the meaning given to them in the Lease Transfer Agreement.

4. This Affidavit should be read in conjunction with the Affidavit of Mark Caiger sworn September 28, 2017 (the “**Caiger Affidavit**”), which describes in more detail the sales efforts undertaken by Sears Canada and BMO Nesbitt Burns Inc. (the “**Sale Advisor**”) pursuant to the Court-approved Sale and Investment Solicitation Process (the “**SISP**”), which efforts resulted in, among other things, Indigo’s bid and the Lease Transfer Agreement which is the subject of this motion.

5. I understand from the Monitor that the consideration that Sears Canada will receive in this proposed transaction (the “**Purchase Price**”) is included in a Confidential Appendix to the Monitor’s Report that will be filed separately in connection with this motion. In the view of the Applicants and the Sale Advisor, the Purchase Price is confidential information and general disclosure of such information could be materially prejudicial to the Applicants in connection with the SISP generally and in connection with any further marketing of the Lease in particular in the event the proposed transaction does not proceed to close as anticipated. As such, the Purchase Price in the Lease Transfer Agreement, which is attached as Exhibit “A” to this Affidavit, has been redacted. The Applicants are requesting that a sealing order be granted with respect to the Confidential Appendix.

6. Under the terms of the Lease Transfer Agreement, Sears Canada has agreed to use commercially reasonable efforts to obtain the Landlord’s Consent, on or prior to closing, in which, among other things, the Landlord consents to the assignment of the Lease, to the retention of certain FF&E and Trade Fixtures (including certain racking, shelving, and conveyer belts) by Indigo, and agrees to release certain claims to leasehold improvement allowances. The Landlord’s Consent is a condition to closing.

7. The Applicants and the Sale Advisor believe that this transaction is in the best interests of the Applicants and their stakeholders and the Purchase Price to be paid in respect of the transaction is fair and reasonable. Moreover, the Applicants and the Sale Advisor believe that the process leading to the transaction, as described in the Caiger Affidavit and herein, was reasonable in the circumstances.

8. It is my understanding that the Monitor approves the process that has been followed by Sears Canada and the Sale Advisor, and supports the Applicants' motion seeking approval of the Lease Transfer Agreement.

Background to Indigo's Bid

9. On July 13, 2017, the Court granted the Applicants' request for an order approving the SISP that would be conducted by Sears Canada's Sale Advisor under the supervision of the Monitor and a special committee of independent directors of the board of Sears Canada (the "**Special Committee**").

10. The purpose of the SISP was to seek out proposals for the acquisition of, or an investment in, Sears Canada's business, property and/or leases, and to implement one or a combination of such proposals with the objective of maximizing value for the benefit of Sears Canada's stakeholders.

11. The Caiger Affidavit provides details regarding the steps that were taken to market and solicit interest in Sears Canada's assets pursuant to the SISP, including the Lease which is subject to the Lease Transfer Agreement.

12. In accordance with the SISP, on August 31, 2017, Indigo submitted a bid in respect of the Lease in which Indigo offered to acquire Sears Canada's right, title and interest in and to the Lease, Realty Tax Appeals, FF&E, the Trade Fixtures, and the Assigned Software Contracts (collectively, the "**Subject Assets**"), on the terms and conditions set out in Indigo's proposed form of lease transfer agreement.

13. Following receipt of the bid, the Special Committee directed Sears Canada and the Sale Advisor to engage in negotiations with Indigo in an effort to conclude a transaction. I am advised by Mr. Caiger and believe that negotiations ensued with Indigo in respect of financial and legal aspects of its bid, draft documents were exchanged by the parties, and follow up discussions were held as necessary.

14. After considering Indigo's offer and alternatives available, the Sale Advisor recommended to the Special Committee, and the Special Committee subsequently recommended to the Board, that Sears Canada enter into a transaction with Indigo for the Subject Assets. The Board carefully considered Indigo's offer and was satisfied that the Purchase Price being offered was fair and reasonable, and in the best interests of the Applicants and their stakeholders.

15. Indigo is a publicly traded Canadian company. I understand that it is Canada's largest book, gift and specialty toy retailer, has stores in all 10 provinces and one territory under a number of banners, and offers online sales through its www.indigo.ca website. Indigo has represented that it has the financial ability to close the transaction. Moreover, Indigo is required under the Lease Transfer Agreement to provide all necessary information to Sears Canada demonstrating that it is qualified to perform the obligations as tenant under the Lease that it will assume from Sears Canada.

The Lease Transfer Agreement

16. On September 28, 2017, Sears Canada and Indigo entered into the Lease Transfer Agreement. The Lease Transfer Agreement provides for, among other things, the following:

- (a) Subject to the Initial Order and the SISP Order, Sears Canada agrees to sell, assign and transfer to Indigo, and Indigo agrees to purchase and assume from Sears Canada, the Subject Assets on the Closing Date in accordance with the terms and conditions of the Lease Transfer Agreement.
- (b) The Subject Assets assigned by Sears Canada and obtained by Indigo under the Lease Transfer Agreement include the Assigned Software Contracts, which consist of Sears Canada's interests in and relating to (i) a software license issued by Bastian Solutions Canada to Sears Canada and the associated contract titled "universal terms and conditions for services and products not for resale" between Sears Canada and Bastian Solutions Canada, and (ii) the Bastian Solutions Canada client support agreement. The Lease Transfer Agreement is conditional upon the parties having obtained any required consents for the assignment of the Assigned Software Contracts to Indigo, or an Assignment Order assigning any Assigned Software Contract for which a required consent has not been obtained.
- (c) Indigo will pay the Purchase Price, plus all applicable taxes. The Purchase Price is subject to certain typical adjustments as set out in the Lease Transfer Agreement, which adjustments will be final and not subject to readjustment. This allows for final settlement of Sears Canada's obligations relating to the Subject Assets, giving certainty of result.
- (d) Indigo has paid a Deposit equal to ten percent of the Purchase Price to the Monitor, as escrow agent. Upon Closing, the Deposit will be paid to Sears

Canada and applied to the Purchase Price. If the Closing does not occur because of a material breach of the Lease Transfer Agreement by Indigo, the full amount of the Deposit together with all accrued interest earned thereon shall be paid to Sears Canada to compensate it for the expenses incurred and the delay caused and opportunities foregone as a result of the failure of the transaction to close. In addition, Sears Canada has all other rights and remedies against Indigo in the event of such breach by Indigo. Otherwise, if the transaction does not close, the Monitor shall return the Deposit to Indigo.

- (e) The Lease Transfer Agreement and the transaction contemplated therein are subject to the Court issuing the proposed Approval and Vesting Order and the Monitor delivering the Monitor's Certificate. In addition, as noted above, the Lease Transfer Agreement is conditional upon Sears Canada obtaining the Landlord's Consent. As noted above, the Lease Transfer Agreement is also conditional upon the parties having obtained any required consents for the assignment of the Assigned Software Contracts to Indigo, or an Assignment Order assigning any Assigned Software Contract for which a required consent has not been obtained.

- (f) The Closing will take place on the date that is three Business Days following the issuance of the Approval and Vesting Order or at such other date as Sears Canada (with the consent of the DIP Lenders and the Monitor) may advise Indigo in writing, provided that the Closing Date will be no later than

November 30, 2017 or such later date as the Parties mutually agree or as otherwise ordered by the Court.

- (g) Sears Canada covenants to use commercially reasonable efforts to obtain by the Closing Date the written consent of the Landlord to the assignment of the Lease by Sears Canada to Indigo.
- (h) Indigo covenants with Sears Canada that it will, as and from the Closing Date, assume, discharge, perform and fulfill all the obligations and liabilities on the part of Sears Canada with respect to the Permitted Encumbrances from and after the Closing Date.
- (i) Subject to the terms of the Lease Transfer Agreement, Indigo is purchasing, accepting and assuming the Subject Assets on an “as is, where is” basis. Indigo has received a copy of the Lease and is familiar with the terms, agreements, covenants, obligations and conditions therein. Indigo will be solely responsible for attempting to obtain the agreement of the Landlord to amend the Lease as may be required by Indigo to allow Indigo to use the Premises for its purposes. Except as otherwise set out in the Lease, there is no rent free period or fixturing period under the Lease, and neither Sears Canada nor the Landlord has any responsibility to pay any form of tenant inducement, tenant allowance, or other lease-takeover payment to Indigo.
- (j) Indigo will use commercially reasonable efforts to assist Sears Canada and shall co-operate with Sears Canada, as reasonably requested, to obtain from

third parties a full release of Sears Canada's obligations under the Permitted Encumbrances and/or the Lease and/or any guarantee or indemnity provided in respect of the obligations of Sears Canada under the Lease, as applicable.

17. The Lease Transfer Agreement does not contain any provision providing any post-closing access to Sears Canada as all of the inventory located at the Calgary Distribution Centre has already been removed and, therefore, such access is not necessary.

Proposed Distribution of Proceeds of Transaction

18. The proposed Approval and Vesting Order provides that the Monitor will distribute any net proceeds from the Transaction ("**Net Proceeds**") to repay amounts owing under the DIP ABL Credit Agreement or the DIP Term Credit Agreement after filing the Monitor's Certificate (a "**Distribution**"). Any Distribution will be made free and clear of all Claims and Encumbrances. If all amounts owing under the DIP Credit Agreements have been repaid, the Monitor will retain any Net Proceeds remaining on behalf of the Applicants pending further Order of the Court.

19. For all of the foregoing reasons, the Applicants believe that approval of the Lease Transfer Agreement is in the best interests of the Applicants and their stakeholders.

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



Commissioner for taking Affidavits

Karen Sachar



Billy Wong

**THIS IS EXHIBIT "A" TO THE AFFIDAVIT
OF BILLY WONG SWORN BEFORE ME ON
THIS 28th DAY OF SEPTEMBER, 2017.**



A commissioner for taking Affidavits

LEASE TRANSFER AGREEMENT

SEARS CANADA INC.
as the Assignor

- and -

INDIGO BOOKS & MUSIC INC.
as the Assignee

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THIS LEASE TRANSFER AGREEMENT

BETWEEN:

SEARS CANADA INC. (the "Assignor")

OF THE FIRST PART,

- and -

INDIGO BOOKS & MUSIC INC. (the "Assignee")

OF THE SECOND PART.

RECITALS:

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

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth in this Agreement and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the Assignor (upon its acceptance of the Offer within the time and in the manner specified herein) and the Assignee (individually, a "**Party**" and collectively, the "**Parties**") covenant and agree as follows:

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ARTICLE 1 DEFINITIONS

1.1 Definitions

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

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

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

“Assigned Software Contracts” means the Assignor’s interests in and relating to: (i) the software license issued by Bastian Solutions Canada to Sears Canada and the associated contract titled “universal terms and conditions for services and products not for resale” between the Assignor and Bastian Solutions Canada; and (ii) the Bastian Solutions Canada client support agreement.

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

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

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

“Assignment and Assumption of Lease” means, with respect to the Lease, an assignment by the Assignor and an assumption by the Assignee of the Assignor’s right, title and interest and all

liability, covenants and obligations, as tenant in the Lease. The agreement evidencing same shall include an indemnity given by the Assignee in favour of the Assignor from and against any Claims arising pursuant to or in connection with the Lease and/or the Property and shall be in substantially the form attached as Schedule H.

“Assignment and Assumption of Realty Tax Appeals” means an assignment by the Assignor and an assumption by the Assignee of the Assignor’s right, title and interest and all liability, covenants and obligations, in respect of the Realty Tax Appeals to be delivered on Closing. The agreement evidencing same shall include an indemnity given by the Assignee in favour of the Assignor from and against any Claims arising pursuant to or in connection with any of the Realty Tax Appeals and shall be in substantially the form attached as Schedule I.

“Assignment Order” means an order or orders of the Court pursuant to applicable provisions of the CCAA, in form and substance acceptable to the Assignor, the Assignee and the Monitor, each acting reasonably, authorizing and approving the assignment to the Assignee of any Assigned Software Contract for which a required consent has not been obtained and preventing any counterparty to the Assigned Software Contract from exercising any right or remedy under the Assigned Software Contract by reason of any default(s) arising from the CCAA Proceedings, the insolvency of the Assignor, the assignment of the Assigned Software Contracts, or the failure of the Assignor to perform a non-monetary obligation under the Assigned Software Contracts.

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

“Assumed Liabilities” has the meaning ascribed thereto in Section 3.4(a).

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

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

“Binding Bid Deadline” has the meaning ascribed thereto in the SISP Order.

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

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

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

“Claims” means any and all claims, demands, complaints, grievances, actions, applications, suits, causes of action, Orders, charges, indictments, prosecutions, informations or other similar processes, assessments or reassessments, equitable interests, options, preferential arrangements of any kind or nature, assignments, restrictions, financing statements, deposit arrangements, rights of others, leases, sub-leases, licences, rights of first refusal or similar restrictions, judgments, debts,

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liabilities, expenses, costs, damages or losses, contingent or otherwise, reasonable professional fees, including fees and disbursements of legal counsel on a full indemnity basis, and all actual and documented costs incurred in investigating or pursuing any of the foregoing or any proceeding relating to any of the foregoing, but excluding any losses howsoever arising or occurring that are in the nature of consequential, indirect, punitive or exemplary damages.

“**Closing**” has the meaning ascribed thereto in Section 7.6(a).

“**Closing Date**” means the Business Day that is three (3) Business Days following the issuance of the Approval and Vesting Order or such later date as the Assignor (with the consent of the DIP Lenders and the Monitor) may advise the Assignee in writing; provided that the Closing Date shall be no later than November 30, 2017 or such later date as the Parties mutually agree or as otherwise ordered by the Court.

“**Closing Documents**” means those documents and deliveries to be delivered in connection with the Closing as contemplated in this Agreement including those set out in Section 7.5.

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

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

“**Cure Costs**” means the amount, if any, that must be paid to the Landlord in respect of the Lease in order for the Assignor, subject to the terms of the Initial Order, to satisfy all monetary defaults (including, without limitation, all arrears of rent for the period prior to Closing) in relation to the Lease, other than those arising by reason only of the Assignor’s insolvency, the commencement of the CCAA Proceedings or the Assignor’s failure to perform a non-monetary obligation.

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

“**DIP Lenders**” has the meaning ascribed thereto in the SISP.

“**Encumbrance**” means any restriction, reservation, easement, servitude, right-of-way, encroachment, mortgage, charge, pledge, hypothec, prior claims, lien (statutory or otherwise), security interest, title retention agreement or arrangement, assignment, claim, prior claim, liability (direct, indirect, absolute or contingent), obligation, trust, deemed trust, right of retention, judgment, writ of seizure or execution, notice of sale, contractual right, option, right of first refusal, or any other right or interest, of any nature or any other arrangement or condition whether or not registered, published or filed, statutory or otherwise, secured or unsecured.

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

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

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

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

“Execution Date” means the date of acceptance of this Agreement as set out on the execution page of this Agreement.

“FF&E” includes all tools, signs, furniture, machinery, equipment, personal or moveable property, chattels, furnishings and fixtures including shelves, video cameras and equipment, security systems, point-of-sales systems and related appurtenances, telecommunications systems and related appurtenances, electric light fixtures, elevating devices and equipment, in each case to the extent owned, leased or licensed by the Assignor or any related party and which are now used or intended to be used, or which were previously used, in connection with the Assignor’s occupation and operation of the Premises, other than the Trade Fixtures. For greater certainty, FF&E shall include, without limitation, all property described in Schedule K and all other property which is situated on the Premises on the Inspection Date, other than the Trade Fixtures and the Excluded Assets.

“Filing Date” means June 22, 2017.

“Financial Advisor” means BMO Nesbitt Burns Inc.

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

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

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

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

“Inspection Date” means August 22, 2017.

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

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

“Landlord’s Consent” has the meaning ascribed thereto in Section 5.4(a).

“Landlord Deliveries” has the meaning ascribed thereto in Section 5.4(c).

“Landlord” means the landlord under the Lease.

“Laws” means any and all applicable laws, including all statutes, codes, ordinances, decrees, rules, regulations, municipal by-laws, judicial or arbitral or administrative or ministerial or departmental or regulatory judgments, orders, decisions, ruling or awards, and general principles of common and civil law and equity, binding on or affecting the Person referred to in the context in which the word is used.

“Lease” means the lease to occupy the Premises entered into by the Assignor, as described in Schedule B.

“Letters of Credit” means letters of credit, letters of guarantee, deposits and/or security deposits provided by or on behalf of the Assignor to any third party in respect of any of the Subject Assets.

“Matching Security” has the meaning ascribed thereto in Section 3.5.

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

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

“**NDA**” means the confidentiality, non-disclosure and non-use agreement between the Assignor and the Assignee dated August 14, 2017, as amended or supplemented in writing from time to time.

“**Notice**” has the meaning ascribed thereto in Section 8.16.

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

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

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

“**Permitted Encumbrances**” means, collectively: (a) any Encumbrances encumbering the Landlord’s freehold or other ownership interest in the Property or any other interest in the Property of the Landlord, but excludes any Encumbrances solely encumbering the Assignor’s leasehold interest in and to any Property situated outside of the Province of Quebec on which the Premises are located or the rights of the Assignor as lessee under the Lease; (b) Encumbrances resulting from the Assignee’s actions or omissions; and (c) the items identified in Schedule J hereto.

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

“**Premises**” means, collectively, the lands and premises which are leased to the Assignor pursuant to the Lease, as more particularly described in Schedule A.

“**Property**” means the real or immovable property of which the Premises form part for the purposes of the Lease and includes the Landlord’s freehold or other ownership interest, ground leasehold interest or right of emphyteusis therein.

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

“**Realty Tax Appeals**” has the meaning ascribed thereto in Section 4.3(a).

“**Realty Tax Refunds**” has the meaning ascribed thereto in Section 4.3(b).

