

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.

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SUPPLEMENTAL MOTION RECORD OF THE APPLICANTS

(Liquidation Sale Approval, Returnable July 18, 2017)

July 17, 2017

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SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

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Tab 1

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
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INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA LTD.,
4201531 CANADA INC., 168886 CANADA INC., AND 3339611
CANADA INC.

APPLICANTS

AFFIDAVIT OF SEAN STIDWILL
(Sworn July 17, 2017)

I, SEAN STIDWILL, of the City of Toronto, in the Province of Ontario, MAKE
OATH AND SAY:

1. I am an associate at the law firm of Osler, Hoskin & Harcourt LLP, the lawyers for the Applicants in these proceedings. As such, I have personal knowledge of the matters deposed to in this Affidavit, based on my direct involvement in this matter. I swear this Affidavit in support of the Applicants' motion for approval of a sale liquidation process and for no other purpose.
2. As described in the Affidavit of Billy Wong sworn July 12, 2017 (the "**Wong Affidavit**"), a contractual joint venture comprised of Gordon Brothers Canada ULC and

Merchant Retail Solutions ULC (together, the “**Original JV**”) and Sears Canada Inc. (“**Sears Canada**”) entered into an Agency Agreement (the “**Original Agency Agreement**”) and a Consulting Agreement (the “**Original Consulting Agreement**”, together with the Original Agency Agreement, the “**Original Liquidation Agreements**”) on July 12, 2017. Copies of the Original Agency Agreement and the Original Consulting Agreement were attached as Exhibits “B” and “C”, respectively, to the Wong Affidavit.

3. As described at paragraph 78 of the First Report of the Monitor dated July 12, 2017, in accordance with the Original Liquidation Agreements, the Original JV provided Sears Canada with notice that the transactions contemplated by the Original Liquidation Agreements will be syndicated with Tiger Capital Group and Great American Group or their affiliates. Attached as Exhibit “A” to this Affidavit is a copy of the Amended and Restated Agency Agreement dated July 12, 2017 and amended and restated on July 14, 2017 between 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 “**Amended and Restated Agency Agreement**”). Attached as Exhibit “B” to this Affidavit is a copy of the Amended and Restated Consulting Agreement dated July 12, 2017 and amended and restated on July 14, 2017 between 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 “**Amended and Restated Consulting Agreement**”). Attached as Exhibit “C” to this Affidavit is a blackline of the Amended and Restated Agency Agreement to the Original Agency Agreement. Attached as Exhibit “D” to this Affidavit is a blackline of the Amended and Restated Consulting Agreement to the Original Consulting Agreement.

SWORN BEFORE ME at the City of
Toronto, in the Province of Ontario on July
17, 2017.



Commissioner for Taking Affidavits

SONJA PAVIC.



Sean Stidwill

Tab A

**THIS IS EXHIBIT "A" TO THE AFFIDAVIT
OF SEAN STIDWILL SWORN BEFORE ME
ON THIS 17th DAY OF JULY, 2017.**

A handwritten signature in black ink, appearing to read 'SONJA PAVIC', written over a horizontal line.

A commissioner for taking Affidavits

SONJA PAVIC

SEARS CANADA INC.

(Company)

- and -

**A contractual joint venture comprised of
GORDON BROTHERS CANADA ULC and
MERCHANT RETAIL SOLUTIONS ULC and
TIGER CAPITAL GROUP, LLC and
GA RETAIL CANADA ULC**

(Agent)

AMENDED AND RESTATED AGENCY AGREEMENT

Dated: July 12, 2017
Amended and Restated: July 14, 2017

Prepared by:

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AGENCY AGREEMENT

This AMENDED AND RESTATED AGENCY AGREEMENT is dated as of July 12, 2017 and amended and restated as of July 14, 2017.

A M O N G:

Sears Canada Inc. (the “Company”)

- and -

**A contractual joint venture comprised of
GORDON BROTHERS CANADA ULC and
MERCHANT RETAIL SOLUTIONS ULC and
TIGER CAPITAL GROUP, LLC and
GA RETAIL CANADA ULC
(the “Agent”)**

RECITALS:

- A. On June 22, 2017, the Company and certain related entities commenced court-supervised restructuring proceedings under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA Proceedings**”) and obtained an initial order (as amended from time to time, the “**Initial Order**”) from the Ontario Superior Court of Justice (Commercial List) (the “**Court**”).
- B. Pursuant to the Initial Order, FTI Consulting Canada Inc. was appointed as monitor (the “**Monitor**”) in the CCAA Proceedings and the engagement of BMO Nesbitt Burns Inc. (“**BMO**”) as financial advisor to the Company was approved.
- C. The Company currently operates a network of retail stores across Canada and has identified certain stores for liquidation and closure.
- D. A contractual joint venture composed of Gordon Brothers Canada ULC and Merchant Retail Solutions ULC entered into an agency agreement with the Company dated July 12, 2017 (the “**Original Agency Agreement**”).
- E. On July 12, 2017, Gordon Brothers Canada ULC and Merchant Retail Solutions ULC exercised their right to syndicate the transaction contemplated by the Original Agency Agreement as provided for in Section 18.14 thereof.

- F. The Company and the Agent, in consultation with the Monitor and BMO, and subject to the approval of the Court, wish to enter into this amended and restated agency agreement (this “**Agreement**”) in accordance with the terms hereof.

NOW THEREFORE in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged) the parties hereto agree as follows:

ARTICLE 1 INTERPRETATION

1.1 Definitions

In this Agreement:

“**Accepted Credits**” has the meaning ascribed to it in Section 10.3(a);

“**Additional Taxes and Penalties**” has the meaning ascribed to it in Section 12.1(a);

“**Agency Documents**” has the meaning ascribed to it in Section 16.1(a)(i);

“**Agent**” means a contractual joint venture comprised of Gordon Brothers Canada ULC, Merchant Retail Solutions ULC, Tiger Capital Group, LLC and GA Retail Canada ULC;

“**Agent’s Base Fee**” has the meaning ascribed to it in Section 3.5;

“**Agent’s Charge and Security Interest**” has the meaning ascribed to it in Section 13.1(a);

“**Agent Claim**” has the meaning ascribed to it in Section 12.2(e);

“**Agent L/C**” has the meaning ascribed to it in Section 3.3(a);

“**Agent Sharing Recovery Amount**” has the meaning ascribed to it in Section 3.5;

“**Agreement**” means this agency agreement, together with the attached schedules;

“**Approval Order**” has the meaning ascribed to it in Section 14.1(a)(i);

“**Assets**” means collectively, the Merchandise and the FF&E;

“**Beneficiary**” has the meaning ascribed to it in Section 3.3(a);

“**Benefits Cap**” has the meaning ascribed to it under the definition of “Expenses”;

“**Budget**” means the budget mutually agreed upon between the Company and the Agent, with the approval of the Monitor, with respect to the FF&E Expenses;

“**Business Day**” means a day on which chartered banks in Canada are open for business in the City of Toronto but does not include a Saturday, Sunday or statutory holiday in the Province of Ontario;

“Canadian Anti-Spam Legislation” means *An Act to promote the efficiency and adaptability of the Canadian economy by regulating certain activities that discourage reliance on electronic means of carrying out commercial activities, and to amend the Canadian Radio-television and Telecommunications Commission Act, the Competition Act, the Personal Information Protection and Electronic Documents Act and the Telecommunications Act* (S.C. 2010, c. 23) and its associated regulations;

“Cash Balance Payment” has the meaning ascribed thereto in Section 3.4;

“CCAA Proceedings” has the meaning ascribed to it in the Recitals;

“Central Services” has the meaning ascribed to it in Section 10.1(a)(iii);

“Company” has the meaning ascribed to it in the Recitals;

“Company Consignment Goods” means those goods identified by the Company as being held by the Company on consignment and identified in Schedule “L”;

“Company’s Designated Account” means the Company’s bank account, the details of which are set out in Schedule “K”;

“Company Personal Information” has the meaning ascribed to it in Section 10.10;

“Company Sharing Recovery Amount” has the meaning ascribed to it in Section 3.5;

“Corporate Office” means the Company’s corporate offices located at 290 Yonge St., Suite 700, Toronto, Ontario, Canada, M5B 2C3;

“Cost Value” has the meaning ascribed to it in Section 4.2(a);

“Court” has the meaning ascribed to it in the Recitals;

“Court Condition Date” has the meaning ascribed to it in Section 14.1(a)(i);

“Defective Merchandise” means any item of inventory that is not saleable as first quality inventory because it is dented, worn, scratched, torn, tailored, soiled, ripped, faded, mismatched, missing pieces, mis-mated, out of box (if normally sold as new in-the-box), or near-sized, items typically sold as a set which are incomplete, or merchandise affected by other similar defenses rendering it not first quality, and as to which Agent and Company mutually agree on its value to define its Cost Value;

“Delayed Delivery Goods” means any goods located in the Locations as at the Sale Commencement Date that were purchased and paid for prior to the Sale Commencement Date and reflect in the file named “Jul Wk1 Unshipped Sales_by store.xlsx” provided to the Agent on July 12, 2017;

“Designated Company Consignment Goods” has the meaning ascribed to in Section 4.4(b);

“**Designated Deposit Accounts**” has the meaning ascribed to it in Section 6.1(a);

“**Designated Sundry Goods**” has the meaning ascribed to it in Section 4.4(b);

“**Designated Sundry And Consignment Goods Commission**” has the meaning ascribed to it in Section 4.4(b);

“**Designated Sundry And Consignment Goods Proceeds**” means the proceeds of sale from the Designated Sundry Goods and the Designated Company Consignment Goods, net of Sales Taxes;

“**Distribution Center**” means any of the Company’s distribution centers, storage facility and warehouses;

“**Encumbrances**” shall mean 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, priorities, prior claims, and encumbrances, including, without limitation, the charges granted by the Court under the CCAA Proceedings (including, but not limited to, the Administration Charge, the KERP Priority Charge, the Directors’ Priority Charge, the DIP Term Lenders’ Charge, the DIP ABL Lenders’ Charge, the KERP Subordinated Charge, and the Directors’ Subordinated charge, each as defined in the Initial Order);

“**Events of Default**” shall have the meaning ascribed to it in Section 15.1;

“**Excluded Benefits**” means paid sick days or sick leave, maternity leave or other leaves of absence including vacation pay for actual vacation time taken by hourly employees, termination or severance pay (prior to or during the Sale and including without limitation any notice in accordance with provincial employment/labour standards), pension benefits and similar contributions, and non-statutory benefits (including any amounts payable to any Retained Employees under the KERP) payable to the Retained Employees and benefits in excess of the Benefits Cap;

“**Excluded Defective Merchandise**” shall mean those items of Defective Merchandise that are not saleable in the ordinary course because they are so damaged or defective that they cannot reasonably be used for their intended purpose or for which the parties cannot mutually agree upon a Cost Value, including parts or components held for repairs or not sold separately by Company to consumers in the ordinary course of business or have been delisted or are return to vendor goods;

“**Excluded FF&E**” means (i) all furnishings, removable trade fixtures, equipment and improvements to real immovable property that are owned by third party vendors and are located in the Locations as at the Sale Commencement Date identified on Schedule “O”, and (ii) all furnishings, removable trade fixtures, equipment and improvements to real immovable property that are owned by the Company and identified in Schedule “J”;

“**Excluded Goods**” shall mean: (i) goods which belong to third parties including sublessees, franchisees, concessionaires or licensees, if any, of the Company; (ii) goods

held by Company as bailee or Company Consignment Goods (including Designated Company Consignment Goods); (iii) Excluded Defective Merchandise; (iv) FF&E; (v) Excluded FF&E; (vi) Delayed Delivery Goods; (vii) Designated Sundry Goods; and/or (viii) In-Transit Merchandise that is not received in the Locations on or before to the Merchandise Receipt Deadline.

“**Excluded Price Adjustments**” shall have the meaning ascribed to it in Section 4.2(a)(iii);

“**Expenses**” shall mean the normal customary operating expenses of the Sale arising during the Sale Term and attributable to the Sale, limited to the following:

- (i) actual Occupancy Expenses for the Locations on a per Location and per diem basis through the applicable Vacate Date for such Location in an amount not to exceed the respective per Location, actual per diem totals set forth on Schedule “A”, which shall be exclusive of Sales Tax; provided however; commencing on the Sale Commencement Date and continuing as part of each Weekly Sale Reconciliation thereafter, Agent shall pre-fund two (2) weeks Occupancy Expenses;
- (ii) wages, overtime, commissions and, if applicable, existing Company plan bonuses (excluding the KERP) as well as vacation pay accruing during the Sale Term (but not arrears) payable by the Company for Retained Employees used in conducting the Sale for actual days/hours worked during the Sale Term; provided however, Agent shall be obligated to pre-fund payroll-related expenses consistent with the Company’s customary payroll funding practices and timing, it being understood that the Agent will never be the employer;
- (iii) actual amounts payable by the Company for statutory deductions and amounts payable by the Company for benefits during the Sale Term for Retained Employees used in the Sale (including Canada Pension Plan premiums and other similar premiums, employment insurance premiums, employment health taxes, workers’ compensation premiums, health care insurance benefits, and vacation pay accruing during the Sale Term (but not in arrears)), but excluding Excluded Benefits, for actual days/hours worked during the Sale Term in an amount not to exceed 10% of base payroll for each Retained Employee in the Locations (the “**Benefits Cap**”). For the purposes herein, “base payroll” shall include commissions and bonuses payable under the Company’s compensation policy in effect as at the Sale Commencement Date; provided, however, Agent shall be obligated to pre-fund payroll-related expenses consistent with the Company’s customary payroll funding practices and timing, it being understood that the Agent will never be the employer;
- (iv) all out of pocket costs and expenses associated with Agent’s on-site supervision of the Locations, including (but not limited to) any and all fees paid to arm’s length third-parties, wages, bonuses, taxes, payroll expenses, and deferred compensation of Agent’s field personnel, travel to, from or

between the Locations, and out-of-pocket and commercially reasonable expenses relating thereto (including reasonable and documented corporate travel to monitor and manage the Sale and third party payroll fees, costs and expenses);

- (v) all costs of advertising, signage and banners (interior and exterior) and in-store signs that are produced and used for the Sale in compliance with the Sales Guidelines whether incurred prior to the Sale or during the Sale Term;
- (vi) promotional costs incurred by Agent pursuant to the terms of this Agreement, including, without limitation, sign walkers, advertising, media, production and creative, digital and direct mailings relating to the Sale;
- (vii) cost of additional supplies used at the Locations as may be required by Agent in the conduct of the Sale (excluding those supplies located at the Locations on the Sale Commencement Date which may be used by Agent at no charge);
- (viii) to the extent not included in per diem Occupancy Expense totals, local and long distance telephone expenses incurred at the Locations;
- (ix) credit card and bank card fees, bank charges, chargebacks and credit/debit card discounts with respect to Merchandise sold in the Sale;
- (x) any and all costs of processing, moving, transferring or consolidating Merchandise between and among the Locations, including delivery and freight costs;
- (xi) bank service charges, cheque guarantee fees, and bad cheque expenses, to the extent attributable to the Sale;
- (xii) all fees and charges required to comply with laws regulating the conduct of store closing sales;
- (xiii) Locations' cash theft and other cash shortfalls in the cash registers;
- (xiv) postage, courier and overnight mail charges to and from or among the Locations and the Corporate Office (to the extent relating to the Sale);
- (xv) to the extent not included in per diem Occupancy Expense totals, Locations' snow and trash removal; provided however, in connection with the conduct of the Sale and/or Agent's vacating of the Locations (but not in connection with the disposition of any unsold FF&E or other non-Merchandise assets being abandoned or otherwise disposed of by the Company), to the extent that the Company incurs additional trash removal charges at a Location, other than the fixed charge component of the Company's lease obligation for a particular Location provided for in the

per diem Occupancy Expense totals (the “**Non-CAM Trash Removal Charges**”), such Non-CAM Trash Removal Charges shall be paid by Agent as an Expense of the Sale, in addition to any trash removal charges as may be set forth in Occupancy Expense totals.

- (xvi) fifty percent (50%) of each of (i) the fees of the Inventory Taking Service to conduct the Inventory Taking at the Locations and (ii) payroll and related costs for Retained Employees who work at the Locations during the Inventory Taking in such Locations;
- (xvii) third party payroll processing fees;
- (xviii) cost of all security in the Locations (to the extent customarily provided in the Locations), including, without limitation, armored car service, security personnel and monthly alarm services for the Locations;
- (xix) cost of Agent’s actual cost of capital, letter of credit fees and currency conversion expenses related to the Sale, including wire transfer and bank charges related to the Initial Guaranty Payment, the Guaranteed Amount, an Overfunded Amount, if applicable, and the Agent L/C;
- (xx) Agent’s reasonable out-of-pocket fees and expenses, including but not limited to, legal fees and expenses incurred in connection with the review of data and preparation, negotiation and execution of this Agreement, the Approval Order, Sales Guidelines, any ancillary documents, and other diligence costs incurred prior to and during the Sale Term in an amount not to exceed \$100,000;
- (xxi) to the extent not included in per diem Occupancy Expense totals, third party cleaning expenses related to the Locations;
- (xxii) all costs and expenses of providing such additional Location-level services, including, without limitation, (i) the employment of temporary help (which shall be coordinated and implemented through the Company’s human resources department), which Agent and the Company consider appropriate, and (ii) the actual cost of any deliver or repair services, to the extent provided by the Agent pursuant to section 10.1(a), below;
- (xxiii) actual cost of Agent’s insurance;
- (xxiv) The actual amount of any Retention Bonuses for Retained Employees paid by the Agent in accordance with Section 11.1(d) hereof; and
- (xxv) for the Sale Term a pro rata portion of the Company’s premiums in respect of general liability, casualty, property, inventory, and other insurance policies attributable to the Merchandise and the Locations.

Provided however that “Expenses” shall not include: (i) Excluded Benefits; (ii) any rent or other occupancy expenses other than Occupancy Expenses in accordance with subsection

(i) and Schedule “A” hereof to the extent actually incurred; (iii) any costs or expenses associated with any of the Non-Store Locations except as set forth above; (iv) Sales Tax on any of the Expenses if Agent is registered for harmonized sales tax or goods and services tax under Part IX of the *Excise Tax Act* (Canada); (v) any costs or expenses arising or accruing during the FFE Removal Period; and (vi) expenses or liabilities arising or accruing during the Sale Term in connection with the Sale, other than the Expenses listed above, all of which shall be paid by Agent or the Company, as applicable, promptly when due during the Sale Term. Notwithstanding anything herein to the contrary, to the extent that any Expense listed in this definition is also included on Schedule “A”, then Schedule “A” shall prevail and such Expense shall not be double counted;

“**FF&E**” means all furnishings, removable trade fixtures, equipment, and improvements to real immovable property that are located in the Locations and are owned by the Company, but excluding the Excluded FF&E;

“**FF&E Commission**” has the meaning ascribed to it in Section 5.1(a);

“**FF&E Expenses**” has the meaning ascribed to it in Section 5.1(a);

“**FF&E Proceeds**” means the proceeds of sale from the FF&E net of Sales Taxes;

“**FF&E Removal Deadline**” has the meaning ascribed to it in Section 5.1(b);

“**FF&E Removal Period**” has the meaning ascribed to it in Section 5.1(b);

“**Final Reconciliation**” has the meaning ascribed to it in Section 7.1(c);

“**Final Inventory Report**” has the meaning ascribed to it in Section 3.2(a);

“**Full-Line Cost Factor Threshold**” has the meaning ascribed to it in Section 3.1(a)(iii);

“**Full-Line Guaranty Percentage**” has the meaning ascribed to it in Section 3.1(a)(i);

“**Full-Line Guaranteed Amount**” has the meaning ascribed to it in Section 3.1(a)(i);

“**Full-Line Merchandise**” means, solely as it relates to the Full-Line Stores, all finished, new, first quality goods inventory saleable in the ordinary course of business that are owned by the Company and that are located at the Locations that are Full-Line Stores on the Sale Commencement Date, including (i) all floor models and sample goods, (ii) all Full-Line Merchandise subject to Gross Rings, (iii) In-Transit Merchandise received in the Locations that are Full-Line Stores by the Merchandise Receipt Deadline, and (iv) Defective Merchandise that would otherwise constitute Full-Line Merchandise for which the Agent and the Company can agree on a Cost Value, but, in all cases, expressly excluding all Excluded Goods;

“**Full-Line Merchandise Threshold**” has the meaning ascribed to it in Section 3.1(a)(ii);

“**Full-Line Stores**” means the Locations identified as full-line retail stores on Schedule “B”;

“**Gross Rings**” has the meaning ascribed to it in Section 4.3;

“**Guaranteed Amount**” means the aggregate value of the Home Store Guaranteed Amount and the Full-Line Guaranteed Amount;

“**Hazardous Materials**” means, collectively, any chemical, solid, liquid, gas, waste, or other substance having the characteristics identified in, listed under, or designated pursuant to any laws, statutes or regulations of a governmental unit or agency thereof, as presenting an imminent and substantial danger to the public health or welfare or to the environment or as otherwise requiring special handling, collection, storage, treatment, disposal, or transportation;

“**Home Store Cost Factor Threshold**” has the meaning ascribed to it in Section 3.1(b)(iii);

“**Home Store Guaranteed Amount**” has the meaning ascribed to it in Section 3.1(b)(i);

“**Home Store Guaranty Percentage**” has the meaning ascribed to it in Section 3.1(b)(i);

“**Home Store Merchandise**” means, solely as it relates to the Home Stores, all finished, new, first quality goods inventory saleable in the ordinary course of business that are owned by the Company and that are located at the Locations that are Home Stores on the Sale Commencement Date, including (i) all floor models and sample goods (ii) Home Store Merchandise subject to Gross Rings, (iii) In-Transit Merchandise received in the Locations that are Home Stores by the Merchandise Receipt Deadline, and (iv) Defective Merchandise that would otherwise constitute Home Store Merchandise for which the Agent and the Company can agree on a Cost Value, but, in all cases, expressly excluding all Excluded Goods;

“**Home Store Merchandise Threshold**” has the meaning ascribed to it in Section 3.1(b)(ii);

“**Home Stores**” means the Locations identified as home store retail stores on Schedule “B”

“**In-Transit Merchandise**” means all new, finished, first-quality saleable goods reflected in the file named “Warehouse to FL Transfers.xlsx” posted to the Company’s datasite on July 7, 2017;

“**Initial Guaranty Payment**” has the meaning ascribed to it in Section 3.2(a);

“**Initial Order**” has the meaning ascribed to it in the Recitals hereto;

“**Inventory Date**” has the meaning ascribed to it in Section 4.1;

“**Inventory Reconciliation Date**” has the meaning ascribed to it in Section 3.2(a);

“**Inventory Taking**” has the meaning ascribed to it in Section 4.1;

“**Inventory Taking Instructions**” has the meaning ascribed to it in Section 4.1;

“**Inventory Taking Service**” has the meaning ascribed to it in Section 4.1;

“**JV Member**” means a member of the joint venture comprising the Agent.

“**KERP**” means the Key Employee Retention Plan approved by the Court in the Initial Order;

“**L/C Date**” has the meaning ascribed to it in Section 3.3(a);

“**Lenders**” means, collectively, the DIP ABL Lenders and the DIP Term Lenders (each as defined in the Initial Order);

“**Locations**” means all of the Company’s retail store locations as described in Schedule “B”;

“**Lowest Location Price**” has the meaning ascribed to it in Section 4.2(a)(ii);

“**Loyalty Points**” means the points earned on the Loyalty Program which can be redeemed for merchandise, in accordance with the terms of the Loyalty Program;

“**Loyalty Program**” means the Sears Club Points Program which allows customers to earn and redeem Loyalty Points;

“**Merchandise**” means all Full-Line Merchandise and Home Store Merchandise;

“**Merchandise File**” means (i) with respect to Full-Line Stores, the Company’s file “Full line Ticket price and cost by item Updated July 6th .xlsx”, including specifically the ticket price June 29, 2017 field included in said file, and (ii) with respect to Home Stores, “Store Inventory by Item Wk22 (Active-Inactive Inventory w aging).xlsx”;

“**Merchandise Receipt Deadline**” means the date that is twenty-eight (28) days after the Sale Commencement Date;

“**Monitor**” has the meaning ascribed to it in the Recitals;

“**Net Designated Sundry And Consignment Goods Proceeds**” means all amounts collected on account of Designated Sundry Goods and Designated Company Consignment Goods, net of Sales Taxes and the Designated Sundry And Consignment Goods Commission;

“**Net FF&E Proceeds**” means all amounts collected on account of FF&E, net of the FF&E Expenses, Sales Taxes, and FF&E Commission;

“**Non-CAM Trash Removal Charges**” has the meaning ascribed to it under the definition of “Expenses”;

“**Non-Store Locations**” means, collectively, the Distribution Centers and the Corporate Office;

“Occupation Agreements” means the leases, subleases or other occupation agreements relating to the Locations in which the Assets are located and to which the Company is a party;

“Occupancy Expenses” means the costs of occupation as set out on Schedule “A”, on a per diem, per Location (including any percentage rent as may become due and owing in connection with the Sale);

“Overfunded Amount” has the meaning ascribed to it in Section 6.1(f);

“Payment Date” has the meaning ascribed to it in Section 3.2(a);

“Prevailing Discount Adjustment” has the meaning ascribed to it in Section 4.2(a)(iv);

“Privacy Law” means the *Personal Information Protection and Electronic Documents Act* (Canada), the *Freedom of Information and Protection of Privacy Act* (Canada) and any comparable law of any other province or territory of Canada, including, for greater certainty, Canadian Anti-Spam Legislation;

“Privacy Policies” means the Company’s privacy policies and procedures relating to (i) the protection of the privacy and security of Company Personal Information, and (ii) Canadian Anti-Spam Legislation;

“Proceeds” means all cash and non-cash consideration from (i) a sale or other disposition of Merchandise and Remaining Merchandise made under this Agreement, and (ii) all proceeds of Company’s insurance for loss or damage to Merchandise arising from events occurring during the Sale Term, but exclusive of (a) Sales Taxes, (b) credit card and bank card fees and chargebacks, and (c) allowances and customer credits. For the avoidance of doubt, (i) proceeds from the sale of Excluded Goods, (ii) FF&E Proceeds; and (iii) Designated Sundry And Consignment Goods Proceeds, shall not be “Proceeds”;

“Promotional Calendar” means the sales and promotions reflected in the file named “2017 Marketing Calendar -Final-.xlsm” provided to the Agent on July 11, 2017;

“Reconciled In-Transit Receipts” has the meaning ascribed to it in Section 4.1;

“Remaining FF&E” has the meaning ascribed to it in Section 5.1(e);

“Remaining Merchandise” has the meaning ascribed to it in Section 9.1;

“Retail Price” has the meaning ascribed to it in Section 4.2(a)(i);

“Retained Employees” has the meaning ascribed to it in Section 11.1(a);

“Retention Bonuses” has the meaning ascribed to it in Section 11.1(d);

“Retrieval Date” has the meaning ascribed to it in Section 10.3(d);

“**Sale**” means the sale by the Agent of the Merchandise, Designated Sundry Goods, Designated Company Consignment Goods and FF&E during the Sale Term, and, solely with respect to the FF&E, also during the FF&E Removal Period, in accordance with this Agreement;

“**Sale Commencement Date**” shall mean July 21, 2017, or such other date as may be agreed to by Company and Agent with the approval of the Monitor and consent of the Lenders;

“**Sales Guidelines**” means the guidelines attached hereto as Schedule “G”;

“**Sale Term**” means the period starting on the Sale Commencement Date and ending on the Sale Termination Date;

“**Sale Termination Date**” means the date on which the Sale terminates at each Location, which date shall be no later than October 12, 2017 (subject to further extension as may be mutually agreed upon, in writing, by the Agent and the Company, with the approval of the Monitor and the Lenders);

“**Sales Taxes**” has the meaning ascribed to it in Section 12.1(a);

“**Sharing Amounts**” has the meaning ascribed to it in Section 3.5;

“**Unclaimed Delayed Delivery Goods**” has the meaning ascribed to it in Section 10.3(d);

“**Unpaid Company’s Entitlement**” shall have the meaning ascribed to it in Section 13.1(a);

“**Vacate Date**” has the meaning ascribed to it in Section 10.6; and

“**Weekly Sale Reconciliation**” has the meaning ascribed to it in Section 7.1(b).

1.2 Extended Meanings

Words importing the singular include the plural and vice versa, words importing gender include all genders and words importing persons include individuals, partnerships, associations, trusts, unincorporated organisations, corporations and governmental authorities. The term “including” means “including, without limitation,” and such terms as “includes” have similar meanings.

1.3 Schedules

The following Schedules are incorporated in and form an integral part of this Agreement:

Schedule “A”:	Occupancy Expenses
Schedule “B”:	Locations
Schedule “C”:	Merchandise Threshold Adjustments

Schedule “D”:	Cost Factor Thresholds Adjustments
Schedule “E”:	Agent L/C
Schedule “F”:	Inventory Taking Instructions
Schedule “G”:	Sales Guidelines
Schedule “H”:	Form of Approval Order
Schedule “I”:	[Intentionally Omitted]
Schedule “J”:	Company Owned Excluded FF&E
Schedule “K”:	Company’s Designated Account
Schedule “L”:	Company Consignment Goods
Schedule “M”:	[Intentionally Omitted]
Schedule “N”:	[Intentionally Omitted]
Schedule “O”:	Third-Party Owned Excluded FF&E

ARTICLE 2 APPOINTMENT OF AGENT

2.1 Appointment of Agent

The Company hereby appoints the Agent, and the Agent hereby agrees to serve as the Company’s exclusive agent and mandatary for the limited purpose of conducting the Sale at the Locations, disposing of the Merchandise and liquidating the FF&E at all of the Locations, the whole in accordance with the terms and conditions of this Agreement.

The Agent hereby acknowledges that it will not hold itself out as Agent of the Company except as specifically provided for in this Section and that the Agent’s authority as Agent of the Company is limited to the powers specifically provided for in this Agreement.

2.2 No Warranty

Except for the Company’s representations and warranties expressly set forth in this Agreement, the Agent acknowledges that it has made such inspections of the Merchandise and FF&E as it deems appropriate and that neither the Company nor the Monitor have made to the Agent or any other person any representation, warranty or condition, whether statutory (including under the *Sale of Goods Act* (Ontario) or similar legislation), express or implied, oral or written, legal, equitable, collateral or otherwise, as to title, encumbrances, fitness for purpose,

marketability, condition, quantity or quality thereof or in respect of any other matter or thing whatsoever.

ARTICLE 3 CONSIDERATION TO COMPANY AND AGENT

3.1 Guaranteed Amount

(a) Full-Line Stores.

- (i) As a guaranty of Agent's performance hereunder in respect of Full-Line Stores, Agent guarantees that the Company shall receive eighty percent (80%) (the "**Full-Line Guaranty Percentage**") of the aggregate Cost Value of the Full-Line Merchandise (the "**Full-Line Guaranteed Amount**"), which Full-Line Guaranteed Amount shall be paid at such times and in such manner as shall hereinafter be provided. The Full-Line Guaranteed Amount will be calculated based upon the aggregate Cost Value of the Full-Line Merchandise as determined by (A) the Final Inventory Report after verification and reconciliation thereof by Agent and Company and satisfactory to the Monitor; (B) the aggregate Cost Value of the Full-Line Merchandise subject to Gross Rings; and (C) any other adjustments to Cost Value as expressly contemplated by this Agreement.
- (ii) The Full-Line Guaranty Percentage has been fixed based upon the aggregate Cost Value of the Full-Line Merchandise included in the Sale being not less than \$49 million and not more than \$51 million (the "**Full-Line Merchandise Threshold**") as of the Sale Commencement Date. To the extent that the aggregate Cost Value of the Full-Line Merchandise included in the Sale is less than, or greater than, the Full-Line Merchandise Threshold, the Full-Line Guaranty Percentage shall be adjusted in accordance with Schedule "C" annexed hereto.
- (iii) The Full-Line Guaranty Percentage has also been fixed based upon the aggregate Cost Value of the Full-Line Merchandise included in the Sale as a percentage of the aggregate Retail Price of the Full-Line Merchandise included in the Sale, such percentage being 53.3% (the "**Full-Line Cost Factor Threshold**"). To the extent that the ratio of the aggregate Cost Value of the Full-Line Merchandise included in the Sale to the aggregate Retail Price of the Full-Line Merchandise included in the Sale is a percentage greater than the Full-Line Cost Factor Threshold, the Full-Line Guaranty Percentage shall be adjusted in accordance with Schedule "D" annexed hereto.
- (iv) The adjustments to the Full-Line Guaranty Percentage contemplated by Section 3.1(a)(ii) and Section 3.1(a)(iii) shall be independent and cumulative.

(b) Home Stores.

- (i) As a guaranty of Agent's performance in respect of Home Stores hereunder, Agent guarantees that the Company shall receive fifty-two-and-one-half percent (52.5%) (the "**Home Store Guaranty Percentage**") of the aggregate Cost Value of the Home Store Merchandise (the "**Home Store Guaranteed Amount**"), which Home Store Guaranteed Amount shall be paid at such times and in such manner as shall hereinafter be provided. The Home Store Guaranteed Amount will be calculated based upon the aggregate Cost Value of the Home Store Merchandise as determined by (A) the Final Inventory Report after verification and reconciliation thereof by Agent and Company and satisfactory to the Monitor; (B) the aggregate Cost Value of the Home Store Merchandise subject to Gross Rings; and (C) any other adjustments to Cost Value as expressly contemplated by this Agreement.
- (ii) The Home Store Guaranty Percentage has been fixed based upon the aggregate Cost Value of the Home Store Merchandise included in the Sale being not less than \$11.5 million and not more than \$13 million (the "**Home Store Merchandise Threshold**") as of the Sale Commencement Date. To the extent that the aggregate Cost Value of the Home Store Merchandise included in the Sale is less than, or greater than, the Home Store Merchandise Threshold, the Home Store Guaranty Percentage shall be adjusted in accordance with Schedule "C" annexed hereto.
- (iii) The Home Store Guaranty Percentage has also been fixed based upon the aggregate Cost Value of the Home Store Merchandise included in the Sale as a percentage of the aggregate Retail Price of the Home Store Merchandise included in the Sale, such percentage being 43.9% (the "**Home Store Cost Factor Threshold**"). To the extent that the ratio of the aggregate Cost Value of the Home Store Merchandise included in the Sale to the aggregate Retail Price of the Home Store Merchandise included in the Sale is a percentage greater than the Home Store Cost Factor Threshold, the Home Store Guaranty Percentage shall be adjusted in accordance with Schedule "D" annexed hereto.
- (iv) The adjustments to the Home Store Guaranty Percentage contemplated by Section 3.1(b)(ii) and Section 3.1(b)(iii) shall be independent and cumulative.

3.2 Payment of Guaranteed Amount

- (a) On the first (1) business day following the entry of the Approval Order (the "**Payment Date**"), Agent shall pay to Company an amount equal to seventy percent (70%) of the estimated Guaranteed Amount with respect to Merchandise (other than any In-Transit Merchandise) (calculated based upon the estimated aggregate Cost Value of the Full-Line Merchandise and the aggregate Cost Value of the Home Store Merchandise to be included in the Sale as reflected on the Company's books and records maintained in the ordinary course as of the date immediately preceding the Payment Date) (the "**Initial Guaranty Payment**") by wire transfer to the Company's Designated Account. The balance of the

Guaranteed Amount, if any, shall be paid by Agent by wire transfer to the Company's Designated Account on the earlier of (i) thirty (30) days after the Sale Commencement Date and (ii) the second Business Day following the issuance of the final report of the aggregate Cost Value of the Full-Line Merchandise and the aggregate Cost Value of the Home Store Merchandise included in the Sale by the Inventory Taking Service, after review, reconciliation and mutual written verification thereof by Agent and Company and satisfactory to the Monitor, after consultation with the Lenders (the "**Final Inventory Report**" with the date of completion of such reconciliation and issuance of such Final Inventory Report to be referred to as the "**Inventory Reconciliation Date**"); provided, however, that if the Final Inventory Report has not been mutually verified by the Agent and Company and in a form satisfactory to the Monitor by the date that is thirty (30) days after the Sale Commencement Date, the Agent shall pay the undisputed portion of the balance of the Guaranteed Amount (if any) on the first business day following the parties mutual identification of such disputed and undisputed aspects of the Final Inventory Report. To the extent that the Guaranteed Amount has not been paid in full by the date of the Final Inventory Report, Agent shall tender payment of the undisputed portion only on account of any remaining portion of the Guaranteed Amount and any remaining amounts shall be paid upon the resolution of any dispute or as part of the Final Reconciliation.

3.3 Letter of Credit

- (a) To secure the Agent's obligations under this Agreement including, *inter alia*, Agent's obligation to pay the balance of the Guaranteed Amount and the Expenses, and in addition to the Agent indemnification obligations under this Agreement, the Agent shall deliver to the Company, no later than one (1) Business Day after the Payment Date, one or more irrevocable and unconditional standby letters of credit in an aggregate original face amount equal to thirty percent (30%) of the estimated Guaranteed Amount, plus an amount equal to three (3) weeks' estimated Expenses, as estimated by the Agent and the Company, each acting reasonably and in consultation with the Monitor, naming the Company as beneficiary (the "**Beneficiary**"), to the extent it is allowed by the Approval Order, substantially in the form of Schedule "E" attached hereto (the "**Agent L/C**"). The Agent L/C shall be issued by Bank of America, N.A. or another bank selected by the Agent and reasonably acceptable to the Company and the Monitor. The Agent LC shall have an expiry date of no earlier than 60 days after the Sale Termination Date (the "**L/C Date**").
- (b) Unless the parties shall have confirmed that they have completed the Final Reconciliation under this Agreement, then, at least ten (10) days prior to the L/C Date or any subsequent expiry date, the Beneficiary shall receive an amended Agent L/C, with the sole amendment being the extension of the L/C Date (or further extending, as the case may be) by no less than sixty (60) days from the L/C Date (or any subsequent extension thereof). If the Beneficiary fails to receive such amended Agent L/C no later than ten (10) days prior to the expiry date, then all amounts hereunder (including, without limitation, the balance of the Guaranteed Amount, the Company Sharing Recovery Amount and Expenses) shall become immediately due and payable and the Beneficiary shall be entitled to immediately draw the full amount of the Agent L/C and apply such amount to all amounts due and owing hereunder. After applying such draw on the Agent L/C to the amounts owing to the Company under this Agreement, the balance of the amount drawn shall be held as security

for amounts that may become due and payable to the Company hereunder and once all amounts have been paid to the Company, the balance shall be paid to the Agent.

- (c) In the event that Agent fails to pay the undisputed portion of the Guaranteed Amount, the Company Sharing Recovery Amount, or any portion thereof, or any Expenses or other obligation hereunder when due, the Company may draw on the Agent L/C in an amount equal to such unpaid obligations after providing the Agent with two (2) Business Days advance notice and provided the Agent has not paid the undisputed portion of such unpaid obligations prior to the expiration of such two (2) Business Day period.
- (d) The Company and the Agent agree that, from time to time upon the Agent's request, subject to the consent of the Monitor, the face amount of the Agent L/C shall be reduced by the aggregate amount of payments made by the Agent or received by the Company on account of the Guaranteed Amount to the time of each such request provided that at no time shall the face amount of the Agent L/C be reduced to an amount less than the parties' mutually agreed upon estimate of three weeks of estimated Expenses.

3.4 Cash

In addition to the Guaranteed Amount and other amounts payable to the Company hereunder, the Agent shall pay to the Company, in connection with the first Weekly Sale Reconciliation following the making of the Approval Order, an amount equal to the cash in the registers at the Locations as of the Sale Commencement Date (the "**Cash Balance Payment**") on a dollar for dollar basis. An actual count of such cash shall be conducted at each Location by the Agent and the Company, at the start of the Sale Commencement Date prior to any transactions.

3.5 Compensation to Agent and Sharing of Proceeds

After Proceeds are used to repay Agent for amounts paid on account of the Guaranteed Amount and to pay Expenses, all remaining Proceeds shall be allocated in the following order of priority: FIRST: to the Agent in an amount equal to five percent (5%) of the aggregate Cost Value of the Merchandise ("**Agent's Base Fee**"); and THEREAFTER as to any remainder, determined net of Sales Taxes, if any, collectible by the Agent on such amounts: fifty percent (50%) to Agent ("**Agent Sharing Recovery Amount**") and fifty percent (50%) to Company ("**Company Sharing Recovery Amount**") and together with the Agent Sharing Recovery Amount, the "**Sharing Amounts**"). To the extent that Company is entitled to receive any funds on account of the Company Sharing Recovery Amount due to Company, Agent shall pay such Company Sharing Recovery Amount as part of the Final Reconciliation under Section 7.1(c).

ARTICLE 4 INVENTORY TAKING, VALUATION AND EXCLUDED GOODS

4.1 Inventory Taking

Commencing on the Sale Commencement Date, Company and Agent shall cause to be taken a SKU level Cost Value and Retail Price physical inventory of the Merchandise located in the Locations (collectively, the "**Inventory Taking**"), which Inventory Taking shall be completed in each of the Locations as soon as practicable (the date of the Inventory Taking at each

Location being the “**Inventory Date**” for each such Location), but in any event no later than fourteen (14) days after the Sale Commencement Date (subject to the availability of the Inventory Taking Service), and, with respect to Merchandise located in the Distribution Center, conducted by Company and Agent upon transfer to the Locations. In-Transit Merchandise received at the Locations shall be counted and reconciled by the Company and the Agent within five (5) business days after receipt of such goods in the Locations in accordance with the procedures set forth below (“**Reconciled In-Transit Receipts**”). Agent shall tender payment of the portion of the Guaranteed Amount attributable to the Reconciled In-Transit Receipts as part of the Weekly Sale Reconciliations. Company and Agent shall jointly employ RGIS or otherwise mutually agree upon a national inventory taking service (the “**Inventory Taking Service**”). The Inventory Taking shall be conducted in accordance with the procedures and instructions mutually agreed upon by both the Agent and the Company and as set forth on Schedule “F” (the “**Inventory Taking Instructions**”), which shall be prepared and mutually agreed upon by both Company and Agent, in consultation with the Monitor, prior to commencement of the Inventory Taking and shall include procedures for the processing of In-Transit Merchandise that arrives in a Location after the Inventory Date (including as to item-level counting, ticketing, and related matters). As an Expense, Agent shall be responsible for fifty percent (50%) of cost of the Inventory Taking Service. Company shall be responsible for fifty percent (50%) of cost of the Inventory Taking Service. Except as provided in the immediately preceding two sentences, Company and Agent shall each bear their respective costs and expenses relative to the Inventory Taking. Company and Agent, as well as the Monitor, may each have representatives present during the Inventory Taking, and shall each have the right to review and verify the listing and tabulation of the Inventory Taking Service. Company and Agent further agree that until the Inventory Taking in a particular Location is completed, neither the Company nor Agent shall: (i) move Merchandise within or about the Location so as to make any such items unavailable for counting as part of the Inventory Taking; or (ii) remove or add any hang tags, price tickets, inventory control tags affixed to any Merchandise or any other kind of in-store pricing signage within the Location. Company agrees to cooperate with Agent to conduct the Inventory Taking (including without limitation by making available to Agent information relating to sales, units, costs, Cost Value, and Retail Price, and making available to Agent Company’s books, records, work papers and personnel to the extent reasonably necessary to calculate the Cost Value and Retail Price of the Merchandise). The Inventory Taking, including, but not limited to the determination of the aggregate Cost Value of the Full-Line Merchandise and the aggregate Cost Value of the Home Store Merchandise, shall be reconciled by Company and Agent, in consultation with the Monitor, within ten (10) days after its completion, and the Agent and the Company shall use their commercially reasonable efforts to accomplish such reconciliation within such ten (10) day period; provided further, that the Final Inventory Report shall be completed not later than thirty (30) days after the Sale Commencement Date. In the event that there is any dispute with respect to the reconciliation of the aggregate Cost Value of the Full-Line Merchandise or the aggregate Cost Value of the Home Store Merchandise following completion of the Inventory Taking, then any such dispute shall be resolved in the manner and at the times set forth in Section 7.1(d) hereof.

4.2 Valuation

- (a) For purposes of this Agreement, “**Cost Value**” shall mean, with respect to each item of Merchandise (as determined on a SKU by SKU basis), the lower of (i) the lowest cost of such item as reflected in the Merchandise File and (ii) the Retail Price.

- (i) For purposes of this Agreement, “**Retail Price**” shall mean with respect to each item of Merchandise, as determined on a SKU by SKU basis, the lowest of (x) the lowest ticketed, marked, shelf, hang-tag, stickered, or other hard marked price as at the Sale Commencement Date, (y) the lowest SKU or PLU as at the Sale Commencement Date; and (z) the lowest PLU, SKU, article number or file price contained in the Merchandise File, or other file price as reflected in Company’s books and records for such item; provided, however that the definition of Retail Price expressly excludes all Excluded Price Adjustments.
- (ii) For purposes of calculating Retail Price, if an item of Merchandise of the same SKU has more than one ticketed price, file price (as reflected on the Merchandise File), marked price, shelf price, hang-tag price, stickered price, or other hard marked price or if multiple items of the same SKU have different ticketed, file (as reflected on the Merchandise File), marked, shelf, hang-tag, stickered, or other hard marked prices and such pricing does not otherwise qualify as an Excluded Price Adjustment, the lowest ticketed price, file price (as reflect on the Merchandise File), marked price, shelf price, hang-tag price, stickered price, or other hard marked price, on any such item shall prevail for such item or for all such items within the same SKU, as the case may be, that are located within the same Location (as the case may be, the “**Lowest Location Price**”), unless it is determined by Company and Agent, acting reasonably, that the applicable Lowest Location Price was mismarked, normal course markdowns had not been reflected or taken, or such item was priced because it was damaged or marked as “as is,” in which case the correct price shall control; provided, however, in determining the Lowest Location Price with respect to any item of Merchandise at a Location, the Lowest Location Price shall be determined based upon the lowest Retail Price for such item on a per location basis. No adjustment to Retail Price shall be made with respect to different Retail Prices for items located in different Locations.
- (iii) “**Excluded Price Adjustments**” means the following discounts or price adjustments offered by the Company by any means: (i) point of sale discounts or similar adjustments regardless of timing or duration; (ii) member or customer appreciation points or coupons; (iii) multi-unit purchase discounts; (iv) adjustments for damaged, defective or “as-is” items; (v) coupons (Company’s or competitors’) or similar type coupons/promotions, catalog, website, or circular prices, or “buy one get one” type discounts, or similar type discounts or promotions; (vi) customer savings pass discounts or “bounce back” coupons, or discounts for future purchases based on dollar value of past purchases; (vii) obvious ticketing or marking errors; (viii) instant (in-store) or mail in rebates; or (x) similar customer specific, temporary, or employee non-product specific discounts or pricing accommodations;

- (iv) The Cost Value and Retail Price of any item of In-Transit Merchandise that is received in a Location after the 14th day after the Sale Commencement Date, but on or before the Merchandise Receipt Deadline, shall be the otherwise applicable Cost Value and Retail Price of such item (determined in accordance with this Section 4.2(a)), multiplied by the inverse of the excess of the (i) the prevailing Sale discount in effect on the date such item arrives in the applicable Location over (ii) the Retail Price (the “**Prevailing Discount Adjustment**”).
- (b) Notwithstanding the provisions of Section 4.2(a), with respect to each item of Defective Merchandise, the parties shall mutually agree upon the Cost Value (and if Agent and Company are unable to mutually agree on the Cost Value of any one or more items of Defective Merchandise, such items shall be deemed Excluded Defective Merchandise).
- (c) To the extent that there is any material discrepancy in the Merchandise File or the Company’s books and records that is a manifest error, the Cost Value should be determined in a manner that is mutually agreed upon by the Company and the Agent.

4.3 Gross Rings

At each Location, for the period from the Sale Commencement Date until the Inventory Date for such Location, Agent and Company shall jointly keep (i) a strict count of gross register receipts less applicable Sales Taxes but excluding any prevailing Sale discounts offered by Agent (“**Gross Rings**”), and (ii) cash reports of sales within such Location to determine the actual Cost Value of the Merchandise sold by SKU or article number. Registered receipts shall show for each item sold the Retail Price for such item and the mark-down or discount, if any, specifically granted by Agent in connection with the Sale. Agent shall pay that portion of the Guaranteed Amount calculated on the Gross Rings basis, to account for shrinkage, on the basis of 101% of the aggregate Cost Value of Merchandise (without taking into account any of the Agent’s point of sale discount or point of sale mark-downs) sold during the Gross Rings period. All such records and reports shall be made available to Agent and Company during regular business hours upon reasonable notice. Any Merchandise included in the Sale using the Gross Rings method shall be included as Merchandise.

4.4 Excluded Goods

- (a) The Company shall retain all rights and responsibilities in respect of any Excluded Goods. Agent shall cooperate with and assist the Company in dealing with any Excluded Goods, as may be required by the Company, including without limitation, the removal or return of any Excluded Goods to such parties as may be identified by the Company, all at the Company’s sole cost and expense (and not as an Expense). Except as expressly provided in this Section, Agent shall have no cost or expense in connection with any Excluded Goods. If the Company does not elect to have the Agent sell any goods or merchandise that are otherwise Excluded Goods, then all such Excluded Goods (other than FF&E and Excluded FF&E) will be segregated and removed by the Company (or the third-party owner of any such Excluded Goods) from the Locations, at the Company’s sole cost and expense, prior to the Sale Commencement Date, to the extent possible (and in all circumstances, by no later than 30 days following the Sale Commencement Date);

provided, however, that all FF&E and Excluded FF&E (other than Excluded FF&E owned by third parties) shall remain in the Locations during the Sale Term or any portion thereof (unless disposed of in accordance with this Agreement).

- (b) With the approval of the Monitor, the Company and the Agent may mutually agree to include as part of the Sale such Company-owned goods located at the Locations that do not otherwise constitute Merchandise or FF&E (“**Designated Sundry Goods**”) and such Company Consignment Goods as may be designated by the Company to be included in the Sale (provided the Company has obtained all necessary approvals, or authorizations as may be required) (the “**Designated Company Consignment Goods**”), in which case the Agent shall sell such Designated Sundry Goods and such Designated Company Consignment Goods at prices established by the Agent, in consultation with the Company. In consideration for its services in selling the Designated Sundry Goods and such Designated Company Consignment Goods, the Agent shall be entitled to receive a commission (the “**Designated Sundry And Consignment Goods Commission**”) from the Company on the sale of such Designated Sundry Goods and such Designated Company Consignment Goods equal to seventeen-and-one-half percent (17.5%) of the Designated Sundry Goods and Consignment Goods Proceeds.
- (c) All gross proceeds from the disposition of the Designated Sundry Goods and the Designated Company Consignment Goods shall be deposited by the Agent in the Designated Deposit Accounts on a daily basis. All amounts owing to the Agent and the Company hereunder shall be reconciled and paid as part of the Weekly Sale Reconciliation conducted pursuant to Section 7.1(b), and subject to the Final Reconciliation under Section 7.1(c). All Net Designated Sundry And Consignment Goods Proceeds paid to the Company or as it may direct as a result of the sale of any Designated Sundry Goods and any Designated Company consignment Goods by the Agent during the Sale shall not be included in the calculation of the Guaranteed Amount.

ARTICLE 5 FF&E

5.1 Sale of FF&E

- (a) The Agent shall have the exclusive right to dispose of all FF&E. In consideration of its services in selling the FF&E, the Agent shall be entitled to receive a commission (the “**FF&E Commission**”) from the Company on the sale of any FF&E by the Agent during the course of the Sale equal to seventeen-and-one-half percent (17.5%) of the FF&E Proceeds. In addition, the Company shall reimburse the Agent for the Agent’s reasonable out of pocket expenses attributable to the sale or disposition of FF&E which are not duplicative of the Expenses set out herein and are in accordance with the Budget (the “**FF&E Expenses**”). The removal of any FF&E shall be done in a manner consistent with the Sales Guidelines.
- (b) Subject to Section 5.1(h), no later than five (5) days after the relevant Vacate Date for each Home Store and no later than fourteen (14) days after the relevant Vacate Date for each Full-Line Store (in each case, the “**FF&E Removal Deadline**”) and the period commencing

on the Vacate Date and ending on the FF&E Removal Deadline, the “**FF&E Removal Period**”), the Agent shall remove all FF&E (other than Excluded FF&E).

