

**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

SUPPLEMENTARY MOTION RECORD OF THE APPLICANTS
(Motion for Approval of Approval of Asset Purchase Agreement with Viking Range, LLC
and The Middleby Corporation ~~Canadian Tire Corporation, Limited~~),
returnable December 8 ~~October 4~~, 2017)

December 6, 2017

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Lawyers for the Applicants

TO: SERVICE LIST

**ONTARIO
SUPERIOR COURT OF JUSTICE
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IN THE MATTER OF THE *COMPANIES' CREDITORS
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AND 3339611 CANADA INC.

Applicants

**SUPPLEMENTAL SERVICE LIST
VIKING TRADE-MARKS**

TO: **GENERAL ELECTRIC CAPITAL
CANADA INC.**
2300 Meadowvale Blvd
Mississauga, Ontario
L5N 5P9

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TAB 1

**ONTARIO
SUPERIOR COURT OF JUSTICE
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IN THE MATTER OF THE *COMPANIES' CREDITORS
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CANADA INC.

Applicants

AMENDED NOTICE OF MOTION

**(Motion for Approval of Asset Purchase Agreement with
~~Canadian Tire Corporation, Limited~~ Viking Range, LLC and The Middleby Corporation ~~{Viking-
brand Trade Marks}~~)**

The Applicants will make a motion before a judge of the Ontario Superior Court of Justice (Commercial List) on December 8, ~~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 Amended Notice of Motion and the Motion Record and dispensing with service on any person other than those served;
 - (b) approving the Asset Purchase Agreement entered into as of December 6 ~~September 29~~, 2017 between Sears Canada Inc. ("**Sears Canada**") and Viking Range, LLC (the "**Buyer**") and, solely for the purposes of Section 11.1 therein, The Middleby Corporation ("**Middleby**") ~~Canadian Tire Corporation, Limited~~ ("**Canadian Tire**") (the "**Middleby APA**"), and vesting Sears Canada's right, title and interest in and to the Purchased Assets (as defined in the Approval and Vesting Order) in the Buyer. ~~Canadian Tire~~; 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 29, 2017, Sears Canada entered into an Asset Purchase Agreement with Canadian Tire Corporation, Limited (the “CT Asset Purchase Agreement”), relating to Sears Canada’s trademarks exclusively related to the “Viking” trademark and brand.

5. On November 9, 2017, Mr. Justice Hainey ordered Sears Canada to provide Middleby with an unredacted copy of the CT Asset Purchase Agreement, and ordered Middleby to advise Sears Canada and the Court within five days of receiving the unredacted copy of the CT Asset Purchase Agreement whether Middleby wished to exercise its right of first refusal (the “ROFR”) with respect to the assets contemplated under the CT Asset Purchase Agreement.

6. On November 14, 2017, Middleby advised Sears Canada of its intention to exercise the ROFR.

7. On November 24, 2017, Mr. Justice Hainey ordered Sears Canada to permit Middleby to exercise the ROFR.

8. On December 6 ~~September 29~~, 2017, Sears Canada entered into the Middleby APA in which the Buyer, and, solely for the purposes of Section 11.1 therein, Middleby, Canadian Tire shall purchase all of Sears Canada’s right, title and interest in and to all of Sears Canada’s trademarks exclusively related to the “Viking” trademark and brand, including the applications and registrations set out in Schedule 2.1 of the Middleby APA and all documentation exclusively related to such assets (the “**Purchased Assets**”);

9. The consideration to be received in the transaction is fair and reasonable;

10. The process leading to the Middleby APA was fair and reasonable in the circumstances and was approved by the Monitor;

11. The Middleby APA is in the best interests of the creditors and other stakeholders of the Applicants;

12. The relief sought on this motion is supported by the Monitor and the Sale Advisor;

13. ~~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;~~

14. ~~Under the Viking Range License Agreement (as defined in the APA), which has since expired, The Middleby Corporation (“Middleby”) had a right of first negotiation and a right of first refusal to purchase in respect of the Purchased Assets (the “ROFR”). Sears Canada has disclaimed the ROFR, and under the Approval and Vesting Order the Purchased Assets vest in Canadian Tire, free and clear of and from the ROFR.~~

Sealing Order

15. ~~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;~~

16. ~~There are no reasonable alternative measures to sealing this information from the public record;~~

17. ~~The salutary effects of sealing this information outweigh the deleterious effects of doing so;~~

18. ~~The provisions of the CCAA, including section 36, and the inherent and equitable jurisdiction of this Honourable Court;~~

19. ~~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~~

20. ~~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 29, 2017 and the exhibits attached thereto;
3. The Affidavit of Billy Wong sworn December 6, 2017 and the exhibits attached thereto;
4. The Third and Sixth Reports of the Monitor; and
5. Such further and other evidence as counsel may advise and this Court may permit.

December 6 ~~September 29~~, 2017

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SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

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

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

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

Applicants

Ontario
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceeding commenced at Toronto

NOTICE OF MOTION

(Motion for Approval of Asset Purchase Agreement with Viking Range, LLC
and The Middleby Corporation ~~Canadian Tire Corporation, Limited (Viking-~~
~~brand Trade Marks)~~)

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Lawyers for the Applicants

TAB 2

Ontario
**SUPERIOR COURT OF JUSTICE
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CANADA INC.

APPLICANTS

AFFIDAVIT OF BILLY WONG
(Sworn December 6, 2017)

**(Motion for Approval of Asset Purchase Agreement with Viking Range, LLC and The
Middleby Corporation)**

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. On September 29, 2017, Sears Canada entered into an Asset Purchase Agreement with Canadian Tire Corporation, Limited (the “**CT Asset Purchase Agreement**”), relating to Sears Canada’s trademarks exclusively related to the “Viking” trademark and brand. Attached as Exhibit “A” is a redacted copy of the CT Asset Purchase Agreement.

3. On November 9, 2017, Mr. Justice Hainey ordered Sears Canada to provide The Middleby Corporation (“**Middleby**”) with an unredacted copy of the CT Asset Purchase Agreement, and ordered Middleby to advise Sears Canada and the Court within five days of receiving the unredacted copy of the CT Asset Purchase Agreement whether Middleby wished to exercise its right of first refusal (the “**ROFR**”) with respect to the assets contemplated under the CT Asset Purchase Agreement. Attached as Exhibit “B” is a copy of the endorsement of Mr. Justice Hainey dated November 9, 2017.

4. On November 14, 2017, Middleby advised Sears Canada and the Court of its intention to exercise the ROFR. Attached as Exhibit “C” to this affidavit is a copy of a letter dated November 14, 2017.

5. On November 24, 2017, Mr. Justice Hainey ordered Sears Canada to permit Middleby to exercise the ROFR. Attached as Exhibit “D” is a copy of the endorsement of Mr. Justice Hainey dated November 24, 2017.

6. Sears Canada (the “**Seller**”) subsequently entered into the Asset Purchase Agreement dated December 6, 2017 (the “**Middleby APA**”) with Viking Range, LLC (the “**Buyer**”), and, solely for the purposes of Section 11.1 therein, Middleby, relating to Sear’s Canada’s trademarks exclusively related to the “Viking” trademark and brand (i.e., the “**Purchased Assets**” (as defined in the Middleby APA)). Attached as Exhibit “E” to this Affidavit is a redacted copy of the Middleby APA.

7. Capitalized terms used in this Affidavit that are not otherwise defined have the meaning given to them in the Middleby APA.

8. Attached as Exhibit "F" to this Affidavit is a redacted blackline highlighting the changes between the proposed CT Asset Purchase Agreement and the Middleby APA. The Middleby APA includes, among other things, the following terms:

- (a) Middleby has paid a deposit of approximately 3.5 percent of the Purchase Price to the Monitor to be held in trust in an interest-bearing account. This is the deposit that was submitted by Middleby with its initial offer in the court approved Sale and Investment Solicitation Process. This deposit was not increased to match the deposit provided under the CT Asset Purchase Agreement as Closing of the Middleby APA is expected to proceed expeditiously.
- (b) On Closing, Middleby will pay the Purchase Price, exclusive of all applicable sales and transfer taxes. The Deposit and all earnings thereon will be credited to Sears Canada and applied to the Purchase Price, and Middleby will pay the balance of the Purchase Price by wire transfer of immediately available funds. The Deposit will be forfeited to Sears Canada, less any applicable withholding tax, if the Closing does not occur (and the Middleby APA is terminated) by reason of the default of Middleby. The Deposit will be returned to Middleby, less any applicable withholding tax, if the Closing does not occur (and the Middleby APA is terminated) for any other reason.
- (c) On Closing, Sears Canada will sell, convey, transfer, assign and deliver, or cause to be sold, conveyed, transferred, assigned and delivered, pursuant to the Approval and Vesting Order, and Middleby shall purchase, free and clear of all

Encumbrances, all of Sears Canada's right, title and interest, including without limitation, all exploitation rights, licenses, sub-licenses, copyrights, logos, trademarks, trade names, domain names, goodwill, know-how rights associated with social media accounts and other intellectual or industrial rights, in and to all of Sears Canada's trademarks exclusively related to the "Viking" trademark and brand, including the applications and registrations set out in Schedule 2.1 of the Middleby APA and all documentation exclusively related to such assets.

- (d) As of Closing, Middleby will assume and pay, discharge and perform, as the case may be, from and after Closing, all obligations and liabilities of Sears Canada with respect to the Purchased Assets to the extent such obligations and liabilities consist of liabilities and obligations that arise in respect of and relate to the period on and after the Closing.
- (e) Sears Canada covenants between the date of the Middleby APA and Closing to, among other things, use commercially reasonable efforts to preserve and not abandon the Purchased Assets.
- (f) Closing will take place on a date that is five (5) business days after the conditions set forth in Article 6 of the Middleby APA have been satisfied or, to the extent permitted by Applicable Law, waived (or such other date agreed to by the Parties in writing), other than the conditions set forth in Article 6 that by their terms are to be satisfied or waived at the Closing.
- (g) Among other conditions to Closing, the Approval and Vesting Order shall have been issued and entered and such order shall be Final (i.e., such Order shall not have been stayed, appealed, varied (except with the consent of Middleby and Sears

Canada) or vacated, and all time periods within which such order could at law be appealed shall have expired); and

- (h) Middleby agrees that nothing in the Middleby APA shall operate to prohibit or diminish in any way the right of Sears Canada to directly or indirectly sell, transfer, liquidate, or otherwise dispose of any existing product bearing the Viking name or related to the Purchased Assets, including any Viking-branded inventory; provided, however, that the aggregate value of the Viking-branded inventory sold, transferred, liquidated or otherwise disposed of shall not exceed the amount set out under Section 5.9(f) of the Middleby APA.
- (i) Middleby is purchasing, accepting and assuming the Purchased Assets on an “as is, where is” basis.
- (j) The Middleby APA may be mutually terminated by written consent (with the consent of the Monitor, in the case of Sears Canada) or on further order of the CCAA Court, or by either Middleby or Sears Canada (with the consent of the Monitor, in the case of Sears Canada) if Closing has not occurred on or before January 11, 2018 (provided that such date may be extended as ordered by the CCAA Court), or by either Middleby or Sears Canada upon permanent denial of the Approval and Vesting Order, or if there has been a material breach by Sears Canada or Middleby as laid out in Section 9 of the Middleby APA.
- (k) The proposed Approval and Vesting Order provides that the Monitor will retain the Net Proceeds on behalf of the Applicants pending further Order of the Court.

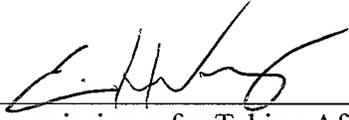
- (l) Under the issuance of the Approval and Vesting Order, all of Sears Canada's right, title and interest in and to the Purchased Assets will absolutely vest in Middleby, free and clear of and from any and all Claims and Encumbrances (as defined in the Approval and Vesting Order).

- (m) Sears Canada has represented that as of Closing, except any surviving rights under the license agreement between Sears Canada and Viking Range Corporation dated December 19, 2002, any license agreements, sub-license agreements or other similar agreements or arrangements have been terminated, are expired and/or have been disclaimed, (ii) any and all subsequent executed renewal terms are not in effect, and (iii) all such license agreements, sub-license agreements or other similar agreements or arrangements have been terminated, are expired and/or have been disclaimed.

9. In the view of the Applicants and the Sale Advisor, the Purchase Price under the Middleby APA is confidential information that could be materially prejudicial to the Applicants in connection with the SISP generally and in connection with any further marketing of the Purchased Assets in particular if the proposed transaction does not proceed to close as anticipated. As such, the Middleby APA, which is attached as Exhibit "E" to this Affidavit, has been redacted to protect the confidential information.

10. For all of the foregoing reasons, the Applicants believe that approval of the Middleby APA is in the best interests of the Applicants and their stakeholders.

SWORN BEFORE ME at the City of
Toronto, in the Province of Ontario, on
December 6, 2017.



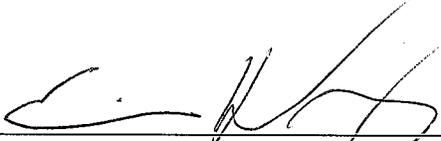
Commissioner for Taking Affidavits



Billy Wong

**Eric James Hendry,
a Commissioner, etc., Province of
Ontario, while a Student-at-Law.
Expires April 5, 2018.**

THIS IS EXHIBIT "A" REFERRED TO IN
THE AFFIDAVIT OF BILLY WONG,
SWORN BEFORE ME ON THIS 6th DAY OF DECEMBER, 2017.



A Commissioner for Taking Affidavits.

**Eric James Hendry,
a Commissioner, etc., Province of
Ontario, while a Student-at-Law.
Expires April 6, 2019.**

ASSET PURCHASE AGREEMENT

SEARS CANADA INC.

as Seller

- and -

CANADIAN TIRE CORPORATION, LIMITED

as Buyer

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ASSET PURCHASE AGREEMENT

THIS AGREEMENT is made as of September 29, 2017

AMONG:

Sears Canada Inc., a corporation governed by the laws of Canada (“**SCI**” or the “**Seller**”)

- and -

Canadian Tire Corporation, Limited, a corporation governed by the laws of the Province of Ontario (the “**Buyer**”)

RECITALS:

- A. On the Filing Date, SCI 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 of the CCAA Court. Pursuant to the Initial Order, the CCAA Court appointed FTI Consulting Canada Inc. as “**Monitor**” in connection with the CCAA Proceedings.
- B. On the SISP Order Date, the CCAA 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 the Business, Assets and/or Leases (each as defined in the SISP) of the Sears Group.
- C. The Buyer has been selected as a Successful Bidder (as defined in the SISP) in accordance with the SISP.
- D. The Seller wishes to sell to the Buyer, and the Buyer wishes to purchase from the Seller, the Purchased Assets, subject to the terms and conditions of this Agreement.

NOW THEREFORE in consideration of the mutual covenants and agreements contained in this Agreement and other good and valuable consideration (the receipt and sufficiency of which are acknowledged), the Parties agree as follows:

ARTICLE 1 INTERPRETATION

1.1 Definitions

In this Agreement,

- (a) “**affiliate**” of any Person means, at the time such determination is being made, any other Person controlling, controlled by or under common control with such first Person, in each case, whether directly or indirectly through one or more intermediaries, and “**control**” and any derivation thereof means the control by one

Person of another Person in accordance with the following: a Person (“A”) controls another Person (“B”) where A has the power to determine the management and policies of B by contract or status (for example, the status of A being the general partner of B) or by virtue of beneficial ownership of a majority of the voting interests in B; and, for certainty and without limitation, if A owns shares to which are attached more than 50% of the votes permitted to be cast in the election of directors (or other Persons performing a similar role) of B, then A controls B for this purpose.

- (b) **“Agreement”** means this Asset Purchase Agreement, in each case as the same may be supplemented, amended, restated or replaced from time to time, and the expressions “hereof”, “herein”, “hereto”, “hereunder”, “hereby” and similar expressions refer to this Asset Purchase Agreement, and unless otherwise indicated, references to Articles and Sections are to Articles and Sections in this Asset Purchase Agreement.
- (c) **“Applicable Law”** means any transnational, domestic or foreign, federal, provincial, territorial, state, local or municipal (or any subdivision of any of them) law (including without limitation the common law), statute, ordinance, rule, regulation, restriction, standard, by-law (zoning or otherwise), judgment, order, direction or any consent, exemption, Governmental Authorizations, or any other legal requirements of, or agreements with, any Governmental Authority, that applies in whole or in part to the transactions contemplated by this Agreement, the Seller, the Buyer or any of the Purchased Assets.
- (d) **“Approval and Vesting Order”** means an order granted by the CCAA Court, in substantially the form attached as Schedule 1.1(d) (with only such changes as the Buyer and the Seller each approve in their reasonable discretion, but in all cases in form and substance acceptable to the Lenders and the Monitor), and served on those Persons identified by the Seller and the Buyer, which will, among other things:
 - (i) authorize and approve this Agreement and the execution and delivery thereof by the Seller;
 - (ii) authorize and direct the Seller to complete the transactions contemplated by this Agreement; and
 - (iii) provide for the vesting of title to the Purchased Assets in and to the Buyer in accordance with the terms and conditions of this Agreement, free and clear of any and all claims against the Purchased Assets of every nature or kind whatsoever and howsoever arising, including all Encumbrances (which shall include any right of first negotiation, right of first refusal and any other similar right), upon the delivery of the Monitor’s Certificate to the Buyer indicating that the conditions precedent to the consummation of the transactions contemplated by this Agreement have been satisfied or waived (where permissible).

- (e) “**Business Day**” means any day, other than a Saturday or Sunday, on which the principal commercial banks in Toronto, Ontario are open for commercial banking business during normal banking hours.
- (f) “**Buyer**” has the meaning given to such term in the preamble to this Agreement.
- (g) “**CCAA**” means the *Companies’ Creditors Arrangement Act* (Canada).
- (h) “**CCAA Court**” means the Ontario Superior Court of Justice (Commercial List).
- (i) “**CCAA Proceedings**” means the proceedings commenced under the CCAA by the Seller pursuant to the Initial Order (Court File No. CV-17-11846-00CL).
- (j) “**Claims**” includes all claims, demands, complaints, grievances, actions, applications, suits, causes of action, Orders, charges, indictments, prosecutions, informations or other similar processes, assessments or reassessments, judgments, debts, liabilities, expenses, costs, damages or losses, contingent or otherwise, whether liquidated or unliquidated, matured or unmatured, disputed or undisputed, contractual, legal or equitable, including loss of value, professional fees, including fees and disbursements of legal counsel on a full indemnity basis, and all costs incurred in investigating or pursuing any of the foregoing or any proceeding relating to any of the foregoing.
- (k) “**Closing**” means the completion of the sale and purchase of the Purchased Assets pursuant to this Agreement at the Closing Time, and all other transactions contemplated by this Agreement that are to occur contemporaneously with the sale and purchase of the Purchased Assets.
- (l) “**Closing Date**” means a date no later than five (5) Business Days after the conditions set forth in ARTICLE 6 have been satisfied (or such other date agreed to by the Parties in writing), other than the conditions set forth in ARTICLE 6 that by their terms are to be satisfied or waived at the Closing; provided, however, that the Closing Date shall be no later than December 4, 2017 (or such other date agreed to in writing by the Buyer and the Seller (with the consent of the Lenders and the Monitor, in the case of the Seller)).
- (m) “**Closing Documents**” means all contracts, agreements and instruments required by this Agreement to be delivered by or on behalf of a Party at or before the Closing.
- (n) “**Closing Time**” means 10:00 a.m. (Toronto time) on the Closing Date or such other time on the Closing Date as the Parties agree in writing that the Closing Time shall take place.
- (o) “**Confidential Information**” means non-public, confidential, personal or proprietary information which is furnished to the Buyer by the Seller or any of the Seller’s representatives or the Monitor, including, without limitation, information about identifiable individuals, any information relating to the Seller and its affiliates, or any customer or supplier of the Seller, but does not include information

that is or becomes generally available to the public other than as a result of disclosure by the Buyer or its representatives in breach of this Agreement or that is received by the Buyer from an independent third party that, to the knowledge of the Buyer, after good faith inquiry, obtained it lawfully and was under no duty of confidentiality (except to the extent that applicable privacy laws do not exclude such information from the definition of personal information) or that is independently developed by the Buyer's employees or representatives without access or reference to any Confidential Information.

- (p) “**Contracts**” means contracts, agreements, obligations, promises, undertakings, understandings, arrangements, documents, commitments, entitlements or engagements to which the Seller is a party or by which the Seller is bound or under which the Seller has, or will have, any right or any liability or contingent right or liability (in each case, whether written or oral, express or implied) relating to the Purchased Assets and includes quotations, orders, proposals or tenders which remain open for acceptance and warranties and guarantees.
- (q) “**Deposit**” means the amount of [REDACTED] delivered by the Buyer to the Monitor in accordance with the SISP.
- (r) “**DIP ABL Credit Agreement**” means the senior secured superpriority debtor-in-possession amended and restated credit agreement among SCI (as borrower), Wells Fargo Capital Finance Corporation Canada (as administrative and collateral agent) and the lenders party thereto dated as of June 22, 2017, and as may be amended, restated, supplemented and/or modified from time to time.
- (s) “**DIP ABL Facility**” means the revolving credit facilities in an aggregate principal amount not to exceed \$300 million under the DIP ABL Credit Agreement.
- (t) “**DIP Credit Agreement**” means collectively, the DIP ABL Credit Agreement and the DIP Term Credit Agreement.
- (u) “**DIP Facility**” means collectively, the DIP ABL Facility and the DIP Term Facility.
- (v) “**DIP Term Credit Agreement**” means the senior secured superpriority debtor-in-possession credit agreement among SCI (as borrower), certain subsidiaries and affiliates of SCI (as guarantors), GACP Finance Co., LLC (as administrative and syndication agent) and the lenders party thereto dated as of June 22, 2017, and as may be amended, restated, supplemented and/or modified from time to time.
- (w) “**DIP Term Facility**” means the term loan facilities in an aggregate principal amount not to exceed \$150 million under the DIP Term Credit Agreement.
- (x) “**Disclaimer Order**” has the meaning given to such term in Section 6.2(d);
- (y) “**Documents**” means all books, records, files and papers exclusively related to the Purchased Assets but not limited to manuals, data, sales and advertising materials,

sales and purchase correspondence, and trade association files, if any, to the extent same is in or will be in the Seller's possession and the Seller is able to find same using commercially reasonable efforts, and all copies and recordings of the foregoing.

- (z) **“Encumbrance”** means any security interest (whether contractual, statutory or otherwise), lien, execution, levy, charge or other financial or monetary claim, hypothec, trust or deemed trust (whether contractual, statutory or otherwise), right of first negotiation, right of first refusal and any other similar right, or mortgage, any and all rights, including without limitation, rights of first negotiation, rights of first refusal or any other similar rights, under the Viking Range License Agreement, and including any and all CCAA Court ordered charges granted in the CCAA Proceedings.
- (aa) **“Filing Date”** means June 22, 2017.
- (bb) **“Final”** with respect to any order of any court of competent jurisdiction, means that such order shall not have been stayed, appealed, varied (except with the consent of the Buyer and the Seller) or vacated, and all time periods within which such order could at law be appealed shall have expired.
- (cc) **“GACP Credit Agreement”** means the term loan credit agreement dated March 20, 2017, as amended by amendment no. 1 to credit agreement dated May 5, 2017, between SCI (as borrower), certain subsidiaries and affiliates of SCI (as guarantors), GACP Finance Co., LLC (as administrative agent and syndication agent), KKR Capital Markets LLC and GACP Finance Co., LLC (as joint lead arrangers), TPG Specialty Lending, Inc. (as documentation agent), and the lenders party thereto, as the same may be amended, restated, supplemented and/or modified from time to time.
- (dd) **“Governmental Authority”** means any applicable transnational, federal, provincial, municipal, state, local, national or other government, regulatory authority, governmental department, agency, commission, board, tribunal, bureau, ministry, court, system operator, judicial body, arbitral body or other law, rule or regulation-making entity, or any entity, officer, inspector, investigator or examiner exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to any government or any court, in each case:
 - (i) having jurisdiction over the Seller, the Buyer or the Purchased Assets on behalf of any country, province, state, locality, or other geographical or political subdivision thereof; or
 - (ii) exercising or entitled to exercise any administrative, judicial, legislative, regulatory or taxing authority or power.
- (ee) **“Governmental Authorizations”** means authorizations, approvals, plans, franchises, orders, certificates, consents, directives, notices, licenses, permits,

variances, registrations or other rights issued to or required by the Seller relating to the Purchased Assets by or from any Governmental Authority.

- (ff) “**GST**” means tax (other than HST) payable under the GST and HST Legislation.
- (gg) “**GST and HST Legislation**” means Part IX of the *Excise Tax Act* (Canada).
- (hh) “**HST**” means tax payable under the GST and HST Legislation in respect of a participating province.
- (ii) “**including**” and “**includes**” shall be interpreted on an inclusive basis and shall be deemed to be followed by the words “without limitation”.
- (jj) “**Initial Order**” means the Initial Order granted by the CCAA Court on June 22, 2017, pursuant to which SCI and certain of its affiliates and subsidiaries were granted protection from their creditors under the CCAA (as amended, restated, supplemented and/or modified from time to time).
- (kk) “**Insolvency Proceedings**” means any action, application, petition, suit or other proceeding under any bankruptcy, arrangement, reorganization, dissolution, liquidation, insolvency, winding-up or similar law of any jurisdiction now or hereafter in effect, for the relief from or otherwise affecting creditors of the Seller, including without limitation under the *Bankruptcy and Insolvency Act* (Canada) (including the filing of a notice of intention to make a proposal), CCAA (including the CCAA Proceedings), the *Winding-Up and Restructuring Act* (Canada), the *Canada Business Corporations Act* or United States Bankruptcy Code by, against or in respect of the Seller.
- (ll) “**IP Assignment and Assumption Agreement**” means the intellectual property assignment and assumption agreement for the Purchased Assets, substantially in the form attached as Schedule 1.1(ll).
- (mm) “**Lender Claims**” means the aggregate amount owing to the Lenders arising from or related to the DIP Credit Agreement, the Wells Fargo Credit Agreement and the GACP Credit Agreement, which shall include to the maximum extent permissible under applicable documentation and law, without limitation, all accrued and unpaid principal, interest, default interest, premiums, fees and reasonable costs, charges and expenses all as may be due and payable under the aforementioned credit facilities and any ancillary documents.
- (nn) “**Lenders**” means the secured lenders under the DIP Credit Agreement, the Wells Fargo Credit Agreement and the GACP Credit Agreement.
- (oo) “**Monitor**” means FTI Consulting Canada Inc., in its capacity as CCAA Court-appointed monitor of the Seller pursuant to the Initial Order and not in its personal capacity.

- (pp) “**Monitor’s Certificate**” means the certificate filed with the CCAA Court by the Monitor certifying that the Monitor has received written confirmation in form and substance satisfactory to the Monitor from the Seller and the Buyer that all conditions to Closing have been satisfied or waived by the applicable Parties and that the Purchase Price and all applicable sales and transfer Taxes payable by the Buyer to the Seller have been received by the Monitor.
- (qq) “**NDA**” means the confidentiality, non-disclosure and non-use agreement between the Buyer and SCI dated August 29, 2017.
- (rr) “**Order**” means any order, directive, judgment, decree, injunction, decision, ruling, award or writ of any Governmental Authority.
- (ss) “**Parties**” means the Seller and the Buyer collectively, and “**Party**” means either the Seller or the Buyer, as the context requires.
- (tt) “**Payment Order**” has the meaning given to such term in Section 3.3(b).
- (uu) “**Person**” means any individual, partnership, limited partnership, limited liability company, joint venture, syndicate, sole proprietorship, company or corporation with or without share capital, unincorporated association, trust, trustee, executor, administrator or other legal personal representative, Governmental Authority or other entity, however designated or constituted.
- (vv) “**Personal Information**” means information about an identifiable individual in the possession or under the control of the Seller.
- (ww) “**Post-Closing Tax Period**” has the meaning given to such term in Section 7.4(c).
- (xx) “**Pre-Closing Tax Period**” has the meaning given to such term in Section 7.4(c).
- (yy) “**Purchase Price**” has the meaning given to such term in Section 3.1.
- (zz) “**Purchased Assets**” has the meaning given to such term in Section 2.1.
- (aaa) “**QST**” means the Québec sales tax payable under the QST Legislation.
- (bbb) “**QST Legislation**” means *An Act Respecting the Québec Sales Tax (Québec)*.
- (ccc) “**SCI**” has the meaning given to such term in the preamble to this Agreement.
- (ddd) “**SCI Viking Inventory**” has the meaning given to such term in Section 5.9(f);
- (eee) “**Sears Group**” has the meaning given to such term in the preamble to this Agreement.
- (fff) “**Seller**” has the meaning given to such term in the preamble to this Agreement.

- (ggg) “**SISP**” means the Sale and Investment Solicitation Process approved by the SISP Order (as amended, restated, supplemented and/or modified from time to time).
- (hhh) “**SISP Order**” means the Order granted by the CCAA Court on the SISP Order Date (as amended, restated, supplemented and/or modified from time to time), which, among other things, approved the SISP.
- (iii) “**SISP Order Date**” means July 13, 2017.
- (jjj) “**Sunset Date**” has the meaning given to such term in Section 9.1(b).
- (kkk) “**Tax**” and “**Taxes**” includes:
 - (i) taxes, duties, fees, premiums, assessments, imposts, levies and other charges of any kind whatsoever (including withholding on amounts paid to or by any Person) imposed by any Governmental Authority, 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, sales, goods and services, harmonized sales, use, value-added, excise, stamp, withholding, business, franchising, property, development, occupancy, employer health, payroll, employment, health, disability, severance, unemployment, social services, education and social security taxes, all surtaxes, all customs duties and import and export taxes, countervail and anti-dumping, all license, franchise and registration fees and all employment insurance, health insurance and Canada, Ontario and other government pension plan premiums or contributions; and
 - (ii) any liability in respect of any items described in clause (i) payable by reason of contract, assumption, transferee liability, operation of law or otherwise.
- (lll) “**Viking Range License Agreement**” has the meaning given to such term in Section 4.6.
- (mmm) “**Wells Fargo Credit Agreement**” means the revolving credit agreement dated September 10, 2010, as amended by the first amending agreement dated August 2012, the second amending agreement dated May 28, 2014, the third amending agreement dated May 28, 2014, the fourth amending agreement dated August 31, 2015, the fifth amending agreement dated August 18, 2016 and the sixth amending agreement dated March 30, 2017, between SCI (as borrower), Wells Fargo Capital Finance Corporation Canada (as administrative agent and collateral agent) and the lenders party thereto, as the same may be amended, restated, supplemented and/or modified from time to time.

1.2 Statutes

Unless specified otherwise, reference in this Agreement to a statute refers to that statute and the regulations thereunder as they may be amended, or to any restated or successor legislation of comparable effect.

1.3 Headings and Table of Contents

The inclusion of headings and a table of contents in this Agreement is for convenience of reference only and shall not affect the construction or interpretation hereof.

1.4 Gender and Number

In this Agreement, unless the context otherwise requires, words importing the singular include the plural and *vice versa*, and words importing gender include all genders.

1.5 Currency

Except where otherwise expressly provided, all amounts in this Agreement are stated and shall be paid in Canadian dollars. References to “\$” are to Canadian dollars. References to “US\$” are to United States dollars.

1.6 Invalidity of Provisions

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provision hereof. Upon such a determination of invalidity or unenforceability, the Parties shall negotiate to modify this Agreement in good faith so as to effect the original intent of the Parties as closely as possible in an acceptable manner so that the transactions contemplated by this Agreement be consummated as originally contemplated to the fullest extent possible.

1.7 Knowledge

Where any representation or warranty, or other provision, contained in this Agreement is expressly qualified by reference to, or otherwise refers to, the knowledge of: (a) the Seller, it will be deemed to refer to the actual knowledge of SCI’s Chief Financial Officer; and (b) the Buyer, it will be deemed to refer to the actual knowledge of the Buyer’s directors and officers.

1.8 Entire Agreement

This Agreement, the schedules to this Agreement, the NDA and the agreements and other documents required to be delivered pursuant to this Agreement, constitute the entire agreement among the Parties, and set out all the covenants, promises, warranties, representations, conditions and agreements among the Parties in connection with the subject matter of this Agreement, and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, pre-contractual or otherwise. There are no covenants, promises, warranties, representations, conditions, understandings or other agreements, whether oral or written, pre-contractual or otherwise, express, implied or collateral among the Parties in connection with

the subject matter of this Agreement, except as specifically set forth in this Agreement and any document required to be delivered pursuant to this Agreement.

1.9 Waiver, Amendment

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement shall be binding unless executed in writing by all Parties hereto. No waiver of any provision of this Agreement shall constitute a waiver of any other provision nor shall any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided.

