

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., 9370-2751
QUEBEC INC., 191020 CANADA INC., THE CUT INC., SEARS
CONTACT SERVICES INC., INITIUM LOGISTICS SERVICES
INC., INITIUM COMMERCE LABS INC., INITIUM TRADING
AND SOURCING CORP., SEARS FLOOR COVERING
CENTRES INC., 173470 CANADA INC., 2497089 ONTARIO
INC., 6988741 CANADA INC., 10011711 CANADA INC.,
1592580 ONTARIO LIMITED, 955041 ALBERTA LTD.,
4201531 CANADA INC., 168886 CANADA INC., AND 3339611
CANADA INC.

APPLICANTS

MOTION RECORD OF THE APPLICANTS
(Motion for Approval of Agreement of Purchase and Sale with
HOOPP Realty Inc. (Store #1017 - Windsor))

August 8, 2018

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TO: SERVICE LIST

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Tab 1

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

Ontario
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APPLICANTS

NOTICE OF MOTION
**(Motion for Approval of Agreement of Purchase and Sale with
HOOPP Realty Inc. (Store #1017 - Windsor))**

The Applicants will make a motion before a judge of the Ontario Superior Court of Justice (Commercial List) on August 20, 2018, or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

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

THE MOTION IS FOR:

1. An Order (the "**Approval and Vesting Order**") substantially in the form attached to the Motion Record, *inter alia*:
 - (a) if necessary, abridging the time for service of this Notice of Motion and the Motion Record and dispensing with service on any person other than those served;
 - (b) approving the Agreement of Purchase and Sale (the "**APS**") dated with effect as of July 25, 2018 between Sears Canada Inc. ("**Sears Canada**") and HOOPP Realty Inc.

(the “**Purchaser**”) and vesting Sears Canada’s right, title and interest in and to the Subject Assets (as defined in the Approval and Vesting Order) in the Purchaser; and

(c) sealing from the public record certain commercially-sensitive information and documents (as described below).

2. Such further and other relief as this Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

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

2. FTI Consulting Canada Inc. was appointed to act as the Monitor (the “**Monitor**”) in the CCAA proceeding;

Approval and Vesting Order

3. On July 13, 2017, the Court approved a process by which BMO Nesbitt Burns Inc. (the “**Sale Advisor**”) on behalf of Sears Canada and under the supervision of both the Special Committee of the Board of Directors of Sears Canada and the Monitor sought bids and proposals for a broad range of transaction alternatives with respect to the business, assets and/or leases of the Applicants;

4. Sears Canada entered into the APS dated with effect as of July 25, 2018 in which the Purchaser would purchase the Sears store location at the property municipally located at 3050 Howard Avenue (Store #1017), located in Windsor, Ontario, (the “**Property**”), in accordance with the terms and conditions set out in the APS (the “**Transaction**”);

5. Pursuant to the Approval and Vesting Order, the Monitor shall be entitled to retain the net proceeds from the Transaction on behalf of the Applicants to be dealt with by further Order of the Court.

6. The consideration to be received in the transaction is fair and reasonable;
7. The process leading to the APS was fair and reasonable in the circumstances and was approved by the Monitor;
8. The APS is in the best interests of the creditors and other stakeholders of the Applicants;
9. The relief sought on this motion is supported by the Monitor and the Sale Advisor;

Sealing Order

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

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

1. The Affidavit of Mark Caiger sworn May 28, 2018 and the exhibits attached thereto;
2. The Affidavit of Philip Mohtadi affirmed August 8, 2018 and the exhibits attached thereto;

- 4 -

3. The Report of the Monitor to be served in connection with this Motion; and
4. Such further and other evidence as counsel may advise and this Court may permit.

August 8, 2018

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TO: SERVICE LIST

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SEARS CANADA INC., 9370-2751 QUEBEC INC., 191020 CANADA INC., THE CUT INC., SEARS CONTACT SERVICES INC., INITIUM LOGISTICS SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM TRADING AND SOURCING CORP., SEARS FLOOR COVERING CENTRES INC., 173470 CANADA INC., 2497089 ONTARIO INC., 6988741 CANADA INC., 10011711 CANADA INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA LTD., 4201531 CANADA INC., 168886 CANADA INC., AND 3339611 CANADA INC.

Applicants

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

NOTICE OF MOTION

(Motion for Approval of Agreement of Purchase and Sale with HOOPP Realty Inc. (Store #1017 - Windsor))

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Tab 2

Ontario
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APPLICANTS

AFFIDAVIT OF PHILIP MOHTADI
(Affirmed August 8, 2018)

**(Motion for Approval of Agreement of Purchase and Sale with
HOOPP Realty Inc. (Store #1017 - Windsor))**

I, Philip Mohtadi, of the City of Toronto, in the Province of Ontario, AFFIRM AND

SAY:

1. I am the General Counsel and Corporate Secretary of the Applicant Sears Canada Inc. ("**Sears Canada**"). I am also a director of each of the other Applicants. As such, I have personal knowledge of the matters deposed to in this Affidavit. Where I have relied on other sources for information, I have specifically referred to such sources and believe them to be true. In preparing this Affidavit, I have consulted with legal, financial and other advisors to Sears Canada, members of the senior management team of Sears Canada, and representatives of FTI Consulting Canada Inc. ("**FTI**" or the "**Monitor**") and its counsel.

2. I swear this Affidavit in support of the motion brought by the Applicants seeking an Order, substantially in the form attached to the Motion Record, approving the Agreement of Purchase and Sale dated July 25, 2018 (the “**APS**”) between Sears Canada and HOOPP Realty Inc., (the “**Purchaser**”) relating to the Subject Assets (as defined in the APS), which include all of the right, title and interest of Sears Canada in and to the property municipally located at 3050 Howard Avenue, in Windsor, Ontario (the “**Property**”) the details of which are summarized in the following chart:

Store No.	Adjacent Property	Province	Address	Legal Description / Square Footage
1017	Devonshire Mall	Ontario	3050 Howard Avenue, Windsor	<p>PIN 01561-2832 (LT) PCL 86-2 SEC WINDSOR SE-3; PT LTS 86 TO 88 CON 3 (FORMERLY TOWNSHIP OF SANDWICH) PTS 1 & 2 EXR99 S/T LT3937, LT3939, LT180373 & LT9839; WINDSOR</p> <p>PIN 01561-0100(LT) LT 21 PL 1415 SANDWICH EAST, S/T R424812, R482458, R1260987; WINDSOR</p> <p>209,330 sq ft</p>

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

4. This Affidavit should be read in conjunction with the affidavit of Mark Caiger sworn May 28, 2018 (the “**Owned Real Estate Process Affidavit**”), which describes in more detail the sales and marketing efforts undertaken by Sears Canada and BMO Capital Markets (the “**Sale Advisor**”) pursuant to and in connection with the Applicants’ court-approved sale

process (the “**SISP**”), which efforts resulted ultimately in the APS which is the subject of this motion.

