

**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 Surrender Agreement with
Orchard Park Shopping Centre Holdings Inc.
Kelowna Full Line (Store #1827) and Kelowna Home Store (Store #1376))
returnable October 4, 2107)**

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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INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA LTD.,
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CANADA INC.

Applicants

**NOTICE OF MOTION
(Motion for Approval of Lease Surrender Agreement with
Orchard Park Shopping Centre Holdings Inc.
Kelowna Full Line (Store #1827) and Kelowna Home Store (Store #1376))**

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 Surrender Agreement entered into as of September 22, 2017 between Sears Canada Inc. (“**Sears Canada**”) and Orchard Park Shopping Centre Holdings Inc. (“**Orchard Park**”), and vesting Sears Canada’s right, title and interest in and to the Leases and the Real Property Interests (as defined in the Approval and Vesting Order) in Orchard Park; 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 22, 2017, Sears Canada entered into a Lease Surrender Agreement in which Sears Canada has agreed to surrender its real property interests related to Sears Canada’s leases in respect of a full line store and Home Store at the Orchard Park Shopping Centre (Kelowna, B.C.);

5. The consideration to be received in the transaction is fair and reasonable;
6. The process leading to the Lease Surrender Agreement was fair and reasonable in the circumstances and was approved by the Monitor;
7. The Lease Surrender 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
(Lease Surrender Agreement with
Orchard Park Shopping Centre Holdings Inc.
Kelowna Full Line (Store #1827) and Kelowna Home Store
(Store #1376))

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TAB 2

Ontario
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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 Surrender Agreement with
Orchard Park Shopping Centre Holdings Inc.
Kelowna Full Line (Store #1827) and Kelowna Home Store (Store #1376))**

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 two Orders, substantially in the form attached to the Motion Record, approving the Lease Surrender Agreement dated as of September 22, 2017 (the “**Lease Surrender Agreement**”) between Sears Canada and Orchard Park Shopping Centre Holdings Inc. (“**Orchard Park**”) relating to the leases held by Sears Canada (the “**Leases**”) for Sears Canada’s full-line store (Store #1827) and Home Store (Store #1376), both located in Kelowna, British Columbia, the details of which are summarized in the following chart:

Property	City	Landlord	Size of Store (square feet)	Lease Expiration	Options Remaining, Outside Expiration
Orchard Park Shopping Centre	Kelowna, B.C.	Orchard Park Shopping Centre Holdings Inc.	92,068	August 31, 2021	2 options August 31, 2041
Orchard Park Shopping Centre	Kelowna, B.C.	Orchard Park Shopping Centre Holdings Inc.	49,612	August 31, 2021	2 options August 31, 2041

3. Capitalized terms used in this Affidavit that are not otherwise defined have the meaning given to them in the Lease Surrender 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 resulted in, among other things, Orchard Park’s bid and the Lease Surrender 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 “**Surrender Consideration**”) and the allocation of the Surrender Consideration as between each of the Leases 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 Surrender Consideration 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 that the proposed transaction does not proceed to close as anticipated. As such, the Surrender Consideration and its allocation in the Lease Surrender 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. The Applicants and the Sale Advisor believe that this transaction is in the best interests of the Applicants and their stakeholders, and that the Surrender Consideration 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.

7. 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 Surrender Agreement.

Background to Orchard Park's Bid

8. 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**").

9. The purpose of the SISP was to seek out proposals for the acquisition of, or an investment in, the Applicants' 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 the Applicants' stakeholders.

10. 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 Leases that are subject to the Lease Surrender Agreement.

11. In accordance with the SISP, on August 31, 2017, Orchard Park submitted a bid in respect of the Lease in which Orchard Park offered to accept a surrender from Sears Canada of Sears Canada's right, title and interest in and to the Leases, the Real Property Interests and the Premises, and to accept the resiliation of such Leases on the terms and conditions set out in Orchard Park's proposed form of lease surrender agreement.

12. Following receipt of the bid, the Special Committee directed Sears Canada and the Sale Advisor to engage in negotiations with Orchard Park in an effort to conclude a transaction. I am advised by Mr. Caiger and believe that negotiations ensued with Orchard Park 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. As a result of those negotiations, and after considering Orchard Park'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 Orchard Park in respect of the Leases. After carefully considering Orchard Park's offer, including being satisfied that the Surrender Consideration being offered is fair and reasonable, the Board determined that Orchard Park's offer was in the best interests of the Applicants and their stakeholders.

13. In coming to this view, Sears Canada and the Special Committee, in consultation with the Sale Advisor, took into account the fact that the proposed transaction also eliminates certain potential claims into the Applicants' estate, including pre-filing claims into the estate from Orchard Park relating to the Leases and any claims Orchard Park might otherwise have arising from a potential disclaimer of the Leases.

The Lease Surrender Agreement

14. On September 28, 2017, Sears Canada and Orchard Park entered into the Lease Surrender Agreement. The Lease Surrender Agreement provides for, among other things, the following:

- (a) Orchard Park will pay the Surrender Consideration plus all applicable taxes. The Surrender Consideration is subject to certain typical adjustments as set out in the Lease Surrender Agreement, which adjustments will be final and not subject to readjustment. This allows for final settlement of all of Sears Canada's obligations relating to the Leases, giving certainty of result.

- (b) The Lease Surrender Agreement and the Transaction contemplated therein are subject to the Court issuing the proposed Approval and Vesting Orders and the Monitor delivering the Monitor's Certificate.
- (c) Closing will take place on the Business Day that is three Business Days following the issuance of the Approval and Vesting Orders or at such other date as Sears Canada (with the consent of the DIP Lenders and the Monitor) may advise Orchard Park in writing, provided that the Closing Date shall be no later than December 24, 2017 without the consent of Orchard Park, the DIP Lenders and the Monitor, or as otherwise ordered by the Court.
- (d) Subject to the terms of the Lease Surrender Agreement, Orchard Park is accepting the surrender of the Leases and the Real Property Interests and accepting the Premises on an "as is, where is" basis. However, nothing in the Lease Surrender Agreement will limit the ability of Orchard Park to make any claim under any applicable insurance policy of Orchard Park or Sears Canada as it relates to the Property and/or the Premises and any issue in respect thereof, and Sears Canada will provide all reasonable assistance to Orchard Park in respect of any such insurance claim or insurable claim. In addition, the Lease Surrender Agreement contains a number of representations and warranties provided by Sears Canada in favour of Orchard Park that will survive for a year after Closing.
- (e) Sears Canada will be responsible for ensuring that any construction liens which may now be registered, perfected or pending against the Property and/or the

Premises, or which may hereafter become registered or perfected against the Property and/or the Premises, in respect of work contracted for and conducted prior to the Closing Date are discharged from the Property and or the Premises, and any or all construction lien trust claims in respect of same are satisfied or discharged on or before the Closing Date. There are no liens relating to services performed for Sears Canada registered against title for either of the Premises as of September 28, 2017.

- (f) Orchard Park will, as and from the Closing Date or, in some cases, the end of the Post-Closing Access Period, assume, discharge, perform and fulfill all the obligations and liabilities on the part of Sears Canada under the Leases with respect to the Premises and the Property and in respect of the period on or after the Closing Date. Orchard Park will not assume any other obligations of Sears Canada of any kind.

- (g) On Closing, Orchard Park, on its own behalf and on behalf of certain affiliates (collectively, the “**Releasors**”), shall execute a Release whereby Orchard Park will fully and unconditionally release and forever discharge each of the Releasees (which includes, among others, Sears Canada and the other Applicants) of and from any and all Claims which any of the Releasors ever had, now has or hereafter can, shall or may have against any of the Releasees in respect of the Leases, the Premises, and/or the Property that are subject to the Lease Surrender Agreement. However, the release will not apply to any Claims against the Releasees which arise as a result of a deliberate, intentional

or grossly negligent misrepresentation by Sears Canada or any deliberate misconduct on the part Sears Canada in these CCAA proceedings. In addition, Orchard Park will use reasonable efforts to assist Sears Canada to obtain a full release of Sears Canada's obligations under Permitted Encumbrances to the extent that Sears Canada is bound thereby.

- (h) Sears Canada and its agents and their respective representatives will have access to the Premises for a period of 15 weeks following closing in order to remove any of the Excluded Assets or to conduct a liquidation sale of the Inventory and FF&E, or for any other use permitted by Order of the Court. During this time, Sears Canada will prior to obtaining access deliver proof of insurance as required under the Leases, and shall pay all rent, additional rent, taxes, utilities and other charges due under the Leases as if it was still the Tenant under the Leases, provided such payments shall be made in accordance with the Initial Order.¹

Proposed Distribution of Proceeds of Transaction

15. The proposed Approval and Vesting Orders provide 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

¹ The Applicants will be seeking Court approval for a proposed liquidation process in order to conduct a sale of the Applicants' Inventory and FF&E at the Premises.

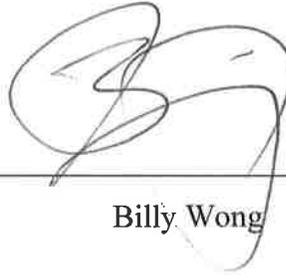
repaid, the Monitor will retain any Net Proceeds remaining on behalf of the Applicants pending further Order of the Court.

16. For all of the foregoing reasons, the Applicants believe that approval of the Lease Surrender 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.

Waleed Malik

Commissioner for taking Affidavits



A handwritten signature in black ink, appearing to read 'Billy Wong', is written over a horizontal line. The signature is stylized and somewhat cursive.

Billy Wong

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

Waleed Malik
A commissioner for taking Affidavits

LEASE SURRENDER AGREEMENT

SEARS CANADA INC.
as Tenant

- and -

ORCHARD PARK SHOPPING CENTRE HOLDINGS INC.
as Landlord

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SCHEDULE "I" FORM OF ASSIGNMENT AND ASSUMPTION OF REALTY TAX
APPEALS 1

THIS LEASE SURRENDER AGREEMENT is made as of September 22, 2017

BETWEEN:

SEARS CANADA INC. (the “**Tenant**”)

- and -

ORCHARD PARK SHOPPING CENTRE HOLDINGS INC.
(the “**Landlord**”)

RECITALS:

- A. On the Filing Date, the Tenant 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.
- B. 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.
- C. The Landlord hereby offers to accept a surrender from the Tenant of the Tenant’s right, title and interest in and to the Leases, the Real Property Interests and the Premises and to accept the resiliation of such Leases on the terms and conditions set out herein (the “**Offer**”).
- D. 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 Tenant and the Landlord (individually, a “**Party**” and collectively, the “**Parties**”) covenant and agree as follows:

ARTICLE 1 DEFINITIONS

1.1 Definitions

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

“**Access Agreement**” means an access agreement between the Landlord and the Tenant, whereby the Tenant, its agents and their respective representatives shall have access to the Premises during the Post-Closing Access Period to conduct a liquidation sale of the Inventory

and/or the FF&E and/or to remove any of the Excluded Assets, and shall be in substantially the form attached as Schedule “F”.