1.10 Governing Law; Jurisdiction and Venue

This Agreement, the rights and obligations of the Parties under this Agreement, and any claim or controversy directly or indirectly based upon or arising out of this Agreement or the transactions contemplated by this Agreement (whether based on contract, tort or any other theory), including all matters of construction, validity and performance, shall in all respects be governed by, and interpreted, construed and determined in accordance with, the laws of the Province of Ontario and the federal laws of Canada applicable therein, without regard to the conflicts of law principles thereof. The Parties consent to the exclusive jurisdiction and venue of the CCAA Court prior to a Final Order of the CCAA Court closing the CCAA Proceedings and thereafter to the Courts of Ontario for the resolution of any such disputes arising under this Agreement. Each Party agrees that service of process on such Party as provided in Section 11.7 shall be deemed effective service of process on such Party.

1.11 Schedules

The schedules to this Agreement, listed below, are an integral part of this Agreement:

<u>Schedule</u>	<u>Description</u>
Schedule 1.1(d)	Form of Approval and Vesting Order
Schedule 1.1(II)	Form of IP Assignment and Assumption Agreement
Schedule 2.1	Trademark Applications and Registrations
Schedule 2.3	Authorization of Counsel

ARTICLE 2 PURCHASE AND SALE

2.1 Agreement to Purchase and Sell Purchased Assets

Upon and subject to the terms and conditions of this Agreement, at the Closing and effective as of the Closing Time, the Seller shall sell, convey, transfer, assign and deliver, or cause to be sold, conveyed, transferred, assigned and delivered, pursuant to the Approval and Vesting Order, and the Buyer shall purchase, free and clear of all Encumbrances, all of the Seller's right,

title and interest, including, without limitation, all exploitation rights, licenses, sub-licenses, copyrights, logos, trademarks, trade names, domain names, goodwill, know-how, rights associated with social media accounts and other intellectual or industrial rights, in and to all of the Seller's trademarks exclusively related to the "Viking" trademark and brand, including the applications and registrations set out in Schedule 2.1 and all Documents that are in the Seller's possession, if any (collectively referred to herein as the "**Purchased Assets**"). The Purchased Assets include all rights to sue for and collect damages for past, present and future infringements and passing off of rights of the Seller pertaining to the Purchased Assets, and all rights to modify, update, use and exploit the rights of the Seller in the Purchased Assets.

2.2 Assumption of Liabilities

The Buyer shall assume as of the Closing Time and shall pay, discharge and perform, as the case may be, from and after the Closing Time, all obligations and liabilities of the Seller with respect to the Purchased Assets to the extent such obligations and liabilities consist of liabilities and obligations that arise in respect of and relate to the period on and after the Closing Time. The Buyer shall not assume or be deemed to assume or be responsible for any debts, obligations, or liabilities of the Sears Group, including, without limitation, the Seller, in relation to the Purchased Assets or otherwise for periods prior to the Closing Time.

2.3 Authorization of Counsel

The Seller agrees to authorize the Seller's representative for service for the trade-marks included in the Purchased Assets to provide to the Buyer (at the Buyer's cost) documents and records in such counsel(s)' possession or control in connection with the use and evidence of use of the Purchased Assets.

ARTICLE 3 PURCHASE PRICE AND RELATED MATTERS

3.1 Purchase Price

The purchase price payable to the Seller for the Purchased Assets (the "**Purchase Price**"), exclusive of all applicable sales and transfer taxes, shall be the amount of [REDACTED] in cash.

3.2 Purchase Price Allocation

The Purchase Price shall be allocated among the Purchased Assets as agreed by the Parties, acting reasonably. Such allocation shall be binding on the Buyer and the Seller.

3.3 Payment of Purchase Price and Treatment of Deposit

- (a) The Purchase Price will be satisfied as follows:
 - (i) the portion of the Purchase Price equal to the amount of the Deposit and the actual earnings thereon will be satisfied by crediting the Seller, at the Closing Time, with the Buyer's interest in the Deposit (and the actual earnings thereon from the date the Deposit is received by the Monitor in

accordance with the SISP to but excluding the Closing Date) that is being held by the Monitor; and

- (ii) the balance of the Purchase Price will be satisfied by the payment of such amount by wire transfer of immediately available funds at the Closing Time from the Buyer to an account of the Monitor specified in writing by the Seller not less than two (2) Business Days prior to the Closing Date.
- (b) In the event that, prior to the Closing Date, an order (a “**Payment Order**”) of the CCAA Court is obtained directing the Seller to pay to the Lenders all or any portion of the proceeds of the Purchase Price to pay the Lender Claims in full or in part, then subject to and in accordance with the terms of the Payment Order, the Seller will deliver to the Buyer and the Monitor a notice and direction, signed by the Seller, directing the Buyer to pay all or the portion of the Purchase Price, as specified by the Payment Order, to the appropriate Lender by wire transfer at the Closing Time of immediately available funds to an account or accounts specified in such notice and direction, such amount to be applied by the appropriate Lender on account of the amounts owing by the Seller under the DIP Credit Agreement, the Wells Fargo Credit Agreement and/or the GACP Credit Agreement, as appropriate.
- (c) The Deposit paid to the Monitor by the Buyer will, together with any actual earnings thereon (from the date the Deposit is received by the Monitor in accordance with the SISP to but excluding the Closing Date), be:
- (i) credited to the Seller, as applicable, at the Closing Time in accordance with Section 3.3(a)(i), if the sale and purchase of the Purchased Assets provided for herein is completed in accordance with the terms and conditions hereof;
 - (ii) forfeited to the Seller, less any applicable withholding tax, if the Closing does not occur by reason of the default of the Buyer and the Seller shall have no further recourse against the Buyer; and
 - (i) returned to the Buyer, less any applicable withholding tax, if the Closing does not occur by any reason other than the default of the Buyer and the Buyer shall have no further recourse against the Seller.

ARTICLE 4 REPRESENTATIONS AND WARRANTIES BY THE SELLER

The Seller represents and warrants to the Buyer as follows, and acknowledge that the Buyer is relying upon the following representations and warranties in connection with its purchase of the Purchased Assets:

4.1 Corporate Existence

The Seller is a corporation duly formed and validly existing under the laws of Canada.

4.2 Due Authorization and Enforceability of Obligations

Subject to the issuance of the Approval and Vesting Order:

- (a) the Seller has all necessary corporate power, authority and capacity to:
 - (i) enter into and deliver this Agreement and the Closing Documents; and
 - (ii) carry out its obligations under this Agreement and the Closing Documents;
- (b) the execution, delivery and performance of this Agreement and the Closing Documents, and the consummation of the transactions contemplated by this Agreement and the Closing Documents, have been duly authorized by all necessary corporate action of each Seller; and
- (c) this Agreement does and the Closing Documents when executed by the Seller will constitute valid and binding obligations of each Seller enforceable against it in accordance with its terms.

4.3 Residence of the Seller

The Seller is not a non-resident of Canada for the purposes of the *Income Tax Act* (Canada).

4.4 Taxes

The Seller is duly registered under Subdivision (d) of Division V of the GST and HST Legislation with respect to the GST and HST, and under Division I of Chapter VIII of Title I of the QST Legislation with respect to the QST, and will provide their respective registration numbers to the Buyer prior to Closing.

4.5 Inventory

As at September 27, 2017, the SCI Viking Inventory consisted of [REDACTED] units with an aggregate value of [REDACTED].

4.6 Licenses

As of the Closing, (i) the License Agreement between SCI and Viking Range Corporation executed on December 19, 2002 (the “**Viking Range License Agreement**”), and any other license agreements, sub-license agreements or other similar agreements or arrangements have been terminated, are expired and/or have been disclaimed; (ii) any and all subsequent executed renewal terms are not in effect; and (iii) all such license agreements, sub-license agreements or other similar agreements or arrangements have been terminated, are expired and/or have been disclaimed.

4.7 No Other Representations, Warranties or Covenants

Unless and solely to the extent expressly set forth in this Agreement, no representation, warranty or covenant is expressed or implied by the Seller, including any warranties as to title, Encumbrance, description, merchantability or fitness for a particular purpose, environmental

compliance, condition, quantity or quality, or in respect of any other matter or thing whatsoever concerning the Purchased Assets or the right of the Seller to sell or assign the same, as applicable. The disclaimer in this Section 4.7 is made notwithstanding the delivery or disclosure to the Buyer or its directors, officers, employees, agents or representatives of any documentation or other information (including any financial projections, estimates, budgets, offering memoranda, management presentations, due diligence materials or other supplemental data not included in this Agreement). Without limiting the generality of the foregoing, any and all conditions, warranties or representations, express or implied, pursuant to Applicable Law (including under Article 1716 of the *Civil Code of Québec*, the *Sale of Goods Act* (Ontario), the *International Convention on Contracts for the Sale of Goods* (Geneva Convention) and any other applicable sale of goods legislation) do not apply hereto and are hereby expressly waived by the Buyer.

ARTICLE 5 REPRESENTATIONS AND WARRANTIES OF THE BUYER

The Buyer represents and warrants to the Seller as follows, and acknowledges that the Seller is relying upon the following representations and warranties in connection with their sale of the Purchased Assets:

5.1 Corporate Existence

The Buyer is a corporation duly formed, validly existing and in good standing under the laws of Canada.

5.2 Residence of the Buyer

The Buyer is not a non-resident of Canada for the purposes of the *Income Tax Act* (Canada).

5.3 Financial Ability

As of the Closing, the Buyer and its subsidiaries will have sufficient cash in immediately available funds to allow it to pay the Purchase Price, and all other costs and expenses in connection with the consummation of the transactions contemplated by this Agreement. Notwithstanding anything to the contrary contained herein, the Buyer's obligations to consummate the transactions contemplated by this Agreement are not conditioned or contingent in any way upon the receipt of financing from any person or the availability of funds to the Buyer.

5.4 Absence of Conflicts

The Buyer is not a party to, bound or affected by or subject to (and the assets of the Buyer are not affected by): (a) any charter or by-law provision; (b) any Applicable Law or governmental authorizations, approvals, franchises, orders, certificates, consents, directives, notices, licenses, permits, variances, registrations or other rights issued, granted or given by or from any Governmental Authority; or (c) any agreement or other document, in each case, that would be violated, breached by, or under which any default would occur or with notice or the passage of time would, be created as a result of the execution and delivery of, or the performance of obligations under, this Agreement or any other agreement or document to be entered into or delivered under the terms of this Agreement, except in the case of (b) and (c) for any violations,

breaches or defaults or any Applicable Law or any governmental authorizations, approvals, franchises, orders, certificates, consents, directives, notices, licenses, permits, variances, registrations or other rights issued, granted or given by or from any Governmental Authority, that would not have a material effect on or materially delay or impair the ability of the Buyer to consummate the transactions hereunder.

5.5 Due Authorization and Enforceability of Obligations

The Buyer has all necessary corporate power, authority and capacity to enter into and deliver this Agreement and the Closing Documents, and to carry out its obligations under this Agreement and the Closing Documents. The execution, delivery and performance of this Agreement and the Closing Documents, and the consummation of the transactions contemplated by this Agreement and the Closing Documents, have been duly authorized by all necessary corporate action of the Buyer. This Agreement does and when executed and delivered by the Buyer the Closing Documents will constitute valid and binding obligations of the Buyer enforceable against it in accordance with its terms.

5.6 Approvals and Consents

Except for the issuance of the Approval and Vesting Order, no authorization, consent or approval of, or filing with or notice to, any Governmental Authority, court or other Person is required in connection with the execution, delivery or performance of this Agreement by the Buyer, and each of the agreements to be executed and delivered by the Buyer hereunder or the purchase of any of the Purchased Assets hereunder, except for any authorizations, consents, approvals, filings or notices of any Governmental Authority, court or Person that would not have a material effect on or materially delay or impair the ability of the Buyer to consummate the transactions hereunder.

5.7 GST, HST and QST Registration

The Buyer is duly registered under subdivision (d) of Division V of the GST and HST Legislation with respect to the GST and HST, and under Division I of Chapter VIII of Title I of the QST Legislation with respect to the QST, and has provided or will prior to Closing provide its registration numbers to the Seller.

5.8 Personal Information

The Buyer's use and disclosure of Personal Information after Closing will be carried out in compliance with all Applicable Laws.

5.9 As Is, Where Is

- (a) The Buyer acknowledges and agrees that it has conducted to its satisfaction an independent investigation and verification of the Purchased Assets (including the state of title thereto and/or the state of any Encumbrances), and, based solely thereon, has determined to proceed with the transactions contemplated by this Agreement. The Buyer has relied solely on the results of its own independent investigation and verification, and the representations and warranties of the Seller

expressly and specifically set forth in ARTICLE 4, and the Buyer understands, acknowledges and agrees that all other representations, warranties and statements of any kind or nature, expressed or implied (including any relating to the future or historical financial condition, results of operations, prospects, assets or liabilities of the Seller, or the quality, quantity or condition of the Purchased Assets) are specifically disclaimed by the Seller. Except for the representations and warranties of the Seller expressly and specifically set forth in ARTICLE 4, the Seller does not make or provide hereunder any warranty or representation, express or implied, as to the quality, merchantability, fitness for a particular purpose, conformity to samples or condition of the Purchased Assets, or any part thereof. THE BUYER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT, EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES OF THE SELLER EXPRESSLY AND SPECIFICALLY SET FORTH IN ARTICLE 4: (A) THE BUYER IS ACQUIRING THE PURCHASED ASSETS ON AN "AS IS, WHERE IS" BASIS; AND (B) NEITHER THE SELLER NOR ANY OTHER PERSON (INCLUDING ANY REPRESENTATIVE OF THE SELLER, WHETHER IN ANY INDIVIDUAL, CORPORATE OR ANY OTHER CAPACITY OR THE MONITOR) IS MAKING, AND THE BUYER IS NOT RELYING ON, ANY REPRESENTATIONS, WARRANTIES OR OTHER STATEMENTS OF ANY KIND WHATSOEVER, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, AS TO ANY MATTER CONCERNING THE SELLER, THE PURCHASED ASSETS, THIS AGREEMENT OR THE TRANSACTIONS, OR THE ACCURACY OR COMPLETENESS OF ANY INFORMATION PROVIDED TO (OR OTHERWISE ACQUIRED BY) THE BUYER OR ANY OF ITS RESPECTIVE REPRESENTATIVES; AND WITHOUT LIMITING THE FOREGOING, ANY AND ALL CONDITIONS OR WARRANTIES EXPRESSED OR IMPLIED PURSUANT TO THE SALE OF GOODS ACT (ONTARIO), THE INTERNATIONAL CONVENTION ON CONTRACTS FOR THE SALE OF GOODS (GENEVA CONVENTION) AND ANY OTHER APPLICABLE SALE OF GOODS LEGISLATION, WILL NOT APPLY AND ARE HEREBY WAIVED BY THE SELLER AND THE PARTIES AGREE TO EXCLUDE THE EFFECT OF THE LEGAL WARRANTY PROVIDED FOR BY ARTICLE 1716 OF THE CIVIL CODE OF QUÉBEC AND THAT THE BUYER IS PURCHASING THE PURCHASED ASSETS AT ITS OWN RISK WITHIN THE MEANING OF ARTICLE 1733 OF THE CIVIL CODE OF QUÉBEC, AND ANY AND ALL CONDITIONS, WARRANTIES OR REPRESENTATIONS, REGARDING MERCHANTABILITY, PHYSICAL OR FINANCIAL CONDITION, DESCRIPTION, FITNESS FOR A PARTICULAR PURPOSE, QUALITY, QUANTITY, ANY NON-INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS, OR REGARDING THE SCOPE, VALIDITY OR ENFORCEABILITY OF ANY PURCHASED ASSET, OR ANY OTHER THING AFFECTING THE PURCHASED ASSETS, OR IN RESPECT OF ANY OTHER MATTER OR THING WHATSOEVER, INCLUDING ANY AND ALL CONDITIONS, WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, PURSUANT TO ANY APPLICABLE LAW IN ANY JURISDICTION, WHICH THE BUYER CONFIRMS DO NOT APPLY TO THIS

AGREEMENT, AND ARE HEREBY WAIVED IN THEIR ENTIRETY BY THE BUYER.

- (b) The Buyer acknowledges and agrees that: (i) the representations and warranties of the Seller set forth in ARTICLE 4 will merge on, and shall not survive, the Closing; and (ii) the Seller will not have or be subject to any liability or indemnification obligation to the Buyer or any other Person resulting from (nor will the Buyer or any other Person have any claim with respect to) the distribution to the Buyer, the Buyer's use of, or reliance on, any information, documents, projections, forecasts or other material made available to the Buyer in certain "data rooms," confidential information memoranda or management presentations in expectation of, or in connection with, the transactions contemplated by this Agreement, regardless of the legal theory under which such liability or obligation may be sought to be imposed, whether sounding in contract or tort, or whether at law or in equity, or otherwise. None of the representatives of the Seller, whether in an individual, corporate or other capacity, will have or be subject to any such liability or indemnification obligations.
- (c) The remedies expressly set forth in this Agreement are the Buyer's sole and exclusive remedies relating to this Agreement, the Closing Documents, the transactions contemplated hereby and thereby, and the Purchased Assets.
- (d) This Section 5.9 will not merge on Closing and is deemed incorporated by reference in all Closing Documents.
- (e) The Buyer acknowledges and agrees that the enforceability of this Agreement against the Seller is subject to entry of the Approval and Vesting Order.
- (f) The Buyer acknowledges and agrees that nothing in this Agreement shall operate to prohibit or diminish in any way the right of the Seller to directly or indirectly sell, transfer, liquidate or otherwise dispose of any existing product bearing the Viking name or related to the Purchased Assets, including any Viking-branded inventory (the "**SCI Viking Inventory**"); provided, however, that the aggregate value of the SCI Viking Inventory sold, transferred, liquidated or otherwise disposed of shall not exceed [REDACTED].

5.10 Investment Canada Act

The Buyer is a "Canadian" or a "WTO Investor" within the meaning of the Investment Canada Act, and the regulations thereunder.

ARTICLE 6 CONDITIONS

6.1 Conditions for the Benefit of the Buyer and the Seller

The respective obligations of the Buyer and of the Seller to consummate the transactions contemplated by this Agreement are subject to the satisfaction of, or compliance with, at or prior to the Closing Time, each of the following conditions:

- (a) *No Law* – no provision of any Applicable Law and no judgment, injunction, order or decree that prohibits the consummation of the purchase of the Purchased Assets or any of the other transactions pursuant to this Agreement shall be in effect;
- (b) *Court Order* – the Approval and Vesting Order shall have been issued and entered and such order shall be Final.

The Parties acknowledge that the foregoing conditions are for the mutual benefit of the Seller, on the one hand, and the Buyer, on the other hand. Any condition in this Section 6.1 may be waived by the Seller, on the one hand, or by the Buyer, on the other hand, in whole or in part, without prejudice to any of their respective rights of termination in the event of non-fulfillment of any other condition in whole or in part. Any such waiver will be binding on the Seller or the Buyer, as applicable, only if made in writing.

6.2 Conditions for the Benefit of the Buyer

The obligation of the Buyer to consummate the transactions contemplated by this Agreement is subject to the satisfaction of, or compliance with, or waiver by the Buyer of, at or prior to the Closing Time, each of the following conditions (each of which is acknowledged to be for the exclusive benefit of the Buyer):

- (a) *Compliance with Covenants* – there shall have been no material breach or non-compliance with any of the covenants, agreements and conditions under this Agreement by the Seller;
- (b) *Truth of Representations and Warranties* – the representations and warranties of the Seller contained in ARTICLE 4 shall be true and correct in all material respects on and as of the Closing Date, as if made on and as of such date (except for representations and warranties made as of specified date, the accuracy of which shall be determined as of such specified date);
- (c) *Officer's Certificate* – the Buyer shall have received a certificate confirming the satisfaction of the conditions contained in Sections 6.2(a) (*Compliance with Covenants*) and 6.2(b) (*Truth of Representations and Warranties*), signed for and on behalf of the Seller without personal liability by an executive officer of the Seller or other Persons acceptable to the Buyer, in each case in form and substance reasonably satisfactory to the Buyer;

- (d) *Disclaimer of Viking Range License Agreement* – at the Seller’s own cost and expense, the Seller shall have commenced the disclaimer process in respect of the Viking Range License Agreement pursuant to Section 32 of the CCAA and one of the following events shall have occurred: (i) the time period in which the licensee is required to apply to a court for an order that such agreement is not to be disclaimed shall have expired and the licensee shall not have applied for such an order; (ii) in the event that an order of a court providing for the disclaimer of the Viking Range License Agreement is required to disclaim such agreement, then such Disclaimer Order shall be Final; or (iii) the CCAA Court shall have otherwise made an order providing for the disclaimer of the Viking Range License Agreement and such order shall be Final (each of the orders described in (ii) and (iii) above, a “**Disclaimer Order**”); and
- (e) *Closing Documents* – each of the deliveries required to be made to the Buyer pursuant to Section 10.2 shall have been so delivered.

6.3 Conditions for the Benefit of the Seller

The obligation of the Seller to consummate the transactions contemplated by this Agreement is subject to the satisfaction of, or compliance with, or waiver where applicable by the Seller of, at or prior to the Closing Time, each of the following conditions (each of which is acknowledged to be for the exclusive benefit of the Seller):

- (a) *Performance of Covenants* – the covenants contained in this Agreement to be performed by the Buyer at or prior to the Closing Time shall have been performed in all material respects as at the Closing Time;
- (b) *Truth of Representations and Warranties* – the representations and warranties of the Buyer contained in ARTICLE 5 shall be true and correct in all material respects on and as of the Closing Date, as if made on and as of such date (except for representations and warranties made as of specified date, the accuracy of which shall be determined as of such specified date); and
- (c) *Officer’s Certificate* – the Seller shall have received a certificate confirming the satisfaction of the conditions contained in Sections 6.3(a) (*Performance of Covenants*) and 6.3(b) (*Truth of Representations and Warranties*) signed for and on behalf of the Buyer without personal liability by an executive officer of the Buyer, in form and substance satisfactory to the Seller, each acting in a commercially reasonable manner.

ARTICLE 7 ADDITIONAL AGREEMENTS OF THE PARTIES

7.1 Conduct of Business Until Closing Time

Except: (1) as contemplated or permitted by this Agreement; (2) as contemplated by the budget delivered in accordance with the DIP Facility; (3) as necessary in connection with the CCAA Proceedings; (4) as otherwise provided in the Initial Order and any other court orders, prior

to the Closing Time; (5) as required by Applicable Law, to the extent reasonably practicable having regard to the CCAA Proceedings; or (6) as consented to by the Buyer, such consent not to be unreasonably withheld, conditioned or delayed, the Seller shall:

- (a) (i) use commercially reasonable efforts to preserve and not abandon the Purchased Assets, and (ii) pay and discharge the debts authorized by the CCAA Court in accordance with the DIP Credit Agreement; and
- (b) not, without the prior written consent of the Buyer (the granting of such consent to be in the Buyer's sole discretion): (i) transfer, lease, license, sell, abandon, create any Encumbrance (other than Encumbrances associated with or permitted by the DIP Credit Agreement) on or otherwise dispose of any of the Purchased Assets (except in the ordinary course of business, in all material respects consistent with past practice); or (ii) agree or make a commitment, whether in writing or otherwise, to do the foregoing.

7.2 Covenants Relating to this Agreement

- (a) Each of the Parties shall perform, and shall cause their affiliates to perform, all obligations required to be performed by the applicable Party under this Agreement, co-operate with the other Parties in connection therewith and, subject to the directions of any applicable courts to the Seller, use commercially reasonable efforts to do all such other acts and things as may be necessary or desirable in order to consummate and make effective, as soon as reasonably practicable and in any event prior to the Sunset Date, the transactions contemplated by this Agreement and, without limiting the generality of the foregoing, each Party shall and, where appropriate, shall cause each of its affiliates to:
 - (i) negotiate in good faith and use its commercially reasonable efforts to take or cause to be taken all actions and to do, or cause to be done, all things necessary, proper or advisable to satisfy the conditions precedent to the obligations of such Party hereunder (including, where applicable, negotiating in good faith with the applicable Governmental Authorities and/or third Persons in connection therewith), and to cause the fulfillment at the earliest practicable date of all of the conditions precedent to the other Party's obligations to consummate the transactions contemplated hereby; and
 - (ii) not take any action, or refrain from taking any action, and use commercially reasonable efforts to not permit any action to be taken or not taken, which would reasonably be expected to prevent, materially delay or otherwise impede the consummation of the transactions contemplated by this Agreement.
- (b) The Seller and the Buyer agree to cause each of their representatives to keep the other informed on a reasonably current basis as to their progress in terms of the satisfaction of the conditions precedent contained herein.

- (c) The Seller and the Buyer agree to execute and deliver such other documents, certificates, agreements and other writings, and to take such other actions as may be reasonably required to consummate or implement as soon as reasonably practicable, the transactions contemplated by this Agreement.

7.3 Release; Acknowledgements

- (a) Except as otherwise contained herein, effective as of the Closing, the Buyer hereby releases and forever discharges the Seller and its affiliates, and their respective successors and assigns, and all officers, directors, partners, members, shareholders, employees and agents of each of them, from any and all actual or potential Claims which such Person had, has or may have in the future to the extent relating to the Purchased Assets.
- (b) The Buyer shall use its best efforts to assist the Seller and shall co-operate with the Seller, as reasonably requested, to obtain from third parties, effective as of the Closing Time, a full release of the Seller's obligations under the Purchased Assets, 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.

7.4 Tax Matters

- (a) The Buyer and the Seller agree to use commercially reasonable efforts to furnish or cause to be furnished to each other, as promptly as practicable, such information and assistance relating to the Purchased Assets as is reasonably necessary for the preparation and filing of any Tax return, claim for refund or other required or optional filings relating to Tax matters, for the preparation for and proof of facts during any Tax audit, for the preparation for any Tax protest, for the prosecution of any suit or other proceedings relating to Tax matters and for the answer to any governmental or regulatory inquiry relating to Tax matters.
- (b) For purposes of any income Tax return related to the transactions contemplated in this Agreement, the Buyer and the Seller agree to report the transactions contemplated in this Agreement in a manner consistent with the Purchase Price allocation determined in accordance with Section 3.2, and the Buyer and the Seller shall not voluntarily take any action inconsistent therewith in any such Tax return, refund claim, litigation or otherwise, unless required by applicable Tax laws. The Buyer and the Seller shall each be responsible for the preparation of their own statements required to be filed under the *Income Tax Act* (Canada) and other similar forms in accordance with applicable Tax laws.
- (c) All Taxes and similar *ad valorem* obligations levied with respect to the Purchased Assets for a taxable period which includes (but does not end on) the Closing Date shall be apportioned between the Seller and the Buyer based on the number of days of such taxable period up to and including the Closing Date (such portion of such taxable period, the "**Pre-Closing Tax Period**") and the number of days of such

taxable period after the Closing Date (such portion of such taxable period, the “**Post-Closing Tax Period**”). Except as otherwise provided herein, the Seller shall be liable for the proportionate amount of such Taxes that is attributable to the Pre-Closing Tax Period, and the Buyer shall be liable for the proportionate amount of such Taxes that is attributable to the Post-Closing Tax Period.

- (d) In respect of the purchase and sale of the Purchased Assets under this Agreement, to the extent permitted by Applicable Law, the Buyer shall pay direct to the appropriate Governmental Authority all sales and transfer Taxes, registration charges and transfer fees payable by it and, upon the reasonable request of the Seller, the Buyer shall furnish proof of such payment, and the Buyer shall otherwise be liable for and shall pay to the Seller an amount equal to any such Tax payable by the Buyer and collectible by the Seller including under the GST and HST Legislation and the QST Legislation and under any similar provincial or territorial legislation imposing a similar value-added or multi-staged Tax. The Buyer shall deliver to Seller any purchase exemption certificates being relied on by the Buyer in accordance with and in the form and manner as required under Applicable Laws governing provincial sales and transfer Taxes.
- (e) The Buyer hereby waives compliance by the Seller with Section 6 of the *Retail Sales Tax Act* (Ontario) and with any similar provision contained in any other Applicable Law in respect of all sales and transfer Taxes, registration charges and transfer fees payable.

7.5 Intellectual Property Matters

The Seller shall cooperate with and assist the Buyer, at the Buyer’s expense, with the registration of the assignment of the registrable rights relating to the Purchased Assets.

7.6 Notice of Certain Events

The Seller, on the one hand, and the Buyer, on the other hand, shall give prompt written notice to the other Party of: (a) the occurrence or non-occurrence of any fact, change, condition or event, the occurrence or non-occurrence of which would render any representation or warranty of such Party contained in this Agreement or any of the Closing Documents untrue or inaccurate in any material respect; (b) any failure of such Party to comply with or satisfy any covenant or agreement to be complied with or satisfied by such Party hereunder in any material respect or any event or condition that would otherwise reasonably be expected to result in the nonfulfillment of any of the conditions to such Party’s obligations hereunder; (c) any notice (whether written or oral) from any Person (including any counterparty to a Contract) alleging that the consent of such Person is or may be required in connection with, or that any Contract with any such Person is or may be breached or otherwise violated in connection with, the consummation of the Closing or any of the other transactions contemplated by this Agreement or any of the Closing Documents; or (d) any proceeding pending or, to the knowledge of such Party, threatened, against such Party relating to the Agreement and the other transactions contemplated by this Agreement or any of the Closing Documents.

7.7 Transition

Following the Closing Time, the Seller agrees to use commercially reasonable efforts to facilitate introductions between the Buyer and existing suppliers of products sold under the “Viking” trademark and brand that Seller has a continuing relationship as of the Closing Time; provided, however, that the Buyer acknowledges and agrees that nothing in this Section 7.7 shall operate to prohibit or diminish in any way the right of the Seller to dissolve, windup or otherwise cease operations as it may determine in its sole discretion following the Closing Time. Notwithstanding the foregoing, any efforts required of the Seller pursuant to this Section 7.7 shall in no event be required to continue for more than 90 days following Closing.

7.8 Risk of Loss

In the event the Purchased Assets are appropriated, expropriated or seized by any Person, on or prior to the Closing Date and without fault of the Seller, the Buyer may elect to (a) terminate this Agreement, or (b) complete the transactions contemplated by this Agreement without reduction of the Purchase Price. In the event the Buyer elects to complete the transactions pursuant to the preceding clause (b), all proceeds of insurance or compensation for expropriation or seizure in respect thereof will be payable to the Buyer and all right and claim of the Seller to any such amounts not paid by the Closing Date will be assigned to the Buyer. Notwithstanding the foregoing, any obligations of the Seller pursuant to this Section 7.8 shall terminate 90 days following Closing.

ARTICLE 8 COURT ORDERS

8.1 Court Orders

- (a) The Buyer shall cooperate with the Seller acting reasonably, as may be necessary, including by providing such information and taking such actions as may be reasonably requested, in obtaining the Approval and Vesting Order and a Disclaimer Order (if necessary).
- (b) Within the time period provided for in the SISF, the Seller shall use commercially reasonable efforts file a motion with the CCAA Court for the issuance of the Approval and Vesting Order.
- (c) The Seller shall use commercially reasonable efforts to obtain the Approval and Vesting Order and a Disclaimer Order (if necessary).
- (d) The Buyer and its legal counsel shall be given a reasonable opportunity to review and comment on the motion(s) for the issuance of the Approval and Vesting Order and a Disclaimer Order (if necessary).
- (e) Notice of the motion seeking the issuance of the Approval and Vesting Order shall be served by the Seller on all Persons required to receive notice under Applicable Law and the requirements of the CCAA, the CCAA Court, and any other Person determined necessary by the Seller or the Buyer.

8.2 CCAA Process

If the Approval and Vesting Order or any other orders of the CCAA Court relating to this Agreement shall be appealed or motion for rehearing or reargument shall be filed with respect thereto, the Seller agrees to take all action as may be commercially reasonable and appropriate to defend against such appeal, petition or motion and the Buyer agrees to use its commercially reasonable efforts to cooperate in such efforts.

ARTICLE 9 TERMINATION

9.1 Termination

This Agreement may be terminated at any time prior to Closing as follows:

- (a) by mutual written consent of the Buyer and the Seller (with the consent of the Lenders and the Monitor, in the case of the Seller) or on further order of the CCAA Court;
- (b) by the Buyer or the Seller (with the consent of the Lenders and the Monitor, in the case of the Seller) if Closing has not occurred on or before the Closing Date (the “**Sunset Date**”); provided, that the Buyer or the Seller, as the case may be, are not in breach of any representation, warranty, covenant or other agreement in this Agreement to cause the conditions in ARTICLE 6 to be satisfied;
- (c) by the Buyer or the Seller upon the dismissal or conversion of the CCAA Proceedings;
- (d) by the Buyer or the Seller upon permanent denial of the Approval and Vesting Order;
- (e) by the Buyer or the Seller if a court of competent jurisdiction or other Governmental Authority has issued an order or taken any other action permanently restraining, enjoining or otherwise prohibiting the consummation of Closing and such order or action has become Final (provided the same was not initiated by the Buyer or the Seller);
- (f) by the Seller, if required under any Order of a court of competent jurisdiction including the CCAA Court;
- (g) by the Seller (with the consent of the Lenders and the Monitor), if there has been a material violation or breach by the Buyer of any covenant, representation or warranty which would prevent the satisfaction of the conditions set forth in Section 6.1 or Section 6.3, as applicable, by the Sunset Date and such violation or breach has not been waived by the Seller or cured within ten (10) Business Days after written notice thereof from the Seller, unless the Seller is in material breach of their obligations under this Agreement;
- (h) by the Buyer pursuant to Section 7.8; or

- (i) by the Buyer, if there has been a material violation or breach by the Seller of any covenant, representation or warranty which would prevent the satisfaction of the conditions set forth in Section 6.1 or Section 6.2, as applicable, by the Sunset Date and such violation or breach has not been waived by the Buyer or cured within ten (10) Business Days after written notice thereof from the Buyer, unless the Buyer is in material breach of its obligations under this Agreement.