- (c) During the FF&E Removal Period for each Location, the Company shall provide the Agent and its invitees with peaceful use and occupancy and access to each such Location for purposes of selling, disposing, and/or removing the FF&E free of all expenses, including occupancy costs and expenses associated with each such Location, and for Retained Employees, if any, utilized during the FF&E Removal Period, any such expenses will be treated as an FF&E Expense and subject to the Budget.
- (d) All gross proceeds from the disposition of the FF&E shall be deposited by the Agent in the Designated Deposit Accounts on a daily basis. All amounts owing to the Agent (together with Sales Taxes, if any, collectible by Agent thereon) and the Company hereunder shall be reconciled and paid as part of the Weekly Sale Reconciliation conducted pursuant to Section 7.1(b), and subject to the Final Reconciliation under Section 7.1(c). All Net FF&E Proceeds paid to the Company or as it may direct as a result of the sale of any FF&E by the Agent during the Sale shall not be included in the calculation of the Guaranteed Amount.
- (e) Notwithstanding Section 2.1 and subject to Section 5.1(h), any FF&E that is not sold by the Agent prior to the applicable FF&E Removal Deadline in section 5.1(b) (the “**Remaining FF&E**”) shall be removed by the Agent from the applicable Location by no later than such applicable FF&E Removal Deadline. Subject to Section 5.1(h), the Agent, shall be entitled to dispose of the Remaining FF&E, free and clear of all Encumbrances, at Agent’s discretion and all proceeds from the sale or other disposition of such Remaining FF&E will be treated as FF&E Proceeds and any expenses of such removal will be treated as an FF&E Expense and subject to the Budget. The removal of any Remaining FF&E shall be done in a manner consistent with the Sales Guidelines.
- (f) Notwithstanding Sections 5.1(a) and 5.1(b) above, the Agent and the Company, with the consent of the Monitor and Lenders, may agree in lieu of the FF&E Commission, upon a lump sum guaranty with respect to the FF&E, in which case all FF&E Expenses shall be the Agent’s sole and exclusive obligation with respect to the sale of such FF&E. For clarity, the obligations of the Agent with respect to Expenses (including Occupancy Expenses for the Locations) as provided for in this Agreement shall be unaffected by this Section 5.1(f).
- (g) Notwithstanding anything in this Agreement to the contrary, Agent shall not have any obligation whatsoever to cap any electrical or plumbing outlets or purchase, sell, make, store, handle, treat, dispose, or remove any Hazardous Materials from the Locations or otherwise. Agent shall have no liability to any party for any environmental action brought:
 - (i) that is related to the storage, handling, treatment, disposition, generation, or transportation of Hazardous Materials, or
 - (ii) in connection with any remedial actions associated therewith or the Locations. The Company (and not Agent) shall be solely responsible to cap all electrical items and plumbing outlets and to remove all Hazardous Materials from the Locations.
- (h) Notwithstanding anything herein to the contrary, the Company may, in its entire discretion, instruct Agent to abandon any Remaining FF&E in any of the Locations by providing

written notice to the Agent by no later than three (3) days after the receipt of the applicable notice of Vacate Date. If so instructed, as of the FF&E Removal Deadline, the Agent may abandon in place, in a neat and orderly manner, any unsold FF&E at the applicable Location and the Budget and FF&E Expenses shall be reduced by such amounts that would have been spent in connection with the removal of such unsold FF&E. If the Agent chooses to remove any Remaining FF&E notwithstanding receipt of the aforementioned notice from the Company, the Agent shall assume all costs and expenses relating to the removal of such FF&E, which costs and expenses shall not constitute FF&E Expenses and shall retain any proceeds from such sale of Remaining FF&E for its own account.

ARTICLE 6 CONTROL OF PROCEEDS

6.1 Deposit of Proceeds

(a) The Agent shall utilize the Company's existing point-of-sale systems for recording all Sales in the Locations. During the Sale Term, all Proceeds (including credit card Proceeds) and proceeds of the sale of Designated Sundry Goods, Designated Company Consignment Goods, and FF&E shall be collected by the Company and deposited on a daily basis into the Company's existing depository accounts designated by, owned and in the name of, the Company for the Locations (the "**Designated Deposit Accounts**"). The Company shall be deemed to hold such proceeds "in trust" for the Agent and the Company, as the case may be, to be dealt with in accordance with the terms of this Agreement.

(b) Any funds in the Designated Deposit Accounts that do not constitute Proceeds, and/or other amounts payable to Agent under this Agreement shall remain the property of the Company and the Company and Agent shall cooperate with each other to establish and implement appropriate steps and procedures to accomplish a daily reconciliation and remittance to Agent of all Proceeds (including credit card Proceeds), and other such amounts in consultation with the Monitor. The Company shall not be responsible for, and Agent shall pay as an Expense hereunder, all bank fees and charges, including wire transfer charges, related to the Sale and Designated Deposit Accounts, whether received during or after the Sale Term.

(c) Commencing on the first business day following the Payment Date, and continuing on each business day thereafter, Company shall promptly cause payment to be made to Agent by wire transfer of immediately available funds, all funds constituting Proceeds (including, without limitation, Proceeds from credit card sales) that were deposited into the Designated Deposit Accounts for the prior day. Agent shall, within a reasonable period of time after the date of each such payment by Company, notify Company of any shortfall in such payment, in which case, Company shall promptly pay to Agent funds in the amount of any undisputed shortfall.

(d) The Company and Agent further agree that if at any time during the Sale Term, (i) Agent holds any amounts due to Company under this Agreement, Company may, in its discretion, after two (2) business days' notice to Agent, offset such amounts being held by Agent against any undisputed amounts due and owing by, or required to be paid by the Company to Agent hereunder, and (ii) Company holds any amounts due to Agent under this Agreement, Agent may, in its

discretion, after two (2) business days' notice to the Company, offset such amounts being held by the Company against any undisputed amounts due and owing by, or required to be paid by, Agent to the Company hereunder.

(e) All amounts required to be paid by Agent or Company under any provision of this Agreement shall be made by wire transfer of immediately available funds which shall be wired by Agent or Company, as applicable, no later than 5:00 p.m. (prevailing Eastern Time) on the date that such payment is due; provided, that all of the information necessary to complete the wire transfer has been received by Agent or Company, as applicable, by 2:00 p.m. (prevailing Eastern Time) on the date that such payment is due. In the event that the date on which any such payment is due is not a Business Day, then such payment shall be made by wire transfer on the next Business Day.

(f) In the event that the Agent funds or pays all or any portion of the Company's obligations under this Agreement, such funding or payment cannot be recovered by the Agent under Section 6.1(d) by means of an offset, and, as a result of such funding or payment, the Company received more value than the Company would have otherwise received under this Agreement had Agent not funded or paid such obligations, the Company shall pay all such funded or paid amounts to Agent within two (2) Business Days of Agent's request. If and to the extent the Agent over-funds any amounts hereunder, the Company shall, within two (2) Business Days of written demand by Agent, pay to the Agent the over-funded amount (the "**Overfunded Amount**").

6.2 Credit Card and Debit Card Proceeds

Agent shall use Company's credit card or debit card facilities (including the Company's credit card or debit card terminals and processor(s), credit card and debit card processor coding, the Company identification number(s) and existing bank accounts) for credit card and debit card proceeds. The Company shall process such transactions on behalf of Agent and for Agent's account, applying customary practices and procedures. Without limiting the foregoing, the Company shall cooperate with Agent to download data from all credit card and debit card terminals each day during the Sale Term and to effect settlement with the Company's credit and debit card processor(s), and shall take such other actions necessary to process credit and debit card transactions on behalf of Agent under the Company's identification number(s). The Company shall deposit, as received, all credit and debit card Proceeds into the Designated Deposit Account and shall transfer such Proceeds to Agent as set forth in Section 6.1(c) hereof. At Agent's request, the Company shall cooperate with Agent to establish the Company identification numbers under Agent's name to enable Agent to process all credit and debit card Proceeds for Agent's account. The Company shall not be responsible for and Agent shall pay as an Expense hereunder, all credit and debit card fees, charges, and chargebacks related to the Sale, whether received during or after the Sale Term. The Agent shall not be responsible for and Agent shall not pay as an Expense hereunder, all credit and debit card fees, charges and chargeback's unrelated to the Sale, whether received prior to, during or after the Sale Term.

ARTICLE 7
SALE RECONCILIATION

7.1 Reconciliation

- (a) The Company, the Agent and the Monitor shall have access to the Locations and access to all of the books, records and other accounting documents of the Company and the Agent related to the transaction and shall be entitled to all information necessary in order to investigate and audit any information provided in connection with the transactions contemplated under this Agreement.
- (b) On each Thursday during the Sale Term, commencing on the first Thursday after the Sale Commencement Date, the Agent and the Company, in consultation with the Monitor, shall cooperate fully to reconcile Proceeds, Designated Sundry And Consignment Goods Proceeds, Expenses, Gross Rings, the Guaranteed Amount, Agent's Base Fee, Sharing Amounts, sales of FF&E, receipts of In-Transit Merchandise, and such other Sale related items as either party shall reasonably request, in each case for the prior week or partial week (i.e. Sunday through Saturday), all pursuant to procedures agreed upon by the Company and the Agent, in consultation with the Monitor (the "**Weekly Sale Reconciliation**").
- (c) Within thirty (30) days after the Sale Termination Date, the Agent and Company (with the approval of the Monitor and after consultation with the Lenders) shall jointly prepare a final reconciliation of the Sale including, without limitation, a summary of Proceeds, amounts due to the Company under this Agreement, amounts due to the Agent under this Agreement, Sales Taxes, Expenses, FF&E Expenses and any other accountings required hereunder (the "**Final Reconciliation**"). Within five (5) days of completion of the Final Reconciliation, Agent shall pay to the Company, and the Company shall pay to Agent, any and all undisputed amounts due to the other and any undisputed and unpaid Expenses shall be paid by Agent. In the absence of an order of the Court, no disputed amount(s) shall be paid until the dispute has been resolved by agreement of the Parties or as determined in the manner prescribed in this Section 7.1(c) hereof. During the Sale Term, and until all of Agent's obligations under this Agreement have been satisfied, the Company (and the Monitor) and the Agent shall have reasonable access to Company's and Agent's records with respect to Proceeds, Designated Sundry And Consignment Goods Proceeds, FF&E Proceeds, Sales Taxes, Expenses, FF&E Expenses and other Sale-related items to review and audit such records.
- (d) In the event that there is any dispute with respect to either (x) the determination of the aggregate Cost Value of the Home Store Merchandise or aggregate Cost Value of the Full-Line Merchandise as reflected in the Final Inventory Report and/or (y) the Final Reconciliation and/or (z) the determination of an Overfunded Amount, such dispute shall be promptly (and in no event later than the third (3rd) Business Day following the request by either Company or Agent) submitted to the Court for resolution. In the event of a dispute as to (x) or (y) above, Agent shall extend the Agent L/C in accordance with the provisions set forth in Section 3.3.

ARTICLE 8 EXPENSES

8.1 Expenses

- (a) The Agent shall be unconditionally responsible for all Expenses incurred in conducting the Sale during the Sale Term, which Expenses shall be paid by Agent in accordance with Section 8.1(b).
- (b) Agent shall be responsible for the payment of all Expenses out of Proceeds (or from Agent's own accounts if and to the extent there are insufficient Proceeds) after the payment of the Guaranteed Amount. All Expenses incurred during each week of the Sale (i.e. Sunday through Saturday) shall be paid from Proceeds, or if Proceeds are insufficient during such week, by Agent to or on behalf of Company, or paid by Company and thereafter reimbursed by Agent as provided for herein, immediately following the Weekly Sale Reconciliation; provided, however, in the event that the actual amount of an Expense is unavailable on the date of the reconciliation (such as payroll), Company and Agent shall agree to an estimate of such amounts, which amounts will be reconciled once the actual amount of such Expense becomes available. Agent and/or Company may review or audit the Expenses at any time.

ARTICLE 9 REMAINING MERCHANDISE

9.1 Remaining Merchandise

Notwithstanding Section 2.1, to the extent there is Merchandise remaining at the Vacate Date (the "**Remaining Merchandise**"), such Remaining Merchandise shall be deemed transferred to the Agent free and clear of all Encumbrances and Agent shall use commercially reasonable efforts to dispose of all such Remaining Merchandise by means of bulk sale/wholesale or otherwise. The proceeds received by Agent from such disposition shall constitute Proceeds hereunder, the net amount of which allocable to the Company shall be consideration payable for such Remaining Merchandise. To the extent that any of the Remaining Merchandise includes any Merchandise with logos, brand names or other intellectual property of the Company or of any of its affiliates or of any other third party, as may be identified by the Company from time to time, the Agent and the Company shall agree on the disposition terms of such Remaining Merchandise prior to the disposition of same by Agent pursuant to the terms hereof.

ARTICLE 10 CONDUCT OF SALE

10.1 Rights of Agent

- (a) Subject to the issuance of the Approval Order as provided by Section 14.1(a)(i), the Agent shall have the right to peaceful use and occupancy of the Locations for the purpose of conducting the Sale for the duration of the Sale Term and shall be permitted to conduct the Sale as a "**store closing**", "**everything on sale**", "**everything must go**", or **similar themed** sale throughout the Sale Term. The Agent shall conduct the Sale in the name of

and on behalf of the Company in a commercially reasonable manner and in compliance with the Initial Order, the Approval Order, and any further orders of the Court or other court of competent jurisdiction. In addition to any other rights granted to the Agent hereunder, in conducting the Sale, the Agent, in consultation with the Company and the Monitor (and subject to their consent solely where expressly required herein), shall have the following rights, subject to the immediately preceding sentence:

- (i) subject to the Sale Guidelines, to establish and implement advertising, signage (including exterior banners and signs), and promotion programs consistent with the above noted themes, and as otherwise provided in the Approval Order and the Sales Guidelines;
- (ii) to establish Sale prices and discounts (provided that Agent shall provide adequate advanced notice to the Company in respect of any discounts to be implemented through the Company's point of sale systems); and Location hours which are consistent with the terms of applicable Occupation Agreements and local laws or regulations;
- (iii) subject to the Company's Privacy Policies, to have access to, throughout the Sale Term, central office facilities, central administrative services and personnel to process and perform central services for the Sale consistent with historical practices, such as (but not limited to) accounting, point-of-sale administration, inventory handling and processing, warehouse management, information technology, management information system services, sales audit, cash management services, cash and inventory reconciliation, email preparation and distribution, and payroll processing, including any such services as may be provided by third parties or related entities to the Company; (collectively, the "**Central Services**");
- (iv) subject to the Company's Privacy Policies, to use without charge during the Sale Term, and solely for the purposes of the Sale, point of sale systems, advertising materials, Designated Deposit Accounts, computer hardware and software, intangible assets (including the Company's name, logo and tax identification numbers), Location keys, case keys, security codes, and safe and lock combinations required to gain access to and operate the Locations, and mailing services;
- (v) to use reasonably sized offices at the Corporate Office to effect the Sale;
- (vi) subject to Section 10.10, to use (through the Company and its existing procedures and not directly) such customer lists, mailing lists, email lists and web and social networking sites utilized by the Company in connection with its business and related exclusively to the Locations, if any so exist, as may be provided by Company to the Agent, in its sole and unfettered discretion (and in all circumstances, solely in connection with the Sale);
- (vii) to use (through the Company and its existing procedures and not directly) all logos, trademarks, brand names, and other intellectual property utilized

- by the Company in connection with its business (but solely in connection with the Sale); and
- (viii) to utilize the services of subcontractors and/or licensees in connection with the performance of its obligations under this Agreement.
 - (ix) to continue to offer third party delivery, repair and related services that Agent may elect, with the consent of the Company not to be unreasonably withheld, if such relevant services have been or terminated or concluded by the third-party service provider during the Sale Term, in which case any actual associated expenses and revenue shall constitute “Expenses” and “Proceeds”, respectively, hereunder.
- (b) All sales of Merchandise, Designated Sundry Goods, Designated Company Consignment Goods, and FF&E will be “final sales” and “as is,” and all advertisements and sales receipts will reflect the same. The Agent shall not warrant the Merchandise, Designated Sundry Goods, Designated Company Consignment Goods and FF&E in any manner whatsoever. The sale of Merchandise, Designated Sundry Goods, Designated Company Consignment Goods and FF&E and the Proceeds, Designated Sundry And Consignment Goods Proceeds and FF&E Proceeds shall be free and clear of Encumbrances (other than, with respect to the Proceeds, Designated Sundry And Consignment Goods Proceeds, and FF&E Proceeds, the Agent’s Charge and Security Interest). All sales will be made only for cash and by debit cards, by approved cheque and by credit cards (including “Sears” private label credit cards) currently accepted by the Company, and by gift cards as provided for in Section 10.3. The Agent shall clearly mark all receipts for the Merchandise, Designated Sundry Goods, and Designated Company Consignment Goods sold during the Sale Term so as to clearly distinguish such Merchandise, Designated Sundry Goods, and Designated Company Consignment Goods from the goods sold prior to the Sale Commencement Date.
- (c) Agent shall have the right to use, without charge, all existing supplies located at the Locations at the Sale Commencement Date. In the event that additional supplies are required in any of the Locations for use during the Sale, the acquisition of such additional supplies shall be the responsibility of the Agent as an Expense.

10.2 Trade-marks, Trade Names and Advertising

- (a) During the Sale Term, the Agent shall have the right to use the trade names, trademarks and logos of the Company relating to the Merchandise, Designated Sundry Goods, and Designated Company Consignment Goods and used in connection with the operation of the Locations, solely for the purpose of advertising the Sale in accordance with the terms of this Agreement. Agent acknowledges that it is not acquiring any interest in or other rights to Company’s trade names, trade-marks or other intellectual property rights of any nature. Any license fees, royalty payments, or similar amounts due and owing on account of use of any trade names, trademarks, and logos of the Company, its affiliates, or any third party or otherwise related to the Merchandise shall be paid by the Company and shall not constitute an “Expense” hereunder.

- (b) The Agent shall be responsible for paying directly all costs of advertising and such costs shall be an Expense. The Agent will, together with the Company, and the Monitor, work with the relevant landlords of the Locations in order to obtain their support of its proposed advertising.

10.3 Other Sale Matters and Employee Discounts

- (a) Administration of matters such as the Loyalty Program, gift cards, and layaway purchases in connection with the Merchandise shall be the responsibility of the Company; provided however that the Agent shall honour the Company's layaway obligations and shall accept the Company's gift cards and Loyalty Points issued by the Company prior to the Sale Commencement Date (the "**Accepted Credits**") and the Company shall reimburse Agent in cash therefor. The Agent agrees to cooperate fully with the Company in the administration of such matters. Any adjustments required in connection with the Accepted Credits shall be paid for by the Company, accounted for and increase Proceeds on a dollar for dollar basis as part of the Weekly Sale Reconciliation set out in Section 7.1(b).
- (b) It is understood and agreed that during the Sale Term, all employees of the Company and Agent, including the Retained Employees, shall not be entitled to take advantage of any employee discounts at the Locations.
- (c) Subject to Section 10.3(a), as and from the Sale Commencement Date and during the Sale Term, no gift certificates, Company or third party gift cards or Merchandise credits shall be issued or sold by the Agent or the Company and Agent shall not accept any return of Merchandise, Designated Sundry Goods, Designated Company Consignment Goods or FF&E sold in the Sale nor accept or honor any coupons issued by the Company or the Company's competitors.
- (d) At the Company's sole cost and expense, and provided the Company reimburses the Agent as appropriate, the Agent agrees to cooperate fully with the Company in satisfying its obligations in respect of Delayed Delivery Goods. As soon as is reasonably practicable, and in no event later than seven (7) days following the Sale Commencement Date, the Company shall notify all customers having purchased Delayed Delivery Goods that pick-up of such Delayed Delivery Goods must be made by no later than twenty-one (21) days following the Sale Commencement Date (the "**Retrieval Date**"). If a customer has failed to pick up their Delayed Delivery Goods by the Retrieval Date ("**Unclaimed Delayed Delivery Goods**"), such Unclaimed Delayed Delivery Goods shall be retrieved by the Company by no later than fourteen (14) days following the Retrieval Date (unless other arrangements in respect of such goods have been mutually agreed to by the Agent and the Company).
- (e) For the duration of the Sale Term and to the extent that these services continue to be available at each of the relevant Locations, the Company shall provide such delivery, repair and related services as was customarily provided in such Locations as of the date of this Agreement and any associated expenses and revenue shall be paid by and inure to the sole benefit of Company. To the extent possible, such services shall be consistent with the Company's historical practices as to manner and scheduling of delivery and repairs.

10.4 Movement of Merchandise and FF&E

- (a) The Agent may move or consolidate Merchandise, Designated Sundry Goods, and Designated Company Consignment Goods and FF&E from Location to Location, in consultation with the Company and the Monitor, in connection with the closing of Locations or the conduct of the Sale during the Sale Term; provided, however, that (i) Home Store Merchandise may only be transferred between and among Home Stores and Full-Line Merchandise may only be transferred between and among Full-Line Stores, unless otherwise consented to in writing by the Company, and (ii) adequate records of the Merchandise, Designated Sundry Goods, Designated Company Consignment Goods or FF&E being moved are maintained and provided that Agent shall not transfer any such goods between and among the Locations until the Inventory Taking at the transferring and receiving Locations has been completed.
- (b) The Company, in consultation with the Agent, shall be responsible for allocating and designating the shipment of any In-Transit Merchandise from the Company's Distribution Centers to the Locations.

10.5 Access to Locations

- (a) The Company shall provide the Agent with access to the Locations for the purposes of carrying out the Sale. The Company shall be responsible for payment of and shall pay all Occupancy Expenses for the Locations, which are required to ensure the continued occupation of the Locations pursuant to the Occupation Agreements for the purposes of this Agreement until the Sale Termination Date with respect to all of the Locations, subject to being reimbursed for same by the Agent to the extent provided for herein as an Expense.
- (b) The Agent shall also allow such parties as may be identified by the Company or the Monitor, including any potential purchaser of the Company's leases in respect of the Locations, reasonable access to the Locations during normal business hours during the Sale Term to conduct reasonable inspections of such Locations, provided there is no interference with the Sale as determined by the Agent, acting reasonably.

10.6 Sale Term and Surrender of Locations

Subject to the issuance of the Approval Order as provided in Section 14.1(a)(i) hereof, the Sale at each Location shall commence on the Sale Commencement Date and terminate on the Sale Termination Date. The Agent shall be entitled to terminate the Sale of Merchandise, Designated Sundry Goods, and Designated Company Consignment Goods at any Location by providing to the Company prior written notice of its intention to do so by 12:00 pm (EST) on or before the twenty-first (21st) day prior to such termination (as to each such Location, as applicable, the "**Vacate Date**"). On the Vacate Date, the Agent shall vacate the Location in favour of the Company or its representatives or assignee, and remove all Remaining Merchandise. From and after the Vacate Date, the Agent shall continue with the disposal and removal of the FF&E as provided for in section 7 of this Agreement and leave the applicable Location in "broom clean" condition (ordinary wear and tear excepted) by the FF&E Removal Deadline. The Agent's obligations to pay all Expenses, including Occupancy Expenses, for each Location shall continue until the applicable Vacate Date for such Location. All assets of the Company used by the Agent in the conduct of the

Sale (e.g., supplies, etc.) shall be returned by the Agent to the Company or left at the Locations, or disposed of as may be directed by the Company. Where reference is made in this Section to vacating the Locations, such shall mean vacating the Locations, as applicable, in favour of the Company, its representatives or assignee and shall not mean vacating possession or disclaimer of lease in favour of the landlord or owner of the relevant Location. The Agent agrees that it shall be obligated to repair any damage caused by the Agent (or any representative, agent or licensee thereof) to any Location during the Sale Term, ordinary wear and tear excepted.

10.7 Extension of Credit

The Agent shall not extend credit (other than by way of credit cards) to any customer in the course of the Sale.

10.8 Security

The Agent shall be responsible for taking all necessary security measures to provide the same level of security at the Locations as was provided by the Company, and the cost of such measures shall be included as an Expense.

10.9 Right to Monitor

In addition to the Company's and the Monitor's right to review the Agent's books and records relating to the Sale, under Section 7.1(a), the Company and the Monitor shall have the right to monitor the Sale and activities attendant thereto and to be present in all Locations at all times and to share such information with the Lenders.

10.10 Company Personal Information

Agent shall honour and observe, in connection with the transactions contemplated by this Agreement, Company's Privacy Policies and all applicable Privacy Law with respect to the collection, use, transfer, and disclosure of any personal information obtained in connection with this Agreement or the Sale, including personal information about Company's customers and current and former employees ("**Company Personal Information**"). Agent shall collect and use Company Personal Information only for and only to the extent reasonably necessary for the purposes of fulfilling its obligations under this Agreement and the Sale. Agent shall not disclose Company Personal Information to any other person other than to its advisors on a strict need-to-know basis. Agent shall implement and maintain physical, technical and administrative measures to protect and safeguard the Company Personal Information against loss, theft, unauthorised collection, use, disclosure, modification or destruction, including limiting access to the Company Personal Information only to those employees of Agent who need to have access to the Company Personal Information solely for the purposes of Agent rendering its services under the Agreement. Agent shall cause its employees and representatives to strictly observe the terms of this Section 10.10, including to protect and safeguard all Company Personal Information in their possession and control, in accordance with the terms hereof. Agent shall notify Company in writing immediately upon Agent becoming aware of, or suspecting, any loss, theft, damage or unauthorized or unlawful access to, use, disclosure or modification of Company Personal Information, and comply with all instructions of Company in connection therewith. In the event that Agent sends or causes to be sent any Commercial Electronic Messages (as such term is defined

in the Canadian Anti-Spam Legislation), in connection with the Agreement or the Sale, Agent shall do so in full compliance with the Canadian Anti-Spam Legislation and the Privacy Policies.

If either Company or Agent terminates this Agreement as provided herein, Agent shall promptly deliver to Company, or upon written instruction of Company securely destroy, all Company Personal Information in its possession and in the possession of any of its representatives, including all copies, reproductions, summaries or extracts thereof in every media, and certify to Company in writing upon completion of any such delivery or destruction. In the event applicable law does not permit Agent to comply with the delivery or destruction of the Company Personal Information, Agent warrants that it shall ensure the strict confidentiality of the Company Personal Information and that it shall not access, use, disclose or otherwise process any Company Personal Information by or on behalf of Company after termination of the Agreement. Agent shall execute such privacy addendums as Company may require in order to comply with Company's Privacy Policies.

10.11 Force Majeure

If any casualty, act of terrorism or act of God prevents the conduct of business in the ordinary course at any Location for a period in excess of five (5) Business Days, such Location and the Merchandise located at such Location shall, in Agent's discretion, be eliminated from the Sale and considered to be deleted from this Agreement as of the date of such event, and Agent and Company shall have no further rights or obligations hereunder with respect thereto; provided, however, that the proceeds of any insurance attributable to such Merchandise shall constitute Proceeds hereunder, and the Guaranteed Amount shall be reduced to account for any Merchandise eliminated from the Sale which is not the subject of insurance proceeds, and Company shall reimburse Agent for the amount the Guaranteed Amount is so reduced in connection with the next Weekly Sale Reconciliation.

ARTICLE 11 EMPLOYEE MATTERS

11.1 Personnel

- (a) Subject to the applicable provisions of the Approval Order and any other provisions in this Agreement relating to employees, the Company shall provide to the Agent such employees as the Agent may designate from time to time in connection with the conduct of the Sale (each such employee, a "**Retained Employee**"). Retained Employees shall at all times remain employees of the Company, and shall not be considered or deemed to be employees of the Agent. The Company and the Agent agree that except to the extent that wages and benefits of Retained Employees constitute Expenses hereunder, nothing contained in this Agreement and none of Agent's actions taken in respect of the Sale shall be deemed to constitute an assumption by the Agent of any of the Company's obligations or any obligations relating to any of the Retained Employees including, without limitation, Excluded Benefits, notice and severance claims and other obligations, or any other amounts required to be paid by statute or law; nor shall Agent or Company become liable under any collective bargaining or employment agreement or be deemed a joint or successor employer with respect to such Retained Employees. The Company shall not, without the Agent's prior written consent, raise the salary or wages or increase the benefits for, or pay

any bonuses or make any other extraordinary payments to, any of the Retained Employees, except as otherwise provided in this Agreement. The Company shall not transfer any Retained Employee during the Sale Term without the Agent's prior consent.

- (b) The Agent may, in its discretion, stop using any Retained Employee at any time during the Sale. In the event the Agent determines to discontinue its use of any Retained Employee in connection with the conduct of the Sale, Agent will provide written notice to Company at least three (3) business days prior thereto. In the event that the Agent no longer requires the assistance of a Retained Employee due to cause (such as dishonesty, fraud or breach of employee duties), the Agent shall notify the Company forthwith and no prior notice shall be required. Until the Sale Termination Date, the Company shall not transfer or dismiss the Retained Employees except 'for cause' without the Agent's prior consent.
- (c) During the Sale Term, the Company shall process and pay the base payroll and all related payroll taxes, worker's compensation, employment and unemployment insurance, and benefits for all Retained Employees (except for Agent's employees and independent contractors hired by Agent) in accordance with its usual and customary procedures. At the Agent's expense, Company shall also process payroll for additional personnel hired by the Agent for the Sale. For greater clarity, the Company shall have no liability with respect to such additional personnel hired by Agent for the Sale, whether as to salary, notice, pay in lieu of notice, separation pay, severance or any other claim the Company's obligation being limited to providing a payroll service.
- (d) Subject to the prior consent of the Company and the Monitor, which shall not be unreasonably withheld, delayed or denied, Agent may pay, as an Expense, retention bonuses ("**Retention Bonuses**") (which bonuses shall be inclusive of payroll taxes, but as to which no benefits shall be payable). The amount of such Retention Bonuses shall be in an amount to be mutually agreed to by the Agent and Company, and such Retention Bonuses shall be processed through the Company's payroll system and shall not be duplicative of and shall take into account any KERP payments.

ARTICLE 12 SALES TAX AND INSURANCE MATTERS

12.1 Authorizations and Remittance of Taxes

- (a) During the Sale Term, all harmonized sales tax, goods and services tax, and all other sales taxes (collectively, "**Sales Taxes**") attributable to sales of Merchandise, Designated Sundry Goods, Designated Company Consignment Goods and FF&E as indicated on Company's point of sale equipment payable to any taxing authority having jurisdiction shall be added to the sales price of Merchandise, Designated Sundry Goods, Designated Company Consignment Goods and FF&E and collected on Company's behalf, and provided to Company on no less than a weekly basis for deposit in Company's existing accounts, trust accounts or other accounts, as designated by Company. Provided that Agent has collected all Sales Taxes during the Sale and remitted the proceeds thereof to Company, Company shall pay all Sales Taxes and file all applicable reports and documents required by the applicable taxing authorities as and when such amounts become payable; provided, however, notwithstanding anything to the contrary herein, in the event that Agent uses any

system other than Company's point of sale system to compute Sales Taxes relating to the Sale, Agent shall reimburse Company for any additional Sales Taxes, interest, fines, penalties, and the like payable to any taxing authority as the result of a Sales Tax audit conducted by or on behalf of such authority which discloses that the Sales Taxes collected by Agent and paid over to Company for any period during the Sale were less than those mandated by applicable law (any such additional Sales Taxes and other amounts are collectively referred to as “**Additional Taxes and Penalties**”). Company and the Monitor will be given access to the computation of gross receipts for verification of all such Sales Tax collections. Provided that Agent performs its responsibilities in accordance with this Section 12.1, Agent shall have no further obligation to the Company, any taxing authority, or any other party, and Company shall indemnify and hold harmless Agent from and against any and all costs, including, but not limited to, reasonable attorneys’ fees, assessments, fines or penalties which Agent sustains or incurs as a result or consequence of the failure by Company to pay such taxes to the proper taxing authorities and/or the failure by Company to file with such taxing authorities all reports and other documents required by applicable law to be filed with or delivered to such taxing authorities. If Agent fails to perform its responsibilities in accordance with this Section 12.1, and provided Company complies with its obligations in accordance with this Section 12.1, Agent shall indemnify and hold harmless Company from and against any and all costs including, but not limited to, reasonable legal fees, assessments, fines or penalties which Company sustains or incurs as a result or consequence of the failure by Agent to collect Sales Taxes or pay or remit Sales Taxes to Company, and/or, to the extent Agent is required hereunder to prepare reports and other documents, the failure by Agent to promptly deliver any and all reports and other documents required to enable Company to file any requisite returns with such taxing authorities.

- (b) If goods and services tax (or harmonized sales tax in the applicable provinces) under Part IX of the *Excise Tax Act* or Quebec sales tax under *An Act respecting the Quebec sales tax* is exigible on any payment of fees or reimbursement of Expenses hereunder (including by the Company to the Agent for services under this Agreement), the Agent shall promptly provide to the Company any documentation satisfying the statutory requirements in respect of Company’s entitlement to input tax credits, and the Company shall pay to the Agent, any Sales Tax collectible by the Agent on any payment of fees or reimbursement of Expenses (including by the Company to the Agent under this Agreement). All reconciliations of these items shall be completed by Company and Agent in connection with the Final Reconciliation.
- (c) Notwithstanding Section 12.1(a), the Agent shall:
 - (i) pay to Company any Sales Taxes payable on the transfer of the Remaining Merchandise and Remaining FF&E from Company to the Agent; and
 - (ii) shall collect and remit (and not pay to Company) any Sales Taxes collectible by the Agent on any disposition of the Remaining Merchandise and Remaining FF&E by the Agent.

12.2 Insurance

- (a) Company shall continue at its cost and expense until the Sale Termination Date, in such amounts as it currently has in effect, all of its liability insurance policies, including, but not limited to, products liability, comprehensive public liability, auto liability and umbrella liability insurance, covering injuries to persons and property in, or in connection with, Company's operation of the Locations or ownership of the Merchandise; and Company shall cause Agent to be named as an additional named insured (as its interest may appear) with respect to all such policies. Company shall deliver to Agent certificates evidencing such insurance setting forth the duration thereof and naming Agent as an additional named insured, in form reasonably satisfactory to Agent. All such policies shall, on a best efforts basis, require at least thirty (30) days' prior notice to Agent of cancellation, nonrenewal or material change during the Sale Term. In the event of a claim under any such policies, Company shall be responsible for the payment of all deductibles, retentions or self-insured amounts thereunder, unless it is determined that liability arose by reason of the willful misconduct or grossly negligent acts or omissions of Agent, or Agent's employees, independent contractors or agents. The Company shall not make any change in the amount of any deductibles or self-insurance amounts prior to the Sale Termination Date without the Agent's prior written consent.
- (b) Company will provide, as an Occupancy Expense, throughout the Sale Term, fire, flood, theft and extended coverage casualty insurance covering the Merchandise in a total amount equal to no less than the Cost Value thereof, which coverage shall be reduced from time to time to take into account the sale of Merchandise. From and after the date of this Agreement until the Sale Termination Date, all such policies will also name Agent as an additional named insured (as its interest may appear). In the event of a loss to the Merchandise on or after the date of this Agreement, the proceeds of such insurance attributable to the Merchandise (net of any deductible to be paid by the Company or Agent, as applicable), shall constitute Proceeds hereunder. Company shall deliver to Agent certificates evidencing such insurance, setting forth the duration thereof and naming the Agent as an additional insured, in form and substance reasonably satisfactory to Agent. All such policies shall, on a best efforts basis, require at least thirty (30) days' prior notice to the Agent of cancellation, non-renewal or material change during the Sale Term. The Company shall not make any change in the amount of any deductibles or self-insurance amounts prior to the Sale Termination Date without the Agent's prior written consent.
- (c) Agent shall maintain at Agent's cost as an Expense hereunder throughout the Sale Term, in such amounts as it currently has in effect, comprehensive public liability insurance policies covering injuries to persons and property in or in connection with Agent's agency at the Location, and shall cause Company to be named as an additional insured with respect to such policies. Agent shall deliver to Company certificates evidencing such insurance policies setting forth the duration thereof and naming Company as an additional insured, in form and substance reasonably satisfactory to Company. In the event of a claim under any such policies, Agent shall be responsible for the payment of all deductibles, retentions or self-insured amounts thereunder, unless it is determined that liability arose by reason of the willful misconduct or grossly negligent acts or omissions of Company or Company's employees, independent contractors or agents (other than Agent or Agent's employees, agents or independent contractors). Agent shall not make any change in the amount of any deductibles or self-insurance amounts prior to the Sale Termination Date without

Company's prior written consent.

- (d) Company shall at all times during the Sale Term maintain in full force and effect workers' compensation insurance (including employer liability insurance) covering all Retained Employees in compliance with all statutory requirements.
- (e) Without limiting any other provision of this Agreement, the Company acknowledges that the Agent is conducting the Sale on behalf of the Company solely in the capacity of an agent, and that in such capacity (i) the Agent shall not be deemed to be in possession or control of the Locations or the assets located therein or associated therewith, or employees located at the Locations, and (ii) except as expressly provided in this Agreement, the Agent does not assume any of the Company's obligations or liabilities with respect to any of the foregoing. Agent shall not be deemed to be a successor employer. Company and Agent agree that, subject to the terms of this Agreement, the Company shall bear all responsibility for liability claims of customers, Retained Employees and the Company's employees and other persons arising from events occurring at the Locations during and after the Sale Term, except to the extent any such claim is related to the negligent acts or omissions of the Agent, or its employees, agents or independent contractors (other than the Company's employees and the Retained Employees, agents or independent contractors) located at the Locations (an "**Agent Claim**"). In the event of any such liability claim other than an Agent Claim, the Company shall administer such claim and shall present such claim to the Company's liability insurance carrier in accordance with Company's or Company's historic policies and procedures, and shall provide a copy of the initial documentation relating to such claim to the Agent in accordance with Section 18.1. To the extent that the Company and the Agent agree that a claim constitutes an Agent Claim, the Agent shall administer such claim and shall present such claim to its liability insurance carrier, and shall provide a copy of the initial documentation relating to such claim to the Company in accordance with Section 18.1. In the event that the Company and the Agent cannot agree whether a claim constitutes an Agent Claim, each party shall present the claim to its own liability insurance carrier, and a copy of the initial claim documentation shall be delivered to the other party in accordance with Section 18.1.

ARTICLE 13 AGENT'S CHARGE

13.1 Grant of Agent's Charge and Security Interest

- (a) In consideration of and subject to the payment of the Initial Guaranty Payment and the issue of the Agent L/C, to secure its obligations to Agent hereunder and all amounts owing by Company to Agent pursuant to the terms of this Agreement, effective as of the Payment Date, the Company hereby grants to the Agent a first ranking priority charge and security interest in and lien, ranking ahead of all Encumbrances, upon the Merchandise, the Proceeds, the Designated Sundry And Consignment Goods Proceeds (to the extent of the Designated Sundry And Consignment Goods Commission), and the FF&E Proceeds (to the extent of the FF&E Commission) ("**Agent's Charge and Security Interest**") provided, however, that until payment in full to the Company of the Guaranteed Amount, the Company's Sharing Recovery Amount, the Net FF&E Proceeds, the Net Designated Sundry And Consignment Goods Proceeds and all other amounts owing to the Company

by the Agent hereunder (collectively, the “**Unpaid Company’s Entitlement**”), the Agent’s Charge and Security Interest shall be junior and subordinate in all respects to all Encumbrances, but solely to the extent of any Unpaid Company’s Entitlement.

- (b) The Approval Order shall provide that the Agent’s Charge and Security Interest shall be automatically perfected without the necessity of the filing or registration of financing statements or other documents and valid and enforceable and deemed perfected as against all charged property and against all persons, including, without limitation, any trustee in bankruptcy, receiver, receiver and manager or interim receiver of the Company, for all purposes without the need for any further action by or on behalf of the Company or the Agent. The Company shall execute and deliver all such documents and take all such other actions as are reasonably required to perfect and maintain such charge and security interest as a valid and perfected first ranking priority security interest.

ARTICLE 14 ORDERS

14.1 Orders

- (a) The obligations of the Company and the Agent hereunder are subject to and conditional upon the following:
- (i) the Company shall have obtained by no later than July 19, 2017 (the “**Court Condition Date**”) an Order of the Court, substantially in the form attached hereto as Schedule “H” and otherwise satisfactory to the Company, the Agent, the Monitor, and the Lenders authorizing the Sale and the transactions contemplated under this Agreement in accordance with the terms hereof (the “**Approval Order**”); and the Approval Order shall not have been stayed, varied, or vacated and shall be final and executory and no Appeal shall have been launched and
 - (ii) no Order shall have been made which in any material respect limits or impairs the ability of the Agent to carry out the terms of this Agreement and to obtain the benefits therefrom.
- (b) The Company covenants and agrees to proceed as expeditiously as possible and to use reasonable commercial efforts to obtain the Approval Order.
- (c) In the event that the Company is unsuccessful in obtaining the Approval Order, the Company, the Monitor, and the Agent may elect, in writing and with the consent of the Lenders, to extend the Court Condition Date to allow the Company to continue to attempt to obtain the Approval Order.
- (d) If the conditions contained in this section are not satisfied at the time or during the time periods specified therein, or if applicable, waived by the parties, then the parties agree that:
- (i) all the obligations of the Company, the Monitor, and the Agent pursuant to this Agreement shall be at an end; and

- (ii) neither party shall have a right to specific performance or other remedy against, or any right to recover damages or expenses from the other.

ARTICLE 15 DEFAULTS AND TERMINATION

15.1 Events of Default

The following shall constitute "Events of Default" hereunder:

- (a) The Company's or the Agent's failure to perform any of their respective material obligations hereunder, which failure shall continue uncured seven (7) days after receipt of written notice thereof to the defaulting Party; or
- (b) Any representation or warranty made by the Company or the Agent proves untrue in any material respect as of the date made or at any time and throughout the Sale Term and, to the extent curable, shall continue uncured ten (10) days after receipt of written notice thereof to the defaulting Party; or
- (c) Subject to Section 10.11 hereof, the Sale is terminated or materially interrupted or impaired at any Location for any reason other than (i) an Event of Default by the Agent, or (ii) any other material breach or action by the Agent not authorized hereunder; or
- (d) The Company becomes subject to a bankruptcy under the *Bankruptcy and Insolvency Act* (Canada) and the Agent's rights under this agreement are terminated or materially impaired for any reason other than (i) an Event of Default by the Agent, or (ii) any other material breach or action by the Agent not authorized hereunder.

15.2 Termination

In the event of an Event of Default, the non-defaulting Party in the case of a Default under subsection 15.1(a) or 15.1(b) or Agent in the case of subsection 15.1(c) may, in its discretion, elect to terminate this Agreement upon seven (7) Business Days' written notice to the other Party and pursue any and all rights and remedies and damages resulting from such default hereunder in the event such default is not cured by the defaulting Party within 48 hours. In the event of an Event of Default under subsection 15.1(d) the Agent, in its discretion may elect to terminate this Agreement on three (3) Business Day's written notice to the Company and pursue any and all rights and remedies and damages resulting from such default hereunder in the event such default is not cured by the Company within 48 hours.

ARTICLE 16 REPRESENTATIONS

16.1 Representations of the Company

The Company hereby represents, warrants, covenants and agrees in favour of the Agent as follows:

- (a) subject to the issuance of the Approval Order:

- (i) the Company has the right, power and authority to execute and deliver this Agreement and each other document and agreement contemplated hereby (collectively, together with this Agreement, the “Agency Documents”) and to perform its obligations thereunder;
 - (ii) the Company has taken all necessary actions required to authorize the execution, delivery and performance of the Agency Documents, and no further consent or approval is required for the Company to enter into and deliver the Agency Documents, to perform its obligations thereunder, and to consummate the transactions contemplated hereby;
 - (iii) each of the Agency Documents has been duly executed and delivered by the Company and constitutes the legal, valid and binding obligation of the Company enforceable in accordance with its terms;
 - (iv) no court order or decree of any federal, provincial or local governmental authority or regulatory body is in effect that would prevent or impair, or is required for the Company’s consummation of, the transactions contemplated by this Agreement, and no consent of any third party which has not been obtained is required therefor; and
 - (v) no contract or other agreement to which the Company is a party or by which the Company is otherwise bound will prevent or impair the consummation of the Sale and the other transactions contemplated by this Agreement;
- (b) Other than as disclosed by the Company to the Agent in writing during the Agent’s diligence process, it has maintained its pricing files (including the Merchandise File) in the ordinary course of business and has not and shall not alter such files outside the ordinary course of business;
- (c) Other than as disclosed by the Company to the Agent in writing during the Agent’s diligence process, it has not marked up or increased the ticket price affixed to Merchandise at the Locations, and as of the date of this Agreement to the Sale Commencement Date, it shall not mark up or raise the price of any items of Merchandise or remove any indicia of sale or clearance at the Locations, without the consent of the Agent;
- (d) as and from the date of this Agreement until the Sale Commencement Date, it shall not implement any promotions, markdowns or discounts of Merchandise at the Locations (including, without limitation, point-of-sale discounts and other similar promotions, regardless of whether consistent with Company’s ordinary course of business), without the consent of the Agent, except as provided for in the Promotional Calendar, and shall ticket or mark all items of inventory received at the Locations prior to the Sale Commencement Date, in a manner consistent with similar Merchandise located at the Locations and in accordance with the Company’s historic practices and policies relative to pricing and marking inventory.
- (e) to the best of Company’s knowledge, all Merchandise is in compliance with all applicable

federal, provincial or local product safety laws, rules and standards. The Company shall provide the Agent with the Company's historic policies and practices, if any, regarding product recalls prior to the Sale Commencement Date;

- (f) the Company has not and shall not, throughout the Sale Term, take any action which may result in materially increasing the cost of operating the Sale, including, without limitation, increasing salaries or other amounts payable to Retained Employees;
- (g) to the best of Company's knowledge, it has paid, shall pay and shall continue to pay, all self-insured or company-funded employee benefits programs, including health benefits and insurance, including all proper claims made or to be made under such programs, in respect of the Retained Employees;
- (h) to the best of Company's knowledge, no action, arbitration, suit, notice, or legal, administrative or other proceeding before any court or governmental body has been instituted by or against the Company, or has been settled or resolved, or to the Company's knowledge affects the Company, relative to the Company's business or properties, or which questions the validity of this Agreement, or that if adversely determined, would adversely affect the conduct of the Sale;
- (i) to the best of Company's knowledge, the Company (i) is not a party to any collective bargaining agreements with its employees at the Locations other than at store number 001311 (St. George de Beauce), (ii) no labour unions represent the Company's employees at the Locations, and (iii) there are currently no strikes, work stoppages or other labour disturbances affecting the Locations; and
- (j) from and after the date of this Agreement, the Company shall not ship any goods to the Locations except for In-Transit Merchandise to the extent that any such goods have not been received at the Locations as at the date of the Agreement, nor shall it ship any goods from the Locations, except with Agent's consent.

16.2 Representations of the Agent

Agent hereby represents, warrants, covenants and agrees in favour of the Company, as follows:

- (i) Each entity comprising Agent (i) is an unlimited liability company or corporation, as the case may be, duly organized, and validly existing and in good standing under the laws of the jurisdiction of its formation; (ii) has all requisite power and authority to carry on its business as presently conducted and to consummate the transactions contemplated hereby; (iii) is entering into this Agreement as principal and not as agent for another person; and (iv) during the Sale Term will continue to be, duly authorized and qualified to do business and in good standing in each jurisdiction where the nature of its business or properties requires such qualification, including all jurisdictions in which the Locations are located, except, in each case, to the extent that the failure to be in good standing or so qualified could not reasonably be expected to have a material adverse effect on the

ability of Agent to execute and deliver this Agreement and perform fully its obligations hereunder.

- (ii) Agent has the right, power and authority to execute and deliver each of the Agency Documents to which it is a party and to perform fully its obligations thereunder. Agent has taken all necessary actions required to authorize the execution, delivery and performance of the Agency Documents, and no further consent or approval is required on the part of Agent for Agent to enter into and deliver the Agency Documents, to perform its obligations thereunder and to consummate the Sale. Each of the Agency Documents has been duly executed and delivered by the Agent and constitutes the legal, valid and binding obligation of Agent enforceable in accordance with its terms. No court order or decree of any federal, provincial or local governmental authority or regulatory body is in effect that would prevent or impair, or is required for, Agent's consummation of the transactions contemplated by this Agreement, and no consent of any third party which has not been obtained is required therefor, other than as provided herein. No contract or other agreement to which Agent is a party or by which Agent is otherwise bound will prevent or impair the consummation of the transactions contemplated by this Agreement.
- (iii) No action, arbitration, suit, notice or legal administrative or other proceeding before any court or governmental body has been instituted by or against Agent, or has been settled or resolved or, to Agent's knowledge, has been threatened against or affects Agent, which questions the validity of this Agreement or any action taken or to be taken by Agent in connection with this Agreement or which, if adversely determined, would have a material adverse effect upon Agent's ability to perform its obligations under this Agreement.
- (iv) The Sale shall be conducted in compliance with this Agreement, the Approval Order, and the Sale Guidelines.
- (v) Absent prior consent by the Company, Agent will not cause any non-emergency repairs or maintenance (emergency repairs are repairs necessary to preserve the security of a Location premise or to ensure customer safety) to be conducted at the Locations.
- (vi) Each entity comprising Agent shall be duly registered, by no later than the Sale Commencement Date, under Subdivision (d) of Division V of Part IX of the *Excise Tax Act* (Canada) with respect to the goods and services tax and harmonized sales tax and under Division I of Chapter VIII of Title I of *An Act respecting the Quebec sales tax* with respect to the Quebec sales tax. The Agent's registration number is as follows: (i) 814418836 RT0001 for Gordon Brothers Canada ULC; (ii) 810929034 RT0001 for Merchant Retail Solutions ULC; (iii) 845025105 RT0001 for Tiger Capital Group, LLC; and (iv) 814306783 RT0001 for GA Retail Canada ULC.

- (vii) Each entity comprising Agent is not a non-resident of Canada for purposes of the *Income Tax Act* (Canada).

ARTICLE 17 INDEMNIFICATION

17.1 Company Indemnification

Company shall indemnify and hold the Agent and its officers, directors, employees, agents and independent contractors harmless from and against all claims, demands, penalties, losses, liability or damage, including, without limitation, reasonable attorneys' fees and expenses, asserted directly or indirectly against the Agent (including acts or omissions of persons or entities affiliated with or acting on behalf of the Company) resulting from, or related to:

- (a) the Company's material breach of or failure to comply with any of its agreements, covenants, representations or warranties contained in any Agency Documents;
- (b) subject to the Agent's performance and compliance with its obligations relating to Retained Employee's wages, salaries and benefits under the terms of this Agreement, any failure of Company to pay to the Retained Employees any wages, salaries or benefits due to such employees during the Sale Term or other claims asserted against the Agent by the Retained Employees resulting from the Company's (and not Agent's) treatment of its employees;
- (c) subject to Agent's compliance with its obligations under Section 12.1 hereof, any failure by the Company to pay any Sales Taxes to the proper taxing authorities or to properly file with any taxing authorities any reports or documents required by applicable law to be filed in respect thereof; and
- (d) the gross negligence or willful misconduct of the Company or any of its officers, directors, employees, agents (other than Agent) or representatives.

17.2 Agent Indemnification

Agent shall indemnify and hold the Company and its officers, directors, employees, agents and representatives harmless from and against all claims, demands, penalties, losses, liability or damage, including, without limitation, reasonable attorneys' fees and expenses, asserted directly or indirectly against, the Company (including acts or omissions of persons or entities affiliated with or acting on behalf of Agent) resulting from, or related to:

- (a) the Agent's material breach of or failure to comply (subject to the Approval Order) with any public health and safety laws or any of its agreements, covenants, representations or warranties contained in any Agency Document;
- (b) in the event that the Agent uses any system other than the Company's point of sale system to compute Sales Taxes relating to the Sale, any Additional Taxes and Penalties;
- (c) any obligation for, or on account of, withholding taxes including interest and penalties applicable thereto, exigible in respect of any payments or disbursements made to Agent under the terms of this Agreement, other than as a result of the Company's failure to remit

any withheld amount; and

- (d) the gross negligence or willful misconduct of the Agent or any of its officers, directors, employees, agents or representatives.