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

6. The Applicants and the Sale Advisor believe that this transaction is in the best interests of the Applicants and their stakeholders, and that the consideration to be paid in respect of the transaction is fair and reasonable. Moreover, the Applicants and the Sale Advisor believe that the process leading to the transaction, as described in the Owned Real Estate Process Affidavit and herein, was reasonable in the circumstances.

7. It is my understanding that the Monitor approves the process that has been followed by Sears Canada and the Sale Advisor and supports the Applicants’ motion seeking approval of the APS.

Background to the Purchaser's Bid

8. On July 13, 2017, the Court granted the Applicants' request for an order approving the SISP that would be conducted by the Sale Advisor under the supervision of the Monitor and the Special Committee of the Board of Directors of Sears Canada.

9. Although expressions of interest were received for the Property, including a bid from the Purchaser, and for other owned properties of Sears Canada as part of the SISP, Sears Canada determined, in consultation with the Sale Advisor and the Monitor, as well as representatives of various creditor groups and their advisors, that better opportunities to monetize the Property and other owned properties would be available only after additional due diligence materials, including environmental studies, were available to potential purchasers.

10. To that end, a Phase II Environmental Site Assessment report for the Property was completed and uploaded to the electronic data room for this transaction.

11. As set out in the Owned Real Estate Process Affidavit, in or around February 2018, the Applicants resumed the sale process in relation to the Applicants' owned real estate in order to seek out proposals for the acquisition of the Applicants' owned real estate, and to implement one or a combination of such proposals with the objective of maximizing value for the benefit of the Applicants' stakeholders.

12. The Owned Real Estate Process Affidavit provides details regarding the steps that were taken to market and solicit interest in Sears Canada's owned real estate, including the Subject Assets which are subject to the APS.

13. On March 7, 2018, the Purchaser submitted a revised bid in respect of the Subject Assets in which the Purchaser offered to purchase the Subject Assets, including the Property, on the terms and conditions set out in its proposed form of asset purchase and sale agreement, which agreement was based on the form of agreement provided to the Purchaser pursuant to the SISP.

14. Negotiations ensued with the Purchaser in respect of the financial and legal aspects of the offer, draft documents were exchanged by the parties, and follow up discussions were held as necessary. As a result of those negotiations, and after considering the Purchaser's offer, the ongoing monthly occupancy costs of the Property of approximately \$140,000, and alternatives available, the Sale Advisor recommended to the Board of Directors of Sears Canada that Sears Canada enter into a transaction with the Purchaser for the Subject Assets. After carefully considering the Purchaser's offer, including being satisfied that the Purchase Price being offered is fair and reasonable, the Board of Directors determined that the Purchaser's offer was in the best interests of the Applicants and their stakeholders and authorized Sears Canada to enter into the proposed transaction subject to Court approval.

The APS

15. Sears Canada and the Purchaser entered into the APS dated with effect as of July 25, 2018. The APS provides for, among other things, the following:

- (a) Subject to the terms of the APS, the Initial Order and the applicable terms of the SISP Order, Sears Canada agrees to sell, assign and transfer to the Purchaser, and the Purchaser agrees to purchase and assume from Sears Canada the Subject Assets, free and clear of all Encumbrances other than the Permitted Encumbrances, on the Closing Date in accordance with the terms and conditions set out in the APS.
- (b) The Offer is conditional on Sears Canada's acceptance of an offer submitted by Lansdowne Mall Inc. to Sears Canada for the purchase of the property municipally located at 637 Lansdowne Street West, Peterborough, Ontario (the "**Peterborough Property**"). The Peterborough Property is subject to a separate motion brought by the Applicants.
- (c) The Purchaser will pay the Purchase Price, plus all applicable taxes. The Purchaser has paid the Deposit, which is thirteen percent of the Purchase Price, by wire transfer of immediately available funds to the Monitor, in trust. If the Transaction is not completed solely by reason of a default of the Purchaser, the full amount of the Deposit shall be paid to Sears Canada as liquidated damages, without limitation to any other right or remedy Sears Canada may have against the Purchaser. If the Transaction is not completed by reason other than by a default of the Purchaser, the full amount of the Deposit and all accrued interest earned thereof shall be paid to the Purchaser.
- (d) The Purchaser will pay the balance of the Purchase Price by wire transfer of immediately available funds to the Monitor payable on the Closing Date. The

Purchase Price is subject to certain closing adjustments as set out in the APS, including realty taxes, which adjustments will be final and not subject to readjustment. This allows for final settlement of all of Sears Canada's obligations relating to the Subject Assets, giving certainty of result.

- (e) The APS and the Transaction contemplated therein are subject to the Court issuing the Approval and Vesting Order and the Monitor delivering the Monitor's Certificate.
- (f) Closing will take place on the Business Day that is five (5) Business Days following the issuance of the Approval and Vesting Order or such later date as Sears Canada (with the consent of the Monitor) may advise the Purchaser in writing provided that the Closing Date shall be no later than September 21, 2018, or as otherwise ordered by the Court or as otherwise extended in accordance with the provisions of the APS.
- (g) Subject to the terms of the APS and the Approval and Vesting Order, the Purchaser is purchasing the Subject Assets on an "as is, where is" basis. On Closing, the Subject Assets shall be subject to the Permitted Encumbrances.
- (h) There are no financing conditions to the APS.
- (i) During the Interim Period between the Execution Date and the Closing Date, Sears Canada shall not be obligated to (i) remove any Inventory, FF&E or Excluded Assets and Sears Canada shall have no liability for any removal or

destruction costs relating thereto, or (ii) repair, renovate or alter, improve or upgrade the Property in any manner. Any Inventory, FF&E or Excluded Assets left on the Property on the Closing Date shall become the property of the Purchaser without representation or warranty by Sears Canada.