The Party desiring to terminate this Agreement pursuant to this Section 9.1 (other than pursuant to Section 9.1(a)) shall give written notice of such termination to the other Party or Parties, as applicable, specifying in reasonable detail the basis for such Party's exercise of its termination rights.

9.2 Effect of Termination

In the event of termination of this Agreement pursuant to Section 9.1, this Agreement shall become void and of no further force or effect without liability of any Party to any other Party to this Agreement except that (a) this Section 9.2 and Sections 3.3(c), 11.1, 11.3, 11.4, 11.5, 11.6 and 11.7 shall survive, (b) the confidentiality, non-use and non-disclosure obligations under the NDA shall survive in accordance with the terms of the NDA, and (b) no termination of this Agreement shall relieve any Party of any liability for any wilful breach by it of this Agreement.

ARTICLE 10 CLOSING

10.1 Location and Time of the Closing

The Closing shall take place at the Closing Time on the Closing Date at the Toronto, Ontario offices of Torys LLP, or at such other location as may be agreed upon by the Parties.

10.2 Seller's Deliveries at Closing

At Closing, the Seller shall deliver to the Buyer the following:

- (a) a certified copy of the Approval and Vesting Order;
- (b) either: (i) written confirmation from the Seller that the time period in which the licensee under the Viking Range License Agreement is required to apply to a court for an order that such agreement is not to be disclaimed pursuant to Section 32 of the CCAA has expired and the licensee shall not have applied for such an order or communicated its intention to do so; or (ii) a certified copy of a Disclaimer Order;
- (c) the IP Assignment and Assumption Agreement duly executed by the Seller;
- (d) an authorization of counsel, substantially in the form attached as Schedule 2.3, duly executed by the Seller;
- (e) an executed copy of the Monitor's Certificate;
- (f) the certificates contemplated by Section 6.2(c);

- (g) a duly executed election pursuant to GST and HST Legislation and QST Legislation, and any certificates, elections or other documents required to be delivered pursuant to Section 7.4; and
- (h) all other documents required to be delivered by the Seller on or prior to the Closing Date pursuant to this Agreement or Applicable Law or as reasonably requested by the Buyer in good faith.

10.3 Buyer's Deliveries at Closing

At Closing, the Buyer shall deliver to the Seller:

- (a) the Purchase Price;
- (b) any sales or transfer Taxes payable on Closing by the Buyer to the Seller pursuant to Section 7.4(d) hereof;
- (c) the IP Assignment and Assumption Agreements duly executed by the Buyer;
- (d) the certificate contemplated by Section 6.3(c);
- (e) a duly executed election pursuant to GST and HST Legislation and QST Legislation, and any certificates, elections or other documents required to be delivered pursuant to Section 7.4; and
- (f) all other documents required to be delivered by the Buyer on or prior to the Closing Date pursuant to this Agreement or Applicable Law or as reasonably requested by the Seller in good faith.

10.4 Possession of Assets and Cooperation of the Seller with respect to Intellectual Property

In no event will the Purchased Assets be sold, assigned, transferred or set over to the Buyer until the conditions set out in the Approval and Vesting Order have been satisfied, and the Buyer has satisfied all delivery requirements outlined in Section 10.3. Promptly following Closing, the Seller shall deliver to the Buyer a hard drive or hard drives containing all of the electronic Documents in its possession, if any, and shall make available for retrieval by the Buyer or its agent(s) any and all Documents in the physical possession of the Seller, if any, for a period of thirty (30) days after the Closing Date.

The Seller will, in respect of the applications and registrations of Intellectual Property included in the Purchased Assets, provide such commercially reasonable cooperation, including the execution of confirmatory notice documents for recordation at government intellectual property offices, to record at such offices the Buyer as the assignee and owner of such Intellectual Property; provided, however, that the Buyer acknowledges and agrees that nothing in this Section 10.4 shall operate to prohibit or diminish in any way the right of the Seller to dissolve, windup or otherwise cease operations as it may determine in its sole discretion following the Closing Time.

10.5 Monitor

The Parties hereby acknowledge and agree that the Monitor will be entitled to file the Monitor's Certificate with the CCAA Court without independent investigation upon receiving written confirmation from the Seller and the Buyer that all conditions to Closing have been satisfied or waived and upon receiving the Purchase Price and any sales or transfer Taxes confirmed in writing by the Seller and the Buyer (on which the Monitor shall be entitled to rely without independent investigation) to be payable on Closing by the Buyer to the Seller pursuant to Section 7.4(d) hereof, and the Monitor will have no liability to the Seller or the Buyer or any other Person as a result of filing the Monitor's Certificate or otherwise in connection with this Agreement or the transactions contemplated hereunder (whether based on contract, tort or any other theory).

10.6 Simultaneous Transactions

All actions taken and transactions consummated at the Closing shall be deemed to have occurred simultaneously, and no such transaction shall be considered consummated unless all are consummated.

ARTICLE 11 GENERAL MATTERS

11.1 Confidentiality

The Buyer shall keep confidential all Confidential Information relating to the Seller and the Purchased Assets in accordance with the terms of the NDA.

11.2 Public Notices

No press release or other announcement concerning the transactions contemplated by this Agreement shall be made by the Seller, on the one hand, or by the Buyer, on the other hand, without the prior consent of the other Party (such consent not to be unreasonably withheld, conditioned or delayed); provided, however, that subject to the last sentence of this Section 11.2, any Party may, without such consent, make such disclosure if the same is required by Applicable Law (including the CCAA Proceedings) or by any stock exchange on which any of the securities of such Party or any of its affiliates are listed, or by any insolvency or other court or securities commission, or other similar Governmental Authority having jurisdiction over such Party or any of its affiliates, and, if such disclosure is required, the Party making such disclosure shall use commercially reasonable efforts to give prior oral or written notice to the other Party to the extent legally permissible and reasonably practicable, and if such prior notice is not legally permissible or reasonably practicable, to give such notice reasonably promptly following the making of such disclosure. Notwithstanding the foregoing: (i) this Agreement may be filed by the Seller with the CCAA Court and posted on SEDAR or such other website as may be required pursuant to Applicable Law or the rules of any relevant stock exchange; and (ii) the transactions contemplated in this Agreement may be disclosed by the Seller to the CCAA Court, subject to redacting confidential or sensitive information as permitted by Applicable Law. The Parties further agree that:

- (a) the Monitor may prepare and file reports and other documents with the CCAA Court containing references to the transactions contemplated by this Agreement and the terms of such transactions; and

- (b) the Seller and its professional advisors may prepare and file such reports and other documents with the CCAA Court containing references to the transactions contemplated by this Agreement and the terms of such transactions as may reasonably be necessary to complete the transactions contemplated by this Agreement or to comply with their obligations in connection therewith.

Wherever possible, the Buyer shall be afforded an opportunity to review and comment on such materials prior to their filing. The Parties may issue a joint press release announcing the execution and delivery of this Agreement, in form and substance mutually agreed to by them.

11.3 Survival

None of the representations, warranties, covenants (except the covenants in ARTICLE 2, ARTICLE 3, ARTICLE 11 and Sections 7.3, 7.4, 7.5, 7.7, 11.1 and 11.4 to the extent they are to be performed after the Closing) of any of the Parties set forth in this Agreement, in any Closing Document to be executed and delivered by any of the Parties (except any covenants included in such Closing Documents, which, by their terms, survive Closing) or in any other agreement, document or certificate delivered pursuant to or in connection with this Agreement or the transactions contemplated hereby shall survive the Closing.

11.4 Expenses

Except as otherwise specifically provided herein, the Seller, on the one hand, and the Buyer, on the other hand, shall be responsible for the expenses (including fees and expenses of legal advisers, accountants and other professional advisers) incurred by each of them, respectively, in connection with the negotiation and settlement of this Agreement, and the completion of the transactions contemplated hereby.

11.5 Non-Recourse

No past, present or future director, officer, employee, incorporator, member, partner, securityholder, affiliate, agent, lawyer or representative of the respective Parties, in such capacity, shall have any liability for any obligations or liabilities of the Buyer or the Seller, as applicable, under this Agreement, or for any Claim based on, in respect of or by reason of the transactions contemplated hereby.

11.6 Assignment; Binding Effect

No Party may assign its right or benefits under this Agreement without the consent of each of the other Parties, except that without such consent any Party may, upon prior notice to the other Parties: (a) assign this Agreement, or any or all of its rights and obligations hereunder, to one or more of its subsidiaries or affiliates; or (b) the Buyer may direct that title to all or some of the Purchased Assets be transferred to one or more of its subsidiaries or affiliates; provided, that no such assignment or direction shall relieve such assigning Party of its obligations hereunder. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective permitted successors and permitted assigns. Except as provided in Section 7.3, nothing in this Agreement shall create or be deemed to create any third Person beneficiary rights in any Person not a Party to this Agreement.

11.7 Notices

Any notice, consent or approval required or permitted to be given in connection with this Agreement (in this Section referred to as 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 transferred by facsimile or email:

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

Canadian Tire Corporation, Limited
2180 Yonge St.
Toronto, Ontario
M4P 2V8

Attention: John Chimienti, Associate General Counsel and Chief Counsel, Retail
Telephone: 416.480.3680
Facsimile: 416.480.3107
Email: john.chimienti@cantire.com

with copies (which shall not in themselves constitute notice) to:

Torys LLP
Suite 3000,
79 Wellington Street West
Box 270, TD Centre
Toronto, Ontario M5K 1N2

Attention: Adam Slavens
Telephone: 416.865.7333
Facsimile: 416.485.7380
Email: aslavens@torys.com

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

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

Attention: Phil Mohtadi
Telephone: (416) 941-4419
Email: pmohtad@sears.ca

with copies (which shall not in themselves constitute notice) to:

Osler, Hoskin & Harcourt LLP
Suite 6200
1 First Canadian Place
Toronto, ON M5X 1B8

Attention: Marc Wasserman and Tracy Sandler
Telephone: 416-862-4908 / 416-862-5890
Facsimile: 416-862-6666
Email: mwasserman@osler.com / tsandler@osler.com

and the Monitor:

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

Attention: Paul Bishop
Telephone: 416-649-8053
Facsimile: 416-649-8101
Email: paul.bishop@fticonsulting.com

and counsel to the Monitor:

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

Attention: Orestes Pasparakis and Virginie Gauthier
Telephone: 416-216-4815 / 416-216-4853
Facsimile: 416-216-3930
Email: orestes.pasparakis@nortonrosefulbright.com /
virginie.gauthier@nortonrosefulbright.com

Any Notice delivered or transmitted to a Party as provided above shall be deemed to have been given and received on the day it is delivered or transmitted, provided that it is delivered or transmitted on a Business Day prior to 5:00 p.m. local time in the place of delivery or receipt. However, if the Notice is delivered or transmitted after 5:00 p.m. local time or if such day is not a Business Day then the Notice shall be deemed to have been given and received on the next Business Day.

Any Party may, from time to time, change its address by giving Notice to the other Parties in accordance with the provisions of this Section.

11.8 Counterparts; Facsimile Signatures

This Agreement may be signed in counterparts and each of such counterparts shall constitute an original document and such counterparts, taken together, shall constitute one and the same instrument. Execution of this Agreement may be made by facsimile signature or by electronic image scan which, for all purposes, shall be deemed to be an original signature.

11.9 Language

Les Parties aux présentes ont expressément exigé que le présent convention et tous les documents et avis qui y sont affèrents soient rédigés en anglaise. The Parties have expressly required that this Agreement and all documents and notices relating hereto be drafted in English.

[Signature pages follow]

IN WITNESS WHEREOF the Parties have executed this Agreement as of the date first written above.

SEARS CANADA INC.

By: P. Mohtadi
Name: Philip Mohtadi
Title: Corporate Secretary

**CANADIAN TIRE CORPORATION,
LIMITED**

By: _____
Name:
Title:

By: _____
Name:
Title:

IN WITNESS WHEREOF the Parties have executed this Agreement as of the date first written above.

SEARS CANADA INC.

By: _____
Name: Philip Mohtadi
Title: Corporate Secretary

**CANADIAN TIRE CORPORATION,
LIMITED**

By: _____
Name: DEAN M. CANN
Title: CHIEF FINANCIAL OFFICER

By: _____
Name: Douglas B. Nathanson
Title: General Counsel

ON READING the Notice of Motion of the Applicants, the Affidavit of ● sworn on ●, 2017 including the exhibits thereto (the “● Affidavit”), and the ● Report of FTI Consulting Canada Inc., in its capacity as Monitor (the “**Monitor**”), filed, and on hearing the submissions of respective counsel for the Applicants, the Monitor, the Purchaser, 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

2. 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.

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

APPROVAL OF THE APA

4. THIS COURT ORDERS AND DECLARES that the entering into of the Transaction by the Seller is hereby approved and ratified and that the execution of the APA by the Seller is hereby authorized, approved and ratified with such minor amendments as the Seller (with the consent of the Monitor after consultation with the DIP Lenders) and the Purchaser may agree upon pursuant to the terms of the APA. The Seller 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 and for the conveyance of the Purchased Assets to the Purchaser and the Monitor shall be authorized to take such additional steps in furtherance of its responsibilities under the APA and this Order, and shall not incur any liability as a result thereof.

5. THIS COURT ORDERS AND DECLARES that upon the delivery of a Monitor’s certificate to the Purchaser substantially in the form attached as Schedule “A” hereto (the “**Monitor’s Certificate**”), all of the Seller’s right, title and interest in and to the Purchased Assets shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory or otherwise), hypothecs, mortgages, trusts or deemed trusts

(whether contractual, statutory or otherwise), liens, executions, levies, charges or other financial or monetary claims, rights or first negotiation, rights of first refusal and any other similar rights, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise in respect of the Purchased Assets (collectively, the “**Claims**”), including, without limiting the generality of the foregoing:

- (a) the Administration Charge, the FA Charge, the KERP Priority Charge, the Directors’ Priority Charge, the DIP ABL Lenders’ Charge, the DIP Term Lenders’ Charge, the KERP Subordinated Charge and the Directors’ Subordinated Charge (as such terms are defined in the Initial Order) and any other charges hereafter granted by this Court in these proceedings (collectively, the “**CCAA Charges**”);
- (b) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) 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**”), and, for greater certainty, this Court orders that all of the Claims and Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

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 Purchased Assets immediately prior to the Closing Date 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 and/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, in such amounts as agreed to by the DIP ABL Agent and DIP Term Agent, as applicable, or if no such applicable agreement can be reached, on further Order of

the Court (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 APA.

12. THIS COURT ORDERS that subject to the terms of the APA nothing herein affects:

- (a) the rights and obligations of Sears Canada Inc. (“**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 vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy or receiver that may be appointed in respect of any of the Applicants and shall not be void or voidable by creditors of any of the Applicants, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor

shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

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 body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Applicants, the Monitor and the Purchaser and each of 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 Monitor, as an officer of this Court, the Applicants and the Purchaser as may be necessary or desirable to give effect to this Order or to assist the Applicants, the Monitor and the Purchaser and each of 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 Asset Purchase Agreement between Sears Canada Inc. (the “**Seller**”), as vendor, and Canadian Tire Corporation, Limited (the “**Purchaser**”), as purchaser, dated September 29, 2017 (the “**APA**”), a copy of which is attached as Exhibit ● to the Affidavit of ● dated ●, 2017.

B. Pursuant to the Approval and Vesting Order the Court approved the APA and provided for the vesting in the Purchaser of the Seller’s right, title and interest in and to the Purchased Assets (as defined in the APA), which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Monitor to the Purchaser and the Seller of a certificate confirming (i) all conditions to Closing have been satisfied or waived by the Purchaser and the Seller, as applicable;

and (ii) the Purchase Price and all applicable sales and transfer Taxes payable (each as defined in the APA) by the Purchaser to the Seller have been received by the Monitor.

THE MONITOR CERTIFIES the following:

1. All conditions to Closing have been satisfied or waived by the Purchaser and the Seller, as applicable; and
2. The cash portion of the Purchase Price and all applicable sales and transfer Taxes payable by the Purchaser to the Seller 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”

Encumbrances

Any and all rights, including without limitation, rights of first negotiation, rights of first refusal or any other similar rights, under the License Agreement between Sears Canada Inc. and Viking Range Corporation executed on December 19, 2002.

SCHEDULE 1.1(J)

FORM OF IP ASSIGNMENT AND ASSUMPTION AGREEMENT

CONFIRMATORY ASSIGNMENT OF TRADE-MARKS

WHEREAS, Sears Canada Inc. (the “**Assignor**”), the full post office address of whose principal office or place of business is 290 Yonge Street, Suite 700, Toronto, Ontario, M5B 2C3, is the owner of the trade-marks listed in the attached schedule (the “**Trade-marks**”);

AND WHEREAS pursuant to an asset purchase agreement made as of September 29, 2017 (the “**Purchase Agreement**”), Canadian Tire Corporation, Limited (the “**Assignee**”), the full post office address of whose principal office or place of business is 2180 Yonge St., Toronto, Ontario, M4P 2V8, acquired from the Assignor all of its right, title and interest in and to the Trade-marks together with the goodwill of the business carried on in association with the Trade-marks;

NOW THEREFORE for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Assignor and the Assignee hereby confirm that the Assignor has sold, assigned and transferred to the Assignee, its successors and assigns, effective as of the date of the Purchase Agreement, all of the Assignor’s right, title and interest in and to the Trade-marks, including all its trade-mark rights in respect of all wares and services in association with which the Trade-marks may have been used, and the goodwill of the business carried on in association with the Trade-marks, together with all right of action resulting from any adverse use of the Trade-marks or any confusingly similar trade-marks prior to such effective date, and the right to claim such relief as is appropriate, the same to be held by the Assignee, its successors and assigns as fully and effectually as they would have been held by the Assignor had this sale, assignment and transfer not been made.

EXECUTED at _____, this _____ day of _____, 2017.

SEARS CANADA INC.

By: _____
Name:
Title:

SCHEDULE

Trademark
VIKING (Registration No. TMDA47453)
VIKING & DESIGN (Registration No. TMA599901) 
VIKING & Design (Application No. 1731943) 
Representation of a Single-Masted Viking Galley (Registration No. UCA41844)

SCHEDULE 2.1

Trademark Applications and Registrations

Trademark
VIKING (Registration No. TMDA47453)
VIKING & DESIGN (Registration No. TMA599901) 
VIKING & Design (Application No. 1731943) 
Representation of a Single-Masted Viking Galley (Registration No. UCA41844)

SCHEDULE 2.3

FORM OF AUTHORIZATION OF COUNSEL

AUTHORIZATION OF COUNSEL

To: Representative for service for the trade-marks listed in the attached schedule (the “**Trade-marks**”) (such counsel, “**You**” or “**Your**”)

WHEREAS Sears Canada Inc. (the “**Assignor**”) has sold, assigned and transferred to the Canadian Tire Corporation, Limited (the “**Assignee**”), its successors and assigns, all of the Assignor’s right, title and interest in and to the Trade-marks, including all its trade-mark rights in respect of all wares and services in association with which the Trade-marks may have been used, and the associated goodwill, together with all right of action resulting from any adverse use of the Trade-marks or any confusingly similar trade-marks prior to such sale, assignment and transfer,

NOW THEREFORE, the Assignor hereby authorizes you to provide to the Assignee documents and records in Your possession or control in connection with the use and evidence of use of the Trade-marks. The Assignee shall be solely responsible for all costs incurred in connection with providing such documents and records.

EXECUTED at _____, this _____ day of _____, 2017.

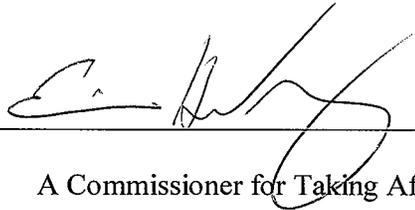
SEARS CANADA INC.

By: _____
Name:
Title:

SCHEDULE

Trademark
VIKING (Registration No. TMDA47453)
VIKING & DESIGN (Registration No. TMA599901) 
VIKING & Design (Application No. 1731943) 
Representation of a Single-Masted Viking Galley (Registration No. UCA41844)

THIS IS EXHIBIT "B" REFERRED TO IN
THE AFFIDAVIT OF BILLY WONG,
SWORN BEFORE ME ON THIS 6th DAY OF DECEMBER, 2017.



A Commissioner for Taking Affidavits.

Eric James Hendry,
a Commissioner, etc., Province of
Ontario, while a Student-at-Law.
Expires April 5, 2019.

CITATION: Sears Canada Inc. (Re), 2017 ONSC 6738
COURT FILE NO.: CV-17-11846-00CL
DATE: 20171109

SUPERIOR COURT OF JUSTICE – ONTARIO

(COMMERCIAL LIST)

RE: 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

BEFORE: HAINEY J.

COUNSEL: *Jeremy Dacks*, for the Applicants, Sears Canada
Monique Jilesen and *Christopher Yung*, for Middleby Corporation
Adam Slavens, for Canadian Tire Corporation, Limited
Danish Afroz, for the Board of Directors and the Special Committee of the Board
of Directors of Sears Canada Inc.
J. Dietrich and *T. Pinos*, for Term DIP Lenders
Alan Merskey and *Evan Cobb*, for the Monitor, FTI Consulting Canada Inc.
Susan Ursel, Employee Representative Counsel
Lily Harmer, for Superintendent of Financial Services
D.J. Miller, for Oxford Properties
Andrew Hatnay and *Amy Tang*, Representative Counsel for Pensioners/Retirees
Linda Galessiere, for Ivanhoe, Morguard, Triovest, 20 VIC, Crombie, Cominar
Pamela Huff and *Julienne Cawthorne-Hwang*, for Morneau Shepell Ltd., in its
capacity as replacement Pension Plan Administrator

HEARD: November 7, 2017

ENDORSEMENT

[1] Sears Canada Inc. ("Sears Canada") and the other Applicants listed above (collectively "Applicants") obtained relief under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended ("CCAA") by an Initial Order I made on June 22, 2017 ("Initial Order"). FTI Consulting Canada Inc. was appointed in the Initial Order to act as the court-appointed Monitor ("Monitor") in this CCAA proceeding.

[2] On July 13, 2017, I approved a sale and investment solicitation process ("SISP") to seek bids for the purchase of the Applicants' business and assets to be conducted by the Applicants, under the supervision and oversight of the Monitor.

[3] On October 2, 2017, the Applicants brought a motion to approve an agreement of purchase and sale ("CT Asset Purchase Agreement") between Sears Canada and Canadian Tire Co. ("Canadian Tire"). Pursuant to the CT Asset Purchase Agreement, Sears Canada proposes to sell to Canadian Tire all of its rights in certain trademarks related to the "Viking" trademark and brand ("Viking Trademarks").

[4] It is a condition of the CT Asset Purchase Agreement that a surviving provision of an expired trademark license agreement relating to the Viking Trademarks between Sears Canada and the Middleby Corporation ("Middleby") be disclaimed. The surviving provision is a right of first refusal ("ROFR") in favour of Middleby pursuant to which it has a ROFR to purchase the Viking Trademarks.

[5] Middleby brings this motion to require Sears Canada to honour its obligation to provide Middleby with a ROFR to purchase the Viking Trademarks on the same terms as Canadian Tire is to purchase them under the CT Asset Purchase Agreement.

[6] On September 27, 2017, Sears Canada delivered a notice of disclaimer to Middleby with respect to the ROFR. This was two days before it entered into the CT Asset Purchase Agreement.

[7] Middleby submits that at the time that the CT Asset Purchase Agreement was entered into the disclaimer was not effective. As a result, according to Middleby, Sears Canada was contractually required to honour the ROFR and it did not do so. Middleby therefore seeks specific performance of the ROFR.

[8] On September 29, 2017 Middleby obtained a copy of the CT Asset Purchase Agreement (in which the purchase price is redacted) when it received the Applicants' motion record. In para. (d) of its notice of motion, Middleby seeks the following order:

(d) Directing Sears Canada to forthwith give the Middleby Corporation ("Middleby") notice of the Asset Purchase Agreement dated September 29, 2017 among Sears Canada and the Canadian Tire Corporation Limited and of all terms relating to, in accordance with the term of section 10.06(b) of the License Agreement.

[9] Ms. Jilesen, on behalf of Middleby, submits that Middleby has not yet decided whether it wishes to exercise its ROFR (if permitted by the court to do so) because it does not know the

purchase price that it will have to match. As a result, the remainder of the relief sought by Middleby in its notice of motion may become academic if it decides that it is not prepared to match the price Canadian Tire has agreed to pay.

[10] Sears Canada and the Monitor oppose an order requiring Sears Canada to provide an unredacted copy of the CT Asset Purchase Agreement to Middleby. However, such an order, in my view, will not prejudice either Sears Canada or Canadian Tire and will allow Middleby to make an informed decision whether it wishes to attempt to exercise its ROFR. The balance of its motion will become academic if Middleby decides not to attempt to exercise its ROFR. To decide the balance of Middleby's motion under circumstances in which my decision may be academic would be an unnecessary waste of judicial resources.

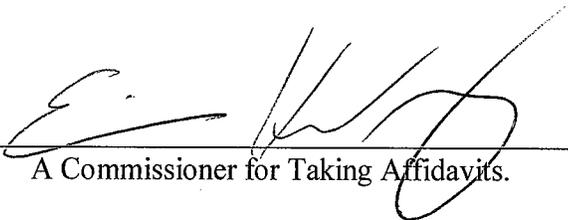
[11] For this reason, as a preliminary matter, I have decided to grant Middleby the relief it seeks in para. (d) of its notice of motion. Sears Canada is ordered to forthwith provide Middleby with an unredacted copy of the CT Asset Purchase Agreement. Middleby is to maintain the confidentiality of the redacted provisions of the agreement.

[12] Within five days of receiving an unredacted copy of the CT Asset Purchase Agreement, Middleby shall advise Sears Canada and the court whether it wishes to exercise its ROFR. If it does, I will decide the balance of the issues raised by Middleby on its motion. If it does not, Sears Canada's motion to approve the CT Asset Purchase Agreement will be granted.


HAINEY J.

Date: November 9, 2017

THIS IS EXHIBIT "C" REFERRED TO IN
THE AFFIDAVIT OF BILLY WONG,
SWORN BEFORE ME ON THIS 6th DAY OF DECEMBER, 2017.



A Commissioner for Taking Affidavits.

Eric James Hendry,
a Commissioner, etc., Province of
Ontario, while a Student-at-Law.
Expires April 5, 2019.

November 14, 2017

Monique Jilesen
Direct line: 416-865-2926
Direct fax: 416-865-2851
Email: mjilesen@litigate.com

Via Email

Jeremy Dacks
100 King Street West
1 First Canadian Place
Suite 6200, P.O. box 50
Toronto, ON
M5X 1B8
jdacks@osler.com

Dear Mr. Dacks:

**RE: Sears Canada Inc.
Our File No.: 49076**

Further to the reasons of Justice Hainey dated November 9, 2017, we are writing to advise you that the Middleby Corporation wishes to exercise the right of first refusal to purchase the Canadian Viking Trademark Assets on the same economic terms as the CT Asset Purchase Agreement, *mutatis mutandis*.

Yours truly,

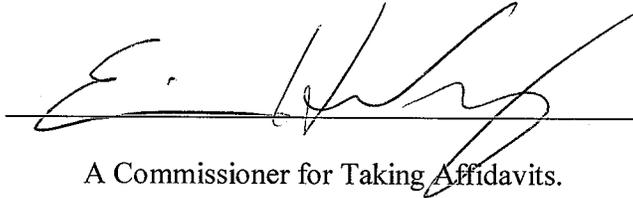


Monique Jilesen

MJ/

c. Alan Mersky
Evan Cobb
Chris Yung

THIS IS EXHIBIT "D" REFERRED TO IN
THE AFFIDAVIT OF BILLY WONG,
SWORN BEFORE ME ON THIS 6th DAY OF DECEMBER, 2017.



A Commissioner for Taking Affidavits.

**Eric James Hendry,
a Commissioner, etc., Province of
Ontario, while a Student-at-Law.
Expires April 5, 2019.**

CITATION: Sears Canada Inc. (Re), 2017 ONSC 7038
COURT FILE NO.: CV-17-11846-00CL
DATE: 20171124

SUPERIOR COURT OF JUSTICE – ONTARIO

(COMMERCIAL LIST)

RE: 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

BEFORE: HAINEY J.

COUNSEL: *Jeremy Dacks*, for the Applicants, Sears Canada

Monique Jilesen and Christopher Yung, for Middleby Corporation

Adam Slavens, for Canadian Tire Corporation, Limited

Danish Afroz, for the Board of Directors and the Special Committee of the Board
of Directors of Sears Canada Inc.

J. Dietrich and T. Pinos, for Term DIP Lenders

Alan Merskey and Evan Cobb, for the Monitor, FTI Consulting Canada Inc.

Susan Ursel, Employee Representative Counsel

Lily Harmer, for Superintendent of Financial Services

D.J. Miller, for Oxford Properties

Andrew Hatnay and Amy Tang, Representative Counsel for Pensioners/Retirees

Linda Galessiere, for Ivanhoe, Morguard, Triovest, 20 VIC, Crombie, Cominar

Pamela Huff and Juliene Cawthorne-Hwang, for Morneau Shepell Ltd., in its
capacity as replacement Pension Plan Administrator

HEARD: November 7, 2017

ENDORSEMENT

Background

[1] Sears Canada Inc. ("Sears Canada") and the other Applicants listed above (collectively "Applicants") obtained relief under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended ("CCAA") by an Initial Order I made on June 22, 2017 ("Initial Order"). FTI Consulting Canada Inc. was appointed in the Initial Order to act as the court-appointed Monitor ("Monitor") in this CCAA proceeding.

[2] On July 13, 2017, I approved a sale and investment solicitation process ("SISP") to seek bids for the purchase of the Applicants' business and assets to be conducted by the Applicants, under the supervision and oversight of the Monitor.

[3] On October 2, 2017, the Applicants brought a motion to approve an agreement of purchase and sale ("CT Asset Purchase Agreement") between Sears Canada and Canadian Tire Co. ("Canadian Tire"). Pursuant to the CT Asset Purchase Agreement, Sears Canada proposes to sell to Canadian Tire all of its rights in certain trademarks related to the "Viking" trademark and brand ("Viking Trademarks").

[4] It is a condition of the CT Asset Purchase Agreement that a surviving provision of an expired trademark licence agreement ("Viking Licence Agreement") relating to the Viking Trademarks between Sears Canada and the Middleby Corporation ("Middleby") be disclaimed. The surviving provision is a right of first refusal ("ROFR") in favour of Middleby pursuant to which it has a ROFR to purchase the Viking Trademarks.

[5] Middleby brought this motion to require Sears Canada to honour its obligation to provide Middleby with a ROFR to purchase the Viking Trademarks on the same terms as Canadian Tire is to purchase them under the CT Asset Purchase Agreement.

[6] On September 27, 2017, Sears Canada delivered a notice of disclaimer to Middleby with respect to the ROFR. This was two days before it entered into the CT Asset Purchase Agreement.

[7] Middleby submits that at the time that the CT Asset Purchase Agreement was entered into the disclaimer was not effective. As a result, according to Middleby, Sears Canada was contractually required to honour the ROFR and it did not do so. Middleby therefore seeks specific performance of the ROFR.

[8] On September 29, 2017 Middleby obtained a copy of the CT Asset Purchase Agreement (in which the purchase price is redacted) when it received the Applicants' motion record. In para. (d) of its notice of motion, Middleby sought the following order:

(d) Directing Sears Canada to forthwith give the Middleby Corporation ("Middleby") notice of the Asset Purchase Agreement dated September 29, 2017 among Sears Canada and the Canadian Tire Corporation Limited and of all terms relating to, in accordance with the term of section 10.06(b) of the License Agreement.

[9] Ms. Jilesen, on behalf of Middleby, submitted that Middleby had not yet decided whether to exercise its ROFR (if permitted by the court to do so) because it did not know the purchase price that it would have to match.

[10] Although Sears Canada and the Monitor opposed an order requiring Sears Canada to provide an unredacted copy of the CT Asset Purchase Agreement to Middleby, I concluded that an unredacted copy should be provided to Middleby to allow it to make an informed decision whether it wishes to attempt to exercise its ROFR.