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

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“Sale Approval Application” means the application to be filed by the Assignor under the CCAA Proceedings seeking entry of the Approval and Vesting Order by the Court.

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

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

“SISP Order Date” means July 13, 2017.

“Subject Assets” means all of the right title and interest of the Assignor in and to the Lease, the Realty Tax Appeals, the FF&E, the Trade Fixtures, and the Assigned Software Contracts, but excludes the Excluded Assets.

“Successful Bid” has the meaning ascribed thereto in the SISP Order.

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

“Trade Fixtures” means the fixtures, shelves, counters, equipment, and other improvements in each case which were installed by or on behalf of the Assignor or any related party and which are now used or intended to be used, or which were previously used, in connection with the Assignor’s occupation and operation of the Premises, and regardless of whether the same were constructed, installed or attached in any manner whatsoever to the floors, walls or ceilings of the Premises. For greater certainty, Trade Fixtures shall include, without limitation, all property described in Schedule L and all other property situated at the Premises on the Inspection Date, other than the FF&E and the Excluded Assets.

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

ARTICLE 2 SALE TRANSACTION

2.1 Offer and Acceptance

- (a) Subject to the Initial Order and the SISP Order, the Assignor hereby agrees to sell, assign and transfer to the Assignee, and the Assignee hereby agrees to purchase and

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assume from the Assignor, the Subject Assets on the Closing Date in accordance with the terms and conditions of this Agreement.

- (b) This Offer shall be open for acceptance by the Assignor until 5:00 p.m. (Toronto time) on the 29th day of September, 2017 by the Assignor signing and delivering the accepted Offer to the Assignee on or before the specified time for acceptance.
- (c) Upon acceptance of this Offer by the Assignor, this Offer shall constitute a binding agreement to acquire the Subject Assets, on the terms of this Agreement.

2.2 As Is, Where Is

- (a) Unless otherwise specified in this Agreement, the Assignee acknowledges and agrees in favour of the Assignor that as of the Execution Date and the Closing Date:
 - (i) the Assignee is purchasing the Subject Assets (including the state of title thereto and/or the state of any Encumbrances and Permitted Encumbrances) and accepting and assuming the Subject Assets on an “as is, where is” basis, without any written or oral statements, representations, warranties, promises or guaranties of any nature or kind whatsoever, either legal or conventional, express or implied (by operation of law or otherwise), as to the condition of any of the Subject Assets, the Lease and the status of the Lease (except as provided for in Section 5.4(a)), Permitted Encumbrances, the rentable area of the Premises, the existence of any default on the part of the Assignor or Landlord (except as provided for in Section 5.4(a)), the physical, environmental or other condition of, in, on, under or in the vicinity of any of the Premises, the use permitted at any of the Premises, the existence of any Encumbrance and/or Off-Title Compliance Matters affecting the Subject Assets, the Premises or the Assignor’s leasehold interest therein, where applicable, the Assumed Liabilities, or any other aspects of any of the Subject Assets and the Permitted Encumbrances, the structural integrity or any other aspect of the physical condition of the Premises, compliance with Environmental Laws, the conformity of the Premises to past, current or future applicable zoning or building code requirements or other applicable Laws, the existence of soil instability, past soil repairs, soil additions or conditions of soil fill or any other matter affecting the stability or integrity of the Premises, the sufficiency of any drainage, the availability of public utilities, access, parking and/or services for the Premises, the fitness or suitability of the Premises for occupancy or any intended use (including matters relating to health and safety), the potential for further development of the Premises, the existence of land use, zoning or building entitlements affecting the Premises, the presence, release or use of wastes of any nature, Hazardous Substances, pollutants, contaminants or other regulated substances in, under, on or about the

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

- (ii) any disclosure in respect of any of the Subject Assets was made available to the Assignee solely as a courtesy but the Assignee is not entitled to rely on such disclosure, and it is expressly acknowledged by the Assignee that no written or oral statement, representation, warranty, promise or guarantee of any nature or kind whatsoever, either legal or conventional, express or implied (by operation of law or otherwise), is made by the Assignor and/or the Monitor and/or their respective legal counsel, the Financial Advisor or other advisors or representatives as to the accuracy, currency or completeness of any such disclosure, and each of them expressly disclaims any and all liabilities with respect to such disclosure and any and all errors therein or omissions therefrom;
- (iii) the Assignee hereby unconditionally and irrevocably waives any and all actual or potential rights or Claims the Assignee might have against the Assignor pursuant to any warranty, legal or conventional, express or implied, of any kind or type relating to the Subject Assets or any other assets or any other aspect of the Transaction. Such waiver is absolute, unlimited and includes, but is not limited to, waiver of express warranties, implied warranties, any warranties at law and/or in equity, warranties of fitness for a particular use, warranties of merchantability, warranties of occupancy, strict liability and Claims of every kind and type, including, but not limited to, Claims regarding defects, whether or not discoverable, product liability Claims, or similar Claims, and to all other extent or later created or conceived of strict liability or strict liability type Claims and rights;
- (iv) the Assignee conducted its own independent review, inspection, diligence and investigations and formed its own independent opinions and conclusions in respect of the Subject Assets. The Assignee's decision to make this Offer and enter into this Agreement was made of its own accord without reference to or reliance upon any disclosure in respect of any of the Subject Assets. The Assignee acknowledges having been given a reasonable and adequate opportunity to conduct its own independent diligence prior to entering in this Agreement;

- (v) the Assignee has received a copy of the Lease and is familiar with the terms, agreements, covenants, obligations and conditions therein. The Assignee shall be solely responsible for negotiating with and attempting to obtain the agreement of the Landlord to amend the Lease as may be required by the Assignee to allow the Assignee to use the Premises for its purposes. For greater certainty, except as provided for in Section 7.1(e), such amendments are not a condition of Closing;
- (vi) neither the Assignor nor the Landlord shall be responsible for making any repairs, replacements, renovations, alterations, improvements or upgrades in or to the Premises or any part thereof, and it shall be the sole responsibility of the Assignee to make, at the Assignee's sole cost, any repairs, replacements, renovations, alterations, improvements and upgrades in or to the Premises in accordance with the Lease as may be required by the Assignee to make the Premises suitable for its purposes;
- (vii) except as otherwise set out in the Lease, there is no rent free period or fixturing period under the Lease, and neither the Assignor nor the Landlord has any responsibility to pay any form of tenant inducement, tenant allowance, or other lease-takeover payment to the Assignee;
- (viii) the Assignor will deliver possession of the Trade Fixtures and FF&E without a bill of sale, representation, warranty or other title documentation and shall make no adjustment to the Purchase Price with respect thereto;
- (ix) the Assignor shall not be responsible for making any repairs, replacements, renovations, alterations, improvements or upgrades or undertaking any remediation to address a Release in or to the Property or any part thereof, and it shall be the sole responsibility of the Assignee to make, at the Assignee's sole cost, any repairs, replacements, renovations, alterations, improvements and upgrades in or to the Property following Closing as may be required by the Assignee to make the Property suitable for its purposes;
- (x) the Subject Assets may be subject to certain Off-Title Compliance Matters, municipal requirements, including building or zoning by-laws and regulations, servitudes, easements for hydro, gas, telephone affecting the Subject Assets, and like services to the Premises, and restrictions and covenants affecting the Premises, including but not limited to the Permitted Encumbrances. Without limiting the foregoing, the Assignor shall not be responsible for rectification of any matters disclosed by any Governmental Authority or quasi-governmental authority having jurisdiction, and the Assignee shall accept the Subject Assets subject to such matters; and

- (xi) the Assignee shall accept full responsibility for all conditions related to the Property, and the Assignee shall comply with all orders relating to the condition of the Property issued by any competent Governmental Authority, including any order issued against the Assignor including without limitation, any non-compliance with Environmental Laws or relating to the existence of any Hazardous Substances.

- (b) The Assignor has no and shall have no obligations or responsibility to the Assignee after Closing with respect to any matter arising out of or attributable to the ownership of the Subject Assets after Closing or the condition thereof save and only to the extent expressly provided in this Agreement. The Assignee shall be responsible for and hereby indemnifies and saves harmless the Assignor and its employees, directors, officers, appointees and agents from any costs, including legal and witness costs, claims, demands, civil actions, prosecutions, or administrative hearings, fines, judgments, awards, including awards of costs, which arise out of or are attributable to the ownership of the Subject Assets after Closing, including as a result of: (i) the condition of the Property, (ii) any order issued by any competent Governmental Authority in connection with the condition of the Property, or (iii) any loss, damage, or injury caused either directly or indirectly as a result of the condition of the Property including, without limitation, non-compliance with Environmental Laws or the existence of any Hazardous Substances, but excluding any losses howsoever arising or occurring that are in the nature of consequential, indirect, punitive or exemplary damages. This Section 2.2 shall survive and not merge on Closing and all Closing Documents shall incorporate this Section 2.2 by reference.

ARTICLE 3 PURCHASE PRICE

3.1 Purchase Price

The Purchase Price for the Subject Assets and the assumption of the Assumed Liabilities shall be [REDACTED] (\$ [REDACTED]) (the “Purchase Price”) exclusive of all Taxes. Subject only to adjustment in accordance with this Agreement, the Purchase Price shall be paid to the Assignor as follows:

- (a) as to the sum of [REDACTED] (\$ [REDACTED]) (the “Deposit”) (receipt of which the Assignor hereby acknowledges), by wire transfer of immediately available funds payable to or to the order of the Monitor, in trust, or as it may otherwise direct in writing, on or prior to 5:00 p.m. (Toronto time) on the date that is three (3) Business Days following the Execution Date, to be held in trust as a deposit and invested in accordance with the provisions of Section 3.2 below pending the completion or other termination of this Agreement; and

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- (b) as to the balance of the Purchase Price, as adjusted in accordance with this Agreement, (the “**Balance**”) by wire transfer of immediately available funds payable to the Monitor or as it may direct on the Closing Date.

3.2 Deposit

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

- (d) If the Transaction is not completed due to any reason other than as addressed in Section 3.2(c), the full amount of the Deposit together with all accrued interest earned thereon shall be paid to the Assignee as full and final settlement and the Assignee shall have no further recourse against the Assignor.
- (e) In holding and dealing with the Deposit and any interest earned thereon pursuant to this Agreement, the Monitor shall release the Deposit and any interest earned thereon to the Persons becoming entitled thereto (i) in accordance with the provisions of (i) Section 3.2(b) or (ii) otherwise in accordance with this Section 3.2 as evidenced by a joint direction in writing executed by the Assignor and the Assignee (the “**Joint Direction**”) except in the event of a dispute between the Parties as to entitlement to the Deposit and any interest earned thereon in which event the Monitor may, in its sole, unfettered and unreviewable discretion, pay the Deposit and any interest earned thereon into Court, whereupon the Monitor shall have no further obligations relating to the Deposit and any interest earned thereon or otherwise hereunder.
- (f) The Monitor shall not, under any circumstances, be required to verify or determine the validity of the written confirmation described in Section 7.9(b) hereof or the Joint Direction and the Monitor is hereby relieved of any liability or responsibility for any loss or damage which may arise as the result of the acceptance by the Monitor of the Joint Direction.
- (g) Notwithstanding the foregoing or anything else contained herein or elsewhere, each of the Assignor and the Assignee acknowledges and agrees that: (i) the Monitor’s obligations hereunder are and shall remain limited to those specifically set out in this Section 3.2; and (ii) FTI Consulting Canada Inc. is acting solely in its capacity as the Court-appointed Monitor of the Assignor in the CCAA Proceedings and not in its personal or corporate capacity, and the Monitor has no liability in connection with this Agreement whatsoever, in its personal or corporate capacity or otherwise.
- (h) The Parties acknowledge that the Monitor may rely upon the provisions of this Section 3.2 notwithstanding that the Monitor is not a party to this Agreement. The provisions of this Section 3.2 shall survive the termination or non-completion of the Transaction.

3.3 Purchase Price Allocation

On or prior to the Closing Date, the Assignor and the Assignee, each acting reasonably, shall agree as to the allocation of the Purchase Price as between the Subject Assets. The Assignor and the Assignee shall adopt such allocation for the purposes of all tax returns, elections and filings respectively made by them or on their behalf provided that if the Parties cannot agree upon such an allocation, on or prior to the Closing Date, this Agreement shall still constitute a binding agreement and the Transaction shall proceed.

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3.4 Assumed Liabilities

- (a) The Assignee covenants with the Assignor that it shall, as and from the Closing Date, assume, discharge, perform and fulfill all the obligations and liabilities on the part of the Assignor with respect to the Permitted Encumbrances in respect of the period on or after the Closing Date (collectively, the “**Assumed Liabilities**”).
- (b) Without limiting the foregoing, the Assignee shall execute and deliver to the Assignor on the Closing Date: (i) an Assignment and Assumption of Lease for the Lease; (ii) the Assignment and Assumption of Assumed Liabilities; (iii) an Assignment and Assumption of Realty Tax Appeals; (iv) the Assignment and Assumption of the Assigned Software Contracts; and (v) such information, deliveries, documentation and assurances that other parties to the Lease or a Permitted Encumbrance may require from time to time.
- (c) Nothing in this Agreement shall be construed as an assignment of, or an attempt to assign to the Assignee, any Permitted Encumbrance which is (i) not assignable; or (ii) not assignable without the approval or consent of the other party or parties thereto, without first obtaining such approval or consent (collectively, “**Non-Assignable Rights**”). The failure to obtain any such approval or consent, or the fact that a Permitted Encumbrance is not assignable, shall not entitle the Assignee to terminate this Agreement or to any other right or remedy whatsoever including the Assignee not being entitled to make any Claims against the Assignor. In connection with such Non-Assignable Rights, the Assignor shall, at the request of the Assignee and in each case at the Assignee’s sole cost and expense and at no cost to the Assignor (other than its own legal costs):
 - (i) apply for and use all reasonable efforts to obtain such consents or approvals, in a form satisfactory to each of the Parties, acting reasonably; and
 - (ii) co-operate with the Assignee in any reasonable and lawful arrangements designed to provide the benefits of such Non-Assignable Rights to the Assignee, including without limitation, holding or causing to be held any such Non-Assignable Rights in trust for the Assignee or acting as agent for the Assignee, provided that pursuant to such arrangements the Assignee fully indemnifies the Assignor for all obligations or liabilities incurred thereunder or in connection therewith arising from and after the Closing Date.

Notwithstanding the foregoing, this Section shall not in any manner restrict the Assignor’s ability to liquidate or wind-up following Closing in connection with the CCAA Proceedings or any other proceedings.

3.5 Letters of Credit and Deposits

On the Closing Date, the Assignee shall issue replacement letters of credit and/or security deposits for the Letters of Credit and shall use its commercially reasonable efforts to cause the Letters of Credit to be released and returned to the Assignor without any further drawings thereunder. Provided that to the extent that the Assignee is unable to cause all of the Letters of Credit to be released and returned to the Assignor, without any further drawings thereunder, in lieu of issuing the replacement letters of credit and/or security deposits referred to above, the Assignee shall cause matching, unconditional and irrevocable letters of credit and/or security deposits in form, and from an issuer, satisfactory to the Assignor, acting reasonably, in favour of the Assignor to be provided to the Assignor on the Closing Date (collectively, the “**Matching Security**”) which Matching Security may be drawn upon by the Assignor and its successors and assigns if and to the extent that the Assignor’s Letters of Credit are drawn upon from time to time, and the Assignee shall reimburse the Assignor for any direct incremental costs incurred and indemnify and hold the Assignor harmless from and against all Claims, incurred or asserted, as a result of any Letters of Credit which are not so released and returned to the Assignor.

3.6 Trade-Marks

Notwithstanding the foregoing or anything else contained herein or elsewhere, the Assignee acknowledges and agrees that: (a) no signs, trade-marks, trade-names, logos, commercial symbols, business names or other intellectual property rights identifying “Sears” are conveyed or intended to be conveyed to the Assignee as part of the Subject Assets; and (b) all right, title and interest of the Assignor in and to all of its existing signs, trade-marks, trade-names, logos, commercial symbols, business names or other intellectual property rights identifying “Sears” or containing the words “Sears” are hereby specifically reserved and excluded from the Subject Assets. This Section shall survive and not merge on Closing.

ARTICLE 4 ADJUSTMENTS

4.1 Statement of Adjustments and Absence of Post-Closing Adjustments

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

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4.2 Items of Adjustments Under the Lease

- (a) The Assignor and the Assignee shall adjust as between themselves the rent (including basic or minimum rent and additional rent) and other amounts payable under the Lease which has been paid or pre-paid to the Landlord in respect of the Lease for any period prior to the Closing Date as well as the month in which the Closing Date occurs, with the Closing Date itself to be allocated to the Assignee.
- (b) Without limiting the generality of the foregoing, the Assignor and the Assignee shall as of the Closing Date adjust between themselves the following amounts:
 - (i) basic or minimum rent for the month in which the Closing occurs;
 - (ii) the reconciliation amounts in accordance with Section 4.2(e);
 - (iii) in favour of the Assignee, any amounts paid by the Assignee under the Assigned Software Contracts for the period up to the Closing Date;
 - (iv) in favour of the Assignor, on account of any roof repair costs or other costs of improvements paid by the Assignor which were required to be reimbursed to the Assignor by the Landlord;
 - (v) in favour of the Assignor, on account of any amount owing to the Assignor by the Landlord in respect of unpaid tenant allowance, rent free periods or other tenant inducements; and
 - (vi) in favour of the Assignor, on account of any other credit/setoff that the Assignor is entitled to claim from the Landlord, e.g. credit against/deduction from future common area maintenance charges due to the Assignor having performed certain work or paid for certain costs which were the Landlord's responsibility.
- (c) From and after the Closing Date, any and all required adjustments to rent (including basic or minimum rent and additional rent) and/or other amounts payable on the part of the tenant to be paid from time to time under the Lease, pursuant to any invoice or statement issued on or after the Closing Date, shall be the sole responsibility of the Assignee.
- (d) The Assignee shall be responsible for and pay all applicable goods and services, value-added, excise and other similar taxes and duties payable in connection with the transfer of any of the Subject Assets by the Assignor to the Assignee.
- (e) The Assignor shall request and seek to obtain from the Landlord, using commercially reasonable efforts, a reconciliation statement setting forth the actual amounts payable by the Assignor up to the Closing Date in respect of actual

Operating Costs (as defined in the Lease), utility charges and other related costs payable for the Premises as of the Closing Date and, to the extent received, shall include in the statement of adjustments to be delivered in accordance with Section 4.1. If the Assignor has paid in excess of the Tenant's Proportionate Share (as defined in the Lease) of Operating Costs (as defined in the Lease) for such period of the Lease Year (as defined in the Lease) up to the Closing Date, the excess shall be credited to the Assignor in the statement of adjustments. If the amount paid by the Assignor is less than the actual amount due up to the Closing Date, the Assignor agrees to credit such amount to the Assignee in the statement of adjustments.