16. In addition, the proposed Approval and Vesting Order provides that the Purchaser shall be bound by and benefit from the Initial Order until the earlier of (a) six months from the date of the proposed Approval and Vesting Order, and (b) the duration of the period during which any other owners, operators, managers or landlords of commercial shopping centres or other commercial properties in which there is a store, office or warehouse owned or operated by Sears Canada, is bound by or obtains any benefit from same. During such period, the Purchaser shall benefit from the stay of proceedings provision provided for at paragraph 15 of the Initial Order.

The Operating Agreement and ROFR

17. As set out in the Owned Real Estate Process Affidavit, certain of Sears Canada's operating agreements provide a right of first refusal, option to purchase or similar right to the counterparty to such property agreement.

18. Sears Canada and the Purchaser are parties to an operating agreement dated August 3, 1973 between Regional Shopping Centres Limited, Simpson-Sears Limited and Simpsons, Limited, as amended and assigned (the "**Operating Agreement**"), with respect to the Property and the adjoining shopping centre property owned by the Purchaser known as Devonshire Mall. The Operating Agreement contains a right of first refusal ("**ROFR**") with

respect to the Property in favour of the Purchaser (as assignee of Regional Shopping Centres Limited).

19. Sears Canada is also party to an option agreement (the “**Option Agreement**”) dated as of January 21, 1994 between Sears Canada, Regional Shopping Centres Limited and OMERS Realty Corporation, whereby the counterparty to the Option Agreement retains an option to purchase the Property (the “**Option**”).

20. Pursuant to section 2.1(e) of the APS, the Purchaser reserves all rights and remedies under the Operating Agreement and the ROFR. Notwithstanding the foregoing, the Purchaser acknowledges and agrees that Sears Canada is not obligated to comply with the terms of the ROFR and the Purchaser shall not give notice of its exercise of the option to purchase contained in the Option.

21. In any case, the Purchaser’s ROFR and Option rights expired on July 24, 2018, prior to the execution of the APS.

22. Under the APS, the Purchaser shall execute and deliver in form and substance reasonably satisfactory to the Purchaser and Sears Canada:

- (a) an assumption agreement in favour of Sears Canada in accordance with the terms of the Operating Agreement and in form and substance acceptable to Sears Canada, acting reasonably, including the Purchaser’s assumption of any amounts owing under the Operating Agreement; and

- (b) a release of Sears Canada from the Purchaser from all of Sears Canada's obligations under the Operating Agreement, in form and substance acceptable to Sears Canada, acting reasonably.

Distribution of Proceeds

23. The property is subject to registered construction liens in favor of Kone Inc. in the aggregate amount of \$11,756.07 (the "**Kone Lien**").

24. Under the terms of the Approval and Vesting Order, all construction liens registered against the Subject Assets, including the Kone Lien, are to be vacated as if an order had been made on motion by Sears Canada to vacate them by the posting of security for claim and costs pursuant to section 44(1) of the *Construction Lien Act*, and the remaining Claims and Encumbrances (which excludes Permitted Encumbrances) affecting or relating to the Subject Assets are to be expunged or discharged as against the Subject Assets.

25. For the purposes of determining the nature and priority of Claims, the net proceeds received on the Closing of the Transaction shall stand in place and stead of the Subject Assets, and from and after the delivery of the Monitor's Certificate all Claims and Encumbrances (which excludes Permitted Encumbrances) shall attach to the net proceeds from the Transaction (the "**Net Proceeds**") with the same priority as they had with respect to the Subject Assets immediately prior to the Closing of the Transaction, as if the Transaction had not been completed.

26. The Monitor shall be entitled to retain the Net Proceeds on behalf of the Applicants to be dealt with by further Order of the Court.

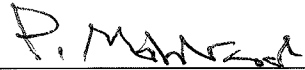
27. For all of the foregoing reasons, the Applicants believe that approval of the APS is in the best interests of the Applicants and their stakeholders.

AFFIRMED BEFORE ME at the City of
Toronto, in the Province of Ontario, on
August 8, 2018.



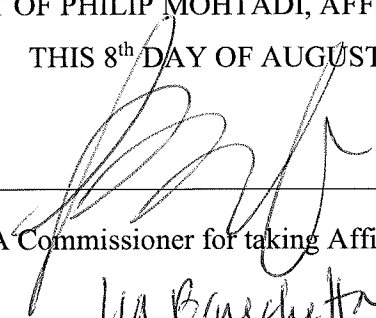
Commissioner for Taking Affidavits

Lisa Benecheta



Philip Mohtadi

THIS IS **EXHIBIT "A"** REFERRED TO IN THE
AFFIDAVIT OF PHILIP MOHTADI, AFFIRMED BEFORE ME
THIS 8th DAY OF AUGUST, 2018.



A Commissioner for taking Affidavits, etc.

Lia Buechler

AGREEMENT OF PURCHASE AND SALE

SEARS CANADA INC.
as the Vendor

- and -

HOOPP REALTY INC.
as the Purchaser

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SCHEDULE "H" PERMITTED ENCUMBRANCES..... 1

THIS AGREEMENT OF PURCHASE AND SALE dated with effect as of July 25, 2018

BETWEEN:

SEARS CANADA INC. (the “**Vendor**”)

OF THE FIRST PART,

- and -

HOOPP REALTY INC. (the “**Purchaser**”)

OF THE SECOND PART,

RECITALS:

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

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth in this Agreement and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the Vendor and the Purchaser (individually, a “**Party**” and collectively, the “**Parties**”) covenant and agree as follows:

ARTICLE 1 DEFINITIONS

1.1 Definitions

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

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

“**Approval and Vesting Order**” means an order issued by the Court approving this Agreement and the transactions contemplated by this Agreement, and conveying to the Purchaser all of the Vendor’s right, title and interest in and to the Subject Assets free and clear of all Encumbrances other than the Permitted Encumbrances, which order shall be substantially in the form of Schedule “D” (with only such changes as may be required by the Land Registrar in order to register an Application for Vesting Order on title to the Property in the manner prescribed by the *Land Titles Act* (Ontario), and such other changes as the Parties shall approve in their reasonable discretion, but in all cases in form and substance acceptable to the Monitor).