[11] I therefore ordered Sears Canada to provide Middleby with an unredacted copy of the CT Asset Purchase Agreement and I gave Middleby five days to determine whether it wished to attempt to exercise its ROFR. I indicated that if it did, I would decide the balance of the issues raised by Middleby on its motion.

[12] On November 14, 2017, Ms. Jilesen wrote to Mr. Dacks, counsel to Sears Canada, and advised as follows:

Further to the reasons of Justice Hainey dated November 9, 2017, we are writing to advise you that the Middleby Corporation wishes to exercise the right of first refusal to purchase the Canadian Viking Trademark Assets on the same economic terms as the CT Asset Purchase Agreement, *mutatis mutandis*.

Issues

[13] As a result of Middleby's decision to exercise its ROFR, I must decide the following issues:

- Is Sears Canada's disclaimer effective?
- If it is not, should the court order specific performance of the ROFR?
- Should the ROFR be disclaimed pursuant to s. 32(4) of the *CCAA*?

Is the disclaimer effective?

[14] Sears Canada issued its notice of disclaimer pursuant to s. 32(1) of the *CCAA* on September 27, 2017, two days before entering into the CT Asset Purchase Agreement.

[15] Section 32(5) of the *CCAA* provides as follows:

32 (5) An agreement is disclaimed or resiliated

(a) if no application is made under subsection (2), on the day that is 30 days after the day on which the company gives notice under subsection (1);

(b) if the court dismisses the application made under subsection (2), on the day that is 30 days after the day on which the company gives notice under subsection (1) or on any later day fixed by the court; or

(c) if the court orders that the agreement is disclaimed or resiliated under subsection (3), on the day that is 30 days after the day on which the company gives notice or on any later day fixed by the court.

[16] Section 32(5) of the *CCAA* is explicit about the timing of the disclaimer of an agreement. The earliest date that an agreement can be disclaimed under this section is 30 days after the notice to disclaim is given by the company.

[17] Because Sears Canada delivered its notice to disclaim the ROFR only two days before it entered into the CT Asset Purchase Agreement, I am of the view that the ROFR remained in effect on September 29, 2017, when the CT Asset Purchase Agreement was entered into.

[18] As a result, the disclaimer was not yet effective under s. 32(5) of the *CCAA* when the CT Asset Purchase Agreement was entered into by Sears Canada.

Should specific performance be ordered?

[19] Because Middleby's ROFR was in effect when Sears Canada entered into the CT Asset Purchase Agreement, Sears Canada breached the ROFR by not allowing Middleby to purchase the Viking Trademarks on the same terms as Canadian Tire. Although a breach of a right of first refusal may give rise to damages, in this case I am of the view that damages would be an inadequate remedy. In arriving at this conclusion I rely upon the decision of Blair J. (as he then was) in *GATX Corp. v. Hawker Siddeley Canada Inc.*, 1996 CanLII 8286 (ON SC) in which he concluded that specific performance was the appropriate remedy to address the breach of a right of first refusal. At para. 153 he stated as follows:

As the Right of First Refusal has been activated by the circumstances which have transpired, the ordinary remedies in such a situation would be an order for specific performance and/or damages. ... Damages, however, are inadequate to redress the wrong in these circumstances, in my view. ... what it seeks in the main is an order enforcing the exercise of its Right of First Refusal. It is the contractual entitlement to exercise that Right, the wrongful attempt by Hawker Siddeley and Procor to circumvent it ... which form the basis for the granting of a remedy in favour of the Applicants. It seems to me that the most suitable remedy is one which rectifies the wrong and the "oppression", and which gives effect to the contractual entitlement. That remedy is a decree of specific performance.

[20] Although Blair J. was also dealing with a finding of oppression by Hawker Siddeley, his conclusion regarding the appropriate remedy for the breach of the right of first refusal applies equally to this case. In my view, the remedy that best rectifies the wrong occasioned by Sears Canada's failure to honour Middleby's ROFR is specific performance.

[21] I am satisfied for these reasons that Sears Canada should be ordered to permit Middleby to exercise its ROFR with respect to the CT Asset Purchase Agreement.

Should the ROFR be disclaimed?

[22] In light of my decision that Sears Canada's disclaimer of the ROFR was not effective and it is required to permit Middleby to exercise its ROFR with respect to the CT Asset Purchase Agreement, it is not necessary for me to decide whether the ROFR should be disclaimed. However, in the event that I am wrong about the previous two issues I also intend to determine whether the ROFR should be disclaimed.

[23] The ability to disclaim an agreement pursuant to s. 32(1) of the *CCAA* is subject to the court's supervision. Section 32(4) sets out the following non-exhaustive factors the court must consider:

- (4) In deciding whether to make the order, the court is to consider, among other things,
 - (a) whether the monitor approved the proposed disclaimer or resiliation;
 - (b) whether the disclaimer or resiliation would enhance the prospects of a viable compromise or arrangement being made in respect of the company; and
 - (c) whether the disclaimer or resiliation would likely cause significant financial hardship to the party to the agreement.

Monitor's Approval

[24] The Monitor has approved the disclaimer of Middleby's ROFR for the following reasons:

- (a) It will allow the Applicants to maximize the value of the Viking Trademarks;
- (b) The disclaimer does not cause significant financial hardship to Middleby because Middleby's right to utilize the Viking Trademarks has already been terminated; and
- (c) Middleby participated in the SISP process and had the opportunity to put its best bid forward in that process and its bid was not the highest bid.

[25] I have concluded that the disclaimer will not allow the Applicants to maximize the value of the Viking Trademarks because Middleby's ROFR allows it to purchase the trademarks "upon the same terms and conditions" as the CT Asset Purchase Agreement. Sears Canada will therefore recover the same amount for the Viking Trademarks if Middleby exercises its ROFR. Further, Middleby has indicated that if its ROFR is disclaimed and it is prevented from acquiring the Viking Trademarks, it will assert a provable claim in respect of its loss pursuant to s. 32(7) of the *CCAA*. As a result, the Applicants will be in a worse position if the ROFR is disclaimed because they will recover the same amount as they would from Middleby for the Viking Trademarks and face a provable claim from Middleby.

[26] Further, I do not agree that Middleby will not suffer financial hardship if the ROFR is disclaimed. I am satisfied that Middleby will suffer significant financial hardship for the reasons outlined at paras. 47-50 of its factum, which I accept.

[27] Finally, although Middleby participated in the SISP process and had an opportunity to put its best bid forward, as the Monitor suggests, it did so on the basis that it reserved its rights under its ROFR. Accordingly, in my view, Middleby's participation in the SISP process should not prejudice its right to enforce its ROFR.

[28] Although I agree that the Monitor is entitled to considerable deference, on the particular facts of this case, I do not agree with the Monitor's reasons for approving the disclaimer.

Would the disclaimer enhance the prospects of a viable compromise or arrangement?

[29] The disclaimer will not enhance the prospects of a viable compromise or arrangement being made in respect of the company because the Viking Trademarks are not being sold to Canadian Tire as part of a going concern. I find that there will be no impact on Sears Canada or the other stakeholders if the Viking Trademarks are sold to Middleby instead of Canadian Tire. In fact, a sale to Middleby will eliminate its provable claim pursuant to s. 32(7) of the CCAA. This is one of the reasons that Middleby's motion is supported by Sears Canada's employees and pensioners.

Would the disclaimer cause significant hardship to Middleby?

[30] I have already determined that the disclaimer will cause significant financial hardship to Middleby.

[31] Having considered all of the factors set out in s. 32(4) of the CCAA, I have concluded that the ROFR should not be disclaimed.

Conclusion

[32] Middleby's motion is granted. Sears Canada's disclaimer was not effective on September 29, 2017 and it is ordered to permit Middleby to exercise its ROFR with respect to the CT Asset Purchase Agreement. Further, Sears Canada's disclaimer of Middleby's ROFR is not approved.

Date: November 24, 2017



HAINES J.

THIS IS EXHIBIT "E" REFERRED TO IN
THE AFFIDAVIT OF BILLY WONG,
SWORN BEFORE ME ON THIS 6th DAY OF DECEMBER, 2017.



A Commissioner for Taking Affidavits.

Eric James Hendry,
a Commissioner, etc., Province of
Ontario, while a Student-at-Law.
Expires April 5, 2019.

ASSET PURCHASE AGREEMENT

among

SEARS CANADA INC.

as Seller,

VIKING RANGE, LLC

as Buyer

- and –

solely for purposes of Section 11.1 hereof,

THE MIDDLEBY CORPORATION

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ASSET PURCHASE AGREEMENT

THIS AGREEMENT is made as of December 6, 2017

AMONG:

Sears Canada Inc., a corporation governed by the laws of Canada (“**SCI**” or the “**Seller**”),

- and -

Viking Range, LLC, a limited liability company governed by the laws of Delaware (the “**Buyer**”),

- and –

solely for purposes of Section 11.1 hereof, **The Middleby Corporation**, a corporation governed by the laws of Delaware.

RECITALS:

- A. On the Filing Date, SCI 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 of the CCAA Court. Pursuant to the Initial Order, the CCAA Court appointed FTI Consulting Canada Inc. as “Monitor” in connection with the CCAA Proceedings.
- B. On the SISP Order Date, the CCAA 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 the Business, Assets and/or Leases (each as defined in the SISP) of the Sears Group.
- C. The Buyer has been selected as a Successful Bidder (as defined in the SISP) in accordance with the SISP.
- D. The Seller wishes to sell to the Buyer, and the Buyer wishes to purchase from the Seller, the Purchased Assets, subject to the terms and conditions of this Agreement.

NOW THEREFORE in consideration of the mutual covenants and agreements contained in this Agreement and other good and valuable consideration (the receipt and sufficiency of which are acknowledged), the Parties agree as follows:

ARTICLE 1 INTERPRETATION

1.1 Definitions

In this Agreement,

- (a) **“affiliate”** of any Person means, at the time such determination is being made, any other Person controlling, controlled by or under common control with such first Person, in each case, whether directly or indirectly through one or more intermediaries, and “control” and any derivation thereof means the control by one Person of another Person in accordance with the following: a Person (“A”) controls another Person (“B”) where A has the power to determine the management and policies of B by contract or status (for example, the status of A being the general partner of B) or by virtue of beneficial ownership of a majority of the voting interests in B; and, for certainty and without limitation, if A owns shares to which are attached more than 50% of the votes permitted to be cast in the election of directors (or other Persons performing a similar role) of B, then A controls B for this purpose.
- (b) **“Agreement”** means this Asset Purchase Agreement, in each case as the same may be supplemented, amended, restated or replaced from time to time, and the expressions “hereof”, “herein”, “hereto”, “hereunder”, “hereby” and similar expressions refer to this Asset Purchase Agreement, and unless otherwise indicated, references to Articles and Sections are to Articles and Sections in this Asset Purchase Agreement.
- (c) **“Applicable Law”** means any transnational, domestic or foreign, federal, provincial, territorial, state, local or municipal (or any subdivision of any of them) law (including without limitation the common law), statute, ordinance, rule, regulation, restriction, standard, by-law (zoning or otherwise), judgment, order, direction or any consent, exemption, Governmental Authorizations, or any other legal requirements of, or agreements with, any Governmental Authority, that applies in whole or in part to the transactions contemplated by this Agreement, the Seller, the Buyer or any of the Purchased Assets.
- (d) **“Approval and Vesting Order”** means an order granted by the CCAA Court, in substantially the form attached as Schedule 1.1(d) (with only such changes as the Buyer and the Seller each approve in their reasonable discretion, but in all cases in form and substance acceptable to the Monitor), and served on those Persons identified by the Seller and the Buyer, which will, among other things:
 - (i) authorize and approve this Agreement and the execution and delivery thereof by the Seller;
 - (ii) authorize and direct the Seller to complete the transactions contemplated by this Agreement; and

- (iii) provide for the vesting of title to the Purchased Assets in and to the Buyer in accordance with the terms and conditions of this Agreement, free and clear of any and all claims against the Purchased Assets of every nature or kind whatsoever and howsoever arising, including all Encumbrances (which shall include any right of first negotiation, right of first refusal and any other similar right), upon the delivery of the Monitor's Certificate to the Buyer indicating that the conditions precedent to the consummation of the transactions contemplated by this Agreement have been satisfied or waived (where permissible).

- (e) "**Business Day**" means any day, other than a Saturday or Sunday, on which the principal commercial banks in Toronto, Ontario are open for commercial banking business during normal banking hours.

- (f) "**Buyer**" has the meaning given to such term in the preamble to this Agreement.

- (g) "**CCAA**" means the *Companies' Creditors Arrangement Act* (Canada).

- (h) "**CCAA Court**" means the Ontario Superior Court of Justice (Commercial List).

- (i) "**CCAA Proceedings**" means the proceedings commenced under the CCAA by the Seller pursuant to the Initial Order (Court File No. CV-17-11846-00CL).

- (j) "**Claims**" includes all claims, demands, complaints, grievances, actions, applications, suits, causes of action, Orders, charges, indictments, prosecutions, informations or other similar processes, assessments or reassessments, judgments, debts, liabilities, expenses, costs, damages or losses, contingent or otherwise, whether liquidated or unliquidated, matured or unmatured, disputed or undisputed, contractual, legal or equitable, including loss of value, professional fees, including fees and disbursements of legal counsel on a full indemnity basis, and all costs incurred in investigating or pursuing any of the foregoing or any proceeding relating to any of the foregoing.

- (k) "**Closing**" means the completion of the sale and purchase of the Purchased Assets pursuant to this Agreement at the Closing Time, and all other transactions contemplated by this Agreement that are to occur contemporaneously with the sale and purchase of the Purchased Assets.

- (l) "**Closing Date**" means the date that is five (5) Business Days after the conditions set forth in ARTICLE 6 have been satisfied or, to the extent permitted by Applicable Law, waived (or such other date agreed to by the Parties in writing), other than the conditions set forth in ARTICLE 6 that by their terms are to be satisfied or waived at the Closing.

- (m) "**Closing Documents**" means all contracts, agreements and instruments required by this Agreement to be delivered by or on behalf of a Party at or before the Closing.

- (n) “**Closing Time**” means 10:00 a.m. (Toronto time) on the Closing Date or such other time on the Closing Date as the Parties agree in writing that the Closing Time shall take place.
- (o) “**Confidential Information**” means non-public, confidential, personal or proprietary information which is furnished to the Buyer by the Seller or any of the Seller’s representatives or the Monitor, including, without limitation, information about identifiable individuals, any information relating to the Seller and its affiliates, or any customer or supplier of the Seller, but does not include information that is or becomes generally available to the public other than as a result of disclosure by the Buyer or its representatives in breach of this Agreement or that is received by the Buyer from an independent third party that, to the knowledge of the Buyer, after good faith inquiry, obtained it lawfully and was under no duty of confidentiality (except to the extent that applicable privacy laws do not exclude such information from the definition of personal information) or that is independently developed by the Buyer’s employees or representatives without access or reference to any Confidential Information.
- (p) “**Contracts**” means contracts, agreements, obligations, promises, undertakings, understandings, arrangements, documents, commitments, entitlements or engagements to which the Seller is a party or by which the Seller is bound or under which the Seller has, or will have, any right or any liability or contingent right or liability (in each case, whether written or oral, express or implied) relating to the Purchased Assets and includes quotations, orders, proposals or tenders which remain open for acceptance and warranties and guarantees.
- (q) “**Deposit**” means the amount of \$ [REDACTED] delivered by the Buyer to the Monitor in accordance with the SISP.
- (r) “**Documents**” means all books, records, files and papers exclusively related to the Purchased Assets but not limited to manuals, data, sales and advertising materials, sales and purchase correspondence, and trade association files, if any, to the extent same is in or will be in the Seller’s possession and the Seller is able to find same using commercially reasonable efforts, and all copies and recordings of the foregoing.
- (s) “**Encumbrance**” means any security interest (whether contractual, statutory or otherwise), lien, execution, levy, charge or other financial or monetary claim, hypothec, trust or deemed trust (whether contractual, statutory or otherwise), right of first negotiation, right of first refusal and any other similar right, or mortgage, any and all rights, including without limitation, rights of first negotiation, rights of first refusal or any other similar rights, and including any and all CCAA Court ordered charges granted in the CCAA Proceedings.
- (t) “**Filing Date**” means June 22, 2017.
- (u) “**Final**” with respect to any order of any court of competent jurisdiction, means that such order shall not have been stayed, appealed, varied (except with the

consent of the Buyer and the Seller) or vacated, and all time periods within which such order could at law be appealed shall have expired.

- (v) **“Governmental Authority”** means any applicable transnational, federal, provincial, municipal, state, local, national or other government, regulatory authority, governmental department, agency, commission, board, tribunal, bureau, ministry, court, system operator, judicial body, arbitral body or other law, rule or regulation-making entity, or any entity, officer, inspector, investigator or examiner exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to any government or any court, in each case:
 - (i) having jurisdiction over the Seller, the Buyer or the Purchased Assets on behalf of any country, province, state, locality, or other geographical or political subdivision thereof; or
 - (ii) exercising or entitled to exercise any administrative, judicial, legislative, regulatory or taxing authority or power.
- (w) **“Governmental Authorizations”** means authorizations, approvals, plans, franchises, orders, certificates, consents, directives, notices, licenses, permits, variances, registrations or other rights issued to or required by the Seller relating to the Purchased Assets by or from any Governmental Authority.
- (x) **“GST”** means tax (other than HST) payable under the GST and HST Legislation.
- (y) **“GST/HST and QST Certificate, Undertaking and Indemnity”** has the meaning given to such term in Section 7.4(d).
- (z) **“GST and HST Legislation”** means Part IX of the *Excise Tax Act* (Canada).
- (aa) **“HST”** means tax payable under the GST and HST Legislation in respect of a participating province.
- (bb) **“including”** and **“includes”** shall be interpreted on an inclusive basis and shall be deemed to be followed by the words “without limitation”.
- (cc) **“Initial Order”** means the Initial Order granted by the CCAA Court on June 22, 2017, pursuant to which SCI and certain of its affiliates and subsidiaries were granted protection from their creditors under the CCAA (as amended, restated, supplemented and/or modified from time to time).
- (dd) **“Insolvency Proceedings”** means any action, application, petition, suit or other proceeding under any bankruptcy, arrangement, reorganization, dissolution, liquidation, insolvency, winding-up or similar law of any jurisdiction now or hereafter in effect, for the relief from or otherwise affecting creditors of the Seller, including without limitation under the *Bankruptcy and Insolvency Act* (Canada) (including the filing of a notice of intention to make a proposal), CCAA (including the CCAA Proceedings), the *Winding-Up and Restructuring Act*

(Canada), the *Canada Business Corporations Act* or United States Bankruptcy Code by, against or in respect of the Seller.

- (ee) “**IP Assignment and Assumption Agreement**” means the intellectual property assignment and assumption agreement for the Purchased Assets, substantially in the form attached as Schedule 1.1(ee).
- (ff) “**Monitor**” means FTI Consulting Canada Inc., in its capacity as CCAA Court-appointed monitor of the Seller pursuant to the Initial Order and not in its personal capacity.
- (gg) “**Monitor’s Certificate**” means the certificate filed with the CCAA Court by the Monitor certifying that the Monitor has received written confirmation in form and substance satisfactory to the Monitor from the Seller and the Buyer that all conditions to Closing have been satisfied or waived by the applicable Parties and that the Purchase Price and all applicable sales and transfer Taxes payable by the Buyer to the Seller at the Closing have been received by the Monitor.
- (hh) “**NDA**” means the confidentiality, non-disclosure and non-use agreement between The Middleby Corporation, an affiliate of the Buyer, and SCI dated August 22, 2017.
- (ii) “**Order**” means any order, directive, judgment, decree, injunction, decision, ruling, award or writ of any Governmental Authority.
- (jj) “**Parties**” means the Seller and the Buyer collectively, and “**Party**” means either the Seller or the Buyer, as the context requires.
- (kk) “**Person**” means any individual, partnership, limited partnership, limited liability company, joint venture, syndicate, sole proprietorship, company or corporation with or without share capital, unincorporated association, trust, trustee, executor, administrator or other legal personal representative, Governmental Authority or other entity, however designated or constituted.
- (ll) “**Personal Information**” means information about an identifiable individual in the possession or under the control of the Seller.
- (mm) “**Purchase Price**” has the meaning given to such term in Section 3.1.
- (nn) “**Purchased Assets**” has the meaning given to such term in Section 2.1.
- (oo) “**QST**” means the Québec sales tax payable under the QST Legislation.
- (pp) “**QST Legislation**” means *An Act Respecting the Québec Sales Tax (Québec)*.
- (qq) “**SCI**” has the meaning given to such term in the preamble to this Agreement.
- (rr) “**SCI Viking Inventory**” has the meaning given to such term in Section 5.9(f);

- (ss) “**Sears Group**” has the meaning given to such term in the preamble to this Agreement.
- (tt) “**Seller**” has the meaning given to such term in the preamble to this Agreement.
- (uu) “**SISP**” means the Sale and Investment Solicitation Process approved by the SISP Order (as amended, restated, supplemented and/or modified from time to time).
- (vv) “**SISP Order**” means the Order granted by the CCAA Court on the SISP Order Date (as amended, restated, supplemented and/or modified from time to time), which, among other things, approved the SISP.
- (ww) “**SISP Order Date**” means July 13, 2017.
- (xx) “**Sunset Date**” has the meaning given to such term in Section 9.1(b).
- (yy) “**Tax**” and “**Taxes**” includes:
 - (i) taxes, duties, fees, premiums, assessments, imposts, levies and other charges of any kind whatsoever (including withholding on amounts paid to or by any Person) imposed by any Governmental Authority, 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, sales, goods and services, harmonized sales, use, value-added, excise, stamp, withholding, business, franchising, property, development, occupancy, employer health, payroll, employment, health, disability, severance, unemployment, social services, education and social security taxes, all surtaxes, all customs duties and import and export taxes, countervail and anti-dumping taxes, all license, franchise and registration fees and all employment insurance, health insurance and Canada, Ontario and other government pension plan premiums or contributions; and
 - (ii) any liability in respect of any items described in clause (i) payable by reason of contract, assumption, transferee liability, operation of law or otherwise.

1.2 Statutes

Unless specified otherwise, reference in this Agreement to a statute refers to that statute and the regulations thereunder as they may be amended, or to any restated or successor legislation of comparable effect.

1.3 Headings and Table of Contents

The inclusion of headings and a table of contents in this Agreement is for convenience of reference only and shall not affect the construction or interpretation hereof.

1.4 Gender and Number

In this Agreement, unless the context otherwise requires, words importing the singular include the plural and *vice versa*, and words importing gender include all genders.

1.5 Currency

Except where otherwise expressly provided, all amounts in this Agreement are stated and shall be paid in Canadian dollars. References to “\$” are to Canadian dollars. References to “US\$” are to United States dollars.

1.6 Invalidity of Provisions

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provision hereof. Upon such a determination of invalidity or unenforceability, the Parties shall negotiate to modify this Agreement in good faith so as to effect the original intent of the Parties as closely as possible in an acceptable manner so that the transactions contemplated by this Agreement be consummated as originally contemplated to the fullest extent possible.

1.7 Knowledge

Where any representation or warranty, or other provision, contained in this Agreement is expressly qualified by reference to, or otherwise refers to, the knowledge of: (a) the Seller, it will be deemed to refer to the actual knowledge of SCI’s Chief Financial Officer; and (b) the Buyer, it will be deemed to refer to the actual knowledge of the Buyer’s directors and officers.

1.8 Entire Agreement

This Agreement, the schedules to this Agreement, the NDA and the agreements and other documents required to be delivered pursuant to this Agreement, constitute the entire agreement among the Parties, and set out all the covenants, promises, warranties, representations, conditions and agreements among the Parties in connection with the subject matter of this Agreement, and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, pre-contractual or otherwise. There are no covenants, promises, warranties, representations, conditions, understandings or other agreements, whether oral or written, pre-contractual or otherwise, express, implied or collateral among the Parties in connection with the subject matter of this Agreement, except as specifically set forth in this Agreement and any document required to be delivered pursuant to this Agreement.

1.9 Waiver, Amendment

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement shall be binding unless executed in writing by all Parties hereto. No waiver of any provision of this Agreement shall constitute a waiver of any other provision nor shall any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided.

1.10 Governing Law; Jurisdiction and Venue

This Agreement, the rights and obligations of the Parties under this Agreement, and any claim or controversy directly or indirectly based upon or arising out of this Agreement or the transactions contemplated by this Agreement (whether based on contract, tort or any other theory), including all matters of construction, validity and performance, shall in all respects be governed by, and interpreted, construed and determined in accordance with, the laws of the Province of Ontario and the federal laws of Canada applicable therein, without regard to the conflicts of law principles thereof. The Parties consent to the exclusive jurisdiction and venue of the CCAA Court prior to a Final Order of the CCAA Court closing the CCAA Proceedings and thereafter to the Courts of Ontario for the resolution of any such disputes arising under this Agreement. Each Party agrees that service of process on such Party as provided in Section 11.7 shall be deemed effective service of process on such Party.

1.11 Schedules

The schedules to this Agreement, listed below, are an integral part of this Agreement:

<u>Schedule</u>	<u>Description</u>
Schedule 1.1(d)	Form of Approval and Vesting Order
Schedule 1.1(ee)	Form of IP Assignment and Assumption Agreement
Schedule 2.1	Trademark Applications and Registrations
Schedule 2.3	Authorization of Counsel

ARTICLE 2 PURCHASE AND SALE

2.1 Agreement to Purchase and Sell Purchased Assets

Upon and subject to the terms and conditions of this Agreement, at the Closing and effective as of the Closing Time, the Seller shall sell, convey, transfer, assign and deliver, or cause to be sold, conveyed, transferred, assigned and delivered, pursuant to the Approval and Vesting Order, and the Buyer shall purchase, free and clear of all Encumbrances, all of the Seller's right, title and interest, including, without limitation, all exploitation rights, licenses, sub-licenses, copyrights, logos, trademarks, trade names, domain names, goodwill, know-how, rights associated with social media accounts and other intellectual or industrial rights, in and to all of the Seller's trademarks exclusively related to the "Viking" trademark and brand, including the applications and registrations set out in Schedule 2.1 and all Documents that are in the Seller's possession, if any (collectively referred to herein as the "**Purchased Assets**"). The Purchased Assets include all rights to sue for and collect damages for past, present and future infringements and passing off of rights of the Seller pertaining to the Purchased Assets, and all rights to modify, update, use and exploit the rights of the Seller in the Purchased Assets.

2.2 Assumption of Liabilities

The Buyer shall assume as of the Closing Time and shall pay, discharge and perform, as the case may be, from and after the Closing Time, all obligations and liabilities of the Seller with respect to the Purchased Assets to the extent such obligations and liabilities consist of liabilities and obligations that arise in respect of and relate to the period on and after the Closing Time. The Buyer shall not assume or be deemed to assume or be responsible for any debts, obligations, or liabilities of the Sears Group, including, without limitation, the Seller, in relation to the Purchased Assets or otherwise for periods prior to the Closing Time.

2.3 Authorization of Counsel

The Seller agrees to authorize the Seller's representative for service for the trade-marks included in the Purchased Assets to provide to the Buyer (at the Buyer's cost) documents and records in such counsel(s)' possession or control in connection with the use and evidence of use of the Purchased Assets.

ARTICLE 3 PURCHASE PRICE AND RELATED MATTERS

3.1 Purchase Price

The purchase price payable to the Seller for the Purchased Assets (the "**Purchase Price**"), exclusive of all applicable sales and transfer taxes, shall be the amount of \$ [REDACTED] in cash.

3.2 Purchase Price Allocation

The Purchase Price shall be allocated among the Purchased Assets as agreed by the Parties, acting reasonably. Such allocation shall be binding on the Buyer and the Seller.

3.3 Payment of Purchase Price and Treatment of Deposit

- (a) The Purchase Price will be satisfied as follows:
 - (i) the portion of the Purchase Price equal to the amount of the Deposit and the actual earnings thereon will be satisfied by crediting the Seller, at the Closing Time, with the Buyer's interest in the Deposit (and the actual earnings thereon from the date the Deposit is received by the Monitor in accordance with the SISP to but excluding the Closing Date) that is being held by the Monitor; and
 - (ii) the balance of the Purchase Price will be satisfied by the payment of such amount by wire transfer of immediately available funds at the Closing Time from the Buyer to an account of the Monitor specified in writing by the Seller not less than two (2) Business Days prior to the Closing Date.
- (b) The Deposit paid to the Monitor by the Buyer will, together with any actual earnings thereon (from the date the Deposit is received by the Monitor in accordance with the SISP to but excluding the Closing Date), be:

- (i) credited to the Seller, as applicable, at the Closing Time in accordance with Section 3.3(a)(i), if the sale and purchase of the Purchased Assets provided for herein is completed in accordance with the terms and conditions hereof;
- (ii) forfeited to the Seller, less any applicable withholding tax, if the Closing does not occur (and this Agreement is terminated) by reason of the default of the Buyer and the Seller shall have no further recourse against the Buyer; and
- (iii) returned to the Buyer, less any applicable withholding tax, if the Closing does not occur (and this Agreement is terminated) by any reason other than the default of the Buyer and the Buyer shall have no further recourse against the Seller.

ARTICLE 4 REPRESENTATIONS AND WARRANTIES OF THE SELLER

The Seller represents and warrants to the Buyer as follows, and acknowledges that the Buyer is relying upon the following representations and warranties in connection with its purchase of the Purchased Assets:

4.1 Corporate Existence

The Seller is a corporation duly formed and validly existing under the laws of Canada.

4.2 Due Authorization and Enforceability of Obligations

Subject to the issuance of the Approval and Vesting Order:

- (a) the Seller has all necessary corporate power, authority and capacity to:
 - (i) enter into and deliver this Agreement and the Closing Documents; and
 - (ii) carry out its obligations under this Agreement and the Closing Documents;
- (b) the execution, delivery and performance of this Agreement and the Closing Documents, and the consummation of the transactions contemplated by this Agreement and the Closing Documents, have been duly authorized by all necessary corporate action of the Seller; and
- (c) this Agreement does and the Closing Documents when executed by the Seller will constitute valid and binding obligations of the Seller enforceable against it in accordance with its terms.

4.3 Residence of the Seller

The Seller is not a non-resident of Canada for the purposes of the *Income Tax Act* (Canada).

4.4 Taxes

The Seller is duly registered under Subdivision (d) of Division V of the GST and HST Legislation with respect to the GST and HST, and under Division I of Chapter VIII of Title I of the QST Legislation with respect to the QST, and will provide its registration numbers to the Buyer prior to Closing.

4.5 Inventory

As at September 27, 2017, the SCI Viking Inventory consisted of [REDACTED] units with an aggregate value of \$ [REDACTED]

4.6 Licenses

As of the Closing, except any surviving rights under the license agreement between SCI and Viking Range Corporation dated December 19, 2002, (i) any license agreements, sub-license agreements or other similar agreements or arrangements have been terminated, are expired and/or have been disclaimed; (ii) any and all subsequent executed renewal terms are not in effect; and (iii) all such license agreements, sub-license agreements or other similar agreements or arrangements have been terminated, are expired and/or have been disclaimed.

4.7 No Other Representations, Warranties or Covenants

Unless and solely to the extent expressly set forth in this Agreement, no representation, warranty or covenant is expressed or implied by the Seller, including any warranties as to title, Encumbrance, description, merchantability or fitness for a particular purpose, environmental compliance, condition, quantity or quality, or in respect of any other matter or thing whatsoever concerning the Purchased Assets or the right of the Seller to sell or assign the same, as applicable. The disclaimer in this Section 4.7 is made notwithstanding the delivery or disclosure to the Buyer or its directors, officers, employees, agents or representatives of any documentation or other information (including any financial projections, estimates, budgets, offering memoranda, management presentations, due diligence materials or other supplemental data not included in this Agreement). Without limiting the generality of the foregoing, any and all conditions, warranties or representations, express or implied, pursuant to Applicable Law (including under Article 1716 of the *Civil Code of Québec*, the *Sale of Goods Act* (Ontario), the *International Convention on Contracts for the Sale of Goods* (Geneva Convention) and any other applicable sale of goods legislation) do not apply hereto and are hereby expressly waived by the Buyer.

ARTICLE 5 REPRESENTATIONS AND WARRANTIES OF THE BUYER

The Buyer represents and warrants to the Seller as follows, and acknowledges that the Seller is relying upon the following representations and warranties in connection with its sale of the Purchased Assets:

5.1 Entity Existence

The Buyer is a limited liability company duly formed, validly existing and in good standing under the laws of the state of Delaware.

5.2 Residence of the Buyer

The Buyer is a non-resident of Canada for the purposes of the *Income Tax Act* (Canada) and the GST and HST Legislation and a non-resident of Quebec for purposes of the QST Legislation.

5.3 Financial Ability

As of the Closing, the Buyer and its subsidiaries will have sufficient cash in immediately available funds to allow it to pay the Purchase Price, and all other costs and expenses in connection with the consummation of the transactions contemplated by this Agreement. Notwithstanding anything to the contrary contained herein, the Buyer's obligations to consummate the transactions contemplated by this Agreement are not conditioned or contingent in any way upon the receipt of financing from any person or the availability of funds to the Buyer.