- (f) For greater certainty and notwithstanding anything in this Agreement to the contrary, (i) any and all obligations to pay the Cure Costs shall be the sole responsibility of the Assignor and not the Assignee, and (ii) the Assignee shall have no obligation whatsoever for, or in connection with, any costs or fees payable to the Landlord in obtaining the Landlord's Consent.

4.3 Realty Tax Appeals

- (a) The Assignor and the Assignee acknowledge that with respect to the Premises the Assignor may have instituted certain appeals and/or claims in respect of realty taxes or assessments for certain periods prior to the Closing Date and possibly including the tax year in which the Closing Date occurs (all such appeals and any associated reassessments are hereinafter collectively referred to as the "**Realty Tax Appeals**").
- (b) On Closing, the Assignor shall assign to the Assignee all of its right, title and interest, if any, in and to such Realty Tax Appeals and in and to any credit, refund and/or rebate which may arise from any of the Realty Tax Appeals for any period that is prior to the Closing Date (collectively, the "**Realty Tax Refunds**").
- (c) From and after the Closing Date, the Assignee may, at its sole cost and expense but without any obligation to do so, assume or retain the carriage of the Realty Tax Appeals and continue as the appellant in the Realty Tax Appeals. At the request of the Assignee and at the Assignee's sole cost and expense, the Assignor agrees to co-operate with the Assignee with respect to the Realty Tax Appeals and to provide the Assignee with access to any reasonably necessary documents or materials required to continue any Realty Tax Appeals. If the Realty Tax Appeals may only be prosecuted in the name of the Assignor, at the request of the Assignee, the Assignor shall cooperate with the Assignee, including granting such authorizations as may be reasonably required, to enable the Assignee to pursue and prosecute such Realty Tax Appeals, at the Assignee's sole cost and expense.

This Section 4.3 shall survive and not merge on Closing.

4.4 Utilities

- (a) The Assignee shall not assume any contracts or agreements entered into by or on behalf of the Assignor for the supply of any utilities (including electricity, gas, water, fuel, telephone service, internet services, security and surveillance services or otherwise) at the Premises. On or before the Closing Date, the Assignor shall terminate all of its contracts and agreements for the supply of any utilities to the Premises. The provisions of this Section 4.4(a) shall survive and not merge on Closing.
- (b) From and after the Closing Date, any and all utility charges and other related fees payable for any of the Premises, pursuant to any invoice or statement issued on or after the Closing Date and relating to the period from and after the Closing Date, shall be the sole responsibility of the Assignee, and there shall be no adjustments between the Assignor and the Assignee of any utility charges or related fees paid by the Assignee pursuant to any such invoice or statement issued on or after the Closing Date.

4.5 Assigned Software Contracts

The Assignee agrees to pay to the counterparty to the Assigned Software Contracts the following amounts: (a) all monetary obligations under the terms of the Assigned Software Contracts for the period up to the Closing that do not arise only from the CCAA Proceedings, the insolvency of the Assignor, the assignment of the Assigned Software Contracts, or the failure of the Assignor to perform a non-monetary obligation under the Assigned Software Contracts, provided that the Assignee has received a credit for such amounts in the statement of adjustments; and (b) all amounts due and owing under the terms of the Assigned Software Contracts arising from and after the Closing Date.

ARTICLE 5 INTERIM PERIOD & LEASE MATTERS

5.1 Interim Period

- (a) During the Interim Period, the Assignor shall comply with each and every term and condition of the Lease as currently applicable in the CCAA Proceedings, subject only to the provisions of the Initial Order, the SISP Order and the provisions of this Section.
- (b) During the Interim Period, the Assignor by itself or through any agent shall be entitled, but not obligated, to remove and sell, or permit any other Persons to

remove and sell, any Excluded Assets, from the Premises in accordance with this Agreement, the Initial Order, the SISP Order, and any other Order of the Court.

- (c) The Assignor shall not be required to repair and/or reinstate the Premises or remove any Excluded Assets; however, the Assignor shall maintain the FF&E, the Trade Fixtures and the Premises in at least as good a condition as they were on the Inspection Date, subject to ordinary wear and tear.
- (d) In the event that prior to the Closing Date all or a material part of the Premises or more is expropriated or notice of expropriation or intent to expropriate all or a material part of the Premises or the Subject Assets is issued by any Governmental Authority, the Assignor shall immediately advise the Assignee thereof by Notice in writing, such Notice to include reasonable details of the nature and extent of the expropriation to allow the Assignee to make a determination whether to complete the Transaction. The Assignee shall have the option, exercisable by Notice in writing given within three (3) Business Days after the Assignee received Notice in writing from the Assignor of such material expropriation, to either:
 - (i) complete the Transaction contemplated herein in accordance with the terms hereof without reduction of the Purchase Price and all compensation for expropriation shall be payable to Assignee and all right, title and interest of the Assignor to such amounts, if any, shall be assigned to the Assignee on a without recourse basis; or
 - (ii) terminate this Agreement and not complete the Transaction, in which case all obligations of the Parties (except for those obligations which are expressly stated to survive the termination of this Agreement) shall terminate forthwith upon the Assignee giving Notice as required herein and the Deposit together with all interest accrued thereon, if any, shall be thereupon returned to the Assignee.
- (e) The Subject Assets shall be and remain until Closing at the risk of the Assignor. In the event of material damage by fire or other hazard to the Premises, the Subject Assets or any part thereof occurring before the Closing Date, the Assignor shall immediately advise the Assignee thereof by Notice in writing, such Notice to include reasonable details of the nature and extent of the damages to all the Assignee to make a determination whether to complete the Transaction. The Assignee shall have the option, exercisable by Notice in writing given within three (3) Business Days after the Assignee received Notice in writing from the Assignor of such material damage, to either:
 - (i) complete the Transaction contemplated herein in accordance with the terms hereof without reduction of the Purchase Price and the proceeds of any

insurance available or actually paid to the Assignor shall be paid and/or assigned to the Assignee; or

- (ii) terminate this Agreement and not complete the Transaction, in which case all obligations of the Parties (except for those obligations which are expressly stated to survive the termination of this Agreement) shall terminate forthwith upon the Assignee giving Notice as required herein and the Deposit together with all interest accrued thereon, if any, shall be thereupon returned to the Assignee.

5.2 Access

During the Interim Period, the Assignee and its agents, advisors, consultants, employees and representatives will have access to the Premises upon reasonable prior written Notice of not less than two (2) Business Days to the Assignor for the purposes of visiting and conducting non-invasive inspections of the Premises, provided that, for greater certainty, the Assignee shall not perform or cause to be performed any structural inspections, soil tests or environmental audits. The Assignor may accompany the Assignee and its agents, advisors, consultants, employees and representatives on any site visits or non-invasive inspections. The Assignee shall not be liable for any damages or losses incurred by the Assignor arising from the Assignee's discovery of adverse facts or conditions with respect to the Premises, which facts or conditions were not otherwise caused, exacerbated or aggravated by Assignee's activities on the Premises, or any pre-existing condition on the Premises except to the extent exacerbated or aggravated by the Assignee. Any damage to the Subject Assets caused by such site visits or inspections or otherwise by the Assignee or those for whom they are responsible at law will be promptly repaired, and the Subject Assets reinstated, by the Assignee and the Assignee will indemnify and save the Assignor harmless from all Claims which the Assignor may suffer as a result thereof or any other breach of this Section by the Assignee. This Section shall survive the Closing or termination of this Agreement.

5.3 Landlord Estoppel Certificate

Except as provided for in Section 5.4, the Assignor shall not be obligated to obtain any acknowledgement, status certificate or estoppel certificate in respect of the Lease from the Landlord.

5.4 Landlord's Consent

- (a) As a condition precedent to the Assignee's obligation to complete the purchase and sale of the Subject Assets, the Landlord shall on or prior to Closing have executed and delivered to and in favour of the Assignee a consent, acknowledgement and agreement of the Landlord (the "**Landlord's Consent**") in form and content satisfactory to both Parties, each acting reasonably, and that includes, without limitation, the consent, acknowledgement and agreement of the Landlord in respect of the following:

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- (i) both to the assignment of the Lease contemplated hereunder and, to the extent possible, to the Approval and Vesting Order;
- (ii) that all right, title and interest in and to the FF&E and the Trade Fixtures shall at all times on and after Closing (including, without limitation, following expiration or other termination of the Lease) be held by the Assignee or any transferee thereof free and clear of any Claims and interests whatsoever of the Landlord notwithstanding any provision to the contrary in the Lease or any other document;
- (iii) that at all times on and after Closing the Assignee shall be entitled to exercise, use and enjoy all the same rights and benefits of the Assignor under the Lease notwithstanding that the Lease may provide that certain rights and benefits are personal or non-assignable rights of the Assignor, including, without limitation, rights and benefits in relation to the tenant's option to extend the term of the Lease and the exclusive use of the Designated Trailer Parking Area (as defined in the Lease);
- (iv) that the Landlord shall not have any claim to the Leasehold Improvement Allowance (as defined in the Lease) arising from any act or omission of the Assignor or any other matter or event whatsoever occurring or relating to the period prior to Closing;
- (v) that the Landlord shall not have any claim pursuant to Section 13.1(g) of the Lease to any consideration whatsoever payable by the Assignee to the Assignor pursuant to this Agreement;
- (vi) that the Lease shall on Closing be in good standing subject only to payment of the Cure Costs, if any, which Cure Costs shall be an obligation of the Assignor to pay on or prior to Closing;
- (vii) the commencement date of the Lease, which date shall not be earlier than September 1, 2014;
- (viii) confirmation that the costs, amounts and claims referred to in Sections 4.2(b)(iv), (v) and (vi) will be reimbursed by the Landlord to the Assignee;
- (ix) that there has been no occurrence of any event or circumstance which, given the passage of time, entitles the Landlord to cancel or terminate the Lease or re-enter the Premises other than as a result of the Assignor's insolvency or commencement of insolvency proceedings and that, in any case, the Landlord shall not be entitled to assert any claim, right or remedy as against the Assignee in respect of any matter, event or occurrence relating to the period prior to Closing; and

- (x) that the Lease is the entire agreement between the Assignor and the Landlord governing their respective rights and obligations with respect to the Premises and the Lease has not been supplemented, modified, extended, renewed or amended in any way, and except for the Lease, there are no agreements, whether oral or written, between the Landlord and the Assignor concerning the Premises, except as set out in the Lease.

The Assignor covenants to and in favour of the Assignee to use commercially reasonable efforts to obtain the Landlord's Consent on or prior to Closing.

- (b) The Assignee agrees to co-operate with and assist the Assignor in pursuing and obtaining the Landlord's Consent, and the Approval and Vesting Order, for the sale of the Subject Assets including, the assignment and assumption of the Lease. The Assignee shall provide any reasonable information requested by the Landlord or the Court (including reasonable financial information, financing structure and proposed management team for the business), providing certificates of insurance, posting replacement deposits and/or security as is currently posted by the Assignor with the Landlord, and executing and delivering any necessary acknowledgements, indemnities and assumption agreements required by:
 - (i) the Landlord as a condition to the issuance of its consent that are commercially reasonable or otherwise contemplated by the Lease; or
 - (ii) the Court as a condition to the issuance of the Approval and Vesting Order.
- (c) Without limiting the foregoing, the Assignee agrees to provide to the Assignor within three (3) Business Days after the Execution Date all such information as is necessary (including reasonable financial information, financing structure and proposed management team for the Assignee's business) or contemplated in the Lease to demonstrate to the Landlord that the Assignee is capable of performing all of the obligations of the Assignor, as tenant under the Lease and that it would be appropriate to assign all of the rights and obligations of the tenant under the Lease to the Assignee. Thereafter, the Assignee agrees to provide to the Assignor promptly upon request by the Assignor such additional information and indemnifications as may be reasonably requested by the Landlord in connection with the Landlord's consideration of the Assignor's request for consent to assign the Lease to the Assignee (collectively, the "**Landlord Deliveries**").
- (d) The Landlord's Consent must be on terms which are acceptable to each of the Assignor and the Assignee, each acting reasonably.
- (e) For greater certainty, the Assignee acknowledges and agrees that: (i) nothing herein shall prohibit the Assignor from seeking a release from the Landlord in respect of the obligations of the Assignor in respect of the Lease before or after Closing and/or

as a term of such consent; and (ii) the Assignee's rights and remedies in respect of the Lease and the Premises shall also be subject to the provisions of the Initial Order and the SISP Order.

5.5 Contracts

The Assignor covenants to terminate effective as of the Closing Date, at its sole cost and expense, all Contracts insofar as they relate to the Premises.

5.6 Releases

The Assignee shall use commercially reasonable efforts to assist the Assignor and shall co-operate with the Assignor, as reasonably requested, to obtain from third parties a full release of the Assignor's obligations under the Permitted Encumbrances and/or the Lease and/or any guarantee or indemnity provided in respect of the obligations of the tenant under the Lease, as applicable, and shall provide such financial and other information and enter into such assumption agreements as such third parties may reasonably require, in form and substance acceptable to each of the parties thereto acting reasonably and without delay.

ARTICLE 6 REPRESENTATIONS, WARRANTIES & COVENANTS

6.1 Assignor's Representations and Warranties

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

- (a) the execution, delivery and performance by the Assignor of this Agreement has been duly authorized by all necessary corporate action on the part of the Assignor subject to the Approval and Vesting Order and authorization as is required by the Court;
- (b) the Assignor is not a non-resident of Canada within the meaning of the *Income Tax Act* (Canada); and
- (c) the Assignor is a registrant for the purposes of the tax imposed under Part IX of the *Excise Tax Act*.

6.2 Assignee's Representations and Warranties

The Assignee represents and warrants to and in favour of the Assignor that as of the Execution Date and as of Closing as to the following and acknowledges and confirms that the Assignor is

relying upon such representations and warranties in connection with the entering into of this Agreement:

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

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

6.3 Assignee's Covenants

- (a) The Assignee shall use commercially reasonable efforts to take all such actions as are within its power or control, and to use its commercially reasonable efforts to cause other actions to be taken which are not within its power or control, so as to ensure compliance with each of the conditions and covenants set forth in Article 7 which are for the benefit of any other Party.
- (b) The Assignee will promptly notify the Assignor and the Assignor will promptly notify the Assignee upon:
 - (i) becoming aware of any Order or any complaint requesting an Order restraining or enjoining the execution of this Agreement or the consummation of the Transactions; or
 - (ii) receiving any notice from any Governmental Authority of its intention:
 - (A) to institute a suit or proceeding to restrain or enjoin the execution of this Agreement or the consummation of the Transaction; or
 - (B) to nullify or render ineffective this Agreement or the Transaction if consummated.

6.4 Assignor's Covenants

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

6.5 Tax Matters

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

- (a) the Assignee is duly registered under Subdivision (d) of Division V of Part IX of the *Excise Tax Act* with respect to the goods and services tax and harmonized sales tax, and that its registration number is: 89715 2666 RT0001, which registration

shall be in full force and effect and shall not have been cancelled or revoked on the Closing Date;

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

as a result of any inaccuracy, misstatement or misrepresentation made by the Assignee on the Closing Date in connection with any matter raised in this Section 6.5 or contained in the GST/HST Certificate, Undertaking and Indemnity or any failure by the Assignee to comply with the provisions of this Section 6.5 or the GST/HST Certificate, Undertaking and Indemnity.

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

6.6 Survival of Covenants

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

ARTICLE 7 CLOSING

7.1 Conditions of Closing for the Benefit of the Assignee

The Assignee's obligation to complete the purchase and sale of the Subject Assets is subject to the following conditions to be fulfilled or performed, on or before the Closing Date, which conditions are for the exclusive benefit of the Assignee and may be waived, in whole or in part, by the Assignee:

- (a) the representations and warranties of the Assignor in Section 6.1 shall be true and correct as of the Closing Date with the same force and effect as if such representations and warranties were made on and as of such date;
- (b) the Assignor shall have performed and complied with all of the other terms and conditions in this Agreement on its part to be performed or complied with at or before Closing in all material respects and shall have executed and delivered or caused to have been executed and delivered to the Assignee at Closing all the Closing Documents contemplated or required to be so executed and delivered in this Agreement;
- (c) the FF&E and the Trade Fixtures are located on the Premises, in all material respects;
- (d) the Landlord shall have agreed in writing with the Assignee, on terms and conditions acceptable to the Assignee, acting reasonably, that the FF&E and the Trade Fixtures and any additions thereto and substitutions therefor shall, at the expiry or earlier termination of the Lease remain the property of the Assignee regardless of whether they are attached in any manner whatsoever to the floors, walls or ceiling of the Premises and shall not vest with the Landlord, provided that

the Assignee shall make good any damage caused to the Premises resulting from the installation or removal thereof in accordance with the Lease;

- (e) the Landlord's Consent shall have been delivered to the Assignee; and
- (f) the Assignee shall have received the Closing Documents.