**ARTICLE 18
GENERAL**

18.1 Notices

Any demand, notice or other communication to be given in connection with this Agreement shall be given in writing and shall be given by personal delivery (in which case it shall be left with a responsible officer of the recipient) or by electronic communication addressed to the recipient as follows:

in the case of the Agent:

GORDON BROTHERS CANADA ULC
c/o Gordon Brothers Group
Prudential Tower
800 Boylston Street
Boston, MA 02119

Attn: Mackenzie Shea
Tel: 617.422.6519
Email: mshea@gordonbrothers.com

And

MERCHANT RETAIL SOLUTIONS ULC
C/O Hilco Merchant Resources, LLC
5 Revere Drive, Suite 206
Northbrook, IL 60062 USA

Attention: Ian S. Fredericks
Tel: (847) 418-2075
Fax: (847) 897-0859
Email: ifredericks@hilcotrading.com

And

TIGER CAPITAL GROUP, LLC
60 State Street, 11th Floor
Boston, MA 02109 USA

Attention: Bradley W. Snyder
Email: bsnyder@tigergroup.com

And

GREAT AMERICAN GROUP, LLC
21255 Burbank Blvd., Suite 400
Woodland Hills, CA 91367

Attention: Scott K. Carpenter
Email: scarpenter@greatamerican.com

with a copy to:

Davies Ward Phillips & Vineberg LLP
1501 McGill College Avenue
Montréal QC H3A 3N9
Canada

Attn: William Rosenberg
Denis Ferland
Email: wrosenberg@dwpv.com
dferland@dwpv.com

and a copy to:

Stikeman Elliott LLP
1155 Boulevard René-Lévesque West, 40th Floor,
Montréal, QC
H3B 4P7 Canada

Attention: Elizabeth Pillon/Guy P. Martel
Email: lpillon@stikeman.com
gmartel@stikeman.com

in the case of the Company:

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

Attention: Billy Wong
Email: billy.wong@sears.ca

with a copy to:

Osler, Hoskin & Harcourt LLP
100 King Street
West 1 First Canadian Place - Suite 6200
Toronto ON M5X 1B8

Attn: Marc Wasserman
Sandra Abitan
Email: mwasserman@osler.com
sabitan@osler.com

in the case of the Monitor:

FTI Consulting Canada Inc.
79 Wellington Street West, Suite #2010
Toronto, ON M5K 1G8

Attn: Steven Bissell
Email: steven.bissell@fticonsulting.com

with a copy to :

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

Attn: Virginie Gauthier
Evan Cobb
Email: virginie.gauthier@nortonrosefulbright.com
evan.cobb@nortonrosefulbright.com

or to such other address, individual or electronic communication number as may be designated by notice given by either party to the other. Any demand, notice or other communication shall be conclusively deemed to have been given, if given by personal delivery, on the day of actual delivery thereof and, if given by electronic communication, on the day of transmittal thereof if transmitted during normal business hours of the recipient on a Business Day and on the Business Day following the transmittal thereof if not so transmitted. Where the Company receives notice under this agreement, the Company shall promptly provide a copy of such notice to the Lenders.

18.2 Time of Essence

Time shall, in all respects, be of the essence hereof, provided that the time for doing or completing any matter provided for herein may be extended or abridged by an agreement in writing signed by the Company and the Agent or by their respective solicitors.

18.3 Currency

All references herein to money amounts are in Canadian currency, unless otherwise noted herein.

18.4 Further Assurances

Each party shall from time to time execute and deliver, or cause to be executed and delivered, all such documents and instruments and do, or cause to be done, all such acts and things as the other party may reasonably require to effectively carry out or better evidence or perfect the full intent and meaning of this Agreement.

18.5 Obligations to Survive

The obligations, representations and warranties of the Parties hereto shall survive the consummation of the Agency Documents.

18.6 Entire Agreement

This Agreement constitutes the only agreement between the parties with respect to the subject matter hereof and supersedes any and all prior negotiations and understandings. No amendment of this Agreement shall be binding unless in writing and signed by the parties. No waiver by a party of any breach of this Agreement shall take effect or be binding upon the party unless it is in writing and signed by the party and, unless otherwise expressly stated therein, any such waiver shall be limited to the specific breach waived.

18.7 Governing Law

This Agreement shall be governed and construed in accordance with the law of the Province of Ontario, without regard to conflicts of laws principles thereof and all disputes relating directly or indirectly to this agreement shall be resolved (i) in first instance by the Court, and (ii) thereafter, by the courts having jurisdiction in Ontario (including Canada's federal court system). By execution of this Agreement, each party hereby irrevocably accepts and submits to the jurisdiction of such court with respect to any such action or proceeding and to service of process by certified mail, return receipt requested to the address listed above for each party.

18.8 Benefit of Agreement

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. Except for the right of syndication in Section 18.14 hereof, the Agent shall not assign the benefit of, or any rights under, this Agreement without the prior written consent of the Company and approval of the Court. The Company shall not assign the benefit of this Agreement without the prior written consent of the Agent, which shall not be

unreasonably withheld or delayed. With the consent of the Company to confirm such assignment is not of a beneficial interest, which consent shall not be unreasonably withheld, any JV Member may pledge or assign a security interest in its rights to receive its pro rata portion of amounts due under this Agreement to secure obligations of such JV Member. Notwithstanding the consent of the Company to any such assignment, the JV Member shall not be relieved of any of its obligations or indemnities as Agent under this Agreement.

18.9 Severability

If any provision of this Agreement or any document delivered in connection with this Agreement is partially or completely invalid or unenforceable, the invalidity or unenforceability of that provision shall not affect the validity or enforceability of any other provision of this Agreement, all of which shall be construed and enforced as if that invalid or unenforceable provision were omitted. The invalidity or unenforceability of any provision in one jurisdiction shall not affect such provisions validity or enforceability in any other jurisdiction.

18.10 Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which shall constitute one and the same Agreement. This Agreement may be executed by facsimile or other electronic transmission, and such facsimile or electronic signature shall be treated as an original signature hereunder.

18.11 Language

The parties have specifically required that the present agreement and all related documents be drafted and executed in English. *Les parties aux présentes ont formellement demandé à ce que la présente convention et tous les documents auxquels celle-ci réfère soient rédigés et signés en langue anglaise.*

18.12 Canadian Withholding Tax

All disbursement and payments made to Agent hereunder shall be paid net of applicable taxes, including for greater certainty taxes required to be withheld and remitted pursuant to Regulation 105 of the *Income Tax Act* (Canada) and/or section 1015R1.18 of the *Regulation Respecting the Taxation Act* (Quebec) as may be determined by the Company in its discretion (exercised on the basis of ensuring no reasonable risk of liability to the Company on account of any such obligation to withhold and remit).

18.13 Dispute Resolution Mechanism

The parties hereto shall refer to the Court any disputes under this Agreement which are not promptly resolved by the parties.

18.14 Joint and Several Liability

To the extent that there are multiple entities that comprise the Agent, each of the entities that comprise the Agent hereunder hereby irrevocably and unconditionally agree that it is jointly and severally liable for all of the liabilities, obligations, covenants and agreements of the Agent

hereunder, whether now or hereafter existing or due or to become due. The obligations of each of the entities that comprise the Agent hereunder may be enforced by the Company against any such entity comprising the Agent or all of the entities that comprise the Agent in any manner or order as determined by the Company in its sole discretion. Each entity comprising the Agent hereby irrevocably waives, for the benefit of the Company, any defense to payment based on (i) any rights of subrogation, (ii) any rights of contribution, indemnity or reimbursement, and (iii) all suretyship defenses generally, in each case, that it may acquire or that may arise against the Company due to any payment or performance made under this Agreement.

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IN WITNESS WHEREOF, each party have caused this Agreement to be signed and delivered by its duly authorized representative(s).

SEARS CANADA INC.

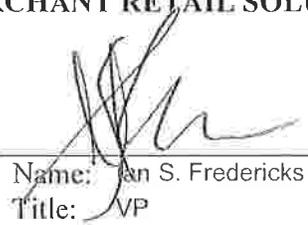
By: P. KAWAN
Name: P. MOWAT
Title: SECRETARY

GORDON BROTHERS CANADA ULC

By: 
Name: *Richard Edwards*
Title: *Co-President - Retail*

MERCHANT RETAIL SOLUTIONS ULC

By: _____



Name: Ian S. Fredericks
Title: VP

TIGER CAPITAL GROUP, LLC

By: 
Name: Michael McGrail
Title: COO

GA RETAIL CANADA ULC

By: 
Name: Alan N. Forman
Title: EUP:GC

SCHEDULE A
Occupancy Expenses
(see attached)

Occupancy Costs - by Location Per Diem
 Schedule A - Full Line Stores

Store ID	Rent	Property Taxes	Utilities	Maintenance	Insurance	Total Occupancy Costs	Retail Channel
001417-REGINA - CORNWALL	\$						Full Line
001678-SAINT JOHN	\$						Full Line
001430-GRANDE PRAIRIE	\$						Full Line
001318-ALMA	\$						Full Line
001311-ST GEORGE DE BEAUCE	\$						Full Line
001646-BATHURST	\$						Full Line
001434-PRINCE ALBERT	\$						Full Line
001082-SAULT STE. MARIE*	\$						Full Line
001019-OTTAWA-HULL	\$						Full Line
001647-CORNERBROOK	\$						Full Line
001383-DRUMMONDVILLE	\$						Full Line
001624-DARTMOUTH	\$						Full Line
001431-MOOSE JAW	\$						Full Line
001618-TRURO	\$						Full Line
001435-LLOYDMINSTER	\$						Full Line
001047-BROCKVILLE	\$						Full Line
001029-CHICOUTIMI	\$						Full Line
001839-KAMLOOPS - ABERDEEN MALL	\$						Full Line
001448-RED DEER RELOCATION	\$						Full Line
001428-MEDICINE HAT	\$						Full Line
Total	\$						

*Store 001082 has a percentage of rent component based on a 12 month period. For the purposes of this Schedule, the Company has assumed a an annual rate to sale of [REDACTED]

Occupancy Costs - by Location Per Diem
 Schedule A - Home Stores

Store ID	Rent	Property Taxes	Utilities	Maintenance	Insurance	Total Occupancy Costs	Retail Channel
001382-EDMONTON NORTH HOME	\$						Home
001357-CALGARY SOUTH HOME	\$						Home
001336-ANCASTER HOME	\$						Home
001353-LONDON HOME	\$						Home
001395-WINDSOR HOME	\$						Home
001354-SCARBOROUGH HOME	\$						Home
001342-WOODBRIDGE HOME	\$						Home
003801-ORILLIA HOME	\$						Home
001381-SUDBURY HOME	\$						Home
001364-KINGSTON HOME	\$						Home
001365-OTTAWA EAST HOME	\$						Home
001348-LAVAL HOME	\$						Home
001346-ST. BRUNO HOME	\$						Home
001352-QUEBEC CITY HOME	\$						Home
001394-STE FOY HOME	\$						Home
Total	\$						

SCHEDULE B

Locations

(see attached)

Channel	Stores
Full Line	001417-Regina - Cornwall
Full Line	001678-Saint John
Full Line	001430-Grande Prairie
Full Line	001318-Alma
Full Line	001311-St George De Beauce
Full Line	001646-Bathurst
Full Line	001434-Prince Albert
Full Line	001082-Sault Ste. Marie
Full Line	001019-Ottawa-Hull
Full Line	001647-Cornerbrook
Full Line	001383-Drummondville
Full Line	001624-Dartmouth
Full Line	001431-Moose Jaw
Full Line	001618-Truro
Full Line	001435-Lloydminster
Full Line	001047-Brockville
Full Line	001029-Chicoutimi
Full Line	001839-Kamloops - Aberdeen Mall
Full Line	001448-Red Deer Relocation
Full Line	001428-Medicine Hat
Home	001382-Edmonton North Home
Home	001357-Calgary South Home
Home	001336-Ancaster Home
Home	001353-London Home
Home	001395-Windsor Home
Home	001354-Scarborough Home
Home	001342-Woodbridge Home
Home	003801-Orillia Home
Home	001381-Sudbury Home
Home	001364-Kingston Home
Home	001365-Ottawa East Home
Home	001348-Laval Home
Home	001346-St. Bruno Home
Home	001352-Quebec City Home
Home	001394-Ste Foy Home

SCHEDULE C
Merchandise Threshold Adjustments
(see attached)

Sears Canada
 Schedule C
 Merchandise Thresholds - Full Line

Cost Value	Adjustment Points	Adjusted Guaranty
59,000,000	0.45%	73.00%
58,600,000	0.45%	73.45%
58,200,000	0.45%	73.90%
57,800,000	0.45%	74.35%
57,400,000	0.40%	74.80%
57,000,000	0.40%	75.20%
56,600,000	0.40%	75.60%
56,200,000	0.40%	76.00%
55,800,000	0.35%	76.40%
55,400,000	0.35%	76.75%
55,000,000	0.35%	77.10%
54,600,000	0.35%	77.45%
54,200,000	0.30%	77.80%
53,800,000	0.30%	78.10%
53,400,000	0.30%	78.40%
53,000,000	0.30%	78.70%
52,600,000	0.25%	79.00%
52,200,000	0.25%	79.25%
51,800,000	0.25%	79.50%
51,400,000	0.25%	79.75%
51,000,000		80.00%
49,000,000		80.00%
48,600,000	0.05%	79.95%
48,200,000	0.05%	79.90%
47,800,000	0.05%	79.85%
47,400,000	0.05%	79.80%
47,000,000	0.10%	79.70%
46,600,000	0.10%	79.60%
46,200,000	0.10%	79.50%
45,800,000	0.10%	79.40%
45,400,000	0.15%	79.25%
45,000,000	0.15%	79.10%
44,600,000	0.15%	78.95%
44,200,000	0.15%	78.80%
43,800,000	0.20%	78.60%
43,400,000	0.20%	78.40%
43,000,000	0.20%	78.20%
42,600,000	0.20%	78.00%
42,200,000	0.25%	77.75%
41,800,000	0.25%	77.50%
41,400,000	0.25%	77.25%
41,000,000	0.25%	77.00%

Note(s):

- Adjustments between the increments shall be on a prorata basis.
- In the event that the Cost value of the Merchandise is greater than \$59,000,000, each \$400,000 (or pro rata portion thereof) increment shall decrease the Guaranty by 0.50%.
- In the event that the Cost value of the Merchandise is less than \$41,000,000, each \$400,000 (or pro rata portion thereof) increment shall decrease the Guaranty by 0.30%.

Sears Canada
 Schedule C
 Merchandise Thresholds - Home

Cost Value	Adjustment Points	Adjusted Guaranty
14,000,000	0.45%	45.50%
13,950,000	0.45%	45.95%
13,900,000	0.45%	46.40%
13,850,000	0.45%	46.85%
13,800,000	0.40%	47.30%
13,750,000	0.40%	47.70%
13,700,000	0.40%	48.10%
13,650,000	0.40%	48.50%
13,600,000	0.35%	48.90%
13,550,000	0.35%	49.25%
13,500,000	0.35%	49.60%
13,450,000	0.35%	49.95%
13,400,000	0.30%	50.30%
13,350,000	0.30%	50.60%
13,300,000	0.30%	50.90%
13,250,000	0.30%	51.20%
13,200,000	0.25%	51.50%
13,150,000	0.25%	51.75%
13,100,000	0.25%	52.00%
13,050,000	0.25%	52.25%
13,000,000		52.50%
11,500,000		52.50%
11,450,000	0.20%	52.30%
11,400,000	0.20%	52.10%
11,350,000	0.20%	51.90%
11,300,000	0.20%	51.70%
11,250,000	0.25%	51.45%
11,200,000	0.25%	51.20%
11,150,000	0.25%	50.95%
11,100,000	0.25%	50.70%
11,050,000	0.30%	50.40%
11,000,000	0.30%	50.10%
10,950,000	0.30%	49.80%
10,900,000	0.30%	49.50%
10,850,000	0.35%	49.15%
10,800,000	0.35%	48.80%
10,750,000	0.35%	48.45%
10,700,000	0.35%	48.10%
10,650,000	0.40%	47.70%
10,600,000	0.40%	47.30%
10,550,000	0.40%	46.90%
10,500,000	0.40%	46.50%

Note(s):

- Adjustments between the increments shall be on a prorata basis.
- In the event that the Cost value of the Merchandise is greater than \$14,000,000, each \$50,000 (or pro rata portion thereof) increment shall decrease the Guaranty by 0.50%.
- In the event that the Cost value of the Merchandise is less than \$10,500,000, each \$50,000 (or pro rata portion thereof) increment shall decrease the Guaranty by 0.45%.

SCHEDULE D
Cost Factor Thresholds Adjustments
(see attached)

Sears Canada

Schedule D

Cost Factor Threshold Adjustments- Full Line

Cost Factor	Adjustment Points	Adjusted Guaranty
53.30%		80.00%
53.40%	0.21%	79.79%
53.50%	0.21%	79.58%
53.60%	0.21%	79.37%
53.70%	0.21%	79.16%
53.80%	0.21%	78.95%
53.90%	0.21%	78.74%
54.00%	0.21%	78.53%
54.10%	0.21%	78.32%
54.20%	0.21%	78.11%
54.30%	0.21%	77.90%
54.40%	0.21%	77.69%
54.50%	0.21%	77.48%
54.60%	0.21%	77.27%
54.70%	0.21%	77.06%
54.80%	0.21%	76.85%
54.90%	0.21%	76.64%
55.00%	0.21%	76.43%
55.10%	0.21%	76.22%
55.20%	0.21%	76.01%
55.30%	0.21%	75.80%

Notes:

1. Adjustments between the increments shall be on a prorata basis.
2. In the event that the Cost Factor of Merchandise is greater than 55.30%, each 0.10% (or pro rata portion thereof) increment shall decrease the Guaranty by 0.21%.

Sears Canada
 Schedule D
 Cost Factor- Home

Cost Factor	Adjustment Points	Adjusted Guaranty
43.90%		52.50%
44.00%	0.24%	52.26%
44.10%	0.24%	52.02%
44.20%	0.24%	51.78%
44.30%	0.24%	51.54%
44.40%	0.24%	51.30%
44.50%	0.24%	51.06%
44.60%	0.24%	50.82%
44.70%	0.24%	50.58%
44.80%	0.24%	50.34%
44.90%	0.24%	50.10%
45.00%	0.24%	49.86%
45.10%	0.24%	49.62%
45.20%	0.24%	49.38%
45.30%	0.24%	49.14%
45.40%	0.24%	48.90%
45.50%	0.24%	48.66%
45.60%	0.24%	48.42%
45.70%	0.24%	48.18%
45.80%	0.24%	47.94%
45.90%	0.24%	47.70%

Notes:

1. Adjustments between the increments shall be on a prorata basis.
2. In the event that the Cost Factor of Merchandise is greater than 45.90%, each 0.10% (or pro rata portion thereof) increment shall decrease the Guaranty by 0.24%.

SCHEDULE E

Agent L/C

(see attached)

FORM OF LETTER OF CREDIT

Bank of America
100 Federal
Street
Boston, MA 02109

Irrevocable Standby Letter of Credit Number:

Beneficiary:

Original sent to:

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

Attn: Billy Wong, CFO

Credit Number:

Opener's Reference No:

Ladies and Gentlemen:

BY ORDER OF:

We hereby open in your favor our Irrevocable Standby Letter of Credit for the account of Gordon Brothers Canada ULC for a sum or sums not exceeding a total of [\$ _____] Canadian dollars ([_____] Canadian dollars) available by your draft(s) at SIGHT on OURSELVES, effective immediately, and expiring at OUR COUNTERS on [_____], 2017 or such earlier date on which the Beneficiary shall notify us in writing that this Standby Letter of Credit shall be terminated accompanied by the original Letter of Credit (the "Expiry Date"). We are informed by the applicant that the Beneficiary may draw on the Letter of Credit in accordance with and subject to the terms of the Agency Agreement dated as of July 12, 2017, as amended and restated (the "Agency Agreement") between the Beneficiary and the Agent (as defined in the Agency Agreement) or as otherwise authorized by order of the Court.

Draft(s) must be accompanied by the original Letter of Credit and a signed statement by an officer of the Beneficiary in the form attached hereto as Exhibit A.

Partial and/or multiple drawings are permitted.

This Letter of Credit may be reduced from time to time when accompanied by a signed statement from the Beneficiary in the form attached as Exhibit B.

If a drawing is received by Bank of America, N.A. at or prior to 12:00 Noon, Eastern Time, on a Business Day, and provided that such drawing conforms to the terms and conditions hereof, payment of the drawing amount shall be made to the Beneficiary, in immediately available funds on the next Business Day. If however, a 1 drawing is received by Bank of America, N.A. after 12:00 Noon, Eastern Time, on a Business Day, and provided that such drawing conforms with the terms and conditions hereof, payment of the drawing amount shall be made to the Beneficiary in immediately available funds on the second

succeeding Business Day.

As used in the Letter of Credit "Business Day" shall mean any day other than a Saturday, Sunday, or day on which Banking Institutions in Scranton, Pennsylvania are required or authorized to close.

Each draft must bear upon its face the clause "Drawn under Letter of Credit No. _____, dated _____ of Bank of America, Scranton, PA."

Except so far as otherwise expressly stated herein, this Letter of Credit is subject to the "Uniform Customs and Practice for Documentary Credits (2007 Revision), International Chamber of Commerce Publication No. 600."

We hereby agree that drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored if presented to the above-mentioned drawee bank on or before the Expiry Date.

Kindly address all correspondence regarding this Letter of Credit to the attention of our Letter of Credit Operations, Bank of America, _____, mentioning our reference number as it appears above. Telephone inquiries can be made to _____ at () - .

Very truly yours,

Authorized Official

Authorized Official

EXHIBIT A

TO IRREVOCABLE LETTER OF CREDIT NO. _____

Re: Drawing for Amounts Due to:

Ladies and Gentlemen:

I refer to your Letter of Credit No. _____ (the "Letter of Credit"). The undersigned duly authorized officers of _____ in their capacity as Beneficiary of the Letter of Credit hereby certify to you that:

- (i) Gordon Brothers Canada, ULC (the "Agent") has not made a payment when due of or for the [Guaranteed Amount, the Company Sharing Recovery Amount, or any portion thereof, or any Expenses or other obligation when due] (where applicable) due by Agent to the Beneficiary pursuant to, and as such terms are defined in, that certain Agency Agreement dated as of [_____], 2017 among the Beneficiary on the one hand, and Agent, on the other.
- (ii) The amount to be drawn is \$ _____ (the "Amount Owing").
- (iii) Payment is hereby demanded in an amount equal to the lesser of (a) the Amount Owing and (b) the face amount of the Letter of Credit, less any prior drawings, as of the date hereof.
- (iv) The Letter of Credit has not expired prior to the delivery of this letter and the accompanying sight draft.
- (v) In accordance with the terms of the Letter of Credit, the payment hereby demanded is requested to be made by wire transfer to the following account:

[Account]

IN WITNESS WHEREOF, this instrument has been executed and delivered as of this _____ day of _____, 2017.

Very truly yours,

By: _____

Duly Authorized Officer
Print Name

EXHIBIT B

TO IRREVOCABLE STANDBY LETTER OF CREDIT NO.

Re: Reduction of Face Amount:

Ladies and Gentlemen:

I refer to your Letter of Credit No. (the "Letter of Credit"). The undersigned, as Beneficiary of the Letter of Credit, hereby confirm to you that the face amount of the Letter of Credit hereby shall be reduced from its present face amount to a new face amount of \$_____.

IN WITNESS WHEREOF, this instrument has been executed and delivered as of this _____ day of _____, 2017.

Very truly yours,

By: _____
Duly Authorized Officer
Print Name:

Wells Fargo Bank, N.A.
 U. S. Trade Services
 Standby Letters of Credit
 MAC A0283-023
 794 Davis Street, 2nd Floor
 San Leandro, CA. 94577-6922
 Phone: 1(800) 798-2815 Option 1
 E-Mail: sfrade@wellsfargo.com

Irrevocable Standby Letter of Credit

Number: _____
Issue Date: _____

Beneficiary:
Beneficiary Name
 Attention: _____
Address
City, State Zip

Ladies and Gentlemen:

At the request and for the account of Tiger Capital Group, LLC, 340 N. Westlake Blvd., Suite 260, Westlake Village, CA 91362 (the "Agent"), we hereby establish our Irrevocable Standby Letter of Credit (the "Letter of Credit") in favor of *Beneficiary Name* (the "Beneficiary") in the amount of *Amount in Words* United States Dollars USD\$ *Amount in Numbers* available with us at our above office by payment of draft(s) drawn at sight on ourselves.

Drafts must be purportedly signed by an officer of the Beneficiary and be accompanied by the original of this Letter of Credit and a signed statement worded in the form of Exhibit A attached hereto with the instructions in brackets therein complied with.

Partial and multiple drawings are permitted under this Letter of Credit.

Each draft must be marked "Drawn under Letter of Credit No. _____ dated _____, 2017, of Wells Fargo Bank N.A."

This Letter of Credit expires at our above office on _____, 2017 (the "Expiry Date").

As used herein the term "Business Day" shall mean a day of the year on which our San Leandro U.S. Trade Services – Standby Letters of Credit office is open for business.

We hereby agree with you that each drawing presented hereunder in full compliance with the terms hereof will be duly honored by our payment to you of the amount of such drawing, in immediately available funds of Wells Fargo Bank, N.A. not later than the third Business Day following the Business Day on which such drawing is presented to us.

Except so far as otherwise expressly stated herein, this Letter of Credit is subject to the "International Standby Practices 1998".

It is a condition of this Letter of Credit that it shall be decreased without amendment upon our receipt at our above office of a statement in the form of Exhibit B signed by the Beneficiary with the instructions in brackets therein complied with.

CANCELLATION PRIOR TO EXPIRATION: You may return this Letter of Credit to us at our above office for cancellation prior to its expiration provided that this Letter of Credit is accompanied by a written agreement signed by you to its cancellation. Such written agreement to cancellation should specifically reference this Letter of Credit by number, clearly indicate that it is being returned for cancellation and be signed by a person identifying themselves as authorized to sign for you.

Very Truly Yours,

WELLS FARGO BANK, N.A.

By: _____
Authorized Signature

The original of the Letter of Credit contains an embossed seal over the Authorized Signature.

Please direct any written correspondence or inquiries regarding this Letter of Credit, always quoting our reference number, to **Wells Fargo Bank, National Association**, Attn: U.S. Standby Trade Services

at either

794 Davis Street, 2nd Floor
 MAC A0283-023
 San Leandro, CA 94577-6922

or

401 Linden Street
 MAC D4004-017,
 Winston-Salem, NC 27101

Phone inquiries regarding this credit should be directed to our Standby Customer Connection Professionals

1-800-798-2815 Option 1
 (Hours of Operation: 8:00 a.m. PT to 5:00 p.m. PT)

1-800-776-3862 Option 2
 (Hours of Operation: 8:00 a.m. EST to 5:30 p.m. EST)

Exhibit A
Wells Fargo Bank, N.A.
Letter of Credit No. _____

Re: Drawing for Amounts Due to:

Beneficiary Name

Attention: _____

Address

City, State Zip

Ladies and Gentlemen:

I refer to your Letter of Credit No. _____ (the "Letter of Credit"). The undersigned, a duly authorized officer of *Beneficiary Name*, a debtor and debtor-in-possession (the "Merchant" and Beneficiary"), and the Beneficiary of the Letter of Credit hereby certifies to you that:

(i) Tiger Capital Group, LLC (the "Agent") has not made a payment when due of or for the Guaranteed Amount, or other amounts due by Agent to Merchant, pursuant to, and as such term is defined in that certain Agency Agreement, dated as of [insert date], by the Merchant, on the one hand and Agent on the other.

(ii) The unpaid amount is \$[insert amount] (the "Amount Owing").

(iii) The amount of the sight draft accompanying this statement is an amount equal to the lesser of (a) the Amount Owing and (b) the amount available on the date hereof to be drawn under the Letter of Credit.

(iv) The Letter of Credit has not expired prior to the delivery of this letter and the accompanying sight draft.

(v) The payment hereby demanded is requested to be made no later than three (3) business days after the date of delivery of this certificate, by wire transfer to the following account:

[insert bank]

ABA No: [insert number]

Further Credit to: [insert name]

Account No. [insert number]

IN WITNESS WHEREOF, I have executed and delivered this certificate as of this [insert date] day of [insert month], [insert year].

Very truly yours,

Beneficiary Name

By: [insert signature]

Name: [insert name]

Title: [insert title]

Exhibit B
Wells Fargo Bank, N.A.
Letter of Credit No. _____

Re: Reduction of Letter of Credit Amount:

Beneficiary Name
Attention: _____
Address
City, State Zip

Ladies and Gentlemen:

We refer to your Letter of Credit No. _____ (the "Letter of Credit"). The undersigned, a duly authorized officer of *Beneficiary Name* (the Beneficiary"), and the Beneficiary of the Letter of Credit hereby certifies to you that the amount of the Letter of Credit may be decreased by \$[insert amount].

IN WITNESS WHEREOF, we have executed and delivered this certificate as of this [insert date] day of [insert month], [insert year].

Very truly yours,

Beneficiary Name

By: [insert signature]
Name: [insert name]
Title: [insert title]

SCHEDULE F
Inventory Taking Instructions
(see attached)

EXHIBIT 5.1(a)

INVENTORY INSTRUCTIONS **Sears Canada**

These inventory instructions incorporate Agency Agreement language and are to be used in conjunction with the company's historical inventory taking procedures. In the event of a conflict between procedures, this document takes precedent.

RGIS INVENTORY SERVICE

Type of count

The counts will be at SKU/UPC level Retail process conducted by *RGIS* or *WIS* Inventory Service. In this type of count, the Inventory Service personnel should scan or key first the UPC/SKU, quantity and lowest ticketed, marked, shelf, hang-tag, stickered, or other hard marked price As per the Agency Agreement, some specific kinds of merchandise need to be specifically identified (see Exception Categories below).

We have set up the count to accept scanned bar code (UPC), keyed bar code and SKU. The inventory service will have a UPC validation file which will increase the accuracy of the count. The service will return a file inclusive of the Store, Date, Area, Unit Count, Keyed Price and Price File Price. Ultimately the purchase price will be based off of the Cost of the item.

For purposes of this Agreement, , "**Retail Price**" shall mean with respect to each item of Merchandise, as determined on a SKU by SKU basis, the lowest of (x) the lowest ticketed, marked, shelf, hang-tag, stickered, or other hard marked price as at the Sale Commencement Date, (y) the lowest SKU or PLU as at the Sale Commencement Date; and (z) the lowest PLU, SKU, article number or file price contained in the Merchandise File, or other file price as reflected in Company's books and records for such item; provided, however that the definition of Retail Price expressly excludes all Excluded Price Adjustments.

Staffing

The Agent will have at least one representative present at every count, and the Merchant will also have at least a store manager or asset protection manager present.

Controls/Audit

1. A primary focus of these counts is on ensuring the accuracy of the piece count. The Service should audit each of their inventory counters during the first hour of the count. In the beginning of the count you should also monitor each RGIS counter and randomly audit their areas. Counters with mistakes should be addressed immediately. Taking counters off the inventory count is YOUR call. **INSIST ON ACCURACY.**
2. Take care not to count empty boxes. This is crucial in the shoe area. Ensure all sneakers are mated with correct sizing/style and match the box description. Open all packed away goods, over stock, and new receipts to count the goods inside. NEVER key from a pack away list. The inventory service must physically touch and scan each piece of clothing which may be layered onto a display. Items that are on peg hooks may be counted in multiple quantities. All higher ticket electronic goods must be counted individually
3. Instruct the inventory service supervisor that after each inventory service counter finishes a section they are to write the total pieces and total extended retail on the area ticket. You should spot check

these tickets for reasonability and can do full piece counts on areas to determine the accuracy of the count.

4. All store locations should be heavily audited. All stores will be required to audit a significant portion of the store. This is to be accomplished by either instructing the inventory supervisor to affix the F1 summary reports on each area counted or print out every area and leave them in a stack at the printer. You should go through along with store personnel these and check each sheet 100% for piece count, price and SKU/UPC. Each sheet must be 100% correct. Be especially cognizant of areas where there are Augment Goods. These goods may be like product but have different UPC's affixed to the product. It is CRUCIAL that the service enters the correct UPC number and you MUST ensure that this is the case.

If there are errors the sheet should be marked with the correction, reviewed with the Merchants representative (NO adjustments are to be made unless both parties agree) and given back to the inventory service supervisor for correction. Upon correction have the consultant reprint the area to ensure it was entered correctly. ALL F1 summary sheets that are audited should be initialed by the consultant and Merchants representative who audited the section. At the end of the count, ALL initialed audit sheets should be collected and held onto by the consultants and available to be sent back to the following address if so directed:

Keith Falce
Prudential Tower
800 Boylston Street, 27th Fl.
Boston, MA 02199

If you are directed to send certain information to the above address, do not use priority mailing. Use budget saver rates. It does not need to be overnight.

5. If a inventory service employee encounters an invalid UPC or an article has no tag on it then they should call for a UPC check if the correct UPC/SKU cannot be located then the item should be placed on a trouble table to be researched further. Only the UPC of items will be allowed to be overridden by RGIS if the store personnel cannot find a valid number. Where possible the personnel should find a like item and enter under that items UPC number.

6. The Service is to furnish representatives of the Merchant and the Agent with a hard copy of the inventory (both units and area numbers) at the completion of the count.

Cutoffs

[Procedures for the processing of In-Transit Merchandise that arrives in a Location after the Inventory Date (including as to item-level counting, ticketing, and related matters) to be mutually agreed upon by Company and Agent, in consultation with the Monitor, prior to commencement of the Inventory Taking.]

Store Mapping

The store will be mapped by the inventory service supervisor in conjunction with the Store Manager.

Exception Categories

At the beginning of the count, the Agents and Merchant's representatives should walk the store to identify these pieces and remove them from the displays. After this is done, the Service will assign counters to go around the store and key the exceptions into the correct areas as shown below. Make sure to mark these pieces by removing them from the display and placing them on the floor or in a cart or specially designated table, so that the Service knows NOT to count the merchandise again with the regular areas. Try to use a different marking method for each type of exception merchandise (on the floor, in carts, etc.) so you can tell in what exception bucket the goods are to be counted.

Trouble Table**Area 9800**

Any goods that have invalid UPC/SKU numbers should be removed from the area they resided in and placed on a trouble table for further research. These items should be entered into area 9800.

Defective Merchandise

“**Defective Merchandise**” means any item of inventory that is not saleable as first quality inventory because it is dented, worn, scratched, torn, tailored, soiled, ripped, faded, mismatched, missing pieces, mis-mated, out of box (if normally sold as new in-the-box), or near-sized, items typically sold as a set which are incomplete, or merchandise affected by other similar defenses rendering it not first quality, and as to which Agent and Company mutually agree on its value to define its Cost Value.

All goods agreed upon by the Merchant and Agent at time of the count as “Defective” should be segregated and counted in the following areas

Areas

9925 – 25% Off

9950 – 50% Off

9975 – 75% Off

Excluded Defective Merchandise**Area 9999**

“**Excluded Defective Merchandise**” shall mean those items of Defective Merchandise that are not saleable in the ordinary course because they are so damaged or defective that they cannot reasonably be used for their intended purpose or for which the parties cannot mutually agree upon a Cost Value, including parts or components held for repairs or not sold separately by Company to consumers in the ordinary course of business or have been delisted or are return to vendor goods.

Any goods that fit the above description should be captured in area 9999 and will have a zero value in the reconciliation.

DO NOT INVENTORY

Isolate and DO NOT INVENTORY any gift cards or gift certificates from outside vendors.

DO NOT COUNT Fixtures or displays as merchandise.

POST COUNT

At the end of the count, please fax the inventory services timesheet as well as the last page of the F1 summary report (inclusive of all above exception areas) to 208-723-1007. **NOTE: It is IMPERATIVE that the F1 summary report include the signature of BOTH the Merchants and Gordon Brothers/Hilco/ representative on the totals page.**

SCHEDULE G
Sales Guidelines
(see attached)

SALE GUIDELINES – INVENTORY AND FF&E

The following procedures shall apply to any liquidation sales (the “**Sale**”) of inventory and goods (“**Merchandise**”) and FF&E (as defined below) to be held at Sears Canada’s retail stores (listed on Schedules “B” and “C” to the Liquidation Sale Order (as defined below), the “**Stores**”). In addition, the following procedures, to the extent applicable, shall apply to the sale of Merchandise and FF&E located at Hometown Dealer stores as set out on Schedule “D” to the Liquidation Sale Order (the “**Hometown Dealer Sale**”) and to any Landlords of such Hometown Dealer stores.

Terms capitalized but not defined in these Sale Guidelines have the meanings ascribed to them in the initial order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated June 22, 2017 (as amended and restated, the “**Initial Order**”), the Liquidation Sale Order, the Agency Agreement (as defined below), or the Consulting Agreement (as defined below).

1. Except as otherwise expressly set out herein, and subject to: (i) an Order of the Court (the “**Liquidation Sale Order**”) approving, *inter alia*, (a) the Amended and Restated Agency Agreement between 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**”) dated July 12, 2017 and amended and restated on July 14, 2017 (the “**Agency Agreement**”), (b) the Amended and Restated Consulting Agreement between Sears Canada and the Agent dated July 12, 2017 and amended and restated on July 14, 2017 (the “**Consulting Agreement**”, and together with the Agency Agreement, the “**Liquidation Agreements**”), and (c) these Sale Guidelines; or (ii) any further Order of the Court; or (iii) any subsequent written agreement between Sears Canada and its applicable landlord(s) (each individually, a “**Landlord**” and, collectively, the “**Landlords**”), the Sale shall be conducted in accordance with the terms of the applicable leases/or other occupancy agreements for each of the affected Stores (individually, a “**Lease**” and, collectively, the “**Leases**”). However, nothing contained herein shall be construed to create or impose upon Sears Canada or the Agent any additional restrictions not contained in the applicable Lease or other occupancy agreement.
2. The Sale shall be conducted so that each of the Stores remain open during their normal hours of operation provided for in the respective Leases for the Stores until the applicable premises vacate date for each Store under the Liquidation Agreements (the “**Vacate Date**”), and in all cases no later than October 12, 2017 (the “**Sale Termination Date**”). Rent payable under the respective Leases shall be paid as provided in the Initial Order.
3. The Sale shall be conducted in accordance with applicable federal, provincial and municipal laws, unless otherwise ordered by the Court.
4. All display and hanging signs used by the Agent in connection with the Sale shall be professionally produced and all hanging signs shall be hung in a professional manner. Notwithstanding anything to the contrary contained in the Leases, the Agent may advertise the Sale at the Stores as a “everything on sale”, “everything must go”, “store closing” or similar theme sale at the Stores (provided however that no signs shall advertise the Sale as a “bankruptcy”, a “liquidation” or a “going out of business” sale, it being understood that the French equivalent of “clearance” is “liquidation” and is permitted to be used). Forthwith upon request, the Agent shall provide the proposed signage packages along with

proposed dimensions by e-mail or facsimile to the applicable Landlords or to their counsel of record and the applicable Landlord shall notify the Agent of any requirement for such signage to otherwise comply with the terms of the Lease and/or the Sale Guidelines and where the provisions of the Lease conflicts with these Sale Guidelines, these Sale Guidelines shall govern. The Agent shall not use neon or day-glow signs or any handwritten signage (save that handwritten "you pay" or "topper" signs may be used). If a Landlord is concerned with "Store Closing" signs being placed in the front window of a Store or with the number or size of the signs in the front window, Sears Canada, the Agent and the Landlord will work together to resolve the dispute. Furthermore, with respect to enclosed mall Store locations without a separate entrance from the exterior of the enclosed mall, no exterior signs or signs in common areas of a mall shall be used unless explicitly permitted by the applicable Lease. In addition, the Agent shall be permitted to utilize exterior banners/signs at stand alone or strip mall Stores or enclosed mall Store locations with a separate entrance from the exterior of the enclosed mall; provided, however, that: (i) no signage in any other common areas of a mall shall be used; and (ii) where such banners are not permitted by the applicable Lease and the Landlord requests in writing that banners are not to be used, no banners shall be used absent further Order of the Court, which may be sought on an expedited basis on notice to the Service List. Any banners used shall be located or hung so as to make clear that the Sale is being conducted only at the affected Store and shall not be wider than the premises occupied by the affected Store. All exterior banners shall be professionally hung and to the extent that there is any damage to the facade of the premises of a Store as a result of the hanging or removal of the exterior banner, such damage shall be professionally repaired at the expense of the Agent.

5. The Agent shall be permitted to utilize sign walkers and street signage; provided, however, such sign walkers and street signage shall not be located on the shopping centre or mall premises.
6. Conspicuous signs shall be posted in the cash register areas of each Store to the effect that all sales are "final" and customers with any questions or complaints are to call the Agent's hotline number.
7. The Agent shall not distribute handbills, leaflets or other written materials to customers outside of any of the Stores on Landlord's property, unless explicitly permitted by the applicable Lease or, if distribution is customary in the shopping centre in which the Store is located. Otherwise, the Agent may solicit customers in the Stores themselves. The Agent shall not use any giant balloons, flashing lights, or amplified sound to advertise the Sale or solicit customers, except as explicitly permitted under the applicable Lease or agreed to by the Landlord, and no advertising trucks shall be used on landlord property or mall ring roads, except as explicitly permitted under the applicable Lease or agreed to by the Landlord.
8. At the conclusion of the Sale in each Store, the Agent and Sears Canada shall arrange that the premises for each Store are in "broom-swept" and clean condition, and shall arrange that the Stores are in the same condition as on the commencement of the Sale, ordinary wear and tear excepted. No property of any Landlord of a Store shall be removed or sold during the Sale. No permanent fixtures (other than FF&E (as defined below) for clarity) may be removed without the Landlord's written consent unless otherwise provided by the applicable Lease and in accordance with the Initial Order and the Liquidation Sale Order.

Any trade fixtures or personal property left in a Store after the applicable Vacate Date in respect of which the applicable Lease has been disclaimed by Sears Canada shall be deemed abandoned, with the applicable Landlord having the right to dispose of the same as the Landlord chooses, without any liability whatsoever on the part of the Landlord. Nothing in this paragraph shall derogate from or expand upon the Agent's obligations under the Liquidation Agreements. Notwithstanding the foregoing, Sears Canada shall only exercise its rights to abandon FF&E pursuant to section 5.1(h) of the Agency Agreement and section 3.4(d) of the Consulting Agreement provided that the applicable Landlord has consented thereto or upon further Order of the Court.

9. Subject to the terms of paragraph 8 above, the Agent may sell furniture, fixtures and equipment owned by Sears Canada ("FF&E") and located in the Stores during the Sale. For greater certainty, FF&E does not include (i) any portion of the Stores' HVAC system or sprinkler systems; and (ii) any furniture, fixtures and equipment owned by the Hometown Dealers. Sears Canada and the Agent may advertise the sale of FF&E consistent with these Sale Guidelines on the understanding that the Landlord may require such signs to be placed in discreet locations within the Stores reasonably acceptable to the Landlord. Additionally, the purchasers of any FF&E sold during the Sale shall only be permitted to remove the FF&E either through the back shipping areas designated by the Landlord or through other areas after regular Store business hours or, through the front door of the Store during Store business hours if the FF&E can fit in a shopping bag, with Landlord's supervision as required by the Landlord and in accordance with the Initial Order and the Liquidation Sale Order. The Agent shall repair any damage to the Stores resulting from the removal of any FF&E by the Agent or by third party purchasers of FF&E from the Agent.
10. The Agent shall not make any alterations to interior or exterior Store lighting, except as authorized pursuant to the affected Lease. The hanging of exterior banners or other signage, where permitted in accordance with the terms of these Sale Guidelines, shall not constitute an alteration to a Store.
11. Sears Canada and the Agent hereby provides notice to the Landlords of Sears Canada's and the Agent's intention to sell and remove FF&E from the Stores. The Agent shall make commercially reasonable efforts to arrange with each Landlord represented by counsel on the Service List and with any other Landlord that so requests, a walk-through with the Agent to identify the FF&E subject to the Sale. The relevant Landlord shall be entitled to have a representative present in the applicable Stores to observe such removal. If the Landlord disputes the Agent's entitlement to sell or remove any FF&E under the provisions of the Lease, such FF&E shall remain on the premises and shall be dealt with as agreed between Sears Canada, the Agent and such Landlord, or by further Order of the Court upon application by Sears Canada on at least two (2) days' notice to such Landlord and the Monitor. If Sears Canada has disclaimed or resiliated the Lease governing such Store in accordance with the CCAA and the Initial Order, it shall not be required to pay rent under such Lease pending resolution of any such dispute (other than rent payable for the notice period provided for in the CCAA and the Initial Order), and the disclaimer or resiliation of the Lease shall be without prejudice to Sears Canada's or the Agent's claim to the FF&E in dispute.
12. If a notice of disclaimer or resiliation is delivered pursuant to the CCAA and the Initial Order to a Landlord while the Sale is ongoing and the Store in question has not yet been

vacated, then: (a) during the notice period prior to the effective time of the disclaimer or resiliation, the Landlord may show the affected leased premises to prospective tenants during normal business hours, on giving Sears Canada, the Agent and the Monitor twenty-four (24) hours' prior written notice; and (b) at the effective time of the disclaimer or resiliation, the relevant Landlord shall be entitled to take possession of any such Store without waiver of or prejudice to any claims or rights such Landlord may have against Sears Canada in respect of such Lease or Store, provided that nothing herein shall relieve such Landlord of any obligation to mitigate any damages claimed in connection therewith.

13. The Agent and its agents and representatives shall have the same access rights to the Stores as Sears Canada under the terms of the applicable Lease, and the Landlords shall have the rights of access to the Stores during the Sale provided for in the applicable Lease (subject, for greater certainty, to any applicable stay of proceedings).
14. Sears Canada and the Agent shall not conduct any auctions of Merchandise or FF&E at any of the Stores.
15. The Agent shall designate a party to be contacted by the Landlords should a dispute arise concerning the conduct of the Sale. The initial contact person for the Agent shall be Ian Fredericks who may be reached by phone at 1-847-418-2075 or email at ifredericks@hilcoglobal.com. If a dispute should arise concerning the conduct of the Sale subject to a Hometown Dealer Sale, the respective Landlord should contact the relevant Hometown Dealer. If the parties are unable to resolve the dispute between themselves, the Landlord or Sears Canada shall have the right to schedule a "status hearing" before the Court on no less than two (2) days written notice to the other party or parties, during which time the Agent shall cease all activity in dispute other than activity expressly permitted herein, pending determination of the matter by the Court; provided, however, subject to paragraph 4 of these Sale Guidelines, if a banner has been hung in accordance with these Sale Guidelines and is the subject of a dispute, the Agent shall not be required to take any such banner down pending determination of any dispute.
16. Nothing herein or in the Liquidation Agreements is, or shall be deemed to be a consent by any Landlord to the sale, assignment or transfer of any Lease, or shall, or shall be deemed to, or grant to the Landlord any greater rights than already exist under the terms of any applicable Lease.
17. These Sale Guidelines may be amended by written agreement between Sears Canada, the Agent and the applicable Landlord.

SCHEDULE H
Form of Approval Order
(see attached)

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MADAM)	TUESDAY, THE 18 th
)	
JUSTICE CONWAY)	DAY OF JULY, 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**”)

LIQUIDATION SALE APPROVAL ORDER

THIS MOTION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. c-36, as amended (the “**CCAA**”) for an order, *inter alia*, approving: (i) the transactions contemplated under the Amended and Restated Agency Agreement entered into between 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 (collectively, the “**Agent**”) dated July 12, 2017 and amended and restated on July 14, 2017 (the “**Agency Agreement**”) and certain related relief; (ii) the transactions contemplated under the Amended and Restated Consulting Agreement entered into between Sears Canada and the Agent dated July 12, 2017 and amended and restated on July 14, 2017 (the “**Consulting Agreement**”, and together with the Agency Agreement, the “**Liquidation Agreements**”) and certain related relief; and (iii) the Sale, the Hometown Dealer

Sale, and the Sale Guidelines (each as defined below) and certain related relief, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion of the Applicants, the Affidavit of Billy Wong sworn July 5, 2017 including the exhibits thereto (the “**Second Wong Affidavit**”), the Affidavit of Billy Wong sworn July 12, 2017 including the exhibits thereto (the “**Third Wong Affidavit**”), the Affidavit of Sean Stidwill sworn July 17, 2017 including the exhibits thereto, the First Report and the Supplement to the First Report of FTI Consulting Canada Inc., in its capacity as Monitor (the “**Monitor**”) filed July 12 and July 13, respectively, and on hearing the submissions of respective counsel for the Applicants, counsel to the Monitor, counsel to the Board of Directors and the Special Committee of the Board of Directors of Sears Canada Inc., counsel to Wells Fargo Capital Finance Corporation Canada as administrative agent under the DIP ABL Credit Agreement, counsel to GACP Finance Co., LLC as administrative agent under the DIP Term Credit Agreement, and such other counsel as were present, no one else appearing although duly served as appears from the Affidavits of Service of Sonja Pavic sworn July 12, 2017 and July 17, 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 Initial Order in these proceedings dated June 22, 2017, as amended (the “**Initial Order**”), the Agency Agreement, the Consulting Agreement, or the Sale Guidelines, as applicable.

THE AGENCY AGREEMENT

3. THIS COURT ORDERS that the Agency Agreement, including the Sale Guidelines attached hereto as Schedule “A” (the “**Sale Guidelines**”), and the transactions contemplated thereunder are hereby approved, authorized and ratified and that the execution of the Agency Agreement by Sears Canada is hereby approved, authorized, and ratified with such minor amendments as Sears Canada (with the consent of the Monitor and, to the extent required under

the Agency Agreement, the DIP ABL Lenders and the DIP Term Lenders) and the Agent may agree to in writing. Subject to the provisions of this Order and the Initial Order, Sears Canada is hereby authorized and directed to take any and all actions as may be necessary or desirable to implement the Agency Agreement and each of the transactions contemplated therein. Without limiting the foregoing, Sears Canada is authorized to execute any other agreement, contract, deed or any other document, or take any other action, which could be required or be useful to give full and complete effect to the Agency Agreement.

THE CONSULTING AGREEMENT

4. THIS COURT ORDERS that the Consulting Agreement, including the Sale Guidelines and the transactions contemplated thereunder are hereby approved, authorized and ratified and that the execution of the Consulting Agreement by Sears Canada is hereby approved, authorized, and ratified with such minor amendments as Sears Canada (with the consent of the Monitor and, to the extent required under the Consulting Agreement, the DIP ABL Lenders and the DIP Term Lenders) and the Agent may agree to in writing. Sears Canada is hereby authorized and directed to take any and all actions as may be necessary or desirable to implement the Consulting Agreement and each of the transactions contemplated therein. Without limiting the foregoing, Sears Canada is authorized to execute any other agreement, contract, deed or any other document, or take any other action, which could be required or be useful to give full and complete effect to the Consulting Agreement.

THE SALE

5. THIS COURT ORDERS that subject to receipt of the Initial Guaranty Payment by Sears Canada and delivery of the Agent L/C to Sears Canada, the Agent is authorized to conduct a liquidation sale of the Merchandise, Designated Sundry Goods, Designated Company Consignment Goods, and FF&E (each as defined in the Agency Agreement) (the “**Agency Sale**”) at the Applicants’ retail stores as set out on Schedule “B” attached hereto (the “**Agent’s Stores**”) in accordance with this Order, the Agency Agreement and the Sale Guidelines and to advertise and promote the Agency Sale within the Agent’s Stores in accordance with the Sale Guidelines. If there is a conflict between this Order, the Agency Agreement and the Sale Guidelines, the order of priority to resolve such conflicts is as follows: (1) this Order; (2) the Sale Guidelines; and (3) the Agency Agreement.

6. THIS COURT ORDERS that Sears Canada, with the assistance of the Agent, is authorized to conduct a liquidation sale of the Merchandise and FF&E (each as defined in the Consulting Agreement) (the “**Consultant’s Sale**”, and together with the Agency Sale, the “**Sale**”) at the Applicants’ retail stores as set out on Schedule “C” attached hereto (the “**Consultant’s Stores**”, and together with the Agent’s Stores, the “**Stores**”, and individually, a “**Store**”) in accordance with this Order, the Consulting Agreement and the Sale Guidelines and to advertise and promote the Consultant’s Sale within the Consultant’s Stores in accordance with the Sale Guidelines. If there is a conflict between this Order, the Consulting Agreement and the Sale Guidelines, the order of priority to resolve such conflicts is as follows: (1) this Order; (2) the Sale Guidelines; and (3) the Consulting Agreement.