“**Assignment and Assumption of Warranties, Permits and Permitted Encumbrances**” means an assignment by the Vendor and an assumption by the Purchaser, as of and from the Closing Date, of the Vendor’s right, title and interest and all liability, covenants and obligations in, to and under the Warranties and Permits (other than Excluded Permits), as well as of any real rights created pursuant to Permitted Encumbrances (but excluding, for greater certainty, personal obligations thereunder). The agreement evidencing same shall be in substantially the form attached as Schedule “F”.

“**Assignment and Assumption of Realty Tax Appeals**” means an assignment by the Vendor and an assumption by the Purchaser of the Vendor’s right, title and interest and all liability, covenants and obligations, in respect of the Realty Tax Appeals to be delivered on Closing. The agreement evidencing same shall be in substantially the form attached as Schedule “G”.

“**Assumed Contracts**” means the Contracts listed on Schedule “I”.

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

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

“**Books and Records**” means the following information of the Vendor relating to the Subject Assets in the possession of the Vendor and either (i) available on the Data Site, (ii) located at the Property, or (iii) located at the head office of the Vendor: realty tax records, equipment logs, operating guides and manuals, Plans, reports (including without limitation, environmental reports, building condition reports and asbestos management plan), documents related to Permitted Encumbrances and Off-Title Compliance Matters, in all cases, excluding any of such information that the Vendor is not entitled to disclose without the consent of a third party where such consent has not been obtained, provided that, for greater certainty, the Vendor is not obligated to obtain any such consent.

“**Buildings**” means, individually or collectively, as the context requires, all of the buildings and structures, improvements, appurtenances and fixtures, located on, in or under the Lands, but, for greater certainty, excluding the Excluded Assets.

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

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

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

“**Claims**” means any and all claims, demands, complaints, grievances, actions, applications, suits, causes of action, Orders, charges, indictments, prosecutions, informations or other similar processes, assessments or reassessments, equitable interests, options, preferential arrangements of any kind or nature, assignments, restrictions, financing statements, deposit arrangements, rights of others, leases, sub-leases, licences, rights of first refusal or similar restrictions, judgments, debts, liabilities, expenses, costs, damages or losses, contingent or otherwise, including loss of value, reasonable professional fees, including fees and disbursements of legal counsel on a full indemnity basis, and all actual and documented costs incurred in investigating or pursuing any of the foregoing or any proceeding relating to any of the foregoing.

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

“**Closing Date**” means the Business Day that is five (5) Business Days following the issuance of the Approval and Vesting Order or such later date as the Vendor (with the consent of the Monitor) may advise the Purchaser in writing provided that the Closing Date shall be no later than the Outside Date, or as otherwise ordered by the Court or as otherwise extended in accordance with the provisions of this Agreement.

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

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

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

“**Data Site**” means the electronic data site with respect to information and material regarding the Subject Assets.

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

“**Disclosed to the Purchaser**” means any information which no later than the date which is one (1) Business Day immediately before the date on which the Purchaser executes this Agreement, is either: (a) delivered or made available to the Purchaser on the Data Site; (b) a Permitted Encumbrance that is registered (and/or notice of which is registered) against title to the Property; or (c) delivered to the Purchaser or the Purchaser’s solicitors.

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

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

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

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

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

“Excluded Permits” means any Permits that, at law, are not capable of assignment or are assignable with the consent of the counterparty.

“Execution Date” means the date of this Agreement as set out on the top of page 1 hereof, being the date on which both the Vendor and the Purchaser execute this Agreement.

“FF&E” means all tools, signs, furniture, machinery, equipment, personal or moveable property, chattels, furnishings and fixtures including shelves, counters, video cameras and equipment, security systems, point-of-sales systems and related appurtenances, telecommunications systems and related appurtenances, electric light fixtures, elevating devices and equipment, in each case to the extent owned, leased or licensed by the Vendor, if any.

“Filing Date” means June 22, 2017.

“Financial Advisor” means BMO Nesbitt Burns Inc.

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

“HST Certificate, Undertaking and Indemnity” mean the Purchaser’s certificate to be in substantially the form set out in Schedule “E”.

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

“**Holder**” has the meaning ascribed thereto in Section 5.3.

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

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

“**Inventory**” includes all inventory, stock, supplies and all other items owned by the Vendor and located at the Property.

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

“**Lands**” means the lands and premises legally described in Schedule “A”.

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

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

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

“**NDA**” means the confidentiality, non-disclosure and non-use agreement between the Vendor and the Purchaser dated August 31, 2017, as amended or supplemented in writing from time to time.

“**Notice**” has the meaning ascribed thereto in Section 8.15.

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

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

“**Operating Agreement**” has the meaning ascribed thereto in Section 2.1(e).

“**Option**” means the Devonshire Mall option to purchase dated as of January 21, 1994 between the Vendor, Regional Shopping Centres Limited and OMERS Realty Corporation, notice of which is registered on title to the Property as Instrument No. LT167608 on January 2, 1994

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

“**Outside Date**” means September 21, 2018.

“**PE Assumption Agreements**” has the meaning ascribed thereto in Section 5.3.

“**Permits**” means a permit, license, certification, Authorization, right or privilege granted, delivered, issued or otherwise conferred by a Governmental Authority.

“**Permitted Encumbrances**” means, collectively: (a) any Encumbrances resulting from the Purchaser’s actions or omissions; and (b) the items identified in Schedule “H” hereto.

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

“**Plans**” means all documentation in the Vendor’s possession and located on the Property on the Closing Date or located on the Execution Date in the electronic data room and monitored by the Financial Advisor relevant to the construction of the Buildings including, working drawings, detail drawings, shop drawings, approved municipal plans, structural, mechanical, electrical and engineering plans, site plans, other documentation prepared to illustrate or define a particular aspect of the Buildings, consultants' contracts, construction contracts, and plans submitted with all building permits issued for the Property.

“**Property**” means, collectively, the Lands and the Buildings.

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

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

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

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

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

“**ROFR**” has the meaning ascribed thereto in Section 2.1(e).

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

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

“**SISP Order Date**” means July 13, 2017.