“**Agreement**” means this agreement constituted by the Tenant’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 surrendering to the Landlord all of the Tenant’s right, title and interest in and to the Leases and the Real Property Interests 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).

“**Assignment and Assumption of Assumed Liabilities**” means an assignment by the Tenant and an assumption by the Landlord of the Tenant’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 Landlord in favour of the Tenant 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 Realty Tax Appeals**” means an assignment by the Tenant and an assumption by the Landlord of the Tenant’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 Landlord in favour of the Tenant 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”.

“**Assumed Liabilities**” has the meaning ascribed thereto in Section 3.3(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.

“**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, liabilities, expenses, costs, damages or losses, contingent or otherwise, including loss of value, reasonable professional fees, including fees and disbursements of legal counsel on a full indemnity basis, and all actual and documented costs incurred in investigating or pursuing any of the foregoing or any proceeding relating to any of the foregoing.

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

“**Closing Date**” means the Business Day that is three (3) Business Days following the issuance of the Approval and Vesting Order or such later date as the Tenant (with the consent of the DIP Lenders and the Monitor) may advise the Landlord in writing; provided that the Closing Date shall be no later than October 25, 2017 or such later date (which shall not be later than sixty (60) days following October 25, 2017 without the further consent of the Landlord) as agreed to in writing by the Tenant (with the consent of the DIP Lenders and the Monitor) or as otherwise ordered by the Court.

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

“**Contracts**” means, collectively, all of the Tenant’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 Tenant or any manager or agent on behalf of the Tenant, in each case solely with respect to the Premises or the Leases.

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

“**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 this Agreement as set out on the top of page 1 hereof.

“FF&E” means the fixtures, improvements, tools, signs, furniture, machinery, equipment, personal or moveable property, chattels, furnishings and fixtures including shelves, counters, video cameras and equipment, security systems, point-of-sales systems and related appurtenances, telecommunications systems and related appurtenances, electric light fixtures, elevating devices and equipment and trade fixtures located at the Premises, in each case, to the extent owned or leased by the Tenant, but specifically excluding such FF&E which are the property of the Landlord in accordance with the Lease or common law and any garbage/cardboard compactors located at the Premises.

“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 Landlord’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).

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

“Inventory” includes all inventory, stock, supplies and all other items to be sold from any of the Premises.

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

“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.

“Leases” means the leases and other agreements to occupy the Premises entered into by, or assigned in favour of the Tenant, as same have been amended, restated, renewed or supplemented from time to time, including but not limited to those documents listed on Schedule “B”. If the Premises comprise more than one leased location, the Leases related to any one leased location are referred to as a **“Lease”**.

“Lease Amendment and Surrender Agreement” means, with respect to each Lease, an amendment and surrender of lease in substantially the form attached as Schedule “H”.

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

“Matching Security” has the meaning ascribed thereto in Section 3.6.

“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 Landlord and the Tenant that all conditions of Closing in Sections 7.1, 7.2 and 7.3 of this Agreement have been satisfied or waived and (ii) the Surrender Consideration and any Taxes payable to the Tenant that are not self-assessed and remitted by the Landlord.

“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 related to any of the foregoing.

“Offer” has the meaning ascribed thereto in Recital C.

“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 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 Tenant’s leasehold interest in and to any Property situated outside of the Province of Québec on which the Premises are located or the rights of the Tenant as lessee under the Leases; (b) Encumbrances resulting from the Landlord’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.

“Post-Closing Access Period” has the meaning ascribed thereto in Section 6.3(d).

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

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

“Property Claims” means any and all Claims which the Landlord ever had, now has or hereafter can, shall or may have against the Tenant in respect of the Leases, the Real Property Interests, the Premises, and/or the Property, other than claims against the Tenant which arise from its breach of this agreement or its breach of the terms of or the operation of the SISP or as a result of a deliberate, intentional or grossly negligent misrepresentation by the Tenant or as a result of any deliberate misconduct on the part of the Tenant in the CCAA Proceedings.

“Real Property Interests” means all properties, assets, interests and rights of the Tenant which are related to the operation at each of the Premises, which for greater certainty do not include Excluded Assets but include the Tenant’s right, title and interest, including its leasehold interest at common law and its rights as a lessee under civil law, in and to the Leases and the Premises, including, if any, the benefit of all easements, restrictive covenants, access rights, licences to use any common areas or rooftop areas of the buildings or shopping centres of which the Premises form part, rights to renew or extend the term of any Lease, options and similar rights of first offer, first refusal or first opportunity or otherwise to lease or purchase (if any), parking rights and signage rights.

“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.

“Release of Property Claims” means a release by the Landlord of any Property Claims against the Tenant and all predecessors in interest to the Tenant under any of the Leases, in substantially the form attached as Schedule “L”

“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.

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

“Surrender Consideration” has the meaning ascribed thereto in Section 3.1

“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.

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

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

ARTICLE 2 SURRENDER TRANSACTION

2.1 Offer and Acceptance

- (a) Subject to the Initial Order and the SISP Order, the Tenant hereby agrees to surrender and the Landlord hereby agrees to accept a surrender of the Leases and the Real Property Interests on the Closing Date in accordance with the terms and conditions of this Agreement.
- (b) The Offer shall be irrevocable by the Landlord until September 28, 2017, provided that if this Offer is selected as a Successful Bid, this Offer will remain irrevocable until the closing of the Transaction, unless this Agreement is terminated in accordance with its terms.
- (c) Upon acceptance of this Offer by the Tenant, this Offer shall constitute a binding agreement to surrender the Leases and the Real Property Interests, on the terms of this Agreement.

2.2 As Is, Where Is

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

- (a) except as expressly stated in this Agreement including the Tenant’s covenant to leave the Premises in a broom-swept condition on the Closing Date as set out in Section 5.1(c), the Landlord is accepting the surrender of the Leases and the Real Property Interests and accepting the Premises, on a free and clear basis in accordance with the Approval and Vesting Order and 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 state of title thereto, the state of any Encumbrances, the condition of any of the Premises and the Real Property Interests and the status of any of the Leases or the Encumbrances, the existence of any default on the part of the Tenant, the

physical, environmental or other condition of, in, on, under or in the vicinity of any of the Premises, the existence of any Encumbrance and/or Off-Title Compliance Matters affecting the Leases, the Real Property Interests, the Premises, the Assumed Liabilities, or 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)* and any other similar legislation of any other jurisdiction will not apply and are hereby waived by the Landlord and the Parties agree to exclude, to the extent applicable, the effect of the legal warranty provided for by Article 1716 of the *Civil Code of Québec* and that the Landlord is accepting a surrender of the Real Property Interests at its own risk within the meaning of Article 1733 of the *Civil Code of Québec*;

- (b) any disclosure in respect of the Leases, the Real Property Interests and/or the Premises, if any, was made available to the Landlord solely as a courtesy but the Landlord is not entitled to rely on such disclosure, and it is expressly acknowledged by the Landlord that, except as expressly stated in this Agreement, 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 Tenant 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;
- (c) the Landlord hereby unconditionally and irrevocably waives any and all actual or potential rights or Claims the Landlord might have against the Tenant pursuant to any warranty, legal or conventional, express or implied, of any kind or type relating to the Leases, the Real Property Interests, the Premises or the Assumed Liabilities or any other assets or any other aspect of the Transaction, other than as may arise as a result of a deliberate, intentional or grossly negligent misrepresentation by the Tenant or as a result of any deliberate misconduct on the part of the Tenant in the CCAA Proceedings. Such waiver is absolute, unlimited (but for the forgoing sentence) 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;

- (d) the Landlord conducted its own independent review, inspection, diligence and investigations and forming its own independent opinions and conclusions in respect of the Leases, the Real Property Interests, the Premises and the Assumed Liabilities. The Landlord'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 made by the Tenant and/or the Monitor and/or their respective legal counsel, the Financial Advisor or other advisors or representatives. The Landlord acknowledges having been given a reasonable and adequate opportunity to conduct its own independent diligence prior to entering in this Agreement;
- (e) during the Interim Period and the Post-Closing Access Period in accordance with the Access Agreement, the Tenant shall be entitled to, but is not obligated to, remove any and all Inventory, FF&E and any other Excluded Assets from all or any of the Premises;
- (f) the Tenant 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 Landlord to make, at the Landlord's sole cost, any repairs, replacements, renovations, alterations, improvements and upgrades in or to the Property following Closing as may be required by the Landlord to make the Property suitable for its purposes;
- (g) the Leases, the Real Property Interests, the Premises or the Assumed Liabilities 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 same, 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 Tenant shall not be responsible for rectification of any matters disclosed by any Governmental Authority or quasi-governmental authority having jurisdiction, and the Landlord shall accept the Property subject to such matters; and
- (h) the Landlord shall accept full responsibility for all conditions related to the Property, and the Landlord shall comply with all orders relating to the condition of the Property issued by any competent Governmental Authority, including any order issued against the Tenant including without limitation, any non-compliance with Environmental Laws or relating to the existence of any Hazardous Substances.

The Tenant has no and shall have no obligations or responsibility to the Landlord after Closing with respect to any matter relating to the Real Property Interests, Leases, the Premises or the Property or the condition thereof save and only to the extent expressly provided in this Agreement. The Landlord shall be responsible for and hereby indemnifies and saves harmless

the Tenant and its employees, directors, officers, appointees and agents from any costs, including legal and witness costs, claims, demands, civil actions, prosecutions, or administrative hearings, fines, judgments, awards, including awards of costs, that may arise or become known to the Landlord after the Closing Date as a result of the condition of the Property, any order issued by any competent Governmental Authority in connection with the condition of the Property, or any loss, damage, or injury caused either directly or indirectly as a result of the condition of the Property including, without limitation, non-compliance with the Environmental Laws or the existence of any Hazardous Substances.