7.2 Conditions of Closing for the Benefit of the Assignor

The Assignor's obligation to complete the purchase and sale of the Subject Assets is subject to the following conditions to be fulfilled or performed, on or before the Closing Date, which conditions are for the exclusive benefit of the Assignor and may be waived, in whole or in part, by the Assignor:

- (a) the representations and warranties of the Assignee in Section 6.2 shall be true and correct as of the Closing Date with the same force and effect as if such representations and warranties were made on and as of such date;
- (b) the Assignee shall have paid the Balance and any Taxes payable to the Assignor in respect of the Transaction and that are not self-assessed and remitted by the Assignee, in its entirety to the Monitor and shall have performed and complied with all of the terms and conditions in this Agreement on its part to be performed or complied with at or before Closing in all material respects and shall have executed and delivered or caused to have been executed and delivered to the Assignor at Closing all the documents contemplated required to be so executed and delivered in this Agreement; and
- (c) the Assignor shall have received the Closing Documents.

7.3 Conditions of Closing for the Mutual Benefit of the Parties

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

- (a) the Approval and Vesting Order, substantially in the form attached hereto as Schedule E, shall have been issued and entered by the Court and shall not be subject to a stay;
- (b) any required consent to the assignment of the Assigned Software Contracts shall have been obtained by the Assignee on terms and conditions satisfactory to the Assignor and the Assignee, each acting reasonably, or an Assignment Order shall have been issued and entered by the Court and shall not be subject to a stay;

- (c) no legal proceeding shall be pending which attempts to enjoin, restrict or prohibit the purchase and sale of the Subject Assets contemplated hereby; and
- (d) the Monitor shall have delivered the Monitor's Certificate.

7.4 Efforts to Fulfill Conditions

The Parties shall proceed diligently and in good faith and use commercially reasonable efforts to satisfy and comply with and assist in the satisfaction and compliance with the conditions precedent set forth in this Article 7.

7.5 Closing Documents

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

- (a) By the Assignor and the Assignee:
 - (i) the Assignment and Assumption of Lease for the Lease;
 - (ii) the Assignment and Assumption of the Assigned Software Contracts;
 - (iii) the Assignment and Assumption of Realty Tax Appeals;
 - (iv) the Assignment and Assumption of Assumed Liabilities; and
 - (v) such other documents as each Party or each Party's solicitors shall reasonably require in good faith in accordance with this Agreement or as may be required under applicable Laws.
- (b) By the Assignor:
 - (i) the Landlord's Consent;
 - (ii) the Approval and Vesting Order;
 - (iii) the statement of adjustments evidencing the adjustments made at Closing;
 - (iv) all master keys relating to the Premises, if any, all security cards and access cards relating to the Premises, if any, and all combinations and passwords to vaults and combination locks and other security features located in the Premises, if any, in each case, to the extent in the possession of the

Assignee, provided that such keys and such other information may be retained by the Assignor during the Post-Closing Access Period; and

- (v) such other documents as the Assignee or the Assignee's solicitors shall reasonably require in good faith in accordance with this Agreement or as may be required under applicable Laws.
- (c) By the Assignee:
 - (i) the Balance plus all Taxes payable to the Assignor hereunder;
 - (ii) GST/HST Certificate, Undertaking and Indemnity;
 - (iii) the Matching Security, if applicable; and
 - (iv) such other documents as the Assignor or the Assignor's solicitors shall reasonably require in good faith in accordance with this Agreement or as may be required under applicable Laws.

7.6 Closing Date

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

7.7 Confirmation of Satisfaction of Conditions

On the Closing Date, subject to satisfaction or waiver by the relevant Party or Parties, as applicable, of the conditions of Closing in its favour contained in Article 7, the parties or their respective solicitors shall confirm to the Monitor the satisfaction of all conditions to Closing and upon the Monitor receiving the Balance and any Taxes payable to the Assignor that are not self-assessed and remitted by the Assignee and any Cure Costs or evidence of payment of such Cure Costs, the Monitor shall deliver copies of the Monitor's Certificate to the Parties hereto and release the Deposit and the Balance to the Assignor and following Closing file the Monitor's Certificate with the Court.

7.8 Closing

- (a) Subject always to Section 3.2 hereof, the Deposit and the Balance and any Taxes payable to the Assignor that are not self-assessed and remitted by the Assignee and any Cure Costs or evidence of payment of such Cure Costs shall be held by the Monitor, in trust in a separate interest bearing account, pending completion of the Transaction or earlier termination of this Agreement. In holding and dealing with the funds paid to the Monitor in trust and any interest earned thereon pursuant to this Agreement, the Monitor is not bound in any way by any agreement other than Section 3.2 and this Section 7.8 and the Monitor shall not assume or be deemed to assume any duty, liability or responsibility other than to hold the trust funds and any interest earned thereon in accordance with the provisions of this Section 7.8 and to pay the funds, and any interest earned thereon, to the Party becoming entitled thereto in accordance with the terms of this Agreement, except in the event of a dispute between the parties as to entitlement to the trust funds, of which the Monitor has been given notice in writing, the Monitor may, in its sole, subjective and unreviewable discretion, or shall, if requested by either of the parties, pay the trust funds and any and all interest earned thereon into court, whereupon the Monitor shall have no further obligations relating to the trust funds or any interest earned thereon or otherwise hereunder.
- (b) The Monitor shall not, under any circumstances, be required to verify or determine the validity of any written notice or other document whatsoever delivered to the Monitor in connection with the trust funds and the Monitor is hereby relieved of any liability or responsibility for any loss or damage which may arise as a result of the acceptance by the Monitor of any such written notice or other document.
- (c) On or before Closing, the parties' respective solicitors shall exchange the Closing Documents in escrow and the Balance and any Taxes payable to the Assignor that are not self-assessed and remitted by the Assignee and any Cure Costs or evidence of payment of such Cure Costs shall be delivered to or paid to the order of the Monitor, in trust, and the Deposit and the Balance and any Taxes payable to the Assignor that are not self-assessed and remitted by the Assignee and any Cure Costs or evidence of payment of such Cure Costs shall remain in escrow with the Monitor until the Monitor has delivered the Monitor's Certificate to the Assignor and the Assignee, upon the occurrence of which the escrow shall be lifted, the Closing Documents shall take effect as of the date and time set out in the Monitor's Certificate, the entire amount of the Deposit and the Balance and any Taxes payable that are not self-assessed and remitted by the Assignee and any Cure Costs or evidence of payment of such Cure Costs shall be forthwith released to the Assignor and, in the case of any Cure Costs, to the Landlord and the Closing shall be deemed to have occurred as of such date and time set out in the Monitor's Certificate and

fully signed Closing Documents shall be released to each of the Assignor and Assignee.

- (d) The parties acknowledge that, notwithstanding that the Monitor is not a party to this Agreement, the Monitor may rely upon the provisions of Section 3.2 hereof and this Section 7.8.
- (e) This Section 7.8 shall survive the Closing or termination of this Agreement.

7.9 Filings and Authorizations

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

7.10 Court Matters

- (a) The Assignor shall serve the Sale Approval Application, on such notice, and to such service list, as is acceptable to the Assignee and the Assignor, each acting reasonably, which for greater certainty will include the Landlord.
- (b) The Assignee shall provide such information and take such actions as may be reasonably requested by the Assignor to assist the Assignor in obtaining the

Approval and Vesting Order, any Assignment Order and any other order of the Court reasonably necessary to consummate the transactions contemplated by this Agreement, including, any Court ordered assignment of the Lease.

- (c) In the event an appeal is taken, or a stay pending appeal is requested, from the Approval and Vesting Order, the Assignor shall promptly notify the Assignee of such appeal or stay request and shall provide to Assignee promptly a copy of the related notice of appeal or order of stay. The Assignor shall also provide the Assignee with written notice of any motion or application filed in connection with any appeal from either of such orders.
- (d) From and after the date of execution of this Agreement and prior to the Closing or the termination of this Agreement in accordance with Section 7.11, the Assignor shall not take or acquiesce in any action that is inconsistent with the Approval and Vesting Order or this Agreement, or that would be in furtherance of the reversal, voiding, modification or staying of the Approval and Vesting Order or this Agreement.
- (e) Notwithstanding anything else contained in this Agreement or elsewhere, the Assignee acknowledges and agrees that the Assignor cannot guarantee that it will obtain the Approval and Vesting Order and the Approval and Vesting Order may or may not be granted by the Court.

7.11 Termination

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

- (a) by mutual consent of the Assignee and the Assignor (in respect of which the Assignor shall require the consent of the DIP Lenders and Monitor to provide its consent) or on further order of the Court;
- (b) by the Assignee in accordance with Section 5.1(d) or Section 5.1(e);
- (c) by the Assignee if any of the conditions in Section 7.1 have not been satisfied on or before the Closing Date and the Assignee has not waived such condition;
- (d) by the Assignor with the consent of the DIP Lenders and the Monitor if any of the conditions in Section 7.2 have not been satisfied on or before the Closing Date and the Assignor has not waived such condition;
- (e) by either Party if:
 - (i) any of the conditions precedent in Section 7.3 have not been satisfied on or before the Closing Date and the Parties have not waived such condition; or

- (ii) if the Closing has not occurred on or before November 30, 2017, or on or before such later date as the Parties agree to in writing, provided that a Party may not terminate this Agreement pursuant to this Section 7.11(e)(ii) if it has failed to perform any one or more of its obligations or covenants under this Agreement and the Closing has not occurred because of such failure.

7.12 Effect of Termination

Subject to Section 3.2(c), Section 3.2(d) and Section 5.2, in the event of termination of this Agreement by the Assignor or the Assignee pursuant to Section 7.11, all rights and obligations of the Parties under this Agreement shall terminate without any liability of any Party to the other Party; provided however, that nothing herein shall relieve any Party from liability for breach of this Agreement prior to such termination.

ARTICLE 8 OTHER PROVISIONS

8.1 Confidentiality

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

8.2 Leasehold Interests

Notwithstanding any provision of this Agreement to the contrary, for purposes of this Agreement and each Closing Document, (i) all references to "Lease" include any sublease or agreement to sublease by which the Assignor (as subtenant) holds its interest in, and/or right to occupy the related Premises, (ii) for the Premises which are subject to a sublease or agreement to sublease (rather than a lease) in favour of the Assignor, all references to the Assignor's "leasehold" interest in such Premises shall mean the Assignor's "subleasehold" interest, where applicable (rather than a leasehold interest) in such Premises, any reference to "Landlord" shall mean the sublandlord under the applicable sublease or agreement to sublease pursuant to which the Assignor (as subtenant) holds its interest in, and/or right to occupy such Premises, and any reference to "Sublease" shall mean a sub-sublease in such Premises in favour of the Assignor, and (iii) all other similar references relating to the Lease and Premises shall be interpreted and construed in a similar manner.

8.3 Time of the Essence

Time shall be of the essence of this Agreement.

8.4 Entire Agreement

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

8.5 Waiver

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

8.6 Further Assurances

Each of the parties covenants and agrees to do such things, to attend such meetings and to execute such further conveyances, transfers, documents and assurances as may be deemed necessary or advisable from time to time in order to effectively transfer the Subject Assets to the Assignee and carry out the terms and conditions of this Agreement in accordance with their true intent. The provisions of this Section 8.6 shall survive and shall not merge on Closing.

8.7 Severability

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

8.8 Governing Law

This Agreement shall be governed by and interpreted and enforced in accordance with the laws of the Province in which the Premises are located and the federal laws of Canada applicable therein. Each Party irrevocably and unconditionally submits to the jurisdiction of the courts of the Province of Ontario with respect to any action or proceeding arising out of or relating to this Agreement or the Transaction, and waives, to the fullest extent permitted by applicable Laws, any objection that

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it may now or hereafter have to the venue of any action or proceeding arising out of or relating to this Agreement or the Transaction in any court of the Province of Ontario. Each of the Parties hereby irrevocably waives, to the fullest extent permitted by applicable Laws, the defence of an inconvenient forum to the maintenance of such action or proceeding in any such court.

8.9 English Language

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

8.10 Statute References

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

8.11 Headings

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

8.12 References

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

8.13 Number and Gender

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

8.14 Business Days

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

8.15 Currency and Payment Obligations

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

8.16 Notice

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

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

Sears Canada Inc.
290 Yonge Street, Suite 700
Toronto, ON M5B 2C3

Attn:
Email:

With a copy to:

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

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

With a copy to:

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

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

With a copy to:

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

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

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

Indigo Books & Music Inc.
468 King Street West, Suite 500
Toronto, ON M5V 1L8

Attn: Hugues Simard
Email: hsimard@indigo.ca

with a copy to:

Indigo Books & Music Inc.
468 King Street West, Suite 500
Toronto, ON M5V 1L8

Attn: General Counsel
Email: legal@indigo.ca

and

Torys LLP
79 Wellington St. W
Box 270, TD South Tower
Toronto, ON M5K 1N2

Attn: Tony DeMarinis
Email: tdemarinis@torys.com

A Notice is deemed to be given and received (i) if sent by personal delivery or same day courier, on the date of delivery if it is a Business Day and the delivery was made prior to 5:00 p.m. (local time in the place of receipt) and otherwise on the next Business Day, (ii) if sent by overnight courier, on the next Business Day, or (iii) if transmitted by facsimile, on the Business Day following the date of confirmation of transmission by the originating facsimile, or (iv) if sent by email, when the sender receives an email from the recipient acknowledging receipt, provided that

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an automatic “read receipt” does not constitute acknowledgment of an email for purposes of this section. Any Party may change its address for service from time to time by providing a Notice in accordance with the foregoing. Any subsequent Notice must be sent to the Party at its changed address. Any element of a Party’s address that is not specifically changed in a Notice will be assumed not to be changed. Subject to Section 8.18, sending a copy of a Notice to a Party’s legal counsel as contemplated above is for information purposes only and does not constitute delivery of the Notice to that Party. The failure to send a copy of a Notice to legal counsel does not invalidate delivery of that Notice to a Party.

8.17 Subdivision Control Legislation

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

8.18 Solicitors as Agent and Tender

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

8.19 No Registration of Agreement

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

8.20 Third Party Costs

Each of the Parties hereto shall be responsible for the costs of their own solicitors, respectively, in respect of the Transaction. The Assignee shall be solely responsible for and shall pay, in addition to the Purchase Price, all fees and expenses in respect of all necessary applications pursuant to the *Competition Act*, the *Investment Canada Act*, any land transfer taxes payable on the transfer of the

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Subject Assets, all registration taxes, fees and other costs payable in respect of registration of any documents to be registered by the Assignee at Closing and all federal and provincial sales and other taxes payable upon or in connection with the conveyance or transfer of the Subject Assets, including, goods and services tax or harmonized sales tax or any similar value added or multi-staged tax imposed by any applicable provincial or territorial legislation, as the case may be, and any other provincial sales taxes. This Section 8.20 shall survive the Closing or the termination of this Agreement.

8.21 Interpretation

The parties hereto acknowledge and agree that: (a) each Party and its counsel reviewed and negotiated the terms and provisions of this Agreement and have contributed to their revision, (b) the rule of construction to the effect that any ambiguities are resolved against the drafting Party shall not be employed in the interpretation of this Agreement, and (c) the terms and provisions of this Agreement shall be construed fairly as to all parties hereto and not in favour of or against any Party, regardless of which Party was generally responsible for the preparation of this Agreement. In the event of any conflict, inconsistency, ambiguity or difference between the provisions of this Agreement and any other agreement between or including the parties hereto (including the Landlord's Consent), then the provisions of this Agreement shall govern and be paramount.

8.22 No Third Party Beneficiaries

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

8.23 Enurement

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

8.24 Amendments

This Agreement may only be amended, supplemented or otherwise modified by written agreement signed by the Assignor and the Assignee, except that the time for doing or completing of any matter provided for herein may be extended or abridged by an agreement in writing signed by the

Assignor or the Assignor's solicitors on one hand and the Assignee or the Assignee's solicitors on the other.

8.25 Counterparts and Delivery

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

[Remainder of Page Intentionally Left Blank]

This Agreement is open for acceptance by the Assignor in the manner described below until 5:00 p.m. (Toronto time) on the 29th day of September, 2017, and if not accepted on or before such time shall be null and void. This Agreement may only be accepted by the Assignor signing and delivering the same to the Assignee, on or before the specified time for acceptance.

IN WITNESS WHEREOF the Assignee has executed this Agreement on the 28th day of September, 2017.

INDIGO BOOKS & MUSIC INC.

By: _____

Name: Muges Simard
Title: Chief Financial Officer

By: _____

Name: Craig Loudon
Title: Senior Vice President,
Finance

ASSIGNOR'S ACCEPTANCE OF OFFER

For and in consideration of the covenants and agreements of the Assignee contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Assignor, the Assignor hereby irrevocably accepts the foregoing Agreement and agrees to sell, assign and transfer to the Assignee the Subject Assets on the terms and conditions set forth in the Agreement.

Dated this 28 day of September, 2017.

SEARS CANADA INC.

By: _____

Name: P. MONTAGNA
Title: Secretary

By: _____

Name:
Title:

This Agreement is open for acceptance by the Assignor in the manner described below until 5:00 p.m. (Toronto time) on the 29th day of September, 2017, and if not accepted on or before such time shall be null and void. This Agreement may only be accepted by the Assignor signing and delivering the same to the Assignee, on or before the specified time for acceptance.

IN WITNESS WHEREOF the Assignee has executed this Agreement on the 28th day of September, 2017.

INDIGO BOOKS & MUSIC INC.