7. THIS COURT ORDERS that, subject to paragraph 12 of the Initial Order, the Agent, in its capacity as agent or consultant of Sears Canada, as applicable, is authorized to market and sell the Merchandise, Designated Sundry Goods, Designated Company Consignment Goods, and FF&E (as such terms are defined in the Liquidation Agreements, as applicable) on a “final sale” and “as is” basis and in accordance with the Sale Guidelines, and free and clear of all liens, claims, encumbrances, security interests, mortgages, charges, trusts, deemed trusts, executions, levies, financial, monetary or other claims, whether or not such claims have attached or been perfected, registered or filed and whether secured, unsecured, quantified or unquantified, contingent or otherwise, whensoever and howsoever arising, and whether such claims arose or came into existence prior to or following the date of this Order (in each case, whether contractual, statutory, arising by operation of law, in equity or otherwise) (all of the foregoing, collectively “**Claims**”), including, without limitation 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**”), and (ii) all Claims, charges, security interests or liens evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal or movable property registration system (all of such Claims, charges (including the CCAA Charges), security interests and liens collectively referred to herein as “**Encumbrances**”), which Encumbrances, subject to this Order, will attach instead: (i) to the Guaranteed Amount and any other amounts received or to be received by Sears Canada under the Agency Agreement, in the same order and priority as they existed on the Sale Commencement Date; and (ii) to the

proceeds of sale of the Merchandise and FF&E (as defined in the Consulting Agreement) other than amounts due and payable to the Agent by Sears Canada under the Consulting Agreement, in the same order and priority as they existed on the Sale Commencement Date.

8. THIS COURT ORDERS that subject to the terms of this Order, the Initial Order, the Liquidation Agreements (as applicable) and the Sale Guidelines, the Agent shall have the right to enter and use the Stores and all related store services and all facilities and all furniture, trade fixtures and equipment, including the FF&E, located at the Stores, and other assets of Sears Canada as designated under the Liquidation Agreements (as applicable), for the purpose of conducting the Sale, and for such purposes, the Agent shall be entitled to the benefit of the Applicants' stay of proceedings provided under the Initial Order, as such stay of proceedings may be extended by further Order of the Court.

9. THIS COURT ORDERS that until the Vacate Date (as defined in the Sale Guidelines) for each Store (which shall be on or before October 12, 2017 (the "**Sale Termination Date**")) the Agent shall have access to the Stores in accordance with the applicable Leases (as such term is defined in the Sale Guidelines) and the Sale Guidelines on the basis that the Agent is an agent or consultant of Sears Canada, as applicable, and Sears Canada has granted the right of access to the Stores to the Agent. To the extent that the terms of the applicable Leases are in conflict with any term of this Order or the Sale Guidelines, it is agreed that the terms of this Order and the Sale Guidelines shall govern.

10. THIS COURT ORDERS that except as provided for in this Order, any further order of the Court and the Sale Guidelines, nothing in this Order shall amend or vary, or be deemed to amend or vary the terms of the Leases or operation agreements. Nothing contained in this Order or the Sale Guidelines shall be construed to create or impose upon Sears Canada or the Agent any additional restrictions not contained in the applicable Leases, occupancy agreements, or operation agreements.

11. THIS COURT ORDERS that, except as provided for in Section 5 hereof in respect of the advertising and promotion of the Sale within the Stores, subject to and in accordance with this Order, the Liquidation Agreements (as applicable) and the Sale Guidelines, the Agent, as agent or consultant for Sears Canada, as applicable, is authorized to advertise and promote the Sale, without

further consent of any Person (as defined in the Initial Order) other than Sears Canada and the Monitor or a Landlord (only as expressly provided under the Liquidation Agreements).

12. THIS COURT ORDERS that until the Vacate Date, the Agent shall have the right to use, without interference by any intellectual property licensor, Sears Canada's intellectual property including without limitation trade names, trademarks and logos relating to and used in connection with the operation of the Stores, as well as all licenses and rights granted to Sears Canada to use the trade names, trademarks and logos of third parties, solely for the purpose of advertising and conducting the Sale in accordance with the terms of the Liquidation Agreements, the Sale Guidelines and this Order.

13. THIS COURT ORDERS that upon delivery of a Monitor's certificate to the Agent substantially in the form attached as Schedule "E" hereto, (the "**Monitor's Agency Certificate**") and subject to payment in full by the Agent to Sears Canada of the Guaranteed Amount, the Expenses, any Company's Sharing Recovery Amount, the Net FF&E Proceeds, the Net Designated Sundry And Consignment Goods Proceeds and all other amounts due to Sears Canada under the Agency Agreement, all of Sears Canada's right, title and interest in and to any Remaining Merchandise and Remaining FF&E at the Agent's Stores, shall vest absolutely in the Agent, free and clear of and from any and all Claims, including without limiting the generality of the foregoing, the Encumbrances, and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to such Remaining Merchandise or Remaining FF&E shall be expunged and discharged as against such Remaining Merchandise or Remaining FF&E upon the delivery of the Monitor's Agency Certificate to the Agent; provided however that nothing herein shall discharge the obligations of the Agent pursuant to the Agency Agreement, or the rights or claims of Sears Canada in respect thereof, including without limitation, the obligations of the Agent to account for and remit the proceeds of sale of such Remaining Merchandise and Remaining FF&E (less the FF&E Commission) to the Designated Deposit Accounts, subject to the terms of the Agency Agreement. The Agent shall comply with paragraph 12 of the Initial Order and the Sale Guidelines regarding the removal and/or sale of any FF&E or any Remaining FF&E.

14. THIS COURT ORDERS that upon delivery of a Monitor's certificate to the Agent substantially in the form attached as Schedule "F" hereto, (the "**Monitor's Consulting Certificate**") and subject to payment in full by the Agent to Sears Canada of all amounts due to

Sears Canada under the Consulting Agreement, all of Sears Canada's right, title and interest in and to any Remaining FF&E at the Consultant's Stores shall vest absolutely in the Agent, free and clear of and from any and all Claims, including without limiting the generality of the foregoing, the Encumbrances, and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to such Remaining FF&E shall be expunged and discharged as against such Remaining FF&E upon the delivery of the Monitor's Consulting Certificate to the Agent; provided however that nothing herein shall discharge the obligations of the Agent pursuant to the Consulting Agreement, or the rights or claims of Sears Canada in respect thereof, including without limitation, the obligations of the Agent to account for and remit the proceeds of sale of such Remaining FF&E (less the FF&E Fee) to Sears Canada, subject to the terms of the Consulting Agreement. The Agent shall comply with paragraph 12 of the Initial Order and the Sale Guidelines regarding the removal and/or sale of any FF&E or any Remaining FF&E.

15. THIS COURT ORDERS AND DIRECTS the Monitor to file with the Court a copy of the Monitor's Agency Certificate and the Monitor's Consulting Certificate, forthwith after delivery thereof.

AGENT LIABILITY

16. THIS COURT ORDERS that the Agent shall act solely as an agent or consultant to Sears Canada and that it shall not be liable for any claims against Sears Canada other than as expressly provided in the Liquidation Agreements. More specifically:

- (a) the Agent shall not be deemed to be an owner or in possession, care, control or management of the Stores, of the assets located therein or associated therewith or of Sears Canada's employees (including the Retained Employees) located at the Stores or any other property of Sears Canada;
- (b) the Agent shall not be deemed to be an employer, or a joint or successor employer or a related or common employer or payor within the meaning of any legislation governing employment or labour standards or pension benefits or health and safety or other statute, regulation or rule of law or equity for any purpose whatsoever, and shall not incur any successorship liabilities whatsoever; and

- (c) Sears Canada shall bear all responsibility for any liability whatsoever (including without limitation losses, costs, damages, fines, or awards) relating to claims of customers, employees and any other persons arising from events occurring at the Stores during and after the term of the Liquidation Agreements, or otherwise in connection with the Sale, except to the extent that such claims are the result of events or circumstances caused or contributed to by the gross negligence or wilful misconduct of the Agent, or its employees, agents or independent contractors (other than Sears Canada's employees and the Retained Employees, agents or independent contractors) located at the Stores, or otherwise in accordance with the Liquidation Agreements (as applicable).

17. THIS COURT ORDERS that to the extent any Landlord may have a claim against the Applicants arising solely out of the conduct of the Agent in conducting the Sale for which Sears Canada has claims against the Agent under the Liquidation Agreements (as applicable), the Applicants shall be deemed to have assigned such claims free and clear to the applicable Landlord (the "**Assigned Landlord Rights**"); provided that each such Landlord shall only be permitted to advance each such claims against the Agent if written notice, including the reasonable details of such claims, is provided by such Landlord to the Agent, Sears Canada and the Monitor during the period from the Sale Commencement Date to the date that is thirty (30) days following the FF&E Removal Deadline, provided however that the Landlords shall be provided with access to the Stores to inspect the Stores within fifteen (15) days following the FF&E Removal Deadline.

AGENT AN UNAFFECTED CREDITOR

18. THIS COURT ORDERS that the Liquidation Agreements shall not be repudiated, resiliated or disclaimed by Sears Canada nor shall the claims of the Agent pursuant to the Liquidation Agreements and under the Agent's Charge and Security Interest (as defined in this Order) be compromised or arranged pursuant to any plan of arrangement or compromise among the Applicants and their creditors (a "**Plan**") and, for greater certainty, the Agent shall be treated as an unaffected creditor in these proceedings and under any Plan.

19. THIS COURT ORDERS that Sears Canada is hereby authorized and directed, in accordance with the Liquidation Agreements, to remit all amounts that become due to the Agent thereunder.

20. THIS COURT ORDERS that no Encumbrances shall attach to any amounts payable or to be credited or reimbursed to, or retained by, the Agent pursuant to the Liquidation Agreements, including, without limitation, any amounts to be reimbursed by Sears Canada to the Agent pursuant to the Liquidation Agreements, and at all times the Agent will retain such amounts, free and clear of all Encumbrances, notwithstanding any enforcement or other process or Claims, all in accordance with the Liquidation Agreements.

DESIGNATED DEPOSIT ACCOUNTS AND SALE ACCOUNTS

21. THIS COURT ORDERS that no Person shall take any action, including any collection or enforcement steps, with respect to amounts deposited into the Designated Deposit Accounts pursuant to the Agency Agreement or the Sale Accounts pursuant to the Consulting Agreement, including any collection or enforcement steps, in relation to any Proceeds or FF&E Proceeds, that are payable to the Agent or in relation to which the Agent has a right of reimbursement or payment under the Agency Agreement or the Consulting Agreement, as applicable.

22. THIS COURT ORDERS that amounts deposited in the Designated Deposit Accounts or the Sale Accounts by or on behalf of the Agent or Sears Canada pursuant to the Agency Agreement and the Consulting Agreement including Proceeds and FF&E Proceeds shall be and be deemed to be held in trust for Sears Canada and the Agent, as the case may be, and, for clarity, no Person shall have any claim, ownership interest or other entitlement in or against such amounts, including, without limitation, by reason of any claims, disputes, rights of offset, set-off, or claims for contribution or indemnity that it may have against or relating to Sears Canada or any third party.

AGENT'S CHARGE AND SECURITY INTEREST

23. THIS COURT ORDERS that subject to the receipt by Sears Canada of the Initial Guaranty Payment and the issue of the Agent L/C, the Agent be and is hereby granted a charge (the "**Agent's Charge and Security Interest**") on all of the Merchandise, Proceeds, the FF&E Proceeds (to the extent of the FF&E Commission) and the Designated Sundry And Consignment Goods Proceeds (to the extent of the Designated Sundry And Consignment Goods Commission) (and, for greater certainty, the Agent's Charge and Security Interest shall not extend to other Property of the Applicants as defined in paragraph 4 of the Initial Order) as security for all of the obligations of Sears Canada to the Agent under the Agency Agreement, including, without limitation, all amounts

owing or payable to the Agent from time to time under or in connection with the Agency Agreement, which charge shall rank in priority to all Encumbrances including without limitation all charges created under the Initial Order; provided, however, that the Agent's Charge and Security Interest shall be junior and subordinate to all Encumbrances, but solely to the extent of any unpaid portion of the Unpaid Company's Entitlement due to Sears Canada under the Agency Agreement (the "**Subordinated Amount**").

24. THIS COURT ORDERS that the filing, registration, recording or perfection of the Agent's Charge and Security Interest shall not be required; and the Agent's Charge and Security Interest shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered or perfected prior or subsequent to the Agent's Charge and Security Interest coming into existence, notwithstanding any failure to file, register or perfect any such Agent's Charge and Security Interest. Absent the Agent's written consent or further Order of this Court (on notice to the Agent), Sears Canada shall not grant or permit to exist any Encumbrances over any Merchandise, Proceeds, FF&E Proceeds (to the extent of the FF&E Commission), or the Designated Sundry And Consignment Goods Proceeds (to the extent of the Designated Sundry And Consignment Goods Commission) that rank in priority to, or *pari passu* with the Agent's Charge and Security Interest.

25. THIS COURT ORDERS that the Agent's Charge and Security Interest shall constitute a mortgage, hypothec, security interest, assignment by way of security and charge over the Merchandise, the Proceeds, the FF&E Proceeds (to the extent of the FF&E Commission), and the Designated Sundry And Consignment Goods Proceeds (to the extent of the Designated Sundry And Consignment Goods Commission), and other than in relation to the Subordinated Amount, shall rank in priority to all other Encumbrances of or in favour of any Person. For greater certainty, the terms Initial Guaranty Payment, Agent L/C, Merchandise, Proceeds, FF&E Proceeds, FF&E Commission, Designated Sundry And Consignment Goods Proceeds, Designated Sundry And Consignment Goods Commission, and Unpaid Company's Entitlement used in these paragraphs 23-25 shall have the meanings given to them in the Agency Agreement.

26. THIS COURT ORDERS that notwithstanding:

- (a) the pendency of these proceedings;

- (b) any application for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (“**BIA**”) in respect of any of the Applicants, or any bankruptcy order made pursuant to any such applications;
- (c) any assignment in bankruptcy made in respect of any of the Applicants;
- (d) the provisions of any federal or provincial statute; or
- (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of encumbrances, contained in any existing loan documents, lease, mortgage, security agreement, debenture, sublease, offer to lease or other document or agreement to which an Applicant is a party;

(i) the Agency Agreement and the transactions and actions provided for and contemplated therein, including without limitation, the payment of amounts due to the Agent thereunder and any transfer of Remaining Merchandise and Remaining FF&E, (ii) the Consulting Agreement and the transactions and actions provided for and contemplated therein, including without limitation, the payment of amounts due to the Agent thereunder and any transfer of Remaining FF&E, (iii) the Assigned Landlord Rights, and (iv) the Agent’s Charge and Security Interest, shall be binding on any trustee in bankruptcy that may be appointed in respect of any of the Applicants and shall not be void or voidable by any Person, including any creditor of the Applicants, nor shall they, or any of them, constitute or be deemed to be a preference, fraudulent conveyance, transfer at undervalue or other challengeable reviewable transaction, under the BIA or any applicable law, nor shall they constitute oppressive or unfairly prejudicial conduct under any applicable law.

27. THIS COURT ORDERS that Sears Canada is authorized and permitted to transfer to the Agent personal information in Sears Canada’s custody and control solely for the purposes of assisting with and conducting the Sale and only to the extent necessary for such purposes and the Agent is hereby authorized to make use of such personal information, as if it were Sears Canada, subject to and in accordance with the Liquidation Agreements.

APPROVAL OF THE HOMETOWN DEALER SALE

28. THIS COURT ORDERS that Sears Canada and the Hometown Dealers are authorized to conduct a liquidation sale (the “**Hometown Dealer Sale**”) of Merchandise and FF&E (each as defined in the Sale Guidelines) located at their respective Hometown Dealer stores as set out on Schedule “D” attached hereto in accordance with this Order and the Sale Guidelines, as applicable. The rights and obligations of the landlords of such Hometown Dealers shall also be governed by this Order and the Sale Guidelines, as applicable.

GENERAL

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

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

SCHEDULE "A"
SALE GUIDELINES

(See attached)

SALE GUIDELINES – INVENTORY AND FF&E

The following procedures shall apply to any liquidation sales (the “**Sale**”) of inventory and goods (“**Merchandise**”) and FF&E (as defined below) to be held at Sears Canada’s retail stores (listed on Schedules “B” and “C” to the Liquidation Sale Order (as defined below), the “**Stores**”). In addition, the following procedures, to the extent applicable, shall apply to the sale of Merchandise and FF&E located at Hometown Dealer stores as set out on Schedule “D” to the Liquidation Sale Order (the “**Hometown Dealer Sale**”) and to any Landlords of such Hometown Dealer stores.

Terms capitalized but not defined in these Sale Guidelines have the meanings ascribed to them in the initial order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated June 22, 2017 (as amended and restated, the “**Initial Order**”), the Liquidation Sale Order, the Agency Agreement (as defined below), or the Consulting Agreement (as defined below).

1. Except as otherwise expressly set out herein, and subject to: (i) an Order of the Court (the “**Liquidation Sale Order**”) approving, *inter alia*, (a) the Amended and Restated Agency Agreement between 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**”) dated July 12, 2017 and amended and restated on July 14, 2017 (the “**Agency Agreement**”), (b) the Amended and Restated Consulting Agreement between Sears Canada and the Agent dated July 12, 2017 and amended and restated on July 14, 2017 (the “**Consulting Agreement**”, and together with the Agency Agreement, the “**Liquidation Agreements**”), and (c) these Sale Guidelines; or (ii) any further Order of the Court; or (iii) any subsequent written agreement between Sears Canada and its applicable landlord(s) (each individually, a “**Landlord**” and, collectively, the “**Landlords**”), the Sale shall be conducted in accordance with the terms of the applicable leases/or other occupancy agreements for each of the affected Stores (individually, a “**Lease**” and, collectively, the “**Leases**”). However, nothing contained herein shall be construed to create or impose upon Sears Canada or the Agent any additional restrictions not contained in the applicable Lease or other occupancy agreement.
2. The Sale shall be conducted so that each of the Stores remain open during their normal hours of operation provided for in the respective Leases for the Stores until the applicable premises vacate date for each Store under the Liquidation Agreements (the “**Vacate Date**”), and in all cases no later than October 12, 2017 (the “**Sale Termination Date**”). Rent payable under the respective Leases shall be paid as provided in the Initial Order.
3. The Sale shall be conducted in accordance with applicable federal, provincial and municipal laws, unless otherwise ordered by the Court.
4. All display and hanging signs used by the Agent in connection with the Sale shall be professionally produced and all hanging signs shall be hung in a professional manner. Notwithstanding anything to the contrary contained in the Leases, the Agent may advertise the Sale at the Stores as a “everything on sale”, “everything must go”, “store closing” or similar theme sale at the Stores (provided however that no signs shall advertise the Sale as a “bankruptcy”, a “liquidation” or a “going out of business” sale, it being understood that the French equivalent of “clearance” is “liquidation” and is permitted to be used). Forthwith upon request, the Agent shall provide the proposed signage packages along with

proposed dimensions by e-mail or facsimile to the applicable Landlords or to their counsel of record and the applicable Landlord shall notify the Agent of any requirement for such signage to otherwise comply with the terms of the Lease and/or the Sale Guidelines and where the provisions of the Lease conflicts with these Sale Guidelines, these Sale Guidelines shall govern. The Agent shall not use neon or day-glow signs or any handwritten signage (save that handwritten "you pay" or "topper" signs may be used). If a Landlord is concerned with "Store Closing" signs being placed in the front window of a Store or with the number or size of the signs in the front window, Sears Canada, the Agent and the Landlord will work together to resolve the dispute. Furthermore, with respect to enclosed mall Store locations without a separate entrance from the exterior of the enclosed mall, no exterior signs or signs in common areas of a mall shall be used unless explicitly permitted by the applicable Lease. In addition, the Agent shall be permitted to utilize exterior banners/signs at stand alone or strip mall Stores or enclosed mall Store locations with a separate entrance from the exterior of the enclosed mall; provided, however, that: (i) no signage in any other common areas of a mall shall be used; and (ii) where such banners are not permitted by the applicable Lease and the Landlord requests in writing that banners are not to be used, no banners shall be used absent further Order of the Court, which may be sought on an expedited basis on notice to the Service List. Any banners used shall be located or hung so as to make clear that the Sale is being conducted only at the affected Store and shall not be wider than the premises occupied by the affected Store. All exterior banners shall be professionally hung and to the extent that there is any damage to the facade of the premises of a Store as a result of the hanging or removal of the exterior banner, such damage shall be professionally repaired at the expense of the Agent.

5. The Agent shall be permitted to utilize sign walkers and street signage; provided, however, such sign walkers and street signage shall not be located on the shopping centre or mall premises.
6. Conspicuous signs shall be posted in the cash register areas of each Store to the effect that all sales are "final" and customers with any questions or complaints are to call the Agent's hotline number.
7. The Agent shall not distribute handbills, leaflets or other written materials to customers outside of any of the Stores on Landlord's property, unless explicitly permitted by the applicable Lease or, if distribution is customary in the shopping centre in which the Store is located. Otherwise, the Agent may solicit customers in the Stores themselves. The Agent shall not use any giant balloons, flashing lights, or amplified sound to advertise the Sale or solicit customers, except as explicitly permitted under the applicable Lease or agreed to by the Landlord, and no advertising trucks shall be used on landlord property or mall ring roads, except as explicitly permitted under the applicable Lease or agreed to by the Landlord.
8. At the conclusion of the Sale in each Store, the Agent and Sears Canada shall arrange that the premises for each Store are in "broom-swept" and clean condition, and shall arrange that the Stores are in the same condition as on the commencement of the Sale, ordinary wear and tear excepted. No property of any Landlord of a Store shall be removed or sold during the Sale. No permanent fixtures (other than FF&E (as defined below) for clarity) may be removed without the Landlord's written consent unless otherwise provided by the applicable Lease and in accordance with the Initial Order and the Liquidation Sale Order.

Any trade fixtures or personal property left in a Store after the applicable Vacate Date in respect of which the applicable Lease has been disclaimed by Sears Canada shall be deemed abandoned, with the applicable Landlord having the right to dispose of the same as the Landlord chooses, without any liability whatsoever on the part of the Landlord. Nothing in this paragraph shall derogate from or expand upon the Agent's obligations under the Liquidation Agreements. Notwithstanding the foregoing, Sears Canada shall only exercise its rights to abandon FF&E pursuant to section 5.1(h) of the Agency Agreement and section 3.4(d) of the Consulting Agreement provided that the applicable Landlord has consented thereto or upon further Order of the Court.

9. Subject to the terms of paragraph 8 above, the Agent may sell furniture, fixtures and equipment owned by Sears Canada ("FF&E") and located in the Stores during the Sale. For greater certainty, FF&E does not include (i) any portion of the Stores' HVAC system or sprinkler systems; and (ii) any furniture, fixtures and equipment owned by the Hometown Dealers. Sears Canada and the Agent may advertise the sale of FF&E consistent with these Sale Guidelines on the understanding that the Landlord may require such signs to be placed in discreet locations within the Stores reasonably acceptable to the Landlord. Additionally, the purchasers of any FF&E sold during the Sale shall only be permitted to remove the FF&E either through the back shipping areas designated by the Landlord or through other areas after regular Store business hours or, through the front door of the Store during Store business hours if the FF&E can fit in a shopping bag, with Landlord's supervision as required by the Landlord and in accordance with the Initial Order and the Liquidation Sale Order. The Agent shall repair any damage to the Stores resulting from the removal of any FF&E by the Agent or by third party purchasers of FF&E from the Agent.
10. The Agent shall not make any alterations to interior or exterior Store lighting, except as authorized pursuant to the affected Lease. The hanging of exterior banners or other signage, where permitted in accordance with the terms of these Sale Guidelines, shall not constitute an alteration to a Store.
11. Sears Canada and the Agent hereby provides notice to the Landlords of Sears Canada's and the Agent's intention to sell and remove FF&E from the Stores. The Agent shall make commercially reasonable efforts to arrange with each Landlord represented by counsel on the Service List and with any other Landlord that so requests, a walk-through with the Agent to identify the FF&E subject to the Sale. The relevant Landlord shall be entitled to have a representative present in the applicable Stores to observe such removal. If the Landlord disputes the Agent's entitlement to sell or remove any FF&E under the provisions of the Lease, such FF&E shall remain on the premises and shall be dealt with as agreed between Sears Canada, the Agent and such Landlord, or by further Order of the Court upon application by Sears Canada on at least two (2) days' notice to such Landlord and the Monitor. If Sears Canada has disclaimed or resiliated the Lease governing such Store in accordance with the CCAA and the Initial Order, it shall not be required to pay rent under such Lease pending resolution of any such dispute (other than rent payable for the notice period provided for in the CCAA and the Initial Order), and the disclaimer or resiliation of the Lease shall be without prejudice to Sears Canada's or the Agent's claim to the FF&E in dispute.
12. If a notice of disclaimer or resiliation is delivered pursuant to the CCAA and the Initial Order to a Landlord while the Sale is ongoing and the Store in question has not yet been

vacated, then: (a) during the notice period prior to the effective time of the disclaimer or resiliation, the Landlord may show the affected leased premises to prospective tenants during normal business hours, on giving Sears Canada, the Agent and the Monitor twenty-four (24) hours' prior written notice; and (b) at the effective time of the disclaimer or resiliation, the relevant Landlord shall be entitled to take possession of any such Store without waiver of or prejudice to any claims or rights such Landlord may have against Sears Canada in respect of such Lease or Store, provided that nothing herein shall relieve such Landlord of any obligation to mitigate any damages claimed in connection therewith.

13. The Agent and its agents and representatives shall have the same access rights to the Stores as Sears Canada under the terms of the applicable Lease, and the Landlords shall have the rights of access to the Stores during the Sale provided for in the applicable Lease (subject, for greater certainty, to any applicable stay of proceedings).
14. Sears Canada and the Agent shall not conduct any auctions of Merchandise or FF&E at any of the Stores.
15. The Agent shall designate a party to be contacted by the Landlords should a dispute arise concerning the conduct of the Sale. The initial contact person for the Agent shall be Ian Fredericks who may be reached by phone at 1-847-418-2075 or email at ifredericks@hilcoglobal.com. If a dispute should arise concerning the conduct of the Sale subject to a Hometown Dealer Sale, the respective Landlord should contact the relevant Hometown Dealer. If the parties are unable to resolve the dispute between themselves, the Landlord or Sears Canada shall have the right to schedule a "status hearing" before the Court on no less than two (2) days written notice to the other party or parties, during which time the Agent shall cease all activity in dispute other than activity expressly permitted herein, pending determination of the matter by the Court; provided, however, subject to paragraph 4 of these Sale Guidelines, if a banner has been hung in accordance with these Sale Guidelines and is the subject of a dispute, the Agent shall not be required to take any such banner down pending determination of any dispute.
16. Nothing herein or in the Liquidation Agreements is, or shall be deemed to be a consent by any Landlord to the sale, assignment or transfer of any Lease, or shall, or shall be deemed to, or grant to the Landlord any greater rights than already exist under the terms of any applicable Lease.
17. These Sale Guidelines may be amended by written agreement between Sears Canada, the Agent and the applicable Landlord.

SCHEDULE "B"
AGENT'S STORES

(See attached)

Channel	Stores
Full Line	001417-Regina - Cornwall
Full Line	001678-Saint John
Full Line	001430-Grande Prairie
Full Line	001318-Alma
Full Line	001311-St George De Beauce
Full Line	001646-Bathurst
Full Line	001434-Prince Albert
Full Line	001082-Sault Ste. Marie
Full Line	001019-Ottawa-Hull
Full Line	001647-Cornerbrook
Full Line	001383-Drummondville
Full Line	001624-Dartmouth
Full Line	001431-Moose Jaw
Full Line	001618-Truro
Full Line	001435-Lloydminster
Full Line	001047-Brockville
Full Line	001029-Chicoutimi
Full Line	001839-Kamloops - Aberdeen Mall
Full Line	001448-Red Deer Relocation
Full Line	001428-Medicine Hat
Home	001382-Edmonton North Home
Home	001357-Calgary South Home
Home	001336-Ancaster Home
Home	001353-London Home
Home	001395-Windsor Home
Home	001354-Scarborough Home
Home	001342-Woodbridge Home
Home	003801-Orillia Home
Home	001381-Sudbury Home
Home	001364-Kingston Home
Home	001365-Ottawa East Home
Home	001348-Laval Home
Home	001346-St. Bruno Home
Home	001352-Quebec City Home
Home	001394-Ste Foy Home

SCHEDULE "C"
CONSULTANT'S STORES

(See attached)

Channel	Stores
Liquidation	001835-Abbotsford
Liquidation	001424-Winnipeg - Garden City
Liquidation	001664-Halifax Outlet
Liquidation	001039-Chatham
Liquidation	001238-Cambridge
Liquidation	001036-Cornwall
Liquidation	001384-Timmins
Liquidation	001080-St Eustache
Liquidation	001084-Place Vertu
Liquidation	001391-Sorel

SCHEDULE "D"
HOMETOWN DEALER STORES

(See attached)

Channel	Stores
Dealer	007642-Spruce Grove, AB
Dealer	007668-Fort McMurray, AB
Dealer	007678-St. Albert, AB
Dealer	007697-Sherwood Park, AB
Dealer	007183-Okotoks, AB
Dealer	007585-Cold Lake, AB
Dealer	007471-Orangeville, ON
Dealer	007534-Rimouski, QC
Dealer	007872-Rouyn Noranda, QC

SCHEDULE “E”

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 AGENCY CERTIFICATE

RECITALS

All undefined terms in this Monitor’s Agency Certificate have the meanings ascribed to them in the Amended and Restated Agency Agreement entered into between 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**”) dated July 12, 2017 and amended and restated on July 14, 2017, a copy of which is attached as Exhibit “●” to the Affidavit of Sean Stidwill sworn July 17, 2017.

Pursuant to an Order of the Court dated July ●, 2017, the Court ordered that all of the Remaining Merchandise and the Remaining FF&E shall vest absolutely in the Agent, free and clear of and

from any and all claims and encumbrances, upon the delivery by the Monitor to the Agent of a certificate certifying that (i) the Sale has ended, and (ii) the Guaranteed Amount, the Expenses, any Company's Sharing Recovery Amount, the Net FF&E Proceeds, the Net Designated Sundry And Consignment Goods Proceeds and all other amounts due to Sears Canada under the Agency Agreement have been paid in full to Sears Canada.

FTI CONSULTING CANADA INC., in its capacity as Court-appointed Monitor in the *Companies' Creditors Arrangement Act* proceedings of Sears Canada Inc., et al. certifies that it has been informed by the Agent and Sears Canada that:

The Sale has ended.

The Guaranteed Amount, the Expenses, any Company's Sharing Recovery Amount, the Net FF&E Proceeds, the Net Designated Sundry And Consignment Goods Proceeds and all other amounts due to Sears Canada under the Agency Agreement have been paid in full to Sears Canada.

The Remaining Merchandise includes the Merchandise listed on Appendix "A" hereto.

The Remaining FF&E includes the FF&E listed on Appendix "B" hereto.

DATED as of this ● day of ●, 2017.

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

APPENDIX "A"
LIST OF REMAINING MERCHANDISE

APPENDIX "B"
LIST OF REMAINING FF&E

SCHEDULE “F”

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 CONSULTING CERTIFICATE

RECITALS

All undefined terms in this Monitor’s Consulting Certificate have the meanings ascribed to them in the Amended and Restated Consulting Agreement entered into between Sears Canada Inc. (“**Sears Canada**”) and Gordon Brothers Canada ULC, Merchant Retail Solutions ULC, Tiger Capital Group, LLC and GA Retail Canada ULC (the “**Agent**”) dated July 12, 2017 and amended and restated on July 14, 2017, a copy of which is attached as Exhibit “●” to the Affidavit of Sean Stidwill sworn July 17, 2017.

Pursuant to an Order of the Court dated July ●, 2017, the Court ordered that all of the Remaining FF&E shall vest absolutely in the Agent, free and clear of and from any and all claims and

encumbrances, upon the delivery by the Monitor to the Agent of a certificate certifying that (i) the Sale has ended, and (ii) all amounts due to Sears Canada under the Consulting Agreement have been paid in full to Sears Canada.

FTI CONSULTING CANADA INC., in its capacity as Court-appointed Monitor in the *Companies' Creditors Arrangement Act* proceedings of Sears Canada Inc., et al. certifies that it has been informed by the Agent and Sears Canada that:

The Sale has ended.

All amounts due to Sears Canada under the Consulting Agreement have been paid in full to Sears Canada.

The Remaining FF&E includes the FF&E listed on Appendix "A" hereto.

DATED as of this ● day of ●, 2017.

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

APPENDIX "A"
LIST OF REMAINING FF&E

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

LIQUIDATION SALE APPROVAL ORDER

OSLER, HOSKIN & HARCOURT LLP

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Lawyers for the Applicants

[Schedule I Intentionally Omitted]

SCHEDULE J
Company Owned Excluded FF&E
(see attached)

Assets excluded from Liquidation - Full Line, Home and Plus Stores

Category	Description	QTYs	Cost / Unit	FTL	Notes
FIXTURES					
Racks	M-3-Double T Stand	714			
Racks	M-19 - AA - Linear - Wardrobe Fixture	199			
Racks	M-2 - AA - Single T Stand - low capacity	473			
Racks	M-5 - AA - The Cut Rack - High Capacity - IMG_0893	15			
Tables	All White - AA & HH in asle + nesting tables	157			
Tables	HH - Tables - Manchester Tables - IMG_0909	11			
Tables	L-103 - AA - CW - CHDRENS WEAR FIXTURE-MIX AND MATCH - IMG_0902	76			
Tables	L-219 - AA - CMAT table - charming charlie - IMG_0892	44			
Tables	L-220 - AA - AC - Table - Handbags - Center Island Fixture-Women Accessories - IMG_0882	35			
Displayer	L-351 - AA - LG - Large Metal Steps for Luggage - 63 x 42 x 40 ht (Luggage) - IMG_0881	31			
Displayer	L-524A - HH - Pillow Bin - (24 x 48 x 36ht) - H_H - various sizes	175			
Displayer	L-524A - HH - White Pillow Bin -48 x 48 x 36ht) - H_H - IMG_0908	150			Approx.
Displayer	M-30 - AA - FW - Shoe displayer - Foldable Shoe Racking - IMG_0896	89			
Hardware	Backwall - 16in + 19in Shelves	2,295			
Hardware	Backwall - 16in + 19in brackets	9,056			
Hardware	Backwall - Chrome Jet rail, brackets and faceouts	TBD			
Other	M-31 - Cube - Large Grid - 3x2 - AA - HD B + All required 'The Cut'	6			12ft section
Other	M-27 - Cube - Mini cube - fixed frame 'The Cut'	6			12ft section
Other	M-28 - Cube - Mini cube - fixed frame - Stationary	4			12ft section
Other	Fixture - Seymour Headboards - IMG_0904	630			Approx [18 per store]
Other	Cart Corrals	635			
Other	IMPULSE QUEUE - IMG_0898	20			lane per store
Other	Shopping Carts	832			
Other	Shopping Caddies	975			
Other	White Self serve - Footwear Bunks	35			
Tandem	G-100 - Tandem + Shelves - 60in - Slatwall - White	308			ft sections
Tandem	G-100 - Tandem + Shelves - 60in - Slatwall - White	213			ft sections
	Sub Total				
DISPLAY					
	Sign holders	TBD			Estimate
	Arrows, Collateral and Promotional signing	TBD			
	Sub Total				
VISUAL Mannequines					
	WA	250			
	MW	58			
	CW	40			
	Sub Total	299			
EQUIPMENT					
	Pump Trucks	45			
	Baker's Rack	67			
	Caged Shelf Cart	66			
	2 Wheel Dolly	78			
	Flatbed Wheels	96			
	Flatbed	319			
	Platform cart	50			
	Rolling Racks - Z Racks	747			
	Rolling Bin	79			
	Step Ladder	55			
	Conveyors	2			
	Defrock Tables	20			
	Sub Total				
	Grand Total				

* Information Technology (IT) equipment will be excluded from liquidation (registers, phones, printers, handheld scanners, CCTV etc)
 ** National branded fixtures and collateral to be excluded from liquidation
 *** LEDs, wall washers and other visual ELFs will be excluded from liquidation
 **** Corbell Assets and fixtures

SCHEDULE K

Company's Designated Account

(see attached)

Bank accounts used for store deposits

Cash deposits	CIBC	0010	0002	8271410
Visa card deposits	RBC	0003	00002	1005065
Amex card deposits	RBC	0003	00002	1031053
Debit card deposits	RBC	0003	00010	1059583
MasterCard deposits	BMO	0001	0002	1213873

SCHEDULE L
Company Consignment Goods

*[List to be provided by Company
prior to Sale Commencement Date]*

[Schedule M Intentionally Omitted]

[Schedule N Intentionally Omitted]

SCHEDULE O

Third-Party Owned Excluded FF&E

*[List to be provided by Company prior
to Sale Commencement Date]*

Tab B

**THIS IS EXHIBIT "B" TO THE AFFIDAVIT
OF SEAN STIDWILL SWORN BEFORE ME
ON THIS 17th DAY OF JULY, 2017.**



A commissioner for taking Affidavits
Sonda PAVIC

CONSULTING AGREEMENT

This Consulting Agreement, dated as of July 12, 2017 and amended and restated as of July 14, 2017 (this "Agreement") is made by and between a contractual joint venture composed of Gordon Brothers Canada ULC, Merchant Retail Solutions ULC, Tiger Capital Group, LLC and GA Retail Canada ULC (collectively, the "Consultant"), and Sears Canada Inc. (the "Company" or the "Merchant").

RECITALS:

- A. On June 22, 2017, the Company and certain related entities commenced court-supervised restructuring proceedings under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA Proceedings") and obtained an initial order (as amended from time to time, the "Initial Order") from the Ontario Superior Court of Justice (Commercial List) (the "Court").
- B. Pursuant to the Initial Order, FTI Consulting Canada Inc. was appointed as monitor (the "Monitor") in the CCAA Proceedings and the engagement of BMO Nesbitt Burns Inc. ("BMO") as financial advisor to the Company was approved.
- C. The Company currently operates a network of retail stores across Canada and has identified certain stores for liquidation and closure.
- D. A contractual joint venture composed of Gordon Brothers Canada ULC and Merchant Retail Solutions ULC entered into a consulting agreement with the Company dated July 12, 2017 (the "Original Consulting Agreement").
- E. On July 12, 2017, Gordon Brothers Canada ULC and Merchant Retail Solutions ULC exercised their right to syndicate the transaction contemplated by the Original Consulting Agreement as provided for in Section 11.13 thereof.
- F. The Company and the Consultant, in consultation with the Monitor and BMO, and subject to the approval of the Court, wish to enter into this amended and restated consulting agreement (the "Agreement") in accordance with the terms hereof.
- G. Merchant desires to retain the Consultant to act as exclusive consultant for the purpose of advising the Merchant, on an exclusive basis, with respect to a sale of the Merchandise (as defined below) and certain of the Merchant's owned furniture, fixtures and equipment, located at the Merchant's retail store locations identified on **Schedule A** attached hereto (each individually, a "Closing Store", and collectively, the "Closing Stores") by means of a promotional "store closing", "everything must go", "sale on everything", or similar themed sale, as approved in writing by the Merchant (the "Sale");
- H. The Consultant is willing to serve as the Merchant's exclusive consultant for the purpose of providing such consulting services, upon the terms and conditions and in the manner set forth in this Agreement and subject to the granting of the Approval Order (defined below);
- I. The Merchant believes that entering in to this Agreement is in the best interest of the Merchant;

J. The Consultant and the Merchant agree and acknowledge that the entering into of this Agreement by the Merchant is subject to the issuance of an Order of the Court in the CCAA Proceedings substantially in the form attached hereto as **Schedule B**, among other things approving this Agreement and the Sale Guidelines (as defined below) (the “Approval Order”), which Approval Order shall be final and executory and no appeal should have been launched by the Sale Commencement Date, and that should the Approval Order not be obtained, final and executory by the Sale Commencement Date, this Agreement shall have no force or effect;

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Consultant and the Merchant hereto agree as follows:

1. Definitions

For the purposes of this Agreement, the terms listed below shall have the respective meanings indicated:

“Agreement” has the meaning set out in the Recitals hereto;

“Approval Order” has the meaning set out in the Recitals hereto;

“BMO” has the meaning set out in the Recitals hereto;

“Budget” shall mean the Consultant Controlled Expense Budget attached hereto as **Schedule C**, which may be modified as mutually agreed to by the Merchant and Consultant, with the approval of the Monitor;

“CCAA Proceedings” has the meaning set out in the Recitals hereto;

“Closing Store” and “Closing Stores” have the meanings set out in the Recitals hereto;

“Closing Store Employees” shall mean those employees of the Merchant retained to conduct the Sale following consultation with Consultant;

“Company” has the meaning set out in the Recitals hereto;

“Consultant” has the meaning set out in the Recitals hereto;

“Consultant Controlled Expenses” has the meaning set out in Section 3.1 hereof;

“Consultant Indemnified Parties” has the meaning set out in Section 8.3 hereof;

“Consulting Fee” has the meaning set out in Section 3.2 hereof;

“Consulting Services” has the meaning set out in Section 2.2 hereof;

“Court” has the meaning set out in the Recitals hereto;

“Encumbrances” shall mean 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, priorities, prior claims, and encumbrances, including, without limitation, the charges granted by the Court under the CCAA Proceedings (including, but not limited to, the Administration Charge, the KERP Priority Charge, the Directors’ Priority Charge, the DIP Term Lenders’ Charge, the DIP ABL Lenders’ Charge, the KERP Subordinated Charge, and the Directors’ Subordinated charge, each as defined in the Initial Order);

“Excluded FF&E” means the furniture, fixtures and equipment on the list attached hereto as **Schedule D**;

“FF&E” means the Company’s owned furniture, fixtures and equipment but excluding any Excluded FF&E;

“FF&E Fee” has the meaning set out in Section 3.3 hereof;

“FF&E Removal Deadline” shall have the meaning ascribed to it in Section 3.4(a)

“FF&E Removal Period” shall have the meaning ascribed to it in Section 3.4(a);

“Final Settlement” has the meaning set out in Section 4.3 hereto;

“Gross Proceeds” shall mean all proceeds of sales of Merchandise (excluding applicable sales tax) derived from the Sale, provided, however, that it is expressly understood and agreed, that Gross Proceeds shall not include proceeds of sales of FF&E or made prior to the Sale Commencement Date or after the Sale Termination Date (including items which were sold prior to the Sale Commencement Date but delivered following the Sale Commencement Date);

“Initial Order” has the meaning set out in the Recitals hereto;

“Lenders” means, collectively, the DIP ABL Lenders and the DIP Term Lenders (each as defined in the Initial Order);

“Merchandise” shall mean each item of saleable inventory owned by the Company, which for greater certainty shall not include gift cards, located at the Closing Stores as of the Sale Commencement Date or received in Closing Stores subsequently, that is sold during the Sale;

“Merchant” has the meaning set out in the Recitals hereto;

“Merchant Indemnified Parties” has the meaning set out in Section 8.2 hereof;

“Monitor” has the meaning set out in the Recitals hereto;

“Remaining FF&E” has the meaning set out in Section 3.4(c);

“Sale” has the meaning set out in the Recitals hereto;

“Sale Accounts” has the meaning set out in Section 4.1 hereof.

“Sale Commencement Date” shall mean July 21, 2017, or such other date as may be agreed to by Merchant and Consultant with the approval of the Monitor and consent of the Lenders.

“Sale Expenses” shall mean all expenses incurred in connection with the Sale, including without limitation: (i) advertising expenses (including direct media costs, agency fees and production costs); (ii) payroll for Closing Store-level employees utilized in connection with the Sale, and related employee benefits and payroll taxes; (iii) maintenance and store cleaning costs; (iv) security costs; (v) credit card processing fees; (vi) employee bonuses determined by Merchant; (vii) all occupancy costs (e.g., rent, percentage rent, CAM charges, HVAC charges, real estate taxes, etc.) relative to the Closing Stores ; (viii) insurance; (ix) telephone charges; and (x) all Supervisor Costs in accordance with Sections 2.3 hereof;

“Sale Guidelines” has the meaning provided for in Section 2.2(c) hereof;

“Sale Term” shall mean the period of time beginning with the Sale Commencement Date and ending on the Sale Termination Date;

“Sale Termination Date” means the date on which the Sale terminates at each of the Closing Stores, which date shall be no later than October 12, 2017 (subject to further extension as may be mutually agreed upon, in writing, by the Agent and the Company, with the approval of the Monitor and the Lenders);

“Supervisor(s)” shall mean the individual(s) whom Consultant shall directly engage to provide services to Merchant in connection with the Sale in accordance with Section 2.3 below; and

“Supervisor Costs” shall have the meaning set forth in Section 2.3 of this Agreement.

2. Consulting Services

- 2.1 The Merchant will seek from the Court the Approval Order. Subject to the entry of and the terms of the Approval Order, the Merchant hereby retains the Consultant and the Consultant hereby agrees to serve as an independent consultant to the Merchant in connection with the conduct of the Sale as set forth herein. With respect to the Sale, the Consultant shall serve as the sole and exclusive consultant to the Merchant relative thereto throughout the Sale Term.
- 2.2 On the terms and conditions set forth herein, commencing as of the Sale Commencement Date, the Consultant shall provide the Merchant with the following services (the “Consulting Services”) with respect to the conduct of the Sale:
- (a) provision of full-time Supervisors to supervise and conduct the Sale as further described in Section 2.3 below; provided that the determination of the number of Supervisors supplied for the Sale shall be determined by the Consultant following consultation with the Merchant;

- (b) provide the Merchant with such oversight, supervision and guidance with respect to the conduct of the Sale and the liquidation and disposal of the Merchandise from the Closing Stores as may be required in order to maximize Gross Proceeds;
- (c) recommend and implement appropriate point of purchase, point of sale and external advertising to effectively sell the Merchandise during the Sale Term, consistent with the theme of the Sale, it being understood that the Sale will be advertised as a “store closing”, “sale on everything” or similar sale themes throughout the term of the Sale subject to the Merchant approval and in accordance with the sales guidelines substantially in the form attached to the Approval Order (the “Sale Guidelines”);
- (d) advise the Merchant as to appropriate pricing and discounting of the Merchandise, appropriate staffing levels for the Closing Stores (including Closing Store Employees) (and the Merchant agrees to take direction from the Consultant with regard to Closing Store Employee staffing levels);
- (e) assist the Merchant in the formulation and implementation of a loss prevention strategies designed to protect the inventory from shrinkage;
- (f) advise and assist the Merchant in the development and implementation of programs for the handling of open customer orders (including delayed delivery goods) and customer deposit issues, including, where appropriate, fulfillment of such orders as may be designated by the Merchant;
- (g) provide such other related services deemed necessary or prudent by the Merchant and the Consultant under the circumstances giving rise to the Sale; and
- (h) the Consultant shall not, in any way, be considered as an employer of the Merchant’s employees and shall have no obligation whatsoever in that respect.

2.3 The Consultant shall provide qualified supervision to oversee the conduct of the Sale in the Closing Stores as may be required to maximize sales, the expense for which is included in the Budget. In connection with the Sale, the Consultant shall indirectly retain and engage the Supervisors. The Supervisors shall not be deemed to be employees or consultants of the Merchant in any manner whatsoever; nor do the Supervisors have any relationship with the Merchant by virtue of this Agreement or otherwise which creates any liability or responsibility on behalf of the Merchant for the Supervisors. During the Sale Term, the Supervisors shall perform the services provided for herein during normal Closing Store operating hours and for the period of time prior to the Closing Stores opening and subsequent to the Closing Stores closing, as required in connection with the Sale, in the Consultant’s discretion. In consideration of Consultant’s engagement of the Supervisors, the Merchant agrees to pay the Consultant, as a Sale Expense, the Supervisor-related wages, fees paid to arm’s length third parties, travel, expenses, deferred compensation and third-party payroll costs and expenses, in accordance with and subject to the Budget (collectively, the “Supervisor Costs”). The Supervisor Costs set forth on the Budget include, among other things, industry standard deferred compensation. The Merchant shall reimburse Consultant for all Supervisor Costs weekly,

based upon invoices or other documentation reasonably satisfactory to the Merchant and the Monitor.

- 2.4 Title to all Merchandise and FF&E shall remain with Merchant at all times during the Sale Term until such Merchandise is sold. Although the Consultant shall undertake its obligations under this Agreement in a manner designed to achieve the desired results of the Sale and to maximize the benefits to the Merchant, the Merchant expressly acknowledges that the Consultant is not guaranteeing the results of the Sale. All sales of Merchandise and FF&E in the Closing Stores shall be made in the name and on behalf of the Merchant, and all sales during the Sale Term shall be final with no returns accepted or allowed. All sales of Merchandise shall be by cash, gift card, gift certificate, merchandise credit, debit card or credit card in accordance with Merchant's policies. The Parties acknowledge and agree that no Closing Stores will honor returns with respect to any items whether or not purchased prior to or during the Sale. The Closing Stores shall accept loyalty points issued by the Company prior to the Sale Commencement Date.

3. Expenses: Consultant's Fees

- 3.1 Sale Expenses. In connection with the Sale, the Merchant shall be responsible for the payment of all expenses incurred in connection with the Sale, including all Sale Expenses. To control certain Sale Expenses, the Consultant and the Merchant have agreed on the Budget of certain delineated Sale Expenses, which includes Supervisor Costs and advertising and sign expenses (collectively the "Consultant Controlled Expenses"). All Consultant Controlled Expenses shall be considered Sale Expenses and be borne by Merchant, except solely to the extent such expenses exceed the aggregate amount set forth in the Budget without the prior written consent of the Merchant. In the event that the Merchant shall not approve any such overage with respect to Consultant Controlled Expenses and the Consultant nevertheless causes such Consultant Controlled Expenses to be incurred, then the Consultant shall fund such Consultant Controlled Expenses in excess of the aggregate amount on the Budget. It is anticipated that the Consultant may advance funds for certain categories of Consultant Controlled Expenses, and the Merchant shall reimburse the Consultant therefor (in connection with each weekly reconciliation provided for in Section 4.1 hereof) upon presentation of invoices and statements for such expenses, which reimbursement shall be in addition to any Consulting Fee and/or FF&E Fee earned and payable hereunder provided that such expenses do not exceed the aggregate amounts set forth in the Budget or otherwise approved by Merchant in accordance with this Section 3.1. The Merchant shall reimburse the Consultant weekly, in connection with each weekly settlement as provided in Section 4.1 hereof, for all Consultant Controlled Expenses incurred or paid directly by the Consultant subject to and in accordance with this Section 3.1.
- 3.2 Consulting Fee. In consideration of the Consulting Services provided hereunder in connection with the Sale, the Merchant shall pay to the Consultant a fee equal to one and three-quarters percent (1.75%) of Gross Proceeds (the "Consulting Fee").:
- 3.3 Fixtures Disposition. In addition to the Consulting Services provided for herein, with respect to FF&E located at the Closing Stores, the Consultant shall sell the FF&E so designated by the Merchant and in accordance with the Sale Guidelines, on an "as is where is" basis in any such Closing Stores for the Merchant's benefit. The Consultant shall

advertise in the context of advertising for the Sale that items of FF&E at the Closing Stores are available for sale, and shall contact and solicit known purchasers and dealers of furniture and fixtures. In consideration of providing such services, the Consultant shall be paid seventeen and one half percent (17.5%) of the gross receipts (net only of applicable sales taxes, if any) from all sales or other dispositions of FF&E, including Remaining FF&E sold pursuant to Section 3.4(c) below (the “FF&E Fee”). In addition, the Merchant shall reimburse the Consultant for the Consultant’s reasonable out of pocket expenses incurred in connection with the sale, other disposition, or removal of the FF&E which have been previously approved in writing by the Merchant and Consultant on a budget (including without limitation costs of removal, commissions and advertising). The Consultant shall have no liability to the Merchant or any third party for its failure to sell any or all of the FF&E.