Nothing in this section or otherwise in the Agreement shall limit the ability of the Landlord to make any claim under any applicable insurance policy of the Landlord or the Tenant as it relates to the Property and or the Premises and any issue in respect thereof to the extent of such policies now in existence in respect of same and the Tenant will provide all reasonable assistance to the Landlord in respect of any such insurance claim or insurable claim.

The Tenant shall be responsible to ensure that any or all construction liens which may now be registered, perfected or pending against the Property and or the Premises or which may hereafter become registered or perfected against the Property and or the Premises in each case in respect of work contracted for or on behalf of the Tenant and conducted prior to the Closing Date are discharged from the Property and or the Premises and any or all construction lien trust claims in respect of same are satisfied or discharged on or before the Closing Date. There will be no adjustment to the Surrender Consideration nor any amount paid by the Landlord for any amount paid by the Tenant to the affect the discharge of those liens or to meet its obligation hereunder.

This Section 2.1(a) shall survive and not merge on Closing and all Closing Documents shall incorporate this Section 2.1(a) by reference.

ARTICLE 3 CONSIDERATION

3.1 Surrender Consideration

The consideration payable by the Landlord to the Tenant for the Transaction shall be [REDACTED] (the "**Surrender Consideration**") exclusive of provincial sales tax, if any. Subject only to adjustment in accordance with this Agreement, the Surrender Consideration shall be paid to the Tenant, by wire transfer of immediately available funds to the Monitor in trust or as it may direct on the Closing Date.

3.2 Surrender Consideration Allocation

- (a) The Tenant and the Landlord agree that the Surrender Consideration is allocated among the Leases as set out on Schedule "D" and the Tenant and the Landlord shall adopt such allocation for the purposes of all tax returns and filings made by them or on their behalf. This Section 3.2 shall survive and not merge on Closing.
- (b) The allocation of the Surrender Consideration as between the Real Property Interests is as set out on Schedule "D". The Landlord and the Tenant shall adopt such allocations for the purposes of all tax returns, elections and filings respectively made by them or on their behalf.

3.3 Assumed Liabilities

- (a) The Landlord covenants with the Tenant that it shall, as and from the Closing Date, assume, discharge, perform and fulfill all the obligations and liabilities on the part of the Tenant under the Lease with respect to the Premises and the Property, only in respect of the period on or after the Closing Date, or otherwise arising, incurred or accrued on or after the Closing Date (collectively, the “**Assumed Liabilities**”). For greater certainty, the Landlord will not assume any other obligations of the Tenant of any kind.
- (b) Without limiting the foregoing, the Landlord shall execute and deliver to the Tenant on the Closing Date documents substantially in the form of: (i) the Lease Amendment and Surrender Agreement for each Lease; (ii) the Assignment and Assumption of Assumed Liabilities; and (iii) an Assignment and Assumption of Realty Tax Appeals.

3.4 Property Claims

The Landlord covenants with the Tenant that it shall, as and from the Closing Date, assign, release and quit claim to the Tenant all of the Landlord’s right, title and interest in and to the Property Claims, together with any and all benefits, advantages, privileges and rights relating thereto or arising and flowing therefrom, to have and to hold the same unto the Tenant, its successors and assigns, forever. On Closing, the Landlord shall execute and deliver to the Tenant a document substantially in the form of the Release of Property Claims.

3.5 Letters of Credit and Deposits

On the Closing Date, the Landlord shall issue replacement letters of credit and/or security deposits for the Letters of Credit and shall use its best commercial efforts to cause the Letters of Credit to be released and returned to the Tenant without any further drawings thereunder. Provided that to the extent that the Landlord is unable to cause all of the Letters of Credit to be released and returned to the Tenant, without any further drawings thereunder, in lieu of issuing the replacement letters of credit and/or security deposits referred to above, the Landlord shall cause matching, unconditional and irrevocable letters of credit and/or security deposits in form, and from an issuer, satisfactory to the Tenant, in favour of the Tenant to be provided to the Tenant on the Closing Date (collectively, the “**Matching Security**”) which Matching Security may be drawn upon by the Tenant and its successors and assigns if and to the extent that the Tenant’s Letters of Credit are drawn upon from time to time, and the Landlord shall reimburse the Tenant for any direct incremental costs incurred and indemnify and hold the Tenant 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 Tenant.

3.6 Trade-Marks

Notwithstanding the foregoing or anything else contained herein or elsewhere, the Landlord 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 Landlord as part of the Transaction; and (b) all right, title and interest of the Tenant 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 Transaction. This Section shall survive and not merge on Closing.

ARTICLE 4 ADJUSTMENTS

4.1 Statement of Adjustments and Absence of Post-Closing Adjustments

The Tenant shall prepare a draft statement of adjustments and deliver same with supporting documentation to the Landlord for its review and approval 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 Landlord and the Tenant as of the Closing Date based upon the best information available to the Parties at such time, each Party acting reasonably and such estimate shall serve as a final determination. The final form of statement of adjustments shall be satisfactory to the Monitor, acting reasonably. There shall be no further adjustments or readjustments after Closing of any amounts adjusted or intended to be adjusted on the statement of adjustments pursuant to this Agreement and the amounts set out on the statement of adjustments shall be final.

4.2 Items of Adjustments Under the Leases

- (a) The Tenant and the Landlord shall adjust the rent (including basic or minimum rent and additional rent) and other amounts payable under each of the Leases which have been paid or pre-paid to the Landlord in respect of each of the Leases 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 Landlord.
- (b) Without limiting the generality of the foregoing, the Tenant and the Landlord 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) 2016 and 2017 adjustments for additional rent paid by the Tenant required after reconciliation of actual amounts with estimated amounts. For greater certainty, there shall be no prior year reconciliations;
 - (iii) in favour of the Tenant, on account of any roof repair costs or other costs of improvements paid by the Tenant which were required to be reimbursed to the Tenant by the Landlord;
 - (iv) in favour of the Tenant, on account of any amount owing to the Tenant by the Landlord in respect of unpaid tenant allowance, rent free periods or other tenant inducements; and
 - (v) in favour of the Tenant, on account of any other credit/setoff that the Tenant is entitled to claim from the Landlord, e.g. credit against/deduction

from future additional rent charges due to the Tenant having performed certain work or paid for certain costs which were the Landlord's responsibility.

- (c) The Landlord shall be responsible for and pay all applicable Taxes payable in connection with the Transaction.
- (d) The Landlord hereby waives any fees or charges payable to the Landlord under any of the Leases in respect of the Transaction, including, without limitation, any fees, penalties, or charges payable to any Landlord in respect of a surrender of a Lease and any obligation in respect of the payment of accelerated and/or increased rent which arises solely as a result of a surrender of a Lease.

4.3 Realty Tax Appeals

- (a) The Tenant and the Landlord acknowledge that with respect to the Premises the Tenant 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, in consideration of an additional adjustment in favour of the Tenant in the amount equal to 100% of any expected credit, refund and/or rebate which may arise from any of the Realty Tax Appeals (collectively, the "**Realty Tax Refunds**") for any period that is prior to the Closing Date, the Tenant shall assign to the Landlord all of its right, title and interest, if any, in and to such Realty Tax Refunds.
- (c) From and after the Closing Date, the Landlord 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 Landlord and at the Landlord's sole cost and expense, the Tenant agrees to co-operate with the Landlord with respect to the Realty Tax Appeals and to provide the Landlord 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 Tenant, at the request of the Landlord, the Tenant shall cooperate with the Landlord, including granting such authorizations as may be reasonably required, to enable the Landlord to pursue and prosecute such Realty Tax Appeals, at the Landlord's sole cost and expense.

This Section 4.3 shall survive and not merge on Closing.

4.4 Utilities

- (a) The Landlord shall not assume any contracts or agreements entered into by or on behalf of the Tenant 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 Tenant shall

terminate all of its contracts and agreements for the supply of any utilities to the Premises. For the avoidance of doubt, there shall be an adjustment at Closing in favour of the Landlord in respect of the amounts due for any utilities consumed but not paid for by the Tenant up until the Closing Date. The provisions of this Section 4.4(a) shall survive and not merge on Closing.

- (b) Subject to the retention of such payments as are due and paid under the Access Agreement which are for the benefit of the Landlord, from and after the Closing Date, any and all utility charges and other related fees payable for any of the Premises, solely in respect of services rendered from or after the Closing Date, shall be the sole responsibility of the Landlord.

ARTICLE 5 INTERIM PERIOD & LEASE MATTERS

5.1 Interim Period

- (a) During the Interim Period, the Landlord and the Tenant shall comply with each and every term and condition of the Leases 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 and the Post-Closing Access Period in accordance with the Access Agreement, the Tenant by itself or through any agent shall be entitled to, but is not obligated to, remove and sell, or permit any other Persons to remove and sell, any and all chattels, personal or movable property, Inventory, FF&E and any other Excluded Assets, from the Premises in accordance with this Agreement, the Initial Order, the SISP Order, the Access Agreement and any other Order of the Court.
- (c) Notwithstanding any provision of the Leases, the Tenant shall have no obligation to operate in the Premises during the Interim Period or the Post-Closing Access Period and on Closing the Tenant shall surrender the Premises in a “broom-swept” clean condition, ordinary wear and tear excepted, and, for greater certainty, the Tenant shall not be required to repair and/or reinstate the Premises or remove any Inventory, FF&E or Excluded Assets.
- (d) In the event that prior to the Closing Date all or a part of the Premises or more is expropriated or notice of expropriation or intent to expropriate all or a part of the Premises is issued by any Governmental Authority, the Landlord shall immediately advise the Tenant thereof by Notice in writing. Notwithstanding the occurrence of any of the foregoing, the Landlord shall complete the Transaction contemplated herein in accordance with the terms hereof without reduction of the Surrender Consideration and all compensation for expropriation shall be payable to the Landlord and all right and claim of the Tenant to such amounts, if any, shall be assigned to the Landlord on a without recourse basis.
- (e) The Premises shall be and remain until Closing at the risk of the Tenant. In the event of material damage by fire or other hazard to the Premises or any part

thereof occurring before the Closing Date, the Tenant shall immediately advise the Landlord thereof by Notice in writing. Notwithstanding the occurrence of any of the foregoing, the Landlord shall complete the Transaction contemplated herein in accordance with the terms hereof without reduction of the Surrender Consideration and the proceeds of any insurance available or actually paid or payable to the Tenant shall be paid and/or assigned to the Landlord on a without recourse basis.