5.4 Absence of Conflicts

The Buyer is not a party to, bound or affected by or subject to (and the assets of the Buyer are not affected by): (a) any charter or by-law provision of the Buyer; (b) any Applicable Law or governmental authorizations, approvals, franchises, orders, certificates, consents, directives, notices, licenses, permits, variances, registrations or other rights issued, granted or given by or from any Governmental Authority; or (c) any agreement or other document, in each case, that would be violated, breached by, or under which any default would occur or with notice or the passage of time would be created as a result of the execution and delivery of, or the performance of its obligations under, this Agreement or any other agreement or document to be entered into or delivered under the terms of this Agreement, except in the case of (b) and (c) for any violations, breaches or defaults or any Applicable Law or any governmental authorizations, approvals, franchises, orders, certificates, consents, directives, notices, licenses, permits, variances, registrations or other rights issued, granted or given by or from any Governmental Authority, that would not have a material effect on or materially delay or impair the ability of the Buyer to consummate the transactions hereunder.

5.5 Due Authorization and Enforceability of Obligations

The Buyer has all necessary corporate power, authority and capacity to enter into and deliver this Agreement and the Closing Documents, and to carry out its obligations under this

Agreement and the Closing Documents. The execution, delivery and performance of this Agreement and the Closing Documents, and the consummation of the transactions contemplated by this Agreement and the Closing Documents, have been duly authorized by all necessary corporate action of the Buyer. This Agreement does and when executed and delivered by the Buyer the Closing Documents will constitute valid and binding obligations of the Buyer enforceable against it in accordance with its terms.

5.6 Approvals and Consents

Except for the issuance of the Approval and Vesting Order, no authorization, consent or approval of, or filing with or notice to, any Governmental Authority, court or other Person is required in connection with the execution, delivery or performance of this Agreement by the Buyer, and each of the agreements to be executed and delivered by the Buyer hereunder or the purchase of any of the Purchased Assets hereunder, except for any authorizations, consents, approvals, filings or notices of any Governmental Authority, court or Person that would not have a material effect on or materially delay or impair the ability of the Buyer to consummate the transactions hereunder.

5.7 GST, HST and QST

The Buyer is not registered under the GST and HST Legislation and is not registered under the QST Legislation.

5.8 Personal Information

The Buyer's use and disclosure of Personal Information after Closing will be carried out in compliance with all Applicable Laws.

5.9 As Is, Where Is

- (a) The Buyer acknowledges and agrees that it has conducted to its satisfaction an independent investigation and verification of the Purchased Assets (including the state of title thereto and/or the state of any Encumbrances), and, based solely thereon, has determined to proceed with the transactions contemplated by this Agreement. The Buyer has relied solely on the results of its own independent investigation and verification, and the representations and warranties of the Seller expressly and specifically set forth in ARTICLE 4, and the Buyer understands, acknowledges and agrees that all other representations, warranties and statements of any kind or nature, expressed or implied (including any relating to the future or historical financial condition, results of operations, prospects, assets or liabilities of the Seller, or the quality, quantity or condition of the Purchased Assets) are specifically disclaimed by the Seller. Except for the representations and warranties of the Seller expressly and specifically set forth in ARTICLE 4, the Seller does not make or provide hereunder any warranty or representation, express or implied, as to the quality, merchantability, fitness for a particular purpose, conformity to samples or condition of the Purchased Assets, or any part thereof. THE BUYER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT, EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES OF THE SELLER EXPRESSLY AND SPECIFICALLY SET FORTH IN ARTICLE 4:

(A) THE BUYER IS ACQUIRING THE PURCHASED ASSETS ON AN “AS IS, WHERE IS” BASIS; AND (B) NEITHER THE SELLER NOR ANY OTHER PERSON (INCLUDING ANY REPRESENTATIVE OF THE SELLER, WHETHER IN ANY INDIVIDUAL, CORPORATE OR ANY OTHER CAPACITY OR THE MONITOR) IS MAKING, AND THE BUYER IS NOT RELYING ON, ANY REPRESENTATIONS, WARRANTIES OR OTHER STATEMENTS OF ANY KIND WHATSOEVER, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, AS TO ANY MATTER CONCERNING THE SELLER, THE PURCHASED ASSETS, THIS AGREEMENT OR THE TRANSACTIONS, OR THE ACCURACY OR COMPLETENESS OF ANY INFORMATION PROVIDED TO (OR OTHERWISE ACQUIRED BY) THE BUYER OR ANY OF ITS RESPECTIVE REPRESENTATIVES; AND WITHOUT LIMITING THE FOREGOING, ANY AND ALL CONDITIONS OR WARRANTIES EXPRESSED OR IMPLIED PURSUANT TO THE SALE OF GOODS ACT (ONTARIO), THE INTERNATIONAL CONVENTION ON CONTRACTS FOR THE SALE OF GOODS (GENEVA CONVENTION) AND ANY OTHER APPLICABLE SALE OF GOODS LEGISLATION, WILL NOT APPLY AND ARE HEREBY WAIVED BY THE SELLER AND THE PARTIES AGREE TO EXCLUDE THE EFFECT OF THE LEGAL WARRANTY PROVIDED FOR BY ARTICLE 1716 OF THE CIVIL CODE OF QUÉBEC AND THAT THE BUYER IS PURCHASING THE PURCHASED ASSETS AT ITS OWN RISK WITHIN THE MEANING OF ARTICLE 1733 OF THE CIVIL CODE OF QUÉBEC, AND ANY AND ALL CONDITIONS, WARRANTIES OR REPRESENTATIONS, REGARDING MERCHANTABILITY, PHYSICAL OR FINANCIAL CONDITION, DESCRIPTION, FITNESS FOR A PARTICULAR PURPOSE, QUALITY, QUANTITY, ANY NON-INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS, OR REGARDING THE SCOPE, VALIDITY OR ENFORCEABILITY OF ANY PURCHASED ASSET, OR ANY OTHER THING AFFECTING THE PURCHASED ASSETS, OR IN RESPECT OF ANY OTHER MATTER OR THING WHATSOEVER, INCLUDING ANY AND ALL CONDITIONS, WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, PURSUANT TO ANY APPLICABLE LAW IN ANY JURISDICTION, WHICH THE BUYER CONFIRMS DO NOT APPLY TO THIS AGREEMENT, AND ARE HEREBY WAIVED IN THEIR ENTIRETY BY THE BUYER.

- (b) The Buyer acknowledges and agrees that: (i) the representations and warranties of the Seller set forth in ARTICLE 4 will merge on, and shall not survive, the Closing; and (ii) the Seller will not have or be subject to any liability or indemnification obligation to the Buyer or any other Person resulting from (nor will the Buyer or any other Person have any claim with respect to) the distribution to the Buyer, the Buyer’s use of, or reliance on, any information, documents, projections, forecasts or other material made available to the Buyer in certain “data rooms,” confidential information memoranda or management presentations in expectation of, or in connection with, the transactions contemplated by this Agreement, regardless of the legal theory under which such liability or obligation may be sought to be imposed, whether sounding in contract or tort, or whether at

law or in equity, or otherwise. None of the representatives of the Seller, whether in an individual, corporate or other capacity, will have or be subject to any such liability or indemnification obligations.

- (c) The remedies expressly set forth in this Agreement are the Buyer's sole and exclusive remedies relating to this Agreement, the Closing Documents, the transactions contemplated hereby and thereby, and the Purchased Assets.
- (d) This Section 5.9 will not merge on Closing and is deemed incorporated by reference in all Closing Documents.
- (e) The Buyer acknowledges and agrees that the enforceability of this Agreement against the Seller is subject to entry of the Approval and Vesting Order.
- (f) The Buyer acknowledges and agrees that nothing in this Agreement shall operate to prohibit or diminish in any way the right of the Seller to directly or indirectly sell, transfer, liquidate or otherwise dispose of any existing product bearing the Viking name or related to the Purchased Assets, including any Viking-branded inventory (the "**SCI Viking Inventory**"); provided, however, that the aggregate value of the SCI Viking Inventory sold, transferred, liquidated or otherwise disposed of shall not exceed \$ [REDACTED].

ARTICLE 6 CONDITIONS TO CLOSING

6.1 Conditions for the Benefit of the Buyer and the Seller

The respective obligations of the Buyer and of the Seller to consummate the transactions contemplated by this Agreement are subject to the satisfaction of, or compliance with, at or prior to the Closing Time, each of the following conditions:

- (a) *No Law* – no provision of any Applicable Law and no judgment, injunction, order or decree that prohibits the consummation of the purchase of the Purchased Assets or any of the other transactions pursuant to this Agreement shall be in effect;
- (b) *Court Order* – the Approval and Vesting Order shall have been issued and entered and such order shall be Final.

The Parties acknowledge that the foregoing conditions are for the mutual benefit of the Seller, on the one hand, and the Buyer, on the other hand. Any condition in this Section 6.1 may be waived by the Seller, on the one hand, or by the Buyer, on the other hand, in whole or in part, without prejudice to any of their respective rights of termination in the event of non-fulfillment of any other condition in whole or in part. Any such waiver will be binding on the Seller or the Buyer, as applicable, only if made in writing.

6.2 Conditions for the Benefit of the Buyer

The obligation of the Buyer to consummate the transactions contemplated by this Agreement is subject to the satisfaction of, or compliance with, or waiver by the Buyer of, at or

prior to the Closing Time, each of the following conditions (each of which is acknowledged to be for the exclusive benefit of the Buyer):

- (a) *Compliance with Covenants* – the covenants contained in this Agreement to be performed by the Seller at or prior to the Closing Time shall have been performed in all material respects as at the Closing Time;
- (b) *Truth of Representations and Warranties* – the representations and warranties of the Seller contained in ARTICLE 4 shall be true and correct in all material respects on and as of the Closing Date, as if made on and as of such date (except for representations and warranties made as of specified date, the accuracy of which shall be determined as of such specified date);
- (c) *Officer's Certificate* – the Buyer shall have received a certificate confirming the satisfaction of the conditions contained in Sections 6.2(a) (*Compliance with Covenants*) and 6.2(b) (*Truth of Representations and Warranties*), signed for and on behalf of the Seller without personal liability by an executive officer of the Seller or other Persons acceptable to the Buyer, in each case in form and substance reasonably satisfactory to the Buyer; and
- (d) *Closing Documents* – each of the deliveries required to be made to the Buyer pursuant to Section 10.2 shall have been so delivered.

6.3 Conditions for the Benefit of the Seller

The obligation of the Seller to consummate the transactions contemplated by this Agreement is subject to the satisfaction of, or compliance with, or waiver where applicable by the Seller of, at or prior to the Closing Time, each of the following conditions (each of which is acknowledged to be for the exclusive benefit of the Seller):

- (a) *Compliance with Covenants* – the covenants contained in this Agreement to be performed by the Buyer at or prior to the Closing Time shall have been performed in all material respects as at the Closing Time;
- (b) *Truth of Representations and Warranties* – the representations and warranties of the Buyer contained in ARTICLE 5 shall be true and correct in all material respects on and as of the Closing Date, as if made on and as of such date (except for representations and warranties made as of specified date, the accuracy of which shall be determined as of such specified date); and
- (c) *Officer's Certificate* – the Seller shall have received a certificate confirming the satisfaction of the conditions contained in Sections 6.3(a) (*Compliance with Covenants*) and 6.3(b) (*Truth of Representations and Warranties*) signed for and on behalf of the Buyer without personal liability by an executive officer of the Buyer, in form and substance satisfactory to the Seller, each acting in a commercially reasonable manner.

ARTICLE 7
ADDITIONAL AGREEMENTS OF THE PARTIES

7.1 Conduct of Business Until Closing Time

Except: (1) as contemplated or permitted by this Agreement; (2) as necessary in connection with the CCAA Proceedings; (3) as otherwise provided in the Initial Order and any other court orders, prior to the Closing Time; (4) as required by Applicable Law, to the extent reasonably practicable having regard to the CCAA Proceedings; or (5) as consented to by the Buyer, such consent not to be unreasonably withheld, conditioned or delayed, the Seller shall:

- (a) use commercially reasonable efforts to preserve and not abandon the Purchased Assets; and
- (b) not, without the prior written consent of the Buyer (the granting of such consent to be in the Buyer's sole discretion): (i) transfer, lease, license, sell, abandon, create any Encumbrance on or otherwise dispose of any of the Purchased Assets (except in the ordinary course of business, in all material respects consistent with past practice); or (ii) agree or make a commitment, whether in writing or otherwise, to do the foregoing.

7.2 Covenants Relating to this Agreement

- (a) Each of the Parties shall perform, and shall cause their affiliates to perform, all obligations required to be performed by the applicable Party under this Agreement, co-operate with the other Parties in connection therewith and, subject to the directions of any applicable courts to the Seller, use commercially reasonable efforts to do all such other acts and things as may be necessary or desirable in order to consummate and make effective, as soon as reasonably practicable and in any event prior to the Sunset Date, the transactions contemplated by this Agreement and, without limiting the generality of the foregoing, each Party shall and, where appropriate, shall cause each of its affiliates to:
 - (i) negotiate in good faith and use its commercially reasonable efforts to take or cause to be taken all actions and to do, or cause to be done, all things necessary, proper or advisable to satisfy the conditions precedent to the obligations of such Party hereunder (including, where applicable, negotiating in good faith with the applicable Governmental Authorities and/or third Persons in connection therewith), and to cause the fulfillment at the earliest practicable date of all of the conditions precedent to the other Party's obligations to consummate the transactions contemplated hereby; and
 - (ii) not take any action, or refrain from taking any action, and use commercially reasonable efforts to not permit any action to be taken or not taken, which would reasonably be expected to prevent, materially delay or otherwise impede the consummation of the transactions contemplated by this Agreement.

- (b) The Seller and the Buyer agree to cause each of their representatives to keep the other informed on a reasonably current basis as to their progress in terms of the satisfaction of the conditions precedent contained herein.
- (c) The Seller and the Buyer agree to execute and deliver such other documents, certificates, agreements and other writings, and to take such other actions as may be reasonably required to consummate or implement as soon as reasonably practicable, the transactions contemplated by this Agreement.

7.3 Release; Acknowledgements

- (a) Except as otherwise contained herein, effective as of the Closing, the Buyer hereby releases and forever discharges the Seller and its affiliates, and their respective successors and assigns, and all officers, directors, partners, members, shareholders, employees and agents of each of them, from any and all actual or potential Claims which such Person had, has or may have in the future to the extent relating to the Purchased Assets.
- (b) The Buyer shall use its best efforts to assist the Seller and shall co-operate with the Seller, as reasonably requested, to obtain from third parties, effective as of the Closing Time, a full release of the Seller's obligations under the Purchased Assets, 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.

7.4 Tax Matters

- (a) The Buyer and the Seller agree to use commercially reasonable efforts to furnish or cause to be furnished to each other, as promptly as practicable, such information and assistance relating to the Purchased Assets as is reasonably necessary for the preparation and filing of any Tax return, claim for refund or other required or optional filings relating to Tax matters, for the preparation for and proof of facts during any Tax audit, for the preparation for any Tax protest, for the prosecution of any suit or other proceedings relating to Tax matters and for the answer to any governmental or regulatory inquiry relating to Tax matters.
- (b) For purposes of any income Tax return related to the transactions contemplated in this Agreement, the Buyer and the Seller agree to report the transactions contemplated in this Agreement in a manner consistent with the Purchase Price allocation determined in accordance with Section 3.2, and the Buyer and the Seller shall not voluntarily take any action inconsistent therewith in any such Tax return, refund claim, litigation or otherwise, unless required by applicable Tax laws. The Buyer and the Seller shall each be responsible for the preparation of their own statements required to be filed under the *Income Tax Act* (Canada) and other similar forms in accordance with applicable Tax laws.
- (c) The Buyer is responsible to pay to the Seller any applicable GST/HST, QST and other similar Taxes applicable to the purchase and sale of the Purchased Assets;

provided, however, that the Parties agree that the Purchased Assets are zero-rated for purposes of the GST and HST Legislation and the QST Legislation so long as the Buyer is an unregistered non-resident of Canada and an unregistered non-resident of Quebec, respectively, and the Purchased Assets are as described in sections 10 and 10.1 (other than subsections (a) to (e) thereof) of Part V of Schedule VI of the GST and HST Legislation and sections 188 and 188.1 (other than subsections (1) to (5) thereof) of Division V of Chapter IV of Part I of the QST Legislation, respectively.

- (d) On Closing, the Buyer shall have executed and delivered a certificate, undertaking and indemnity which includes its certification that it is an unregistered non-resident under the GST and HST Legislation and QST Legislation, and incorporates the provisions of this Section 7.4(d) (the “**GST/HST and QST Certificate, Undertaking and Indemnity**”). The Buyer shall indemnify and save the Seller 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 GST and HST Legislation, the QST Legislation and any other value added or multi-staged tax or sales tax, penalties, costs and/or interest which may become payable by or assessed against the Seller as a result of any failure by the Seller to collect and remit any goods and services tax or harmonized sales tax payable under the GST and HST Legislation and the QST legislation or any similar value added or multi-staged tax or sales tax and applicable on the sale and conveyance of the Purchased Assets by the Seller to the Buyer or as a result of any inaccuracy, misstatement or misrepresentation made by the Buyer in connection with any matter raised in this Section 7.4 or in the GST/HST and QST Certificate, Undertaking and Indemnity or any failure by the Buyer to comply with the provisions of this Section 7.4 or the GST/HST and QST Certificate, Undertaking and Indemnity.
- (e) The Buyer hereby waives compliance by the Seller with Section 6 of the *Retail Sales Tax Act* (Ontario) and with any similar provision contained in any other Applicable Law in respect of all sales and transfer Taxes, registration charges and transfer fees payable.

7.5 Intellectual Property Matters

The Seller shall cooperate with and assist the Buyer, at the Buyer’s expense, with the registration of the assignment of the registrable rights relating to the Purchased Assets.

7.6 Notice of Certain Events

The Seller, on the one hand, and the Buyer, on the other hand, shall give prompt written notice to the other Party of: (a) the occurrence or non-occurrence of any fact, change, condition or event, the occurrence or non-occurrence of which would render any representation or warranty of such Party contained in this Agreement or any of the Closing Documents untrue or inaccurate in any material respect; (b) any failure of such Party to comply with or satisfy any covenant or agreement to be complied with or satisfied by such Party hereunder in any material respect or any event or condition that would otherwise reasonably be expected to result in the nonfulfillment of any of the conditions to such Party’s obligations hereunder; (c) receipt of any

notice (whether written or oral) from any Person (including any counterparty to a Contract) alleging that the consent of such Person is or may be required in connection with, or that any Contract with any such Person is or may be breached or otherwise violated in connection with, the consummation of the Closing or any of the other transactions contemplated by this Agreement or any of the Closing Documents; or (d) any proceeding pending or, to the knowledge of such Party, threatened, against such Party relating to the Agreement and the other transactions contemplated by this Agreement or any of the Closing Documents.

7.7 Transition

Following the Closing Time, the Seller agrees to use commercially reasonable efforts to facilitate introductions between the Buyer and existing suppliers of products sold under the “Viking” trademark and brand that Seller has a continuing relationship as of the Closing Time; provided, however, that the Buyer acknowledges and agrees that nothing in this Section 7.7 shall operate to prohibit or diminish in any way the right of the Seller to dissolve, windup or otherwise cease operations as it may determine in its sole discretion following the Closing Time. Notwithstanding the foregoing, any efforts required of the Seller pursuant to this Section 7.7 shall in no event be required to continue for more than 90 days following Closing.

7.8 Risk of Loss

In the event the Purchased Assets are appropriated, expropriated or seized by any Person, on or prior to the Closing Date and without fault of the Seller, the Buyer may elect to (a) terminate this Agreement, or (b) complete the transactions contemplated by this Agreement without reduction of the Purchase Price. In the event the Buyer elects to complete the transactions pursuant to the preceding clause (b), all proceeds of insurance or compensation for expropriation or seizure in respect thereof will be payable to the Buyer and all right and claim of the Seller to any such amounts not paid by the Closing Date will be assigned to the Buyer. Notwithstanding the foregoing, any obligations of the Seller pursuant to this Section 7.8 shall terminate 90 days following Closing.

ARTICLE 8 COURT ORDERS

8.1 Court Orders

- (a) The Buyer shall cooperate with the Seller acting reasonably, as may be necessary, including by providing such information and taking such actions as may be reasonably requested, in obtaining the Approval and Vesting Order.
- (b) Within the time period provided for in the SISF, the Seller shall use commercially reasonable efforts to file a motion with the CCAA Court for the issuance of the Approval and Vesting Order.
- (c) The Seller shall use commercially reasonable efforts to obtain the Approval and Vesting Order.

- (d) The Buyer and its legal counsel shall be given a reasonable opportunity to review and comment on the motion(s) for the issuance of the Approval and Vesting Order.
- (e) Notice of the motion seeking the issuance of the Approval and Vesting Order shall be served by the Seller on all Persons required to receive notice under Applicable Law and the requirements of the CCAA, the CCAA Court, and any other Person determined necessary by the Seller or the Buyer.

8.2 CCAA Process

If the Approval and Vesting Order or any other orders of the CCAA Court relating to this Agreement shall be appealed or motion for rehearing or reargument shall be filed with respect thereto, the Seller agrees to take all action as may be commercially reasonable and appropriate to defend against such appeal, petition or motion and the Buyer agrees to use its commercially reasonable efforts to cooperate in such efforts.

ARTICLE 9 TERMINATION

9.1 Termination

This Agreement may be terminated at any time prior to Closing as follows:

- (a) by mutual written consent of the Buyer and the Seller (with the consent of the Monitor, in the case of the Seller) or on further order of the CCAA Court;
- (b) by the Buyer or the Seller (with the consent of the Monitor, in the case of the Seller) if Closing has not occurred on or before January 11, 2018 (provided, that such date may be extended as ordered by the CCAA Court) (the “**Sunset Date**”); provided, that the Buyer or the Seller, as the case may be, are not in breach of any representation, warranty, covenant or other agreement in this Agreement that would cause the conditions in ARTICLE 6 to fail to be satisfied;
- (c) by the Buyer or the Seller upon the dismissal or conversion of the CCAA Proceedings;
- (d) by the Buyer or the Seller upon permanent denial of the Approval and Vesting Order;
- (e) by the Buyer or the Seller if a court of competent jurisdiction or other Governmental Authority has issued an order or taken any other action permanently restraining, enjoining or otherwise prohibiting the consummation of Closing and such order or action has become Final (provided the same was not initiated by the Party seeking to terminate hereunder);
- (f) by the Seller, if required under any Order of a court of competent jurisdiction including the CCAA Court;

- (g) by the Seller (with the consent of the Monitor), if there has been a material violation or breach by the Buyer of any covenant, representation or warranty which would prevent the satisfaction of the conditions set forth in Section 6.1 or Section 6.3, as applicable, by the Sunset Date and such violation or breach has not been waived by the Seller or cured within ten (10) Business Days after written notice thereof from the Seller, unless the Seller is in material breach of its obligations under this Agreement;
- (h) by the Buyer pursuant to Section 7.8; or
- (i) by the Buyer, if there has been a material violation or breach by the Seller of any covenant, representation or warranty which would prevent the satisfaction of the conditions set forth in Section 6.1 or Section 6.2, as applicable, by the Sunset Date and such violation or breach has not been waived by the Buyer or cured within ten (10) Business Days after written notice thereof from the Buyer, unless the Buyer is in material breach of its obligations under this Agreement.

The Party desiring to terminate this Agreement pursuant to this Section 9.1 (other than pursuant to Section 9.1(a)) shall give written notice of such termination to the other Party or Parties, as applicable, specifying in reasonable detail the basis for such Party's exercise of its termination rights.

9.2 Effect of Termination

In the event of termination of this Agreement pursuant to Section 9.1, this Agreement shall become void and of no further force or effect without liability of any Party to any other Party to this Agreement except that (a) this Section 9.2 and Sections 3.3(b), 11.1, 11.3, 11.4, 11.5, 11.6 and 11.7 shall survive, (b) the confidentiality, non-use and non-disclosure obligations under the NDA shall survive in accordance with the terms of the NDA, and (b) no termination of this Agreement shall relieve any Party of any liability for any willful breach by it of this Agreement.

ARTICLE 10 CLOSING

10.1 Location and Time of the Closing

The Closing shall take place at the Closing Time on the Closing Date at the Toronto, Ontario offices of Osler, Hoskin & Harcourt LLP, or at such other location as may be agreed upon by the Parties.

10.2 Seller's Deliveries at Closing

At Closing, the Seller shall deliver to the Buyer the following:

- (a) a certified copy of the Approval and Vesting Order;
- (b) the IP Assignment and Assumption Agreement duly executed by the Seller;

- (c) an authorization of counsel, substantially in the form attached as Schedule 2.3, duly executed by the Seller;
- (d) an executed copy of the Monitor's Certificate;
- (e) the certificate contemplated by Section 6.2(c); and
- (f) all other documents required to be delivered by the Seller on or prior to the Closing Date pursuant to this Agreement or Applicable Law or as reasonably requested by the Buyer in good faith.

10.3 Buyer's Deliveries at Closing

At Closing, the Buyer shall deliver to the Seller:

- (a) the portion of the Purchase Price payable at the Closing;
- (b) any sales or transfer Taxes payable on Closing by the Buyer to the Seller pursuant to Section 7.4(c) hereof;
- (c) the IP Assignment and Assumption Agreement duly executed by the Buyer;
- (d) the certificate contemplated by Section 6.3(c);
- (e) the GST/HST and QST Certificate, Undertaking and Indemnity; and
- (f) all other documents required to be delivered by the Buyer on or prior to the Closing Date pursuant to this Agreement or Applicable Law or as reasonably requested by the Seller in good faith.

10.4 Possession of Assets and Cooperation of the Seller with respect to Intellectual Property

In no event will the Purchased Assets be sold, assigned, transferred or set over to the Buyer until the conditions set out in the Approval and Vesting Order have been satisfied, and the Buyer has satisfied all delivery requirements outlined in Section 10.3. Promptly following Closing, the Seller shall deliver to the Buyer a hard drive or hard drives containing all of the electronic Documents in its possession, if any, and shall make available for retrieval by the Buyer or its agent(s) any and all Documents in the physical possession of the Seller, if any, for a period of thirty (30) days after the Closing Date.

The Seller will, in respect of the applications and registrations of Intellectual Property included in the Purchased Assets, provide such commercially reasonable cooperation, including the execution of confirmatory notice documents for recordation at government intellectual property offices, to record at such offices the Buyer as the assignee and owner of such Intellectual Property; provided, however, that the Buyer acknowledges and agrees that nothing in this Section 10.4 shall operate to prohibit or diminish in any way the right of the Seller to dissolve, windup or otherwise cease operations as it may determine in its sole discretion following the Closing Time.

10.5 Monitor

The Parties hereby acknowledge and agree that the Monitor will be entitled to file the Monitor's Certificate with the CCAA Court without independent investigation upon receiving written confirmation from the Seller and the Buyer that all conditions to Closing have been satisfied or waived and upon receiving the portion of the Purchase Price payable at Closing and any sales or transfer Taxes confirmed in writing by the Seller and the Buyer (on which the Monitor shall be entitled to rely without independent investigation) to be payable on Closing by the Buyer to the Seller pursuant to Section 7.4(c) hereof, and the Monitor will have no liability to the Seller or the Buyer or any other Person as a result of filing the Monitor's Certificate or otherwise in connection with this Agreement or the transactions contemplated hereunder (whether based on contract, tort or any other theory).

10.6 Simultaneous Transactions

All actions taken and transactions consummated at the Closing shall be deemed to have occurred simultaneously, and no such transaction shall be considered consummated unless all are consummated.

ARTICLE 11 GENERAL MATTERS

11.1 Confidentiality

The Buyer shall keep confidential all Confidential Information relating to the Seller and the Purchased Assets in accordance with the terms of the NDA; provided, that upon the Closing, the obligations of The Middleby Corporation and any Interested Party Representatives (as defined in the NDA) with respect to any Purchased Assets (including all obligations of confidentiality) shall immediately terminate. Subject to the foregoing sentence, the NDA shall remain in full force and effect in accordance with its terms following the Closing (and the Buyer shall, for the avoidance of doubt, be considered an Interested Party Representative thereunder).

11.2 Public Notices

No press release or other announcement concerning the transactions contemplated by this Agreement shall be made by the Seller, on the one hand, or by the Buyer, on the other hand, without the prior consent of the other Party (such consent not to be unreasonably withheld, conditioned or delayed); provided, however, that subject to the last sentence of this Section 11.2, any Party may, without such consent, make such disclosure if the same is required by Applicable Law (including the CCAA Proceedings) or by any stock exchange on which any of the securities of such Party or any of its affiliates are listed, or by any insolvency or other court or securities commission, or other similar Governmental Authority having jurisdiction over such Party or any of its affiliates, and, if such disclosure is required, the Party making such disclosure shall use commercially reasonable efforts to give prior oral or written notice to the other Party to the extent legally permissible and reasonably practicable, and if such prior notice is not legally permissible or reasonably practicable, to give such notice reasonably promptly following the making of such disclosure. Notwithstanding the foregoing: (i) this Agreement may be filed by the Seller with the CCAA Court and posted on SEDAR or such other website as may be required pursuant to Applicable Law or the rules of any relevant stock exchange; and (ii) the transactions

contemplated in this Agreement may be disclosed by the Seller to the CCAA Court, subject to redacting confidential or sensitive information as permitted by Applicable Law. The Parties further agree that:

- (a) the Monitor may prepare and file reports and other documents with the CCAA Court containing references to the transactions contemplated by this Agreement and the terms of such transactions; and
- (b) the Seller and its professional advisors may prepare and file such reports and other documents with the CCAA Court containing references to the transactions contemplated by this Agreement and the terms of such transactions as may reasonably be necessary to complete the transactions contemplated by this Agreement or to comply with their obligations in connection therewith.

Wherever possible, the Buyer shall be afforded an opportunity to review and comment on such materials prior to their filing. The Parties may issue a joint press release announcing the execution and delivery of this Agreement, in form and substance mutually agreed to by them.

11.3 Survival

None of the representations, warranties, covenants (except the covenants in ARTICLE 2, ARTICLE 3, ARTICLE 11 and Sections 7.3, 7.4, 7.5, 7.7, 11.1 and 11.4 to the extent they are to be performed after the Closing) of any of the Parties set forth in this Agreement, in any Closing Document to be executed and delivered by any of the Parties (except any covenants included in such Closing Documents, which, by their terms, survive Closing) or in any other agreement, document or certificate delivered pursuant to or in connection with this Agreement or the transactions contemplated hereby shall survive the Closing.

11.4 Expenses

Except as otherwise specifically provided herein, the Seller, on the one hand, and the Buyer, on the other hand, shall be responsible for the expenses (including fees and expenses of legal advisers, accountants and other professional advisers) incurred by each of them, respectively, in connection with the negotiation and settlement of this Agreement, and the completion of the transactions contemplated hereby.

11.5 Non-Recourse

No past, present or future director, officer, employee, incorporator, member, partner, securityholder, affiliate, agent, lawyer or representative of the respective Parties, in such capacity, shall have any liability for any obligations or liabilities of the Buyer or the Seller, as applicable, under this Agreement, or for any Claim based on, in respect of or by reason of the transactions contemplated hereby.

11.6 Assignment; Binding Effect

No Party may assign its right or benefits under this Agreement without the consent of each of the other Parties, except that without such consent any Party may, upon prior notice to the other Parties: (a) assign this Agreement, or any or all of its rights and obligations hereunder,

to one or more of its subsidiaries or affiliates; or (b) the Buyer may direct that title to all or some of the Purchased Assets be transferred to one or more of its subsidiaries or affiliates; provided, that no such assignment or direction shall relieve such assigning Party of its obligations hereunder. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective permitted successors and permitted assigns. Except as provided in Section 7.3, nothing in this Agreement shall create or be deemed to create any third Person beneficiary rights in any Person not a Party to this Agreement.