By: _____
Name: Hugues Simard
Title: Chief Financial Officer

By: _____
Name: Craig Loudon
Title: Senior Vice President,
Finance

ASSIGNOR'S ACCEPTANCE OF OFFER

For and in consideration of the covenants and agreements of the Assignee contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Assignor, the Assignor hereby irrevocably accepts the foregoing Agreement and agrees to sell, assign and transfer to the Assignee the Subject Assets on the terms and conditions set forth in the Agreement.

Dated this ___ day of September, 2017.

SEARS CANADA INC.

By: _____
Name:
Title:

By: _____
Name:
Title:

**SCHEDULE A
PREMISES**

Bays A-N (gridlines 1-13) situated in the building municipally known as #10, 5800-79 Avenue S.E., Calgary, Alberta on the lands legally described as:

Plan 1113473

Block 13

Lot 8

Excepting Thereout All Mines and Minerals

Area: 12.82 Hectares (31.68 Acres) More or Less

**SCHEDULE B
LEASE PARTICULARS**

Industrial Lease dated January 13, 2014 between I.G. Investment Management, Ltd. as trustee for Investors Real Property Fund, as landlord, and Sears Canada Inc., as tenant.

SCHEDULE C
EXCLUDED ASSETS

1. All intellectual property or proprietary rights, whether registered or not, and any intangible property, owned, used or held by the Assignor, excluding the Assigned Software Contracts;
2. All items, materials and signs bearing the logo, trade-mark, trade-name or business name or other mark or design of the Assignor;
3. Any property belonging to the subtenants, franchisees or licensees of the Assignor or other occupants of the Premises;
4. Any freehold or other ownership interest (other than the leasehold interest granted pursuant to the terms of the Lease) in real or immovable property, and any property belonging to the Landlord, but excluding, for greater certainty, any property that forms part of the Subject Assets;
5. All insurance policies of the Assignor, subject to the right of the Assignee to receive proceeds arising from the same pursuant to Section 5.1(e);
6. All rights and interests in trade-marks, trade-names, logos, commercial symbols and business names containing "Sears" or any other proprietary wording or intellectual property rights of the Assignor or any of its affiliates (including, the websites);
7. All rights of the Assignor against the Assignee pursuant to this Agreement.

**SCHEDULE D
PURCHASE PRICE ALLOCATION**

To be determined prior to Closing.

“Assignee”) as Assignee dated ■, 2017 (the “Lease Transfer Agreement”) and certain related relief, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion of the Applicants, the Affidavit of Stephen Champion sworn on ■, 2017 including the exhibits thereto (the “Champion Affidavit”), and the ■ Report of FTI Consulting Canada Inc., in its capacity as Monitor (the “Monitor”), filed, and on hearing the submissions of respective counsel for the Applicants, the Monitor, the Assignee, the DIP ABL Agent, the DIP Term Agent, I.G. Investment Management, Ltd., as trustee for Investors Real Property Fund (the “Landlord”) and such other counsel as were present, no one else appearing although duly served as appears from the Affidavit of Service of ■ sworn ■, 2017, filed:

SERVICE AND DEFINITIONS

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion Record herein is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. THIS COURT ORDERS that any capitalized term used and not defined herein shall have the meaning ascribed thereto in the Amended and Restated Initial Order in these proceedings dated June 22, 2017 (the “Initial Order”), or in the Lease Transfer Agreement, or in the Lease, as applicable.

APPROVAL OF THE LEASE TRANSFER AGREEMENT

3. THIS COURT ORDERS AND DECLARES that the entering into of the Transaction by Sears Canada is hereby approved and ratified and that the execution of the Lease Transfer Agreement by Sears Canada is hereby authorized, approved and ratified with such minor amendments as Sears Canada (with the consent of the Monitor after consultation with the DIP Lenders) and the Assignee may agree to in writing. Sears Canada is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction, including the sale, assignment and transfer by Sears Canada of its right, title and interest in and to the lease dated January 13, 2014 between the

Landlord and Sears Canada in respect of the lands legally described as Plan 1113473, Block 13, Lot 8 (the “**Lease**”) and certain ancillary assets as set out and described in the Lease Transfer Agreement (collectively, with the Lease, the “**Subject Assets**”) to the Assignee and the Monitor shall be authorized to take such additional steps in furtherance of its responsibilities under the Lease Transfer Agreement and this Order, and shall not incur any liability as a result thereof. The legal descriptions and applicable land registry offices with respect to the Subject Assets are as set out on Schedule “B” hereto.

4. THIS COURT ORDERS AND DECLARES that upon the delivery of a Monitor’s certificate to the Assignee substantially in the form attached as Schedule “A” hereto (the “**Monitor’s Certificate**”), all of Sears Canada’s right, title and interest in and to the Subject Assets shall be sold, assigned and transferred to the Assignee, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise in respect of the Subject Assets (collectively, the “**Claims**”), including, without limiting the generality of the foregoing:

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

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

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

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

7. THIS COURT ORDERS that, to the extent that obligations remain owing by the Applicants under the DIP ABL Credit Agreement or the DIP Term Credit Agreement, the Monitor be and is hereby authorized and directed to distribute, on behalf of the Applicants, on the day of filing the Monitor’s Certificate or as soon as practicable thereafter, the Net Proceeds, in partial repayment of amounts then owing by the Applicants under the DIP ABL Credit Agreement or the DIP Term Credit Agreement, as applicable (a “**Distribution**”).

8. THIS COURT ORDERS that any Distribution made pursuant to this Order shall be and shall be deemed to be made free and clear of all Claims and Encumbrances.

9. THIS COURT ORDERS that, notwithstanding:

(a) the pendency of these proceedings;

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

the distribution permitted by paragraph 7 above shall be binding on any trustee in bankruptcy or receiver that may be appointed in respect of any of the Applicants and shall not be void or voidable by creditors of any of the Applicants, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

10. THIS COURT ORDERS that, if all obligations of the Applicants under the DIP ABL Credit Agreement or the DIP Term Credit Agreement have been satisfied in full the Monitor shall be entitled to retain the Net Proceeds or any remaining portion thereof on behalf of the Applicants to be dealt with by further Order of the Court.

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

12. THIS COURT ORDERS that subject to the terms of the Lease Transfer Agreement nothing herein affects:

- (a) the rights and obligations of Sears Canada and a contractual joint venture comprised of Gordon Brothers Canada ULC, Merchant Retail Solutions ULC, Tiger Capital Group, LLC and GA Retail Canada ULC (the "**Agent**") under the Amended and Restated Agency Agreement between Sears Canada and the Agent dated July 12, 2017 and amended and restated on July 14, 2017;

- (b) the rights and obligations of Sears Canada and the Agent under the Amended and Restated Consulting Agreement between Sears Canada and the Agent dated July 12, 2017 and amended and restated on July 14, 2017; and
- (c) the terms of the Liquidation Sale Approval Order granted July 18, 2017 including the Sale Guidelines attached as Schedule “A” thereto.

SEALING

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

GENERAL PROVISIONS

14. THIS COURT ORDERS that, notwithstanding:

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

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

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

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

SCHEDULE "A"

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

ONTARIO

SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF SEARS CANADA INC., 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**")

MONITOR'S CERTIFICATE

RECITALS

A. All undefined terms in this Monitor's Certificate have the meanings ascribed to them in the Order of the Court dated ■, 2017 (the "**Approval and Vesting Order**") approving the Lease Transfer Agreement between Sears Canada Inc. ("**Sears Canada**"), as Assignor, and Indigo Books & Music Inc. (the "**Assignee**") as Assignee dated ■, 2017 (the "**Lease Transfer Agreement**"), a copy of which is attached as Exhibit ■ to the Affidavit of Stephen Champion dated ■, 2017.

B. Pursuant to the Approval and Vesting Order the Court approved the Lease Transfer Agreement and provided for the sale, assignment and transfer to the Assignee of Sears Canada's right, title and interest in and to the Subject Assets (as defined in the Lease Transfer Agreement), which sale, assignment and transfer is to be effective with respect to the Subject Assets upon the delivery by the Monitor to the Assignee and Sears Canada of a certificate confirming that (i) the

conditions to Closing as set out in sections 7.1, 7.2 and 7.3 of the Lease Transfer Agreement have been satisfied or waived by the Assignee and Sears Canada, as applicable, and (ii) the Purchase Price, any Taxes payable to Sears Canada that are not self-assessed and remitted by the Assignee and any Cure Costs (each as defined in the Lease Transfer Agreement) have been received by the Monitor.

THE MONITOR CERTIFIES the following:

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

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

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

Per: _____
Name:
Title:

SCHEDULE "B"

No.	Location/Address	Province	Land Registry Office	Legal Description	Encumbrances to be Expunged/ Deleted
1	■	■	■	■	[■]

SCHEDULE "C"
PERMITTED ENCUMBRANCES

"Permitted Encumbrances" means, collectively: (a) any Encumbrances encumbering the Landlord's freehold or other ownership interest in the Property or any other interest in the Property of the Landlord, but excludes any Encumbrances solely encumbering the Assignor's leasehold interest in and to any Property situated outside of the Province of Quebec on which the Premises are located or the rights of the Tenant as lessee under the Lease; (b) Encumbrances resulting from the Assignee's actions or omissions; and (c) the items identified in Schedule J of the Lease Transfer Agreement.

SCHEDULE F
ASSIGNEE'S GST/HST CERTIFICATE, UNDERTAKING AND INDEMNITY

TO: Sears Canada Inc. (the "Assignor")

RE: Lease Transfer Agreement dated ■, 2017, made between the Assignor, as assignor, and Indigo Books & Music Inc., as assignee, (the "Assignee"), as amended from time to time (the "Lease Transfer Agreement"), for the assignment of the Lease and related Subject Assets (as such terms are defined in the Lease Transfer Agreement)

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

- a) the Subject Assets are being assigned to the Assignee as principal for its own account and not as an agent, nominee, trustee or otherwise on behalf of or for another Person;
- b) the Assignee is registered under Subdivision (d) of Division V of Part IX of the *Excise Tax Act* (Canada) (the "*Excise Tax Act*") for the collection and remittance of goods and services tax and harmonized sales tax ("GST/HST") and its registration number is 89715 2666 RT0001 and such registration is in good standing and has not been varied, cancelled or revoked;
- c) the Assignee shall be liable for, shall self-assess and shall remit to the appropriate governmental authority, all GST/HST which is payable under the *Excise Tax Act*, in connection with the transfer of the Subject Assets, all in accordance with the *Excise Tax Act*; **[NTD: to be revised if FF&E and/or Inventory included in Subject Assets]**
- d) the Assignee shall indemnify and save harmless the Assignor from and against any and all GST/HST, penalties, interest and/or other costs which may become payable by or be assessed against the Assignor as a result of any failure by the Assignor to collect and remit any GST/HST applicable on the sale and conveyance of the Subject Assets by the Assignor to the Assignee or as a result of any inaccuracy, misstatement or misrepresentation by the Assignee in this GST/HST Certificate, Undertaking and Indemnity or any failure by the Assignee to comply with the provisions of this GST/HST Certificate, Undertaking and Indemnity; and
- e) this GST/HST Certificate, Undertaking and Indemnity shall survive and not merge upon closing of the above-noted transaction.

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

DATED _____, 2017.

INDIGO BOOKS & MUSIC INC.

By: _____
Name: ■
Title: ■

By: _____
Name: ■
Title: ■

SCHEDULE G
FORM OF ASSIGNMENT AND ASSUMPTION OF ASSUMED LIABILITIES

THIS AGREEMENT is made as of the _____ day of _____, 2017 (the “**Effective Date**”)

B E T W E E N:

SEARS CANADA INC.

(the “**Assignor**”)

- and -

INDIGO BOOKS & MUSIC INC.

(the “**Assignee**”)

- and -

RECITALS:

- A. The Assignor and certain of its affiliates and subsidiaries applied for and were granted protection from their creditors under the CCAA pursuant to the Initial Order of the Court. Pursuant to the Initial Order, the Court appointed FTI Consulting Canada Inc. as Monitor in connection with the CCAA Proceedings.
- B. The Assignor and the Assignee entered into a lease transfer agreement dated ■, 2017 (the “**Lease Transfer Agreement**”), whereby, among other things, the Assignor agreed to assign to the Assignee all of the Assignor’s right, title and interest in and to the Lease.
- C. The Lease Transfer Agreement was approved by the Court pursuant to the Order dated ■ (the “**Approval and Vesting Order**”).
- D. The Assignor and the Assignee are entering into this Agreement to provide for the Assignee’s assumption of the Assumed Liabilities in accordance with the Lease Transfer Agreement and the Approval and Vesting Order.
- E. Unless otherwise expressly provided for herein, all capitalized terms when used in this Agreement have the same meaning given to such terms in the Lease Transfer Agreement.

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

**ARTICLE 1
ASSIGNMENT**

1.1 Assumption by Assignee

The Assignee hereby covenants with the Assignor to assume, discharge, perform and fulfill all the obligations and liabilities on the part of the Assignor with respect to the Assumed Liabilities from and after the Effective Date.

For greater certainty, nothing in this Agreement shall be construed as an attempt to assign to the Assignee any contract or other agreement which, as a matter of law or by its terms, is not assignable in whole or in part without the consent of the other party or parties to such contract or other agreement, unless such consent has been given or the assignment has been approved by the Court in the Approval and Vesting Order.

1.2 Indemnity

The Assignee hereby covenants with the Assignor, as of and from the Effective Date, to indemnify and save the Assignor harmless, from any and all Claims arising from, relating to or in connection with any non-payment, non-observance or non-performance of any of the Assumed Liabilities to be paid, observed or performed from time to time, in respect of the period on or after the Effective Date.

1.3 Paramountcy

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

**ARTICLE 2
GENERAL**

2.1 Time of the Essence

Time shall be of the essence of this Agreement.

2.2 Enurement

This Agreement shall become effective when executed by the Assignor and the Assignee and after that time shall be binding upon and enure to the benefit of the parties and their respective heirs, executors, personal legal representatives, successors and permitted assigns. Neither this

Agreement nor any of the rights or obligations under this Agreement shall be assignable or transferable by either party without the consent of the other party.

2.3 Entire Agreement

This Agreement and the Lease Transfer Agreement constitute the entire agreement between the parties with respect to the assignment and assumption of the Assumed Liabilities and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the parties with respect to the subject matter of this Agreement. There are no representations, warranties, covenants, conditions or other agreements, legal or conventional, express or implied, collateral, statutory or otherwise, between the parties in connection with the subject matter of this Agreement, except as specifically set forth in this Agreement. The parties have not relied and are not relying on any other information, discussion or understanding in entering into and completing the transactions contemplated by this Agreement.

2.4 Waiver

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

2.5 Further Assurances

Each of the parties covenants and agrees to do such things, to attend such meetings and to execute such further conveyances, transfers, documents and assurances as may be deemed necessary or advisable from time to time in order to effectively transfer the Subject Assets to the Assignee and carry out the terms and conditions of this Agreement in accordance with their true intent.

2.6 Severability

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

2.7 Governing Law

This Agreement shall be governed by and interpreted and enforced in accordance with the laws of the Province of Alberta and the federal laws of Canada applicable therein.

2.8 CCAA Proceedings

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

2.9 English Language

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

2.10 Statute References

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

2.11 Headings

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

2.12 References

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

2.13 Number and Gender

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

2.14 Business Days

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

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2.15 Notice

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

2.16 Counterparts and Delivery

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

[Signature pages follow.]

IN WITNESS WHEREOF the Assignor has executed this Agreement.

SEARS CANADA INC.

By: _____
Name:
Title:

By: _____
Name:
Title:

IN WITNESS WHEREOF the Assignee has executed this Agreement.

INDIGO BOOKS & MUSIC INC.

By: _____
Name: ■
Title: ■

By: _____
Name: ■
Title: ■

SCHEDULE H
FORM OF ASSIGNMENT AND ASSUMPTION OF LEASE

THIS AGREEMENT is made as of the _____ day of _____, 2017 (the “**Effective Date**”)

B E T W E E N:

SEARS CANADA INC.

(the “**Assignor**”)

- and -

INDIGO BOOKS & MUSIC INC.

(the “**Assignee**”)

RECITALS:

- A. Pursuant to a lease dated January 13, 2014, described in Schedule “A” attached hereto (the “**Lease**”), I.G. Investment Management, Ltd. as trustee for Investors Real Property Fund (the “**Landlord**”) leased to the Assignor certain premises at #10, 5800-79 Avenue S.E. in the City of Calgary, in the Province of Alberta as more particularly described in the Lease (the “**Premises**”).
- B. The Assignor and certain of its affiliates and subsidiaries applied for and were granted protection from their creditors under the CCAA pursuant to the Initial Order of the Court. Pursuant to the Initial Order, the Court appointed FTI Consulting Canada Inc. as Monitor in connection with the CCAA Proceedings.
- C. The Assignor and the Assignee entered into a lease transfer agreement dated ■, 2017 (the “**Lease Transfer Agreement**”), whereby, among other things, the Assignor agreed to assign to the Assignee all of the Assignor’s right, title and interest in and to the Lease.
- D. The Lease Transfer Agreement was approved by the Court pursuant to the Order dated ■ (the “**Approval and Vesting Order**”).
- E. The Assignor and the Assignee are entering into this Agreement to provide for the assignment and assumption of the Lease by the Assignor to the Assignee in accordance with the Lease Transfer Agreement and the Approval and Vesting Order.
- F. Unless otherwise expressly provided for herein, all capitalized terms when used in this Agreement have the same meaning given to such terms in the Lease Transfer Agreement, or if no meaning is given in the Lease Transfer Agreement, in the Lease.