5.2 Contracts

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

5.3 Releases

The Landlord shall use reasonable efforts to assist the Tenant and shall co-operate with the Tenant, as reasonably requested, to obtain from third parties a full release of the Tenant's obligations under the Permitted Encumbrances to the extent that the Tenant is bound thereby, 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 Tenant's Representations and Warranties

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

- (a) the execution, delivery and performance by the Tenant of this Agreement has been duly authorized by all necessary corporate action on the part of the Tenant subject to the Approval and Vesting Order and authorization as is required by the Court
- (b) the Tenant is not a non-resident of Canada within the meaning of the *Income Tax Act* (Canada);
- (c) the Tenant is a registrant for the purposes of the tax imposed under Part IX of the *Excise Tax Act*;
- (d) the Tenant is the sole tenant of the Premises;
- (e) the Tenant has no knowledge of any non-monetary material breach of the Lease on the part of the Tenant, save these CCAA Proceedings and its insolvency, or any material issue with the Premises in breach of the Lease which would not be

visible during any walkthrough inspection conducted by the Landlord, acting reasonably;

- (f) the Tenant has no knowledge of any prosecution or claims in any material respects against the Tenant by any Government Authority, or complaints, requests to the Tenant to comply or orders to comply which are material and are outstanding or pending from any Government Authority with respect to the Premises;
- (g) subject to obtaining the Approval and Vesting Order, the execution, delivery and performance by the Tenant of this Agreement
 - (i) 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, including any consent or approval from a mortgagee or lender or its respective agent, servicer or hypothecary representative or such other creditor to the Landlord or its affiliates with security on all or part of a Property, other than those which will be obtained by Closing;

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

6.2 Landlord's Representations and Warranties

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

- (a) the Landlord 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 Landlord is not a non-resident of Canada within the meaning of the *Income Tax Act* (Canada);
- (c) the Landlord 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 Landlord of this Agreement:
 - (i) has been duly authorized by all necessary corporate action on the part of the Landlord;

- (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, including any consent or approval from a mortgagee or lender or its respective agent, servicer or hypothecary representative or such other creditor to the Landlord or its affiliates with security on all or part of a Property; and
- (iii) will not result in the violation of any Laws;
- (e) [deleted]
- (f) the Landlord is the registered and beneficial owner, ground lessee, emphyteuta or head tenant of the Property and the sole and beneficial lessor under the Leases for the Premises;
- (g) this Agreement has been duly executed and delivered by the Landlord and constitutes legal, valid and binding obligations of the Landlord, 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;
- (h) the Landlord has reviewed and is familiar with all of the terms and conditions of the Leases; and
- (i) the Landlord has, and will have at Closing, all funds on hand necessary to pay the Surrender Consideration and any Taxes payable in connection with the Transaction.

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

6.3 Landlord's Covenants

- (a) The Landlord shall use commercially reasonable efforts to take all such actions as are within its power or control, and to cause other actions to be taken which are not within its power or control, so as to ensure compliance with each of the conditions and covenants set forth in Article 7 which are for the benefit of any other Party.
- (b) The Landlord shall take any and all steps in order to avoid the filing of an application for, or the issuance of any interim Order or other Order which would have the effect of delaying or preventing the Closing, and if any such interim Order or other Order is issued, the Landlord shall take any and all steps to have it rescinded, revoked or set aside as soon as possible. For greater certainty, "any

and all steps” shall include, committing to or effecting undertakings, a consent agreement, a hold separate arrangement, a consent Order, a hold separate Order, a sale, a divestiture, a disposition or other action, in any such case without any reduction of the Surrender Consideration. Nothing herein shall prevent the Landlord from taking any necessary steps against the Tenant or any related party in these CCAA Proceedings in respect of any other property, matter or thing.

(c) The Landlord will promptly notify the Tenant and the Tenant will promptly notify the Landlord 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.

(d) For a period from the Closing Date to the date that is fifteen (15) weeks from the Closing Date (the “**Post-Closing Access Period**”), the Tenant and its agents and their respective representatives (collectively, the “**Accessing Parties**”) shall have access to the Premises to occupy the Premises in order for one or more of the Accessing Parties to conduct a liquidation sale of the Inventory and/or the FF&E and/or to remove any of the Excluded Assets, in accordance with the Access Agreement, and, without limitation, subject to the requirements to make payment and the other obligations therein. The Tenant shall not be obligated to remove any Excluded Assets or repair the Premises (other than as expressly stated in the Access Agreement). Any Excluded Assets left on the Premises at the expiry of the Post-Closing Access Period shall become the property of the Landlord without a bill of sale, representation, warranty or other title documentation. This Section shall survive and not merge on Closing.

6.4 Tenant’s Covenants

The Tenant 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 Tenant 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 Landlord further warrants, represents and covenants to the Tenant, and acknowledges and confirms that the

Tenant is relying on such representations and warranties, indemnities and covenants in connection with the entering into of this Agreement, that:

- (a) the Landlord 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 shall be provided at closing which registration shall be in full force and effect and shall not have been cancelled or revoked on the Closing Date;
- (b) the Landlord has entered into this Agreement and is accepting a surrender of the Leases and the Real Property Interests 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 Landlord 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 Transaction, including the surrender of the Leases and the Real Property Interests;
- (d) on Closing, the Landlord will pay, in addition to the Surrender Consideration, and the Tenant will collect, any Taxes including transfer taxes as well as goods and services tax or harmonized sales tax, as the case may be, imposed under the *Excise Tax Act* and any similar value added or multi-staged tax or sales tax exigible on the Transaction, except to the extent that the Landlord 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 Landlord 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 Landlord 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 Landlord shall indemnify and save the Tenant harmless from and against any and all Taxes including transfer taxes and goods and services tax or harmonized sales tax, as the case may be, imposed under the *Excise Tax Act* and any similar value added or multi-staged tax or sales tax, penalties, costs and/or interest which may become payable by or assessed against the Tenant as a result of any failure by the Tenant 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 Transaction or as a result of any inaccuracy,

misstatement or misrepresentation made by the Landlord 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 Landlord 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 Tenant or the Landlord in this Agreement shall survive the Closing.

ARTICLE 7 CLOSING

7.1 Conditions of Closing for the Benefit of the Landlord

The Landlord's obligation to complete the Transaction 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 Landlord and may be waived, in whole or in part, by the Landlord:

- (a) the representations and warranties of the Tenant 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 Tenant 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 Landlord at Closing all the Closing Documents contemplated or required to be so executed and delivered in this Agreement;
- (c) the Landlord shall have received the Closing Documents.

7.2 Conditions of Closing for the Benefit of the Tenant

The Tenant's obligation to complete the Transaction 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 Tenant and may be waived, in whole or in part, by the Tenant:

- (a) the representations and warranties of the Landlord 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 Landlord shall have paid the Surrender Consideration and any Taxes payable to the Tenant that are not self-assessed and remitted by the Landlord, subject to the adjustments in accordance with this Agreement, 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 Tenant at Closing all the documents contemplated required to be so executed and delivered in this Agreement; and

- (c) the Tenant shall have received the Closing Documents.

7.3 Conditions of Closing for the Mutual Benefit of the Parties

The obligations of either the Tenant or the Landlord to complete the Transaction 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
- (b) the Monitor shall have delivered the Monitor's Certificate.

7.4 Closing Documents

On or before Closing, subject to the provisions of this Agreement, the Tenant and the Landlord 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 Landlord and the Tenant and, where applicable, in registerable form), the following, which shall be in form and substance reasonably satisfactory to the Landlord and the Tenant and their respective solicitors:

- (a) By the Tenant and the Landlord:
 - (i) the Lease Amendment and Surrender Agreement for each Lease;
 - (ii) the Assignment and Assumption of Realty Tax Appeals;
 - (iii) the Assignment and Assumption of Assumed Liabilities;
 - (iv) a deed of cancellation in registrable form consenting to the cancellation of all registrations made at the land registry office in respect of any Lease for Premises situated in the Province of Québec, which shall be prepared by the solicitors of the Landlord at the sole cost and expense of the Landlord and approved by the Tenant's solicitors, acting reasonably;
 - (v) the Access Agreement; and
 - (vi) 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 Tenant:
 - (i) the Approval and Vesting Order;

- (ii) the statement of adjustments evidencing the adjustments made at Closing;
 - (iii) 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 Tenant, provided that such keys and such other information may be retained by the Tenant during the Post-Closing Access Period; and
 - (iv) such other documents as the Landlord or the Landlord's solicitors shall reasonably require in good faith in accordance with this Agreement or as may be required under applicable Laws.
- (c) By the Landlord:
- (i) the Surrender Consideration, subject to the adjustments in accordance with this Agreement, plus all Taxes required to be collected by the Tenant pursuant to this Agreement;
 - (ii) GST/HST Certificate, Undertaking and Indemnity;
 - (iii) the Matching Security, if applicable;
 - (iv) the Release of Property Claims; and
 - (v) such other documents as the Tenant or the Tenant's solicitors shall reasonably require in good faith in accordance with this Agreement or as may be required under applicable Laws.

7.5 Closing Date

- (a) 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 Tenant and the Landlord 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 Landlord will pay or satisfy the Surrender Consideration in accordance with Article 3, and the Closing of the Transaction will take effect, pursuant to the Approval and Vesting Order, upon delivery of the Monitor's Certificate.

7.6 Confirmation of Satisfaction of Conditions

On the Closing Date, subject to satisfaction or waiver by the relevant Party or Parties, as applicable, of the conditions of Closing in its favour contained in Article 7, the parties or their respective solicitors shall confirm to the Monitor the satisfaction of all conditions to Closing, and upon the Monitor receiving the Surrender Consideration, subject to the adjustments in accordance with this Agreement, the Monitor shall deliver copies of the Monitor's Certificate to the Parties hereto and release the Surrender Consideration, as well as any Taxes payable to the

Tenant that are not self- assessed and remitted by the Landlord, to the Tenant and following Closing file the Monitor's Certificate with the Court.