11.7 Notices

Any notice, consent or approval required or permitted to be given in connection with this Agreement (in this Section referred to as 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 transferred by facsimile or email:

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

Viking Range, LLC c/o The Middleby Corporation
1400 Toastmaster Drive
Elgin, IL 60120
Attention: Tim FitzGerald, Chief Financial Officer
Facsimile: (847) 429-7544
Email: tfitzgerald@middleby.com

with a copy (which shall not in themselves constitute notice) to:

Skadden, Arps, Slate, Meagher and Flom LLP
155 N. Wacker Drive, Suite 2700
Chicago, IL 60606
Attention: Shilpi Gupta, Partner
Facsimile: 312-407-0411
Email: sgupta@skadden.com

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

Sears Canada Inc.
290 Yonge Street, Suite 700
Toronto, Ontario M5B 2C3
Attention: Phil Mohtadi
Telephone: (416) 941-4419
Email: pmohtad@sears.ca

with copies (which shall not in themselves constitute notice) to:

Osler, Hoskin & Harcourt LLP
Suite 6200
1 First Canadian Place
Toronto, ON M5X 1B8

Attention: Marc Wasserman and Tracy Sandler
Telephone: 416-862-4908 / 416-862-5890
Facsimile: 416-862-6666
Email: mwasserman@osler.com / tsandler@osler.com

and the Monitor:

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

Attention: Paul Bishop
Telephone: 416-649-8053
Facsimile: 416-649-8101
Email: paul.bishop@fticonsulting.com

and counsel to the Monitor:

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

Attention: Orestes Pasparakis and Virginie Gauthier
Telephone: 416-216-4815 / 416-216-4853
Facsimile: 416-216-3930
Email: orestes.pasparakis@nortonrosefulbright.com /
virginie.gauthier@nortonrosefulbright.com

Any Notice delivered or transmitted to a Party as provided above shall be deemed to have been given and received on the day it is delivered or transmitted, provided that it is delivered or transmitted on a Business Day prior to 5:00 p.m. local time in the place of delivery or receipt. However, if the Notice is delivered or transmitted after 5:00 p.m. local time or if such day is not a Business Day then the Notice shall be deemed to have been given and received on the next Business Day.

Any Party may, from time to time, change its address by giving Notice to the other Parties in accordance with the provisions of this Section.

11.8 Counterparts; Facsimile Signatures

This Agreement may be signed in counterparts and each of such counterparts shall constitute an original document and such counterparts, taken together, shall constitute one and the same instrument. Execution of this Agreement may be made by facsimile signature or by electronic image scan which, for all purposes, shall be deemed to be an original signature.

11.9 Language

Les Parties aux présentes ont expressément exigé que le présent convention et tous les documents et avis qui y sont affèrents soient rédigés en anglaise. The Parties have expressly required that this Agreement and all documents and notices relating hereto be drafted in English.

[Signature pages follow]

IN WITNESS WHEREOF the Parties have executed this Agreement as of the date first written above.

SEARS CANADA INC.

By: Philip Mohtadi
Name: Philip Mohtadi
Title: Corporate Secretary

VIKING RANGE, LLC

By: _____
Name:
Title:

**and, solely for purposes of Section 11.1
herein,**

THE MIDDLEBY CORPORATION

By: _____
Name:
Title:

IN WITNESS WHEREOF the Parties have executed this Agreement as of the date first written above.

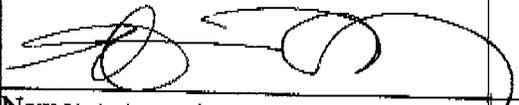
SEARS CANADA INC.

By:

Name: Philip Mohtadi
Title: Corporate Secretary

VIKING RANGE, LLC

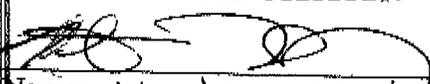
By:


Name: Martin M. Lindsay
Title: Treasurer

and, solely for purposes of Section 11.1 herein,

THE MIDDLEBY CORPORATION

By:


Name: Martin M. Lindsay
Title: Treasurer

to the Purchaser all right, title and interest of the Seller in and to the Purchased Assets (as defined in the APA), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion of the Applicants, the Affidavit of ● sworn on ●, 2017 including the exhibits thereto (the “● Affidavit”), and the ● Report of FTI Consulting Canada Inc., in its capacity as Monitor (the “**Monitor**”), filed, and on hearing the submissions of respective counsel for the Applicants, the Monitor, the Purchaser and such other counsel as were present, no one else appearing although duly served as appears from the Affidavit of Service of ● sworn ●, 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 APA, as applicable.

APPROVAL OF THE APA

3. THIS COURT ORDERS AND DECLARES that the entering into of the Transaction by the Seller is hereby approved and ratified and that the execution of the APA by the Seller is hereby authorized, approved and ratified with such minor amendments as the Seller (with the consent of the Monitor) and the Purchaser may agree pursuant to the terms of the APA. The Seller 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 and for the conveyance of the Purchased Assets to the Purchaser and the Monitor shall be authorized to take such additional steps in furtherance of its responsibilities under the APA and this Order, and shall not incur any liability as a result thereof.
4. THIS COURT ORDERS AND DECLARES that upon the delivery of a Monitor’s certificate to the Purchaser substantially in the form attached as Schedule “A” hereto (the “**Monitor’s Certificate**”), all of the Seller’s right, title and interest in and to the Purchased

Assets shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory or otherwise), liens, executions, levies, charges or other financial or monetary claims, rights of first negotiation, rights of first refusal and any other similar rights, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise in respect of the Purchased Assets (collectively, the “**Claims**”), including, without limiting the generality of the foregoing:

- (a) the Administration Charge, the FA Charge, the KERP Priority Charge, the Directors’ Priority Charge, the KERP Subordinated Charge and the Directors’ Subordinated Charge (as such terms are defined in the Initial Order) and any other charges hereafter granted by this Court in these proceedings (collectively, the “**CCAA Charges**”);
- (b) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) 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**”), and, for greater certainty, this Court orders that all of the Claims and Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

5. 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 Purchased Assets immediately prior to the Closing Date of the Transaction, as if the Transaction had not been completed.

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

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

8. THIS COURT ORDERS that subject to the terms of the APA nothing herein affects:
- (a) the rights and obligations of the Seller 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 the Seller and the Agent dated October 10, 2017; and
 - (b) the terms of the Liquidation Sale Approval Order granted October 13, 2017 including the Sale Guidelines attached as Schedule “A” thereto.

GENERAL PROVISIONS

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

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

11. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Applicants, the Monitor and the Purchaser and each of 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 Monitor, as an officer of this Court, the Applicants and the Purchaser as may be necessary or desirable to give effect to this Order or to assist the Applicants, the Monitor and the Purchaser and each of 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 Asset Purchase Agreement among Sears Canada Inc. (the “**Seller**”), as vendor, Viking Range, LLC (the “**Purchaser**”), as purchaser, and, solely for purposes of Section 11.1 therein, The Middleby Corporation, dated December 6, 2017 (the “**APA**”), a redacted copy of which is attached as Exhibit ● to the Affidavit of ● dated ●, 2017.

B. Pursuant to the Approval and Vesting Order the Court approved the APA and provided for the vesting in the Purchaser of the Seller’s right, title and interest in and to the Purchased Assets (as defined in the APA), which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Monitor to the Purchaser and the Seller of a certificate confirming (i) all conditions to Closing have been satisfied or waived by the Purchaser and the Seller, as applicable; and (ii) the Purchase Price (including the Deposit previously received by

the Monitor) and any applicable sales and transfer Taxes payable (each as defined in the APA) by the Purchaser to the Seller at the Closing (as defined in the APA) have been received by the Monitor.

THE MONITOR CERTIFIES the following:

1. All conditions to Closing have been satisfied or waived by the Purchaser and the Seller, as applicable; and
2. The cash portion of the Purchase Price (including the Deposit previously received by the Monitor) and any applicable sales and transfer Taxes payable by the Purchaser to the Seller at the Closing 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”

Claims to be expunged:

1. Security Agreement in favour of General Electric Capital Canada Inc. registered June 2, 1997
2. Security Agreement in favour of General Electric Capital Canada registered December 22, 1997
3. License Agreement between 1373639 Alberta Ltd. and Sears Canada Inc. dated February 3, 2008

SCHEDULE 1.1(ee)

FORM OF IP ASSIGNMENT AND ASSUMPTION AGREEMENT

CONFIRMATORY ASSIGNMENT OF TRADE-MARKS

WHEREAS, Sears Canada Inc. (the “**Assignor**”), the full post office address of whose principal office or place of business is 290 Yonge Street, Suite 700, Toronto, Ontario, M5B 2C3, is the owner of the trade-marks listed in the attached schedule (the “**Trade-marks**”);

AND WHEREAS pursuant to an asset purchase agreement among the Assignor, Viking Range, LLC (the “**Assignee**”), and, solely for purposes of Section 11.1 therein, The Middleby Corporation, dated December 6, 2017 (the “**Purchase Agreement**”), the Assignee, the full post office address of whose principal office or place of business is 1400 Toastmaster Drive, Elgin, Illinois 60120, acquired from the Assignor all of its right, title and interest in and to the Trade-marks together with the goodwill of the business carried on in association with the Trade-marks and certain other assets described in the Purchase Agreement as Purchased Assets;

NOW THEREFORE for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Assignor and the Assignee hereby confirm that the Assignor has sold, assigned and transferred to the Assignee, its successors and assigns, effective as of the date hereof, all of the Assignor’s right, title and interest in and to the Trade-marks (and all other assets described in the Purchase Agreement as Purchased Assets), including all its trade-mark rights in respect of all wares and services in association with which the Trade-marks may have been used, and the goodwill of the business carried on in association with the Trade-marks, together with all right of action resulting from any adverse use of the Trade-marks or any confusingly similar trade-marks prior to such effective date, and the right to claim such relief as is appropriate, the same to be held by the Assignee, its successors and assigns as fully and effectually as they would have been held by the Assignor had this sale, assignment and transfer not been made.

This agreement is executed in connection with and subject to the terms and conditions of the Purchase Agreement. As between Assignor and Assignee, nothing in this agreement shall be deemed to limit or modify any representations, warranties, liabilities, indemnities or other agreements as between Assignor and Assignee as provided for in the Purchase Agreement.

This agreement shall be governed by and construed in accordance with the internal substantive laws of the Province of Ontario without giving effect to the principles of conflicts of laws thereof. This agreement may be executed in one or more original or facsimile counterparts, and all counterparts so executed shall constitute one agreement, binding upon the parties hereto, notwithstanding that the parties are not signatory to the same counterpart.

[Signature page follows]

EXECUTED at _____, this _____ day of _____, 201[●].

SEARS CANADA INC.

By: _____

Name:

Title:

SCHEDULE

Trademark
VIKING (Registration No. TMDA47453; Application No. 147635)
VIKING & DESIGN (Registration No. TMA599901; Application No. 1124667) 
VIKING & Design (Application No. 1731943) 
Representation of a Single-Masted Viking Galley (Registration No. UCA41844)

SCHEDULE 2.1

Trademark Applications and Registrations

Trademark
VIKING (Registration No. TMDA47453; Application No. 147635)
VIKING & DESIGN (Registration No. TMA599901; Application No. 1124667) 
VIKING & Design (Application No. 1731943) 
Representation of a Single-Masted Viking Galley (Registration No. UCA41844)

SCHEDULE 2.3

FORM OF AUTHORIZATION OF COUNSEL

AUTHORIZATION OF COUNSEL

To: Representative for service for the trade-marks listed in the attached schedule (the “**Trade-marks**”) (such counsel, “**You**” or “**Your**”)

WHEREAS Sears Canada Inc. (the “**Assignor**”) has sold, assigned and transferred to Viking Range, LLC (the “**Assignee**”), its successors and assigns, all of the Assignor’s right, title and interest in and to the Trade-marks, including all its trade-mark rights in respect of all wares and services in association with which the Trade-marks may have been used, and the associated goodwill, together with all right of action resulting from any adverse use of the Trade-marks or any confusingly similar trade-marks prior to such sale, assignment and transfer,

NOW THEREFORE, the Assignor hereby authorizes you to provide to the Assignee documents and records in Your possession or control in connection with the use and evidence of use of the Trade-marks. The Assignee shall be solely responsible for all costs incurred in connection with providing such documents and records.

EXECUTED at _____, this _____ day of _____, 201[●].

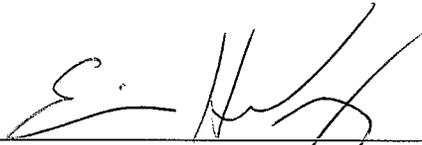
SEARS CANADA INC.

By: _____
Name:
Title:

SCHEDULE

Trademark
VIKING (Registration No. TMDA47453; Application No. 147635)
VIKING & DESIGN (Registration No. TMA599901; Application No. 1124667) 
VIKING & Design (Application No. 1731943) 
Representation of a Single-Masted Viking Galley (Registration No. UCA41844)

THIS IS EXHIBIT "F" REFERRED TO IN
THE AFFIDAVIT OF BILLY WONG,
SWORN BEFORE ME ON THIS 6th DAY OF DECEMBER, 2017.



A Commissioner for Taking Affidavits.

Eric James Hendry,
a Commissioner, etc., Province of
Ontario, while a Student-at-Law.
Expires April 5, 2019.

ASSET PURCHASE AGREEMENT

among

SEARS CANADA INC.

as Seller,

VIKING RANGE, LLC

as Buyer

- and -

solely for purposes of Section 11.1 hereof,

~~**CANADIAN TIRE**~~ **THE MIDDLEBY** CORPORATION, ~~**LIMITED**~~

~~**as Buyer**~~

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ASSET PURCHASE AGREEMENT

THIS AGREEMENT is made as of ~~September 29,~~December 6, 2017

AMONG:

Sears Canada Inc., a corporation governed by the laws of Canada (“SCI” or the “Seller”)

- and -

Viking Range, LLC, a limited liability company governed by the laws of Delaware (the “Buyer”),

- and -

~~Canadian Tire~~solely for purposes of Section 11.1 hereof, The Middleby Corporation, Limited, a corporation governed by the laws of ~~the Province of Ontario (the “Buyer”)~~Delaware.

RECITALS:

- A. On the Filing Date, SCI 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 of the CCAA Court. Pursuant to the Initial Order, the CCAA Court appointed FTI Consulting Canada Inc. as “Monitor” in connection with the CCAA Proceedings.
- B. On the SISP Order Date, the CCAA 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 the Business, Assets and/or Leases (each as defined in the SISP) of the Sears Group.
- C. The Buyer has been selected as a Successful Bidder (as defined in the SISP) in accordance with the SISP.
- D. The Seller wishes to sell to the Buyer, and the Buyer wishes to purchase from the Seller, the Purchased Assets, subject to the terms and conditions of this Agreement.

NOW THEREFORE in consideration of the mutual covenants and agreements contained in this Agreement and other good and valuable consideration (the receipt and sufficiency of which are acknowledged), the Parties agree as follows:

ARTICLE 1 INTERPRETATION

1.1 Definitions

In this Agreement,

- (a) “**affiliate**” of any Person means, at the time such determination is being made, any other Person controlling, controlled by or under common control with such first Person, in each case, whether directly or indirectly through one or more intermediaries, and “control” and any derivation thereof means the control by one Person of another Person in accordance with the following: a Person (“A”) controls another Person (“B”) where A has the power to determine the management and policies of B by contract or status (for example, the status of A being the general partner of B) or by virtue of beneficial ownership of a majority of the voting interests in B; and, for certainty and without limitation, if A owns shares to which are attached more than 50% of the votes permitted to be cast in the election of directors (or other Persons performing a similar role) of B, then A controls B for this purpose.
- (b) “**Agreement**” means this Asset Purchase Agreement, in each case as the same may be supplemented, amended, restated or replaced from time to time, and the expressions “hereof”, “herein”, “hereto”, “hereunder”, “hereby” and similar expressions refer to this Asset Purchase Agreement, and unless otherwise indicated, references to Articles and Sections are to Articles and Sections in this Asset Purchase Agreement.
- (c) “**Applicable Law**” means any transnational, domestic or foreign, federal, provincial, territorial, state, local or municipal (or any subdivision of any of them) law (including without limitation the common law), statute, ordinance, rule, regulation, restriction, standard, by-law (zoning or otherwise), judgment, order, direction or any consent, exemption, Governmental Authorizations, or any other legal requirements of, or agreements with, any Governmental Authority, that applies in whole or in part to the transactions contemplated by this Agreement, the Seller, the Buyer or any of the Purchased Assets.
- (d) “**Approval and Vesting Order**” means an order granted by the CCAA Court, in substantially the form attached as Schedule 1.1(d) (with only such changes as the Buyer and the Seller each approve in their reasonable discretion, but in all cases in form and substance acceptable to the ~~Lenders and the~~ Monitor), and served on those Persons identified by the Seller and the Buyer, which will, among other things:
 - (i) authorize and approve this Agreement and the execution and delivery thereof by the Seller;
 - (ii) authorize and direct the Seller to complete the transactions contemplated by this Agreement; and

- (iii) provide for the vesting of title to the Purchased Assets in and to the Buyer in accordance with the terms and conditions of this Agreement, free and clear of any and all claims against the Purchased Assets of every nature or kind whatsoever and howsoever arising, including all Encumbrances (which shall include any right of first negotiation, right of first refusal and any other similar right), upon the delivery of the Monitor's Certificate to the Buyer indicating that the conditions precedent to the consummation of the transactions contemplated by this Agreement have been satisfied or waived (where permissible).
- (e) "**Business Day**" means any day, other than a Saturday or Sunday, on which the principal commercial banks in Toronto, Ontario are open for commercial banking business during normal banking hours.
- (f) "**Buyer**" has the meaning given to such term in the preamble to this Agreement.
- (g) "**CCAA**" means the *Companies' Creditors Arrangement Act* (Canada).
- (h) "**CCAA Court**" means the Ontario Superior Court of Justice (Commercial List).
- (i) "**CCAA Proceedings**" means the proceedings commenced under the CCAA by the Seller pursuant to the Initial Order (Court File No. CV-17-11846-00CL).
- (j) "**Claims**" includes all claims, demands, complaints, grievances, actions, applications, suits, causes of action, Orders, charges, indictments, prosecutions, informations or other similar processes, assessments or reassessments, judgments, debts, liabilities, expenses, costs, damages or losses, contingent or otherwise, whether liquidated or unliquidated, matured or unmatured, disputed or undisputed, contractual, legal or equitable, including loss of value, professional fees, including fees and disbursements of legal counsel on a full indemnity basis, and all costs incurred in investigating or pursuing any of the foregoing or any proceeding relating to any of the foregoing.
- (k) "**Closing**" means the completion of the sale and purchase of the Purchased Assets pursuant to this Agreement at the Closing Time, and all other transactions contemplated by this Agreement that are to occur contemporaneously with the sale and purchase of the Purchased Assets.
- (l) "**Closing Date**" means ~~at the date no later than that is~~ five (5) Business Days after the conditions set forth in ARTICLE 6 have been satisfied or* to the extent permitted by Applicable Law, *waived (or such other date agreed to by the Parties in writing), other than the conditions set forth in ARTICLE 6 that by their terms are to be satisfied or waived at the Closing; ~~provided, however, that the Closing Date shall be no later than December 4, 2017 (or such other date agreed to in writing by the Buyer and the Seller (with the consent of the Lenders and the Monitor, in the case of the Seller)).~~

- (m) **“Closing Documents”** means all contracts, agreements and instruments required by this Agreement to be delivered by or on behalf of a Party at or before the Closing.
- (n) **“Closing Time”** means 10:00 a.m. (Toronto time) on the Closing Date or such other time on the Closing Date as the Parties agree in writing that the Closing Time shall take place.
- (o) **“Confidential Information”** means non-public, confidential, personal or proprietary information which is furnished to the Buyer by the Seller or any of the Seller’s representatives or the Monitor, including, without limitation, information about identifiable individuals, any information relating to the Seller and its affiliates, or any customer or supplier of the Seller, but does not include information that is or becomes generally available to the public other than as a result of disclosure by the Buyer or its representatives in breach of this Agreement or that is received by the Buyer from an independent third party that, to the knowledge of the Buyer, after good faith inquiry, obtained it lawfully and was under no duty of confidentiality (except to the extent that applicable privacy laws do not exclude such information from the definition of personal information) or that is independently developed by the Buyer’s employees or representatives without access or reference to any Confidential Information.
- (p) **“Contracts”** means contracts, agreements, obligations, promises, undertakings, understandings, arrangements, documents, commitments, entitlements or engagements to which the Seller is a party or by which the Seller is bound or under which the Seller has, or will have, any right or any liability or contingent right or liability (in each case, whether written or oral, express or implied) relating to the Purchased Assets and includes quotations, orders, proposals or tenders which remain open for acceptance and warranties and guarantees.
- (q) **“Deposit”** means the amount of \$ [REDACTED] delivered by the Buyer to the Monitor in accordance with the SISF.
- ~~(r) **“DIP ABL Credit Agreement”** means the senior secured superpriority debtor in possession amended and restated credit agreement among SCI (as borrower), Wells Fargo Capital Finance Corporation Canada (as administrative and collateral agent) and the lenders party thereto dated as of June 22, 2017, and as may be amended, restated, supplemented and/or modified from time to time.~~
- ~~(s) **“DIP ABL Facility”** means the revolving credit facilities in an aggregate principal amount not to exceed \$300 million under the DIP ABL Credit Agreement.~~
- ~~(t) **“DIP Credit Agreement”** means collectively, the DIP ABL Credit Agreement and the DIP Term Credit Agreement.~~
- ~~(u) **“DIP Facility”** means collectively, the DIP ABL Facility and the DIP Term Facility.~~

- (v) ~~“DIP Term Credit Agreement” means the senior secured superpriority debtor in possession credit agreement among SCI (as borrower), certain subsidiaries and affiliates of SCI (as guarantors), GACP Finance Co., LLC (as administrative and syndication agent) and the lenders party thereto dated as of June 22, 2017, and as may be amended, restated, supplemented and/or modified from time to time.~~
- (w) ~~“DIP Term Facility” means the term loan facilities in an aggregate principal amount not to exceed \$150 million under the DIP Term Credit Agreement.~~
- (x) ~~“Disclaimer Order” has the meaning given to such term in Section 6.2(d);~~
- (r) (y) **“Documents”** means all books, records, files and papers exclusively related to the Purchased Assets but not limited to manuals, data, sales and advertising materials, sales and purchase correspondence, and trade association files, if any, to the extent same is in or will be in the Seller’s possession and the Seller is able to find same using commercially reasonable efforts, and all copies and recordings of the foregoing.
- (s) (z) **“Encumbrance”** means any security interest (whether contractual, statutory or otherwise), lien, execution, levy, charge or other financial or monetary claim, hypothec, trust or deemed trust (whether contractual, statutory or otherwise), right of first negotiation, right of first refusal and any other similar right, or mortgage, any and all rights, including without limitation, rights of first negotiation, rights of first refusal or any other similar rights, ~~under the Viking Range License Agreement,~~ and including any and all CCAA Court ordered charges granted in the CCAA Proceedings.
- (t) (aa) **“Filing Date”** means June 22, 2017.
- (u) (bb) **“Final”** with respect to any order of any court of competent jurisdiction, means that such order shall not have been stayed, appealed, varied (except with the consent of the Buyer and the Seller) or vacated, and all time periods within which such order could at law be appealed shall have expired.
- (ee) ~~“GACP Credit Agreement” means the term loan credit agreement dated March 20, 2017, as amended by amendment no. 1 to credit agreement dated May 5, 2017, between SCI (as borrower), certain subsidiaries and affiliates of SCI (as guarantors), GACP Finance Co., LLC (as administrative agent and syndication agent), KKR Capital Markets LLC and GACP Finance Co., LLC (as joint lead arrangers), TPG Specialty Lending, Inc. (as documentation agent), and the lenders party thereto, as the same may be amended, restated, supplemented and/or modified from time to time.~~
- (v) (dd) **“Governmental Authority”** means any applicable transnational, federal, provincial, municipal, state, local, national or other government, regulatory authority, governmental department, agency, commission, board, tribunal, bureau, ministry, court, system operator, judicial body, arbitral body or other law, rule or

regulation-making entity, or any entity, officer, inspector, investigator or examiner exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to any government or any court, in each case:

- (i) having jurisdiction over the Seller, the Buyer or the Purchased Assets on behalf of any country, province, state, locality, or other geographical or political subdivision thereof; or
- (ii) exercising or entitled to exercise any administrative, judicial, legislative, regulatory or taxing authority or power.

(w) ~~(ee)~~ **“Governmental Authorizations”** means authorizations, approvals, plans, franchises, orders, certificates, consents, directives, notices, licenses, permits, variances, registrations or other rights issued to or required by the Seller relating to the Purchased Assets by or from any Governmental Authority.

(x) ~~(ff)~~ **“GST”** means tax (other than HST) payable under the GST and HST Legislation.

(y) ~~(gg)~~ **“GST/HST and OST Certificate, Undertaking and Indemnity”** has the meaning given to such term in Section 7.4(d).

(z) ~~(gg)~~ **“GST and HST Legislation”** means Part IX of the *Excise Tax Act* (Canada).

(aa) ~~(hh)~~ **“HST”** means tax payable under the GST and HST Legislation in respect of a participating province.

(bb) ~~(ii)~~ **“including”** and **“includes”** shall be interpreted on an inclusive basis and shall be deemed to be followed by the words “without limitation”.

(cc) ~~(jj)~~ **“Initial Order”** means the Initial Order granted by the CCAA Court on June 22, 2017, pursuant to which SCI and certain of its affiliates and subsidiaries were granted protection from their creditors under the CCAA (as amended, restated, supplemented and/or modified from time to time).

(dd) ~~(kk)~~ **“Insolvency Proceedings”** means any action, application, petition, suit or other proceeding under any bankruptcy, arrangement, reorganization, dissolution, liquidation, insolvency, winding-up or similar law of any jurisdiction now or hereafter in effect, for the relief from or otherwise affecting creditors of the Seller, including without limitation under the *Bankruptcy and Insolvency Act* (Canada) (including the filing of a notice of intention to make a proposal), CCAA (including the CCAA Proceedings), the *Winding-Up and Restructuring Act* (Canada), the *Canada Business Corporations Act* or United States Bankruptcy Code by, against or in respect of the Seller.

(ee) ~~(ll)~~ **“IP Assignment and Assumption Agreement”** means the intellectual property assignment and assumption agreement for the Purchased Assets, substantially in the form attached as Schedule 1.1(~~H~~ee).

- (mm) ~~“Lender Claims” means the aggregate amount owing to the Lenders arising from or related to the DIP Credit Agreement, the Wells Fargo Credit Agreement and the GACP Credit Agreement, which shall include to the maximum extent permissible under applicable documentation and law, without limitation, all accrued and unpaid principal, interest, default interest, premiums, fees and reasonable costs, charges and expenses all as may be due and payable under the aforementioned credit facilities and any ancillary documents.~~
- (nn) ~~“Lenders” means the secured lenders under the DIP Credit Agreement, the Wells Fargo Credit Agreement and the GACP Credit Agreement.~~
- (ff) ~~(oo)~~ **“Monitor”** means FTI Consulting Canada Inc., in its capacity as CCAA Court-appointed monitor of the Seller pursuant to the Initial Order and not in its personal capacity.
- (gg) ~~(pp)~~ **“Monitor’s Certificate”** means the certificate filed with the CCAA Court by the Monitor certifying that the Monitor has received written confirmation in form and substance satisfactory to the Monitor from the Seller and the Buyer that all conditions to Closing have been satisfied or waived by the applicable Parties and that the Purchase Price and all applicable sales and transfer Taxes payable by the Buyer to the Seller at the Closing have been received by the Monitor.
- (hh) ~~(qq)~~ **“NDA”** means the confidentiality, non-disclosure and non-use agreement between The Middleby Corporation, an affiliate of the Buyer, and SCI dated August ~~29,22~~, 2017.
- (ii) ~~(rr)~~ **“Order”** means any order, directive, judgment, decree, injunction, decision, ruling, award or writ of any Governmental Authority.
- (jj) ~~(ss)~~ **“Parties”** means the Seller and the Buyer collectively, and **“Party”** means either the Seller or the Buyer, as the context requires.
- (tt) ~~“Payment Order” has the meaning given to such term in Section 3.3(b).~~
- (kk) ~~(uu)~~ **“Person”** means any individual, partnership, limited partnership, limited liability company, joint venture, syndicate, sole proprietorship, company or corporation with or without share capital, unincorporated association, trust, trustee, executor, administrator or other legal personal representative, Governmental Authority or other entity, however designated or constituted.
- (ll) ~~(vv)~~ **“Personal Information”** means information about an identifiable individual in the possession or under the control of the Seller.
- (ww) ~~“Post-Closing Tax Period” has the meaning given to such term in Section 7.4(e).~~
- (xx) ~~“Pre-Closing Tax Period” has the meaning given to such term in Section 7.4(e).~~
- (mm) ~~(yy)~~ **“Purchase Price”** has the meaning given to such term in Section 3.1.

- (nn) ~~(zz)~~ “**Purchased Assets**” has the meaning given to such term in Section 2.1.
- (oo) ~~(aaa)~~ “**QST**” means the Québec sales tax payable under the QST Legislation.
- (pp) ~~(bbb)~~ “**QST Legislation**” means *An Act Respecting the Québec Sales Tax (Québec)*.
- (qq) ~~(eee)~~ “**SCI**” has the meaning given to such term in the preamble to this Agreement.
- (rr) ~~(ddd)~~ “**SCI Viking Inventory**” has the meaning given to such term in Section 5.9(f);
- (ss) ~~(eee)~~ “**Sears Group**” has the meaning given to such term in the preamble to this Agreement.
- (tt) ~~(fff)~~ “**Seller**” has the meaning given to such term in the preamble to this Agreement.
- (uu) ~~(ggg)~~ “**SISP**” means the Sale and Investment Solicitation Process approved by the SISP Order (as amended, restated, supplemented and/or modified from time to time).
- (vv) ~~(hhh)~~ “**SISP Order**” means the Order granted by the CCAA Court on the SISP Order Date (as amended, restated, supplemented and/or modified from time to time), which, among other things, approved the SISP.
- (ww) ~~(iii)~~ “**SISP Order Date**” means July 13, 2017.
- (xx) ~~(jjj)~~ “**Sunset Date**” has the meaning given to such term in Section 9.1(b).
- (yy) ~~(kkk)~~ “**Tax**” and “**Taxes**” includes:
- (i) taxes, duties, fees, premiums, assessments, imposts, levies and other charges of any kind whatsoever (including withholding on amounts paid to or by any Person) imposed by any Governmental Authority, 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, sales, goods and services, harmonized sales, use, value-added, excise, stamp, withholding, business, franchising, property, development, occupancy, employer health, payroll, employment, health, disability, severance, unemployment, social services, education and social security taxes, all surtaxes, all customs duties and import and export taxes, countervail and anti-dumping taxes, all license, franchise and registration fees and all employment insurance, health insurance and Canada, Ontario and other government pension plan premiums or contributions; and

(ii) any liability in respect of any items described in clause (i) payable by reason of contract, assumption, transferee liability, operation of law or otherwise.

~~(iii) “Viking Range License Agreement” has the meaning given to such term in Section 4.6.~~

~~(mmm) “Wells Fargo Credit Agreement” means the revolving credit agreement dated September 10, 2010, as amended by the first amending agreement dated August 2012, the second amending agreement dated May 28, 2014, the third amending agreement dated May 28, 2014, the fourth amending agreement dated August 31, 2015, the fifth amending agreement dated August 18, 2016 and the sixth amending agreement dated March 30, 2017, between SCI (as borrower), Wells Fargo Capital Finance Corporation Canada (as administrative agent and collateral agent) and the lenders party thereto, as the same may be amended, restated, supplemented and/or modified from time to time.~~

1.2 Statutes

Unless specified otherwise, reference in this Agreement to a statute refers to that statute and the regulations thereunder as they may be amended, or to any restated or successor legislation of comparable effect.

1.3 Headings and Table of Contents

The inclusion of headings and a table of contents in this Agreement is for convenience of reference only and shall not affect the construction or interpretation hereof.

1.4 Gender and Number

In this Agreement, unless the context otherwise requires, words importing the singular include the plural and *vice versa*, and words importing gender include all genders.

1.5 Currency

Except where otherwise expressly provided, all amounts in this Agreement are stated and shall be paid in Canadian dollars. References to “\$” are to Canadian dollars. References to “US\$” are to United States dollars.

1.6 Invalidity of Provisions

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provision hereof. Upon such a determination of invalidity or unenforceability, the Parties shall negotiate to modify this Agreement in good faith so as to effect the original intent of the Parties as closely as possible in an acceptable manner so that the transactions contemplated by this Agreement be consummated as originally contemplated to the fullest extent possible.

1.7 Knowledge

Where any representation or warranty, or other provision, contained in this Agreement is expressly qualified by reference to, or otherwise refers to, the knowledge of: (a) the Seller, it will be deemed to refer to the actual knowledge of SCI's Chief Financial Officer; and (b) the Buyer, it will be deemed to refer to the actual knowledge of the Buyer's directors and officers.

1.8 Entire Agreement

This Agreement, the schedules to this Agreement, the NDA and the agreements and other documents required to be delivered pursuant to this Agreement, constitute the entire agreement among the Parties, and set out all the covenants, promises, warranties, representations, conditions and agreements among the Parties in connection with the subject matter of this Agreement, and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, pre-contractual or otherwise. There are no covenants, promises, warranties, representations, conditions, understandings or other agreements, whether oral or written, pre-contractual or otherwise, express, implied or collateral among the Parties in connection with the subject matter of this Agreement, except as specifically set forth in this Agreement and any document required to be delivered pursuant to this Agreement.

1.9 Waiver, Amendment

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement shall be binding unless executed in writing by all Parties hereto. No waiver of any provision of this Agreement shall constitute a waiver of any other provision nor shall any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided.