“**Subject Assets**” means all of the right, title and interest of the Vendor, if any, in and to: (a) the Property; (b) the Realty Tax Appeals; (c) the Warranties; (d) the Permits (other than the Excluded Permits) (e) the Books and Records and (f) all Inventory, FF&E and Excluded Assets left on the Property on the Closing Date, but excludes, the Vendor’s right, title and interest in and to each of the other Excluded Assets and any and all other assets of the Vendor relating to the Property not included in the foregoing.

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

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

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

“**Warranties**” means any existing warranties and guarantees in favour of the Vendor in connection with the construction, condition or operation of the Buildings or any component thereof or any improvements made to the Buildings or any component thereof (other than the Excluded Assets) which are assignable without the consent of the counterparty thereto.

ARTICLE 2 SALE TRANSACTION

2.1 Offer and Acceptance

- (a) Subject to the terms of this Agreement, the Initial Order and the applicable terms of the SISP Order, the Vendor hereby agrees to sell, assign and transfer to the Purchaser, and the Purchaser hereby agrees to purchase and assume from the Vendor, the Subject Assets on the Closing Date in accordance with the terms and conditions of this Agreement.
- (b) Subject to the Purchaser’s condition set forth in Section 2.1(d), the Offer shall be irrevocable by the Purchaser until 5:00 p.m. (Toronto time) on July 31, 2018 (the “**Irrevocable Period**”), provided that if this Offer is accepted by the Vendor prior to the expiry of the Irrevocable Period, this Offer will remain irrevocable by the Purchaser (subject to Section 2.1(d)) and the Vendor until the closing of the Transaction. If this Offer is not accepted by the Vendor prior to the expiry of the Irrevocable Period, then this Offer shall terminate on July 31, 2018 at 5:01 p.m.,

unless extended by the Purchaser in writing, and the entire Deposit shall be returned to the Purchaser with interest. Notwithstanding the foregoing, this Offer shall be conditional for the Purchaser in accordance with Section 2.1(d) below.

- (c) Upon acceptance of this Offer by the Vendor, this Offer shall constitute a binding agreement to acquire the Subject Assets, on the terms of this Agreement.
- (d) Notwithstanding anything to the contrary in this Offer, this Offer is conditional on the Vendor's acceptance of the offer dated July 25, 2018 submitted by Lansdowne Mall Inc. to the Vendor for the purchase of the property municipally known as 637 Lansdowne Street West, Peterborough, Ontario (the "**Peterborough Offer**"). In the event that the Vendor accepts this Offer prior to the Irrevocable Date but does not accept the Peterborough Offer prior to the Irrevocable Date, then, unless the Purchaser delivers written notice to the Vendor that this condition has been waived, this Offer shall automatically terminate on July 31, 2018 at 5:01 p.m., unless extended by the Purchaser in writing and delivered to the Vendor prior to the expiry of the Irrevocable Period, and the entire Deposit shall be returned to the Purchaser with interest. The foregoing condition is inserted for the sole benefit of the Purchaser and may be waived by the Purchaser in writing prior to the expiry of the Irrevocable Period.
- (e) The Vendor and the Purchaser are parties to an operating agreement dated August 3, 1973 between Regional Shopping Centres Limited, Simpson-Sears Limited and Simpsons, Limited, as amended, supplemented, confirmed, assigned and otherwise modified, with respect to the Property and the adjoining shopping centre property owned by the Purchaser known as Devonshire Mall (such operating agreement as amended is hereinafter collectively referred to as the "**Operating Agreement**"), which Operating Agreement contains a right of first refusal with respect to the Property in favour of the Purchaser (the "**ROFR**"). This Offer is submitted by the Purchaser without prejudice to all of the Purchaser's rights under the ROFR. The Purchaser hereby reserves all rights and remedies under the Operating Agreement and the ROFR. Notwithstanding the foregoing, the Purchaser acknowledges and agrees that if the Offer is accepted by the Vendor, the Vendor shall not be obligated to comply with the terms of the ROFR and the Purchaser shall not give notice of its exercise of the option to purchase contained in the Option.

2.2 As Is, Where Is

Notwithstanding the foregoing or anything else contained herein or elsewhere, but expressly subject to the express representations and warranties of the Vendor set out in Section 6.1, the Purchaser acknowledges and agrees in favour of the Vendor that as of the Execution Date and the Closing Date:

- (a) the Purchaser is purchasing the Subject Assets (including the state of title thereto and/or the state of any Encumbrances and Permitted Encumbrances) and accepting and assuming the Subject Assets on an "as is, where is" basis, without any written or oral statements, representations, warranties, promises or guaranties of any nature or kind whatsoever, either legal or conventional, express or implied (by operation of law or otherwise), as to the condition of any of the Subject Assets, the Permitted

Encumbrances, the rentable area of the Buildings, the existence of any default on the part of the Vendor (excluding any default by the Vendor pursuant to this Agreement or any Closing Document), the physical, environmental or other condition of, in, on, under or in the vicinity of the Property, the use permitted at the Property, the existence of any Encumbrance and/or Off-Title Compliance Matters affecting the Subject Assets, or any other aspects of any of the Subject Assets and the Permitted Encumbrances, the structural integrity or any other aspect of the physical condition of any Subject Assets, the conformity of any Building to any Plans or specifications (including, but not limited to, any Plans and specifications that may have been or which may be provided to the Purchaser), compliance with Environmental Laws, the conformity of the Property to past, current or future applicable zoning or building code requirements or other applicable Laws, the existence of soil instability, past soil repairs, soil additions or conditions of soil fill or any other matter affecting the stability or integrity of the Lands, or any Building situated on or as part of the Property, the sufficiency of any drainage, whether the Property is located wholly or partially in a flood plain or a flood hazard boundary or similar area, the existence or non-existence of underground and/or above ground storage tanks, the availability of public utilities, access, parking and/or services for the Property, the fitness or suitability of the Property for occupancy or any intended use (including matters relating to health and safety), the potential for further development of the Property, the existence of land use, zoning or building entitlements affecting the Property, the presence, release or use of wastes of any nature, Hazardous Substances, pollutants, contaminants or other regulated substances in, under, on or about the Property or any neighbouring lands; and without limiting the foregoing, any and all conditions or warranties expressed or implied pursuant to the *Sale of Goods Act* (Ontario) or similar legislation in other jurisdictions will not apply and are hereby waived by the Purchaser;