7.7 Closing

- (a) The Surrender Consideration, as well as any Taxes payable to the Tenant that are not self- assessed and remitted by the Landlord, subject to the adjustments in accordance with this Agreement, 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 this Section 7.7 and the Monitor shall not assume or be deemed to assume any duty, liability or responsibility other than to hold the trust funds and any interest earned thereon in accordance with the provisions of this Section 7.7 and to pay the funds, and any interest earned thereon, to the Party becoming entitled thereto in accordance with the terms of this Agreement, except in the event of a dispute between the parties as to entitlement to the trust funds, of which the Monitor has been given notice in writing, the Monitor may, in its sole, subjective and unreviewable discretion, or shall, if requested by either of the parties, pay the trust funds and any and all interest earned thereon into court, whereupon the Monitor shall have no further obligations relating to the trust funds or any interest earned thereon or otherwise hereunder.
- (b) The Monitor shall not, under any circumstances, be required to verify or determine the validity of any written notice or other document whatsoever delivered to the Monitor in connection with the trust funds and the Monitor is hereby relieved of any liability or responsibility for any loss or damage which may arise as a result of the acceptance by the Monitor of any such written notice or other document.
- (c) On or before Closing, the parties' respective solicitors shall exchange the Closing Documents in escrow and the Surrender Consideration, as well as any Taxes payable to the Tenant that are not self- assessed and remitted by the Landlord, subject to the adjustments in accordance with this Agreement, shall be delivered to or paid to the order of the Monitor, in trust, and shall remain in escrow with the Monitor until the Monitor has delivered the Monitor's Certificate to the Tenant and the Landlord, 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 Surrender Consideration, as well as any Taxes payable to the Tenant that are not self- assessed and remitted by the Landlord, subject to the adjustments in accordance with this Agreement, shall be forthwith released to the Tenant 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 Tenant and Landlord.
- (d) The parties acknowledge that, notwithstanding that the Monitor is not a party to this Agreement, the Monitor may rely upon the provisions of this Section 7.7.

- (e) This Section 7.7 shall survive the Closing or termination of this Agreement.

7.8 Filings and Authorizations

- (a) Each of the Tenant and the Landlord, 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 Transaction 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 Tenant and the Landlord 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 Tenant or the Landlord, 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 Tenant and the Landlord and file the Monitor's Certificate with the Court, without independent investigation, upon (i) receiving written confirmation from the Tenant and the Landlord or their respective solicitors that all conditions of Closing have been satisfied or waived, and setting out the amount of the Surrender Consideration and Taxes payable to the Tenant that are not self-assessed and remitted by the Landlord, and (ii) receipt of such Surrender Consideration and Taxes by the Monitor, and the Monitor shall have no liability to the Tenant or the Landlord or any other Person as a result of filing the Monitor's Certificate.

7.9 Court Matters

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

7.10 Termination

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

- (a) by mutual consent of the Landlord and Tenant (in respect of which the Tenant shall require the consent of the DIP Lenders and Monitor to provide its consent) or on further order of the Court;
- (b) by the Landlord if any of the conditions in Section 7.1 have not been satisfied on or before the Closing Date and the Landlord has not waived such condition;
- (c) by the Tenant 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 Tenant has not waived such condition; or
- (d) by either Party if any of the conditions precedent in Section 7.3 have not been satisfied on or before the Closing Date and the parties have not waived such condition; or
- (e) by either party (with the consent of the DIP Lenders and the Monitor) if Closing has not occurred on or before the Closing Date, provided that the terminating party may not terminate this Agreement pursuant to this Section 7.10(e) 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.

ARTICLE 8 OTHER PROVISIONS

8.1 Confidentiality

The Tenant shall only be entitled to disclose this Agreement and all information provided by the Landlord in connection herewith, to the Court, the Monitor, the DIP Lenders and to parties in interest to the CCAA Proceedings. The Agreement will otherwise be kept confidential. To the extent the Agreement is to be included in motion materials, a sealing order will be sought for commercially sensitive financial or similar information as part of the Approval and Vesting Order. This Section shall survive and not merge on Closing.

8.2 Leasehold Interest

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 Tenant (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 Tenant, all references to the Tenant's "leasehold" interest in such Premises shall mean the Tenant'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 Tenant (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 Tenant, and (iii) all other similar references relating to the Leases and Premises shall be interpreted and construed in a similar manner. The Tenant warrants that there is no valid sublease or licence of the Premise.

8.3 Time of the Essence

Time shall be of the essence of this Agreement.

8.4 Entire Agreement

This Agreement constitutes 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 Tenant or the Landlord 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 surrenders, releases, conveyances, transfers, documents and assurances as may be deemed necessary or advisable from time to time in order to effectively surrender the Leases and the Real Property Interests to the Landlord and carry out the terms and conditions of this Agreement in accordance with their true intent. The provisions of this Section 8.7 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 of Ontario, 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 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

Notwithstanding anything to the contrary contained in the Lease, any notice, consent or approval required or permitted to be given in connection with this Agreement or the Leases (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 Tenant 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 Landlord at:

●

with a copy to:

Blaney McMurtry LLP

Attention: John Wolf and David Ullmann

A Notice is deemed to be given and received (i) if sent by personal delivery or same day courier, on the date of delivery if it is a Business Day and the delivery was made prior to 5:00 p.m. (local time in the place of receipt) and otherwise on the next Business Day, (ii) if sent by overnight courier, on the next Business Day, or (iii) if transmitted by facsimile, on the Business Day following the date of confirmation of transmission by the originating facsimile, or (iv) if sent by email, when the sender receives an email from the recipient acknowledging receipt, provided that an automatic "read receipt" does not constitute acknowledgment of an email for purposes of this section. Any Party may change its address for service from time to time by providing a Notice in accordance with the foregoing. Any subsequent Notice must be sent to the Party at its changed address. Any element of a Party's address that is not specifically changed in a Notice will be assumed not to be changed. Subject to Section 8.19, 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 Landlord's solicitors on behalf of the Landlord and by the Tenant's solicitors on behalf of the Tenant and any tender of Closing Documents may be made upon the Tenant's solicitors and the Landlord's solicitors, as the case may be.

8.19 No Registration of Agreement

The Landlord 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 Properties 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

Landlord 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 Property and/or any part thereof prior to the successful completion of the Transaction contemplated herein on the Closing Date. The Landlord shall indemnify and save the Tenant 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 Tenant 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 Landlord shall be solely responsible for and shall pay, in addition to the Surrender Consideration, any land transfer taxes payable in connection with the Transaction, all registration taxes, fees and other costs payable in respect of registration of any documents to be registered by the Landlord at Closing and all federal and provincial sales and other taxes payable upon or in connection with the Transaction, 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.

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 Tenant and the Landlord 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 Landlord has and shall have no right to assign, convey and/or transfer its rights and/or obligations hereunder 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 Tenant, which consent may be arbitrarily and unreasonably withheld by the Tenant.

8.24 Amendments

This Agreement may only be amended, supplemented or otherwise modified by written agreement signed by the Tenant and the Landlord, 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 Tenant or the Tenant's solicitors on one hand and the Landlord or the Landlord'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.

8.26 Closing Date and Tenant Liability

The use of the term "Closing Date" in any section in this Agreement where it is meant to be a reference point in time for the purpose of dividing liability between the Tenant and the Landlord before and after a point in time (such as paragraphs 2.2 or 3.3) shall not mean the date on which the Transaction closed, but shall mean the moment when the Tenant finally hands over possession of the Property and the Premises and or surrenders all of its rights to the Premises to the Landlord and has no further right, under the Lease, the Access Agreement or otherwise, to access or provide access to the Property without the further consent of the Landlord.

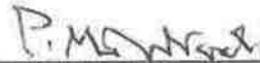
8.27 Real Estate Investment Trust

If at any time any interest of Landlord is held by a trust, the obligations of such Landlord hereunder and any other documents or agreements contemplated herein or delivered in respect hereof shall not be personally binding upon, and resort shall not be had to, nor shall recourse or satisfaction be sought from, the private property of any of the trustees, unitholders, annuitants under a plan of which a unitholder acts as a trustee or carrier, or officers, employees or agents of any trust, but the property of such Landlord only shall be bound by the obligations of Landlord hereunder and thereunder.

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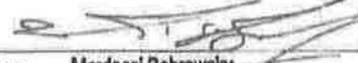
IN WITNESS WHEREOF the parties have executed this Agreement.

SEARS CANADA INC.

By: 
Name: P. McWaters
Title: Secretary

By: _____
Name: _____
Title: _____

ORCHARD PARK SHOPPING CENTRE HOLDINGS INC., by its manager, without personal liability, Primaris Management Inc.

By: 
Name: Mordecai Bobrowsky
Title: Vice President, Legal

By: 
Name: _____
Title: Patrick Sullivan
Chief Operation Officer
Primaris Management Inc.

SCHEDULE "A"
PREMISES

Sears Department Store

Landlord leases to Tenant and Tenant leases from Landlord the following premises situated in the City of Kelowna, Province of British Columbia, more particularly described in the Lease and forms a portion of the buildings located in the Orchard Park Shopping Centre which is known municipally as 2271 Harvey Avenue, Kelowna, British Columbia VIY 6H2 and is situated on the land legally described in Schedule "B" to the Lease. (the "**Sears Department Leased Premises**")

Sears Home Store

Landlord leases to Tenant and Tenant leases from Landlord the following premises situated in the City of Kelowna, Province of British Columbia, more particularly described in the Lease and forms a portion of the buildings located in the Orchard Park Shopping Centre which is known municipally as 2271 Harvey Avenue, Kelowna, British Columbia VIY 6H2 and is situated on the land legally described in Schedule "B" to the Lease. (the "**Sears Home Leased Premises**")

SCHEDULE "B"
LEASE PARTICULARS

Sears Department Store

By a lease dated September 1, 1971 as amended by lease amending agreements dated December 14, 1993, February 7, 1994, April 17, 2001 and April 22, 2010 between the Landlord, as landlord, and the Tenant, as tenant, comprising of a forty (40) year lease term (collectively the "**Sears Department Lease**")

Sears Home Store

By a lease dated September 29, 2000 as amended by lease amending agreement dated April 22, 2010 between the Landlord, as landlord, and the Tenant, as tenant, the Landlord grants to the Tenant three (3) consecutive ten (10) year option to extend initial term of ten (10) years (collectively the "**Sears Home Lease**")

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 Tenant;
2. All items, materials and signs bearing the logo, trade-mark, trade-name or business name or other mark or design of the Tenant;
3. All FF&E and Inventory which have been removed from the Premises by or on behalf of the Tenant or its agents or their respective representatives prior to the expiry of the Post-Closing Access Period;
4. Any property belonging to the subtenants, franchisees or licensees of the Tenant or other occupants of the Premises;
5. Any and all assets not located at a Premises or any asset not used directly and exclusively at the Premises; and
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 Tenant or any of its affiliates (including, the websites).