3.4 Remaining FF&E.

- (a) Subject to Section 3.4(d), the Consultant shall within fourteen (14) days (the “FF&E Removal Period”) following the applicable Sale Termination Date (the “FF&E Removal Deadline”) remove all FF&E from the applicable Closing Store.
- (b) During the FF&E Removal Period, the Company shall, at each Closing Store, provide the Consultant and its invitees with peaceful use and occupancy and access to each such Closing Store for purposes of selling, disposing, and/or removing the FF&E.
- (c) Subject to Section 3.4(d), any FF&E that is not sold by the Consultant prior to the applicable FF&E Removal Deadline in section 3.4(a) (the “Remaining FF&E”) shall be removed by the Consultant from the applicable Closing Store by no later than such applicable FF&E Removal Deadline. Subject to Section 3.4(d), the Consultant, shall be entitled to dispose of the Remaining FF&E, free and clear of all Encumbrances, at Consultant’s discretion. Any associated expenses shall be paid by the Company as provided for in Section 3.3 above and in accordance with the budget referred to therein, and the gross receipts thereof (net of sales tax) shall be included in the calculation of the FF&E Fee due to Consultant. The removal of any Remaining FF&E shall be done in a manner consistent with the Sale Guidelines.
- (d) Notwithstanding anything herein to the contrary, the Company may, in its entire discretion, instruct Consultant to abandon any Remaining FF&E in any of the Closing Stores by providing written notice to the Consultant by no later than seven (7) days prior to the applicable FF&E Removal Deadline. If so instructed, as of the FF&E Removal Deadline, the Consultant may abandon in place, in a neat and orderly manner, any unsold FF&E at the applicable Closing Store. If the Consultant chooses to remove any Remaining FF&E notwithstanding receipt of the aforementioned notice from the Company, the Consultant shall assume all costs and expenses relating to the removal of such FF&E and retain all proceeds from the sale thereof for its own account.
- (e) Notwithstanding anything in this Agreement to the contrary, Consultant shall not have any obligation whatsoever to cap any electrical or plumbing outlets or

purchase, sell, make, store, handle, treat, dispose, or remove any hazardous materials from the Closing Stores or otherwise. Consultant shall have no liability to any party for any environmental action brought: (i) that is related to the storage, handling, treatment, disposition, generation, or transportation of hazardous materials, or (ii) in connection with any remedial actions associated therewith or the Closing Locations. The Merchant (and not Consultant) shall be solely responsible to cap all electrical items and plumbing outlets and to remove all hazardous materials from the Closing Stores.

4. Sale Proceeds; Weekly Settlement

- 4.1 **Sale Proceeds; Sale Reconciliation.** All proceeds of sales of Merchandise and FF&E through the Sale shall be collected by Merchant's Closing Store management personnel and deposited into Merchant's existing Closing Store-level deposit accounts (the "Sale Accounts"). The Merchant shall, upon request, deliver to the Consultant account statements and such other information relating to the Sale Accounts reasonably requested by the Consultant. On Wednesday of each week, commencing on the second Wednesday following the Sale Commencement Date, the Consultant and the Merchant shall, in consultation with the Monitor, reconcile the results of the Sale for the prior week, including, without limitation, Gross Proceeds of Merchandise, sales of FF&E, Consultant Controlled Expenses, and any Consulting Fee (subject to clause (iii) below) and FF&E Fee earned and payable hereunder, and the Merchant shall pay to the Consultant on a weekly basis, in connection with such weekly settlement, mutually agreed (i) Consultant Controlled Expenses incurred or paid by the Consultant for such prior week, (ii) anticipated Consultant Controlled Expenses for the next succeeding week of the Sale, and (iii) the Consultant's Consulting Fee and FF&E Fee on account of the prior week's sales of Merchandise and FF&E. Merchant shall within five (5) business days of completion of the Final Settlement pay the Consultant any remaining unpaid Consulting Fee and FF&E Fee and/or unreimbursed Consultant Controlled Expenses incurred or paid directly by the Consultant subject to and in accordance with Section 3.1 of this Agreement.
- 4.2 **Cash and Credit Card Proceeds.** Merchant shall have control over all Closing Store Employees and shall handle the cash, debit and charge card payments for all Merchandise in accordance with Merchant's customary cash management practices and procedures, subject to Consultant's right to audit any such items. Merchant shall provide throughout the Sale Term its current credit card systems and servicing arrangements (including the Merchant's credit card terminals and processor(s), credit card processor coding and bank accounts) and other central administrative services necessary for the Sale, including without limitation customary POS administration, sales, audit, cash reconciliation, accounting, payroll processing during the course of the Sale, all borne as a Sale Expense by Merchant.
- 4.3 **Final Settlement.** As soon as possible following the conclusion of the Sale and in no event later than thirty (30) days following the end of the Sale Term, the parties shall complete a Final Settlement, subject to the Monitor's approval in consultation with the Lenders, of all amounts contemplated by this Agreement ("Final Settlement"), including, without limitation, the determination and payment of any fees due to Consultant and all reimbursements contemplated hereby.

5. Closing Store Employees

- 5.1 Closing Store Employees. The Consultant and the Merchant shall cooperate to retain the employees of the Merchant, as designated by the Consultant, to be utilized to conduct the Sale at the Closing Stores during the Sale Term. Such employees shall remain employees of the Merchant, and subject to paragraph 8.2 hereof the Consultant shall have no liability to the Closing Store Employees (including any of the Merchant's former employees) of any kind or nature whatsoever, including without limitation, with respect to severance pay, termination pay, vacation pay, pay in lieu of reasonable notice of termination, or any other expenses or liability arising from the Merchant's or the Merchant's employment of such Closing Store Employees prior to, during, and subsequent to the Sale. Consultant shall not change the terms of employment of any Closing Store Employees and Merchant shall remain the employer thereof.

6. Representation and Warranties of Consultant

- 6.1 The Consultant hereby represents warrants and covenants in favour of the Merchant as follows:
- (a) The Consultant has taken all necessary action required to authorize the execution, performance and delivery of this Agreement, and to consummate the transactions contemplated hereby;
 - (b) This Agreement is a valid and binding obligation of the Consultant enforceable in accordance with its terms;
 - (c) No action or proceeding has been instituted or, to Consultant's knowledge, threatened, affecting the consummation of this Agreement or the transactions contemplated herein;
 - (d) The Consultant is not a non-resident of Canada pursuant to the *Income Tax Act* (Canada); and
 - (e) Each entity comprising Consultant shall be duly registered, by no later than the Sale Commencement Date, under Subdivision (d) of Division V of Part IX of the Excise Tax Act (Canada) with respect to the goods and services tax and harmonized sales tax and under Division I of Chapter VIII of Title I of An Act respecting the Quebec sales tax with respect to the Quebec sales tax. The Consultant's registration number is as follows: (i) 814418836 RT0001 for Gordon Brothers Canada ULC; (ii) 810929034 RT0001 for Merchant Retail Solutions ULC, (iii) 845025105 RT0001 for Tiger Capital Group, LLC; and (iv) 814306783 RT0001 for GA Retail Canada ULC.

7. Representations and Warranties of Merchant

- 7.1 The Merchant hereby represents warrants and covenants in favour of the Consultant as follows:

- (a) Subject to the Approval Order, the Merchant has taken all necessary actions required to authorize its execution, performance and delivery of this Agreement, and to consummate the transactions contemplated hereby;
- (b) Subject to the Approval Order, this Agreement is a valid and binding obligation of the Merchant enforceable in accordance with its terms, subject only to any applicable bankruptcy, insolvency or similar laws affecting the rights of creditors generally and the availability of equitable remedies; and
- (c) No action or proceeding has been instituted or, to the Merchant's knowledge, threatened, affecting the consummation of this Agreement or the transactions contemplated herein.

8. Affirmative Duties of Consultant

- 8.1 Except as may be provided otherwise in the Approval Order or any order of the Court, the Consultant shall advise the Merchant with respect to the legal requirements of effecting the Sale as a "store closing" or other mutually agreed upon theme in compliance, if required with applicable provincial and local "going out of business" laws and assist in obtaining all permits and governmental consents required in order to conduct the Sale under such laws.
- 8.2 The Consultant, on a joint and several basis, shall indemnify and hold the Merchant and its affiliates, and their respective officers, directors, employees, agents and independent contractors (collectively, "Merchant Indemnified Parties"), harmless from and against all claims, demands, penalties, losses, liability or damage, including, without limitation, reasonable legal fees on a full indemnity basis and expenses, directly or indirectly asserted against, resulting from, or related to:
 - (i) the Consultant's material breach of or failure to comply with any of its agreements, covenants, representations or warranties contained herein or in any written agreement entered into in connection herewith;
 - (ii) any harassment or any other unlawful, tortious or otherwise actionable treatment of any employees or agents of the Merchant by the Consultant or any of the Consultant's officers, directors, employees, agents or representatives;
 - (iii) any claims by any party engaged by the Consultant as an employee or independent contractor arising out of such employment; except where due to the gross negligence or willful misconduct of the Merchant or from a breach of the terms hereof by the Merchant; and
 - (iv) the gross negligence or willful misconduct of the Consultant or any of its officers, directors, employees, the agents or representatives, or any Supervisor.
- 8.3 The Merchant shall indemnify and hold the Consultant and its affiliates, and their respective officers, directors, employees, agents and independent contractors including the

Supervisors (collectively, "Consultant Indemnified Parties"), harmless from and against all claims, demands, penalties, losses, liability or damage, including, without limitation, reasonable legal fees on a full indemnity basis and expenses, directly or indirectly asserted against, resulting from, or related to:

- (i) the Merchant's material breach of or failure to comply with any of its agreements, covenants, representations or warranties contained herein or in any written agreement entered into in connection herewith;
- (ii) any harassment or any other unlawful, tortious or otherwise actionable treatment of the Consultant Indemnified Parties by the Merchant or any of the Merchant Indemnified Parties;
- (iii) any liability or other claims, including, without limitation, product liability claims, asserted by customers, any Closing Store Employees (under a collective bargaining agreement or otherwise) or any other person, except where due to the gross negligence or willful misconduct of the Consultant or from a breach of the terms hereof by the Consultant; and
- (iv) the gross negligence or willful misconduct of the Merchant or any of the Merchant Indemnified Parties.
- (v) Merchant's failure to pay over to the appropriate taxing authority any taxes required to be paid by Merchant during the Sale Term in accordance with applicable law.

8.4 The Consultant shall conduct the Sale in accordance with the terms of this Agreement, the Approval Order, and the Sale Guidelines.

9. Affirmative Duties of Merchant

9.1 The Merchant shall be solely liable for, and shall pay when due, (i) all expenses (including, without limitation, Sale Expenses) which are necessary to conduct the Sale, including, without limitation, all taxes, costs, expenses, accounts payable and other liabilities relating to the Sale, the Closing Stores, Closing Store Employees and any other consultants and representatives of Merchant, and (ii) all Consultant Controlled Expenses, Consulting Fees and FF&E Fees payable hereunder.

9.2 The Merchant shall prepare and process all reporting forms, certificates, reports and other documentation required in connection with the payment of all applicable taxes to the appropriate taxing authorities.

9.3 Without limiting any other term or provision of this Agreement, subject to the provisions of the Initial Order and the Approval Order, during the Sale Term, the Merchant shall provide the Consultant, at no cost or expense to the Consultant, with (i) central administrative services necessary to administer the Sale, (ii) employees at the Closing Stores (to the extent reasonably agreed upon by the Merchant and the Consultant necessary to effect the Sale), and (iii) peaceful use and occupancy of, and reasonable access (including reasonable before and after hours access and normal utilities/phone

service) to, the Closing Stores and the Merchant's corporate, offices for the purpose of preparing for, conducting, and completing the Sale as contemplated hereby. Merchant shall use reasonable efforts to cause Merchant's employees to cooperate with Consultant and the Supervisors.

- 9.4 Unless otherwise directed by the Merchant, the Consultant and the Merchant shall honour gift cards and merchandise credits at the Closing Stores, in accordance with store operation procedures to be mutually agreed upon between the Merchant and the Consultant, with the full amount of such gift cards and merchandise credits constituting Gross Proceeds hereunder. No gift cards shall be sold from the Closing Stores during the Sale Term.
- 9.5 The Merchant shall collect all sales taxes and shall be solely responsible for reporting and paying the same to the appropriate taxing authorities in accordance with applicable law.
- 9.6 The obligations of the Merchant and the Consultant shall be conditional upon having obtained the Approval Order by July 19, 2017 (or such alter date as the Company, the Consultant, the Monitor and the Lenders may agree to in writing), which shall not have been stayed, varied or vacated.

10. Insurance: Risk of Loss

- 10.1 The Merchant shall maintain throughout the Sale Term, (i) its existing insurance with respect to the Merchandise at the Closing Stores in amounts and on such terms and conditions as are consistent with the Merchant's ordinary course operations and (ii) casualty and liability insurance policies (including, but not limited to, product liability, comprehensive public liability insurance and auto liability insurance) covering injuries to persons and property in or in connection with the operation of the Closing Stores.
- 10.2 The Consultant shall maintain throughout the Sale Term, liability insurance policies (including, but not limited to, comprehensive public liability and auto liability insurance) covering injuries to persons and property in or in connection with the Consultant's provision of Consulting Services at the Closing Stores.
- 10.3 Subject to Section 8.2 but notwithstanding any other provision of this Agreement, the Merchant and the Consultant agree that the Merchant shall bear all responsibility for liability claims (product liability and otherwise) of customers, employees and other persons arising from events occurring at the Closing Stores before, during and after the Sale Term, except to the extent any such claim arises from the gross negligence, willful misconduct, or unlawful acts of the Consultant.
- 10.4 Subject to Section 8.2 but notwithstanding any other provision of this Agreement, the Merchant and the Consultant agree that (i) the Consultant shall not be deemed to be in possession or control of the Closing Stores or the Merchandise or other assets located therein or associated therewith, or of the Merchant's employees located at the Closing Stores, and (ii) the Consultant does not assume any of the Merchant's obligations or liabilities with respect to any of the matters addressed in clause (i) above, except to the extent any such claim arises from the gross negligence, willful misconduct or unlawful acts of the Consultant.

11. Miscellaneous

11.1 Any notice or other communication under this Agreement shall be in writing and may be delivered personally or sent by facsimile or by prepaid registered or certified mail, by facsimile, email or courier delivery as follows:

(i) In the case of Consultant:

Gordon Brothers Canada ULC
c/o Gordon Brothers Group, LLC
800 Boylston Street 27th Floor
Boston, MA 02199

Attention: Mackenzie Shea,
Associate General Counsel

Email: mshea@gordonbrothers.com

and

Merchant Retail Solutions ULC
c/o Hilco Merchant Resources, LLC
5 Revere Drive Suite 206
Northbrook, IL 60062

Attention: Ian Fredericks

Email: ifredericks@hilcoglobal.com

and

Tiger Capital Group, LLC
60 State Street, 11th Floor
Boston, MA 02109 USA

Attention: Bradley W. Snyder

Email: bsnyder@tigergroup.com

And

Great American Group, LLC
21255 Burbank Blvd., Suite 400
Woodland Hills, CA 91367

Attention: Scott K. Carpenter

Email: scarpenter@greatamerican.com

With a copy to:

Davies Ward Phillips & Vineberg LLP
 1501 McGill College Avenue
 Montréal QC H3A 3N9 Canada

Attn: William Rosenberg
 Denis Ferland

Email: wrosenberg@dwpv.com
dferland@dwpv.com

and with a copy to:

Stikeman Elliott LLP
 1155 Boulevard René-Lévesque West, 40th Floor, Montréal, QC
 H3B 4P7 Canada

Attention: Elizabeth Pillon/Guy P. Martel
 Email: lpillon@stikeman.com
gmartel@stikeman.com

(ii) In the case of Merchant:

BMO Nesbitt Burns Inc.,
 100 King Street East, 4th floor
 Toronto, ON M5X 1H3

Attn: Mark Caiger, Managing Director
mark.caiger@bmo.com

Attn: Constance de Grosbois, Director
constance.degrosbois@bmo.com

Osler, Hoskin & Harcourt LLP
 100 King Street West,
 Suite #6200
 Toronto, ON M5X 1B8

Attn: Marc Wasserman, Partner
mwasserman@osler.com

Attn: Sandra Abitan, Partner
sabitan@osler.com

with a copy to the Monitor:

FTI Consulting Canada Inc.
 79 Wellington Street West,
 Suite #2010
 Toronto, ON M5K 1G8

Attn: Steven Bissell, Managing Director
steven.bissell@fticonsulting.com

- 11.2 Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein, without reference to any conflict of law provisions. The parties hereto agree that the Court shall retain exclusive jurisdiction to hear and finally determine any disputes arising from or under this Agreement, and by execution of this Agreement each party hereby irrevocably accepts and submits to the jurisdiction of such Court with respect to any such action or proceeding and to service of process by certified mail, return receipt requested to the address listed above for each party.
- 11.3 Severability. In the event any term or provision contained within this Agreement shall be deemed illegal or unenforceable, then such offending term or provision shall be considered deleted from this Agreement and the remaining terms shall continue to be in full force and effect.
- 11.4 No Waiver. No consent or waiver by any party, express or implied, to or of any breach or default by the other in the performance of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such other party of the same or any other obligation of such party. Failure on the part of any party to complain of any act or failure to act by the other party or to declare the other party in default, irrespective of how long such failure continues, shall not constitute a waiver by such party of its rights hereunder.
- 11.5 Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect of the subject matter hereof and supersedes all prior negotiations and understandings, and can only be modified by a writing signed by the Merchant and the Consultant.
- 11.6 Assignment. Neither the Merchant nor the Consultant shall assign this Agreement without the express written consent of the other. This Agreement shall inure to the benefit of, and be binding upon, the parties and their respective successors and permitted assigns.
- 11.7 Counterparts. This Agreement may be executed in several counterparts, each of which when so executed shall be deemed to be an original and such counterparts, together, shall constitute one and the same instrument. Delivery by facsimile or other electronic transmission including email of this Agreement or an executed counterpart hereof shall be deemed a good and valid execution and delivery hereof or thereof.
- 11.8 Independent Contractor. Nothing contained herein shall be deemed to create any relationship between the Consultant and the Merchant other than that of an independent contractor.
- 11.9 Survival. All representations, warranties, covenants, agreements and indemnities made herein, by the parties hereto, shall be continuing, shall be considered to have been relied upon by the parties and shall survive the execution, delivery and performance of this Agreement.

- 11.10 Choice of Language. The parties have specifically required that this Agreement and all related documents be drafted and executed in English. *Les parties aux présentes ont formellement demandé à ce que la présente convention et tous les documents auxquels celle-ci réfère soient rédigés et signés en langue anglaise.*
- 11.11 Further Assurances. The Merchant and the Consultant shall each execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, at the cost and expense of the requesting party, such instruments and take such other actions as may be necessary or advisable to carry out their obligations under this Agreement, or any document, certificate or other instrument delivered pursuant hereto or thereto or required by applicable law.
- 11.12 Termination. This Agreement shall terminate upon the completion and approval of the Final Settlement (as provided in Section 4.1 above); provided, however, that either party may terminate this Agreement in the event that the other commits a material breach of its obligations hereunder. If either party seeks to terminate this Agreement by reason of a claim of a material breach, such party shall provide the other party with not less than five (5) days' prior written notice stating with specificity the nature of the claimed material breach, and the party receiving such notice shall have three (3) business days in which to cure such material breach, failing which this Agreement shall be deemed terminated. In addition, if the Sale is terminated prior to the Sale Termination Date, any other material breach or action by Merchant not authorized hereunder occurs, or any force majeure, then Consultant may, in its discretion, elect to terminate this Agreement. In the event this Agreement is terminated, the Consultant shall be entitled to be paid any Consulting Fee and FF&E Fee earned and accrued and any Consultant Controlled Expenses incurred through the date of termination.
- 11.13 Joint and Several Liability. All obligations of the Consultant under this Agreement are the joint and several obligations of Gordon Brothers Canada ULC, Merchant Retail Solutions ULC, Tiger Capital Group, LLC and GA Retail Canada ULC, and any parties that are deemed to be included in references to "Consultant" pursuant to the terms hereof.
- 11.14 Currency. Any amounts specified in this Agreement to be in Dollars or "\$" shall be deemed in all cases to be Canadian Dollars.

[Signature Page Follows]

Gordon Brothers Canada ULC

By: 
Name: *Richard Edwards*
Title: *Co. President - Retail*

Merchant Retail Solutions ULC

By: _____

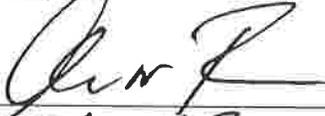
Name:  Ken S. Fredericks

Title: VP

Tiger Capital Group, LLC

By: 
Name: Michael McGrail
Title: COO

GA Retail Canada ULC

By: 
Name: Alan N. Forman
Title: EUP & GC

**SCHEDULE A
STORE LISTING**

(See attached.)

Channel	Stores
Liquidation	001835-Abbotsford
Liquidation	001424-Winnipeg - Garden City
Liquidation	001664-Halifax Outlet
Liquidation	001039-Chatham
Liquidation	001238-Cambridge
Liquidation	001036-Cornwall
Liquidation	001384-Timmins
Liquidation	001080-St Eustache
Liquidation	001084-Place Vertu
Liquidation	001391-Sorel

**SCHEDULE B
APPROVAL ORDER**

(See attached.)

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MADAM)	TUESDAY, THE 18 th
)	
JUSTICE CONWAY)	DAY OF JULY, 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**”)

LIQUIDATION SALE APPROVAL ORDER

THIS MOTION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. c-36, as amended (the “**CCAA**”) for an order, *inter alia*, approving: (i) the transactions contemplated under the Amended and Restated Agency Agreement entered into between 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 (collectively, the “**Agent**”) dated July 12, 2017 and amended and restated on July 14, 2017 (the “**Agency Agreement**”) and certain related relief; (ii) the transactions contemplated under the Amended and Restated Consulting Agreement entered into between Sears Canada and the Agent dated July 12, 2017 and amended and restated on July 14, 2017 (the “**Consulting Agreement**”, and together with the Agency Agreement, the “**Liquidation Agreements**”) and certain related relief; and (iii) the Sale, the Hometown Dealer

Sale, and the Sale Guidelines (each as defined below) and certain related relief, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion of the Applicants, the Affidavit of Billy Wong sworn July 5, 2017 including the exhibits thereto (the “**Second Wong Affidavit**”), the Affidavit of Billy Wong sworn July 12, 2017 including the exhibits thereto (the “**Third Wong Affidavit**”), the Affidavit of Sean Stidwill sworn July 17, 2017 including the exhibits thereto, the First Report and the Supplement to the First Report of FTI Consulting Canada Inc., in its capacity as Monitor (the “**Monitor**”) filed July 12 and July 13, respectively, and on hearing the submissions of respective counsel for the Applicants, counsel to the Monitor, counsel to the Board of Directors and the Special Committee of the Board of Directors of Sears Canada Inc., counsel to Wells Fargo Capital Finance Corporation Canada as administrative agent under the DIP ABL Credit Agreement, counsel to GACP Finance Co., LLC as administrative agent under the DIP Term Credit Agreement, and such other counsel as were present, no one else appearing although duly served as appears from the Affidavits of Service of Sonja Pavic sworn July 12, 2017 and July 17, 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 Initial Order in these proceedings dated June 22, 2017, as amended (the “**Initial Order**”), the Agency Agreement, the Consulting Agreement, or the Sale Guidelines, as applicable.

THE AGENCY AGREEMENT

3. THIS COURT ORDERS that the Agency Agreement, including the Sale Guidelines attached hereto as Schedule “A” (the “**Sale Guidelines**”), and the transactions contemplated thereunder are hereby approved, authorized and ratified and that the execution of the Agency Agreement by Sears Canada is hereby approved, authorized, and ratified with such minor amendments as Sears Canada (with the consent of the Monitor and, to the extent required under

the Agency Agreement, the DIP ABL Lenders and the DIP Term Lenders) and the Agent may agree to in writing. Subject to the provisions of this Order and the Initial Order, Sears Canada is hereby authorized and directed to take any and all actions as may be necessary or desirable to implement the Agency Agreement and each of the transactions contemplated therein. Without limiting the foregoing, Sears Canada is authorized to execute any other agreement, contract, deed or any other document, or take any other action, which could be required or be useful to give full and complete effect to the Agency Agreement.

THE CONSULTING AGREEMENT

4. THIS COURT ORDERS that the Consulting Agreement, including the Sale Guidelines and the transactions contemplated thereunder are hereby approved, authorized and ratified and that the execution of the Consulting Agreement by Sears Canada is hereby approved, authorized, and ratified with such minor amendments as Sears Canada (with the consent of the Monitor and, to the extent required under the Consulting Agreement, the DIP ABL Lenders and the DIP Term Lenders) and the Agent may agree to in writing. Sears Canada is hereby authorized and directed to take any and all actions as may be necessary or desirable to implement the Consulting Agreement and each of the transactions contemplated therein. Without limiting the foregoing, Sears Canada is authorized to execute any other agreement, contract, deed or any other document, or take any other action, which could be required or be useful to give full and complete effect to the Consulting Agreement.

THE SALE

5. THIS COURT ORDERS that subject to receipt of the Initial Guaranty Payment by Sears Canada and delivery of the Agent L/C to Sears Canada, the Agent is authorized to conduct a liquidation sale of the Merchandise, Designated Sundry Goods, Designated Company Consignment Goods, and FF&E (each as defined in the Agency Agreement) (the “**Agency Sale**”) at the Applicants’ retail stores as set out on Schedule “B” attached hereto (the “**Agent’s Stores**”) in accordance with this Order, the Agency Agreement and the Sale Guidelines and to advertise and promote the Agency Sale within the Agent’s Stores in accordance with the Sale Guidelines. If there is a conflict between this Order, the Agency Agreement and the Sale Guidelines, the order of priority to resolve such conflicts is as follows: (1) this Order; (2) the Sale Guidelines; and (3) the Agency Agreement.

6. THIS COURT ORDERS that Sears Canada, with the assistance of the Agent, is authorized to conduct a liquidation sale of the Merchandise and FF&E (each as defined in the Consulting Agreement) (the “**Consultant’s Sale**”, and together with the Agency Sale, the “**Sale**”) at the Applicants’ retail stores as set out on Schedule “C” attached hereto (the “**Consultant’s Stores**”, and together with the Agent’s Stores, the “**Stores**”, and individually, a “**Store**”) in accordance with this Order, the Consulting Agreement and the Sale Guidelines and to advertise and promote the Consultant’s Sale within the Consultant’s Stores in accordance with the Sale Guidelines. If there is a conflict between this Order, the Consulting Agreement and the Sale Guidelines, the order of priority to resolve such conflicts is as follows: (1) this Order; (2) the Sale Guidelines; and (3) the Consulting Agreement.

7. THIS COURT ORDERS that, subject to paragraph 12 of the Initial Order, the Agent, in its capacity as agent or consultant of Sears Canada, as applicable, is authorized to market and sell the Merchandise, Designated Sundry Goods, Designated Company Consignment Goods, and FF&E (as such terms are defined in the Liquidation Agreements, as applicable) on a “final sale” and “as is” basis and in accordance with the Sale Guidelines, and free and clear of all liens, claims, encumbrances, security interests, mortgages, charges, trusts, deemed trusts, executions, levies, financial, monetary or other claims, whether or not such claims have attached or been perfected, registered or filed and whether secured, unsecured, quantified or unquantified, contingent or otherwise, whensoever and howsoever arising, and whether such claims arose or came into existence prior to or following the date of this Order (in each case, whether contractual, statutory, arising by operation of law, in equity or otherwise) (all of the foregoing, collectively “**Claims**”), including, without limitation 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**”), and (ii) all Claims, charges, security interests or liens evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal or movable property registration system (all of such Claims, charges (including the CCAA Charges), security interests and liens collectively referred to herein as “**Encumbrances**”), which Encumbrances, subject to this Order, will attach instead: (i) to the Guaranteed Amount and any other amounts received or to be received by Sears Canada under the Agency Agreement, in the same order and priority as they existed on the Sale Commencement Date; and (ii) to the

proceeds of sale of the Merchandise and FF&E (as defined in the Consulting Agreement) other than amounts due and payable to the Agent by Sears Canada under the Consulting Agreement, in the same order and priority as they existed on the Sale Commencement Date.

8. THIS COURT ORDERS that subject to the terms of this Order, the Initial Order, the Liquidation Agreements (as applicable) and the Sale Guidelines, the Agent shall have the right to enter and use the Stores and all related store services and all facilities and all furniture, trade fixtures and equipment, including the FF&E, located at the Stores, and other assets of Sears Canada as designated under the Liquidation Agreements (as applicable), for the purpose of conducting the Sale, and for such purposes, the Agent shall be entitled to the benefit of the Applicants' stay of proceedings provided under the Initial Order, as such stay of proceedings may be extended by further Order of the Court.

9. THIS COURT ORDERS that until the Vacate Date (as defined in the Sale Guidelines) for each Store (which shall be on or before October 12, 2017 (the "**Sale Termination Date**")) the Agent shall have access to the Stores in accordance with the applicable Leases (as such term is defined in the Sale Guidelines) and the Sale Guidelines on the basis that the Agent is an agent or consultant of Sears Canada, as applicable, and Sears Canada has granted the right of access to the Stores to the Agent. To the extent that the terms of the applicable Leases are in conflict with any term of this Order or the Sale Guidelines, it is agreed that the terms of this Order and the Sale Guidelines shall govern.

10. THIS COURT ORDERS that except as provided for in this Order, any further order of the Court and the Sale Guidelines, nothing in this Order shall amend or vary, or be deemed to amend or vary the terms of the Leases or operation agreements. Nothing contained in this Order or the Sale Guidelines shall be construed to create or impose upon Sears Canada or the Agent any additional restrictions not contained in the applicable Leases, occupancy agreements, or operation agreements.

11. THIS COURT ORDERS that, except as provided for in Section 5 hereof in respect of the advertising and promotion of the Sale within the Stores, subject to and in accordance with this Order, the Liquidation Agreements (as applicable) and the Sale Guidelines, the Agent, as agent or consultant for Sears Canada, as applicable, is authorized to advertise and promote the Sale, without

further consent of any Person (as defined in the Initial Order) other than Sears Canada and the Monitor or a Landlord (only as expressly provided under the Liquidation Agreements).

12. THIS COURT ORDERS that until the Vacate Date, the Agent shall have the right to use, without interference by any intellectual property licensor, Sears Canada's intellectual property including without limitation trade names, trademarks and logos relating to and used in connection with the operation of the Stores, as well as all licenses and rights granted to Sears Canada to use the trade names, trademarks and logos of third parties, solely for the purpose of advertising and conducting the Sale in accordance with the terms of the Liquidation Agreements, the Sale Guidelines and this Order.

13. THIS COURT ORDERS that upon delivery of a Monitor's certificate to the Agent substantially in the form attached as Schedule "E" hereto, (the "**Monitor's Agency Certificate**") and subject to payment in full by the Agent to Sears Canada of the Guaranteed Amount, the Expenses, any Company's Sharing Recovery Amount, the Net FF&E Proceeds, the Net Designated Sundry And Consignment Goods Proceeds and all other amounts due to Sears Canada under the Agency Agreement, all of Sears Canada's right, title and interest in and to any Remaining Merchandise and Remaining FF&E at the Agent's Stores, shall vest absolutely in the Agent, free and clear of and from any and all Claims, including without limiting the generality of the foregoing, the Encumbrances, and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to such Remaining Merchandise or Remaining FF&E shall be expunged and discharged as against such Remaining Merchandise or Remaining FF&E upon the delivery of the Monitor's Agency Certificate to the Agent; provided however that nothing herein shall discharge the obligations of the Agent pursuant to the Agency Agreement, or the rights or claims of Sears Canada in respect thereof, including without limitation, the obligations of the Agent to account for and remit the proceeds of sale of such Remaining Merchandise and Remaining FF&E (less the FF&E Commission) to the Designated Deposit Accounts, subject to the terms of the Agency Agreement. The Agent shall comply with paragraph 12 of the Initial Order and the Sale Guidelines regarding the removal and/or sale of any FF&E or any Remaining FF&E.

14. THIS COURT ORDERS that upon delivery of a Monitor's certificate to the Agent substantially in the form attached as Schedule "F" hereto, (the "**Monitor's Consulting Certificate**") and subject to payment in full by the Agent to Sears Canada of all amounts due to

Sears Canada under the Consulting Agreement, all of Sears Canada's right, title and interest in and to any Remaining FF&E at the Consultant's Stores shall vest absolutely in the Agent, free and clear of and from any and all Claims, including without limiting the generality of the foregoing, the Encumbrances, and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to such Remaining FF&E shall be expunged and discharged as against such Remaining FF&E upon the delivery of the Monitor's Consulting Certificate to the Agent; provided however that nothing herein shall discharge the obligations of the Agent pursuant to the Consulting Agreement, or the rights or claims of Sears Canada in respect thereof, including without limitation, the obligations of the Agent to account for and remit the proceeds of sale of such Remaining FF&E (less the FF&E Fee) to Sears Canada, subject to the terms of the Consulting Agreement. The Agent shall comply with paragraph 12 of the Initial Order and the Sale Guidelines regarding the removal and/or sale of any FF&E or any Remaining FF&E.

15. THIS COURT ORDERS AND DIRECTS the Monitor to file with the Court a copy of the Monitor's Agency Certificate and the Monitor's Consulting Certificate, forthwith after delivery thereof.

AGENT LIABILITY

16. THIS COURT ORDERS that the Agent shall act solely as an agent or consultant to Sears Canada and that it shall not be liable for any claims against Sears Canada other than as expressly provided in the Liquidation Agreements. More specifically:

- (a) the Agent shall not be deemed to be an owner or in possession, care, control or management of the Stores, of the assets located therein or associated therewith or of Sears Canada's employees (including the Retained Employees) located at the Stores or any other property of Sears Canada;
- (b) the Agent shall not be deemed to be an employer, or a joint or successor employer or a related or common employer or payor within the meaning of any legislation governing employment or labour standards or pension benefits or health and safety or other statute, regulation or rule of law or equity for any purpose whatsoever, and shall not incur any successorship liabilities whatsoever; and

- (c) Sears Canada shall bear all responsibility for any liability whatsoever (including without limitation losses, costs, damages, fines, or awards) relating to claims of customers, employees and any other persons arising from events occurring at the Stores during and after the term of the Liquidation Agreements, or otherwise in connection with the Sale, except to the extent that such claims are the result of events or circumstances caused or contributed to by the gross negligence or wilful misconduct of the Agent, or its employees, agents or independent contractors (other than Sears Canada's employees and the Retained Employees, agents or independent contractors) located at the Stores, or otherwise in accordance with the Liquidation Agreements (as applicable).

17. THIS COURT ORDERS that to the extent any Landlord may have a claim against the Applicants arising solely out of the conduct of the Agent in conducting the Sale for which Sears Canada has claims against the Agent under the Liquidation Agreements (as applicable), the Applicants shall be deemed to have assigned such claims free and clear to the applicable Landlord (the "**Assigned Landlord Rights**"); provided that each such Landlord shall only be permitted to advance each such claims against the Agent if written notice, including the reasonable details of such claims, is provided by such Landlord to the Agent, Sears Canada and the Monitor during the period from the Sale Commencement Date to the date that is thirty (30) days following the FF&E Removal Deadline, provided however that the Landlords shall be provided with access to the Stores to inspect the Stores within fifteen (15) days following the FF&E Removal Deadline.

AGENT AN UNAFFECTED CREDITOR

18. THIS COURT ORDERS that the Liquidation Agreements shall not be repudiated, resiliated or disclaimed by Sears Canada nor shall the claims of the Agent pursuant to the Liquidation Agreements and under the Agent's Charge and Security Interest (as defined in this Order) be compromised or arranged pursuant to any plan of arrangement or compromise among the Applicants and their creditors (a "**Plan**") and, for greater certainty, the Agent shall be treated as an unaffected creditor in these proceedings and under any Plan.

19. THIS COURT ORDERS that Sears Canada is hereby authorized and directed, in accordance with the Liquidation Agreements, to remit all amounts that become due to the Agent thereunder.

20. THIS COURT ORDERS that no Encumbrances shall attach to any amounts payable or to be credited or reimbursed to, or retained by, the Agent pursuant to the Liquidation Agreements, including, without limitation, any amounts to be reimbursed by Sears Canada to the Agent pursuant to the Liquidation Agreements, and at all times the Agent will retain such amounts, free and clear of all Encumbrances, notwithstanding any enforcement or other process or Claims, all in accordance with the Liquidation Agreements.

DESIGNATED DEPOSIT ACCOUNTS AND SALE ACCOUNTS

21. THIS COURT ORDERS that no Person shall take any action, including any collection or enforcement steps, with respect to amounts deposited into the Designated Deposit Accounts pursuant to the Agency Agreement or the Sale Accounts pursuant to the Consulting Agreement, including any collection or enforcement steps, in relation to any Proceeds or FF&E Proceeds, that are payable to the Agent or in relation to which the Agent has a right of reimbursement or payment under the Agency Agreement or the Consulting Agreement, as applicable.

22. THIS COURT ORDERS that amounts deposited in the Designated Deposit Accounts or the Sale Accounts by or on behalf of the Agent or Sears Canada pursuant to the Agency Agreement and the Consulting Agreement including Proceeds and FF&E Proceeds shall be and be deemed to be held in trust for Sears Canada and the Agent, as the case may be, and, for clarity, no Person shall have any claim, ownership interest or other entitlement in or against such amounts, including, without limitation, by reason of any claims, disputes, rights of offset, set-off, or claims for contribution or indemnity that it may have against or relating to Sears Canada or any third party.

AGENT'S CHARGE AND SECURITY INTEREST

23. THIS COURT ORDERS that subject to the receipt by Sears Canada of the Initial Guaranty Payment and the issue of the Agent L/C, the Agent be and is hereby granted a charge (the "**Agent's Charge and Security Interest**") on all of the Merchandise, Proceeds, the FF&E Proceeds (to the extent of the FF&E Commission) and the Designated Sundry And Consignment Goods Proceeds (to the extent of the Designated Sundry And Consignment Goods Commission) (and, for greater certainty, the Agent's Charge and Security Interest shall not extend to other Property of the Applicants as defined in paragraph 4 of the Initial Order) as security for all of the obligations of Sears Canada to the Agent under the Agency Agreement, including, without limitation, all amounts

owing or payable to the Agent from time to time under or in connection with the Agency Agreement, which charge shall rank in priority to all Encumbrances including without limitation all charges created under the Initial Order; provided, however, that the Agent's Charge and Security Interest shall be junior and subordinate to all Encumbrances, but solely to the extent of any unpaid portion of the Unpaid Company's Entitlement due to Sears Canada under the Agency Agreement (the "**Subordinated Amount**").

24. THIS COURT ORDERS that the filing, registration, recording or perfection of the Agent's Charge and Security Interest shall not be required; and the Agent's Charge and Security Interest shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered or perfected prior or subsequent to the Agent's Charge and Security Interest coming into existence, notwithstanding any failure to file, register or perfect any such Agent's Charge and Security Interest. Absent the Agent's written consent or further Order of this Court (on notice to the Agent), Sears Canada shall not grant or permit to exist any Encumbrances over any Merchandise, Proceeds, FF&E Proceeds (to the extent of the FF&E Commission), or the Designated Sundry And Consignment Goods Proceeds (to the extent of the Designated Sundry And Consignment Goods Commission) that rank in priority to, or *pari passu* with the Agent's Charge and Security Interest.

25. THIS COURT ORDERS that the Agent's Charge and Security Interest shall constitute a mortgage, hypothec, security interest, assignment by way of security and charge over the Merchandise, the Proceeds, the FF&E Proceeds (to the extent of the FF&E Commission), and the Designated Sundry And Consignment Goods Proceeds (to the extent of the Designated Sundry And Consignment Goods Commission), and other than in relation to the Subordinated Amount, shall rank in priority to all other Encumbrances of or in favour of any Person. For greater certainty, the terms Initial Guaranty Payment, Agent L/C, Merchandise, Proceeds, FF&E Proceeds, FF&E Commission, Designated Sundry And Consignment Goods Proceeds, Designated Sundry And Consignment Goods Commission, and Unpaid Company's Entitlement used in these paragraphs 23-25 shall have the meanings given to them in the Agency Agreement.

26. THIS COURT ORDERS that notwithstanding:

- (a) the pendency of these proceedings;

- (b) any application for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (“BIA”) in respect of any of the Applicants, or any bankruptcy order made pursuant to any such applications;
- (c) any assignment in bankruptcy made in respect of any of the Applicants;
- (d) the provisions of any federal or provincial statute; or
- (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of encumbrances, contained in any existing loan documents, lease, mortgage, security agreement, debenture, sublease, offer to lease or other document or agreement to which an Applicant is a party;

(i) the Agency Agreement and the transactions and actions provided for and contemplated therein, including without limitation, the payment of amounts due to the Agent thereunder and any transfer of Remaining Merchandise and Remaining FF&E, (ii) the Consulting Agreement and the transactions and actions provided for and contemplated therein, including without limitation, the payment of amounts due to the Agent thereunder and any transfer of Remaining FF&E, (iii) the Assigned Landlord Rights, and (iv) the Agent’s Charge and Security Interest, shall be binding on any trustee in bankruptcy that may be appointed in respect of any of the Applicants and shall not be void or voidable by any Person, including any creditor of the Applicants, nor shall they, or any of them, constitute or be deemed to be a preference, fraudulent conveyance, transfer at undervalue or other challengeable reviewable transaction, under the BIA or any applicable law, nor shall they constitute oppressive or unfairly prejudicial conduct under any applicable law.

27. THIS COURT ORDERS that Sears Canada is authorized and permitted to transfer to the Agent personal information in Sears Canada’s custody and control solely for the purposes of assisting with and conducting the Sale and only to the extent necessary for such purposes and the Agent is hereby authorized to make use of such personal information, as if it were Sears Canada, subject to and in accordance with the Liquidation Agreements.

APPROVAL OF THE HOMETOWN DEALER SALE

28. THIS COURT ORDERS that Sears Canada and the Hometown Dealers are authorized to conduct a liquidation sale (the “**Hometown Dealer Sale**”) of Merchandise and FF&E (each as defined in the Sale Guidelines) located at their respective Hometown Dealer stores as set out on Schedule “D” attached hereto in accordance with this Order and the Sale Guidelines, as applicable. The rights and obligations of the landlords of such Hometown Dealers shall also be governed by this Order and the Sale Guidelines, as applicable.

GENERAL

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

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

SCHEDULE "A"
SALE GUIDELINES

(See attached)

SALE GUIDELINES – INVENTORY AND FF&E

The following procedures shall apply to any liquidation sales (the “**Sale**”) of inventory and goods (“**Merchandise**”) and FF&E (as defined below) to be held at Sears Canada’s retail stores (listed on Schedules “B” and “C” to the Liquidation Sale Order (as defined below), the “**Stores**”). In addition, the following procedures, to the extent applicable, shall apply to the sale of Merchandise and FF&E located at Hometown Dealer stores as set out on Schedule “D” to the Liquidation Sale Order (the “**Hometown Dealer Sale**”) and to any Landlords of such Hometown Dealer stores.

Terms capitalized but not defined in these Sale Guidelines have the meanings ascribed to them in the initial order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated June 22, 2017 (as amended and restated, the “**Initial Order**”), the Liquidation Sale Order, the Agency Agreement (as defined below), or the Consulting Agreement (as defined below).

1. Except as otherwise expressly set out herein, and subject to: (i) an Order of the Court (the “**Liquidation Sale Order**”) approving, *inter alia*, (a) the Amended and Restated Agency Agreement between 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**”) dated July 12, 2017 and amended and restated on July 14, 2017 (the “**Agency Agreement**”), (b) the Amended and Restated Consulting Agreement between Sears Canada and the Agent dated July 12, 2017 and amended and restated on July 14, 2017 (the “**Consulting Agreement**”, and together with the Agency Agreement, the “**Liquidation Agreements**”), and (c) these Sale Guidelines; or (ii) any further Order of the Court; or (iii) any subsequent written agreement between Sears Canada and its applicable landlord(s) (each individually, a “**Landlord**” and, collectively, the “**Landlords**”), the Sale shall be conducted in accordance with the terms of the applicable leases/or other occupancy agreements for each of the affected Stores (individually, a “**Lease**” and, collectively, the “**Leases**”). However, nothing contained herein shall be construed to create or impose upon Sears Canada or the Agent any additional restrictions not contained in the applicable Lease or other occupancy agreement.
2. The Sale shall be conducted so that each of the Stores remain open during their normal hours of operation provided for in the respective Leases for the Stores until the applicable premises vacate date for each Store under the Liquidation Agreements (the “**Vacate Date**”), and in all cases no later than October 12, 2017 (the “**Sale Termination Date**”). Rent payable under the respective Leases shall be paid as provided in the Initial Order.
3. The Sale shall be conducted in accordance with applicable federal, provincial and municipal laws, unless otherwise ordered by the Court.
4. All display and hanging signs used by the Agent in connection with the Sale shall be professionally produced and all hanging signs shall be hung in a professional manner. Notwithstanding anything to the contrary contained in the Leases, the Agent may advertise the Sale at the Stores as a “everything on sale”, “everything must go”, “store closing” or similar theme sale at the Stores (provided however that no signs shall advertise the Sale as a “bankruptcy”, a “liquidation” or a “going out of business” sale, it being understood that the French equivalent of “clearance” is “liquidation” and is permitted to be used). Forthwith upon request, the Agent shall provide the proposed signage packages along with

proposed dimensions by e-mail or facsimile to the applicable Landlords or to their counsel of record and the applicable Landlord shall notify the Agent of any requirement for such signage to otherwise comply with the terms of the Lease and/or the Sale Guidelines and where the provisions of the Lease conflicts with these Sale Guidelines, these Sale Guidelines shall govern. The Agent shall not use neon or day-glow signs or any handwritten signage (save that handwritten "you pay" or "topper" signs may be used). If a Landlord is concerned with "Store Closing" signs being placed in the front window of a Store or with the number or size of the signs in the front window, Sears Canada, the Agent and the Landlord will work together to resolve the dispute. Furthermore, with respect to enclosed mall Store locations without a separate entrance from the exterior of the enclosed mall, no exterior signs or signs in common areas of a mall shall be used unless explicitly permitted by the applicable Lease. In addition, the Agent shall be permitted to utilize exterior banners/signs at stand alone or strip mall Stores or enclosed mall Store locations with a separate entrance from the exterior of the enclosed mall; provided, however, that: (i) no signage in any other common areas of a mall shall be used; and (ii) where such banners are not permitted by the applicable Lease and the Landlord requests in writing that banners are not to be used, no banners shall be used absent further Order of the Court, which may be sought on an expedited basis on notice to the Service List. Any banners used shall be located or hung so as to make clear that the Sale is being conducted only at the affected Store and shall not be wider than the premises occupied by the affected Store. All exterior banners shall be professionally hung and to the extent that there is any damage to the facade of the premises of a Store as a result of the hanging or removal of the exterior banner, such damage shall be professionally repaired at the expense of the Agent.

5. The Agent shall be permitted to utilize sign walkers and street signage; provided, however, such sign walkers and street signage shall not be located on the shopping centre or mall premises.
6. Conspicuous signs shall be posted in the cash register areas of each Store to the effect that all sales are "final" and customers with any questions or complaints are to call the Agent's hotline number.
7. The Agent shall not distribute handbills, leaflets or other written materials to customers outside of any of the Stores on Landlord's property, unless explicitly permitted by the applicable Lease or, if distribution is customary in the shopping centre in which the Store is located. Otherwise, the Agent may solicit customers in the Stores themselves. The Agent shall not use any giant balloons, flashing lights, or amplified sound to advertise the Sale or solicit customers, except as explicitly permitted under the applicable Lease or agreed to by the Landlord, and no advertising trucks shall be used on landlord property or mall ring roads, except as explicitly permitted under the applicable Lease or agreed to by the Landlord.
8. At the conclusion of the Sale in each Store, the Agent and Sears Canada shall arrange that the premises for each Store are in "broom-swept" and clean condition, and shall arrange that the Stores are in the same condition as on the commencement of the Sale, ordinary wear and tear excepted. No property of any Landlord of a Store shall be removed or sold during the Sale. No permanent fixtures (other than FF&E (as defined below) for clarity) may be removed without the Landlord's written consent unless otherwise provided by the applicable Lease and in accordance with the Initial Order and the Liquidation Sale Order.

Any trade fixtures or personal property left in a Store after the applicable Vacate Date in respect of which the applicable Lease has been disclaimed by Sears Canada shall be deemed abandoned, with the applicable Landlord having the right to dispose of the same as the Landlord chooses, without any liability whatsoever on the part of the Landlord. Nothing in this paragraph shall derogate from or expand upon the Agent's obligations under the Liquidation Agreements. Notwithstanding the foregoing, Sears Canada shall only exercise its rights to abandon FF&E pursuant to section 5.1(h) of the Agency Agreement and section 3.4(d) of the Consulting Agreement provided that the applicable Landlord has consented thereto or upon further Order of the Court.

9. Subject to the terms of paragraph 8 above, the Agent may sell furniture, fixtures and equipment owned by Sears Canada ("FF&E") and located in the Stores during the Sale. For greater certainty, FF&E does not include (i) any portion of the Stores' HVAC system or sprinkler systems; and (ii) any furniture, fixtures and equipment owned by the Hometown Dealers. Sears Canada and the Agent may advertise the sale of FF&E consistent with these Sale Guidelines on the understanding that the Landlord may require such signs to be placed in discreet locations within the Stores reasonably acceptable to the Landlord. Additionally, the purchasers of any FF&E sold during the Sale shall only be permitted to remove the FF&E either through the back shipping areas designated by the Landlord or through other areas after regular Store business hours or, through the front door of the Store during Store business hours if the FF&E can fit in a shopping bag, with Landlord's supervision as required by the Landlord and in accordance with the Initial Order and the Liquidation Sale Order. The Agent shall repair any damage to the Stores resulting from the removal of any FF&E by the Agent or by third party purchasers of FF&E from the Agent.
10. The Agent shall not make any alterations to interior or exterior Store lighting, except as authorized pursuant to the affected Lease. The hanging of exterior banners or other signage, where permitted in accordance with the terms of these Sale Guidelines, shall not constitute an alteration to a Store.
11. Sears Canada and the Agent hereby provides notice to the Landlords of Sears Canada's and the Agent's intention to sell and remove FF&E from the Stores. The Agent shall make commercially reasonable efforts to arrange with each Landlord represented by counsel on the Service List and with any other Landlord that so requests, a walk-through with the Agent to identify the FF&E subject to the Sale. The relevant Landlord shall be entitled to have a representative present in the applicable Stores to observe such removal. If the Landlord disputes the Agent's entitlement to sell or remove any FF&E under the provisions of the Lease, such FF&E shall remain on the premises and shall be dealt with as agreed between Sears Canada, the Agent and such Landlord, or by further Order of the Court upon application by Sears Canada on at least two (2) days' notice to such Landlord and the Monitor. If Sears Canada has disclaimed or resiliated the Lease governing such Store in accordance with the CCAA and the Initial Order, it shall not be required to pay rent under such Lease pending resolution of any such dispute (other than rent payable for the notice period provided for in the CCAA and the Initial Order), and the disclaimer or resiliation of the Lease shall be without prejudice to Sears Canada's or the Agent's claim to the FF&E in dispute.
12. If a notice of disclaimer or resiliation is delivered pursuant to the CCAA and the Initial Order to a Landlord while the Sale is ongoing and the Store in question has not yet been

vacated, then: (a) during the notice period prior to the effective time of the disclaimer or resiliation, the Landlord may show the affected leased premises to prospective tenants during normal business hours, on giving Sears Canada, the Agent and the Monitor twenty-four (24) hours' prior written notice; and (b) at the effective time of the disclaimer or resiliation, the relevant Landlord shall be entitled to take possession of any such Store without waiver of or prejudice to any claims or rights such Landlord may have against Sears Canada in respect of such Lease or Store, provided that nothing herein shall relieve such Landlord of any obligation to mitigate any damages claimed in connection therewith.

13. The Agent and its agents and representatives shall have the same access rights to the Stores as Sears Canada under the terms of the applicable Lease, and the Landlords shall have the rights of access to the Stores during the Sale provided for in the applicable Lease (subject, for greater certainty, to any applicable stay of proceedings).
14. Sears Canada and the Agent shall not conduct any auctions of Merchandise or FF&E at any of the Stores.
15. The Agent shall designate a party to be contacted by the Landlords should a dispute arise concerning the conduct of the Sale. The initial contact person for the Agent shall be Ian Fredericks who may be reached by phone at 1-847-418-2075 or email at ifredericks@hilcoglobal.com. If a dispute should arise concerning the conduct of the Sale subject to a Hometown Dealer Sale, the respective Landlord should contact the relevant Hometown Dealer. If the parties are unable to resolve the dispute between themselves, the Landlord or Sears Canada shall have the right to schedule a "status hearing" before the Court on no less than two (2) days written notice to the other party or parties, during which time the Agent shall cease all activity in dispute other than activity expressly permitted herein, pending determination of the matter by the Court; provided, however, subject to paragraph 4 of these Sale Guidelines, if a banner has been hung in accordance with these Sale Guidelines and is the subject of a dispute, the Agent shall not be required to take any such banner down pending determination of any dispute.
16. Nothing herein or in the Liquidation Agreements is, or shall be deemed to be a consent by any Landlord to the sale, assignment or transfer of any Lease, or shall, or shall be deemed to, or grant to the Landlord any greater rights than already exist under the terms of any applicable Lease.
17. These Sale Guidelines may be amended by written agreement between Sears Canada, the Agent and the applicable Landlord.