- (b) on Closing, the Subject Assets shall be subject to the Permitted Encumbrances;
- (c) any disclosure in respect of any of the Subject Assets was made available to the Purchaser solely as a courtesy but the Purchaser is not entitled to rely on such disclosure, and it is expressly acknowledged by the Purchaser that no written or oral statement, representation, warranty, promise or guarantee of any nature or kind whatsoever, either legal or conventional, express or implied (by operation of law or otherwise), is made by the Vendor and/or the Monitor and/or their respective legal counsel, the Financial Advisor or other advisors or representatives as to the accuracy, currency or completeness of any such disclosure, and each of them expressly disclaims any and all liabilities with respect to such disclosure and any and all errors therein or omissions therefrom;
- (d) the Purchaser hereby unconditionally and irrevocably waives any and all actual or potential rights or Claims the Purchaser might have against the Vendor pursuant to any warranty, legal or conventional, express or implied, of any kind or type relating to the Subject Assets or any other assets or any other aspect of the Transaction, but expressly excluding any Claims attributable to a default by the Vendor pursuant to this Agreement, the Vendor's representations and warranties contained in this Agreement or any Closing Document. Such waiver is absolute, unlimited and

includes, but is not limited to, waiver of express warranties, implied warranties, any warranties at law and/or in equity, warranties of fitness for a particular use, warranties of merchantability, warranties of occupancy, strict liability and Claims of every kind and type, including, but not limited to, Claims regarding defects, whether or not discoverable, product liability Claims, or similar Claims, and to all other extent or later created or conceived of strict liability or strict liability type Claims and rights;

- (e) the Purchaser conducted its own independent review, inspection, diligence and investigations and forming its own independent opinions and conclusions in respect of the Subject Assets. The Purchaser's decision to make this Offer and enter into this Agreement was made of its own accord without reference to or reliance upon any disclosure in respect of any of the Subject Assets. The Purchaser acknowledges having been given a reasonable and adequate opportunity to conduct its own independent diligence prior to entering in this Agreement;
- (f) the Vendor shall not be responsible for making any repairs, replacements, renovations, alterations, improvements or upgrades or undertaking any remediation to address a Release in or to the Property or any part thereof, and it shall be the sole responsibility of the Purchaser to make, at the Purchaser's sole cost, any repairs, replacements, renovations, alterations, improvements and upgrades in or to the Property following Closing as may be required by the Purchaser to make the Property suitable for its purposes and to undertake any required, necessary, or desired remediation to address a Release at, on, under or migrating from the Property or any part thereof;
- (g) the Subject Assets may be subject to certain Off-Title Compliance Matters, municipal requirements, including building or zoning by-laws and regulations, easements or servitudes for hydro, gas, telephone affecting the Subject Assets, and like services to the Property, and restrictions and covenants which run with the land, including but not limited to the Permitted Encumbrances. Without limiting the foregoing, the Vendor shall not be responsible for rectification of any matters disclosed by any Governmental Authority or quasi-governmental authority having jurisdiction and the Purchaser shall accept the Subject Assets subject to such matters;
- (h) the Purchaser shall accept as of and from Closing full responsibility for all conditions related to the Property;
- (i) if any incorrect statement, error or omission shall be found in the particulars of the legal and/or the Subject Assets' description, the same shall not annul the sale or entitle the Purchaser to be relieved of any obligation hereunder, nor shall any compensation be allowed to the Purchaser in respect thereof, but the Vendor shall take such action required, if any, under Section 8.5.

The Vendor has no and shall have no obligations or responsibility to the Purchaser after Closing with respect to any matter relating to the Subject Assets or the condition thereof save and only to the extent expressly provided in this Agreement. This Section 2.2 shall

survive and not merge on Closing and all Closing Documents shall incorporate this Section 2.2 by reference.

ARTICLE 3 PURCHASE PRICE

3.1 Purchase Price

The Purchase Price for the Subject Assets shall be [REDACTED] (the “**Purchase Price**”) exclusive of all Taxes. Subject only to adjustment in accordance with this Agreement, the Purchase Price shall be paid to the Vendor as follows:

- (a) as to the sum of [REDACTED] (the “**Deposit**”), by wire transfer of immediately available funds payable to or to the order of the Monitor, in trust, to be held in trust as a deposit and invested in accordance with the provisions of Section 3.2 below pending the completion or other termination of this Agreement. The Vendor acknowledges and confirms that the Deposit has been received by the Monitor; and
- (b) as to the balance of the Purchase Price (the “**Balance**”), subject only to the adjustments made in accordance with this Agreement, by wire transfer of immediately available funds payable to the Monitor or as it may direct on the Closing Date.

3.2 Deposit

- (a) Following receipt, the Deposit shall be invested by the Monitor, in trust, in an interest bearing account or term deposit or guaranteed investment certificate pending completion of the Transaction or earlier termination or non-completion of this Agreement. In holding and dealing with the Deposit and any interest earned thereon pursuant to this Agreement, the Monitor is not bound in any way by any agreement other than this Section 3.2, and the Monitor shall not and shall not be considered to assume any duty, liability or responsibility other than to hold the Deposit, and any interest earned thereon, in accordance with the provisions of this Section 3.2, and to pay the Deposit, and any interest earned thereon, to the Person becoming entitled thereto in accordance with the terms of this Agreement, except in the event of a dispute between the Parties as to entitlement to the Deposit. In the case of such dispute, the Monitor may, in its sole, subjective and unreviewable discretion, or shall, if requested by any of the Parties, pay the Deposit and any and all interest earned thereon into Court, whereupon the Monitor shall have no further obligations relating to the Deposit or any interest earned thereon. The Monitor shall not, under any circumstances, be required to verify or determine the validity of any notice or other document whatsoever delivered to the Monitor and the Monitor is hereby relieved of any liability or responsibility for any Claims which may arise as a result of the acceptance by the Monitor of any such notice or other document.
- (b) If the Transaction is completed, the Deposit shall be paid to the Vendor forthwith upon completion of the Closing and applied to the Purchase Price. Interest on the Deposit shall accrue to the benefit of the Purchaser from the date of deposit with

the Monitor until the Closing or other termination or non-completion of this Agreement. If the Transaction is successfully, completed, all interest earned on the Deposit until Closing shall be paid to the Purchaser following Closing or applied to the Purchase Price.