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

**ARTICLE 1
ASSIGNMENT**

1.1 Assignment by Assignor

The Assignor assigns and transfers to the Assignee, as of the Effective Date, all of the Assignor's obligations, rights, title and interest, both at law and at equity, in and to the Lease and any modifications thereof by the terms of the Landlord's Consent, which Landlord's Consent shall provide, among other things, that: (i) the FF&E and Trade Fixtures shall remain the property of the Assignee at the expiry or earlier termination of the Lease; (ii) the Landlord shall not have any claim to the Leasehold Improvement Allowance (as defined in the Lease) arising from any act or omission of the Assignor as provided for in paragraph 4(d) of Schedule "C" to the Lease; and (iii) the Assignee shall be entitled to all the same rights and benefits of the Assignor under the Lease including, without limitation, in relation to the tenant extension option and the exclusive use of the Designated Trailer Parking Area (as defined in the Lease)) and the Premises and all related rights, benefits and advantages, including the residue of the term of the Lease and any rights of renewal and/or extension and/or purchase, if any, contained in the Lease (the "**Assigned Interest**").

1.2 Assumption by Assignee

The Assignee hereby accepts the assignment of the Assigned Interest provided for in this Agreement and assumes all of the Assignor's obligations with respect to the Assigned Interest from and after the Effective Date.

1.3 Adjustments

All adjustments under the Lease shall be dealt with in accordance with the Lease Transfer Agreement.

1.4 Indemnity

The Assignee hereby covenants with the Assignor, as of and from the Effective Date, including any renewals or extensions of the term of the Lease, to indemnify and save the Assignor harmless, from any and all Claims arising from, relating to or in connection with the Property and any non-payment of rents or other amounts payable on the part of the tenant to be paid from time to time under the Lease, or any non-observance or non-performance of any of the terms, agreements, covenants, obligations and conditions on the part of the tenant under the Lease to be paid, observed or performed from time to time, in respect of the period on or after the Effective Date.

1.5 Paramountcy

The rights and obligations of the parties respectively with respect to the Lease and any other Subject Assets related to the Lease shall be governed by the Lease Transfer Agreement. In the event of any conflict, inconsistency, ambiguity or difference between the provisions of this

Agreement and of the Lease Transfer Agreement, then the provisions of the Lease Transfer Agreement shall govern and be paramount, and any such provision in this Agreement shall be deemed to be amended, to the extent necessary to eliminate any such conflict, inconsistency, ambiguity or difference.

ARTICLE 2 GENERAL

2.1 Time of the Essence

Time shall be of the essence of this Agreement.

2.2 Enurement

This Agreement shall become effective when executed by the Assignor and the Assignee and after that time shall be binding upon and enure to the benefit of the parties and their respective heirs, executors, personal legal representatives, successors and permitted assigns. Neither this Agreement nor any of the rights or obligations under this Agreement shall be assignable or transferable by either party without the consent of the other party.

2.3 Entire Agreement

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

2.4 Waiver

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

2.5 Further Assurances

Each of the parties covenants and agrees to do such things, to attend such meetings and to execute such further conveyances, transfers, documents and assurances as may be deemed necessary or advisable from time to time in order to effectively transfer the Subject Assets related to the Lease to the Assignee and carry out the terms and conditions of this Agreement in accordance with their true intent.

2.6 Severability

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

2.7 Governing Law

This Agreement shall be governed by and interpreted and enforced in accordance with the laws of the Province of Alberta and the federal laws of Canada applicable therein.

2.8 CCAA Proceedings

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

2.9 English Language

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

2.10 Statute References

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

2.11 Headings

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

2.12 References

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

2.13 Number and Gender

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

2.14 Business Days

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

2.15 Notice

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

2.16 Counterparts and Delivery

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

[Signature pages follow.]

IN WITNESS WHEREOF the Assignor has executed this Agreement.

SEARS CANADA INC.

By: _____
Name:
Title:

By: _____
Name:
Title:

IN WITNESS WHEREOF the Assignee has executed this Agreement.

INDIGO BOOKS & MUSIC INC.

By: _____
Name: ■
Title: ■

By: _____
Name: ■
Title: ■

SCHEDULE "A" – LEASE PARTICULARS

Industrial Lease dated January 13, 2014 between I.G. Investment Management, Ltd. as trustee for Investors Real Property Fund, as landlord, and Sears Canada Inc., as tenant.

SCHEDULE I
FORM OF ASSIGNMENT AND ASSUMPTION OF REALTY TAX APPEALS

THIS AGREEMENT is made as of the _____ day of _____, 2017 (the “Effective Date”)

B E T W E E N:

SEARS CANADA INC.

(the “Assignor”)

- and -

INDIGO BOOKS & MUSIC INC.

(the “Assignee”)

RECITALS:

- A. Pursuant to a lease dated January 13, 2014, described in Schedule “A” attached hereto (the “Lease”), I.G. Investment Management, Ltd. as trustee for Investors Real Property Fund (the “Landlord”) leased to the Assignor certain premises at #10, 5800 79 Avenue S.E. in the City of Calgary, in the Province of Alberta as more particularly described in the Lease (the “Premises”).
- B. The Assignor and certain of its affiliates and subsidiaries applied for and were granted protection from their creditors under the CCAA pursuant to the Initial Order of the Court. Pursuant to the Initial Order, the Court appointed FTI Consulting Canada Inc. as Monitor in connection with the CCAA Proceedings.
- C. The Assignor and the Assignee entered into a lease transfer agreement dated ■, 2017 (the “Lease Transfer Agreement”), whereby, among other things, the Assignor agreed to assign to the Assignee all of the Assignor’s right, title and interest in and to the Lease.
- D. The Lease Transfer Agreement was approved by the Court pursuant to the Order dated ■ (the “Approval and Vesting Order”).
- E. The Assignor and the Assignee are entering into this Agreement to provide for the assignment of the Realty Tax Appeals and Realty Tax Refunds in respect of the Lease by the Assignor to the Assignee in accordance with the Lease Transfer Agreement and the Approval and Vesting Order.
- F. Unless otherwise expressly provided for herein, all capitalized terms when used in this Agreement have the same meaning given to such terms in the Lease Transfer Agreement, or if no meaning is given in the Lease Transfer Agreement, in the Lease.

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

**ARTICLE 1
ASSIGNMENT**

1.1 Assignment and Assumption

Subject to the terms and conditions contained herein, effective as of the Effective Date, the Assignor hereby assigns, transfers and sets over unto the Assignee all of the Assignor's right, title and interest, if any, in and to the Realty Tax Appeals and any Realty Tax Refunds which may arise from any of the Realty Tax Appeals for any period that is prior to the Closing Date.

1.2 Carriage of Realty Tax Appeals

From and after the Closing Date, the Assignee may, at its sole cost and expense but without any obligation to do so, assume or retain the carriage of the Realty Tax Appeals and continue as the appellant in the Realty Tax Appeals. At the request of the Assignee and at the Assignee's sole cost and expense, the Assignor agrees to co-operate with the Assignee with respect to the Realty Tax Appeals and to provide the Assignee with access to any reasonably necessary documents or materials required to continue any Realty Tax Appeals. If the Realty Tax Appeals may only be prosecuted in the name of the Assignor, at the request of the Assignee, the Assignor shall cooperate with the Assignee, including granting such authorizations as may be reasonably required, to enable the Assignee to pursue and prosecute such Realty Tax Appeals, at the Assignee's sole cost and expense.

1.3 Authorization and Direction

This assignment shall serve as authorization and direction to the municipal and/or provincial taxing authority to pay to the Assignee, from and after the Effective Date, the Realty Tax Refunds.

1.4 Paramountcy

The rights and obligations of the parties respectively with respect to the Realty Tax Appeals and Realty Tax Refunds shall be governed by the Lease Transfer Agreement. In the event of any conflict, inconsistency, ambiguity or difference between the provisions of this Agreement and of the Lease Transfer Agreement, then the provisions of the Lease Transfer Agreement shall govern and be paramount, and any such provision in this Agreement shall be deemed to be amended, to the extent necessary to eliminate any such conflict, inconsistency, ambiguity or difference.

**ARTICLE 2
GENERAL**

2.1 Time of the Essence

Time shall be of the essence of this Agreement.

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2.2 Enurement

This Agreement shall become effective when executed by the Assignor and the Assignee and after that time shall be binding upon and enure to the benefit of the parties and their respective heirs, executors, personal legal representatives, successors and permitted assigns. Neither this Agreement nor any of the rights or obligations under this Agreement shall be assignable or transferable by either party without the consent of the other party.

2.3 Entire Agreement

This Agreement and the Lease Transfer Agreement constitute the entire agreement between the parties with respect to the assignment and assumption of the Realty Tax Appeals contemplated in the Lease Transfer Agreement and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the parties with respect to the subject matter of this Agreement. There are no representations, warranties, covenants, conditions or other agreements, legal or conventional, express or implied, collateral, statutory or otherwise, between the parties in connection with the subject matter of this Agreement, except as specifically set forth in this Agreement and the Lease Transfer Agreement. The parties have not relied and are not relying on any other information, discussion or understanding in entering into and completing the transactions contemplated by this Agreement and the Lease Transfer Agreement.

2.4 Waiver

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

2.5 Further Assurances

Each of the parties covenants and agrees to do such things, to attend such meetings and to execute such further conveyances, transfers, documents and assurances as may be deemed necessary or advisable from time to time in order to effectively transfer the Subject Assets to the Assignee and carry out the terms and conditions of this Agreement in accordance with their true intent.

2.6 Severability

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

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2.7 Governing Law

This Agreement shall be governed by and interpreted and enforced in accordance with the laws of the Province of Alberta and the federal laws of Canada applicable therein.

2.8 CCAA Proceedings

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

2.9 English Language

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

2.10 Statute References

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

2.11 Headings

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

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

2.13 Number and Gender

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

2.14 Business Days

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

2.15 Currency and Payment Obligations

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

2.16 Notice

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

2.17 Counterparts and Delivery

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

[Signature pages follow.]

IN WITNESS WHEREOF the Assignor has executed this Agreement.

SEARS CANADA INC.

By: _____
Name:
Title:

By: _____
Name:
Title:

IN WITNESS WHEREOF the Assignee has executed this Agreement.

INDIGO BOOKS & MUSIC INC.

By: _____

Name: ■

Title: ■

By: _____

Name: ■

Title: ■

SCHEDULE "A" – LEASE PARTICULARS

Industrial Lease dated January 13, 2014 between I.G. Investment Management, Ltd. as trustee for Investors Real Property Fund, as landlord, and Sears Canada Inc., as tenant.

SCHEDULE J
PERMITTED ENCUMBRANCES

GENERAL ENCUMBRANCES

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

- (l) Security given to a public utility or any municipality or governmental or other public authority when required by the operations of the Property in the ordinary course of business, including, without limitation, the right of the municipality to acquire portions of the Property for road widening or interchange construction and the right of the municipality to complete improvements, landscaping or remedy deficiencies in any pedestrian walkways or traffic control or monitoring to be provided to the Property.
- (m) Any minor title defects, irregularities, easements, servitudes, encroachments, rights-of-way or other discrepancies in title or possession relating to the Property which would be disclosed by an up-to-date plan of survey, certificate of location, real property report or technical description.
- (n) Permits, licenses, agreements, servitudes, easements, (including, without limitation, heritage easements and agreements relating thereto), restrictions, restrictive covenants, options, rights-of-way, public ways, rights in the nature of an easement and other similar rights in land granted to or reserved by other persons (including, without in any way limiting the generality of the foregoing, permits, licenses, agreements, easements, servitudes, rights-of-way, sidewalks, public ways, and rights in the nature of easements or servitudes for sewers, drains, steam, gas and water mains or electric light and power or telephone and telegraph conduits, poles, wires and cables) (other than those described in paragraph (d) and (e) of this Schedule) which do not materially impair the current use, operation or marketability of the Property.
- (o) Undetermined or inchoate liens incidental to construction, renovations or current operations, a claim for which shall not at the time have been registered against the Property or of which notice in writing shall not at the time have been given to the Assignor pursuant to the *Builders' Lien Act* (Alberta) or similar applicable legislation, and in respect of any of the foregoing cases, the Assignor has, where applicable, complied with the holdback or other similar provisions or requirements of the relevant construction contracts.
- (p) All Off-Title Compliance Matters.
- (q) Any unregistered interests in the Property of which the Assignee has actual notice prior to the Execution Date.
- (r) The Encumbrances and the rights of distraint, repair, maintenance and inspection in favour of the Landlord contained in the Lease.
- (s) The Encumbrances which the Lease and/or any Property are stated to be subject to or bound by pursuant to the terms of the Lease.

- (t) Any emphyteusis or any ground lease, head lease or other lease which is superior to the Lease (each a “**Head Lease**”), any Encumbrances or other rights in favour of the applicable landlord contained in any Head Lease, and any Encumbrances which the Head Leases and/or leasehold interests created thereby are stated to be subject to or bound by pursuant to the terms of the applicable Head Lease.
- (u) Encumbrances encumbering the intervening leasehold interest pursuant to a Head Lease.
- (v) All Encumbrances affecting the Landlord’s freehold or other ownership interest in the Premises.
- (w) All instruments which are registered against title to a Property: (i) as of the date that is one (1) Business Days prior to the Execution Date; or (ii) otherwise agreed to by the Assignee; or (iii) permitted by this Agreement, except for those Encumbrances to be vested off pursuant to the Approval and Vesting Order.

SPECIFIC ENCUMBRANCES

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

[NIL]

**SCHEDULE K
FF&E**

Description	Confirmed Quantity	Make	Model	Serial Number
HMI Terminals	2			
— HDMI Terminal 1		Dell	D07B	2111400821
— HDMI Terminal 2		Dell	D07B	21036699218
Servers	2			
— Server 1		HP	DL320E	USE419Y2BN
— Server 2		HP	DL360P	MXQ41801F2
RF Scanner Intermec	40			
— RF Scanner 1		Intermec	CK71AA4KN00W1400	8721443724
— RF Scanner 2		Intermec	CK71AA4KN00W1400	8721443510
— RF Scanner 3		Intermec	CK71AA4KN00W1400	8721443824
— RF Scanner 4		Intermec	CK71AA4KN00W1400	8721443802
— RF Scanner 5		Intermec	CK71AA4KN00W1400	8721443604
— RF Scanner 6		Intermec	CK71AA4KN00W1400	8721443660
— RF Scanner 7		Intermec	CK71AA4KN00W1400	8721443653
— RF Scanner 8		Intermec	CK71AA4KN00W1400	8721443770
— RF Scanner 9		Intermec	CK71AA4KN00W1400	8721443536
— RF Scanner 10		Intermec	CK71AA4KN00W1400	8721443566
— RF Scanner 11		Intermec	CK71AA4KN00W1400	8721443842
— RF Scanner 12		Intermec	CK71AA4KN00W1400	8721443538
— RF Scanner 13		Intermec	CK71AA4KN00W1400	8721443671
— RF Scanner 14		Intermec	CK71AA4KN00W1400	9121443011
— RF Scanner 15		Intermec	CK71AA4KN00W1400	8721443587
— RF Scanner 16		Intermec	CK71AA4KN00W1400	8721443667
— RF Scanner 17		Intermec	CK71AA4KN00W1400	8721443642
— RF Scanner 18		Intermec	CK71AA4KN00W1400	8721443666
— RF Scanner 19		Intermec	CK71AA4KN00W1400	8721443616
— RF Scanner 20		Intermec	CK71AA4KN00W1400	8721443582
— RF Scanner 21		Intermec	CK71AA4KN00W1400	8721443070
— RF Scanner 22		Intermec	CK71AA4KN00W1400	8721443640
— RF Scanner 23		Intermec	CK71AA4KN00W1400	8721443757
— RF Scanner 24		Intermec	CK71AA4KN00W1400	2821443185
— RF Scanner 25		Intermec	CK71AA4KN00W1400	8721443855
— RF Scanner 26		Intermec	CK71AA4KN00W1400	8721443501
— RF Scanner 27		Intermec	CK71AA4KN00W1400	8721443655
— RF Scanner 28		Intermec	CK71AA4KN00W1400	8721443910
— RF Scanner 29		Intermec	CK71AA4KN00W1400	8721443751
— RF Scanner 30		Intermec	CK71AA4KN00W1400	8721443518

Description	Confirmed Quantity	Make	Model	Serial Number
— RF Scanner 31		Intermec	CK71AA4KN00W1400	8721443525
— RF Scanner 32		Intermec	CK71AA4KN00W1400	8721443818
— RF Scanner 33		Intermec	CK71AA4KN00W1400	8721443686
— RF Scanner 34		Intermec	CK71AA4KN00W1400	8721443918
— RF Scanner 35		Intermec	CK71AA4KN00W1400	8721443618
— RF Scanner 36		Intermec	CK71AA4KN00W1400	8721443756
— RF Scanner 37		Intermec	CK71AA4KN00W1400	8721443519
— RF Scanner 38		Intermec	CK71AA4KN00W1400	8721443682
— RF Scanner 39		Intermec	CK71AA4KN00W1400	8721443700
— RF Scanner 40		Intermec	CK71AA4KN00W1400	8721443786
RF Batteries	40			
— RF Battery 1		Intermec	318-046-011	4861401828
— RF Battery 2		Intermec	318-046-011	32261305534
— RF Battery 3		Intermec	318-046-011	4861401961
— RF Battery 4		Intermec	318-046-011	4861401736
— RF Battery 5		Intermec	318-046-011	32261305033
— RF Battery 6		Intermec	318-046-011	4861401938
— RF Battery 7		Intermec	318-046-011	32261305531
— RF Battery 8		Intermec	318-046-011	32261305032
— RF Battery 9		Intermec	318-046-011	4861402137
— RF Battery 10		Intermec	318-046-011	32261305532
— RF Battery 11		Intermec	318-046-011	4861400032
— RF Battery 12		Intermec	318-046-011	4861402105
— RF Battery 13		Intermec	318-046-011	32261305126
— RF Battery 14		Intermec	318-046-011	4861401911
— RF Battery 15		Intermec	318-046-011	32261305509
— RF Battery 16		Intermec	318-046-011	4861401616
— RF Battery 17		Intermec	318-046-011	32261305510
— RF Battery 18		Intermec	318-046-011	30861305132
— RF Battery 19		Intermec	318-046-011	32261305543
— RF Battery 20		Intermec	318-046-011	32261305140
— RF Battery 21		Intermec	318-046-011	32261305123
— RF Battery 22		Intermec	318-046-011	32261305527
— RF Battery 23		Intermec	318-046-011	4861402037
— RF Battery 24		Intermec	318-046-011	4861402544
— RF Battery 25		Intermec	318-046-011	32261305523