SCHEDULE "B"
AGENT'S STORES

(See attached)

Channel	Stores
Full Line	001417-Regina - Cornwall
Full Line	001678-Saint John
Full Line	001430-Grande Prairie
Full Line	001318-Alma
Full Line	001311-St George De Beauce
Full Line	001646-Bathurst
Full Line	001434-Prince Albert
Full Line	001082-Sault Ste. Marie
Full Line	001019-Ottawa-Hull
Full Line	001647-Cornerbrook
Full Line	001383-Drummondville
Full Line	001624-Dartmouth
Full Line	001431-Moose Jaw
Full Line	001618-Truro
Full Line	001435-Lloydminster
Full Line	001047-Brockville
Full Line	001029-Chicoutimi
Full Line	001839-Kamloops - Aberdeen Mall
Full Line	001448-Red Deer Relocation
Full Line	001428-Medicine Hat
Home	001382-Edmonton North Home
Home	001357-Calgary South Home
Home	001336-Ancaster Home
Home	001353-London Home
Home	001395-Windsor Home
Home	001354-Scarborough Home
Home	001342-Woodbridge Home
Home	003801-Orillia Home
Home	001381-Sudbury Home
Home	001364-Kingston Home
Home	001365-Ottawa East Home
Home	001348-Laval Home
Home	001346-St. Bruno Home
Home	001352-Quebec City Home
Home	001394-Ste Foy Home

SCHEDULE "C"
CONSULTANT'S STORES

(See attached)

Channel	Stores
Liquidation	001835-Abbotsford
Liquidation	001424-Winnipeg - Garden City
Liquidation	001664-Halifax Outlet
Liquidation	001039-Chatham
Liquidation	001238-Cambridge
Liquidation	001036-Cornwall
Liquidation	001384-Timmins
Liquidation	001080-St Eustache
Liquidation	001084-Place Vertu
Liquidation	001391-Sorel

SCHEDULE "D"
HOMETOWN DEALER STORES

(See attached)

Channel	Stores
Dealer	007642-Spruce Grove, AB
Dealer	007668-Fort McMurray, AB
Dealer	007678-St. Albert, AB
Dealer	007697-Sherwood Park, AB
Dealer	007183-Okotoks, AB
Dealer	007585-Cold Lake, AB
Dealer	007471-Orangeville, ON
Dealer	007534-Rimouski, QC
Dealer	007872-Rouyn Noranda, QC

SCHEDULE “E”

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 AGENCY CERTIFICATE

RECITALS

All undefined terms in this Monitor’s Agency Certificate have the meanings ascribed to them in the Amended and Restated Agency Agreement entered into between 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**”) dated July 12, 2017 and amended and restated on July 14, 2017, a copy of which is attached as Exhibit “●” to the Affidavit of Sean Stidwill sworn July 17, 2017.

Pursuant to an Order of the Court dated July ●, 2017, the Court ordered that all of the Remaining Merchandise and the Remaining FF&E shall vest absolutely in the Agent, free and clear of and

from any and all claims and encumbrances, upon the delivery by the Monitor to the Agent of a certificate certifying that (i) the Sale has ended, and (ii) the Guaranteed Amount, the Expenses, any Company's Sharing Recovery Amount, the Net FF&E Proceeds, the Net Designated Sundry And Consignment Goods Proceeds and all other amounts due to Sears Canada under the Agency Agreement have been paid in full to Sears Canada.

FTI CONSULTING CANADA INC., in its capacity as Court-appointed Monitor in the *Companies' Creditors Arrangement Act* proceedings of Sears Canada Inc., et al. certifies that it has been informed by the Agent and Sears Canada that:

The Sale has ended.

The Guaranteed Amount, the Expenses, any Company's Sharing Recovery Amount, the Net FF&E Proceeds, the Net Designated Sundry And Consignment Goods Proceeds and all other amounts due to Sears Canada under the Agency Agreement have been paid in full to Sears Canada.

The Remaining Merchandise includes the Merchandise listed on Appendix "A" hereto.

The Remaining FF&E includes the FF&E listed on Appendix "B" hereto.

DATED as of this ● day of ●, 2017.

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

APPENDIX "A"
LIST OF REMAINING MERCHANDISE

APPENDIX "B"
LIST OF REMAINING FF&E

SCHEDULE “F”

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 CONSULTING CERTIFICATE

RECITALS

All undefined terms in this Monitor’s Consulting Certificate have the meanings ascribed to them in the Amended and Restated Consulting Agreement entered into between Sears Canada Inc. (“**Sears Canada**”) and Gordon Brothers Canada ULC, Merchant Retail Solutions ULC, Tiger Capital Group, LLC and GA Retail Canada ULC (the “**Agent**”) dated July 12, 2017 and amended and restated on July 14, 2017, a copy of which is attached as Exhibit “●” to the Affidavit of Sean Stidwill sworn July 17, 2017.

Pursuant to an Order of the Court dated July ●, 2017, the Court ordered that all of the Remaining FF&E shall vest absolutely in the Agent, free and clear of and from any and all claims and

encumbrances, upon the delivery by the Monitor to the Agent of a certificate certifying that (i) the Sale has ended, and (ii) all amounts due to Sears Canada under the Consulting Agreement have been paid in full to Sears Canada.

FTI CONSULTING CANADA INC., in its capacity as Court-appointed Monitor in the *Companies' Creditors Arrangement Act* proceedings of Sears Canada Inc., et al. certifies that it has been informed by the Agent and Sears Canada that:

The Sale has ended.

All amounts due to Sears Canada under the Consulting Agreement have been paid in full to Sears Canada.

The Remaining FF&E includes the FF&E listed on Appendix "A" hereto.

DATED as of this ● day of ●, 2017.

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

APPENDIX "A"
LIST OF REMAINING FF&E

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

LIQUIDATION SALE APPROVAL ORDER

OSLER, HOSKIN & HARCOURT LLP

P.O. Box 50, 1 First Canadian Place
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Michael De Lellis LSUC# 48038U
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Lawyers for the Applicants

SCHEDULE C
BUDGET OF CONSULTANT CONTROLLED
EXPENSES

(See attached.)

**Sears Canada
Exhibit C**

Consultant Controlled Expenses

	<u>Total</u>
<u>Advertising</u>	
Media	275,000
Signs	124,000
Sign Walkers	53,504
Subtotal Advertising	452,504
 <u>Supervision</u>	
Fees / Wages / Expenses (1)	688,683
Subtotal Supervision	688,683
 Total Expenses	 1,141,188

Note(s):

1. Includes Deferred Compensation and Insurance.

**SCHEDULE D
EXCLUDED FF&E**

(See attached.)

Assets excluded from liquidation - Outlet Stores

Category	Description	QTYs	Cost / Unit	TTU	Notes	
FIXTURES	Racks	M-3-Double T Stand	175			
	Racks	M-19 - AA - Linear - Wardrobe Fixture	69			
	Racks	M-2 - AA - Single T Stand - low capacity	125			
	Racks	M-5 - AA - The Cut Rack - High Capacity - IMG_0893				
	Tables	All White - AA & HH in aslie + nesting tables	25			
	Tables	HH - Tables - Manchester Tables - IMG_0909				
	Tables	L-103 - AA - CW - CHILDRENS WEAR FIXTURE-MIX AND MATCH - IMG_0902	5			
	Tables	L-219 - AA - CMAT table - charming charlie - IMG_0892	10			
	Tables	L-220 - AA - AC - Table - Handbags - Center Island Fixture-Women Accessories - IMG_0882	10			
	Displayer	L-351 - AA - LG - Large Metal Steps for Luggage 63 x 42 x 40 ht (Luggage) - IMG_0881	15			
	Displayer	L-524A - HH - Pillow Bin -(24 x 48 x 36ht) - H_ H - various sizes	145			
	Displayer	L-524A - HH - White Pillow Bin -48 x 48 x 36ht) - H_ H - IMG_0908	71		Approx	
	Displayer	M-30 - AA - FW - Shoe displayer - Foldable Shoe Racking - IMG_0896	31			
	Hardware	Backwall - 16in + 19in Shelves	1,200			
		Backwall - 16in + 19in brackets	3,717			
Backwall - Chrome Jet rail, brackets and faceouts		TBD				
Other	M-31 - Cube - Large Grid - 3x2 - AA - HO B + All required 'The Cut'				per 12ft section	
	M-27 - Cube - Mini cube - fixed frame 'The Cut'				per 12ft section	
	M-28 - Cube - Mini cube - fixed frame - Stationary				per 12ft section	
	Fixture - Seymour Headboards - IMG_0904				Approx (18 per store)	
	Cart Corrals					
	IMPULSE QUEUE - IMG_0898				1 lane per store	
	Shopping Carts					
	Shopping Caddies					
Tandem	G-100 - Tandem + Shelves - 60in - Slotwall - White	80			1th sections	
	G-100 - Tandem + Shelves - 60in - Slotwall - White	80			1th sections	
Sub Total						
DISPLAY	Sign holders	TBD				
	Artwork, Collateral and Promotional signing	TBD			** Estimate	
	Sub Total					
VISUAL Mannequines	WA					
	MW					
	CW					
	Sub Total					
EQUIPMENT	Pump Trucks	27				
	Baker's Rack	23				
	Caged Shelf Cart	27				
	2 Wheel Dolly	43				
	Flatbed Wheels	43				
	Flatbed	59				
	Platform cart	23				
	Rolling Racks - Z Racks	204				
	Rolling Bin	44				
	Step Ladder	36				
	Conveyors					
	Sub Total					
	Grand Total					

*Information Technology (IT) equipment will be excluded from liquidation (registers, phones, printers, handheld scanners, CCTV etc.)

**National branded fixtures and collateral to be excluded from liquidation

*** LEDs, wall washers and other visual ELFs will be excluded from liquidation

****Corbell Assets and fixtures

Tab C

**THIS IS EXHIBIT "C" TO THE AFFIDAVIT
OF SEAN STIDWILL SWORN BEFORE ME
ON THIS 17th DAY OF JULY, 2017.**


A commissioner for taking Affidavits
SONJA PAUL

SEARS CANADA INC.

(Company)

- and -

A contractual joint venture comprised of
GORDON BROTHERS CANADA ULC and
MERCHANT RETAIL SOLUTIONS ULC and

TIGER CAPITAL GROUP, LLC and

GA RETAIL CANADA ULC

(Agent)

AMENDED AND RESTATED AGENCY AGREEMENT

Dated: July 12, 2017

Amended and Restated: July 14, 2017

Prepared by:

Osler, Hoskin & Harcourt LLP
PO Box 50, 1 First Canadian Place,
Toronto, Ontario M5X 1B8

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AGENCY AGREEMENT

This AMENDED AND RESTATED AGENCY AGREEMENT is ~~made~~dated as of July 12, 2017 and amended and restated as of July 14, 2017.

A M O N G:

Sears Canada Inc. (the “Company”)

- and -

A contractual joint venture comprised of
GORDON BROTHERS CANADA ULC and
MERCHANT RETAIL SOLUTIONS ULC and
TIGER CAPITAL GROUP, LLC and
GA RETAIL CANADA ULC
 (the “Agent”)

RECITALS:

- A. On June 22, 2017, the Company and certain related entities commenced court-supervised restructuring proceedings under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA Proceedings**”) and obtained an initial order (as amended from time to time, the “**Initial Order**”) from the Ontario Superior Court of Justice (Commercial List) (the “**Court**”).
- B. Pursuant to the Initial Order, FTI Consulting Canada Inc. was appointed as monitor (the “**Monitor**”) in the CCAA Proceedings and the engagement of BMO Nesbitt Burns Inc. (“**BMO**”) as financial advisor to the Company was approved.
- C. The Company currently operates a network of retail stores across Canada and has identified certain stores for liquidation and closure.
- D. A contractual joint venture composed of Gordon Brothers Canada ULC and Merchant Retail Solutions ULC entered into an agency agreement with the Company dated July 12, 2017 (the “**Original Agency Agreement**”).
- E. On July 12, 2017, Gordon Brothers Canada ULC and Merchant Retail Solutions ULC exercised their* right to syndicate the transaction contemplated by *the Original Agency Agreement as provided for in Section 18.14 thereof.

E. D. The Company and the Agent, in consultation with the Monitor and BMO, and subject to the approval of the Court, wish to enter into this amended and restated agency agreement (this “Agreement”) in accordance with the terms hereof.

NOW THEREFORE in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged) the parties hereto agree as follows:

ARTICLE 1 INTERPRETATION

1.1 Definitions

In this Agreement:

“**Accepted Credits**” has the meaning ascribed to it in Section 10.3(a);

“**Additional Taxes and Penalties**” has the meaning ascribed to it in Section 12.1(a);

“**Agency Documents**” has the meaning ascribed to it in Section 16.1(a)(i);

“**Agent**” means a contractual joint venture comprised of Gordon Brothers Canada ULC and Merchant Retail Solutions ULC, Tiger Capital Group, LLC and GA Retail Canada ULC;

“**Agent’s Base Fee**” has the meaning ascribed to it in Section 3.5;

“**Agent’s Charge and Security Interest**” has the meaning ascribed to it in Section 13.1(a);

“**Agent Claim**” has the meaning ascribed to it in Section 12.2(e);

“**Agent L/C**” has the meaning ascribed to it in Section 3.3(a);

“**Agent Sharing Recovery Amount**” has the meaning ascribed to it in Section 3.5;

“**Agreement**” means this agency agreement, together with the attached schedules;

“**Approval Order**” has the meaning ascribed to it in Section 14.1(a)(i);

“**Assets**” means collectively, the Merchandise and the FF&E;

“**Beneficiary**” has the meaning ascribed to it in Section 3.3(a);

“**Benefits Cap**” has the meaning ascribed to it under the definition of “Expenses”;

“**Budget**” means the budget mutually agreed upon between the Company and the Agent, with the approval of the Monitor, with respect to the FF&E Expenses;

“**Business Day**” means a day on which chartered banks in Canada are open for business in the City of Toronto but does not include a Saturday, Sunday or statutory holiday in the Province of Ontario;

“**Canadian Anti-Spam Legislation**” means *An Act to promote the efficiency and adaptability of the Canadian economy by regulating certain activities that discourage reliance on electronic means of carrying out commercial activities, and to amend the Canadian Radio-television and Telecommunications Commission Act, the Competition Act, the Personal Information Protection and Electronic Documents Act and the Telecommunications Act* (S.C. 2010, c. 23) and its associated regulations;

“**Cash Balance Payment**” has the meaning ascribed thereto in Section 3.4;

“**CCA Proceedings**” has the meaning ascribed to it in the Recitals;

“**Central Services**” has the meaning ascribed to it in Section 10.1(a)(iii);

“**Company**” has the meaning ascribed to it in the Recitals;

“**Company Consignment Goods**” means those goods identified by the Company as being held by the Company on consignment and identified in Schedule “L”;

“**Company’s Designated Account**” means the Company’s bank account, the details of which are set out in Schedule “K”;

“**Company Personal Information**” has the meaning ascribed to it in Section 10.10;

“**Company Sharing Recovery Amount**” has the meaning ascribed to it in Section 3.5;

“**Corporate Office**” means the Company’s corporate offices located at 290 Yonge St., Suite 700, Toronto, Ontario, Canada, M5B 2C3;

“**Cost Value**” has the meaning ascribed to it in Section 4.2(a);

“**Court**” has the meaning ascribed to it in the Recitals;

“**Court Condition Date**” has the meaning ascribed to it in Section 14.1(a)(i);

“**Defective Merchandise**” means any item of inventory that is not saleable as first quality inventory because it is dented, worn, scratched, torn, tailored, soiled, ripped, faded, mismatched, missing pieces, mis-mated, out of box (if normally sold as new in-the-box), or near-sized, items typically sold as a set which are incomplete, or merchandise affected by other similar defenses rendering it not first quality, and as to which Agent and Company mutually agree on its value to define its Cost Value;

“**Delayed Delivery Goods**” means any goods located in the Locations as at the Sale Commencement Date that were purchased and paid for prior to the Sale Commencement Date and reflect in the file named “Jul Wk1 Unshipped Sales_by store.xlsx” provided to the Agent on July 12, 2017;

“**Designated Company Consignment Goods**” has the meaning ascribed to in Section 4.4(b);

“**Designated Deposit Accounts**” has the meaning ascribed to it in Section 6.1(a);

“**Designated Sundry Goods**” has the meaning ascribed to it in Section 4.4(b);

“**Designated Sundry And Consignment Goods Commission**” has the meaning ascribed to it in Section 4.4(b);

“**Designated Sundry And Consignment Goods Proceeds**” means the proceeds of sale from the Designated Sundry Goods and the Designated Company Consignment Goods, net of Sales Taxes;

“**Distribution Center**” means any of the Company’s distribution centers, storage facility and warehouses;

“**Encumbrances**” shall mean 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, priorities, prior claims, and encumbrances, including, without limitation, the charges granted by the Court under the CCAA Proceedings (including, but not limited to, the Administration Charge, the KERP Priority Charge, the Directors’ Priority Charge, the DIP Term Lenders’ Charge, the DIP ABL Lenders’ Charge, the KERP Subordinated Charge, and the Directors’ Subordinated charge, each as defined in the Initial Order);

“**Events of Default**” shall have the meaning ascribed to it in Section 15.1;

“**Excluded Benefits**” means paid sick days or sick leave, maternity leave or other leaves of absence including vacation pay for actual vacation time taken by hourly employees, termination or severance pay (prior to or during the Sale and including without limitation any notice in accordance with provincial employment/labour standards), pension benefits and similar contributions, and non-statutory benefits (including any amounts payable to any Retained Employees under the KERP) payable to the Retained Employees and benefits in excess of the Benefits Cap;

“**Excluded Defective Merchandise**” shall mean those items of Defective Merchandise that are not saleable in the ordinary course because they are so damaged or defective that they cannot reasonably be used for their intended purpose or for which the parties cannot mutually agree upon a Cost Value, including parts or components held for repairs or not sold separately by Company to consumers in the ordinary course of business or have been delisted or are return to vendor goods;

“**Excluded FF&E**” means (i) all furnishings, removable trade fixtures, equipment and improvements to real immovable property that are owned by third party vendors and are located in the Locations as at the Sale Commencement Date identified on Schedule “O”, and (ii) all furnishings, removable trade fixtures, equipment and improvements to real immovable property that are owned by the Company and identified in Schedule “J”;

“**Excluded Goods**” shall mean: (i) goods which belong to third parties including sublessees, franchisees, concessionaires or licensees, if any, of the Company; (ii) goods held by Company as bailee or Company Consignment Goods (including Designated Company Consignment Goods); (iii) Excluded Defective Merchandise; (iv) FF&E; (v) Excluded FF&E; (vi) Delayed Delivery Goods; (vii) Designated Sundry Goods; and/or (viii) In-Transit Merchandise that is not received in the Locations on or before to the Merchandise Receipt Deadline.

“**Excluded Price Adjustments**” shall have the meaning ascribed to it in Section 4.2(a)(iii);

“**Expenses**” shall mean the normal customary operating expenses of the Sale arising during the Sale Term and attributable to the Sale, limited to the following:

- (i) actual Occupancy Expenses for the Locations on a per Location and per diem basis through the applicable Vacate Date for such Location in an amount not to exceed the respective per Location, actual per diem totals set forth on Schedule “A”, which shall be exclusive of Sales Tax; provided however; commencing on the Sale Commencement Date and continuing as part of each Weekly Sale Reconciliation thereafter, Agent shall pre-fund two (2) weeks Occupancy Expenses;
- (ii) wages, overtime, commissions and, if applicable, existing Company plan bonuses (excluding the KERP) as well as vacation pay accruing during the Sale Term (but not arrears) payable by the Company for Retained Employees used in conducting the Sale for actual days/hours worked during the Sale Term; provided however, Agent shall be obligated to pre-fund payroll-related expenses consistent with the Company’s customary payroll funding practices and timing, it being understood that the Agent will never be the employer;
- (iii) actual amounts payable by the Company for statutory deductions and amounts payable by the Company for benefits during the Sale Term for Retained Employees used in the Sale (including Canada Pension Plan premiums and other similar premiums, employment insurance premiums, employment health taxes, workers’ compensation premiums, health care insurance benefits, and vacation pay accruing during the Sale Term (but not in arrears)), but excluding Excluded Benefits, for actual days/hours worked during the Sale Term in an amount not to exceed 10% of base payroll for each Retained Employee in the Locations (the “**Benefits Cap**”). For the purposes herein, “base payroll” shall include commissions and bonuses payable under the Company’s compensation policy in effect as at the Sale Commencement Date; provided, however, Agent shall be obligated to pre-fund payroll-related expenses consistent with the Company’s customary payroll funding practices and timing, it being understood that the Agent will never be the employer;

- (iv) all out of pocket costs and expenses associated with Agent's on-site supervision of the Locations, including (but not limited to) any and all fees paid to arm's length third-parties, wages, bonuses, taxes, payroll expenses, and deferred compensation of Agent's field personnel, travel to, from or between the Locations, and out-of-pocket and commercially reasonable expenses relating thereto (including reasonable and documented corporate travel to monitor and manage the Sale and third party payroll fees, costs and expenses);
- (v) all costs of advertising, signage and banners (interior and exterior) and in-store signs that are produced and used for the Sale in compliance with the Sales Guidelines whether incurred prior to the Sale or during the Sale Term;
- (vi) promotional costs incurred by Agent pursuant to the terms of this Agreement, including, without limitation, sign walkers, advertising, media, production and creative, digital and direct mailings relating to the Sale;
- (vii) cost of additional supplies used at the Locations as may be required by Agent in the conduct of the Sale (excluding those supplies located at the Locations on the Sale Commencement Date which may be used by Agent at no charge);
- (viii) to the extent not included in per diem Occupancy Expense totals, local and long distance telephone expenses incurred at the Locations;
- (ix) credit card and bank card fees, bank charges, chargebacks and credit/debit card discounts with respect to Merchandise sold in the Sale;
- (x) any and all costs of processing, moving, transferring or consolidating Merchandise between and among the Locations, including delivery and freight costs;
- (xi) bank service charges, cheque guarantee fees, and bad cheque expenses, to the extent attributable to the Sale;
- (xii) all fees and charges required to comply with laws regulating the conduct of store closing sales;
- (xiii) Locations' cash theft and other cash shortfalls in the cash registers;
- (xiv) postage, courier and overnight mail charges to and from or among the Locations and the Corporate Office (to the extent relating to the Sale);
- (xv) to the extent not included in per diem Occupancy Expense totals, Locations' snow and trash removal; provided however, in connection with the conduct of the Sale and/or Agent's vacating of the Locations (but not in connection with the disposition of any unsold FF&E or other

non-Merchandise assets being abandoned or otherwise disposed of by the Company), to the extent that the Company incurs additional trash removal charges at a Location, other than the fixed charge component of the Company's lease obligation for a particular Location provided for in the per diem Occupancy Expense totals (the "**Non-CAM Trash Removal Charges**"), such Non-CAM Trash Removal Charges shall be paid by Agent as an Expense of the Sale, in addition to any trash removal charges as may be set forth in Occupancy Expense totals.

- (xvi) fifty percent (50%) of each of (i) the fees of the Inventory Taking Service to conduct the Inventory Taking at the Locations and (ii) payroll and related costs for Retained Employees who work at the Locations during the Inventory Taking in such Locations;
- (xvii) third party payroll processing fees;
- (xviii) cost of all security in the Locations (to the extent customarily provided in the Locations), including, without limitation, armored car service, security personnel and monthly alarm services for the Locations;
- (xix) cost of Agent's actual cost of capital, letter of credit fees and currency conversion expenses related to the Sale, including wire transfer and bank charges related to the Initial Guaranty Payment, the Guaranteed Amount, an Overfunded Amount, if applicable, and the Agent L/C;
- (xx) Agent's reasonable out-of-pocket fees and expenses, including but not limited to, legal fees and expenses incurred in connection with the review of data and preparation, negotiation and execution of this Agreement, the Approval Order, Sales Guidelines, any ancillary documents, and other diligence costs incurred prior to and during the Sale Term in an amount not to exceed \$100,000;
- (xxi) to the extent not included in per diem Occupancy Expense totals, third party cleaning expenses related to the Locations;
- (xxii) all costs and expenses of providing such additional Location-level services, including, without limitation, (i) the employment of temporary help (which shall be coordinated and implemented through the Company's human resources department), which Agent and the Company consider appropriate, and (ii) the actual cost of any deliver or repair services, to the extent provided by the Agent pursuant to section 10.1(a), below;
- (xxiii) actual cost of Agent's insurance;
- (xxiv) The actual amount of any Retention Bonuses for Retained Employees paid by the Agent in accordance with Section 11.1(d) hereof; and

- (xxv) for the Sale Term a pro rata portion of the Company's premiums in respect of general liability, casualty, property, inventory, and other insurance policies attributable to the Merchandise and the Locations.

Provided however that "Expenses" shall not include: (i) Excluded Benefits; (ii) any rent or other occupancy expenses other than Occupancy Expenses in accordance with subsection (i) and Schedule "A" hereof to the extent actually incurred; (iii) any costs or expenses associated with any of the Non-Store Locations except as set forth above; (iv) Sales Tax on any of the Expenses if Agent is registered for harmonized sales tax or goods and services tax under Part IX of the *Excise Tax Act* (Canada); (v) any costs or expenses arising or accruing during the FFE Removal Period; and (vi) expenses or liabilities arising or accruing during the Sale Term in connection with the Sale, other than the Expenses listed above, all of which shall be paid by Agent or the Company, as applicable, promptly when due during the Sale Term. Notwithstanding anything herein to the contrary, to the extent that any Expense listed in this definition is also included on Schedule "A", then Schedule "A" shall prevail and such Expense shall not be double counted;

"**FF&E**" means all furnishings, removable trade fixtures, equipment, and improvements to real immovable property that are located in the Locations and are owned by the Company, but excluding the Excluded FF&E;

"**FF&E Commission**" has the meaning ascribed to it in Section 5.1(a);

"**FF&E Expenses**" has the meaning ascribed to it in Section 5.1(a);

"**FF&E Proceeds**" means the proceeds of sale from the FF&E net of Sales Taxes;

"**FF&E Removal Deadline**" has the meaning ascribed to it in Section 5.1(b);

"**FF&E Removal Period**" has the meaning ascribed to it in Section 5.1(b);

"**Final Reconciliation**" has the meaning ascribed to it in Section 7.1(c);

"**Final Inventory Report**" has the meaning ascribed to it in Section 3.2(a);

"**Full-Line Cost Factor Threshold**" has the meaning ascribed to it in Section 3.1(a)(iii);

"**Full-Line Guaranty Percentage**" has the meaning ascribed to it in Section 3.1(a)(i);

"**Full-Line Guaranteed Amount**" has the meaning ascribed to it in Section 3.1(a)(i);

"**Full-Line Merchandise**" means, solely as it relates to the Full-Line Stores, all finished, new, first quality goods inventory saleable in the ordinary course of business that are owned by the Company and that are located at the Locations that are Full-Line Stores on the Sale Commencement Date, including (i) all floor models and sample goods, (ii) all Full-Line Merchandise subject to Gross Rings, (iii) In-Transit Merchandise received in the Locations that are Full-Line Stores by the Merchandise Receipt Deadline, and (iv) Defective Merchandise that would otherwise constitute Full-Line Merchandise for which

the Agent and the Company can agree on a Cost Value, but, in all cases, expressly excluding all Excluded Goods;

“**Full-Line Merchandise Threshold**” has the meaning ascribed to it in Section 3.1(a)(ii);

“**Full-Line Stores**” means the Locations identified as full-line retail stores on Schedule “B”;

“**Gross Rings**” has the meaning ascribed to it in Section 4.3;

“**Guaranteed Amount**” means the aggregate value of the Home Store Guaranteed Amount and the Full-Line Guaranteed Amount;

“**Hazardous Materials**” means, collectively, any chemical, solid, liquid, gas, waste, or other substance having the characteristics identified in, listed under, or designated pursuant to any laws, statutes or regulations of a governmental unit or agency thereof, as presenting an imminent and substantial danger to the public health or welfare or to the environment or as otherwise requiring special handling, collection, storage, treatment, disposal, or transportation;

“**Home Store Cost Factor Threshold**” has the meaning ascribed to it in Section 3.1(b)(iii);

“**Home Store Guaranteed Amount**” has the meaning ascribed to it in Section 3.1(b)(i);

“**Home Store Guaranty Percentage**” has the meaning ascribed to it in Section 3.1(b)(i);

“**Home Store Merchandise**” means, solely as it relates to the Home Stores, all finished, new, first quality goods inventory saleable in the ordinary course of business that are owned by the Company and that are located at the Locations that are Home Stores on the Sale Commencement Date, including (i) all floor models and sample goods (ii) Home Store Merchandise subject to Gross Rings, (iii) In-Transit Merchandise received in the Locations that are Home Stores by the Merchandise Receipt Deadline, and (iv) Defective Merchandise that would otherwise constitute Home Store Merchandise for which the Agent and the Company can agree on a Cost Value, but, in all cases, expressly excluding all Excluded Goods;

“**Home Store Merchandise Threshold**” has the meaning ascribed to it in Section 3.1(b)(ii);

“**Home Stores**” means the Locations identified as home store retail stores on Schedule “B”

“**In-Transit Merchandise**” means all new, finished, first-quality saleable goods reflected in the file named “Warehouse to FL Transfers.xlsx” posted to the Company’s datasite on July 7, 2017;

“**Initial Guaranty Payment**” has the meaning ascribed to it in Section 3.2(a);

“**Initial Order**” has the meaning ascribed to it in the Recitals hereto;

“**Inventory Date**” has the meaning ascribed to it in Section 4.1;

“**Inventory Reconciliation Date**” has the meaning ascribed to it in Section 3.2(a);

“**Inventory Taking**” has the meaning ascribed to it in Section 4.1;

“**Inventory Taking Instructions**” has the meaning ascribed to it in Section 4.1;

“**Inventory Taking Service**” has the meaning ascribed to it in Section 4.1;

“**JV Member**” means a member of the joint-venture comprising the Agent.

“**KERP**” means the Key Employee Retention Plan approved by the Court in the Initial Order;

“**L/C Date**” has the meaning ascribed to it in Section 3.3(a);

“**Lenders**” means, collectively, the DIP ABL Lenders and the DIP Term Lenders (each as defined in the Initial Order);

“**Locations**” means all of the Company’s retail store locations as described in Schedule “B”;

“**Lowest Location Price**” has the meaning ascribed to it in Section 4.2(a)(ii);

“**Loyalty Points**” means the points earned on the Loyalty Program which can be redeemed for merchandise, in accordance with the terms of the Loyalty Program;

“**Loyalty Program**” means the Sears Club Points Program which allows customers to earn and redeem Loyalty Points;

“**Merchandise**” means all Full-Line Merchandise and Home Store Merchandise;

“**Merchandise File**” means (i) with respect to Full-Line Stores, the Company’s file “Full line Ticket price and cost by item Updated July 6th .xlsx”, including specifically the ticket price June 29, 2017 field included in said file, and (ii) with respect to Home Stores, “Store Inventory by Item Wk22 (Active-Inactive Inventory w aging).xlsx”;

“**Merchandise Receipt Deadline**” means the date that is twenty-eight (28) days after the Sale Commencement Date;

“**Monitor**” has the meaning ascribed to it in the Recitals;

“**Net Designated Sundry And Consignment Goods Proceeds**” means all amounts collected on account of Designated Sundry Goods and Designated Company Consignment Goods, net of Sales Taxes and the Designated Sundry And Consignment Goods Commission;

“**Net FF&E Proceeds**” means all amounts collected on account of FF&E, net of the FF&E Expenses, Sales Taxes, and FF&E Commission;

“**Non-CAM Trash Removal Charges**” has the meaning ascribed to it under the definition of “Expenses”;

“**Non-Store Locations**” means, collectively, the Distribution Centers and the Corporate Office;

“**Occupation Agreements**” means the leases, subleases or other occupation agreements relating to the Locations in which the Assets are located and to which the Company is a party;

“**Occupancy Expenses**” means the costs of occupation as set out on Schedule “A”, on a per diem, per Location (including any percentage rent as may become due and owing in connection with the Sale);

“**Overfunded Amount**” has the meaning ascribed to it in Section 6.1(f);

“**Payment Date**” has the meaning ascribed to it in Section 3.2(a);

“**Prevailing Discount Adjustment**” has the meaning ascribed to it in Section 4.2(a)(iv);

“**Privacy Law**” means the *Personal Information Protection and Electronic Documents Act* (Canada), the *Freedom of Information and Protection of Privacy Act* (Canada) and any comparable law of any other province or territory of Canada, including, for greater certainty, Canadian Anti-Spam Legislation;

“**Privacy Policies**” means the Company’s privacy policies and procedures relating to (i) the protection of the privacy and security of Company Personal Information, and (ii) Canadian Anti-Spam Legislation;

“**Proceeds**” means all cash and non-cash consideration from (i) a sale or other disposition of Merchandise and Remaining Merchandise made under this Agreement, and (ii) all proceeds of Company’s insurance for loss or damage to Merchandise arising from events occurring during the Sale Term, but exclusive of (a) Sales Taxes, (b) credit card and bank card fees and chargebacks, and (c) allowances and customer credits. For the avoidance of doubt, (i) proceeds from the sale of Excluded Goods, (ii) FF&E Proceeds; and (iii) Designated Sundry And Consignment Goods Proceeds, shall not be “Proceeds”;

“**Promotional Calendar**” means the sales and promotions reflected in the file named “2017 Marketing Calendar -Final-.xslm” provided to the Agent on July 11, 2017;

“**Reconciled In-Transit Receipts**” has the meaning ascribed to it in Section 4.1;

“**Remaining FF&E**” has the meaning ascribed to it in Section 5.1(e);

“**Remaining Merchandise**” has the meaning ascribed to it in Section 9.1;

“**Retail Price**” has the meaning ascribed to it in Section 4.2(a)(i);

“**Retained Employees**” has the meaning ascribed to it in Section 11.1(a);

“**Retention Bonuses**” has the meaning ascribed to it in Section 11.1(d);

“**Retrieval Date**” has the meaning ascribed to it in Section 10.3(d);

“**Sale**” means the sale by the Agent of the Merchandise, Designated Sundry Goods, Designated Company Consignment Goods and FF&E during the Sale Term, and, solely with respect to the FF&E, also during the FF&E Removal Period, in accordance with this Agreement;

“**Sale Commencement Date**” shall mean July 21, 2017, or such other date as may be agreed to by Company and Agent with the approval of the Monitor and consent of the Lenders;

“**Sales Guidelines**” means the guidelines attached hereto as Schedule “G”;

“**Sale Term**” means the period starting on the Sale Commencement Date and ending on the Sale Termination Date;

“**Sale Termination Date**” means the date on which the Sale terminates at each Location, which date shall be no later than October 12, 2017 (subject to further extension as may be mutually agreed upon, in writing, by the Agent and the Company, with the approval of the Monitor and the Lenders);

“**Sales Taxes**” has the meaning ascribed to it in Section 12.1(a);

“**Sharing Amounts**” has the meaning ascribed to it in Section 3.5;

“**Unclaimed Delayed Delivery Goods**” has the meaning ascribed to it in Section 10.3(d);

“**Unpaid Company’s Entitlement**” shall have the meaning ascribed to it in Section 13.1(a);

“**Vacate Date**” has the meaning ascribed to it in Section 10.6; and

“**Weekly Sale Reconciliation**” has the meaning ascribed to it in Section 7.1(b).

1.2 Extended Meanings

Words importing the singular include the plural and vice versa, words importing gender include all genders and words importing persons include individuals, partnerships, associations, trusts, unincorporated organisations, corporations and governmental authorities. The term “including” means “including, without limitation,” and such terms as “includes” have similar meanings.

1.3 Schedules

The following Schedules are incorporated in and form an integral part of this Agreement:

Schedule "A":	Occupancy Expenses
Schedule "B":	Locations
Schedule "C":	Merchandise Threshold Adjustments
Schedule "D":	Cost Factor Thresholds Adjustments
Schedule "E":	Agent L/C
Schedule "F":	Inventory Taking Instructions
Schedule "G":	Sales Guidelines
Schedule "H":	Form of Approval Order
Schedule "I":	[Intentionally Omitted]
Schedule "J":	Company Owned Excluded FF&E
Schedule "K":	Company's Designated Account
Schedule "L":	Company Consignment Goods
Schedule "M":	[Intentionally Omitted]
Schedule "N":	[Intentionally Omitted]
Schedule "O":	Third-Party Owned Excluded FF&E

ARTICLE 2 APPOINTMENT OF AGENT

2.1 Appointment of Agent

The Company hereby appoints the Agent, and the Agent hereby agrees to serve as the Company's exclusive agent and mandatary for the limited purpose of conducting the Sale at the Locations, disposing of the Merchandise and liquidating the FF&E at all of the Locations, the whole in accordance with the terms and conditions of this Agreement.

The Agent hereby acknowledges that it will not hold itself out as Agent of the Company except as specifically provided for in this Section and that the Agent's authority as Agent of the Company is limited to the powers specifically provided for in this Agreement.

2.2 No Warranty

Except for the Company's representations and warranties expressly set forth in this Agreement, the Agent acknowledges that it has made such inspections of the Merchandise and FF&E as it deems appropriate and that neither the Company nor the Monitor have made to the Agent or any other person any representation, warranty or condition, whether statutory (including under the *Sale of Goods Act* (Ontario) or similar legislation), express or implied, oral or written, legal, equitable, collateral or otherwise, as to title, encumbrances, fitness for purpose, marketability, condition, quantity or quality thereof or in respect of any other matter or thing whatsoever.

ARTICLE 3 CONSIDERATION TO COMPANY AND AGENT

3.1 Guaranteed Amount

(a) Full-Line Stores.

- (i) As a guaranty of Agent's performance hereunder in respect of Full-Line Stores, Agent guarantees that the Company shall receive eighty percent (80%) (the "**Full-Line Guaranty Percentage**") of the aggregate Cost Value of the Full-Line Merchandise (the "**Full-Line Guaranteed Amount**"), which Full-Line Guaranteed Amount shall be paid at such times and in such manner as shall hereinafter be provided. The Full-Line Guaranteed Amount will be calculated based upon the aggregate Cost Value of the Full-Line Merchandise as determined by (A) the Final Inventory Report after verification and reconciliation thereof by Agent and Company and satisfactory to the Monitor; (B) the aggregate Cost Value of the Full-Line Merchandise subject to Gross Rings; and (C) any other adjustments to Cost Value as expressly contemplated by this Agreement.
- (ii) The Full-Line Guaranty Percentage has been fixed based upon the aggregate Cost Value of the Full-Line Merchandise included in the Sale being not less than \$49 million and not more than \$51 million (the "**Full-Line Merchandise Threshold**") as of the Sale Commencement Date. To the extent that the aggregate Cost Value of the Full-Line Merchandise included in the Sale is less than, or greater than, the Full-Line Merchandise Threshold, the Full-Line Guaranty Percentage shall be adjusted in accordance with Schedule "C" annexed hereto.
- (iii) The Full-Line Guaranty Percentage has also been fixed based upon the aggregate Cost Value of the Full-Line Merchandise included in the Sale as a percentage of the aggregate Retail Price of the Full-Line Merchandise included in the Sale, such percentage being 53.3% (the "**Full-Line Cost Factor Threshold**"). To the extent that the ratio of the aggregate Cost Value of the Full-Line Merchandise included in the Sale to the aggregate Retail Price of the Full-Line Merchandise included in the Sale is a

percentage greater than the Full-Line Cost Factor Threshold, the Full-Line Guaranty Percentage shall be adjusted in accordance with Schedule "D" annexed hereto.

- (iv) The adjustments to the Full-Line Guaranty Percentage contemplated by Section 3.1(a)(ii) and Section 3.1(a)(iii) shall be independent and cumulative.

(b) Home Stores.

- (i) As a guaranty of Agent's performance in respect of Home Stores hereunder, Agent guarantees that the Company shall receive fifty-two-and-one-half percent (52.5%) (the "**Home Store Guaranty Percentage**") of the aggregate Cost Value of the Home Store Merchandise (the "**Home Store Guaranteed Amount**"), which Home Store Guaranteed Amount shall be paid at such times and in such manner as shall hereinafter be provided. The Home Store Guaranteed Amount will be calculated based upon the aggregate Cost Value of the Home Store Merchandise as determined by (A) the Final Inventory Report after verification and reconciliation thereof by Agent and Company and satisfactory to the Monitor; (B) the aggregate Cost Value of the Home Store Merchandise subject to Gross Rings; and (C) any other adjustments to Cost Value as expressly contemplated by this Agreement.
- (ii) The Home Store Guaranty Percentage has been fixed based upon the aggregate Cost Value of the Home Store Merchandise included in the Sale being not less than \$11.5 million and not more than \$13 million (the "**Home Store Merchandise Threshold**") as of the Sale Commencement Date. To the extent that the aggregate Cost Value of the Home Store Merchandise included in the Sale is less than, or greater than, the Home Store Merchandise Threshold, the Home Store Guaranty Percentage shall be adjusted in accordance with Schedule "C" annexed hereto.
- (iii) The Home Store Guaranty Percentage has also been fixed based upon the aggregate Cost Value of the Home Store Merchandise included in the Sale as a percentage of the aggregate Retail Price of the Home Store Merchandise included in the Sale, such percentage being 43.9% (the "**Home Store Cost Factor Threshold**"). To the extent that the ratio of the aggregate Cost Value of the Home Store Merchandise included in the Sale to the aggregate Retail Price of the Home Store Merchandise included in the Sale is a percentage greater than the Home Store Cost Factor Threshold, the Home Store Guaranty Percentage shall be adjusted in accordance with Schedule "D" annexed hereto.
- (iv) The adjustments to the Home Store Guaranty Percentage contemplated by Section 3.1(b)(ii) and Section 3.1(b)(iii) shall be independent and cumulative.

3.2 Payment of Guaranteed Amount

- (a) On the first (1) business day following the entry of the Approval Order (the “**Payment Date**”), Agent shall pay to Company an amount equal to seventy percent (70%) of the estimated Guaranteed Amount with respect to Merchandise (other than any In-Transit Merchandise) (calculated based upon the estimated aggregate Cost Value of the Full-Line Merchandise and the aggregate Cost Value of the Home Store Merchandise to be included in the Sale as reflected on the Company’s books and records maintained in the ordinary course as of the date immediately preceding the Payment Date) (the “**Initial Guaranty Payment**”) by wire transfer to the Company’s Designated Account. The balance of the Guaranteed Amount, if any, shall be paid by Agent by wire transfer to the Company’s Designated Account on the earlier of (i) thirty (30) days after the Sale Commencement Date and (ii) the second Business Day following the issuance of the final report of the aggregate Cost Value of the Full-Line Merchandise and the aggregate Cost Value of the Home Store Merchandise included in the Sale by the Inventory Taking Service, after review, reconciliation and mutual written verification thereof by Agent and Company and satisfactory to the Monitor, after consultation with the Lenders (the “**Final Inventory Report**” with the date of completion of such reconciliation and issuance of such Final Inventory Report to be referred to as the “**Inventory Reconciliation Date**”); provided, however, that if the Final Inventory Report has not been mutually verified by the Agent and Company and in a form satisfactory to the Monitor by the date that is thirty (30) days after the Sale Commencement Date, the Agent shall pay the undisputed portion of the balance of the Guaranteed Amount (if any) on the first business day following the parties mutual identification of such disputed and undisputed aspects of the Final Inventory Report. To the extent that the Guaranteed Amount has not been paid in full by the date of the Final Inventory Report, Agent shall tender payment of the undisputed portion only on account of any remaining portion of the Guaranteed Amount and any remaining amounts shall be paid upon the resolution of any dispute or as part of the Final Reconciliation.

3.3 Letter of Credit

- (a) To secure the Agent’s obligations under this Agreement including, *inter alia*, Agent’s obligation to pay the balance of the Guaranteed Amount and the Expenses, and in addition to the Agent indemnification obligations under this Agreement, the Agent shall deliver to the Company, no later than one (1) Business Day after the Payment Date, one or more irrevocable and unconditional standby letters of credit in an aggregate original face amount equal to thirty percent (30%) of the estimated Guaranteed Amount, plus an amount equal to three (3) weeks’ estimated Expenses, as estimated by the Agent and the Company, each acting reasonably and in consultation with the Monitor, naming the ~~Monitor~~ Company as beneficiary (the “**Beneficiary**”), to the extent it is allowed by the Approval Order, substantially in the form of Schedule “E” attached hereto (the “**Agent L/C**”). The Agent L/C shall be issued by Bank of America, N.A. or another bank selected by the Agent and reasonably acceptable to the Company and the Monitor. The Agent LC shall have an expiry date of no earlier than 60 days after the Sale Termination Date (the “**L/C Date**”).

- (b) Unless the parties shall have confirmed that they have completed the Final Reconciliation under this Agreement, then, at least ten (10) days prior to the L/C Date or any subsequent expiry date, the Beneficiary shall receive an amended Agent L/C, with the sole amendment being the extension of the L/C Date (or further extending, as the case may be) by no less than sixty (60) days from the L/C Date (or any subsequent extension thereof). If the Beneficiary fails to receive such amended Agent L/C no later than ten (10) days prior to the expiry date, then all amounts hereunder (including, without limitation, the balance of the Guaranteed Amount, the Company Sharing Recovery Amount and Expenses) shall become immediately due and payable and the Beneficiary shall be entitled to immediately draw the full amount of the Agent L/C and apply such amount to all amounts due and owing hereunder. After applying such draw on the Agent L/C to the amounts owing to the Company under this Agreement, the balance of the amount drawn shall be held as security for amounts that may become due and payable to the Company hereunder and once all amounts have been paid to the Company, the balance shall be paid to the Agent.
- (c) In the event that Agent fails to pay the undisputed portion of the Guaranteed Amount, the Company Sharing Recovery Amount, or any portion thereof, or any Expenses or other obligation hereunder when due, the Company may draw on the Agent L/C in an amount equal to such unpaid obligations after providing the Agent with two (2) Business Days advance notice and provided the Agent has not paid the undisputed portion of such unpaid obligations prior to the expiration of such two (2) Business Day period.
- (d) The Company and the Agent agree that, from time to time upon the Agent's request, subject to the consent of the Monitor, the face amount of the Agent L/C shall be reduced by the aggregate amount of payments made by the Agent or received by the Company on account of the Guaranteed Amount to the time of each such request provided that at no time shall the face amount of the Agent L/C be reduced to an amount less than the parties' mutually agreed upon estimate of three weeks of estimated Expenses.

3.4 Cash

In addition to the Guaranteed Amount and other amounts payable to the Company hereunder, the Agent shall pay to the Company, in connection with the first Weekly Sale Reconciliation following the making of the Approval Order, an amount equal to the cash in the registers at the Locations as of the Sale Commencement Date (the "**Cash Balance Payment**") on a dollar for dollar basis. An actual count of such cash shall be conducted at each Location by the Agent and the Company, at the start of the Sale Commencement Date prior to any transactions.

3.5 Compensation to Agent and Sharing of Proceeds

After Proceeds are used to repay Agent for amounts paid on account of the Guaranteed Amount and to pay Expenses, all remaining Proceeds shall be allocated in the following order of priority: FIRST: to the Agent in an amount equal to five percent (5%) of the aggregate Cost Value of the Merchandise ("**Agent's Base Fee**"); and THEREAFTER as to any remainder, determined net of Sales Taxes, if any, collectible by the Agent on such amounts: fifty percent (50%) to Agent ("**Agent Sharing Recovery Amount**") and fifty percent (50%) to Company ("**Company Sharing Recovery Amount**" and together with the Agent Sharing Recovery

Amount, the “**Sharing Amounts**”). To the extent that Company is entitled to receive any funds on account of the Company Sharing Recovery Amount due to Company, Agent shall pay such Company Sharing Recovery Amount as part of the Final Reconciliation under Section 7.1(c).

ARTICLE 4 INVENTORY TAKING, VALUATION AND EXCLUDED GOODS

4.1 Inventory Taking

Commencing on the Sale Commencement Date, Company and Agent shall cause to be taken a SKU level Cost Value and Retail Price physical inventory of the Merchandise located in the Locations (collectively, the “**Inventory Taking**”), which Inventory Taking shall be completed in each of the Locations as soon as practicable (the date of the Inventory Taking at each Location being the “**Inventory Date**” for each such Location), but in any event no later than fourteen (14) days after the Sale Commencement Date (subject to the availability of the Inventory Taking Service), and, with respect to Merchandise located in the Distribution Center, conducted by Company and Agent upon transfer to the Locations. In-Transit Merchandise received at the Locations shall be counted and reconciled by the Company and the Agent within five (5) business days after receipt of such goods in the Locations in accordance with the procedures set forth below (“**Reconciled In-Transit Receipts**”). Agent shall tender payment of the portion of the Guaranteed Amount attributable to the Reconciled In-Transit Receipts as part of the Weekly Sale Reconciliations. Company and Agent shall jointly employ RGIS or otherwise mutually agree upon a national inventory taking service (the “**Inventory Taking Service**”). The Inventory Taking shall be conducted in accordance with the procedures and instructions mutually agreed upon by both the Agent and the Company and as set forth on Schedule “F” (the “**Inventory Taking Instructions**”), which shall be prepared and mutually agreed upon by both Company and Agent, in consultation with the Monitor, prior to commencement of the Inventory Taking and shall include procedures for the processing of In-Transit Merchandise that arrives in a Location after the Inventory Date (including as to item-level counting, ticketing, and related matters). As an Expense, Agent shall be responsible for fifty percent (50%) of cost of the Inventory Taking Service. Company shall be responsible for fifty percent (50%) of cost of the Inventory Taking Service. Except as provided in the immediately preceding two sentences, Company and Agent shall each bear their respective costs and expenses relative to the Inventory Taking. Company and Agent, as well as the Monitor, may each have representatives present during the Inventory Taking, and shall each have the right to review and verify the listing and tabulation of the Inventory Taking Service. Company and Agent further agree that until the Inventory Taking in a particular Location is completed, neither the Company nor Agent shall: (i) move Merchandise within or about the Location so as to make any such items unavailable for counting as part of the Inventory Taking; or (ii) remove or add any hang tags, price tickets, inventory control tags affixed to any Merchandise or any other kind of in-store pricing signage within the Location. Company agrees to cooperate with Agent to conduct the Inventory Taking (including without limitation by making available to Agent information relating to sales, units, costs, Cost Value, and Retail Price, and making available to Agent Company’s books, records, work papers and personnel to the extent reasonably necessary to calculate the Cost Value and Retail Price of the Merchandise). The Inventory Taking, including, but not limited to the determination of the aggregate Cost Value of the Full-Line Merchandise and the aggregate Cost Value of the Home Store Merchandise, shall be reconciled by Company and Agent, in consultation with the Monitor,

within ten (10) days after its completion, and the Agent and the Company shall use their commercially reasonable efforts to accomplish such reconciliation within such ten (10) day period; provided further, that the Final Inventory Report shall be completed not later than thirty (30) days after the Sale Commencement Date. In the event that there is any dispute with respect to the reconciliation of the aggregate Cost Value of the Full-Line Merchandise or the aggregate Cost Value of the Home Store Merchandise following completion of the Inventory Taking, then any such dispute shall be resolved in the manner and at the times set forth in Section 7.1(d) hereof.