- (c) If the Transaction is not completed and Closing does not occur solely by a breach by the Purchaser of its representations or warranties or other default by the Purchaser under this Agreement, the full amount of the Deposit together with all accrued interest earned thereon shall be paid to the Vendor as liquidated damages (and not as a penalty) to compensate the Vendor for the expenses incurred and the delay caused and opportunities foregone as a result of the failure of the Transaction to close. The entitlement of the Vendor to receive and retain the Deposit together with all accrued interest earned thereon, if any, in such circumstances shall not limit the Vendor's right to exercise any other rights or remedies which the Vendor may have against the Purchaser in respect of such breach or default.
- (d) If the Transaction is not completed by any reason (including if as a result of a breach by the Vendor of its representations or warranties or other default by the Vendor under this Agreement) other than by a breach by the Purchaser of its representations or warranties or other default by the Purchaser under this Agreement, the full amount of the Deposit together with all accrued interest earned thereon shall be paid to the Purchaser, as full and final settlement and the Purchaser shall have no further recourse against the Vendor.
- (e) In holding and dealing with the Deposit and any interest earned thereon pursuant to this Agreement, the Monitor shall release the Deposit and any interest earned thereon to the Persons becoming entitled thereto in accordance with the provisions of (i) Section 7.7(c); or (ii) this Section 3.2 as evidenced by a joint direction in writing executed by the Vendor and the Purchaser (the "**Joint Direction**") except in the event of a dispute between the Parties as to entitlement to the Deposit and any interest earned thereon in which event the Monitor may, in its sole, unfettered and unreviewable discretion, pay the Deposit and any interest earned thereon into Court, whereupon the Monitor shall have no further obligations relating to the Deposit and any interest earned thereon or otherwise hereunder.
- (f) The Monitor shall not, under any circumstances, be required to verify or determine the validity of the Joint Direction or any written confirmation received pursuant to Section 7.8(b) and the Monitor is hereby relieved of any liability or responsibility for any loss or damage which may arise as the result of the acceptance by the Monitor of the Joint Direction.
- (g) Notwithstanding the foregoing or anything else contained herein or elsewhere, each of the Vendor and the Purchaser acknowledges and agrees that: (i) the Monitor's obligations hereunder are and shall remain limited to those specifically set out in this Section 3.2; and (ii) FTI Consulting Canada Inc. is acting solely in its capacity as the Court-appointed Monitor of the Vendor in the CCAA Proceedings and not in its personal or corporate capacity, and the Monitor has no liability in connection with this Agreement whatsoever, in its personal or corporate capacity or otherwise.

- (h) The Parties acknowledge that the Monitor may rely upon the provisions of this Section 3.2 notwithstanding that the Monitor is not a party to this Agreement. The provisions of this Section 3.2 shall survive the termination or non-completion of the Transaction.

3.3 Purchase Price Allocation

- (a) The allocation of the Purchase Price as between the Subject Assets is as set out on Schedule “C”. The Vendor and the Purchaser shall adopt such allocations for the purposes of all tax returns, elections and filings respectively made by them or on their behalf.

3.4 Trade-Marks

Notwithstanding the foregoing or anything else contained herein or elsewhere, the Purchaser acknowledges and agrees that: (a) no signs, trade-marks, trade-names, logos, commercial symbols, business names or other intellectual property rights identifying “Sears” are conveyed or intended to be conveyed to the Purchaser as part of the Subject Assets; and (b) all right, title and interest of the Vendor in and to all of its existing signs, trade-marks, trade-names, logos, commercial symbols, business names or other intellectual property rights identifying “Sears” or containing the words “Sears” are hereby specifically reserved and excluded from the Subject Assets. Notwithstanding the foregoing or anything to the contrary, the Vendor shall not be obligated to remove any interior or exterior signs located at the Property, including those identifying “Sears” and the Vendor shall have no liability for any removal or destruction costs relating thereto and any such signs left on the Property on the Closing Date shall become the property of the Purchaser without a bill of sale, representation, warranty or other title documentation. This Section shall survive and not merge on Closing.

ARTICLE 4 ADJUSTMENTS

4.1 Statement of Adjustments and Absence of Post-Closing Adjustments

The Vendor shall prepare a statement of adjustments and deliver same with supporting documentation to the Purchaser no later than five (5) Business Days prior to the Closing Date. If the amount of any adjustments required to be made pursuant to this Agreement cannot be reasonably determined as of the Closing Date, an estimate shall be made by the Vendor as of the Closing Date based upon the best information available to the Parties at such time, each Party acting reasonably and such estimate shall serve as a final determination. The final form of statement of adjustments shall be satisfactory to the Monitor, acting reasonably. There shall be no further adjustments or readjustments after Closing of any amounts adjusted or intended to be adjusted on the statement of adjustments pursuant to this Agreement and the amounts set out on the statement of adjustments shall be final.

4.2 General Adjustments

- (a) The adjustments shall include realty taxes, local improvement rates and charges and, except as set out in this Agreement, other adjustments established by usual practice in the municipality in which the Property is located for the purchase and

sale of similar properties. In addition, the adjustments shall include the other matters referred to in this Agreement which are stated to be the subject of adjustment and shall exclude the other matters in this Agreement which are stated not to be the subject of adjustment.

- (b) From and after the Closing Date, the Purchaser shall be responsible for all expenses and shall be entitled to all revenue from the Subject Assets. The Vendor shall be responsible for all expenses and entitled to all revenue from the Subject Assets for that period prior to the Closing Date.
- (c) The Purchaser shall be responsible for and pay all applicable Taxes payable in connection with the transfer of any of the Subject Assets by the Vendor to the Purchaser.
- (d) On or before Closing, the Vendor shall pay the outstanding 2017 and 2018 realty taxes relating to the period prior to the Closing Date for the Subject Assets.