SCHEDULE "D"
SURRENDER CONSIDERATION ALLOCATION

N/A

● 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 Landlord, the DIP ABL Agent, the DIP Term Agent 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 Surrender Agreement, as applicable.

APPROVAL OF THE LEASE SURRENDER 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 Surrender 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 Landlord 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 surrender by Sears Canada of its right, title and interest in and to the Leases and the Real Property Interests (each as defined in the Lease Surrender Agreement) to the Landlord and the Monitor shall be authorized to take such additional steps in furtherance of its responsibilities under the Lease Surrender 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 Premises 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 Landlord 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 Leases and

the Real Property Interests shall be surrendered to the Landlord (with the Leases being resiliated) 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 Leases and the Real Property Interests (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* (●) 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 Leases, the Real Property Interests and/or the Premises are hereby expunged and discharged as against the Leases, the Real Property Interests and/or the Premises 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 Leases and the Real Property Interests 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 Surrender Agreement.

12. THIS COURT ORDERS that subject to the terms of the Lease Surrender 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 surrender of the Leases and the Real Property Interests to the Landlord and the resiliation of the Leases 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 Surrender Agreement between Sears Canada Inc. ("**Sears Canada**"), as Tenant, and ● (the "**Landlord**") as Landlord dated ●, 2017 (the "**Lease Surrender 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 Surrender Agreement and provided for the surrender to the Landlord of Sears Canada's right, title and interest in and to the Leases and the Real Property Interests (as defined in the Lease Surrender Agreement), which surrender is to be effective with respect to the Leases and the Real Property Interests upon the delivery by the Monitor to the Landlord 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 Surrender Agreement have been satisfied or waived by the Landlord and Sears Canada, as

applicable, and (ii) the Surrender Consideration and any Taxes payable (each as defined in the Lease Surrender Agreement) to Sears Canada that are not self-assessed and remitted by the Landlord 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 Surrender Agreement have been satisfied or waived by the Landlord and Sears Canada, as applicable; and
2. The Surrender Consideration and any Taxes payable to Sears Canada that are not self-assessed and remitted by the Landlord 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.	●	●	●	●	[NIL]

SCHEDULE "C"
PERMITTED ENCUMBRANCES

"Permitted Encumbrances" means, collectively: (a) any Encumbrances encumbering the 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 Tenant's leasehold interest in and to any Property situated outside of the Province of Québec on which the Premises are located or the rights of the Tenant as lessee under the Leases; (b) Encumbrances resulting from the Landlord's actions or omissions; and (c) the items identified in Schedule "J" of the Lease Surrender Agreement.

SCHEDULE "F"
LANDLORD'S GST/HST [AND QST] CERTIFICATE, UNDERTAKING AND INDEMNITY

[NTD: to be revised as applicable]

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

RE: Lease Surrender Agreement dated ●, 2017, made between the Tenant, as Tenant, and ●, as Landlord, (the "Landlord") (said agreement as amended, extended, supplemented, restated and/or amended and restated from time to time being collectively, the "Lease Surrender Agreement") for the surrender of the Leases (as such terms are defined in the Lease Surrender Agreement)

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

- a) the Leases and the Real Property Interests are being surrendered to the Landlord as principal for its own account and not as an agent, nominee, trustee or otherwise on behalf of or for another Person;
- b) the Landlord 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") [NTD: and under Division I of Chapter VIII of Title I of *An Act respecting the Québec Sales Tax* (the "Québec Act") with respect to the Québec sales tax ("QST")] and its registration number is [numbers are] ● and such registration[s] is [are] in good standing and has [have] not been varied, cancelled or revoked;
- c) the Landlord 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* [and all QST which is payable under the Québec Act], in connection with the surrender of the Leases and the Real Property Interests, all in accordance with the *Excise Tax Act* [and the Québec Act respectively];
- d) the Landlord shall indemnify and save harmless the Tenant from and against any and all GST/HST, [QST,] penalties, interest and/or other costs which may become payable by or be assessed against the Tenant as a result of any failure by the Tenant to collect and remit any GST/HST [or QST] applicable on the surrender of the Leases and the Real Property Interests by the Tenant to the Landlord or as a result of any inaccuracy, misstatement or misrepresentation by the Landlord in this GST/HST [and QST] Certificate, Undertaking and Indemnity or any failure by the Landlord to comply with the provisions of this GST/HST [and QST] Certificate, Undertaking and Indemnity; and
- e) this GST/HST [and QST] Certificate, Undertaking and Indemnity shall survive and not merge upon closing of the above-noted transaction.

This GST/HST [and QST] 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.

[LANDLORD]

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 "Tenant")

- and -

●
(the "Landlord")

RECITALS:

- A. The Tenant 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 Tenant and the Landlord entered into a lease surrender agreement dated ●, 2017 (said agreement as amended, extended, supplemented, restated and/or amended and restated from time to time being collectively, the "**Lease Surrender Agreement**"), whereby, among other things, the Tenant agreed to surrender to the Landlord, and the Landlord agreed to accept a surrender of, all of the Tenant's right, title and interest in and to the Lease.
- C. [**The Lease Surrender Agreement was approved by the Court pursuant to the Order dated ● (the "Approval and Vesting Order")**].
- D. The Tenant and the Landlord are entering into this Agreement to provide for the Landlord's assumption of the Assumed Liabilities in accordance with the Lease Surrender 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 Surrender 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 Landlord

The Landlord hereby covenants with the Tenant to assume, discharge, perform and fulfill all the obligations and liabilities on the part of the Tenant with respect to the Assumed Liabilities.

For greater certainty, nothing in this Agreement shall be construed as an attempt to assign to the Landlord 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 Landlord hereby covenants with the Tenant, as of and from the Effective Date, to indemnify and save the Tenant 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, or otherwise arising, incurred or accrued on or after the Effective Date whether in respect of the period before or after the Effective Date, including, without limitation, any default as a consequence of the Closing of the Transaction.

1.3 Paramountcy

The rights and obligations of the parties respectively with respect to the Leases shall be governed by the Lease Surrender Agreement. In the event of any conflict, inconsistency or ambiguity between the provisions of this Agreement and of the Lease Surrender Agreement, then the provisions of the Lease Surrender 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 Tenant and the Landlord 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 Surrender 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 Tenant or the Landlord 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 surrenders, releases, conveyances, transfers, documents and assurances as may be deemed necessary or advisable from time to time in order to effectively assign the Assumed Liabilities to the Landlord 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 ● 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 Surrender 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 Leases (a “**Notice**”) shall be in writing and shall be sufficiently given if delivered or transmitted in accordance with the Lease Surrender 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 Tenant has executed this Agreement.

SEARS CANADA INC.

By: _____

Name:

Title:

By: _____

Name:

Title:

IN WITNESS WHEREOF the Landlord has executed this Agreement.



By: _____

Name:

Title:

By: _____

Name:

Title:

SCHEDULE "H"
FORM OF AMENDMENT AND SURRENDER 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 "**Tenant**")

- and -

●
(the "**Landlord**")

RECITALS:

- A. Pursuant to a lease dated ●, as same is assigned, amended, restated, renewed or supplemented from time to time, including but not limited to those documents listed in Schedule "A" attached hereto (collectively, the "**Lease**"), the Landlord leased to the Tenant certain premises at ● in the City of ●, in the Province of ● as more particularly described in the Lease (the "**Premises**").
- B. The Tenant 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 Tenant and the Landlord entered into a lease surrender agreement dated ●, 2017 (said agreement as amended, extended, supplemented, restated and/or amended and restated from time to time being collectively, the "**Lease Surrender Agreement**") whereby, among other things, the Tenant agreed to surrender to the Landlord, and the Landlord agreed to accept a surrender of, all of the Tenant's right, title and interest in and to the Lease and the resiliation of the Lease.
- D. The Tenant and the Landlord are entering into this Agreement to provide for the surrender and resiliation of the Lease by the Tenant to the Landlord in accordance with the Lease Surrender 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 Surrender Agreement, or if no meaning is given in the Lease Surrender 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
TERMINATION AND SURRENDER**

1.1 Amendment and Early Termination of Lease

The Lease is hereby amended and the Landlord and the Tenant hereby agree that the Lease has expired and is terminated, as of 11:59 p.m. on the day immediately preceding the Effective Date (the "**Termination Date**"), and neither the Tenant nor the Landlord shall have any further liabilities or obligations under the Lease, financial or otherwise, as of and as from the Termination Date.

1.2 Surrender by Tenant

The Tenant hereby surrenders to the Landlord, as of the Termination Date, and the Landlord hereby accepts such surrender from the Tenant, the Lease and the Premises demised by the Lease and all the Tenant's rights, title and interest thereunder, with the intent that the unexpired residue of the term of the Lease including, without limitation, any rights or options to renew or extend hereby merge and are extinguished in the reversion expectant thereon, on the terms and conditions set out in the Lease Surrender Agreement. **[NTD: if this Agreement relates to a Quebec Lease replace the foregoing provision with the following: The Tenant hereby surrenders to the Landlord, as of the Termination Date, the Premises on the terms and conditions set out in the Lease Surrender Agreement.]**

1.3 Adjustments

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

1.4 Paramountcy

The rights and obligations of the parties respectively with respect to the Lease shall be governed by the Lease Surrender Agreement. In the event of any conflict, inconsistency, ambiguity or difference between the provisions of this Agreement and of the Lease Surrender Agreement, then the provisions of the Lease Surrender 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 Tenant and the Landlord 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 Surrender Agreement constitute the entire agreement between the parties with respect to the surrender of the Lease contemplated in the Lease Surrender 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 Surrender 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 Surrender 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 Tenant or the Landlord 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 surrenders, releases, conveyances, transfers, documents and assurances as may be deemed necessary or advisable from time to time in order to effectively surrender the Lease to the Landlord 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 in which the Premises are located 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 Surrender 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 Surrender 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 Tenant has executed this Agreement.

SEARS CANADA INC.

By: _____

Name:

Title:

By: _____

Name:

Title:

IN WITNESS WHEREOF the Landlord has executed this Agreement.