4.2 Valuation

- (a) For purposes of this Agreement, “**Cost Value**” shall mean, with respect to each item of Merchandise (as determined on a SKU by SKU basis), the lower of (i) the lowest cost of such item as reflected in the Merchandise File and (ii) the Retail Price.
- (i) For purposes of this Agreement, “**Retail Price**” shall mean with respect to each item of Merchandise, as determined on a SKU by SKU basis, the lowest of (x) the lowest ticketed, marked, shelf, hang-tag, stickered, or other hard marked price as at the Sale Commencement Date, (y) the lowest SKU or PLU as at the Sale Commencement Date; and (z) the lowest PLU, SKU, article number or file price contained in the Merchandise File, or other file price as reflected in Company’s books and records for such item; provided, however that the definition of Retail Price expressly excludes all Excluded Price Adjustments.
- (ii) For purposes of calculating Retail Price, if an item of Merchandise of the same SKU has more than one ticketed price, file price (as reflected on the Merchandise File), marked price, shelf price, hang-tag price, stickered price, or other hard marked price or if multiple items of the same SKU have different ticketed, file (as reflected on the Merchandise File), marked, shelf, hang-tag, stickered, or other hard marked prices and such pricing does not otherwise qualify as an Excluded Price Adjustment, the lowest ticketed price, file price (as reflect on the Merchandise File), marked price, shelf price, hang-tag price, stickered price, or other hard marked price, on any such item shall prevail for such item or for all such items within the same SKU, as the case may be, that are located within the same Location (as the case may be, the “**Lowest Location Price**”), unless it is determined by Company and Agent, acting reasonably, that the applicable Lowest Location Price was mismarked, normal course markdowns had not been reflected or taken, or such item was priced because it was damaged or marked as “as is,” in which case the correct price shall control; provided, however, in determining the Lowest Location Price with respect to any item of Merchandise at a Location, the Lowest Location Price shall be determined based upon the lowest Retail Price for such item on a per location basis. No adjustment to Retail Price shall be made with respect to different Retail Prices for items located in different Locations.

- (iii) “**Excluded Price Adjustments**” means the following discounts or price adjustments offered by the Company by any means: (i) point of sale discounts or similar adjustments regardless of timing or duration; (ii) member or customer appreciation points or coupons; (iii) multi-unit purchase discounts; (iv) adjustments for damaged, defective or “as-is” items; (v) coupons (Company’s or competitors’) or similar type coupons/promotions, catalog, website, or circular prices, or “buy one get one” type discounts, or similar type discounts or promotions; (vi) customer savings pass discounts or “bounce back” coupons, or discounts for future purchases based on dollar value of past purchases; (vii) obvious ticketing or marking errors; (viii) instant (in-store) or mail in rebates; or (x) similar customer specific, temporary, or employee non-product specific discounts or pricing accommodations;
- (iv) The Cost Value and Retail Price of any item of In-Transit Merchandise that is received in a Location after the 14th day after the Sale Commencement Date, but on or before the Merchandise Receipt Deadline, shall be the otherwise applicable Cost Value and Retail Price of such item (determined in accordance with this Section 4.2(a)), multiplied by the inverse of the excess of the (i) the prevailing Sale discount in effect on the date such item arrives in the applicable Location over (ii) the Retail Price (the “**Prevailing Discount Adjustment**”).
- (b) Notwithstanding the provisions of Section 4.2(a), with respect to each item of Defective Merchandise, the parties shall mutually agree upon the Cost Value (and if Agent and Company are unable to mutually agree on the Cost Value of any one or more items of Defective Merchandise, such items shall be deemed Excluded Defective Merchandise).
- (c) To the extent that there is any material discrepancy in the Merchandise File or the Company’s books and records that is a manifest error, the Cost Value should be determined in a manner that is mutually agreed upon by the Company and the Agent.

4.3 Gross Rings

At each Location, for the period from the Sale Commencement Date until the Inventory Date for such Location, Agent and Company shall jointly keep (i) a strict count of gross register receipts less applicable Sales Taxes but excluding any prevailing Sale discounts offered by Agent (“**Gross Rings**”), and (ii) cash reports of sales within such Location to determine the actual Cost Value of the Merchandise sold by SKU or article number. Registered receipts shall show for each item sold the Retail Price for such item and the mark-down or discount, if any, specifically granted by Agent in connection with the Sale. Agent shall pay that portion of the Guaranteed Amount calculated on the Gross Rings basis, to account for shrinkage, on the basis of 101% of the aggregate Cost Value of Merchandise (without taking into account any of the Agent’s point of sale discount or point of sale mark-downs) sold during the Gross Rings period. All such records and reports shall be made available to Agent and Company during regular business hours upon reasonable notice. Any Merchandise included in the Sale using the Gross Rings method shall be included as Merchandise.

4.4 Excluded Goods

- (a) The Company shall retain all rights and responsibilities in respect of any Excluded Goods. Agent shall cooperate with and assist the Company in dealing with any Excluded Goods, as may be required by the Company, including without limitation, the removal or return of any Excluded Goods to such parties as may be identified by the Company, all at the Company's sole cost and expense (and not as an Expense). Except as expressly provided in this Section, Agent shall have no cost or expense in connection with any Excluded Goods. If the Company does not elect to have the Agent sell any goods or merchandise that are otherwise Excluded Goods, then all such Excluded Goods (other than FF&E and Excluded FF&E) will be segregated and removed by the Company (or the third-party owner of any such Excluded Goods) from the Locations, at the Company's sole cost and expense, prior to the Sale Commencement Date, to the extent possible (and in all circumstances, by no later than 30 days following the Sale Commencement Date); provided, however, that all FF&E and Excluded FF&E (other than Excluded FF&E owned by third parties) shall remain in the Locations during the Sale Term or any portion thereof (unless disposed of in accordance with this Agreement).
- (b) With the approval of the Monitor, the Company and the Agent may mutually agree to include as part of the Sale such Company-owned goods located at the Locations that do not otherwise constitute Merchandise or FF&E ("**Designated Sundry Goods**") and such Company Consignment Goods as may be designated by the Company to be included in the Sale (provided the Company has obtained all necessary approvals, or authorizations as may be required) (the "**Designated Company Consignment Goods**"), in which case the Agent shall sell such Designated Sundry Goods and such Designated Company Consignment Goods at prices established by the Agent, in consultation with the Company. In consideration for its services in selling the Designated Sundry Goods and such Designated Company Consignment Goods, the Agent shall be entitled to receive a commission (the "**Designated Sundry And Consignment Goods Commission**") from the Company on the sale of such Designated Sundry Goods and such Designated Company Consignment Goods equal to seventeen-and-one-half percent (17.5%) of the Designated Sundry Goods and Consignment Goods Proceeds.
- (c) All gross proceeds from the disposition of the Designated Sundry Goods and the Designated Company Consignment Goods shall be deposited by the Agent in the Designated Deposit Accounts on a daily basis. All amounts owing to the Agent and the Company hereunder shall be reconciled and paid as part of the Weekly Sale Reconciliation conducted pursuant to Section 7.1(b), and subject to the Final Reconciliation under Section 7.1(c). All Net Designated Sundry And Consignment Goods Proceeds paid to the Company or as it may direct as a result of the sale of any Designated Sundry Goods and any Designated Company consignment Goods by the Agent during the Sale shall not be included in the calculation of the Guaranteed Amount.

ARTICLE 5
FF&E

5.1 Sale of FF&E

- (a) The Agent shall have the exclusive right to dispose of all FF&E. In consideration of its services in selling the FF&E, the Agent shall be entitled to receive a commission (the “**FF&E Commission**”) from the Company on the sale of any FF&E by the Agent during the course of the Sale equal to seventeen-and-one-half percent (17.5%) of the FF&E Proceeds. In addition, the Company shall reimburse the Agent for the Agent’s reasonable out of pocket expenses attributable to the sale or disposition of FF&E which are not duplicative of the Expenses set out herein and are in accordance with the Budget (the “**FF&E Expenses**”). The removal of any FF&E shall be done in a manner consistent with the Sales Guidelines.
- (b) Subject to Section 5.1(h), no later than five (5) days after the relevant Vacate Date for each Home Store and no later than fourteen (14) days after the relevant Vacate Date for each Full-Line Store (in each case, the “**FF&E Removal Deadline**” and the period commencing on the Vacate Date and ending on the FF&E Removal Deadline, the “**FF&E Removal Period**”), the Agent shall remove all FF&E (other than Excluded FF&E).
- (c) During the FF&E Removal Period for each Location, the Company shall provide the Agent and its invitees with peaceful use and occupancy and access to each such Location for purposes of selling, disposing, and/or removing the FF&E free of all expenses, including occupancy costs and expenses associated with each such Location, and for Retained Employees, if any, utilized during the FF&E Removal Period, any such expenses will be treated as an FF&E Expense and subject to the Budget.
- (d) All gross proceeds from the disposition of the FF&E shall be deposited by the Agent in the Designated Deposit Accounts on a daily basis. All amounts owing to the Agent (together with Sales Taxes, if any, collectible by Agent thereon) and the Company hereunder shall be reconciled and paid as part of the Weekly Sale Reconciliation conducted pursuant to Section 7.1(b), and subject to the Final Reconciliation under Section 7.1(c). All Net FF&E Proceeds paid to the Company or as it may direct as a result of the sale of any FF&E by the Agent during the Sale shall not be included in the calculation of the Guaranteed Amount.
- (e) Notwithstanding Section 2.1 and subject to Section 5.1(h), any FF&E that is not sold by the Agent prior to the applicable FF&E Removal Deadline in section 5.1(b) (the “**Remaining FF&E**”) shall be removed by the Agent from the applicable Location by no later than such applicable FF&E Removal Deadline. Subject to Section 5.1(h), the Agent, shall be entitled to dispose of the Remaining FF&E, free and clear of all Encumbrances, at Agent’s discretion and all proceeds from the sale or other disposition of such Remaining FF&E will be treated as FF&E Proceeds and any expenses of such removal will be treated as an FF&E Expense and subject to the Budget. The removal of any Remaining FF&E shall be done in a manner consistent with the Sales Guidelines.

- (f) Notwithstanding Sections 5.1(a) and 5.1(b) above, the Agent and the Company, with the consent of the Monitor and Lenders, may agree in lieu of the FF&E Commission, upon a lump sum guaranty with respect to the FF&E, in which case all FF&E Expenses shall be the Agent's sole and exclusive obligation with respect to the sale of such FF&E. For clarity, the obligations of the Agent with respect to Expenses (including Occupancy Expenses for the Locations) as provided for in this Agreement shall be unaffected by this Section 5.1(f).
- (g) Notwithstanding anything in this Agreement to the contrary, Agent shall not have any obligation whatsoever to cap any electrical or plumbing outlets or purchase, sell, make, store, handle, treat, dispose, or remove any Hazardous Materials from the Locations or otherwise. Agent shall have no liability to any party for any environmental action brought: (i) that is related to the storage, handling, treatment, disposition, generation, or transportation of Hazardous Materials, or (ii) in connection with any remedial actions associated therewith or the Locations. The Company (and not Agent) shall be solely responsible to cap all electrical items and plumbing outlets and to remove all Hazardous Materials from the Locations.
- (h) Notwithstanding anything herein to the contrary, the Company may, in its entire discretion, instruct Agent to abandon any Remaining FF&E in any of the Locations by providing written notice to the Agent by no later than three (3) days after the receipt of the applicable notice of Vacate Date. If so instructed, as of the FF&E Removal Deadline, the Agent may abandon in place, in a neat and orderly manner, any unsold FF&E at the applicable Location and the Budget and FF&E Expenses shall be reduced by such amounts that would have been spent in connection with the removal of such unsold FF&E. If the Agent chooses to remove any Remaining FF&E notwithstanding receipt of the aforementioned notice from the Company, the Agent shall assume all costs and expenses relating to the removal of such FF&E, which costs and expenses shall not constitute FF&E Expenses and shall retain any proceeds from such sale of Remaining FF&E for its own account.

ARTICLE 6 CONTROL OF PROCEEDS

6.1 Deposit of Proceeds

(a) The Agent shall utilize the Company's existing point-of-sale systems for recording all Sales in the Locations. During the Sale Term, all Proceeds (including credit card Proceeds) and proceeds of the sale of Designated Sundry Goods, Designated Company Consignment Goods, and FF&E shall be collected by the Company and deposited on a daily basis into the Company's existing depository accounts designated by, owned and in the name of, the Company for the Locations (the "**Designated Deposit Accounts**"). The Company shall be deemed to hold such proceeds "in trust" for the Agent and the Company, as the case may be, to be dealt with in accordance with the terms of this Agreement.

(b) Any funds in the Designated Deposit Accounts that do not constitute Proceeds, and/or other amounts payable to Agent under this Agreement shall remain the property of the Company and the Company and Agent shall cooperate with each other to establish and implement appropriate steps and procedures to accomplish a daily reconciliation and remittance to Agent of all Proceeds (including credit card Proceeds), and other such amounts in consultation with the Monitor. The Company shall not be responsible for, and Agent shall pay as an Expense hereunder, all bank fees and charges, including wire transfer charges, related to the Sale and Designated Deposit Accounts, whether received during or after the Sale Term.

(c) Commencing on the first business day following the Payment Date, and continuing on each business day thereafter, Company shall promptly cause payment to be made to Agent by wire transfer of immediately available funds, all funds constituting Proceeds (including, without limitation, Proceeds from credit card sales) that were deposited into the Designated Deposit Accounts for the prior day. Agent shall, within a reasonable period of time after the date of each such payment by Company, notify Company of any shortfall in such payment, in which case, Company shall promptly pay to Agent funds in the amount of any undisputed shortfall.

(d) The Company and Agent further agree that if at any time during the Sale Term, (i) Agent holds any amounts due to Company under this Agreement, Company may, in its discretion, after two (2) business days' notice to Agent, offset such amounts being held by Agent against any undisputed amounts due and owing by, or required to be paid by the Company to Agent hereunder, and (ii) Company holds any amounts due to Agent under this Agreement, Agent may, in its discretion, after two (2) business days' notice to the Company, offset such amounts being held by the Company against any undisputed amounts due and owing by, or required to be paid by, Agent to the Company hereunder.

(e) All amounts required to be paid by Agent or Company under any provision of this Agreement shall be made by wire transfer of immediately available funds which shall be wired by Agent or Company, as applicable, no later than 5:00 p.m. (prevailing Eastern Time) on the date that such payment is due; provided, that all of the information necessary to complete the wire transfer has been received by Agent or Company, as applicable, by 2:00 p.m. (prevailing Eastern Time) on the date that such payment is due. In the event that the date on which any such payment is due is not a Business Day, then such payment shall be made by wire transfer on the next Business Day.

(f) In the event that the Agent funds or pays all or any portion of the Company's obligations under this Agreement, such funding or payment cannot be recovered by the Agent under Section 6.1(d) by means of an offset, and, as a result of such funding or payment, the Company received more value than the Company would have otherwise received under this Agreement had Agent not funded or paid such obligations, the Company shall pay all such funded or paid amounts to Agent within two (2) Business Days of Agent's request. If and to the extent the Agent over-funds any amounts hereunder, the Company shall, within two (2) Business Days of written demand by Agent, pay to the Agent the over-funded amount (the "**Overfunded Amount**").

6.2 Credit Card and Debit Card Proceeds

Agent shall use Company's credit card or debit card facilities (including the Company's credit card or debit card terminals and processor(s), credit card and debit card processor coding, the Company identification number(s) and existing bank accounts) for credit card and debit card proceeds. The Company shall process such transactions on behalf of Agent and for Agent's account, applying customary practices and procedures. Without limiting the foregoing, the Company shall cooperate with Agent to download data from all credit card and debit card terminals each day during the Sale Term and to effect settlement with the Company's credit and debit card processor(s), and shall take such other actions necessary to process credit and debit card transactions on behalf of Agent under the Company's identification number(s). The Company shall deposit, as received, all credit and debit card Proceeds into the Designated Deposit Account and shall transfer such Proceeds to Agent as set forth in Section 6.1(c) hereof. At Agent's request, the Company shall cooperate with Agent to establish the Company identification numbers under Agent's name to enable Agent to process all credit and debit card Proceeds for Agent's account. The Company shall not be responsible for and Agent shall pay as an Expense hereunder, all credit and debit card fees, charges, and chargebacks related to the Sale, whether received during or after the Sale Term. The Agent shall not be responsible for and Agent shall not pay as an Expense hereunder, all credit and debit card fees, charges and chargeback's unrelated to the Sale, whether received prior to, during or after the Sale Term.

ARTICLE 7 SALE RECONCILIATION

7.1 Reconciliation

- (a) The Company, the Agent and the Monitor shall have access to the Locations and access to all of the books, records and other accounting documents of the Company and the Agent related to the transaction and shall be entitled to all information necessary in order to investigate and audit any information provided in connection with the transactions contemplated under this Agreement.
- (b) On each Thursday during the Sale Term, commencing on the first Thursday after the Sale Commencement Date, the Agent and the Company, in consultation with the Monitor, shall cooperate fully to reconcile Proceeds, Designated Sundry And Consignment Goods Proceeds, Expenses, Gross Rings, the Guaranteed Amount, Agent's Base Fee, Sharing Amounts, sales of FF&E, receipts of In-Transit Merchandise, and such other Sale related items as either party shall reasonably request, in each case for the prior week or partial week (i.e. Sunday through Saturday), all pursuant to procedures agreed upon by the Company and the Agent, in consultation with the Monitor (the "**Weekly Sale Reconciliation**").
- (c) Within thirty (30) days after the Sale Termination Date, the Agent and Company (with the approval of the Monitor and after consultation with the Lenders) shall jointly prepare a final reconciliation of the Sale including, without limitation, a summary of Proceeds, amounts due to the Company under this Agreement, amounts due to the Agent under this Agreement, Sales Taxes, Expenses, FF&E Expenses and any other accountings required hereunder (the "**Final Reconciliation**"). Within five (5) days of completion of the Final

Reconciliation, Agent shall pay to the Company, and the Company shall pay to Agent, any and all undisputed amounts due to the other and any undisputed and unpaid Expenses shall be paid by Agent. In the absence of an order of the Court, no disputed amount(s) shall be paid until the dispute has been resolved by agreement of the Parties or as determined in the manner prescribed in this Section 7.1(c) hereof. During the Sale Term, and until all of Agent's obligations under this Agreement have been satisfied, the Company (and the Monitor) and the Agent shall have reasonable access to Company's and Agent's records with respect to Proceeds, Designated Sundry And Consignment Goods Proceeds, FF&E Proceeds, Sales Taxes, Expenses, FF&E Expenses and other Sale-related items to review and audit such records.

- (d) In the event that there is any dispute with respect to either (x) the determination of the aggregate Cost Value of the Home Store Merchandise or aggregate Cost Value of the Full-Line Merchandise as reflected in the Final Inventory Report and/or (y) the Final Reconciliation and/or (z) the determination of an Overfunded Amount, such dispute shall be promptly (and in no event later than the third (3rd) Business Day following the request by either Company or Agent) submitted to the Court for resolution. In the event of a dispute as to (x) or (y) above, Agent shall extend the Agent L/C in accordance with the provisions set forth in Section 3.3.

ARTICLE 8 EXPENSES

8.1 Expenses

- (a) The Agent shall be unconditionally responsible for all Expenses incurred in conducting the Sale during the Sale Term, which Expenses shall be paid by Agent in accordance with Section 8.1(b).
- (b) Agent shall be responsible for the payment of all Expenses out of Proceeds (or from Agent's own accounts if and to the extent there are insufficient Proceeds) after the payment of the Guaranteed Amount. All Expenses incurred during each week of the Sale (i.e. Sunday through Saturday) shall be paid from Proceeds, or if Proceeds are insufficient during such week, by Agent to or on behalf of Company, or paid by Company and thereafter reimbursed by Agent as provided for herein, immediately following the Weekly Sale Reconciliation; provided, however, in the event that the actual amount of an Expense is unavailable on the date of the reconciliation (such as payroll), Company and Agent shall agree to an estimate of such amounts, which amounts will be reconciled once the actual amount of such Expense becomes available. Agent and/or Company may review or audit the Expenses at any time.

ARTICLE 9 REMAINING MERCHANDISE

9.1 Remaining Merchandise

Notwithstanding Section 2.1, to the extent there is Merchandise remaining at the Vacate Date (the "**Remaining Merchandise**"), such Remaining Merchandise shall be deemed

transferred to the Agent free and clear of all Encumbrances and Agent shall use commercially reasonable efforts to dispose of all such Remaining Merchandise by means of bulk sale/wholesale or otherwise. The proceeds received by Agent from such disposition shall constitute Proceeds hereunder, the net amount of which allocable to the Company shall be consideration payable for such Remaining Merchandise. To the extent that any of the Remaining Merchandise includes any Merchandise with logos, brand names or other intellectual property of the Company or of any of its affiliates or of any other third party, as may be identified by the Company from time to time, the Agent and the Company shall agree on the disposition terms of such Remaining Merchandise prior to the disposition of same by Agent pursuant to the terms hereof.

ARTICLE 10 CONDUCT OF SALE

10.1 Rights of Agent

- (a) Subject to the issuance of the Approval Order as provided by Section 14.1(a)(i), the Agent shall have the right to peaceful use and occupancy of the Locations for the purpose of conducting the Sale for the duration of the Sale Term and shall be permitted to conduct the Sale as a **“store closing”, “everything on sale”, “everything must go”, or similar themed** sale throughout the Sale Term. The Agent shall conduct the Sale in the name of and on behalf of the Company in a commercially reasonable manner and in compliance with the Initial Order, the Approval Order, and any further orders of the Court or other court of competent jurisdiction. In addition to any other rights granted to the Agent hereunder, in conducting the Sale, the Agent, in consultation with the Company and the Monitor (and subject to their consent solely where expressly required herein), shall have the following rights, subject to the immediately preceding sentence:
- (i) subject to the Sale Guidelines, to establish and implement advertising, signage (including exterior banners and signs), and promotion programs consistent with the above noted themes, and as otherwise provided in the Approval Order and the Sales Guidelines;
 - (ii) to establish Sale prices and discounts (provided that Agent shall provide adequate advanced notice to the Company in respect of any discounts to be implemented through the Company’s point of sale systems); and Location hours which are consistent with the terms of applicable Occupation Agreements and local laws or regulations;
 - (iii) subject to the Company’s Privacy Policies, to have access to, throughout the Sale Term, central office facilities, central administrative services and personnel to process and perform central services for the Sale consistent with historical practices, such as (but not limited to) accounting, point-of-sale administration, inventory handling and processing, warehouse management, information technology, management information system services, sales audit, cash management services, cash and inventory reconciliation, email preparation and distribution, and payroll processing, including any such services as may be provided by

third parties or related entities to the Company; (collectively, the “Central Services”);

- (iv) subject to the Company’s Privacy Policies, to use without charge during the Sale Term, and solely for the purposes of the Sale, point of sale systems, advertising materials, Designated Deposit Accounts, computer hardware and software, intangible assets (including the Company’s name, logo and tax identification numbers), Location keys, case keys, security codes, and safe and lock combinations required to gain access to and operate the Locations, and mailing services;
 - (v) to use reasonably sized offices at the Corporate Office to effect the Sale;
 - (vi) subject to Section 10.10, to use (through the Company and its existing procedures and not directly) such customer lists, mailing lists, email lists and web and social networking sites utilized by the Company in connection with its business and related exclusively to the Locations, if any so exist, as may be provided by Company to the Agent, in its sole and unfettered discretion (and in all circumstances, solely in connection with the Sale);
 - (vii) to use (through the Company and its existing procedures and not directly) all logos, trademarks, brand names, and other intellectual property utilized by the Company in connection with its business (but solely in connection with the Sale); and
 - (viii) to utilize the services of subcontractors and/or licensees in connection with the performance of its obligations under this Agreement.
 - (ix) to continue to offer third party delivery, repair and related services that Agent may elect, with the consent of the Company not to be unreasonably withheld, if such relevant services have been or terminated or concluded by the third-party service provider during the Sale Term, in which case any actual associated expenses and revenue shall constitute “Expenses” and “Proceeds”, respectively, hereunder.
- (b) All sales of Merchandise, Designated Sundry Goods, Designated Company Consignment Goods, and FF&E will be “final sales” and “as is,” and all advertisements and sales receipts will reflect the same. The Agent shall not warrant the Merchandise, Designated Sundry Goods, Designated Company Consignment Goods and FF&E in any manner whatsoever. The sale of Merchandise, Designated Sundry Goods, Designated Company Consignment Goods and FF&E and the Proceeds, Designated Sundry And Consignment Goods Proceeds and FF&E Proceeds shall be free and clear of Encumbrances (other than, with respect to the Proceeds, Designated Sundry And Consignment Goods Proceeds, and FF&E Proceeds, the Agent’s Charge and Security Interest). All sales will be made only for cash and by debit cards, by approved cheque and by credit cards (including “Sears” private label credit cards) currently accepted by the Company, and by gift cards as provided for in Section 10.3. The Agent shall clearly mark all receipts for the

Merchandise, Designated Sundry Goods, and Designated Company Consignment Goods sold during the Sale Term so as to clearly distinguish such Merchandise, Designated Sundry Goods, and Designated Company Consignment Goods from the goods sold prior to the Sale Commencement Date.

- (c) Agent shall have the right to use, without charge, all existing supplies located at the Locations at the Sale Commencement Date. In the event that additional supplies are required in any of the Locations for use during the Sale, the acquisition of such additional supplies shall be the responsibility of the Agent as an Expense.

10.2 Trade-marks, Trade Names and Advertising

- (a) During the Sale Term, the Agent shall have the right to use the trade names, trademarks and logos of the Company relating to the Merchandise, Designated Sundry Goods, and Designated Company Consignment Goods and used in connection with the operation of the Locations, solely for the purpose of advertising the Sale in accordance with the terms of this Agreement. Agent acknowledges that it is not acquiring any interest in or other rights to Company's trade names, trade-marks or other intellectual property rights of any nature. Any license fees, royalty payments, or similar amounts due and owing on account of use of any trade names, trademarks, and logos of the Company, its affiliates, or any third party or otherwise related to the Merchandise shall be paid by the Company and shall not constitute an "Expense" hereunder.
- (b) The Agent shall be responsible for paying directly all costs of advertising and such costs shall be an Expense. The Agent will, together with the Company, and the Monitor, work with the relevant landlords of the Locations in order to obtain their support of its proposed advertising.

10.3 Other Sale Matters and Employee Discounts

- (a) Administration of matters such as the Loyalty Program, gift cards, and layaway purchases in connection with the Merchandise shall be the responsibility of the Company; provided however that the Agent shall honour the Company's layaway obligations and shall accept the Company's gift cards and Loyalty Points issued by the Company prior to the Sale Commencement Date (the "**Accepted Credits**") and the Company shall reimburse Agent in cash therefor. The Agent agrees to cooperate fully with the Company in the administration of such matters. Any adjustments required in connection with the Accepted Credits shall be paid for by the Company, accounted for and increase Proceeds on a dollar for dollar basis as part of the Weekly Sale Reconciliation set out in Section 7.1(b).
- (b) It is understood and agreed that during the Sale Term, all employees of the Company and Agent, including the Retained Employees, shall not be entitled to take advantage of any employee discounts at the Locations.
- (c) Subject to Section 10.3(a), as and from the Sale Commencement Date and during the Sale Term, no gift certificates, Company or third party gift cards or Merchandise credits shall be issued or sold by the Agent or the Company and Agent shall not accept any return of

Merchandise, Designated Sundry Goods, Designated Company Consignment Goods or FF&E sold in the Sale nor accept or honor any coupons issued by the Company or the Company's competitors.

- (d) At the Company's sole cost and expense, and provided the Company reimburses the Agent as appropriate, the Agent agrees to cooperate fully with the Company in satisfying its obligations in respect of Delayed Delivery Goods. As soon as is reasonably practicable, and in no event later than seven (7) days following the Sale Commencement Date, the Company shall notify all customers having purchased Delayed Delivery Goods that pick-up of such Delayed Delivery Goods must be made by no later than twenty-one (21) days following the Sale Commencement Date (the "**Retrieval Date**"). If a customer has failed to pick up their Delayed Delivery Goods by the Retrieval Date ("**Unclaimed Delayed Delivery Goods**"), such Unclaimed Delayed Delivery Goods shall be retrieved by the Company by no later than fourteen (14) days following the Retrieval Date (unless other arrangements in respect of such goods have been mutually agreed to by the Agent and the Company).
- (e) For the duration of the Sale Term and to the extent that these services continue to be available at each of the relevant Locations, the Company shall provide such delivery, repair and related services as was customarily provided in such Locations as of the date of this Agreement and any associated expenses and revenue shall be paid by and inure to the sole benefit of Company. To the extent possible, such services shall be consistent with the Company's historical practices as to manner and scheduling of delivery and repairs.

10.4 Movement of Merchandise and FF&E

- (a) The Agent may move or consolidate Merchandise, Designated Sundry Goods, and Designated Company Consignment Goods and FF&E from Location to Location, in consultation with the Company and the Monitor, in connection with the closing of Locations or the conduct of the Sale during the Sale Term; provided, however, that (i) Home Store Merchandise may only be transferred between and among Home Stores and Full-Line Merchandise may only be transferred between and among Full-Line Stores, unless otherwise consented to in writing by the Company, and (ii) adequate records of the Merchandise, Designated Sundry Goods, Designated Company Consignment Goods or FF&E being moved are maintained and provided that Agent shall not transfer any such goods between and among the Locations until the Inventory Taking at the transferring and receiving Locations has been completed.
- (b) The Company, in consultation with the Agent, shall be responsible for allocating and designating the shipment of any In-Transit Merchandise from the Company's Distribution Centers to the Locations.

10.5 Access to Locations

- (a) The Company shall provide the Agent with access to the Locations for the purposes of carrying out the Sale. The Company shall be responsible for payment of and shall pay all Occupancy Expenses for the Locations, which are required to ensure the continued occupation of the Locations pursuant to the Occupation Agreements for the purposes of

this Agreement until the Sale Termination Date with respect to all of the Locations, subject to being reimbursed for same by the Agent to the extent provided for herein as an Expense.

- (b) The Agent shall also allow such parties as may be identified by the Company or the Monitor, including any potential purchaser of the Company's leases in respect of the Locations, reasonable access to the Locations during normal business hours during the Sale Term to conduct reasonable inspections of such Locations, provided there is no interference with the Sale as determined by the Agent, acting reasonably.

10.6 Sale Term and Surrender of Locations

Subject to the issuance of the Approval Order as provided in Section 14.1(a)(i) hereof, the Sale at each Location shall commence on the Sale Commencement Date and terminate on the Sale Termination Date. The Agent shall be entitled to terminate the Sale of Merchandise, Designated Sundry Goods, and Designated Company Consignment Goods at any Location by providing to the Company prior written notice of its intention to do so by 12:00 pm (EST) on or before the twenty-first (21st) day prior to such termination (as to each such Location, as applicable, the "**Vacate Date**"). On the Vacate Date, the Agent shall vacate the Location in favour of the Company or its representatives or assignee, and remove all Remaining Merchandise. From and after the Vacate Date, the Agent shall continue with the disposal and removal of the FF&E as provided for in section 7 of this Agreement and leave the applicable Location in "broom clean" condition (ordinary wear and tear excepted) by the FF&E Removal Deadline. The Agent's obligations to pay all Expenses, including Occupancy Expenses, for each Location shall continue until the applicable Vacate Date for such Location. All assets of the Company used by the Agent in the conduct of the Sale (e.g., supplies, etc.) shall be returned by the Agent to the Company or left at the Locations, or disposed of as may be directed by the Company. Where reference is made in this Section to vacating the Locations, such shall mean vacating the Locations, as applicable, in favour of the Company, its representatives or assignee and shall not mean vacating possession or disclaimer of lease in favour of the landlord or owner of the relevant Location. The Agent agrees that it shall be obligated to repair any damage caused by the Agent (or any representative, agent or licensee thereof) to any Location during the Sale Term, ordinary wear and tear excepted.

10.7 Extension of Credit

The Agent shall not extend credit (other than by way of credit cards) to any customer in the course of the Sale.

10.8 Security

The Agent shall be responsible for taking all necessary security measures to provide the same level of security at the Locations as was provided by the Company, and the cost of such measures shall be included as an Expense.

10.9 Right to Monitor

In addition to the Company's and the Monitor's right to review the Agent's books and records relating to the Sale, under Section 7.1(a), the Company and the Monitor shall have the right to monitor the Sale and activities attendant thereto and to be present in all Locations at all times and to share such information with the Lenders.

10.10 Company Personal Information

Agent shall honour and observe, in connection with the transactions contemplated by this Agreement, Company's Privacy Policies and all applicable Privacy Law with respect to the collection, use, transfer, and disclosure of any personal information obtained in connection with this Agreement or the Sale, including personal information about Company's customers and current and former employees ("**Company Personal Information**"). Agent shall collect and use Company Personal Information only for and only to the extent reasonably necessary for the purposes of fulfilling its obligations under this Agreement and the Sale. Agent shall not disclose Company Personal Information to any other person other than to its advisors on a strict need-to-know basis. Agent shall implement and maintain physical, technical and administrative measures to protect and safeguard the Company Personal Information against loss, theft, unauthorised collection, use, disclosure, modification or destruction, including limiting access to the Company Personal Information only to those employees of Agent who need to have access to the Company Personal Information solely for the purposes of Agent rendering its services under the Agreement. Agent shall cause its employees and representatives to strictly observe the terms of this Section 10.10, including to protect and safeguard all Company Personal Information in their possession and control, in accordance with the terms hereof. Agent shall notify Company in writing immediately upon Agent becoming aware of, or suspecting, any loss, theft, damage or unauthorized or unlawful access to, use, disclosure or modification of Company Personal Information, and comply with all instructions of Company in connection therewith. In the event that Agent sends or causes to be sent any Commercial Electronic Messages (as such term is defined in the Canadian Anti-Spam Legislation), in connection with the Agreement or the Sale, Agent shall do so in full compliance with the Canadian Anti-Spam Legislation and the Privacy Policies.

If either Company or Agent terminates this Agreement as provided herein, Agent shall promptly deliver to Company, or upon written instruction of Company securely destroy, all Company Personal Information in its possession and in the possession of any of its representatives, including all copies, reproductions, summaries or extracts thereof in every media, and certify to Company in writing upon completion of any such delivery or destruction. In the event applicable law does not permit Agent to comply with the delivery or destruction of the Company Personal Information, Agent warrants that it shall ensure the strict confidentiality of the Company Personal Information and that it shall not access, use, disclose or otherwise process any Company Personal Information by or on behalf of Company after termination of the Agreement. Agent shall execute such privacy addendums as Company may require in order to comply with Company's Privacy Policies.

10.11 Force Majeure

If any casualty, act of terrorism or act of God prevents the conduct of business in the ordinary course at any Location for a period in excess of five (5) Business Days, such Location and the Merchandise located at such Location shall, in Agent's discretion, be eliminated from the

Sale and considered to be deleted from this Agreement as of the date of such event, and Agent and Company shall have no further rights or obligations hereunder with respect thereto; provided, however, that the proceeds of any insurance attributable to such Merchandise shall constitute Proceeds hereunder, and the Guaranteed Amount shall be reduced to account for any Merchandise eliminated from the Sale which is not the subject of insurance proceeds, and Company shall reimburse Agent for the amount the Guaranteed Amount is so reduced in connection with the next Weekly Sale Reconciliation.

ARTICLE 11 EMPLOYEE MATTERS

11.1 Personnel

- (a) Subject to the applicable provisions of the Approval Order and any other provisions in this Agreement relating to employees, the Company shall provide to the Agent such employees as the Agent may designate from time to time in connection with the conduct of the Sale (each such employee, a “**Retained Employee**”). Retained Employees shall at all times remain employees of the Company, and shall not be considered or deemed to be employees of the Agent. The Company and the Agent agree that except to the extent that wages and benefits of Retained Employees constitute Expenses hereunder, nothing contained in this Agreement and none of Agent's actions taken in respect of the Sale shall be deemed to constitute an assumption by the Agent of any of the Company's obligations or any obligations relating to any of the Retained Employees including, without limitation, Excluded Benefits, notice and severance claims and other obligations, or any other amounts required to be paid by statute or law; nor shall Agent or Company become liable under any collective bargaining or employment agreement or be deemed a joint or successor employer with respect to such Retained Employees. The Company shall not, without the Agent's prior written consent, raise the salary or wages or increase the benefits for, or pay any bonuses or make any other extraordinary payments to, any of the Retained Employees, except as otherwise provided in this Agreement. The Company shall not transfer any Retained Employee during the Sale Term without the Agent's prior consent.
- (b) The Agent may, in its discretion, stop using any Retained Employee at any time during the Sale. In the event the Agent determines to discontinue its use of any Retained Employee in connection with the conduct of the Sale, Agent will provide written notice to Company at least three (3) business days prior thereto. In the event that the Agent no longer requires the assistance of a Retained Employee due to cause (such as dishonesty, fraud or breach of employee duties), the Agent shall notify the Company forthwith and no prior notice shall be required. Until the Sale Termination Date, the Company shall not transfer or dismiss the Retained Employees except 'for cause' without the Agent's prior consent.
- (c) During the Sale Term, the Company shall process and pay the base payroll and all related payroll taxes, worker's compensation, employment and unemployment insurance, and benefits for all Retained Employees (except for Agent's employees and independent contractors hired by Agent) in accordance with its usual and customary procedures. At the Agent's expense, Company shall also process payroll for additional personnel hired by the

Agent for the Sale. For greater clarity, the Company shall have no liability with respect to such additional personnel hired by Agent for the Sale, whether as to salary, notice, pay in lieu of notice, separation pay, severance or any other claim the Company's obligation being limited to providing a payroll service.

- (d) Subject to the prior consent of the Company and the Monitor, which shall not be unreasonably withheld, delayed or denied, Agent may pay, as an Expense, retention bonuses ("**Retention Bonuses**") (which bonuses shall be inclusive of payroll taxes, but as to which no benefits shall be payable). The amount of such Retention Bonuses shall be in an amount to be mutually agreed to by the Agent and Company, and such Retention Bonuses shall be processed through the Company's payroll system and shall not be duplicative of and shall take into account any KERP payments.

ARTICLE 12 SALES TAX AND INSURANCE MATTERS

12.1 Authorizations and Remittance of Taxes

- (a) During the Sale Term, all harmonized sales tax, goods and services tax, and all other sales taxes (collectively, "**Sales Taxes**") attributable to sales of Merchandise, Designated Sundry Goods, Designated Company Consignment Goods and FF&E as indicated on Company's point of sale equipment payable to any taxing authority having jurisdiction shall be added to the sales price of Merchandise, Designated Sundry Goods, Designated Company Consignment Goods and FF&E and collected on Company's behalf, and provided to Company on no less than a weekly basis for deposit in Company's existing accounts, trust accounts or other accounts, as designated by Company. Provided that Agent has collected all Sales Taxes during the Sale and remitted the proceeds thereof to Company, Company shall pay all Sales Taxes and file all applicable reports and documents required by the applicable taxing authorities as and when such amounts become payable; provided, however, notwithstanding anything to the contrary herein, in the event that Agent uses any system other than Company's point of sale system to compute Sales Taxes relating to the Sale, Agent shall reimburse Company for any additional Sales Taxes, interest, fines, penalties, and the like payable to any taxing authority as the result of a Sales Tax audit conducted by or on behalf of such authority which discloses that the Sales Taxes collected by Agent and paid over to Company for any period during the Sale were less than those mandated by applicable law (any such additional Sales Taxes and other amounts are collectively referred to as "**Additional Taxes and Penalties**"). Company and the Monitor will be given access to the computation of gross receipts for verification of all such Sales Tax collections. Provided that Agent performs its responsibilities in accordance with this Section 12.1, Agent shall have no further obligation to the Company, any taxing authority, or any other party, and Company shall indemnify and hold harmless Agent from and against any and all costs, including, but not limited to, reasonable attorneys' fees, assessments, fines or penalties which Agent sustains or incurs as a result or consequence of the failure by Company to pay such taxes to the proper taxing authorities and/or the failure by Company to file with such taxing authorities all reports and other documents required by applicable law to be filed with or delivered to such taxing authorities. If Agent fails to perform its responsibilities in accordance with this Section 12.1, and provided Company complies

with its obligations in accordance with this Section 12.1, Agent shall indemnify and hold harmless Company from and against any and all costs including, but not limited to, reasonable legal fees, assessments, fines or penalties which Company sustains or incurs as a result or consequence of the failure by Agent to collect Sales Taxes or pay or remit Sales Taxes to Company, and/or, to the extent Agent is required hereunder to prepare reports and other documents, the failure by Agent to promptly deliver any and all reports and other documents required to enable Company to file any requisite returns with such taxing authorities.

- (b) If goods and services tax (or harmonized sales tax in the applicable provinces) under Part IX of the *Excise Tax Act* or Quebec sales tax under *An Act respecting the Quebec sales tax* is exigible on any payment of fees or reimbursement of Expenses hereunder (including by the Company to the Agent for services under this Agreement), the Agent shall promptly provide to the Company any documentation satisfying the statutory requirements in respect of Company's entitlement to input tax credits, and the Company shall pay to the Agent, any Sales Tax collectible by the Agent on any payment of fees or reimbursement of Expenses (including by the Company to the Agent under this Agreement). All reconciliations of these items shall be completed by Company and Agent in connection with the Final Reconciliation.
- (c) Notwithstanding Section 12.1(a), the Agent shall:
 - (i) pay to Company any Sales Taxes payable on the transfer of the Remaining Merchandise and Remaining FF&E from Company to the Agent; and
 - (ii) shall collect and remit (and not pay to Company) any Sales Taxes collectible by the Agent on any disposition of the Remaining Merchandise and Remaining FF&E by the Agent.

12.2 Insurance

- (a) Company shall continue at its cost and expense until the Sale Termination Date, in such amounts as it currently has in effect, all of its liability insurance policies, including, but not limited to, products liability, comprehensive public liability, auto liability and umbrella liability insurance, covering injuries to persons and property in, or in connection with, Company's operation of the Locations or ownership of the Merchandise; and Company shall cause Agent to be named as an additional named insured (as its interest may appear) with respect to all such policies. Company shall deliver to Agent certificates evidencing such insurance setting forth the duration thereof and naming Agent as an additional named insured, in form reasonably satisfactory to Agent. All such policies shall, on a best efforts basis, require at least thirty (30) days' prior notice to Agent of cancellation, nonrenewal or material change during the Sale Term. In the event of a claim under any such policies, Company shall be responsible for the payment of all deductibles, retentions or self-insured amounts thereunder, unless it is determined that liability arose by reason of the willful misconduct or grossly negligent acts or omissions of Agent, or Agent's employees, independent contractors or agents. The Company shall not make any change in the amount of any deductibles or self-insurance amounts prior to the Sale Termination Date without the Agent's prior written consent.

- (b) Company will provide, as an Occupancy Expense, throughout the Sale Term, fire, flood, theft and extended coverage casualty insurance covering the Merchandise in a total amount equal to no less than the Cost Value thereof, which coverage shall be reduced from time to time to take into account the sale of Merchandise. From and after the date of this Agreement until the Sale Termination Date, all such policies will also name Agent as an additional named insured (as its interest may appear). In the event of a loss to the Merchandise on or after the date of this Agreement, the proceeds of such insurance attributable to the Merchandise (net of any deductible to be paid by the Company or Agent, as applicable), shall constitute Proceeds hereunder. Company shall deliver to Agent certificates evidencing such insurance, setting forth the duration thereof and naming the Agent as an additional insured, in form and substance reasonably satisfactory to Agent. All such policies shall, on a best efforts basis, require at least thirty (30) days' prior notice to the Agent of cancellation, non-renewal or material change during the Sale Term. The Company shall not make any change in the amount of any deductibles or self-insurance amounts prior to the Sale Termination Date without the Agent's prior written consent.
- (c) Agent shall maintain at Agent's cost as an Expense hereunder throughout the Sale Term, in such amounts as it currently has in effect, comprehensive public liability insurance policies covering injuries to persons and property in or in connection with Agent's agency at the Location, and shall cause Company to be named as an additional insured with respect to such policies. Agent shall deliver to Company certificates evidencing such insurance policies setting forth the duration thereof and naming Company as an additional insured, in form and substance reasonably satisfactory to Company. In the event of a claim under any such policies, Agent shall be responsible for the payment of all deductibles, retentions or self-insured amounts thereunder, unless it is determined that liability arose by reason of the willful misconduct or grossly negligent acts or omissions of Company or Company's employees, independent contractors or agents (other than Agent or Agent's employees, agents or independent contractors). Agent shall not make any change in the amount of any deductibles or self-insurance amounts prior to the Sale Termination Date without Company's prior written consent.
- (d) Company shall at all times during the Sale Term maintain in full force and effect workers' compensation insurance (including employer liability insurance) covering all Retained Employees in compliance with all statutory requirements.
- (e) Without limiting any other provision of this Agreement, the Company acknowledges that the Agent is conducting the Sale on behalf of the Company solely in the capacity of an agent, and that in such capacity (i) the Agent shall not be deemed to be in possession or control of the Locations or the assets located therein or associated therewith, or employees located at the Locations, and (ii) except as expressly provided in this Agreement, the Agent does not assume any of the Company's obligations or liabilities with respect to any of the foregoing. Agent shall not be deemed to be a successor employer. Company and Agent agree that, subject to the terms of this Agreement, the Company shall bear all responsibility for liability claims of customers, Retained Employees and the Company's employees and other persons arising from events occurring at the Locations during and after the Sale Term, except to the extent any such claim is related to the negligent acts or omissions of the Agent, or its employees, agents

or independent contractors (other than the Company's employees and the Retained Employees, agents or independent contractors) located at the Locations (an "**Agent Claim**"). In the event of any such liability claim other than an Agent Claim, the Company shall administer such claim and shall present such claim to the Company's liability insurance carrier in accordance with Company's or Company's historic policies and procedures, and shall provide a copy of the initial documentation relating to such claim to the Agent in accordance with Section 18.1. To the extent that the Company and the Agent agree that a claim constitutes an Agent Claim, the Agent shall administer such claim and shall present such claim to its liability insurance carrier, and shall provide a copy of the initial documentation relating to such claim to the Company in accordance with Section 18.1. In the event that the Company and the Agent cannot agree whether a claim constitutes an Agent Claim, each party shall present the claim to its own liability insurance carrier, and a copy of the initial claim documentation shall be delivered to the other party in accordance with Section 18.1.

ARTICLE 13 AGENT'S CHARGE

13.1 Grant of Agent's Charge and Security Interest

- (a) In consideration of and subject to the payment of the Initial Guaranty Payment and the issue of the Agent L/C, to secure its obligations to Agent hereunder and all amounts owing by Company to Agent pursuant to the terms of this Agreement, effective as of the Payment Date, the Company hereby grants to the Agent a first ranking priority charge and security interest in and lien, ranking ahead of all Encumbrances, upon the Merchandise, the Proceeds, the Designated Sundry And Consignment Goods Proceeds (to the extent of the Designated Sundry And Consignment Goods Commission), and the FF&E Proceeds (to the extent of the FF&E Commission) ("**Agent's Charge and Security Interest**") provided, however, that until payment in full to the Company of the Guaranteed Amount, the Company's Sharing Recovery Amount, the Net FF&E Proceeds, the Net Designated Sundry And Consignment Goods Proceeds and all other amounts owing to the Company by the Agent hereunder (collectively, the "**Unpaid Company's Entitlement**"), the Agent's Charge and Security Interest shall be junior and subordinate in all respects to all Encumbrances, but solely to the extent of any Unpaid Company's Entitlement.
- (b) The Approval Order shall provide that the Agent's Charge and Security Interest shall be automatically perfected without the necessity of the filing or registration of financing statements or other documents and valid and enforceable and deemed perfected as against all charged property and against all persons, including, without limitation, any trustee in bankruptcy, receiver, receiver and manager or interim receiver of the Company, for all purposes without the need for any further action by or on behalf of the Company or the Agent. The Company shall execute and deliver all such documents and take all such other actions as are reasonably required to perfect and maintain such charge and security interest as a valid and perfected first ranking priority security interest.

**ARTICLE 14
ORDERS**

14.1 Orders

- (a) The obligations of the Company and the Agent hereunder are subject to and conditional upon the following:
- (i) the Company shall have obtained by no later than July 4, ~~2017~~ 19, 2017 (the “**Court Condition Date**”) an Order of the Court, substantially in the form attached hereto as Schedule “H” and otherwise satisfactory to the Company, the Agent, the Monitor, and the Lenders authorizing the Sale and the transactions contemplated under this Agreement in accordance with the terms hereof (the “**Approval Order**”); and the Approval Order shall not have been stayed, varied, or vacated and shall be final and executory and no Appeal shall have been launched and
 - (ii) no Order shall have been made which in any material respect limits or impairs the ability of the Agent to carry out the terms of this Agreement and to obtain the benefits therefrom.
- (b) The Company covenants and agrees to proceed as expeditiously as possible and to use reasonable commercial efforts to obtain the Approval Order.
- (c) In the event that the Company is unsuccessful in obtaining the Approval Order, the Company, the Monitor, and the Agent may elect, in writing and with the consent of the Lenders, to extend the Court Condition Date to allow the Company to continue to attempt to obtain the Approval Order.
- (d) If the conditions contained in this section are not satisfied at the time or during the time periods specified therein, or if applicable, waived by the parties, then the parties agree that:
- (i) all the obligations of the Company, the Monitor, and the Agent pursuant to this Agreement shall be at an end; and
 - (ii) neither party shall have a right to specific performance or other remedy against, or any right to recover damages or expenses from the other.

**ARTICLE 15
DEFAULTS AND TERMINATION**

15.1 Events of Default

The following shall constitute “Events of Default” hereunder:

- (a) The Company’s or the Agent’s failure to perform any of their respective material obligations hereunder, which failure shall continue uncured seven (7) days after receipt of written notice thereof to the defaulting Party; or

- (b) Any representation or warranty made by the Company or the Agent proves untrue in any material respect as of the date made or at any time and throughout the Sale Term and, to the extent curable, shall continue uncured ten (10) days after receipt of written notice thereof to the defaulting Party; or
- (c) Subject to Section 10.11 hereof, the Sale is terminated or materially interrupted or impaired at any Location for any reason other than (i) an Event of Default by the Agent, or (ii) any other material breach or action by the Agent not authorized hereunder; or
- (d) The Company becomes subject to a bankruptcy under the *Bankruptcy and Insolvency Act* (Canada) and the Agent's rights under this agreement are terminated or materially impaired for any reason other than (i) an Event of Default by the Agent, or (ii) any other material breach or action by the Agent not authorized hereunder.

15.2 Termination

In the event of an Event of Default, the non-defaulting Party in the case of a Default under subsection 15.1(a) or 15.1(b) or Agent in the case of subsection 15.1(c) may, in its discretion, elect to terminate this Agreement upon seven (7) Business Days' written notice to the other Party and pursue any and all rights and remedies and damages resulting from such default hereunder in the event such default is not cured by the defaulting Party within 48 hours. In the event of an Event of Default under subsection 15.1(d) the Agent, in its discretion may elect to terminate this Agreement on three (3) Business Day's written notice to the Company and pursue any and all rights and remedies and damages resulting from such default hereunder in the event such default is not cured by the Company within 48 hours.

ARTICLE 16 REPRESENTATIONS

16.1 Representations of the Company

The Company hereby represents, warrants, covenants and agrees in favour of the Agent as follows:

- (a) subject to the issuance of the Approval Order:
 - (i) the Company has the right, power and authority to execute and deliver this Agreement and each other document and agreement contemplated hereby (collectively, together with this Agreement, the "**Agency Documents**") and to perform its obligations thereunder;
 - (ii) the Company has taken all necessary actions required to authorize the execution, delivery and performance of the Agency Documents, and no further consent or approval is required for the Company to enter into and deliver the Agency Documents, to perform its obligations thereunder, and to consummate the transactions contemplated hereby;
 - (iii) each of the Agency Documents has been duly executed and delivered by the Company and constitutes the legal, valid and binding obligation of the

Company enforceable in accordance with its terms;

- (iv) no court order or decree of any federal, provincial or local governmental authority or regulatory body is in effect that would prevent or impair, or is required for the Company's consummation of, the transactions contemplated by this Agreement, and no consent of any third party which has not been obtained is required therefor; and
 - (v) no contract or other agreement to which the Company is a party or by which the Company is otherwise bound will prevent or impair the consummation of the Sale and the other transactions contemplated by this Agreement;
- (b) Other than as disclosed by the Company to the Agent in writing during the Agent's diligence process, it has maintained its pricing files (including the Merchandise File) in the ordinary course of business and has not and shall not alter such files outside the ordinary course of business;
 - (c) Other than as disclosed by the Company to the Agent in writing during the Agent's diligence process, it has not marked up or increased the ticket price affixed to Merchandise at the Locations, and as of the date of this Agreement to the Sale Commencement Date, it shall not mark up or raise the price of any items of Merchandise or remove any indicia of sale or clearance at the Locations, without the consent of the Agent;
 - (d) as and from the date of this Agreement until the Sale Commencement Date, it shall not implement any promotions, markdowns or discounts of Merchandise at the Locations (including, without limitation, point-of-sale discounts and other similar promotions, regardless of whether consistent with Company's ordinary course of business), without the consent of the Agent, except as provided for in the Promotional Calendar, and shall ticket or mark all items of inventory received at the Locations prior to the Sale Commencement Date, in a manner consistent with similar Merchandise located at the Locations and in accordance with the Company's historic practices and policies relative to pricing and marking inventory.
 - (e) to the best of Company's knowledge, all Merchandise is in compliance with all applicable federal, provincial or local product safety laws, rules and standards. The Company shall provide the Agent with the Company's historic policies and practices, if any, regarding product recalls prior to the Sale Commencement Date;
 - (f) the Company has not and shall not, throughout the Sale Term, take any action which may result in materially increasing the cost of operating the Sale, including, without limitation, increasing salaries or other amounts payable to Retained Employees;
 - (g) to the best of Company's knowledge, it has paid, shall pay and shall continue to pay, all self-insured or company-funded employee benefits programs, including health benefits and insurance, including all proper claims made or to be made under such programs, in respect of the Retained Employees;

- (h) to the best of Company's knowledge, no action, arbitration, suit, notice, or legal, administrative or other proceeding before any court or governmental body has been instituted by or against the Company, or has been settled or resolved, or to the Company's knowledge affects the Company, relative to the Company's business or properties, or which questions the validity of this Agreement, or that if adversely determined, would adversely affect the conduct of the Sale;
- (i) to the best of Company's knowledge, the Company (i) is not a party to any collective bargaining agreements with its employees at the Locations other than at store number 001311 (St. George de Beauce), (ii) no labour unions represent the Company's employees at the Locations, and (iii) there are currently no strikes, work stoppages or other labour disturbances affecting the Locations; and
- (j) from and after the date of this Agreement, the Company shall not ship any goods to the Locations except for In-Transit Merchandise to the extent that any such goods have not been received at the Locations as at the date of the Agreement, nor shall it ship any goods from the Locations, except with Agent's consent.