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Description	Confirmed Quantity	Make	Model	Serial Number
— RF Battery 26		Intermec	318-046-011	4861402549
— RF Battery 27		Intermec	318-046-011	4861402520
— RF Battery 28		Intermec	318-046-011	32261305529
— RF Battery 29		Intermec	318-046-011	32261305113
— RF Battery 30		Intermec	318-046-011	32261305526
— RF Battery 31		Intermec	318-046-011	4861401799
— RF Battery 32		Intermec	318-046-011	4861401690
— RF Battery 33		Intermec	318-046-011	32261305120
— RF Battery 34		Intermec	318-046-011	32261305145
— RF Battery 35		Intermec	318-046-011	32261305511
— RF Battery 36		Intermec	318-046-011	32261305513
— RF Battery 37		Intermec	318-046-011	4861401971
— RF Battery 38		Intermec	318-046-011	32261305538
— RF Battery 39		Intermec	318-046-011	32261305515
— RF Battery 40		Intermec	318-046-011	32261305106
RF Chargers	10			
— RF Charger 1		Intermec	852-918-002	342D1300468
— RF Charger 2		Intermec	852-918-002	324D1300941
— RF Charger 3		Intermec	852-918-002	304D1300284
— RF Charger 4		Intermec	852-918-002	342D1300458
— RF Charger 5		Intermec	852-918-002	304D1300065
— RF Charger 6		Intermec	852-918-002	049D1400807
— RF Charger 7		Intermec	852-918-002	049D1400761
— RF Charger 8		Intermec	852-918-002	069D1400252
— RF Charger 9		Intermec	852-918-002	324D1300975
— RF Charger 10		Intermec	852-918-002	345D1300157
Desktops - no OS will be provided	18			
— Desktop 1		HP	PRODESK 600 G1-[L]	2UA4151R8S
— Desktop 2		HP	PRODESK 600 G1-[L]	2UA4180YL1
— Desktop 3		HP	PRODESK 600 G1-[L]	2UA4180YKZ
— Desktop 4		HP	PRODESK 600 G1-[L]	2UA4180YK8
— Desktop 5		HP	PRODESK 600 G1-[L]	2UA4151R8V
— Desktop 6		HP	PRODESK 600 G1-[L]	2UA4151R8F
— Desktop 7		HP	PRODESK 600 G1-[L]	2UA4180YKM
— Desktop 8		HP	PRODESK 600 G1-[L]	2UA4180YJZ
— Desktop 9		HP	PRODESK 600 G1-[L]	2UA4180YJM

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Description	Confirmed Quantity	Make	Model	Serial Number
— Desktop 10		HP	PRODESK 600 G1-[L]	2UA4180Yk3
— Desktop 11		HP	PRODESK 600 G1-[L]	2UA4151R89
— Desktop 12		HP	PRODESK 600 G1-[L]	2UA4180YKQ
— Desktop 13		HP	PRODESK 600 G1-[L]	2UA4151R8T
— Desktop 14		HP	PRODESK 600 G1-[L]	2UA4151R8W
— Desktop 15		HP	PRODESK 600 G1-[L]	2UA4180YIZ
— Desktop 16		HP	PRODESK 600 G1-[L]	2UA4151R8P
— Desktop 17		HP	PRODESK 600 G1-[L]	2UA4151R8K
— Desktop 18		HP	PRODESK 600 G1-[L]	2UA4151YKV
Laptops	9			
— Laptop 1		HP	ProBook 640 G1	CNU4169CK4
— Laptop 2		HP	ProBook 640 G1	CNU4169CWX
— Laptop 3		HP	ProBook 640 G1	CNU4169CG8
— Laptop 4		HP	ProBook 640 G1	5CG426F8RB
— Laptop 5		HP	ProBook 640 G1	CNU4169CZK
— Laptop 6		HP	ProBook 640 G1	CNU4169CHT
— Laptop 7		HP	ProBook 640 G1	5CG426F8NV
— Laptop 8		HP	ProBook 640 G1	5CG426F97D
— Laptop 9		HP	ProBook 650 G2	5CG7087LF0
Monitors	20			
— Monitor 1		HP	P231	CNC4110GG0
— Monitor 2		HP	P231	CNC4110GKC
— Monitor 3		HP	P231	CNC4110GJH
— Monitor 4		HP	P231	CNC4110GF9
— Monitor 5		HP	P231	CNC4110GK6
— Monitor 6		HP	P231	CNC4110GJ0
— Monitor 7		HP	P231	CNC4110G9Y
— Monitor 8		HP	P231	CNC4110GK0
— Monitor 9		HP	P231	CNC4110GJL
— Monitor 10		HP	P231	CNC4110GJM
— Monitor 11		HP	P231	CNC4110GJB
— Monitor 12		HP	P231	CNC4110GKL
— Monitor 13		HP	P231	CNC4110GHH
— Monitor 14		HP	P231	CNC4110GJF
— Monitor 15		HP	P231	CNC4110GJ5
— Monitor 16		HP	P231	CNC4110GJZ

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Description	Confirmed Quantity	Make	Model	Serial Number
— Monitor 17		HP	P231	CNC4110GL2
— Monitor 18		HP	P231	CNC4110GB1
— Monitor 19		HP	P231	CNC4110GFL
— Monitor 20		HP	P231	CNC4110GJ9
Zebra Printers	20			
— Zebra Printer 1		Zebra	105SL-L	69J141100953
— Zebra Printer 2		Zebra	105SL-L	69J134801329
— Zebra Printer 3		Zebra	105SL-L	69J141000915
— Zebra Printer 4		Zebra	105SL-L	69J141300157
— Zebra Printer 5		Zebra	105SL-L	69J141300163
— Zebra Printer 6		Zebra	105SL-L	69J141300162
— Zebra Printer 7		Zebra	105SL-L	69J141000548
— Zebra Printer 8		Zebra	105SL-L	69J141000055
— Zebra Printer 9		Zebra	105SL-L	69J141000549
— Zebra Printer 10		Zebra	105SL-L	69J141300156
— Zebra Printer 11		Zebra	105SL-L	69J141000918
— Zebra Printer 12		Zebra	105SL-L	69J141000058
— Zebra Printer 13		Zebra	105SL-L	69J141000054
— Zebra Printer 14		Zebra	105SL-L	69J140401468
— Zebra Printer 15		Zebra	105SL-L	69J140401465
— Zebra Printer 16		Zebra	105SL-L	69J140401464
— Zebra Printer 17		Zebra	105SL-L	69J140401458
— Zebra Printer 18		Zebra	105SL-L	69J140401467
— Zebra Printer 19		Zebra	105SL-L	69J141000546
— Zebra Printer 20		Zebra	105SL-L	69J141000053
Lexmark Laser Printers	20			
— Laser Printer 1		Lexmark	MS811N	4063369909D4 4
— Laser Printer 2		Lexmark	MS811N	4063369909DB B
— Laser Printer 3		Lexmark	MS811N	4063369909DC 0
— Laser Printer 4		Lexmark	MS811N	4063369908TW 4
— Laser Printer 5		Lexmark	MS811N	4063369909D1 T
— Laser Printer 6		Lexmark	MS811N	4063369909D1 G
— Laser Printer 7		Lexmark	MS811N	4063369909D2 Z

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Description	Confirmed Quantity	Make	Model	Serial Number
— Laser Printer 8		Lexmark	MS811N	4063369908TR Z
— Laser Printer 9		Lexmark	MS811N	4063369909DB R
— Laser Printer 10		Lexmark	MS811N	4063369908TT N
— Laser Printer 11		Lexmark	MS811N	4063369909D4 L
— Laser Printer 12		Lexmark	MS811N	4063369909TW B
— Laser Printer 13		Lexmark	MS811N	4063369909D3 1
— Laser Printer 14		Lexmark	MS811N	4063369908TV W
— Laser Printer 15		Lexmark	MS811N	4063369909D4 D
— Laser Printer 16		Lexmark	MS811N	4063369908TV K
— Laser Printer 17		Lexmark	MS811N	4063369908TT K
— Laser Printer 18		Lexmark	MS811N	4063369908TT 9
— Laser Printer 19		Lexmark	MS811N	4063369909D7 7
— Laser Printer 20		Lexmark	MS811N	4063369909D7 C
Avaya Wired VOIP phone/boardroom phone	11			
— Wired Phone 1		Avaya	n/a	13wz19330045
— Wired Phone 2		Avaya	9608	13N544411683
— Wired Phone 3		Avaya	9608	13N544411809
— Wired Phone 4		Avaya	9608	13N544411738
— Wired Phone 5		Avaya	9608	13N544411696
— Wired Phone 6		Avaya	9608	14N510018994
— Wired Phone 7		Avaya	9608	14N504017756
— Wired Phone 8		Avaya	9608	13N544411780
— Wired Phone 9		Avaya	9608	14N504017763
— Wired Phone 10		Avaya	9608	14N504018317
— Wired Phone 11		Avaya	9608	14N510019020
Silver Pick Carts Small Cart Dimensions (L = 36, W= 18 and H = 40)	27			

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Description	Confirmed Quantity	Make	Model	Serial Number
— Small Pick Carts (all)		unknown	unknown	unknown
Silver Pick Carts Big Cart Dimensions (L = 48, W= 24, and H = 40)	20			
— Big Pick Carts (all)		unknown	unknown	unknown
Blue Utility Carts (H59" W 18" D 30")	38			
— Blue Utility Carts (all)		unknown	unknown	unknown
Corded Scanner - Motorola Symbol LS2208	50			
— Corded Scanner 1		Motorola	LS2208	Y5DN2W
— Corded Scanner 2		Motorola	LS2208	YCCUUT
— Corded Scanner 3		Motorola	LS2208	YCCUUU
— Corded Scanner 4		Motorola	LS2208	YCD72F
— Corded Scanner 5		Motorola	LS2208	YCDW9J
— Corded Scanner 6		Motorola	LS2208	YCDW9N
— Corded Scanner 7		Motorola	LS2208	YCDW9Y
— Corded Scanner 8		Motorola	LS2208	YCDWAE
— Corded Scanner 9		Motorola	LS2208	YCDWAR
— Corded Scanner 10		Motorola	LS2208	YCDWAU
— Corded Scanner 11		Motorola	LS2208	YCDWAY
— Corded Scanner 12		Motorola	LS2208	YCDWB0
— Corded Scanner 13		Motorola	LS2208	YCDYCL
— Corded Scanner 14		Motorola	LS2208	YCDYCY
— Corded Scanner 15		Motorola	LS2208	YCDYDJ
— Corded Scanner 16		Motorola	LS2208	YCDYDN
— Corded Scanner 17		Motorola	LS2208	YCDYDP
— Corded Scanner 18		Motorola	LS2208	YCDYHG
— Corded Scanner 19		Motorola	LS2208	YCECBL
— Corded Scanner 20		Motorola	LS2208	YCECBP
— Corded Scanner 21		Motorola	LS2208	YCECBT
— Corded Scanner 22		Motorola	LS2208	YCECBU
— Corded Scanner 23		Motorola	LS2208	YCECBV
— Corded Scanner 24		Motorola	LS2208	YCECCA
— Corded Scanner 25		Motorola	LS2208	YCECCE

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Description	Confirmed Quantity	Make	Model	Serial Number
— Corded Scanner 26		Motorola	LS2208	YCECCH
— Corded Scanner 27		Motorola	LS2208	YCECCV
— Corded Scanner 28		Motorola	LS2208	YCECD2
— Corded Scanner 29		Motorola	LS2208	YCECD6
— Corded Scanner 30		Motorola	LS2208	YCECDA
— Corded Scanner 31		Motorola	LS2208	YCECDV
— Corded Scanner 32		Motorola	LS2208	YCECEP
— Corded Scanner 33		Motorola	LS2208	YCECEW
— Corded Scanner 34		Motorola	LS2208	YCECF4
— Corded Scanner 35		Motorola	LS2208	YCECF8
— Corded Scanner 36		Motorola	LS2208	YCECFA
— Corded Scanner 37		Motorola	LS2208	YCECFC
— Corded Scanner 38		Motorola	LS2208	YCECFE
— Corded Scanner 39		Motorola	LS2208	YCCUUK
— Corded Scanner 40		Motorola	LS2208	YCDWAW
— Corded Scanner 41		Motorola	LS2208	YCD72J
— Corded Scanner 42		Motorola	LS2208	YCECC4
— Corded Scanner 43		Motorola	LS2208	YCDWA4
— Corded Scanner 44		Motorola	LS2208	YCDWA7
— Corded Scanner 45		Motorola	LS2208	20EARF
— Corded Scanner 46		Motorola	LS2208	YCECF3
— Corded Scanner 47		Motorola	LS2208	YD2TD8
— Corded Scanner 48		Motorola	LS2208	Y7A8VE
— Corded Scanner 49		Motorola	LS2208	YCECF0
— Corded Scanner 50		Motorola	LS2208	YCCUUV
Corded Scanners	5			
— Corded Scanner 1		Datalogic	Powerscan MM300	F14E03906
— Corded Scanner 2		Datalogic	Powerscan MM300	F14E03907
— Corded Scanner 3		Datalogic	Powerscan MM300	F14E03901
— Corded Scanner 4		Datalogic	Powerscan MM300	F14E03899
— Corded Scanner 5		Datalogic	Powerscan MM300	F14E03900
Floor Sweeper	1			
— Floor Sweeper		Tennant	515SS	515-5239
Walkies	1			

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Description	Confirmed Quantity	Make	Model	Serial Number
— Walkies		Raymond	8400	840-07-73861
Order Pickers	4			
— Order Picker 1		Raymond	EASI-IPC30TT	EASI-99-AT22005
— Order Picker 2		Raymond	EASI-IPC30TT	EASI-00-AT24661
— Order Picker 3		Raymond	EASI-IPC30TT	EASI-00-AT24658
— Order Picker 4		Raymond	EASI-IPC30TT	EASI-00-AT24665
Dock Stocker	1			
--- Dock Stocker		Raymond	4200C35TT	420-08-16542
Access points	35			
— Access Point 1		Aruba	AP 115	CJ0111898
— Access Point 2		Aruba	AP 115	CJ0112066
--- Access Point 3		Aruba	AP 115	CJ0112253
--- Access Point 4		Aruba	AP 115	CJ0112108
— Access Point 5		Aruba	AP 115	CJ0112074
— Access Point 6		Aruba	AP 115	CJ0112123
--- Access Point 7		Aruba	AP 115	CJ0112271
— Access Point 8		Aruba	AP 115	CJ0111940
— Access Point 9		Aruba	AP 115	CJ0111938
— Access Point 10		Aruba	AP 115	CJ0111805
— Access Point 11		Aruba	AP 115	CJ0112160
— Access Point 12		Aruba	AP 115	CJ0111900
— Access Point 13		Aruba	AP 115	CJ0111952
— Access Point 14		Aruba	AP 115	CJ0110371
— Access Point 15		Aruba	AP 115	CJ0111923
— Access Point 16		Aruba	AP 115	CJ0112209
— Access Point 17		Aruba	AP 115	CJ0112141
— Access Point 18		Aruba	AP 115	CJ0112129
— Access Point 19		Aruba	AP 115	CJ0112269
— Access Point 20		Aruba	AP 115	CJ0112100
— Access Point 21		Aruba	AP 115	CJ0112263
— Access Point 22		Aruba	AP 115	CJ0112228
— Access Point 23		Aruba	AP 115	CJ0111935
— Access Point 24		Aruba	AP 115	CJ0111930

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Description	Confirmed Quantity	Make	Model	Serial Number
— Access Point 25		Aruba	AP 115	CJ0112233
— Access Point 26		Aruba	AP 115	CJ0110370
— Access Point 27		Aruba	AP 115	CJ0110358
— Access Point 28		Aruba	AP 115	CJ0110367
— Access Point 29		Aruba	AP 115	CJ0110330
— Access Point 30		Aruba	AP 115	CJ0110098
— Access Point 31		Aruba	AP 115	CJ0110072
— Access Point 32		Aruba	AP 115	CJ0110095
— Access Point 33		Aruba	AP 115	CJ0110060
— Access Point 34		Aruba	AP 115	CJ0110073
— Access Point 35		unknown	unknown	unknown
Pump truck/pallet truck	15			
— Pump truck/pallet truck 1		unknown	unknown	unknown
— Pump truck/pallet truck 2		unknown	unknown	unknown
— Pump truck/pallet truck 3		unknown	unknown	unknown
— Pump truck/pallet truck 4		unknown	unknown	unknown
— Pump truck/pallet truck 5		unknown	unknown	unknown
— Pump truck/pallet truck 6		unknown	unknown	unknown
— Pump truck/pallet truck 7		unknown	unknown	unknown
— Pump truck/pallet truck 8		unknown	unknown	unknown
— Pump truck/pallet truck 9		unknown	unknown	unknown
— Pump truck/pallet truck 10		unknown	unknown	unknown
— Pump truck/pallet truck 11		unknown	unknown	unknown
— Pump truck/pallet truck 12		unknown	unknown	unknown
— Pump truck/pallet truck 13		unknown	unknown	unknown
— Pump truck/pallet truck 14		unknown	unknown	unknown
— Pump truck/pallet truck 15		unknown	unknown	unknown
MHE Quick Chargers	8			
— Quick Charger 1		Manu Energsys - EnForcer HF	EH3-10-1	unknown
— Quick Charger 2		Manu Energsys - EnForcer HF	EH3-10-1	unknown
— Quick Charger 3		Manu Energsys - EnForcer HF	EH3-10-1	unknown
— Quick Charger 4		Manu Energsys - EnForcer HF	EH3-10-1	unknown
— Quick Charger 5		Manu Energsys - EnForcer HF	EH3-10-1	unknown