By: _____

Name:

Title:

By: _____

Name:

Title:

SCHEDULE "A" – LEASE PARTICULARS

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 "Tenant")

- and -

●
(the "Landlord")

RECITALS:

- A. Pursuant to a lease dated ● , as same is assigned, amended, restated, renewed or supplemented from time to time, including but not limited to those documents listed in Schedule "A" attached hereto (collectively, the "Lease"), the Landlord leased to the Tenant certain premises at ● in the City of ●, in the Province of ● as more particularly described in the Lease (the "Premises"). [NTD: insert applicable Leases]
- B. The Tenant 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 Tenant and the Landlord entered into a lease surrender agreement dated ●, 2017 (said agreement as amended, extended, supplemented, restated and/or amended and restated from time to time being collectively, the "Lease Surrender Agreement") whereby, among other things, the Tenant agreed to surrender to the Landlord, and the Landlord agreed to accept a surrender of, all of the Tenant's right, title and interest in and to the Lease.
- D. [The Lease Surrender Agreement was approved by the Court pursuant to the Order dated ● (the "Approval and Vesting Order")].
- E. The Tenant and the Landlord are entering into this Agreement to provide for the assignment of the Realty Tax Appeals and Realty Tax Refunds in respect of the Leases by the Tenant to the Landlord in accordance with the Lease Surrender 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 Surrender Agreement, or if no meaning is given in the Lease Surrender 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 Tenant hereby assigns, transfers and sets over unto the Landlord all of the Tenant'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 Landlord 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 Landlord and at the Landlord's sole cost and expense, the Tenant agrees to co-operate with the Landlord with respect to the Realty Tax Appeals and to provide the Landlord 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 Tenant, at the request of the Landlord, the Tenant shall cooperate with the Landlord, including granting such authorizations as may be reasonably required, to enable the Landlord to pursue and prosecute such Realty Tax Appeals, at the Landlord'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 Landlord, 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 Surrender Agreement. In the event of any conflict, inconsistency, ambiguity or difference between the provisions of this Agreement and of the Lease Surrender Agreement, then the provisions of the Lease Surrender 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 Tenant and the Landlord 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 Surrender Agreement constitute the entire agreement between the parties with respect to the assignment and assumption of the Realty Tax Appeals contemplated in the Lease Surrender 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 Surrender 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 Surrender 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 Tenant or the Landlord 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 surrenders, releases, conveyances, transfers, documents and assurances as may be deemed necessary or advisable from time to time in order to effectively assign the Realty Tax Appeals to the Landlord and carry out the terms and conditions of this Agreement in accordance with their true intent.

2.6 Severability

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

2.7 Governing Law

This Agreement shall be governed by and interpreted and enforced in accordance with the laws of the Province in which the Premises are located 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 Surrender 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 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 Surrender 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 Tenant has executed this Agreement.

SEARS CANADA INC.

By: _____

Name:

Title:

By: _____

Name:

Title:

IN WITNESS WHEREOF the Landlord has executed this Agreement.



By: _____

Name:

Title:

By: _____

Name:

Title:

SCHEDULE "A" – LEASE PARTICULARS

SCHEDULE "J"
PERMITTED ENCUMBRANCES

NTD: insert for applicable Lease

SCHEDULE "K"
FORM OF RELEASE OF PROPERTY CLAIMS

TO: SEARS CANADA INC. (the "Tenant")

AND TO: ALL PREDECESSORS IN INTEREST TO THE TENANT UNDER ANY OF THE LEASES (the "Predecessors")

FROM: ● (the "Landlord")

RE: Lease Surrender Agreement between the Tenant and the Landlord dated ●, 2017 (as amended, modified, restated and/or supplemented from time to time, the "Lease Surrender Agreement")

WHEREAS:

- A. The Tenant and certain of its affiliates and subsidiaries (collectively, the "Sears Group") 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 Tenant and the Landlord entered into a lease surrender agreement dated ●, 2017 (said agreement as amended, extended, supplemented, restated and/or amended and restated from time to time being collectively, the "Lease Surrender Agreement") whereby, among other things, the Tenant agreed to surrender to the Landlord, and the Landlord agreed to accept a surrender of, all of the Tenant's right, title and interest in and to the Leases.
- C. [On ●, 2017, the Court issued an Approval and Vesting Order approving the Lease Surrender Agreement, pursuant to which the Tenant shall surrender to the Landlord the Leases on the terms and conditions set out in the Lease Surrender Agreement].
- D. The Lease Surrender Agreement contemplates that the Landlord shall execute and deliver a release on the Closing Date to the Tenant pursuant to which the Landlord will release and forever discharge the Tenant from all claims in respect of each of the Leases, the Premises, and the Property.
- E. The Landlord desires to execute and deliver this Release to the Tenant in satisfaction of the foregoing obligation.
- F. Unless otherwise expressly provided for herein, all capitalized terms when used in this Release have the same meaning given to such terms in the Lease Surrender Agreement.

NOW THEREFORE in consideration of the payment of TEN DOLLARS (\$10.00) and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned agree as follows:

1. The Landlord, on its own behalf and on behalf of its subsidiary, affiliated, and associated corporations and entities and all of their respective successors and assigns (collectively the “**Releasors**”, and individually, a “**Releasor**”), hereby forever fully and unconditionally remises, releases, acquits, waives and forever discharges each of the Tenant, the Sears Group, and the Predecessors and each of their respective subsidiaries, affiliates, and associates and each of their respective members, partners, directors, officers, employees, agents, shareholders, successors and permitted assigns (collectively, the “**Releasees**” and individually, a “**Releasee**”) from any and all actual or potential claims, demands, complaints, grievances, actions, applications, proceedings, suits, causes of action, Orders, charges, indictments, prosecutions, informations or other similar processes, assessments or reassessments, judgments, debts, liabilities, expenses, costs, dues, accounts, bonds, damages or losses, contingent or otherwise, whether liquidated or unliquidated, matured or unmatured, disputed or undisputed, contractual, legal or equitable, including loss of value, reasonable professional fees, including fees and disbursements of legal counsel on a full indemnity basis, and all actual and documented costs incurred in investigating or pursuing any of the foregoing or any proceeding relating to any of the foregoing, but excluding any claims as a result of a deliberate, intentional or grossly negligent misrepresentation by the Tenant or as a result of any deliberate misconduct on the part of the Tenant in the CCAA Proceeding, (collectively, the “**Claims**”), whether known or unknown, howsoever arising of every nature and kind whatsoever that the Releasors ever had, now have or hereafter can, shall or may have against any of the Releasees solely in any way relating to or arising from any of the Leases, the Premises, and/or the Property. For greater certainty any or all other claims of the Landlord or any party related to the Landlord against the Tenant or any party related to the Tenant are expressly reserved and unaffected by this release.
2. Nothing in this release in any way prevents or alters the right of the Landlord to seek recourse under any applicable insurance policy of the Tenant or the Landlord with respect to the Premises or the Property and all such rights are expressly reserved.
3. Subject to the exclusions in 1 and 2 above, each of the Releasors covenants and agrees not to make any Claims against any Person which might Claim over against any of the Releasees, or who might claim contribution or indemnity from any of the Releasees in connection with the matters which are herein released. In the event that any of the Releasors hereafter makes any Claims against any of the Releasees or against any Person who may Claim over or claim contribution or indemnity against any of the Releasees with respect to any of the matters herein released then:
 - (i) such Releasor shall immediately discontinue such Claim;
 - (ii) such Releasor shall be liable for all legal and related costs and expenses incurred by the affected member of the other on a full indemnity basis; and
 - (iii) this Release contained shall:
 - (A) operate conclusively as an estoppel and complete bar to any such Claim;
 - (B) may be pleaded as a complete defence and reply in the event of such Claim; and

- (C) may be relied upon in any proceeding to dismiss such Claim and no objection will be raised by the party which commenced such Claim to the effect that the other parties to such Claim are not parties to this Release.
4. Each of the Releasors acknowledges and declares that: (a) it has had an adequate opportunity to read and consider this Release and to obtain such advice in regard to it as it should consider advisable; (b) it fully understands the nature and effect of this Release; and (c) this Release has been duly and voluntarily authorized, executed and delivered and it has the capacity and authority to execute and deliver it.
 5. This Release shall not be deemed to be any admission of liability on the part of the Releasees and liability is specifically denied by each of them.
 6. Each of the Releasors covenants and agrees to do such things, to attend such meetings and to execute such further surrenders, releases, conveyances, transfers, documents and assurances as may be deemed reasonably necessary or advisable from time to time in order to effectively carry out the terms and conditions of this Release in accordance with their true intent at the cost of the party making the request.
 7. If any provision of this Release shall be determined to be illegal, invalid or unenforceable, that provision shall be severed from this Release and the remaining provisions shall continue in full force and effect.
 8. This Release shall enure to the benefit of each of the Releasees and its heirs, attorneys, guardians, estate trustees, executors, successors, assigns and representatives and be binding upon each of the Releasors and its heirs, attorneys, guardians, estate trustees, executors, successors, assigns and representatives.
 9. This Release shall be governed by the laws of the Province of Ontario and the federal laws of Canada applicable therein.
 10. The terms of this Release constitute the entire agreement between the parties relating to the subject matter hereof.
 11. This Release may be executed by the parties in counterparts and may be executed and delivered by facsimile or electronic transmission and all such counterparts and facsimiles or electronic transmissions shall together constitute one and the same agreement.

[Remainder of Page Intentionally Left Blank]

IN WITNESS OF WHICH the parties have duly executed this Release this ____ day of ●, 2017.

[LANDLORD]

By: _____

Name:

Title:

By: _____

Name:

Title:

SCHEDULE "L"
FORM OF ACCESS AGREEMENT

THIS AGREEMENT dated as of the ____ day of _____, 2017,

B E T W E E N:

SEARS CANADA INC. (the "Tenant")

- and -

● (the "Landlord")

RECITALS:

- A. The Tenant 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. 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.
- C. The Tenant and the Landlord entered into a lease surrender agreement dated ●, 2017 (said agreement as amended, extended, supplemented, restated and/or amended and restated from time to time being collectively, the "**Lease Surrender Agreement**") whereby, among other things, the Tenant agreed to surrender to the Landlord, and the Landlord agreed to accept a surrender of, all of the Tenant's right, title and interest in and to the Lease at the Property (being the property commonly known as ● and municipally known as ●).
- D. **[The Lease Surrender Agreement was approved by the Court pursuant to the Order dated ● (the "Approval and Vesting Order").]**
- E. The Tenant and the Landlord are entering into this Agreement to provide for the Tenant to have access to the Premises to remove and sell any and all Inventory and FF&E located on the Premises in accordance with the terms hereof.
- 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 Surrender Agreement.