16.2 Representations of the Agent

Agent hereby represents, warrants, covenants and agrees in favour of the Company, as follows:

- (i) Each entity comprising Agent (i) is an unlimited liability company or corporation, as the case may be, duly organized, and validly existing and in good standing under the laws of the jurisdiction of its formation; (ii) has all requisite power and authority to carry on its business as presently conducted and to consummate the transactions contemplated hereby; (iii) is entering into this Agreement as principal and not as agent for another person; and (iv) during the Sale Term will continue to be, duly authorized and qualified to do business and in good standing in each jurisdiction where the nature of its business or properties requires such qualification, including all jurisdictions in which the Locations are located, except, in each case, to the extent that the failure to be in good standing or so qualified could not reasonably be expected to have a material adverse effect on the ability of Agent to execute and deliver this Agreement and perform fully its obligations hereunder.
- (ii) Agent has the right, power and authority to execute and deliver each of the Agency Documents to which it is a party and to perform fully its obligations thereunder. Agent has taken all necessary actions required to authorize the execution, delivery and performance of the Agency Documents, and no further consent or approval is required on the part of Agent for Agent to enter into and deliver the Agency Documents, to

perform its obligations thereunder and to consummate the Sale. Each of the Agency Documents has been duly executed and delivered by the Agent and constitutes the legal, valid and binding obligation of Agent enforceable in accordance with its terms. No court order or decree of any federal, provincial or local governmental authority or regulatory body is in effect that would prevent or impair, or is required for, Agent's consummation of the transactions contemplated by this Agreement, and no consent of any third party which has not been obtained is required therefor, other than as provided herein. No contract or other agreement to which Agent is a party or by which Agent is otherwise bound will prevent or impair the consummation of the transactions contemplated by this Agreement.

- (iii) No action, arbitration, suit, notice or legal administrative or other proceeding before any court or governmental body has been instituted by or against Agent, or has been settled or resolved or, to Agent's knowledge, has been threatened against or affects Agent, which questions the validity of this Agreement or any action taken or to be taken by Agent in connection with this Agreement or which, if adversely determined, would have a material adverse effect upon Agent's ability to perform its obligations under this Agreement.
- (iv) The Sale shall be conducted in compliance with this Agreement, the Approval Order, and the Sale Guidelines.
- (v) Absent prior consent by the Company, Agent will not cause any non-emergency repairs or maintenance (emergency repairs are repairs necessary to preserve the security of a Location premise or to ensure customer safety) to be conducted at the Locations.
- (vi) Each entity comprising Agent shall be duly registered, by no later than the Sale Commencement Date, under Subdivision (d) of Division V of Part IX of the *Excise Tax Act* (Canada) with respect to the goods and services tax and harmonized sales tax and under Division I of Chapter VIII of Title I of *An Act respecting the Quebec sales tax* with respect to the Quebec sales tax. The Agent's registration number is as follows: (i) 814418836 RT0001 for Gordon Brothers Canada ULC; (ii) 810929034 RT0001 for Merchant Retail Solutions ULC; (iii) 845025105 RT0001 for Tiger Capital Group, LLC; and (iv) 814306783 RT0001 for GA Retail Canada ULC.
- (vii) Each entity comprising Agent is not a non-resident of Canada for purposes of the *Income Tax Act* (Canada).

ARTICLE 17 INDEMNIFICATION

17.1 Company Indemnification

Company shall indemnify and hold the Agent and its officers, directors, employees, agents and independent contractors harmless from and against all claims, demands, penalties, losses, liability or damage, including, without limitation, reasonable attorneys' fees and expenses, asserted directly or indirectly against the Agent (including acts or omissions of persons or entities affiliated with or acting on behalf of the Company) resulting from, or related to:

- (a) the Company's material breach of or failure to comply with any of its agreements, covenants, representations or warranties contained in any Agency Documents;
- (b) subject to the Agent's performance and compliance with its obligations relating to Retained Employee's wages, salaries and benefits under the terms of this Agreement, any failure of Company to pay to the Retained Employees any wages, salaries or benefits due to such employees during the Sale Term or other claims asserted against the Agent by the Retained Employees resulting from the Company's (and not Agent's) treatment of its employees;
- (c) subject to Agent's compliance with its obligations under Section 12.1 hereof, any failure by the Company to pay any Sales Taxes to the proper taxing authorities or to properly file with any taxing authorities any reports or documents required by applicable law to be filed in respect thereof; and
- (d) the gross negligence or willful misconduct of the Company or any of its officers, directors, employees, agents (other than Agent) or representatives.

17.2 Agent Indemnification

Agent shall indemnify and hold the Company and its officers, directors, employees, agents and representatives harmless from and against all claims, demands, penalties, losses, liability or damage, including, without limitation, reasonable attorneys' fees and expenses, asserted directly or indirectly against, the Company (including acts or omissions of persons or entities affiliated with or acting on behalf of Agent) resulting from, or related to:

- (a) the Agent's material breach of or failure to comply (subject to the Approval Order) with any public health and safety laws or any of its agreements, covenants, representations or warranties contained in any Agency Document;
- (b) in the event that the Agent uses any system other than the Company's point of sale system to compute Sales Taxes relating to the Sale, any Additional Taxes and Penalties;
- (c) any obligation for, or on account of, withholding taxes including interest and penalties applicable thereto, exigible in respect of any payments or disbursements made to Agent under the terms of this Agreement, other than as a result of the Company's failure to remit any withheld amount; and
- (d) the gross negligence or willful misconduct of the Agent or any of its officers, directors, employees, agents or representatives.

**ARTICLE 18
GENERAL**

18.1 Notices

Any demand, notice or other communication to be given in connection with this Agreement shall be given in writing and shall be given by personal delivery (in which case it shall be left with a responsible officer of the recipient) or by electronic communication addressed to the recipient as follows:

in the case of the Agent:

GORDON BROTHERS CANADA ULC
c/o Gordon Brothers Group
Prudential Tower
800 Boylston Street
Boston, MA 02119

Attn: Mackenzie Shea
Tel: 617.422.6519
Email: mshea@gordonbrothers.com

And

MERCHANT RETAIL SOLUTIONS ULC
C/O ~~HILCO MERCHANT RESOURCES~~ Hilco
Merchant Resources, LLC
5 Revere Drive, Suite 206
Northbrook, IL 60062 USA

Attention: Ian S. Fredericks
Tel: (847) 418-2075
Fax: (847) 897-0859
Email: ifredericks@hilcotrading.com

And

TIGER CAPITAL GROUP, LLC
60 State Street, 11th Floor
Boston, MA 02109 USA

Attention: Bradley W. Snyder
Email: bsnyder@tigergroup.com

And

GREAT AMERICAN GROUP, LLC

21255 Burbank Blvd., Suite 400
Woodland Hills, CA 91367

Attention: Scott K. Carpenter
Email: scarpenter@greatamerican.com

with a copy to:

Davies Ward Phillips & Vineberg LLP
1501 McGill College Avenue
Montréal QC H3A 3N9
Canada

Attn: William Rosenberg
Denis Ferland
Email: wrosenberg@dwpv.com
dferland@dwpv.com

and a copy to:

Stikeman Elliott LLP
1155 Boulevard René-Lévesque West, 40th Floor,
Montréal, QC
H3B 4P7 Canada

Attention: Elizabeth Pillon/Guy P. Martel
Email: lpillon@stikeman.com
gmartel@stikeman.com

in the case of the Company:

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

Attention: Billy Wong
Email: billy.wong@scars.ca

with a copy to:

Osler, Hoskin & Harcourt LLP
 100 King Street
 West 1 First Canadian Place - Suite 6200
 Toronto ON M5X 1B8

Attn: Marc Wasserman
 Sandra Abitan
 Email: mwasserman@osler.com
sabitan@osler.com

in the case of the Monitor:

FTI Consulting Canada Inc.
 79 Wellington Street West, Suite #2010
 Toronto, ON M5K 1G8

Attn: Steven Bissell
 Email: steven.bissell@fticonsulting.com

with a copy to :

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

Attn: Virginie Gauthier
 Evan Cobb
 Email: virginie.gauthier@nortonrosefulbright.com
evan.cobb@nortonrosefulbright.com

or to such other address, individual or electronic communication number as may be designated by notice given by either party to the other. Any demand, notice or other communication shall be conclusively deemed to have been given, if given by personal delivery, on the day of actual delivery thereof and, if given by electronic communication, on the day of transmittal thereof if transmitted during normal business hours of the recipient on a Business Day and on the Business Day following the transmittal thereof if not so transmitted. Where the Company receives notice under this agreement, the Company shall promptly provide a copy of such notice to the Lenders.

18.2 Time of Essence

Time shall, in all respects, be of the essence hereof, provided that the time for doing or completing any matter provided for herein may be extended or abridged by an agreement in writing signed by the Company and the Agent or by their respective solicitors.

18.3 Currency

All references herein to money amounts are in Canadian currency, unless otherwise noted herein.

18.4 Further Assurances

Each party shall from time to time execute and deliver, or cause to be executed and delivered, all such documents and instruments and do, or cause to be done, all such acts and things as the other party may reasonably require to effectively carry out or better evidence or perfect the full intent and meaning of this Agreement.

18.5 Obligations to Survive

The obligations, representations and warranties of the Parties hereto shall survive the consummation of the Agency Documents.

18.6 Entire Agreement

This Agreement constitutes the only agreement between the parties with respect to the subject matter hereof and supersedes any and all prior negotiations and understandings. No amendment of this Agreement shall be binding unless in writing and signed by the parties. No waiver by a party of any breach of this Agreement shall take effect or be binding upon the party unless it is in writing and signed by the party and, unless otherwise expressly stated therein, any such waiver shall be limited to the specific breach waived.

18.7 Governing Law

This Agreement shall be governed and construed in accordance with the law of the Province of Ontario, without regard to conflicts of laws principles thereof and all disputes relating directly or indirectly to this agreement shall be resolved (i) in first instance by the Court, and (ii) thereafter, by the courts having jurisdiction in Ontario (including Canada's federal court system). By execution of this Agreement, each party hereby irrevocably accepts and submits to the jurisdiction of such court with respect to any such action or proceeding and to service of process by certified mail, return receipt requested to the address listed above for each party.

18.8 Benefit of Agreement

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. Except for the right of syndication in Section 18.14 hereof, the Agent shall not assign the benefit of, or any rights under, this Agreement without the prior written consent of the Company and approval of the Court. The Company shall not assign the benefit of this Agreement without the prior written consent of the Agent, which shall not be unreasonably withheld or delayed. With the consent of the Company to confirm such assignment is not of a beneficial interest, which consent shall not be unreasonably withheld, any JV Member may pledge or assign a security interest in its rights to receive its pro rata portion of amounts due under this Agreement to secure obligations of such JV Member. Notwithstanding the consent of the Company to any such assignment, the JV Member shall not be relieved of any of its obligations or indemnities as Agent under this Agreement.

18.9 Severability

If any provision of this Agreement or any document delivered in connection with this Agreement is partially or completely invalid or unenforceable, the invalidity or unenforceability of that provision shall not affect the validity or enforceability of any other provision of this Agreement, all of which shall be construed and enforced as if that invalid or unenforceable provision were omitted. The invalidity or unenforceability of any provision in one jurisdiction shall not affect such provisions validity or enforceability in any other jurisdiction.

18.10 Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which shall constitute one and the same Agreement. This Agreement may be executed by facsimile or other electronic transmission, and such facsimile or electronic signature shall be treated as an original signature hereunder.

18.11 Language

The parties have specifically required that the present agreement and all related documents be drafted and executed in English. *Les parties aux présentes ont formellement demandé à ce que la présente convention et tous les documents auxquels celle-ci réfère soient rédigés et signés en langue anglaise.*

18.12 Canadian Withholding Tax

All disbursement and payments made to Agent hereunder shall be paid net of applicable taxes, including for greater certainty taxes required to be withheld and remitted pursuant to Regulation 105 of the *Income Tax Act* (Canada) and/or section 1015R1.18 of the *Regulation Respecting the Taxation Act* (Quebec) as may be determined by the Company in its discretion (exercised on the basis of ensuring no reasonable risk of liability to the Company on account of any such obligation to withhold and remit).

18.13 Dispute Resolution Mechanism

The parties hereto shall refer to the Court any disputes under this Agreement which are not promptly resolved by the parties.

18.14 Joint and Several Liability

To the extent that there are multiple entities that comprise the Agent, each of the entities that comprise the Agent hereunder hereby irrevocably and unconditionally agree that it is jointly and severally liable for all of the liabilities, obligations, covenants and agreements of the Agent hereunder, whether now or hereafter existing or due or to become due. The obligations of each of the entities that comprise the Agent hereunder may be enforced by the Company against any such entity comprising the Agent or all of the entities that comprise the Agent in any manner or order as determined by the Company in its sole discretion. Each entity comprising the Agent hereby irrevocably waives, for the benefit of the Company, any defense to payment based on (i) any rights of subrogation, (ii) any rights of contribution, indemnity or reimbursement, and (iii) all suretyship defenses generally, in each case, that it may acquire or that may arise against the

Company due to any payment or performance made under this Agreement. Agent shall have the*
right to syndicate the transaction contemplated by* this Agreement to one or more third parties
previously disclosed to the Company by providing the Company with notice of such syndication
prior to the Sale Commencement Date, and if syndicated, any such parties shall thereafter be
deemed to be included in references to "Agent" hereunder for all purposes.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, each party have caused this Agreement to be signed and delivered by its duly authorized representative(s).

SEARS CANADA INC.

By:

Name:

Title:

GORDON BROTHERS CANADA ULC

By:

Name:

Title:

~~GORDON BROTHERS CANADA ULC~~

~~By:
Name:
Title:~~

MERCHANT RETAIL SOLUTIONS ULC

By:
Name:
Title:

TIGER CAPITAL GROUP, LLC

By:

Name:

Title:

GA RETAIL CANADA ULC

By:

Name:

Title:

Tab D

**THIS IS EXHIBIT "D" TO THE AFFIDAVIT
OF SEAN STIDWILL SWORN BEFORE ME
ON THIS 17th DAY OF JULY, 2017.**



A commissioner for taking Affidavits
SONJA PAULC

CONSULTING AGREEMENT

This Consulting Agreement, dated as of July 12, 2017 and amended and restated as of July 14, 2017 (this "Agreement") is made by and between a contractual joint venture composed of Gordon Brothers Canada ULC ~~and~~ Merchant Retail Solutions ULC ~~(together, Tiger Capital Group, LLC and GA Retail Canada ULC~~ (collectively, the "Consultant"), and Sears Canada Inc. (the "Company" or the "Merchant").

RECITALS:

- A. ~~A.~~ On June 22, 2017, the Company and certain related entities commenced court-supervised restructuring proceedings under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA Proceedings") and obtained an initial order (as amended from time to time, the "Initial Order") from the Ontario Superior Court of Justice (Commercial List) (the "Court").
- B. ~~B.~~ Pursuant to the Initial Order, FTI Consulting Canada Inc. was appointed as monitor (the "Monitor") in the CCAA Proceedings and the engagement of BMO Nesbitt Burns Inc. ("BMO") as financial advisor to the Company was approved.
- C. ~~C.~~ The Company currently operates a network of retail stores across Canada and has identified certain stores for liquidation and closure.
- D. A contractual joint venture composed of Gordon Brothers Canada ULC and Merchant Retail Solutions ULC entered into a consulting agreement with the Company dated July 12, 2017 (the "Original Consulting Agreement").
- E. On July 12, 2017, Gordon Brothers Canada ULC and Merchant Retail Solutions ULC exercised their right to syndicate the transaction contemplated by the Original Consulting Agreement as provided for in Section 11.13 thereof.
- E. ~~D.~~ The Company and the Consultant, in consultation with the Monitor and BMO, and subject to the approval of the Court, wish to enter into this amended and restated consulting agreement (the "Agreement") in accordance with the terms hereof.
- G. ~~E.~~ Merchant desires to retain the Consultant to act as exclusive consultant for the purpose of advising the Merchant, on an exclusive basis, with respect to a sale of the Merchandise (as defined below) and certain of the Merchant's owned furniture, fixtures and equipment, located at the Merchant's retail store locations identified on **Schedule A** attached hereto (each individually, a "Closing Store", and collectively, the "Closing Stores") by means of a promotional "store closing", "everything must go", "sale on everything", or similar themed sale, as approved in writing by the Merchant (the "Sale");
- H. ~~F.~~ The Consultant is willing to serve as the Merchant's exclusive consultant for the purpose of providing such consulting services, upon the terms and conditions and in the manner set forth in this Agreement and subject to the granting of the Approval Order (defined below);

I. ~~G.~~ The Merchant believes that entering in to this Agreement is in the best interest of the Merchant;

J. ~~H.~~ The Consultant and the Merchant agree and acknowledge that the entering into of this Agreement by the Merchant is subject to the issuance of an Order of the Court in the CCAA Proceedings substantially in the form attached hereto as **Schedule B**, among other things approving this Agreement and the Sale Guidelines (as defined below) (the "Approval Order"), which Approval Order shall be final and executory and no appeal should have been launched by the Sale Commencement Date, and that should the Approval Order not be obtained, final and executory by the Sale Commencement Date, this Agreement shall have no force or effect;

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Consultant and the Merchant hereto agree as follows:

1. **Definitions**

For the purposes of this Agreement, the terms listed below shall have the respective meanings indicated:

"Agreement" has the meaning set out in the Recitals hereto;

"Approval Order" has the meaning set out in the Recitals hereto;

"BMO" has the meaning set out in the Recitals hereto;

"Budget" shall mean the Consultant Controlled Expense Budget attached hereto as **Schedule C**, which may be modified as mutually agreed to by the Merchant and Consultant, with the approval of the Monitor;

"CCAA Proceedings" has the meaning set out in the Recitals hereto;

"Closing Store" and "Closing Stores" have the meanings set out in the Recitals hereto;

"Closing Store Employees" shall mean those employees of the Merchant retained to conduct the Sale following consultation with Consultant;

"Company" has the meaning set out in the Recitals hereto;

"Consultant" has the meaning set out in the Recitals hereto;

"Consultant Controlled Expenses" has the meaning set out in Section 3.1 hereof;

"Consultant Indemnified Parties" has the meaning set out in Section 8.3 hereof;

"Consulting Fee" has the meaning set out in Section 3.2 hereof;

"Consulting Services" has the meaning set out in Section 2.2 hereof;

“Court” has the meaning set out in the Recitals hereto;

“Encumbrances” shall mean 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, priorities, prior claims, and encumbrances, including, without limitation, the charges granted by the Court under the CCAA Proceedings (including, but not limited to, the Administration Charge, the KERP Priority Charge, the Directors’ Priority Charge, the DIP Term Lenders’ Charge, the DIP ABL Lenders’ Charge, the KERP Subordinated Charge, and the Directors’ Subordinated charge, each as defined in the Initial Order);

“Excluded FF&E” means the furniture, fixtures and equipment on the list attached hereto as **Schedule D**;

“FF&E” means the Company’s owned furniture, fixtures and equipment but excluding any Excluded FF&E;

“FF&E Fee” has the meaning set out in Section 3.3 hereof;

“FF&E Removal Deadline” shall have the meaning ascribed to it in Section 3.4(a)

“FF&E Removal Period” shall have the meaning ascribed to it in Section 3.4(a);

“Final Settlement” has the meaning set out in Section 4.3 hereto;

“Gross Proceeds” shall mean all proceeds of sales of Merchandise (excluding applicable sales tax) derived from the Sale, provided, however, that it is expressly understood and agreed, that Gross Proceeds shall not include proceeds of sales of FF&E or made prior to the Sale Commencement Date or after the Sale Termination Date (including items which were sold prior to the Sale Commencement Date but delivered following the Sale Commencement Date);

“Initial Order” has the meaning set out in the Recitals hereto;

“Lenders” means, collectively, the DIP ABL Lenders and the DIP Term Lenders (each as defined in the Initial Order);

“Merchandise” shall mean each item of saleable inventory owned by the Company, which for greater certainty shall not include gift cards, located at the Closing Stores as of the Sale Commencement Date or received in Closing Stores subsequently, that is sold during the Sale;

“Merchant” has the meaning set out in the Recitals hereto;

“Merchant Indemnified Parties” has the meaning set out in Section 8.2 hereof;

“Monitor” has the meaning set out in the Recitals hereto;

“Remaining FF&E” has the meaning set out in Section 3.4(c);

“Sale” has the meaning set out in the Recitals hereto;

“Sale Accounts” has the meaning set out in Section 4.1 hereof.

“Sale Commencement Date” shall mean July 21, 2017, or such other date as may be agreed to by Merchant and Consultant with the approval of the Monitor and consent of the Lenders.

“Sale Expenses” shall mean all expenses incurred in connection with the Sale, including without limitation: (i) advertising expenses (including direct media costs, agency fees and production costs); (ii) payroll for Closing Store-level employees utilized in connection with the Sale, and related employee benefits and payroll taxes; (iii) maintenance and store cleaning costs; (iv) security costs; (v) credit card processing fees; (vi) employee bonuses determined by Merchant; (vii) all occupancy costs (e.g., rent, percentage rent, CAM charges, HVAC charges, real estate taxes, etc.) relative to the Closing Stores ; (viii) insurance; (ix) telephone charges; and (x) all Supervisor Costs in accordance with Sections 2.3 hereof;

“Sale Guidelines” has the meaning provided for in Section 2.2(c) hereof;

“Sale Term” shall mean the period of time beginning with the Sale Commencement Date and ending on the Sale Termination Date;

“Sale Termination Date” means the date on which the Sale terminates at each of the Closing Stores, which date shall be no later than October 12, 2017 (subject to further extension as may be mutually agreed upon, in writing, by the Agent and the Company, with the approval of the Monitor and the Lenders);

“Supervisor(s)” shall mean the individual(s) whom Consultant shall directly engage to provide services to Merchant in connection with the Sale in accordance with Section 2.3 below; and

“Supervisor Costs” shall have the meaning set forth in Section 2.3 of this Agreement.

2. Consulting Services

- 2.1 The Merchant will seek from the Court the Approval Order. Subject to the entry of and the terms of the Approval Order, the Merchant hereby retains the Consultant and the Consultant hereby agrees to serve as an independent consultant to the Merchant in connection with the conduct of the Sale as set forth herein. With respect to the Sale, the Consultant shall serve as the sole and exclusive consultant to the Merchant relative thereto throughout the Sale Term.
- 2.2 On the terms and conditions set forth herein, commencing as of the Sale Commencement Date, the Consultant shall provide the Merchant with the following services (the “Consulting Services”) with respect to the conduct of the Sale:
- (a) provision of full-time Supervisors to supervise and conduct the Sale as further described in Section 2.3 below; provided that the determination of the number of

Supervisors supplied for the Sale shall be determined by the Consultant following consultation with the Merchant;

- (b) provide the Merchant with such oversight, supervision and guidance with respect to the conduct of the Sale and the liquidation and disposal of the Merchandise from the Closing Stores as may be required in order to maximize Gross Proceeds;
- (c) recommend and implement appropriate point of purchase, point of sale and external advertising to effectively sell the Merchandise during the Sale Term, consistent with the theme of the Sale, it being understood that the Sale will be advertised as a “store closing”, “sale on everything” or similar sale themes throughout the term of the Sale subject to the Merchant approval and in accordance with the sales guidelines substantially in the form attached to the Approval Order (the “Sale Guidelines”);
- (d) advise the Merchant as to appropriate pricing and discounting of the Merchandise, appropriate staffing levels for the Closing Stores (including Closing Store Employees) (and the Merchant agrees to take direction from the Consultant with regard to Closing Store Employee staffing levels);
- (e) assist the Merchant in the formulation and implementation of a loss prevention strategies designed to protect the inventory from shrinkage;
- (f) advise and assist the Merchant in the development and implementation of programs for the handling of open customer orders (including delayed delivery goods) and customer deposit issues, including, where appropriate, fulfillment of such orders as may be designated by the Merchant;
- (g) provide such other related services deemed necessary or prudent by the Merchant and the Consultant under the circumstances giving rise to the Sale; and
- (h) the Consultant shall not, in any way, be considered as an employer of the Merchant’s employees and shall have no obligation whatsoever in that respect.

2.3 The Consultant shall provide qualified supervision to oversee the conduct of the Sale in the Closing Stores as may be required to maximize sales, the expense for which is included in the Budget. In connection with the Sale, the Consultant shall indirectly retain and engage the Supervisors. The Supervisors shall not be deemed to be employees or consultants of the Merchant in any manner whatsoever; nor do the Supervisors have any relationship with the Merchant by virtue of this Agreement or otherwise which creates any liability or responsibility on behalf of the Merchant for the Supervisors. During the Sale Term, the Supervisors shall perform the services provided for herein during normal Closing Store operating hours and for the period of time prior to the Closing Stores opening and subsequent to the Closing Stores closing, as required in connection with the Sale, in the Consultant’s discretion. In consideration of Consultant’s engagement of the Supervisors, the Merchant agrees to pay the Consultant, as a Sale Expense, the Supervisor-related wages, fees paid to arm’s length third parties, travel, expenses, deferred compensation and third-party payroll costs and expenses, in accordance with and subject to the Budget (collectively, the “Supervisor Costs”). The

Supervisor Costs set forth on the Budget include, among other things, industry standard deferred compensation. The Merchant shall reimburse Consultant for all Supervisor Costs weekly, based upon invoices or other documentation reasonably satisfactory to the Merchant and the Monitor.

- 2.4 Title to all Merchandise and FF&E shall remain with Merchant at all times during the Sale Term until such Merchandise is sold. Although the Consultant shall undertake its obligations under this Agreement in a manner designed to achieve the desired results of the Sale and to maximize the benefits to the Merchant, the Merchant expressly acknowledges that the Consultant is not guaranteeing the results of the Sale. All sales of Merchandise and FF&E in the Closing Stores shall be made in the name and on behalf of the Merchant, and all sales during the Sale Term shall be final with no returns accepted or allowed. All sales of Merchandise shall be by cash, gift card, gift certificate, merchandise credit, debit card or credit card in accordance with Merchant's policies. The Parties acknowledge and agree that no Closing Stores will honor returns with respect to any items whether or not purchased prior to or during the Sale. The Closing Stores shall accept loyalty points issued by the Company prior to the Sale Commencement Date.

3. **Expenses: Consultant's Fees**

- 3.1 **Sale Expenses.** In connection with the Sale, the Merchant shall be responsible for the payment of all expenses incurred in connection with the Sale, including all Sale Expenses. To control certain Sale Expenses, the Consultant and the Merchant have agreed on the Budget of certain delineated Sale Expenses, which includes Supervisor Costs and advertising and sign expenses (collectively the "Consultant Controlled Expenses"). All Consultant Controlled Expenses shall be considered Sale Expenses and be borne by Merchant, except solely to the extent such expenses exceed the aggregate amount set forth in the Budget without the prior written consent of the Merchant. In the event that the Merchant shall not approve any such overage with respect to Consultant Controlled Expenses and the Consultant nevertheless causes such Consultant Controlled Expenses to be incurred, then the Consultant shall fund such Consultant Controlled Expenses in excess of the aggregate amount on the Budget. It is anticipated that the Consultant may advance funds for certain categories of Consultant Controlled Expenses, and the Merchant shall reimburse the Consultant therefor (in connection with each weekly reconciliation provided for in Section 4.1 hereof) upon presentation of invoices and statements for such expenses, which reimbursement shall be in addition to any Consulting Fee and/or FF&E Fee earned and payable hereunder provided that such expenses do not exceed the aggregate amounts set forth in the Budget or otherwise approved by Merchant in accordance with this Section 3.1. The Merchant shall reimburse the Consultant weekly, in connection with each weekly settlement as provided in Section 4.1 hereof, for all Consultant Controlled Expenses incurred or paid directly by the Consultant subject to and in accordance with this Section 3.1.
- 3.2 **Consulting Fee.** In consideration of the Consulting Services provided hereunder in connection with the Sale, the Merchant shall pay to the Consultant a fee equal to one and three-quarters percent (1.75%) of Gross Proceeds (the "Consulting Fee").:
- 3.3 **Fixtures Disposition.** In addition to the Consulting Services provided for herein, with respect to FF&E located at the Closing Stores, the Consultant shall sell the FF&E so

designated by the Merchant and in accordance with the Sale Guidelines, on an “as is where is” basis in any such Closing Stores for the Merchant’s benefit. The Consultant shall advertise in the context of advertising for the Sale that items of FF&E at the Closing Stores are available for sale, and shall contact and solicit known purchasers and dealers of furniture and fixtures. In consideration of providing such services, the Consultant shall be paid seventeen and one half percent (17.5%) of the gross receipts (net only of applicable sales taxes, if any) from all sales or other dispositions of FF&E, including Remaining FF&E sold pursuant to Section 3.4(c) below (the “FF&E Fee”). In addition, the Merchant shall reimburse the Consultant for the Consultant’s reasonable out of pocket expenses incurred in connection with the sale, other disposition, or removal of the FF&E which have been previously approved in writing by the Merchant and Consultant on a budget (including without limitation costs of removal, commissions and advertising). The Consultant shall have no liability to the Merchant or any third party for its failure to sell any or all of the FF&E.

3.4 Remaining FF&E.

- (a) Subject to Section 3.4(d), the Consultant shall within fourteen (14) days (the “FF&E Removal Period”) following the applicable Sale Termination Date (the “FF&E Removal Deadline”) remove all FF&E from the applicable Closing Store.
- (b) During the FF&E Removal Period, the Company shall, at each Closing Store, provide the Consultant and its invitees with peaceful use and occupancy and access to each such Closing Store for purposes of selling, disposing, and/or removing the FF&E.
- (c) Subject to Section 3.4(d), any FF&E that is not sold by the Consultant prior to the applicable FF&E Removal Deadline in section 3.4(a) (the “Remaining FF&E”) shall be removed by the Consultant from the applicable Closing Store by no later than such applicable FF&E Removal Deadline. Subject to Section 3.4(d), the Consultant, shall be entitled to dispose of the Remaining FF&E, free and clear of all Encumbrances, at Consultant’s discretion. Any associated expenses shall be paid by the Company as provided for in Section 3.3 above and in accordance with the budget referred to therein, and the gross receipts thereof (net of sales tax) shall be included in the calculation of the FF&E Fee due to Consultant. The removal of any Remaining FF&E shall be done in a manner consistent with the Sale Guidelines.
- (d) Notwithstanding anything herein to the contrary, the Company may, in its entire discretion, instruct Consultant to abandon any Remaining FF&E in any of the Closing Stores by providing written notice to the Consultant by no later than seven (7) days prior to the applicable FF&E Removal Deadline. If so instructed, as of the FF&E Removal Deadline, the Consultant may abandon in place, in a neat and orderly manner, any unsold FF&E at the applicable Closing Store. If the Consultant chooses to remove any Remaining FF&E notwithstanding receipt of the aforementioned notice from the Company, the Consultant shall assume all costs and expenses relating to the removal of such FF&E and retain all proceeds from the sale thereof for its own account.

- (e) Notwithstanding anything in this Agreement to the contrary, Consultant shall not have any obligation whatsoever to cap any electrical or plumbing outlets or purchase, sell, make, store, handle, treat, dispose, or remove any hazardous materials from the Closing Stores or otherwise. Consultant shall have no liability to any party for any environmental action brought: (i) that is related to the storage, handling, treatment, disposition, generation, or transportation of hazardous materials, or (ii) in connection with any remedial actions associated therewith or the Closing Locations. The Merchant (and not Consultant) shall be solely responsible to cap all electrical items and plumbing outlets and to remove all hazardous materials from the Closing Stores.

4. **Sale Proceeds; Weekly Settlement**

- 4.1 **Sale Proceeds; Sale Reconciliation.** All proceeds of sales of Merchandise and FF&E through the Sale shall be collected by Merchant's Closing Store management personnel and deposited into Merchant's existing Closing Store-level deposit accounts (the "Sale Accounts"). The Merchant shall, upon request, deliver to the Consultant account statements and such other information relating to the Sale Accounts reasonably requested by the Consultant. On Wednesday of each week, commencing on the second Wednesday following the Sale Commencement Date, the Consultant and the Merchant shall, in consultation with the Monitor, reconcile the results of the Sale for the prior week, including, without limitation, Gross Proceeds of Merchandise, sales of FF&E, Consultant Controlled Expenses, and any Consulting Fee (subject to clause (iii) below) and FF&E Fee earned and payable hereunder, and the Merchant shall pay to the Consultant on a weekly basis, in connection with such weekly settlement, mutually agreed (i) Consultant Controlled Expenses incurred or paid by the Consultant for such prior week, (ii) anticipated Consultant Controlled Expenses for the next succeeding week of the Sale, and (iii) the Consultant's Consulting Fee and FF&E Fee on account of the prior week's sales of Merchandise and FF&E. Merchant shall within five (5) business days of completion of the Final Settlement pay the Consultant any remaining unpaid Consulting Fee and FF&E Fee and/or unreimbursed Consultant Controlled Expenses incurred or paid directly by the Consultant subject to and in accordance with Section 3.1 of this Agreement.
- 4.2 **Cash and Credit Card Proceeds.** Merchant shall have control over all Closing Store Employees and shall handle the cash, debit and charge card payments for all Merchandise in accordance with Merchant's customary cash management practices and procedures, subject to Consultant's right to audit any such items. Merchant shall provide throughout the Sale Term its current credit card systems and servicing arrangements (including the Merchant's credit card terminals and processor(s), credit card processor coding and bank accounts) and other central administrative services necessary for the Sale, including without limitation customary POS administration, sales, audit, cash reconciliation, accounting, payroll processing during the course of the Sale, all borne as a Sale Expense by Merchant.
- 4.3 **Final Settlement.** As soon as possible following the conclusion of the Sale and in no event later than thirty (30) days following the end of the Sale Term, the parties shall complete a Final Settlement, subject to the Monitor's approval in consultation with the Lenders, of all amounts contemplated by this Agreement ("Final Settlement"), including,

without limitation, the determination and payment of any fees due to Consultant and all reimbursements contemplated hereby.

5. Closing Store Employees

- 5.1 Closing Store Employees. The Consultant and the Merchant shall cooperate to retain the employees of the Merchant, as designated by the Consultant, to be utilized to conduct the Sale at the Closing Stores during the Sale Term. Such employees shall remain employees of the Merchant, and subject to paragraph 8.2 hereof the Consultant shall have no liability to the Closing Store Employees (including any of the Merchant's former employees) of any kind or nature whatsoever, including without limitation, with respect to severance pay, termination pay, vacation pay, pay in lieu of reasonable notice of termination, or any other expenses or liability arising from the Merchant's or the Merchant's employment of such Closing Store Employees prior to, during, and subsequent to the Sale. Consultant shall not change the terms of employment of any Closing Store Employees and Merchant shall remain the employer thereof.

6. Representation and Warranties of Consultant

- 6.1 The Consultant hereby represents warrants and covenants in favour of the Merchant as follows:
- (a) The Consultant has taken all necessary action required to authorize the execution, performance and delivery of this Agreement, and to consummate the transactions contemplated hereby;
 - (b) This Agreement is a valid and binding obligation of the Consultant enforceable in accordance with its terms;
 - (c) No action or proceeding has been instituted or, to Consultant's knowledge, threatened, affecting the consummation of this Agreement or the transactions contemplated herein;
 - (d) The Consultant is not a non-resident of Canada pursuant to the *Income Tax Act* (Canada); and
 - (e) Each entity comprising Consultant shall be duly registered, by no later than the Sale Commencement Date, under Subdivision (d) of Division V of Part IX of the Excise Tax Act (Canada) with respect to the goods and services tax and harmonized sales tax and under Division I of Chapter VIII of Title I of An Act respecting the Quebec sales tax with respect to the Quebec sales tax. The Consultant's registration number is as follows: (i) 814418836 RT0001 for Gordon Brothers Canada ULC; (ii) 810929034 RT0001 for Merchant Retail Solutions ULC, (iii) 845025105 RT0001 for Tiger Capital Group, LLC; and (iv) 814306783 RT0001 for GA Retail Canada ULC.

7. **Representations and Warranties of Merchant**

7.1 The Merchant hereby represents warrants and covenants in favour of the Consultant as follows:

- (a) Subject to the Approval Order, the Merchant has taken all necessary actions required to authorize its execution, performance and delivery of this Agreement, and to consummate the transactions contemplated hereby;
- (b) Subject to the Approval Order, this Agreement is a valid and binding obligation of the Merchant enforceable in accordance with its terms, subject only to any applicable bankruptcy, insolvency or similar laws affecting the rights of creditors generally and the availability of equitable remedies; and
- (c) No action or proceeding has been instituted or, to the Merchant's knowledge, threatened, affecting the consummation of this Agreement or the transactions contemplated herein.

8. **Affirmative Duties of Consultant**

8.1 Except as may be provided otherwise in the Approval Order or any order of the Court, the Consultant shall advise the Merchant with respect to the legal requirements of effecting the Sale as a "store closing" or other mutually agreed upon theme in compliance, if required with applicable provincial and local "going out of business" laws and assist in obtaining all permits and governmental consents required in order to conduct the Sale under such laws.

8.2 The Consultant, on a joint and several basis, shall indemnify and hold the Merchant and its affiliates, and their respective officers, directors, employees, agents and independent contractors (collectively, "Merchant Indemnified Parties"), harmless from and against all claims, demands, penalties, losses, liability or damage, including, without limitation, reasonable legal fees on a full indemnity basis and expenses, directly or indirectly asserted against, resulting from, or related to:

- (i) the Consultant's material breach of or failure to comply with any of its agreements, covenants, representations or warranties contained herein or in any written agreement entered into in connection herewith;
- (ii) any harassment or any other unlawful, tortious or otherwise actionable treatment of any employees or agents of the Merchant by the Consultant or any of the Consultant's officers, directors, employees, agents or representatives;
- (iii) any claims by any party engaged by the Consultant as an employee or independent contractor arising out of such employment; except where due to the gross negligence or willful misconduct of the Merchant or from a breach of the terms hereof by the Merchant; and

- (iv) the gross negligence or willful misconduct of the Consultant or any of its officers, directors, employees, the agents or representatives, or any Supervisor.

8.3 The Merchant shall indemnify and hold the Consultant and its affiliates, and their respective officers, directors, employees, agents and independent contractors including the Supervisors (collectively, "Consultant Indemnified Parties"), harmless from and against all claims, demands, penalties, losses, liability or damage, including, without limitation, reasonable legal fees on a full indemnity basis and expenses, directly or indirectly asserted against, resulting from, or related to:

- (i) the Merchant's material breach of or failure to comply with any of its agreements, covenants, representations or warranties contained herein or in any written agreement entered into in connection herewith;
- (ii) any harassment or any other unlawful, tortious or otherwise actionable treatment of the Consultant Indemnified Parties by the Merchant or any of the Merchant Indemnified Parties;
- (iii) any liability or other claims, including, without limitation, product liability claims, asserted by customers, any Closing Store Employees (under a collective bargaining agreement or otherwise) or any other person, except where due to the gross negligence or willful misconduct of the Consultant or from a breach of the terms hereof by the Consultant; and
- (iv) the gross negligence or willful misconduct of the Merchant or any of the Merchant Indemnified Parties.
- (v) Merchant's failure to pay over to the appropriate taxing authority any taxes required to be paid by Merchant during the Sale Term in accordance with applicable law.

8.4 The Consultant shall conduct the Sale in accordance with the terms of this Agreement, the Approval Order, and the Sale Guidelines.

9. Affirmative Duties of Merchant

9.1 The Merchant shall be solely liable for, and shall pay when due, (i) all expenses (including, without limitation, Sale Expenses) which are necessary to conduct the Sale, including, without limitation, all taxes, costs, expenses, accounts payable and other liabilities relating to the Sale, the Closing Stores, Closing Store Employees and any other consultants and representatives of Merchant, and (ii) all Consultant Controlled Expenses, Consulting Fees and FF&E Fees payable hereunder.

9.2 The Merchant shall prepare and process all reporting forms, certificates, reports and other documentation required in connection with the payment of all applicable taxes to the appropriate taxing authorities.

- 9.3 Without limiting any other term or provision of this Agreement, subject to the provisions of the Initial Order and the Approval Order, during the Sale Term, the Merchant shall provide the Consultant, at no cost or expense to the Consultant, with (i) central administrative services necessary to administer the Sale, (ii) employees at the Closing Stores (to the extent reasonably agreed upon by the Merchant and the Consultant necessary to effect the Sale), and (iii) peaceful use and occupancy of, and reasonable access (including reasonable before and after hours access and normal utilities/phone service) to, the Closing Stores and the Merchant's corporate, offices for the purpose of preparing for, conducting, and completing the Sale as contemplated hereby. Merchant shall use reasonable efforts to cause Merchant's employees to cooperate with Consultant and the Supervisors.
- 9.4 Unless otherwise directed by the Merchant, the Consultant and the Merchant shall honour gift cards and merchandise credits at the Closing Stores, in accordance with store operation procedures to be mutually agreed upon between the Merchant and the Consultant, with the full amount of such gift cards and merchandise credits constituting Gross Proceeds hereunder. No gift cards shall be sold from the Closing Stores during the Sale Term.
- 9.5 The Merchant shall collect all sales taxes and shall be solely responsible for reporting and paying the same to the appropriate taxing authorities in accordance with applicable law.
- 9.6 The obligations of the Merchant and the Consultant shall be conditional upon having obtained the Approval Order by July 14, 2017 (or such alter date as the Company, the Consultant, the Monitor and the Lenders may agree to in writing), which shall not have been stayed, varied or vacated.
- 10. Insurance: Risk of Loss**
- 10.1 The Merchant shall maintain throughout the Sale Term, (i) its existing insurance with respect to the Merchandise at the Closing Stores in amounts and on such terms and conditions as are consistent with the Merchant's ordinary course operations and (ii) casualty and liability insurance policies (including, but not limited to, product liability, comprehensive public liability insurance and auto liability insurance) covering injuries to persons and property in or in connection with the operation of the Closing Stores.
- 10.2 The Consultant shall maintain throughout the Sale Term, liability insurance policies (including, but not limited to, comprehensive public liability and auto liability insurance) covering injuries to persons and property in or in connection with the Consultant's provision of Consulting Services at the Closing Stores.
- 10.3 Subject to Section 8.2 but notwithstanding any other provision of this Agreement, the Merchant and the Consultant agree that the Merchant shall bear all responsibility for liability claims (product liability and otherwise) of customers, employees and other persons arising from events occurring at the Closing Stores before, during and after the Sale Term, except to the extent any such claim arises from the gross negligence, willful misconduct, or unlawful acts of the Consultant.

- 10.4 Subject to Section 8.2 but notwithstanding any other provision of this Agreement, the Merchant and the Consultant agree that (i) the Consultant shall not be deemed to be in possession or control of the Closing Stores or the Merchandise or other assets located therein or associated therewith, or of the Merchant's employees located at the Closing Stores, and (ii) the Consultant does not assume any of the Merchant's obligations or liabilities with respect to any of the matters addressed in clause (i) above, except to the extent any such claim arises from the gross negligence, willful misconduct or unlawful acts of the Consultant.

11. Miscellaneous

- 11.1 Any notice or other communication under this Agreement shall be in writing and may be delivered personally or sent by facsimile or by prepaid registered or certified mail, by facsimile, email or courier delivery as follows:

- (i) In the case of Consultant:

Gordon Brothers Canada ULC
c/o Gordon Brothers Group, LLC
800 Boylston Street 27th Floor
Boston, MA 02199

Attention: Mackenzie Shea,
Associate General Counsel

Email: [mshea@gordonbrothers.com](mailto:m Shea@gordonbrothers.com)

and

Merchant Retail Solutions ULC
c/o Hilco Merchant Resources, LLC
5 Revere Drive Suite 206
Northbrook, IL 60062

Attention: Ian Fredericks

Email: ifredericks@hilcoglobal.com

and

Tiger Capital Group, LLC
60 State Street, 11th Floor
Boston, MA 02109 USA

Attention: Bradley W. Snyder
Email: bsnyder@tigergroup.com

And

Great American Group, LLC

21255 Burbank Blvd., Suite 400
Woodland Hills, CA 91367

Attention: Scott K. Carpenter
Email: scarpenter@greatamerican.com

With a copy to:

Davies Ward Phillips & Vineberg LLP
1501 McGill College Avenue
Montréal QC H3A 3N9 Canada

Attn: William Rosenberg
Denis Ferland

Email: wrosenberg@dwpv.com
dferland@dwpv.com

and with a copy to:

Stikeman Elliott LLP
1155 Boulevard René-Lévesque West, 40th Floor, Montréal, QC
H3B 4P7 Canada

Attention: Elizabeth Pillon/Guy P. Martel
Email: lpillon@stikeman.com
gmartel@stikeman.com

(ii) In the case of Merchant:

BMO Nesbitt Burns Inc.,
100 King Street East, 4th floor
Toronto, ON M5X 1H3

Attn: Mark Caiger, Managing Director
mark.caiger@bmo.com

Attn: Constance de Grosbois, Director
constance.degrosbois@bmo.com

Osler, Hoskin & Harcourt LLP
100 King Street West,
Suite #6200
Toronto, ON M5X 1B8

Attn: Marc Wasserman, Partner
mwasserman@osler.com

Attn: Sandra Abitan, Partner
sabitan@osler.com

with a copy to the Monitor;

FTI Consulting Canada Inc.
79 Wellington Street West,
Suite #2010
Toronto, ON M5K 1G8

Attn: Steven Bissell, Managing Director
steven.bissell@fticonsulting.com

- 11.2 Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein, without reference to any conflict of law provisions. The parties hereto agree that the Court shall retain exclusive jurisdiction to hear and finally determine any disputes arising from or under this Agreement, and by execution of this Agreement each party hereby irrevocably accepts and submits to the jurisdiction of such Court with respect to any such action or proceeding and to service of process by certified mail, return receipt requested to the address listed above for each party.
- 11.3 Severability. In the event any term or provision contained within this Agreement shall be deemed illegal or unenforceable, then such offending term or provision shall be considered deleted from this Agreement and the remaining terms shall continue to be in full force and effect.
- 11.4 No Waiver. No consent or waiver by any party, express or implied, to or of any breach or default by the other in the performance of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such other party of the same or any other obligation of such party. Failure on the part of any party to complain of any act or failure to act by the other party or to declare the other party in default, irrespective of how long such failure continues, shall not constitute a waiver by such party of its rights hereunder.
- 11.5 Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect of the subject matter hereof and supersedes all prior negotiations and understandings, and can only be modified by a writing signed by the Merchant and the Consultant.
- 11.6 Assignment. Neither the Merchant nor the Consultant shall assign this Agreement without the express written consent of the other. This Agreement shall inure to the benefit of, and be binding upon, the parties and their respective successors and permitted assigns.
- 11.7 Counterparts. This Agreement may be executed in several counterparts, each of which when so executed shall be deemed to be an original and such counterparts, together, shall constitute one and the same instrument. Delivery by facsimile or other electronic transmission including email of this Agreement or an executed counterpart hereof shall be deemed a good and valid execution and delivery hereof or thereof.

- 11.8 Independent Contractor. Nothing contained herein shall be deemed to create any relationship between the Consultant and the Merchant other than that of an independent contractor.
- 11.9 Survival. All representations, warranties, covenants, agreements and indemnities made herein, by the parties hereto, shall be continuing, shall be considered to have been relied upon by the parties and shall survive the execution, delivery and performance of this Agreement.
- 11.10 Choice of Language. The parties have specifically required that this Agreement and all related documents be drafted and executed in English. *Les parties aux présentes ont formellement demandé à ce que la présente convention et tous les documents auxquels celle-ci réfère soient rédigés et signés en langue anglaise.*
- 11.11 Further Assurances. The Merchant and the Consultant shall each execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, at the cost and expense of the requesting party, such instruments and take such other actions as may be necessary or advisable to carry out their obligations under this Agreement, or any document, certificate or other instrument delivered pursuant hereto or thereto or required by applicable law.
- 11.12 Termination. This Agreement shall terminate upon the completion and approval of the Final Settlement (as provided in Section 4.1 above); ~~provided, however,~~ that either party may terminate this Agreement in the event that the other commits a material breach of its obligations hereunder. If either party seeks to terminate this Agreement by reason of a claim of a material breach, such party shall provide the other party with not less than five (5) days' prior written notice stating with specificity the nature of the claimed material breach, and the party receiving such notice shall have three (3) business days in which to cure such material breach, failing which this Agreement shall be deemed terminated. In addition, if the Sale is terminated prior to the Sale Termination Date, any other material breach or action by Merchant not authorized hereunder occurs, or any force majeure, then Consultant may, in its discretion, elect to terminate this Agreement. In the event this Agreement is terminated, the Consultant shall be entitled to be paid any Consulting Fee and FF&E Fee earned and accrued and any Consultant Controlled Expenses incurred through the date of termination.
- 11.13 Joint and Several Liability. All obligations of the Consultant under this Agreement are the joint and several obligations of Gordon Brothers Canada ULC ~~and~~, Merchant Retail Solutions ULC, Tiger Capital Group, LLC and GA Retail Canada ULC, and any parties that are deemed to be included in references to "Consultant" pursuant to the terms hereof. ~~Consultant shall have the right to syndicate the provision of services contemplated by this Agreement to one or more third parties previously disclosed to the Company by providing the Company with notice of such syndication prior to the Sale Commencement Date, and if syndicated, any such parties shall thereafter be deemed to be included in references to "Consultant" hereunder for all purposes.~~
- 11.14 Currency. Any amounts specified in this Agreement to be in Dollars or "\$" shall be deemed in all cases to be Canadian Dollars.

[Signature Page Follows]

IN WITNESS WHEREOF, the Merchant and the Consultant have executed this Agreement or caused this Agreement to be executed by their respective officers thereunto duly authorized as of the date first written above.

~~On behalf of itself
For the Consultant~~

~~Gordon Brothers Canada ULC~~

By:
Name:-
Title:-

By: _____
Name:-
Title:-

and

Sears Canada Inc.

By:
Name:
Title:

Gordon Brothers Canada ULC

By:

Name:

Title:

Merchant Retail Solutions ULC

By:

Name:

Title:

Tiger Capital Group, LLC

By:

Name:

Title:

GA Retail Canada ULC

By:

Name:

Title:

~~As Merchant:~~

~~Sears Canada Inc.~~

~~By:~~

~~Name:~~

~~Title:~~

**SCHEDULE A
STORE LISTING**

(See attached.)

**SCHEDULE B
APPROVAL ORDER**

(See attached.)

SCHEDULE C
BUDGET OF CONSULTANT CONTROLLED
EXPENSES

(See attached.)

**SCHEDULE D
EXCLUDED FF&E**

(See attached.)

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

**SUPPLEMENTAL MOTION RECORD
OF THE APPLICANTS**
(Liquidation Sale Approval, Returnable July 18, 2017)

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