1.10 Governing Law; Jurisdiction and Venue

This Agreement, the rights and obligations of the Parties under this Agreement, and any claim or controversy directly or indirectly based upon or arising out of this Agreement or the transactions contemplated by this Agreement (whether based on contract, tort or any other theory), including all matters of construction, validity and performance, shall in all respects be governed by, and interpreted, construed and determined in accordance with, the laws of the Province of Ontario and the federal laws of Canada applicable therein, without regard to the conflicts of law principles thereof. The Parties consent to the exclusive jurisdiction and venue of the CCAA Court prior to a Final Order of the CCAA Court closing the CCAA Proceedings and thereafter to the Courts of Ontario for the resolution of any such disputes arising under this Agreement. Each Party agrees that service of process on such Party as provided in Section 11.7 shall be deemed effective service of process on such Party.

1.11 Schedules

The schedules to this Agreement, listed below, are an integral part of this Agreement:

<u>Schedule</u>	<u>Description</u>
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Schedule 1.1(d)	Form of Approval and Vesting Order
Schedule 1.1(Hee)	Form of IP Assignment and Assumption Agreement
Schedule 2.1	Trademark Applications and Registrations
Schedule 2.3	Authorization of Counsel

ARTICLE 2 PURCHASE AND SALE

2.1 Agreement to Purchase and Sell Purchased Assets

Upon and subject to the terms and conditions of this Agreement, at the Closing and effective as of the Closing Time, the Seller shall sell, convey, transfer, assign and deliver, or cause to be sold, conveyed, transferred, assigned and delivered, pursuant to the Approval and Vesting Order, and the Buyer shall purchase, free and clear of all Encumbrances, all of the Seller's right, title and interest, including, without limitation, all exploitation rights, licenses, sub-licenses, copyrights, logos, trademarks, trade names, domain names, goodwill, know-how, rights associated with social media accounts and other intellectual or industrial rights, in and to all of the Seller's trademarks exclusively related to the "Viking" trademark and brand, including the applications and registrations set out in Schedule 2.1 and all Documents that are in the Seller's possession, if any (collectively referred to herein as the "**Purchased Assets**"). The Purchased Assets include all rights to sue for and collect damages for past, present and future infringements and passing off of rights of the Seller pertaining to the Purchased Assets, and all rights to modify, update, use and exploit the rights of the Seller in the Purchased Assets.

2.2 Assumption of Liabilities

The Buyer shall assume as of the Closing Time and shall pay, discharge and perform, as the case may be, from and after the Closing Time, all obligations and liabilities of the Seller with respect to the Purchased Assets to the extent such obligations and liabilities consist of liabilities and obligations that arise in respect of and relate to the period on and after the Closing Time. The Buyer shall not assume or be deemed to assume or be responsible for any debts, obligations, or liabilities of the Sears Group, including, without limitation, the Seller, in relation to the Purchased Assets or otherwise for periods prior to the Closing Time.

2.3 Authorization of Counsel

The Seller agrees to authorize the Seller's representative for service for the trade-marks included in the Purchased Assets to provide to the Buyer (at the Buyer's cost) documents and records in such counsel(s)' possession or control in connection with the use and evidence of use of the Purchased Assets.

ARTICLE 3 PURCHASE PRICE AND RELATED MATTERS

3.1 Purchase Price

The purchase price payable to the Seller for the Purchased Assets (the “Purchase Price”), exclusive of all applicable sales and transfer taxes, shall be the amount of \$ [REDACTED] in cash.

3.2 Purchase Price Allocation

The Purchase Price shall be allocated among the Purchased Assets as agreed by the Parties, acting reasonably. Such allocation shall be binding on the Buyer and the Seller.

3.3 Payment of Purchase Price and Treatment of Deposit

- (a) The Purchase Price will be satisfied as follows:
- (i) the portion of the Purchase Price equal to the amount of the Deposit and the actual earnings thereon will be satisfied by crediting the Seller, at the Closing Time, with the Buyer’s interest in the Deposit (and the actual earnings thereon from the date the Deposit is received by the Monitor in accordance with the SISP to but excluding the Closing Date) that is being held by the Monitor; and
 - (ii) the balance of the Purchase Price will be satisfied by the payment of such amount by wire transfer of immediately available funds at the Closing Time from the Buyer to an account of the Monitor specified in writing by the Seller not less than two (2) Business Days prior to the Closing Date.
- ~~(b) In the event that, prior to the Closing Date, an order (a “Payment Order”) of the CCAA Court is obtained directing the Seller to pay to the Lenders all or any portion of the proceeds of the Purchase Price to pay the Lender Claims in full or in part, then subject to and in accordance with the terms of the Payment Order, the Seller will deliver to the Buyer and the Monitor a notice and direction, signed by the Seller, directing the Buyer to pay all or the portion of the Purchase Price, as specified by the Payment Order, to the appropriate Lender by wire transfer at the Closing Time of immediately available funds to an account or accounts specified in such notice and direction, such amount to be applied by the appropriate Lender on account of the amounts owing by the Seller under the DIP Credit Agreement, the Wells Fargo Credit Agreement and/or the GACP Credit Agreement, as appropriate.~~
- (b) ~~(e)~~ The Deposit paid to the Monitor by the Buyer will, together with any actual earnings thereon (from the date the Deposit is received by the Monitor in accordance with the SISP to but excluding the Closing Date), be:
- (i) credited to the Seller, as applicable, at the Closing Time in accordance with Section 3.3(a)(i), if the sale and purchase of the Purchased Assets

provided for herein is completed in accordance with the terms and conditions hereof;

- (ii) forfeited to the Seller, less any applicable withholding tax, if the Closing does not occur (and this Agreement is terminated) by reason of the default of the Buyer and the Seller shall have no further recourse against the Buyer; and
- (iii) ~~(i)~~ returned to the Buyer, less any applicable withholding tax, if the Closing does not occur (and this Agreement is terminated) by any reason other than the default of the Buyer and the Buyer shall have no further recourse against the Seller.

ARTICLE 4 REPRESENTATIONS AND WARRANTIES ~~BY~~OF THE SELLER

The Seller represents and warrants to the Buyer as follows, and acknowledges that the Buyer is relying upon the following representations and warranties in connection with its purchase of the Purchased Assets:

4.1 Corporate Existence

The Seller is a corporation duly formed and validly existing under the laws of Canada.

4.2 Due Authorization and Enforceability of Obligations

Subject to the issuance of the Approval and Vesting Order:

- (a) the Seller has all necessary corporate power, authority and capacity to:
 - (i) enter into and deliver this Agreement and the Closing Documents; and
 - (ii) carry out its obligations under this Agreement and the Closing Documents;
- (b) the execution, delivery and performance of this Agreement and the Closing Documents, and the consummation of the transactions contemplated by this Agreement and the Closing Documents, have been duly authorized by all necessary corporate action of ~~each~~the Seller; and
- (c) this Agreement does and the Closing Documents when executed by the Seller will constitute valid and binding obligations of ~~each~~the Seller enforceable against it in accordance with its terms.

4.3 Residence of the Seller

The Seller is not a non-resident of Canada for the purposes of the *Income Tax Act* (Canada).

4.4 Taxes

The Seller is duly registered under Subdivision (d) of Division V of the GST and HST Legislation with respect to the GST and HST, and under Division I of Chapter VIII of Title I of the QST Legislation with respect to the QST, and will provide ~~their respective~~*its* registration numbers to the Buyer prior to Closing.

4.5 Inventory

As at September 27, 2017, the SCI Viking Inventory consisted of [REDACTED] units with an aggregate value of \$ [REDACTED].

4.6 Licenses

As of the Closing, ~~(i) except any surviving rights under the License Agreement between SCI and Viking Range Corporation executed on dated December 19, 2002 (the "Viking Range License Agreement"), and any other 2002, (i) any~~ license agreements, sub-license agreements or other similar agreements or arrangements have been terminated, are expired and/or have been disclaimed; (ii) any and all subsequent executed renewal terms are not in effect; and (iii) all such license agreements, sub-license agreements or other similar agreements or arrangements have been terminated, are expired and/or have been disclaimed.

4.7 No Other Representations, Warranties or Covenants

Unless and solely to the extent expressly set forth in this Agreement, no representation, warranty or covenant is expressed or implied by the Seller, including any warranties as to title, Encumbrance, description, merchantability or fitness for a particular purpose, environmental compliance, condition, quantity or quality, or in respect of any other matter or thing whatsoever concerning the Purchased Assets or the right of the Seller to sell or assign the same, as applicable. The disclaimer in this Section 4.7 is made notwithstanding the delivery or disclosure to the Buyer or its directors, officers, employees, agents or representatives of any documentation or other information (including any financial projections, estimates, budgets, offering memoranda, management presentations, due diligence materials or other supplemental data not included in this Agreement). Without limiting the generality of the foregoing, any and all conditions, warranties or representations, express or implied, pursuant to Applicable Law (including under Article 1716 of the *Civil Code of Québec*, the *Sale of Goods Act* (Ontario), the *International Convention on Contracts for the Sale of Goods* (Geneva Convention) and any other applicable sale of goods legislation) do not apply hereto and are hereby expressly waived by the Buyer.

ARTICLE 5 REPRESENTATIONS AND WARRANTIES OF THE BUYER

The Buyer represents and warrants to the Seller as follows, and acknowledges that the Seller is relying upon the following representations and warranties in connection with ~~their~~its sale of the Purchased Assets:

5.1 ~~Corporate~~Entity Existence

The Buyer is a ~~corporation~~limited liability company duly formed, validly existing and in good standing under the laws of ~~Canada~~the state of Delaware.

5.2 Residence of the Buyer

The Buyer is ~~not~~ a non-resident of Canada for the purposes of the *Income Tax Act* (Canada) and the GST and HST Legislation and a non-resident of Quebec for purposes of the QST Legislation.

5.3 Financial Ability

As of the Closing, the Buyer and its subsidiaries will have sufficient cash in immediately available funds to allow it to pay the Purchase Price, and all other costs and expenses in connection with the consummation of the transactions contemplated by this Agreement. Notwithstanding anything to the contrary contained herein, the Buyer's obligations to consummate the transactions contemplated by this Agreement are not conditioned or contingent in any way upon the receipt of financing from any person or the availability of funds to the Buyer.

5.4 Absence of Conflicts

The Buyer is not a party to, bound or affected by or subject to (and the assets of the Buyer are not affected by): (a) any charter or by-law provision of the Buyer; (b) any Applicable Law or governmental authorizations, approvals, franchises, orders, certificates, consents, directives, notices, licenses, permits, variances, registrations or other rights issued, granted or given by or from any Governmental Authority; or (c) any agreement or other document, in each case, that would be violated, breached by, or under which any default would occur or with notice or the passage of time would, be created as a result of the execution and delivery of, or the performance of its obligations under, this Agreement or any other agreement or document to be entered into or delivered under the terms of this Agreement, except in the case of (b) and (c) for any violations, breaches or defaults or any Applicable Law or any governmental authorizations, approvals, franchises, orders, certificates, consents, directives, notices, licenses, permits, variances, registrations or other rights issued, granted or given by or from any Governmental Authority, that would not have a material effect on or materially delay or impair the ability of the Buyer to consummate the transactions hereunder.

5.5 Due Authorization and Enforceability of Obligations

The Buyer has all necessary corporate power, authority and capacity to enter into and deliver this Agreement and the Closing Documents, and to carry out its obligations under this Agreement and the Closing Documents. The execution, delivery and performance of this Agreement and the Closing Documents, and the consummation of the transactions contemplated by this Agreement and the Closing Documents, have been duly authorized by all necessary corporate action of the Buyer. This Agreement does and when executed and delivered by the Buyer the Closing Documents will constitute valid and binding obligations of the Buyer enforceable against it in accordance with its terms.

5.6 Approvals and Consents

Except for the issuance of the Approval and Vesting Order, no authorization, consent or approval of, or filing with or notice to, any Governmental Authority, court or other Person is required in connection with the execution, delivery or performance of this Agreement by the Buyer, and each of the agreements to be executed and delivered by the Buyer hereunder or the purchase of any of the Purchased Assets hereunder, except for any authorizations, consents, approvals, filings or notices of any Governmental Authority, court or Person that would not have a material effect on or materially delay or impair the ability of the Buyer to consummate the transactions hereunder.

5.7 GST, HST and QST ~~Registration~~

The Buyer is ~~duly~~not registered under ~~subdivision (d) of Division V of the GST and HST Legislation with respect to the GST and HST, and under Division I of Chapter VIII of Title I of the QST Legislation with respect to the QST, and has provided or will prior to Closing provide~~ ~~its~~ ~~registration numbers to the Seller.~~ and is not registered under the QST Legislation.

5.8 Personal Information

The Buyer's use and disclosure of Personal Information after Closing will be carried out in compliance with all Applicable Laws.

5.9 As Is, Where Is

- (a) The Buyer acknowledges and agrees that it has conducted to its satisfaction an independent investigation and verification of the Purchased Assets (including the state of title thereto and/or the state of any Encumbrances), and, based solely thereon, has determined to proceed with the transactions contemplated by this Agreement. The Buyer has relied solely on the results of its own independent investigation and verification, and the representations and warranties of the Seller expressly and specifically set forth in ARTICLE 4, and the Buyer understands, acknowledges and agrees that all other representations, warranties and statements of any kind or nature, expressed or implied (including any relating to the future or historical financial condition, results of operations, prospects, assets or liabilities of the Seller, or the quality, quantity or condition of the Purchased Assets) are specifically disclaimed by the Seller. Except for the representations and warranties of the Seller expressly and specifically set forth in ARTICLE 4, the Seller does not make or provide hereunder any warranty or representation, express or implied, as to the quality, merchantability, fitness for a particular purpose, conformity to samples or condition of the Purchased Assets, or any part thereof. THE BUYER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT, EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES OF THE SELLER EXPRESSLY AND SPECIFICALLY SET FORTH IN ARTICLE 4: (A) THE BUYER IS ACQUIRING THE PURCHASED ASSETS ON AN "AS IS, WHERE IS" BASIS; AND (B) NEITHER THE SELLER NOR ANY OTHER PERSON (INCLUDING ANY REPRESENTATIVE OF THE SELLER, WHETHER IN ANY INDIVIDUAL, CORPORATE OR ANY OTHER

CAPACITY OR THE MONITOR) IS MAKING, AND THE BUYER IS NOT RELYING ON, ANY REPRESENTATIONS, WARRANTIES OR OTHER STATEMENTS OF ANY KIND WHATSOEVER, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, AS TO ANY MATTER CONCERNING THE SELLER, THE PURCHASED ASSETS, THIS AGREEMENT OR THE TRANSACTIONS, OR THE ACCURACY OR COMPLETENESS OF ANY INFORMATION PROVIDED TO (OR OTHERWISE ACQUIRED BY) THE BUYER OR ANY OF ITS RESPECTIVE REPRESENTATIVES; AND WITHOUT LIMITING THE FOREGOING, ANY AND ALL CONDITIONS OR WARRANTIES EXPRESSED OR IMPLIED PURSUANT TO THE SALE OF GOODS ACT (ONTARIO), THE INTERNATIONAL CONVENTION ON CONTRACTS FOR THE SALE OF GOODS (GENEVA CONVENTION) AND ANY OTHER APPLICABLE SALE OF GOODS LEGISLATION, WILL NOT APPLY AND ARE HEREBY WAIVED BY THE SELLER AND THE PARTIES AGREE TO EXCLUDE THE EFFECT OF THE LEGAL WARRANTY PROVIDED FOR BY ARTICLE 1716 OF THE CIVIL CODE OF QUÉBEC AND THAT THE BUYER IS PURCHASING THE PURCHASED ASSETS AT ITS OWN RISK WITHIN THE MEANING OF ARTICLE 1733 OF THE CIVIL CODE OF QUÉBEC, AND ANY AND ALL CONDITIONS, WARRANTIES OR REPRESENTATIONS, REGARDING MERCHANTABILITY, PHYSICAL OR FINANCIAL CONDITION, DESCRIPTION, FITNESS FOR A PARTICULAR PURPOSE, QUALITY, QUANTITY, ANY NON-INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS, OR REGARDING THE SCOPE, VALIDITY OR ENFORCEABILITY OF ANY PURCHASED ASSET, OR ANY OTHER THING AFFECTING THE PURCHASED ASSETS, OR IN RESPECT OF ANY OTHER MATTER OR THING WHATSOEVER, INCLUDING ANY AND ALL CONDITIONS, WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, PURSUANT TO ANY APPLICABLE LAW IN ANY JURISDICTION, WHICH THE BUYER CONFIRMS DO NOT APPLY TO THIS AGREEMENT, AND ARE HEREBY WAIVED IN THEIR ENTIRETY BY THE BUYER.

- (b) The Buyer acknowledges and agrees that: (i) the representations and warranties of the Seller set forth in ARTICLE 4 will merge on, and shall not survive, the Closing; and (ii) the Seller will not have or be subject to any liability or indemnification obligation to the Buyer or any other Person resulting from (nor will the Buyer or any other Person have any claim with respect to) the distribution to the Buyer, the Buyer's use of, or reliance on, any information, documents, projections, forecasts or other material made available to the Buyer in certain "data rooms," confidential information memoranda or management presentations in expectation of, or in connection with, the transactions contemplated by this Agreement, regardless of the legal theory under which such liability or obligation may be sought to be imposed, whether sounding in contract or tort, or whether at law or in equity, or otherwise. None of the representatives of the Seller, whether in an individual, corporate or other capacity, will have or be subject to any such liability or indemnification obligations.

- (c) The remedies expressly set forth in this Agreement are the Buyer's sole and exclusive remedies relating to this Agreement, the Closing Documents, the transactions contemplated hereby and thereby, and the Purchased Assets.
- (d) This Section 5.9 will not merge on Closing and is deemed incorporated by reference in all Closing Documents.
- (e) The Buyer acknowledges and agrees that the enforceability of this Agreement against the Seller is subject to entry of the Approval and Vesting Order.
- (f) The Buyer acknowledges and agrees that nothing in this Agreement shall operate to prohibit or diminish in any way the right of the Seller to directly or indirectly sell, transfer, liquidate or otherwise dispose of any existing product bearing the Viking name or related to the Purchased Assets, including any Viking-branded inventory (the "**SCI Viking Inventory**"); provided, however, that the aggregate value of the SCI Viking Inventory sold, transferred, liquidated or otherwise disposed of shall not exceed \$ [REDACTED].

5.10 Investment Canada Act

~~The Buyer is a "Canadian" or a "WTO Investor" within the meaning of the Investment Canada Act, and the regulations thereunder.~~

ARTICLE 6 **CONDITIONS TO CLOSING**

6.1 Conditions for the Benefit of the Buyer and the Seller

The respective obligations of the Buyer and of the Seller to consummate the transactions contemplated by this Agreement are subject to the satisfaction of, or compliance with, at or prior to the Closing Time, each of the following conditions:

- (a) *No Law* – no provision of any Applicable Law and no judgment, injunction, order or decree that prohibits the consummation of the purchase of the Purchased Assets or any of the other transactions pursuant to this Agreement shall be in effect;
- (b) *Court Order* – the Approval and Vesting Order shall have been issued and entered and such order shall be Final.

The Parties acknowledge that the foregoing conditions are for the mutual benefit of the Seller, on the one hand, and the Buyer, on the other hand. Any condition in this Section 6.1 may be waived by the Seller, on the one hand, or by the Buyer, on the other hand, in whole or in part, without prejudice to any of their respective rights of termination in the event of non-fulfillment of any other condition in whole or in part. Any such waiver will be binding on the Seller or the Buyer, as applicable, only if made in writing.

6.2 Conditions for the Benefit of the Buyer

The obligation of the Buyer to consummate the transactions contemplated by this Agreement is subject to the satisfaction of, or compliance with, or waiver by the Buyer of, at or prior to the Closing Time, each of the following conditions (each of which is acknowledged to be for the exclusive benefit of the Buyer):

- (a) *Compliance with Covenants* – ~~there shall have been no material breach or non-compliance with any of the covenants, agreements and conditions under contained in~~ this Agreement to be performed by the Seller at or prior to the Closing Time shall have been performed in all material respects as at the Closing Time;
- (b) *Truth of Representations and Warranties* – the representations and warranties of the Seller contained in ARTICLE 4 shall be true and correct in all material respects on and as of the Closing Date, as if made on and as of such date (except for representations and warranties made as of specified date, the accuracy of which shall be determined as of such specified date);
- (c) *Officer's Certificate* – the Buyer shall have received a certificate confirming the satisfaction of the conditions contained in Sections 6.2(a) (*Compliance with Covenants*) and 6.2(b) (*Truth of Representations and Warranties*), signed for and on behalf of the Seller without personal liability by an executive officer of the Seller or other Persons acceptable to the Buyer, in each case in form and substance reasonably satisfactory to the Buyer; and
- ~~(d) *Disclaimer of Viking Range License Agreement* – at the Seller's own cost and expense, the Seller shall have commenced the disclaimer process in respect of the Viking Range License Agreement pursuant to Section 32 of the CCAA and one of the following events shall have occurred: (i) the time period in which the licensee is required to apply to a court for an order that such agreement is not to be disclaimed shall have expired and the licensee shall not have applied for such an order; (ii) in the event that an order of a court providing for the disclaimer of the Viking Range License Agreement is required to disclaim such agreement, then such Disclaimer Order shall be Final; or (iii) the CCAA Court shall have otherwise made an order providing for the disclaimer of the Viking Range License Agreement and such order shall be Final (each of the orders described in (ii) and (iii) above, a "Disclaimer Order"); and~~
- (d) ~~(e)~~ *Closing Documents* – each of the deliveries required to be made to the Buyer pursuant to Section 10.2 shall have been so delivered.

6.3 Conditions for the Benefit of the Seller

The obligation of the Seller to consummate the transactions contemplated by this Agreement is subject to the satisfaction of, or compliance with, or waiver where applicable by the Seller of, at or prior to the Closing Time, each of the following conditions (each of which is acknowledged to be for the exclusive benefit of the Seller):

- (a) ~~Performance of Compliance with~~ Covenants – the covenants contained in this Agreement to be performed by the Buyer at or prior to the Closing Time shall have been performed in all material respects as at the Closing Time;
- (b) *Truth of Representations and Warranties* – the representations and warranties of the Buyer contained in ARTICLE 5 shall be true and correct in all material respects on and as of the Closing Date, as if made on and as of such date (except for representations and warranties made as of specified date, the accuracy of which shall be determined as of such specified date); and
- (c) *Officer's Certificate* – the Seller shall have received a certificate confirming the satisfaction of the conditions contained in Sections 6.3(a) (~~Performance of Compliance with~~ Covenants) and 6.3(b) (*Truth of Representations and Warranties*) signed for and on behalf of the Buyer without personal liability by an executive officer of the Buyer, in form and substance satisfactory to the Seller, each acting in a commercially reasonable manner.

ARTICLE 7 ADDITIONAL AGREEMENTS OF THE PARTIES

7.1 Conduct of Business Until Closing Time

Except: (1) as contemplated or permitted by this Agreement; ~~(2) as contemplated by the budget delivered in accordance with the DIP Facility;~~ (3) as necessary in connection with the CCAA Proceedings; ~~(4)~~ (4) as otherwise provided in the Initial Order and any other court orders, prior to the Closing Time; ~~(5)~~ (5) as required by Applicable Law, to the extent reasonably practicable having regard to the CCAA Proceedings; or ~~(6)~~ (6) as consented to by the Buyer, such consent not to be unreasonably withheld, conditioned or delayed, the Seller shall:

- (a) ~~(i)~~ use commercially reasonable efforts to preserve and not abandon the Purchased Assets, ~~and (ii) pay and discharge the debts authorized by the CCAA Court in accordance with the DIP Credit Agreement;~~ and
- (b) not, without the prior written consent of the Buyer (the granting of such consent to be in the Buyer's sole discretion): (i) transfer, lease, license, sell, abandon, create any Encumbrance ~~(other than Encumbrances associated with or permitted by the DIP Credit Agreement)~~ on or otherwise dispose of any of the Purchased Assets (except in the ordinary course of business, in all material respects consistent with past practice); or (ii) agree or make a commitment, whether in writing or otherwise, to do the foregoing.

7.2 Covenants Relating to this Agreement

- (a) Each of the Parties shall perform, and shall cause their affiliates to perform, all obligations required to be performed by the applicable Party under this Agreement, co-operate with the other Parties in connection therewith and, subject to the directions of any applicable courts to the Seller, use commercially reasonable efforts to do all such other acts and things as may be necessary or

desirable in order to consummate and make effective, as soon as reasonably practicable and in any event prior to the Sunset Date, the transactions contemplated by this Agreement and, without limiting the generality of the foregoing, each Party shall and, where appropriate, shall cause each of its affiliates to:

- (i) negotiate in good faith and use its commercially reasonable efforts to take or cause to be taken all actions and to do, or cause to be done, all things necessary, proper or advisable to satisfy the conditions precedent to the obligations of such Party hereunder (including, where applicable, negotiating in good faith with the applicable Governmental Authorities and/or third Persons in connection therewith), and to cause the fulfillment at the earliest practicable date of all of the conditions precedent to the other Party's obligations to consummate the transactions contemplated hereby; and
 - (ii) not take any action, or refrain from taking any action, and use commercially reasonable efforts to not permit any action to be taken or not taken, which would reasonably be expected to prevent, materially delay or otherwise impede the consummation of the transactions contemplated by this Agreement.
- (b) The Seller and the Buyer agree to cause each of their representatives to keep the other informed on a reasonably current basis as to their progress in terms of the satisfaction of the conditions precedent contained herein.
- (c) The Seller and the Buyer agree to execute and deliver such other documents, certificates, agreements and other writings, and to take such other actions as may be reasonably required to consummate or implement as soon as reasonably practicable, the transactions contemplated by this Agreement.

7.3 Release; Acknowledgements

- (a) Except as otherwise contained herein, effective as of the Closing, the Buyer hereby releases and forever discharges the Seller and its affiliates, and their respective successors and assigns, and all officers, directors, partners, members, shareholders, employees and agents of each of them, from any and all actual or potential Claims which such Person had, has or may have in the future to the extent relating to the Purchased Assets.
- (b) The Buyer shall use its best efforts to assist the Seller and shall co-operate with the Seller, as reasonably requested, to obtain from third parties, effective as of the Closing Time, a full release of the Seller's obligations under the Purchased Assets, 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.

7.4 Tax Matters

- (a) The Buyer and the Seller agree to use commercially reasonable efforts to furnish or cause to be furnished to each other, as promptly as practicable, such information and assistance relating to the Purchased Assets as is reasonably necessary for the preparation and filing of any Tax return, claim for refund or other required or optional filings relating to Tax matters, for the preparation for and proof of facts during any Tax audit, for the preparation for any Tax protest, for the prosecution of any suit or other proceedings relating to Tax matters and for the answer to any governmental or regulatory inquiry relating to Tax matters.
- (b) For purposes of any income Tax return related to the transactions contemplated in this Agreement, the Buyer and the Seller agree to report the transactions contemplated in this Agreement in a manner consistent with the Purchase Price allocation determined in accordance with Section 3.2, and the Buyer and the Seller shall not voluntarily take any action inconsistent therewith in any such Tax return, refund claim, litigation or otherwise, unless required by applicable Tax laws. The Buyer and the Seller shall each be responsible for the preparation of their own statements required to be filed under the *Income Tax Act* (Canada) and other similar forms in accordance with applicable Tax laws.
- (c) ~~All Taxes and similar *ad valorem* obligations levied with respect to the Purchased Assets for a taxable period which includes (but does not end on) the Closing Date shall be apportioned between the Seller and the Buyer based on the number of days of such taxable period up to and including the Closing Date (such portion of such taxable period, the “Pre-Closing Tax Period”) and the number of days of such taxable period after the Closing Date (such portion of such taxable period, the “Post-Closing Tax Period”). Except as otherwise provided herein, the Seller shall be liable for the proportionate amount of such Taxes that is attributable to the Pre-Closing Tax Period, and the Buyer shall be liable for the proportionate amount of such Taxes that is attributable to the Post-Closing Tax Period.~~ The Buyer is responsible to pay to the Seller any applicable GST/HST, QST and other similar Taxes applicable to the purchase and sale of the Purchased Assets; provided, however, that the Parties agree that the Purchased Assets are zero-rated for purposes of the GST and HST Legislation and the QST Legislation so long as the Buyer is an unregistered non-resident of Canada and an unregistered non-resident of Quebec, respectively, and the Purchased Assets are as described in sections 10 and 10.1 (other than subsections (a) to (e) thereof) of Part V of Schedule VI of the GST and HST Legislation and sections 188 and 188.1 (other than subsections (1) to (5) thereof) of Division V of Chapter IV of Part I of the QST Legislation, respectively.
- (d) ~~In respect of the purchase and sale of the Purchased Assets under this Agreement*, to the extent permitted by Applicable Law, *the Buyer shall pay direct to the appropriate Governmental Authority all sales and transfer Taxes, registration charges and transfer fees payable by it and, upon the reasonable request of the Seller, the Buyer shall furnish proof of such payment, and the Buyer~~

~~shall otherwise be liable for and shall pay to the Seller an amount equal to any such Tax payable by the Buyer and collectible by the Seller including under the GST and HST Legislation and the QST Legislation and under any similar provincial or territorial legislation imposing a similar value added or multi-staged Tax. The Buyer shall deliver to Seller any purchase exemption certificates being relied on by the Buyer in accordance with and in the form and manner as required under Applicable Laws governing provincial sales and transfer Taxes. On Closing, the Buyer shall have executed and delivered a certificate, undertaking and indemnity which includes its certification that it is an unregistered non-resident under the GST and HST Legislation and QST Legislation, and incorporates the provisions of this Section 7.4(d) (the “GST/HST and QST Certificate, Undertaking and Indemnity”). The Buyer shall indemnify and save the Seller 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 GST and HST Legislation, the QST Legislation and any other value added or multi-staged tax or sales tax, penalties, costs and/or interest which may become payable by or assessed against the Seller as a result of any failure by the Seller to collect and remit any goods and services tax or harmonized sales tax payable under the GST and HST Legislation and the QST legislation or any similar value added or multi-staged tax or sales tax and applicable on the sale and conveyance of the Purchased Assets by the Seller to the Buyer or as a result of any inaccuracy, misstatement or misrepresentation made by the Buyer in connection with any matter raised in this Section 7.4 or in the GST/HST and QST Certificate, Undertaking and Indemnity or any failure by the Buyer to comply with the provisions of this Section 7.4 or the GST/HST and QST Certificate, Undertaking and Indemnity.~~

- (e) The Buyer hereby waives compliance by the Seller with Section 6 of the *Retail Sales Tax Act* (Ontario) and with any similar provision contained in any other Applicable Law in respect of all sales and transfer Taxes, registration charges and transfer fees payable.

7.5 Intellectual Property Matters

The Seller shall cooperate with and assist the Buyer, at the Buyer's expense, with the registration of the assignment of the registrable rights relating to the Purchased Assets.

7.6 Notice of Certain Events

The Seller, on the one hand, and the Buyer, on the other hand, shall give prompt written notice to the other Party of: (a) the occurrence or non-occurrence of any fact, change, condition or event, the occurrence or non-occurrence of which would render any representation or warranty of such Party contained in this Agreement or any of the Closing Documents untrue or inaccurate in any material respect; (b) any failure of such Party to comply with or satisfy any covenant or agreement to be complied with or satisfied by such Party hereunder in any material respect or any event or condition that would otherwise reasonably be expected to result in the nonfulfillment of any of the conditions to such Party's obligations hereunder; (c) receipt of any notice (whether written or oral) from any Person (including any counterparty to a Contract) alleging that the

consent of such Person is or may be required in connection with, or that any Contract with any such Person is or may be breached or otherwise violated in connection with, the consummation of the Closing or any of the other transactions contemplated by this Agreement or any of the Closing Documents; or (d) any proceeding pending or, to the knowledge of such Party, threatened, against such Party relating to the Agreement and the other transactions contemplated by this Agreement or any of the Closing Documents.

7.7 Transition

Following the Closing Time, the Seller agrees to use commercially reasonable efforts to facilitate introductions between the Buyer and existing suppliers of products sold under the “Viking” trademark and brand that Seller has a continuing relationship as of the Closing Time; provided, however, that the Buyer acknowledges and agrees that nothing in this Section 7.7 shall operate to prohibit or diminish in any way the right of the Seller to dissolve, windup or otherwise cease operations as it may determine in its sole discretion following the Closing Time. Notwithstanding the foregoing, any efforts required of the Seller pursuant to this Section 7.7 shall in no event be required to continue for more than 90 days following Closing.

7.8 Risk of Loss

In the event the Purchased Assets are appropriated, expropriated or seized by any Person, on or prior to the Closing Date and without fault of the Seller, the Buyer may elect to (a) terminate this Agreement, or (b) complete the transactions contemplated by this Agreement without reduction of the Purchase Price. In the event the Buyer elects to complete the transactions pursuant to the preceding clause (b), all proceeds of insurance or compensation for expropriation or seizure in respect thereof will be payable to the Buyer and all right and claim of the Seller to any such amounts not paid by the Closing Date will be assigned to the Buyer. Notwithstanding the foregoing, any obligations of the Seller pursuant to this Section 7.8 shall terminate 90 days following Closing.