NOW THEREFORE IN CONSIDERATION OF the mutual covenants contained herein, the receipt and sufficiency of which is hereby acknowledged by each of the Tenant and the Landlord (collectively, the "**Parties**", and individually, a "**Party**"), the Parties hereby covenant and agree as follows:

1. The Tenant may at its sole risk and expense maintain the FF&E and/or Inventory in the Premises and the Landlord shall not cause any damage to such FF&E and/or Inventory. The Tenant shall have no obligation to remove any of the FF&E or Inventory that remains on the Premises following the expiry of the Post-Closing Access Period and shall have no liability for any removal or destruction costs relating thereto.
2. The Landlord hereby grants to Tenant and its agents and representatives (collectively, the "**Accessing Parties**") the uninterrupted and undisturbed right to possess, access, use, occupy and enjoy the Premises, on an "as is where as" basis and on an exclusive basis for 24 hours a day and seven days a week commencing on the Closing Date and ending on the date that is fifteen (15) weeks from the Closing Date (the "**Post-Closing Access Period**"). The Accessing Parties shall, prior to obtaining access deliver proof of insurance as required under the Lease as extended to reflect the Accessing Parties; and shall pay all rent ,additional rent , taxes utilities and other charges due by the Lease as if still the Tenant under the Lease, except that the Landlord will accept payment of monthly rent bi monthly in advance. The Accessing Parties shall comply with all of the non financial obligations of the Tenant under the Lease, as if they were named tenant under the Lease, and without limiting the generality of the foregoing conduct themselves in a commercially reasonable manner with a view not to unreasonably impairing the condition of the Premises . The Accessing Parties shall be entitled to use the Premises as they are currently being used, to remove any Excluded Assets and to conduct a liquidation sale of the Inventory and/or FF&E and for any other use permitted by Order of the Court (the "**Permitted Use**"). For greater certainty, the Accessing Parties shall be entitled to advertise and sell the Inventory and FF&E on a "final sale" and "as is" basis and may advertise such liquidation sale as a "everything on sale", "everything must go", "store closing" or similar themed sale and may use exterior banners and signs, provided that the Accessing Parties shall not use neon or day-glow signs, such exterior signs and banners shall be professionally hung and the Accessing Parties shall repair any damage caused by the hanging or removal of such exterior signs and banners. Conditional upon the Accessing Parties being in compliance with this agreement the Landlord shall not interfere with the Accessing Parties use and enjoyment of the Premises as permitted hereunder. Any Excluded Assets left on the Premises, including any Inventory and FF&E at the expiry of the Post-Closing Access Period shall become the property of the Landlord without a bill of sale, representation, warranty or other title documentation.
3. The Accessing Parties shall be responsible for capping all utility at source and for making any repairs, to the Premises or any part thereof resulting from the disconnection or removal of any FF&E. The Tenant shall maintain, and leave the Premises at the expiry of the Post Closing Access period in a broom-swept and clean condition, with Excluded Assets including abandoned FF&E , if any, left on the Premises concentrated in a single location in the loading dock area.

4. The Landlord hereby grants to the Accessing Parties, including their respective officers, agents, employees, customers, invitees and licensees, the non-exclusive use and enjoyment of the **parking facilities, driveways, entrances, sidewalks, landscaped areas, elevators, escalators and all other common facilities** from time to time located on the Property and for the public use and enjoyment (collectively, the "**Common Facilities**"), provided that the Accessing Parties shall not conduct any sales on the Common Facilities nor shall the Accessing Parties obstruct the Common Facilities.
5. The Landlord shall maintain, repair and replace the Common Facilities, and the Property in good repair and in a clean, orderly and safe condition and shall continue to operate the Property in accordance with its obligations under the Lease .
6. The Landlord shall provide, supply and maintain at actual cost plus 15% to the Accessing Parties all adequate water, gas, sewage, telephone and other communications outlets, electrical power services and all other utilities to all parts of the Premises, and all such sums shall be promptly paid in full upon invoicing..
7. During the Post-Closing Access Period, the Accessing Parties shall maintain commercial general liability insurance in an amount and with such coverage as is customary and commercially reasonable taking into account the value of the assets and the nature of the activities to be conducted with the Landlord named as an additional insured, in amounts which meet or exceed the obligations of the tenant under the Lease.
8. This Agreement shall become effective when executed by the Tenant and the Landlord and after that time shall be binding upon and enure to the benefit of the Parties and their respective 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, provided that notwithstanding the foregoing, the Tenant shall be entitled to assign this Agreement without consent of, but on notice to, the Landlord, to any agent conducting a sale of the Inventory and/or FF&E of the Tenant pursuant to an agency agreement or similar agreement approved by the Court. Upon any such assignment by the Tenant, the Tenant shall cause the assignee to enter into an agreement with the Landlord agreeing to be bound by the terms of this Agreement and the Tenant shall thereupon be released from all of its liabilities and obligations hereunder. Upon a transfer of the Property or any portion thereof, the Landlord shall obtain an agreement executed by the Landlord and such transferee in favour of the Tenant, in form satisfactory to the Tenant, whereby the transferee agrees to be bound by the terms of this Agreement and the Landlord and the transferee shall be jointly and severally liable for the Landlord's obligations hereunder.
9. No amendment to or waiver of this Agreement shall be effective unless evidenced in writing and executed by all the Parties.
10. Each of the parties covenants and agrees to do such things and to execute such further documents and assurances as may be deemed necessary or advisable from time to time in order to effectively carry out the terms and conditions of this Agreement in accordance with their true intent.

11. 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.
12. This Agreement shall be governed by and interpreted and enforced in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.
13. Each Party submits to the exclusive jurisdiction of the Court in any action, application, reference or other proceeding arising out of or related to this 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.
14. This Agreement shall enure to the benefit and be binding on the Parties and their respective successors and assigns.
15. Any notice, consent or approval required or permitted to be given in connection with this Agreement shall be in writing and shall be sufficiently given if delivered or transmitted in accordance with the Lease Surrender Agreement.
16. 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 Tenant has executed this Agreement.

SEARS CANADA INC.

By: _____
Name:
Title:

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

AFFIDAVIT OF BILLY WONG
(Motion for Approval of Lease Surrender Agreement with
Orchard Park Shopping Centre Holdings Inc. Kelowna Full
Line Store (Store #1827) and Kelowna Home Store
(Store #1376))

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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 SURRENDER AGREEMENT

KELOWNA HOME AND KELOWNA FULL LINE (STORE # 1376 AND STORE #1827)

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 surrender and resiliation (the “**Transaction**”) contemplated by a Lease Surrender Agreement between Sears Canada Inc. (“**Sears Canada**”), as Tenant, and Orchard Park Shopping Centre Holdings Inc. (the “**Landlord**”) as Landlord dated September 22, 2017 (the “**Lease Surrender 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 Landlord, the DIP ABL Agent, the DIP Term Agent 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 Surrender Agreement, as applicable.

APPROVAL OF THE LEASE SURRENDER 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 Surrender 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 Landlord 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 surrender by Sears Canada of its right, title and interest in and to the Leases and the Real Property Interests (each as defined in the Lease Surrender Agreement) to the Landlord and the Monitor shall be authorized to take such additional steps in furtherance of its responsibilities under the Lease Surrender 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 Premises 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 Landlord 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 Leases and the Real Property Interests shall be surrendered to the Landlord (with the Leases being resiliated) 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 Leases and the Real Property Interests (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* (British Columbia) 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 Leases, the Real Property Interests and/or the Premises are hereby expunged and discharged as against the Leases, the Real Property Interests and/or the Premises 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 Leases and the Real Property

Interests 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 Surrender Agreement.

12. THIS COURT ORDERS that subject to the terms of the Lease Surrender 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 surrender of the Leases and the Real Property Interests to the Landlord and the resiliation of the Leases 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
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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 Surrender Agreement between Sears Canada Inc. ("**Sears Canada**"), as Tenant, and Orchard Park Shopping Centre Holdings Inc. (the "**Landlord**") as Landlord dated September 22, 2017 (the "**Lease Surrender 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 Surrender Agreement and provided for the surrender to the Landlord of Sears Canada's right, title and interest in and to the Leases and the Real Property Interests (as defined in the Lease Surrender Agreement), which surrender is to be effective with respect to the Leases and the Real Property Interests upon the delivery by the Monitor to the Landlord 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

Surrender Agreement have been satisfied or waived by the Landlord and Sears Canada, as applicable, and (ii) the Surrender Consideration and any Taxes payable (each as defined in the Lease Surrender Agreement) to Sears Canada that are not self-assessed and remitted by the Landlord 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 Surrender Agreement have been satisfied or waived by the Landlord and Sears Canada, as applicable; and
2. The Surrender Consideration and any Taxes payable to Sears Canada that are not self-assessed and remitted by the Landlord 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.	2271 Harvey Avenue, Kelowna	BC	Kamloops Land Title Office	<p>PID: 003-348-903 LOT 2 DISTRICT LOT 127 OSOYOOS DIVISION YALE DISTRICT PLAN 32650 EXCEPT PLAN KAP47935 ("Firstly")</p> <p>PID: 018-967-337 LOT 1 DISTRICT LOT 127 OSOYOOS DIVISION YALE DISTRICT PLAN KAP53260 EXCEPT PLANS DAP56123 AND EPP3467 ("Secondly")</p> <p>PID: 017-889-774 LOT 1 DISTRICT LOTS 127 AND 4646 OSOYOOS DIVISION YALE DISTRICT PLAN KAP47934 ("Thirdly")</p>	<p>K37415 – is a Lease registered on July 21, 1975 made in favour of Simpsons- Sears Limited, as tenant for part of ground floor of building shown area 53 on Plan E11735</p>

SCHEDULE "C"
PERMITTED ENCUMBRANCES

"Permitted Encumbrances" means, collectively: (a) any Encumbrances encumbering the 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 Tenant's leasehold interest in and to any Property situated outside of the Province of Québec on which the Premises are located or the rights of the Tenant as lessee under the Leases; (b) Encumbrances resulting from the Landlord's actions or omissions; and (c) the items identified in Schedule "J" of the Lease Surrender 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 Surrender Agreement
with Orchard Park Shopping Centre Holdings Inc.
Kelowna Full Line (Store #1827) and Kelowna Home
Store (Store #1376))
returnable October 4, 2017)

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