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Description	Confirmed Quantity	Make	Model	Serial Number
— Quick Charger 6		Manu Enersys - EnForcer HF	EH3-10-1	unknown
— Quick Charger 7		Manu Enersys - EnForcer HF	EH3-10-1	unknown
— Quick Charger 8		Manu Enersys - EnForcer HF	EH3-10-1	unknown
UPS	3			
— UPS 1		APC	BE55G-CN	4B1402P07818
— UPS 2		APC	BE55G-CN	4B1329P22458
— UPS 3		Tripplite	23909	AGBC750CP3 USB
Pack Tables	78			
— Pack Tables (all)		unknown	unknown	unknown
Grey, Blue & Red Totes	2900			
— Grey, Blue & Red Totes (all)		unknown	unknown	unknown
Bin Shelving - 6800 shelving bays				
— Bin Shelving - 6800 shelving bays		unkown	unknown	unknown

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**SCHEDULE L
TRADE FIXTURES**

Description	Confirmed Quantity	Make	Model	Serial Number
CCTV systems	29			
— Camera 1		Pelco Dome	FD2DWV10-6 REVA	41607570
— Camera 2		Pelco Dome	FD2DWV10-6 REVA	41607658
— Camera 3		Pelco Dome	FD2DWV10-6 REVA	41607647
— Camera 4		Pelco Dome	FD2DWV10-6 REVA	41607852
— Camera 5		Pelco Dome	FD2DWV10-6 REVA	41607847
— Camera 6		Pelco Dome	FD2DWV10-6 REVA	41607573
— Camera 7		Pelco Dome	FD2DWV10-6 REVA	41607665
— Camera 8		Pelco Dome	FD2DWV10-6 REVA	41607849
— Camera 9		Pelco Dome	FD2DWV10-6 REVA	41607571
— Camera 10		Pelco Dome	FD2DWV10-6 REVA	41607851
— Camera 11		Pelco Dome	FD2DWV10-6 REVA	41607853
— Camera 12		Pelco Dome	FD2DWV10-6 REVA	41607576
— Camera 13		Pelco Dome	FD2DWV10-6 REVA	41607614
— Camera 14		Pelco Dome	FD2DWV10-6 REVA	41607855
— Camera 15		Pelco Dome	FD2DWV10-6 REVA	41607850
— Camera 16		Pelco Dome	FD2DWV10-6 REVA	41607854
— Camera 17		Pelco Dome	FD2DWV10-6 REVA	41607660
— Camera 18		Pelco Dome	FD2DWV10-6 REVA	41607567
— Camera 19		Pelco Dome	FD2DWV10-6 REVA	41607666
— Camera 20		Pelco Dome	FD2DWV10-6 REVA	41607856
— Camera 21		Pelco Dome	FD2DWV10-6 REVA	41607572
— Camera 22		Pelco Dome	FD2DWV10-6 REVA	41607616
— Camera 23		Pelco Dome	FD2DWV10-6 REVA	41607568
— Camera 24		Pelco Dome	FD2DWV10-6 REVA	41607848
— Camera 25		Pelco Dome	FD2DWV10-6 REVA	41607574
— Camera 26		Pelco Dome	FD2DWV10-6 REVA	41607575
— Camera 27		Pelco Dome	EVO-05NID	DGOO1B4120605
— Camera 28		Pelco Dome	EVO-05NID	DGOO1B4120610
— Camera 29		Pelco Dome	EVO-05NID	DGOO1C5160389
External Security Cameras	5			
— External Security Camera 1		Pelco	unknown	unknown
— External Security Camera 2		Pelco	unknown	unknown
— External Security Camera 3		Pelco	unknown	unknown

Description	Confirmed Quantity	Make	Model	Serial Number
— External Security Camera 4		Pelco	unknown	unknown
— External Security Camera 5		Pelco	unknown	unknown
Security Access and Alarm System	1			
— Alarm System		Chubb Edwards, Vipond, Gardaworld		unknown
Racking - 4610 full pallet positions and 6990 overflow positions	-			
— Racking (all)		unknown	unknown	unknown
Conveyance - existing setup - approximately 6000 feet w/ 2 sorters and inline scale QA	-			
— Racking (all)		unknown	unknown	unknown

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**SCHEDULE M
FORM OF ASSIGNMENT AND ASSUMPTION OF ASSIGNED SOFTWARE
CONTRACTS**

THIS AGREEMENT is made as of the _____ day of _____, 2017 (the “**Effective Date**”)

B E T W E E N:

SEARS CANADA INC.

(the “**Assignor**”)

- and -

INDIGO BOOKS & MUSIC INC.

(the “**Assignee**”)

RECITALS:

- A. The Assignor and certain of its affiliates and subsidiaries applied for and were granted protection from their creditors under the CCAA pursuant to the Initial Order of the Court. Pursuant to the Initial Order, the Court appointed FTI Consulting Canada Inc. as Monitor in connection with the CCAA Proceedings.
- B. The Assignor and the Assignee entered into a lease transfer agreement dated ■, 2017 (the “**Lease Transfer Agreement**”), whereby, among other things, the Assignor agreed to assign to the Assignee all of the Assignor’s right, title and interest in and to the Assigned Software Contracts.
- C. The Lease Transfer Agreement was approved by the Court pursuant to the Order dated ■ (the “**Approval and Vesting Order**”).
- D. The Assignor and the Assignee are entering into this Agreement to provide for the assignment and assumption of the Assigned Software Contracts by the Assignor to the Assignee in accordance with the Lease Transfer Agreement and the Approval and Vesting Order.
- E. Unless otherwise expressly provided for herein, all capitalized terms when used in this Agreement have the same meaning given to such terms in the Lease Transfer Agreement.

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

**ARTICLE 1
ASSIGNMENT**

1.1 Assignment by Assignor

The Assignor assigns and transfers to the Assignee, as of the Effective Date, all of the Assignor's obligations, rights, title and interest, both at law and at equity, in and to the Assigned Software Contracts (the "Assigned Interest").

1.2 Assumption by Assignee

The Assignee hereby accepts the assignment of the Assigned Interest provided for in this Agreement and assumes all of the Assignor's obligations with respect to the Assigned Interest from and after the Effective Date.

1.3 Indemnity

The Assignee hereby covenants with the Assignor, as of and from the Effective Date, to indemnify and save the Assignor harmless, from any and all Claims arising from, relating to or in connection with the Assigned Software Contracts, or any non-observance or non-performance of any of the terms, agreements, covenants, obligations and conditions on the part of the licensee under the Assigned Software Contracts to be paid, observed or performed from time to time, in respect of the period on or after the Effective Date.

1.4 Paramountcy

The rights and obligations of the parties respectively with respect to the Assigned Software Contracts shall be governed by the Lease Transfer Agreement. In the event of any conflict, inconsistency, ambiguity or difference between the provisions of this Agreement and of the Lease Transfer Agreement, then the provisions of the Lease Transfer Agreement shall govern and be paramount, and any such provision in this Agreement shall be deemed to be amended, to the extent necessary to eliminate any such conflict, inconsistency, ambiguity or difference.

**ARTICLE 2
GENERAL**

2.1 Time of the Essence

Time shall be of the essence of this Agreement.

2.2 Enurement

This Agreement shall become effective when executed by the Assignor and the Assignee and after that time shall be binding upon and enure to the benefit of the parties and their respective heirs, executors, personal legal representatives, successors and permitted assigns. Neither this

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Agreement nor any of the rights or obligations under this Agreement shall be assignable or transferable by either party without the consent of the other party.

2.3 Entire Agreement

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

2.4 Waiver

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

2.5 Further Assurances

Each of the parties covenants and agrees to do such things, to attend such meetings and to execute such further conveyances, transfers, documents and assurances as may be deemed necessary or advisable from time to time in order to effectively transfer the Assigned Software Contracts to the Assignee and carry out the terms and conditions of this Agreement in accordance with their true intent.

2.6 Severability

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

2.7 Governing Law

This Agreement shall be governed by and interpreted and enforced in accordance with the laws of the Province of Alberta and the federal laws of Canada applicable therein.

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2.8 CCAA Proceedings

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

2.9 English Language

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

2.10 Statute References

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

2.11 Headings

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

2.12 References

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

2.13 Number and Gender

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

2.14 Business Days

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

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2.15 Notice

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

2.16 Counterparts and Delivery

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

[Signature pages follow.]

IN WITNESS WHEREOF the Assignor has executed this Agreement.

SEARS CANADA INC.

By: _____
Name:
Title:

By: _____
Name:
Title:

IN WITNESS WHEREOF the Assignee has executed this Agreement.

INDIGO BOOKS & MUSIC INC.

By: _____
Name: ■
Title: ■

By: _____
Name: ■
Title: ■

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.

Applicants

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

**AFFIDAVIT OF BILLY WONG
(Motion for Approval of Lease Transfer Agreement
with Indigo Books & Music Inc.
Calgary Distribution Centre)**

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Lawyers for the Applicants

TAB 3

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.) WEDNESDAY, THE 4TH
)
JUSTICE HAINEY) DAY OF OCTOBER, 2017

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**”)

APPROVAL AND VESTING ORDER – LEASE TRANSFER AGREEMENT AND CERTAIN ANCILLARY ASSETS

CALGARY DC

THIS MOTION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. c-36, as amended (the “**CCAA**”) for an order, *inter alia*, approving: the lease transfer (the “**Transaction**”) contemplated by a Lease Transfer Agreement between Sears Canada Inc. (“**Sears Canada**”), as Assignor, and Indigo Books & Music Inc. (the

“Assignee”) as Assignee dated September 28, 2017 (the “Lease Transfer Agreement”) and certain related relief, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion of the Applicants, the Affidavit of Billy Wong sworn on September 28, 2017 including the exhibits thereto, and the ■ Report of FTI Consulting Canada Inc., in its capacity as Monitor (the “Monitor”), filed, and on hearing the submissions of respective counsel for the Applicants, the Monitor, the Assignee, the DIP ABL Agent, the DIP Term Agent, I.G. Investment Management, Ltd., as trustee for Investors Real Property Fund (the “Landlord”) and such other counsel as were present, no one else appearing although duly served as appears from the Affidavit of Service of ■ sworn ■, 2017, filed:

SERVICE AND DEFINITIONS

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion Record herein is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. THIS COURT ORDERS that any capitalized term used and not defined herein shall have the meaning ascribed thereto in the Amended and Restated Initial Order in these proceedings dated June 22, 2017 (the “Initial Order”), or in the Lease Transfer Agreement, or in the Lease, as applicable.

APPROVAL OF THE LEASE TRANSFER AGREEMENT

3. THIS COURT ORDERS AND DECLARES that the entering into of the Transaction by Sears Canada is hereby approved and ratified and that the execution of the Lease Transfer Agreement by Sears Canada is hereby authorized, approved and ratified with such minor amendments as Sears Canada (with the consent of the Monitor after consultation with the DIP Lenders) and the Assignee may agree to in writing. Sears Canada is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction, including the sale, assignment and transfer by Sears Canada of its right, title and interest in and to the lease dated January 13, 2014 between the Landlord and Sears Canada in respect of the lands legally described as Plan 1113473, Block 13, Lot 8 (the “Lease”) and certain ancillary assets as set out and described in the Lease Transfer

Agreement (collectively, with the Lease, the “**Subject Assets**”) to the Assignee and the Monitor shall be authorized to take such additional steps in furtherance of its responsibilities under the Lease Transfer Agreement and this Order, and shall not incur any liability as a result thereof. The legal descriptions and applicable land registry offices with respect to the Subject Assets are as set out on Schedule “B” hereto.

4. THIS COURT ORDERS AND DECLARES that upon the delivery of a Monitor’s certificate to the Assignee substantially in the form attached as Schedule “A” hereto (the “**Monitor’s Certificate**”), all of Sears Canada’s right, title and interest in and to the Subject Assets shall be sold, assigned and transferred to the Assignee, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise in respect of the Subject Assets (collectively, the “**Claims**”), including, without limiting the generality of the foregoing:

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

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

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

6. THIS COURT ORDERS that from and after the delivery of the Monitor's Certificate, all Claims and Encumbrances shall attach to the net proceeds from the Transaction (the "**Net Proceeds**"), with the same priority as they had with respect to the Subject Assets immediately prior to the Closing of the Transaction, as if the Transaction had not been completed.

7. THIS COURT ORDERS that, to the extent that obligations remain owing by the Applicants under the DIP ABL Credit Agreement or the DIP Term Credit Agreement, the Monitor be and is hereby authorized and directed to distribute, on behalf of the Applicants, on the day of filing the Monitor's Certificate or as soon as practicable thereafter, the Net Proceeds, in partial repayment of amounts then owing by the Applicants under the DIP ABL Credit Agreement or the DIP Term Credit Agreement, as applicable (a "**Distribution**").

8. THIS COURT ORDERS that any Distribution made pursuant to this Order shall be and shall be deemed to be made free and clear of all Claims and Encumbrances.

9. THIS COURT ORDERS that, notwithstanding:

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

the distribution permitted by paragraph 7 above shall be binding on any trustee in bankruptcy or receiver that may be appointed in respect of any of the Applicants and shall not be void or voidable by creditors of any of the Applicants, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable

transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

10. THIS COURT ORDERS that, if all obligations of the Applicants under the DIP ABL Credit Agreement or the DIP Term Credit Agreement have been satisfied in full the Monitor shall be entitled to retain the Net Proceeds or any remaining portion thereof on behalf of the Applicants to be dealt with by further Order of the Court.

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

12. THIS COURT ORDERS that subject to the terms of the Lease Transfer Agreement nothing herein affects:

- (a) the rights and obligations of Sears Canada and a contractual joint venture comprised of Gordon Brothers Canada ULC, Merchant Retail Solutions ULC, Tiger Capital Group, LLC and GA Retail Canada ULC (the "**Agent**") under the Amended and Restated Agency Agreement between Sears Canada and the Agent dated July 12, 2017 and amended and restated on July 14, 2017;
- (b) the rights and obligations of Sears Canada and the Agent under the Amended and Restated Consulting Agreement between Sears Canada and the Agent dated July 12, 2017 and amended and restated on July 14, 2017; and
- (c) the terms of the Liquidation Sale Approval Order granted July 18, 2017 including the Sale Guidelines attached as Schedule "A" thereto.

SEALING

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

GENERAL PROVISIONS

14. THIS COURT ORDERS that, notwithstanding:

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

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

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

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

SCHEDULE "A"

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

ONTARIO

SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

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

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

MONITOR'S CERTIFICATE

RECITALS

A. All undefined terms in this Monitor's Certificate have the meanings ascribed to them in the Order of the Court dated ■, 2017 (the "Approval and Vesting Order") approving the Lease Transfer Agreement between Sears Canada Inc. ("Sears Canada"), as Assignor, and Indigo Books & Music Inc. (the "Assignee") as Assignee dated September 28, 2017 (the "Lease Transfer Agreement"), a copy of which is attached as Exhibit A to the Affidavit of Billy Wong dated September 28, 2017.

B. Pursuant to the Approval and Vesting Order the Court approved the Lease Transfer Agreement and provided for the sale, assignment and transfer to the Assignee of Sears Canada's right, title and interest in and to the Subject Assets (as defined in the Lease Transfer Agreement), which sale, assignment and transfer is to be effective with respect to the Subject Assets upon the

delivery by the Monitor to the Assignee and Sears Canada of a certificate confirming that (i) the conditions to Closing as set out in sections 7.1, 7.2 and 7.3 of the Lease Transfer Agreement have been satisfied or waived by the Assignee and Sears Canada, as applicable, and (ii) the Purchase Price, any Taxes payable to Sears Canada that are not self-assessed and remitted by the Assignee and any Cure Costs (each as defined in the Lease Transfer Agreement) have been received by the Monitor.

THE MONITOR CERTIFIES the following:

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

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

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

Per: _____
Name:
Title:

SCHEDULE "B"

No.	Location/Address	Province	Land Registry Office	Legal Description	Encumbrances to be Expunged/ Deleted
1	#10, 5800-79th Ave. SE, Calgary	AB	South Alberta Land Registry Office	PLAN 1113473 BLOCK 13 LOT 8 EXCEPTING THEREOUT ALL MINES AND MINERALS AREA: 12.82 HECTARES (31.68 ACRES) MORE OR LESS	NIL

SCHEDULE "C"
PERMITTED ENCUMBRANCES

"Permitted Encumbrances" means, collectively: (a) any Encumbrances encumbering the Landlord's freehold or other ownership interest in the Property or any other interest in the Property of the Landlord, but excludes any Encumbrances solely encumbering the Assignor's leasehold interest in and to any Property situated outside of the Province of Quebec on which the Premises are located or the rights of the Tenant as lessee under the Lease; (b) Encumbrances resulting from the Assignee's actions or omissions; and (c) the items identified in Schedule J of the Lease Transfer Agreement.

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

Applicants

Ontario

**SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

MOTION RECORD OF THE APPLICANTS

(Motion for Approval of Lease Transfer Agreement with Indigo Books & Music Inc. and Certain Ancillary Assets – Calgary DC returnable October 4, 2017)

OSLER, HOSKIN & HARCOURT LLP

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