ARTICLE 8 COURT ORDERS

8.1 Court Orders

- (a) The Buyer shall cooperate with the Seller acting reasonably, as may be necessary, including by providing such information and taking such actions as may be reasonably requested, in obtaining the Approval and Vesting Order ~~and a Disclaimer Order (if necessary)~~.
- (b) Within the time period provided for in the SISP, the Seller shall use commercially reasonable efforts file a motion with the CCAA Court for the issuance of the Approval and Vesting Order.
- (c) The Seller shall use commercially reasonable efforts to obtain the Approval and Vesting Order ~~and a Disclaimer Order (if necessary)~~.

- (d) The Buyer and its legal counsel shall be given a reasonable opportunity to review and comment on the motion(s) for the issuance of the Approval and Vesting Order ~~and a Disclaimer Order (if necessary)~~.
- (e) Notice of the motion seeking the issuance of the Approval and Vesting Order shall be served by the Seller on all Persons required to receive notice under Applicable Law and the requirements of the CCAA, the CCAA Court, and any other Person determined necessary by the Seller or the Buyer.

8.2 CCAA Process

If the Approval and Vesting Order or any other orders of the CCAA Court relating to this Agreement shall be appealed or motion for rehearing or reargument shall be filed with respect thereto, the Seller agrees to take all action as may be commercially reasonable and appropriate to defend against such appeal, petition or motion and the Buyer agrees to use its commercially reasonable efforts to cooperate in such efforts.

ARTICLE 9 TERMINATION

9.1 Termination

This Agreement may be terminated at any time prior to Closing as follows:

- (a) by mutual written consent of the Buyer and the Seller (with the consent of the ~~Lenders and the~~ Monitor, in the case of the Seller) or on further order of the CCAA Court;
- (b) by the Buyer or the Seller (with the consent of the ~~Lenders and the~~ Monitor, in the case of the Seller) if Closing has not occurred on or before ~~the Closing Date~~ January 11, 2018 (provided, that such date may be extended as ordered by the CCAA Court) (the “**Sunset Date**”); provided, that the Buyer or the Seller, as the case may be, are not in breach of any representation, warranty, covenant or other agreement in this Agreement ~~to that would~~ fail to be satisfied;
- (c) by the Buyer or the Seller upon the dismissal or conversion of the CCAA Proceedings;
- (d) by the Buyer or the Seller upon permanent denial of the Approval and Vesting Order;
- (e) by the Buyer or the Seller if a court of competent jurisdiction or other Governmental Authority has issued an order or taken any other action permanently restraining, enjoining or otherwise prohibiting the consummation of Closing and such order or action has become Final (provided the same was not initiated by the ~~Buyer or the Seller~~ Party seeking to terminate hereunder);

- (f) by the Seller, if required under any Order of a court of competent jurisdiction including the CCAA Court;
- (g) by the Seller (with the consent of ~~the Lenders and~~ the Monitor), if there has been a material violation or breach by the Buyer of any covenant, representation or warranty which would prevent the satisfaction of the conditions set forth in Section 6.1 or Section 6.3, as applicable, by the Sunset Date and such violation or breach has not been waived by the Seller or cured within ten (10) Business Days after written notice thereof from the Seller, unless the Seller is in material breach of ~~their~~its obligations under this Agreement;
- (h) by the Buyer pursuant to Section 7.8; or
- (i) by the Buyer, if there has been a material violation or breach by the Seller of any covenant, representation or warranty which would prevent the satisfaction of the conditions set forth in Section 6.1 or Section 6.2, as applicable, by the Sunset Date and such violation or breach has not been waived by the Buyer or cured within ten (10) Business Days after written notice thereof from the Buyer, unless the Buyer is in material breach of its obligations under this Agreement.

The Party desiring to terminate this Agreement pursuant to this Section 9.1 (other than pursuant to Section 9.1(a)) shall give written notice of such termination to the other Party or Parties, as applicable, specifying in reasonable detail the basis for such Party's exercise of its termination rights.

9.2 Effect of Termination

In the event of termination of this Agreement pursuant to Section 9.1, this Agreement shall become void and of no further force or effect without liability of any Party to any other Party to this Agreement except that (a) this Section 9.2 and Sections 3.3(eb), 11.1, 11.3, 11.4, 11.5, 11.6 and 11.7 shall survive, (b) the confidentiality, non-use and non-disclosure obligations under the NDA shall survive in accordance with the terms of the NDA, and (b) no termination of this Agreement shall relieve any Party of any liability for any willful breach by it of this Agreement.

ARTICLE 10 CLOSING

10.1 Location and Time of the Closing

The Closing shall take place at the Closing Time on the Closing Date at the Toronto, Ontario offices of ~~Torys~~Osler, Hoskin & Harcourt LLP, or at such other location as may be agreed upon by the Parties.

10.2 Seller's Deliveries at Closing

At Closing, the Seller shall deliver to the Buyer the following:

- (a) a certified copy of the Approval and Vesting Order;
- ~~(b) either: (i) written confirmation from the Seller that the time period in which the licensee under the Viking Range License Agreement is required to apply to a court for an order that such agreement is not to be disclaimed pursuant to Section 32 of the CCAA has expired and the licensee shall not have applied for such an order or communicated its intention to do so; or (ii) a certified copy of a Disclaimer Order;~~
- ~~(b)~~ (b) the IP Assignment and Assumption Agreement duly executed by the Seller;
- ~~(c)~~ (c) an authorization of counsel, substantially in the form attached as Schedule 2.3, duly executed by the Seller;
- ~~(d)~~ (d) an executed copy of the Monitor's Certificate;
- ~~(e)~~ (e) the certificates contemplated by Section 6.2(c); and
- ~~(f)~~ (g) a duly executed election pursuant to GST and HST Legislation and QST Legislation, and any certificates, elections or all other documents required to be delivered pursuant to Section 7.4; and ~~(h) all other documents required to be delivered~~ by the Seller on or prior to the Closing Date pursuant to this Agreement or Applicable Law or as reasonably requested by the Buyer in good faith.

10.3 Buyer's Deliveries at Closing

At Closing, the Buyer shall deliver to the Seller:

- (a) the portion of the Purchase Price payable at the Closing;
- (b) any sales or transfer Taxes payable on Closing by the Buyer to the Seller pursuant to Section 7.4(~~dc~~) hereof;
- (c) the IP Assignment and Assumption Agreements duly executed by the Buyer;
- (d) the certificate contemplated by Section 6.3(c);
- ~~(e) a duly executed election pursuant to GST and HST Legislation and QST Legislation, and any certificates, elections or other documents required to be delivered pursuant to Section 7.4; and~~ the GST/HST and QST Certificate, Undertaking and Indemnity; and
- (f) all other documents required to be delivered by the Buyer on or prior to the Closing Date pursuant to this Agreement or Applicable Law or as reasonably requested by the Seller in good faith.

10.4 Possession of Assets and Cooperation of the Seller with respect to Intellectual Property

In no event will the Purchased Assets be sold, assigned, transferred or set over to the Buyer until the conditions set out in the Approval and Vesting Order have been satisfied, and the Buyer has satisfied all delivery requirements outlined in Section 10.3. Promptly following Closing, the Seller shall deliver to the Buyer a hard drive or hard drives containing all of the electronic Documents in its possession, if any, and shall make available for retrieval by the Buyer or its agent(s) any and all Documents in the physical possession of the Seller, if any, for a period of thirty (30) days after the Closing Date.

The Seller will, in respect of the applications and registrations of Intellectual Property included in the Purchased Assets, provide such commercially reasonable cooperation, including the execution of confirmatory notice documents for recordation at government intellectual property offices, to record at such offices the Buyer as the assignee and owner of such Intellectual Property; provided, however, that the Buyer acknowledges and agrees that nothing in this Section 10.4 shall operate to prohibit or diminish in any way the right of the Seller to dissolve, windup or otherwise cease operations as it may determine in its sole discretion following the Closing Time.

10.5 Monitor

The Parties hereby acknowledge and agree that the Monitor will be entitled to file the Monitor's Certificate with the CCAA Court without independent investigation upon receiving written confirmation from the Seller and the Buyer that all conditions to Closing have been satisfied or waived and upon receiving the [portion of the Purchase Price payable at Closing](#) and any sales or transfer Taxes confirmed in writing by the Seller and the Buyer (on which the Monitor shall be entitled to rely without independent investigation) to be payable on Closing by the Buyer to the Seller pursuant to Section 7.4(~~ec~~) hereof, and the Monitor will have no liability to the Seller or the Buyer or any other Person as a result of filing the Monitor's Certificate or otherwise in connection with this Agreement or the transactions contemplated hereunder (whether based on contract, tort or any other theory).

10.6 Simultaneous Transactions

All actions taken and transactions consummated at the Closing shall be deemed to have occurred simultaneously, and no such transaction shall be considered consummated unless all are consummated.

ARTICLE 11 GENERAL MATTERS

11.1 Confidentiality

The Buyer shall keep confidential all Confidential Information relating to the Seller and the Purchased Assets in accordance with the terms of the NDA; [provided, that upon the Closing, the obligations of The Middleby Corporation and any Interested Party Representatives \(as defined in the NDA\) with respect to any Purchased Assets \(including all obligations of confidentiality\) shall immediately terminate. Subject to the foregoing sentence, the NDA shall remain in full force and effect in accordance with its terms following the Closing \(and the Buyer shall, for the avoidance of doubt, be considered an Interested Party Representative thereunder\).](#)

11.2 Public Notices

No press release or other announcement concerning the transactions contemplated by this Agreement shall be made by the Seller, on the one hand, or by the Buyer, on the other hand, without the prior consent of the other Party (such consent not to be unreasonably withheld, conditioned or delayed); provided, however, that subject to the last sentence of this Section 11.2, any Party may, without such consent, make such disclosure if the same is required by Applicable Law (including the CCAA Proceedings) or by any stock exchange on which any of the securities of such Party or any of its affiliates are listed, or by any insolvency or other court or securities commission, or other similar Governmental Authority having jurisdiction over such Party or any of its affiliates, and, if such disclosure is required, the Party making such disclosure shall use commercially reasonable efforts to give prior oral or written notice to the other Party to the extent legally permissible and reasonably practicable, and if such prior notice is not legally permissible or reasonably practicable, to give such notice reasonably promptly following the making of such disclosure. Notwithstanding the foregoing: (i) this Agreement may be filed by the Seller with the CCAA Court and posted on SEDAR or such other website as may be required pursuant to Applicable Law or the rules of any relevant stock exchange; and (ii) the transactions contemplated in this Agreement may be disclosed by the Seller to the CCAA Court, subject to redacting confidential or sensitive information as permitted by Applicable Law. The Parties further agree that:

- (a) the Monitor may prepare and file reports and other documents with the CCAA Court containing references to the transactions contemplated by this Agreement and the terms of such transactions; and
- (b) the Seller and its professional advisors may prepare and file such reports and other documents with the CCAA Court containing references to the transactions contemplated by this Agreement and the terms of such transactions as may reasonably be necessary to complete the transactions contemplated by this Agreement or to comply with their obligations in connection therewith.

Wherever possible, the Buyer shall be afforded an opportunity to review and comment on such materials prior to their filing. The Parties may issue a joint press release announcing the execution and delivery of this Agreement, in form and substance mutually agreed to by them.

11.3 Survival

None of the representations, warranties, covenants (except the covenants in ARTICLE 2, ARTICLE 3, ARTICLE 11 and Sections 7.3, 7.4, 7.5, 7.7, 11.1 and 11.4 to the extent they are to be performed after the Closing) of any of the Parties set forth in this Agreement, in any Closing Document to be executed and delivered by any of the Parties (except any covenants included in such Closing Documents, which, by their terms, survive Closing) or in any other agreement, document or certificate delivered pursuant to or in connection with this Agreement or the transactions contemplated hereby shall survive the Closing.

11.4 Expenses

Except as otherwise specifically provided herein, the Seller, on the one hand, and the Buyer, on the other hand, shall be responsible for the expenses (including fees and expenses of legal advisers, accountants and other professional advisers) incurred by each of them, respectively, in connection with the negotiation and settlement of this Agreement, and the completion of the transactions contemplated hereby.

11.5 Non-Recourse

No past, present or future director, officer, employee, incorporator, member, partner, securityholder, affiliate, agent, lawyer or representative of the respective Parties, in such capacity, shall have any liability for any obligations or liabilities of the Buyer or the Seller, as applicable, under this Agreement, or for any Claim based on, in respect of or by reason of the transactions contemplated hereby.

11.6 Assignment; Binding Effect

No Party may assign its right or benefits under this Agreement without the consent of each of the other Parties, except that without such consent any Party may, upon prior notice to the other Parties: (a) assign this Agreement, or any or all of its rights and obligations hereunder, to one or more of its subsidiaries or affiliates; or (b) the Buyer may direct that title to all or some of the Purchased Assets be transferred to one or more of its subsidiaries or affiliates; provided, that no such assignment or direction shall relieve such assigning Party of its obligations hereunder. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective permitted successors and permitted assigns. Except as provided in Section 7.3, nothing in this Agreement shall create or be deemed to create any third Person beneficiary rights in any Person not a Party to this Agreement.

11.7 Notices

Any notice, consent or approval required or permitted to be given in connection with this Agreement (in this Section referred to as 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 transferred by facsimile or email:.

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

~~Canadian Tire Corporation, Limited~~

~~2180 Yonge St.~~

~~Toronto, Ontario~~

~~M4P 2V8~~ Viking Range, LLC c/o The Middleby Corporation

1400 Toastmaster Drive

Elgin, IL 60120

Attention: ~~John Chimienti, Associate General Counsel and Chief Counsel,~~
~~Retail~~

Telephone: ~~416.480.3680~~ Tim FitzGerald, Chief Financial Officer

Facsimile: ~~416.480.3107~~ (847) 429-7544

Email: ~~john.chimienti@cantire~~ tfitzgerald@middleby.com

with ~~copies~~ a copy (which shall not in themselves constitute notice) to:

~~Torys LLP
Suite 3000,
79 Wellington Street West
Box 270, TD Centre
Toronto, Ontario M5K 1N2~~
Skadden, Arps, Slate, Meagher and Flom LLP
155 N. Wacker Drive, Suite 2700
Chicago, IL 60606
Attention: ~~Adam Slavens~~
~~Telephone: 416.865.7333~~
Shilpi Gupta, Partner
Facsimile: ~~416.485.7380~~
312-407-0411
Email: ~~aslavens@torys.com~~ sgupta@skadden.com

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

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

Attention: Phil Mohtadi
Telephone: (416) 941-4419
Email: pmohtad@sears.ca

with copies (which shall not in themselves constitute notice) to:

Osler, Hoskin & Harcourt LLP
Suite 6200
1 First Canadian Place
Toronto, ON M5X 1B8

Attention: Marc Wasserman and Tracy Sandler
Telephone: 416-862-4908 / 416-862-5890
Facsimile: 416-862-6666
Email: mwasserman@osler.com / tsandler@osler.com

and the Monitor:

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

Attention: Paul Bishop
Telephone: 416-649-8053

Facsimile: 416-649-8101
Email: paul.bishop@fticonsulting.com

and counsel to the Monitor:

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

Attention: Orestes Pasparakis and Virginie Gauthier
Telephone: 416-216-4815 / 416-216-4853
Facsimile: 416-216-3930
Email: orestes.pasparakis@nortonrosefulbright.com /
virginie.gauthier@nortonrosefulbright.com

Any Notice delivered or transmitted to a Party as provided above shall be deemed to have been given and received on the day it is delivered or transmitted, provided that it is delivered or transmitted on a Business Day prior to 5:00 p.m. local time in the place of delivery or receipt. However, if the Notice is delivered or transmitted after 5:00 p.m. local time or if such day is not a Business Day then the Notice shall be deemed to have been given and received on the next Business Day.

Any Party may, from time to time, change its address by giving Notice to the other Parties in accordance with the provisions of this Section.

11.8 Counterparts; Facsimile Signatures

This Agreement may be signed in counterparts and each of such counterparts shall constitute an original document and such counterparts, taken together, shall constitute one and the same instrument. Execution of this Agreement may be made by facsimile signature or by electronic image scan which, for all purposes, shall be deemed to be an original signature.

11.9 Language

Les Parties aux présentes ont expressement exigé que le présent convention et tous les documents et avis qui y sont afférents soient rédigés en anglaise. The Parties have expressly required that this Agreement and all documents and notices relating hereto be drafted in English.

[Signature pages follow]

IN WITNESS WHEREOF the Parties have executed this Agreement as of the date first written above.

SEARS CANADA INC.

By:

Name: Philip Mohtadi

Title: Corporate Secretary

~~CANADIAN TIRE~~
~~CORPORATION~~ VIKING RANGE,
~~LIMITED~~ LLC

By:

Name:

Title:

By:

and, solely for purposes of
Section 11.1 herein, Name:
Title:

THE MIDDLEBY
CORPORATION

and interest of the Seller in and to the Purchased Assets (as defined in the APA), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion of the Applicants, the Affidavit of ● sworn on ●, 2017 including the exhibits thereto (the “● Affidavit”), and the ● Report of FTI Consulting Canada Inc., in its capacity as Monitor (the “**Monitor**”), filed, and on hearing the submissions of respective counsel for the Applicants, the Monitor, the Purchaser, ~~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. ~~2.~~ 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. ~~3.~~ THIS COURT ORDERS that any capitalized term used and not defined herein shall have the meaning ascribed thereto in the Amended and Restated Initial Order in these proceedings dated June 22, 2017 (the “**Initial Order**”), or in the APA, as applicable.

APPROVAL OF THE APA

3. ~~4.~~ THIS COURT ORDERS AND DECLARES that the entering into of the Transaction by the Seller is hereby approved and ratified and that the execution of the APA by the Seller is hereby authorized, approved and ratified with such minor amendments as the Seller (with the consent of the Monitor ~~after consultation with the DIP Lenders~~) and the Purchaser may agree ~~upon~~ pursuant to the terms of the APA. The Seller 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 and for the conveyance of the Purchased Assets to the Purchaser and the Monitor shall be authorized to take such additional steps in furtherance of its responsibilities under the APA and this Order, and shall not incur any liability as a result thereof.

4. ~~5.~~ THIS COURT ORDERS AND DECLARES that upon the delivery of a Monitor’s certificate to the Purchaser substantially in the form attached as Schedule “A” hereto (the “**Monitor’s Certificate**”), all of the Seller’s right, title and interest in and to the Purchased

Assets shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory or otherwise), liens, executions, levies, charges or other financial or monetary claims, rights ~~or~~^{of} first negotiation, rights of first refusal and any other similar rights, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise in respect of the Purchased Assets (collectively, the “**Claims**”), including, without limiting the generality of the foregoing:

- (a) the Administration Charge, the FA Charge, the KERP Priority Charge, the Directors’ Priority Charge, ~~the DIP ABL Lenders’ Charge, the DIP Term Lenders’ Charge,~~ the KERP Subordinated Charge and the Directors’ Subordinated Charge (as such terms are defined in the Initial Order) and any other charges hereafter granted by this Court in these proceedings (collectively, the “**CCA Charges**”);
- (b) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) 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**”), and, for greater certainty, this Court orders that all of the Claims and Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

5. ~~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 Purchased Assets immediately prior to the Closing Date of the Transaction, as if the Transaction had not been completed.

6. ~~7.~~ THIS COURT ORDERS that, ~~to the extent that obligations remain owing by the Applicants under the DIP ABL Credit Agreement and/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, in such amounts as agreed to by the DIP ABL Agent and DIP Term Agent, as applicable, or if no such applicable agreement can be reached, on further Order of the Court (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.~~

7. ~~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 APA.

8. ~~12.~~ THIS COURT ORDERS that subject to the terms of the APA nothing herein affects:

- (a) the rights and obligations of ~~Sears Canada Inc. (“Sears Canada”)~~ the Seller 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,~~ the Seller and the Agent dated October 10, 2017; and
- (b) ~~(e)~~ the terms of the Liquidation Sale Approval Order granted ~~July 18,~~ October 13, 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

9. ~~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 vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy or receiver that may be appointed in respect of any of the Applicants and shall not be void or voidable by creditors of any of the Applicants, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy*

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

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

11. ~~16.~~ THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Applicants, the Monitor and the Purchaser and each of 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 Monitor, as an officer of this Court, the Applicants and the Purchaser as may be necessary or desirable to give effect to this Order or to assist the Applicants, the Monitor and the Purchaser and each of 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 Asset Purchase Agreement ~~between~~among Sears Canada Inc. (the “**Seller**”), as vendor, ~~and Canadian Tire Corporation, Limited~~Viking Range, LLC (the “**Purchaser**”), as purchaser, ~~dated September 29,~~and, solely for purposes of Section 11.1 therein, The Middleby Corporation, dated December 6, 2017 (the “**APA**”), a redacted copy of which is attached as Exhibit ● to the Affidavit of ● dated ●, 2017.

B. Pursuant to the Approval and Vesting Order the Court approved the APA and provided for the vesting in the Purchaser of the Seller’s right, title and interest in and to the Purchased Assets (as defined in the APA), which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Monitor to the Purchaser and the Seller of a certificate

confirming (i) all conditions to Closing have been satisfied or waived by the Purchaser and the Seller, as applicable; and (ii) the Purchase Price ~~and all~~ (including the Deposit previously received by the Monitor) and any applicable sales and transfer Taxes payable (each as defined in the APA) by the Purchaser to the Seller at the Closing (as defined in the APA) have been received by the Monitor.

THE MONITOR CERTIFIES the following:

1. All conditions to Closing have been satisfied or waived by the Purchaser and the Seller, as applicable; and
2. The cash portion of the Purchase Price ~~and all~~ (including the Deposit previously received by the Monitor) and any applicable sales and transfer Taxes payable by the Purchaser to the Seller at the Closing 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"

Encumbrances

Claims to be expunged:

1. Security Agreement in favour of General Electric Capital Canada Inc. registered June 2, 1997

2. Security Agreement in favour of General Electric Capital Canada registered December 22, 1997

~~Any and all rights, including without limitation, rights *of* first negotiation, rights of first refusal or any other similar rights, under the 3. License Agreement between 1373639 Alberta Ltd. and Sears Canada Inc. and Viking Range Corporation executed on December 19, 2002, dated February 3, 2008~~

SCHEDULE 1.1(Jee)

FORM OF IP ASSIGNMENT AND ASSUMPTION AGREEMENT

CONFIRMATORY ASSIGNMENT OF TRADE-MARKS

WHEREAS, Sears Canada Inc. (the “Assignor”), the full post office address of whose principal office or place of business is 290 Yonge Street, Suite 700, Toronto, Ontario, M5B 2C3, is the owner of the trade-marks listed in the attached schedule (the “Trade-marks”);

AND WHEREAS pursuant to an asset purchase agreement ~~made as of September 29, 2017~~ among the Assignor, Viking Range, LLC (the “Assignee”), and, solely for purposes of Section 11.1 therein, The Middleby Corporation, dated December 6, 2017 (the “Purchase Agreement”), ~~Canadian Tire Corporation, Limited~~ (the “Assignee”), the full post office address of whose principal office or place of business is ~~2180 Yonge St., Toronto, Ontario, M4P 2V8,~~ 1400 Toastmaster Drive, Elgin, Illinois 60120, acquired from the Assignor all of its right, title and interest in and to the Trade-marks together with the goodwill of the business carried on in association with the Trade-marks and certain other assets described in the Purchase Agreement as Purchased Assets;

NOW THEREFORE for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Assignor and the Assignee hereby confirm that the Assignor has sold, assigned and transferred to the Assignee, its successors and assigns, effective as of the date ~~of the Purchase Agreement~~ hereof, all of the Assignor’s right, title and interest in and to the Trade-marks (and all other assets described in the Purchase Agreement as Purchased Assets), including all its trade-mark rights in respect of all wares and services in association with which the Trade-marks may have been used, and the goodwill of the business carried on in association with the Trade-marks, together with all right of action resulting from any adverse use of the Trade-marks or any confusingly similar trade-marks prior to such effective date, and the right to claim such relief as is appropriate, the same to be held by the Assignee, its successors and assigns as fully and effectually as they would have been held by the Assignor had this sale, assignment and transfer not been made.

This agreement is executed in connection with and subject to the terms and conditions of the

Purchase Agreement. As between Assignor and Assignee, nothing in this agreement shall be deemed to limit or modify any representations, warranties, liabilities, indemnities or other agreements as between Assignor and Assignee as provided for in the Purchase Agreement.

This agreement shall be governed by and construed in accordance with the internal substantive laws of the Province of Ontario without giving effect to the principles of conflicts of laws thereof. This agreement may be executed in one or more original or facsimile counterparts, and all counterparts so executed shall constitute one agreement, binding upon the parties hereto, notwithstanding that the parties are not signatory to the same counterpart.

[Signature page follows]

EXECUTED at _____, this _____ day of _____, ~~2017~~[2017](#)[\[●\]](#).

SEARS CANADA INC.

By:

Name:

Title:

SCHEDULE

Trademark

VIKING (Registration No. TMDA47453;
[Application No. 147635](#))

VIKING & DESIGN (Registration No.
TMA599901; [Application No. 1124667](#))



VIKING & Design (Application No. 1731943)



Representation of a Single-Masted Viking
Galley (Registration No. UCA41844)

SCHEDULE 2.1

Trademark Applications and Registrations

Trademark

VIKING (Registration No. TMDA47453;
[Application No. 147635](#))

VIKING & DESIGN (Registration No.
TMA599901; [Application No. 1124667](#))



VIKING & Design (Application No. 1731943)



Representation of a Single-Masted Viking
Galley (Registration No. UCA41844)

SCHEDULE 2.3

FORM OF AUTHORIZATION OF COUNSEL

AUTHORIZATION OF COUNSEL

To: Representative for service for the trade-marks listed in the attached schedule (the “**Trade-marks**”) (such counsel, “**You**” or “**Your**”)

WHEREAS Sears Canada Inc. (the “**Assignor**”) has sold, assigned and transferred to ~~the Canadian Tire Corporation, Limited~~ Viking Range, LLC (the “**Assignee**”), its successors and assigns, all of the Assignor’s right, title and interest in and to the Trade-marks, including all its trade-mark rights in respect of all wares and services in association with which the Trade-marks may have been used, and the associated goodwill, together with all right of action resulting from any adverse use of the Trade-marks or any confusingly similar trade-marks prior to such sale, assignment and transfer,

NOW THEREFORE, the Assignor hereby authorizes you to provide to the Assignee documents and records in Your possession or control in connection with the use and evidence of use of the Trade-marks. The Assignee shall be solely responsible for all costs incurred in connection with providing such documents and records.

EXECUTED at _____, this _____ day of _____, ~~2017~~201~~1~~[●].

SEARS CANADA INC.

By:

Name:

Title:

SCHEDULE

Trademark

VIKING (Registration No. TMDA47453;
[Application No. 147635](#))

VIKING & DESIGN (Registration No.
TMA599901; [Application No. 1124667](#))



VIKING & Design (Application No. 1731943)



Representation of a Single-Masted Viking
Galley (Registration No. UCA41844)

TAB 3

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.) FRIDAY, THE 8TH
)
JUSTICE HAINEY) DAY OF DECEMBER, 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
(VIKING Trade-Marks)**

THIS MOTION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. c-36, as amended (the “**CCAA**”), for an order, *inter alia*, approving the sale transaction (the “**Transaction**”) contemplated by the asset purchase agreement (the “**APA**”) between Sears Canada Inc. (the “**Seller**”), as vendor, Viking Range, LLC (the “**Purchaser**”), as purchaser, and, solely for purposes of Section 11.1 therein, The Middleby Corporation, dated December [●], 2017, and certain related relief, and (ii) vesting in and to the Purchaser all right, title and interest of the Seller in and to the Purchased Assets (as defined in the APA), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion of the Applicants, the Affidavit of ● sworn on ●, 2017 including the exhibits thereto (the “● **Affidavit**”), and the ● Report of FTI Consulting Canada Inc., in its capacity as Monitor (the “**Monitor**”), filed, and on hearing the submissions of

respective counsel for the Applicants, the Monitor, the Purchaser and such other counsel as were present, no one else appearing although duly served as appears from the Affidavit of Service of ● sworn ●, 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 APA, as applicable.

APPROVAL OF THE APA

3. THIS COURT ORDERS AND DECLARES that the entering into of the Transaction by the Seller is hereby approved and ratified and that the execution of the APA by the Seller is hereby authorized, approved and ratified with such minor amendments as the Seller (with the consent of the Monitor) and the Purchaser may agree pursuant to the terms of the APA. The Seller 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 and for the conveyance of the Purchased Assets to the Purchaser and the Monitor shall be authorized to take such additional steps in furtherance of its responsibilities under the APA and this Order, and shall not incur any liability as a result thereof.
4. THIS COURT ORDERS AND DECLARES that upon the delivery of a Monitor’s certificate to the Purchaser substantially in the form attached as Schedule “A” hereto (the “**Monitor’s Certificate**”), all of the Seller’s right, title and interest in and to the Purchased Assets shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory or otherwise), liens, executions, levies, charges or other financial or monetary claims, rights of first negotiation, rights of first refusal and any other similar rights, whether or not they have attached or been perfected, registered or filed and

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

- (a) the Administration Charge, the FA Charge, the KERP Priority Charge, the Directors’ Priority Charge, the KERP Subordinated Charge and the Directors’ Subordinated Charge (as such terms are defined in the Initial Order) and any other charges hereafter granted by this Court in these proceedings (collectively, the “**CCAA Charges**”);
- (b) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) 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**”), and, for greater certainty, this Court orders that all of the Claims and Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

5. THIS COURT ORDERS that upon the registration in the Canadian Intellectual Property Office of a certified copy of this Order, the applicable Registrar is hereby directed to transfer to the Purchaser all of the Seller’s right, title and interest in and to the trademark applications and registrations listed in Schedule “C” hereto, free and clear of and from any and all Claims and Encumbrances.

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 Purchased Assets immediately prior to the Closing Date of the Transaction, as if the Transaction had not been completed.

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

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

9. THIS COURT ORDERS that subject to the terms of the APA nothing herein affects:
- (a) the rights and obligations of the Seller 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 the Seller and the Agent dated October 10, 2017; and
 - (b) the terms of the Liquidation Sale Approval Order granted October 13, 2017 including the Sale Guidelines attached as Schedule “A” thereto.

GENERAL PROVISIONS

10. THIS COURT ORDERS that, notwithstanding:
- (a) the pendency of these proceedings;
 - (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of any of the Applicants and any bankruptcy order issued pursuant to any such applications; or
 - (c) any assignment in bankruptcy made in respect of any of the Applicants;

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

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

12. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Applicants, the Monitor and the Purchaser and each of 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 Monitor, as an officer of this Court, the Applicants and the Purchaser as may be necessary or desirable to give effect to this Order or to assist the Applicants, the Monitor and the Purchaser and each of 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 Asset Purchase Agreement among Sears Canada Inc. (the “**Seller**”), as vendor, Viking Range, LLC (the “**Purchaser**”), as purchaser, and, solely for purposes of Section 11.1 therein, The Middleby Corporation, dated December [●], 2017 (the “**APA**”), a redacted copy of which is attached as Exhibit ● to the Affidavit of ● dated ●, 2017.

B. Pursuant to the Approval and Vesting Order the Court approved the APA and provided for the vesting in the Purchaser of the Seller’s right, title and interest in and to the Purchased Assets (as defined in the APA), which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Monitor to the Purchaser and the Seller of a certificate confirming (i) all conditions to Closing have been satisfied or waived by the Purchaser and the Seller, as applicable; and (ii) the Purchase Price (including the Deposit previously received by

the Monitor) and all applicable sales and transfer Taxes payable (each as defined in the APA) by the Purchaser to the Seller at the Closing (as defined in the APA) have been received by the Monitor.

THE MONITOR CERTIFIES the following:

1. All conditions to Closing have been satisfied or waived by the Purchaser and the Seller, as applicable; and
2. The cash portion of the Purchase Price (including the Deposit previously received by the Monitor) and all applicable sales and transfer Taxes payable by the Purchaser to the Seller at the Closing 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”

CLAIMS TO BE EXPUNGED

Claims in respect of:

1. Security Agreement in favour of General Electric Capital Canada Inc. registered June 2, 1997
2. Security Agreement in favour of General Electric Capital Canada registered December 22, 1997
3. License Agreement between 1373639 Alberta Ltd. and Sears Canada Inc. dated February 3, 2008

SCHEDULE "C"

Trademark
VIKING (Registration No. TMDA47453; Application No. 147635)
VIKING & DESIGN (Registration No. TMA599901; Application No. 1124667) 
VIKING & Design (Application No. 1731943) 
Representation of a Single-Masted Viking Galley (Registration No. UCA41844)

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 Asset Purchase Agreement with Viking Range, LLC
and The Middleby Corporation Canadian Tire Corporation, Limited,
returnable December 8 October 4, 2017)

OSLER, HOSKIN & HARCOURT LLP

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