4.3 Realty Tax Appeals

- (a) The Vendor and the Purchaser acknowledge that with respect to the Property the Vendor may have instituted certain appeals and/or claims in respect of realty taxes or assessments for certain periods prior to the Closing Date and possibly including the tax year, or assessment roll relating to the period in which, the Closing Date occurs (all such appeals and any associated reassessments are hereinafter collectively referred to as the “**Realty Tax Appeals**”).
- (b) On Closing, in consideration of the Purchaser’s payment of the Purchase Price, the Vendor shall assign to the Purchaser all of its right, title and interest, if any, in and to any expected credits, refunds and/or rebates which may arise from any of the Realty Tax Appeals (collectively, the “**Realty Tax Refunds**”) for any period that is prior to the Closing Date.
- (c) From and after the Closing Date, the Purchaser may, at its sole cost and expense but without any obligation to do so, assume or retain the carriage of the Realty Tax Appeals and continue as the appellant in the Realty Tax Appeals. At the request of the Purchaser and at the Purchaser’s sole cost and expense, the Vendor agrees to co-operate with the Purchaser with respect to the Realty Tax Appeals and to provide the Purchaser with access to any reasonably necessary documents or materials required to continue any Realty Tax Appeals. If the Realty Tax Appeals may only be prosecuted in the name of the Vendor, at the request of the Purchaser, the Vendor shall cooperate with the Purchaser, including granting such authorizations as may be reasonably required, to enable the Purchaser to pursue and prosecute such Realty Tax Appeals, at the Purchaser’s sole cost and expense. Notwithstanding the foregoing, the Purchaser’s obligation to assume the costs and expenses of the Vendor shall be limited to reasonable and documented out-of-pocket costs or expenses actually paid by the Vendor to arm’s length third parties and shall not include any internal costs or expenses of the Vendor nor any costs or expenses for time spent by the Vendor’s or its Affiliates’ directors, officers, employees or agents. In addition, nothing herein shall restrict the Vendor from winding down and

terminating all operations even if by so doing the Vendor ceases to be capable of providing the cooperation, authorizations and assistance contemplated by this Section 4.3. This Section 4.3 shall survive and not merge on Closing.

4.4 Utilities

- (a) The Purchaser shall not assume any contracts or agreements entered into by or on behalf of the Vendor for the supply of any utilities (including electricity, gas, water, fuel, telephone service, internet services, security and surveillance services or otherwise) at the Property. On or before the Closing Date, the Vendor shall terminate all of its contracts and agreements for the supply of any utilities to the Property. For the avoidance of doubt, there shall be no adjustment at Closing in respect of the payment of any utilities. The provisions of this Section 4.4(a) shall survive and not merge on Closing.
- (b) From and after the Closing Date, any and all utility charges and other related fees payable for any of the Property, pursuant to any invoice or statement issued on or after the Closing Date and in respect of the period from and after the Closing Date, shall be the sole responsibility of the Purchaser, and there shall be no adjustments between the Vendor and the Purchaser of any utility charges or related fees paid by the Purchaser pursuant to any such invoice or statement issued on or after the Closing Date and in respect of the period from and after the Closing Date. The Purchaser shall have no obligation, responsibility or liability pursuant to any contracts or arrangements for the supply of utilities entered into by the Vendor, except for any contract or arrangement assumed by the Purchaser.

ARTICLE 5 INTERIM PERIOD

5.1 Interim Period

- (a) The Vendor shall not be obligated to (i) remove any Inventory, FF&E or Excluded Assets and the Vendor shall have no liability for any removal or destruction costs relating thereto, or (ii) repair, renovate, alter, improve or upgrade the Property in any manner. Any Inventory, FF&E or Excluded Assets left on the Property on the Closing Date shall become the property of the Purchaser without a bill of sale, representation, warranty or other title documentation. This Section shall survive and not merge on Closing.
- (b) In the event that prior to the Closing Date all or a part of the Lands is expropriated or notice of expropriation or intent to expropriate all or a part of the Lands is issued by any Governmental Authority, the Vendor shall immediately advise the Purchaser thereof by Notice in writing. Notwithstanding the occurrence of any of the foregoing, the Purchaser shall complete the Transaction contemplated herein in accordance with the terms hereof without reduction of the Purchase Price and all compensation for expropriation shall be payable to the Purchaser and all right, title and interest of the Vendor to such amounts, if any, shall be assigned to the Purchaser on a without recourse basis.

- (c) The Subject Assets shall be and remain until Closing at the risk of the Vendor. In the event of material damage by fire or other hazard or other casualty to the Subject Assets or any part thereof occurring before the Closing Date, the Vendor shall immediately advise the Purchaser thereof by Notice in writing. In the event of material damage to the Property prior to Closing (a) less than or equal to 20% of the Purchase Price, the Transaction shall be completed without regard to such damage and the insurance proceeds actually paid or payable to the Vendor shall be paid and/or assigned to the Purchaser; and (b) in excess of 20% of the Purchase Price, the Purchaser shall have the right to elect to (i) take such insurance proceeds and complete the Transaction without abatement of the Purchase Price, or (ii) terminate this Agreement. This Section 5.1(c) shall survive and not merge on Closing.

5.2 Contracts

The Vendor covenants to terminate effective as of the Closing Date, at its sole cost and expense, all Contracts other than Permitted Encumbrances.

5.3 Permitted Encumbrances

The Purchaser shall provide such financial, business, organizational, managerial and other information and enter into such assumption agreements or deeds of re-hypothecation as the relevant party to a Permitted Encumbrance (the relevant party being a “**Holder**”) shall require to effect the assumption of the Permitted Encumbrances, as applicable, by the Purchaser (collectively, the “**PE Assumption Agreements**”). The Purchaser shall use reasonable efforts to assist the Vendor and shall co-operate with the Vendor, as reasonably requested, to obtain from third parties a full release of the Vendor’s obligations under the Permitted Encumbrances, and shall provide such financial and other information and enter into such assumption agreements as such third parties may reasonably require, in form and substance acceptable to each of the parties thereto acting reasonably and without delay, provided that the Purchaser shall not be required to provide any letter of credit, deposit or other form of security to obtain any release of the Vendor.

ARTICLE 6 REPRESENTATIONS, WARRANTIES & COVENANTS

6.1 Vendor’s Representations and Warranties

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

- (a) the execution, delivery and performance by the Vendor of this Agreement has been duly authorized by all necessary corporate action on the part of the Vendor subject to the Approval and Vesting Order and authorization as is required by the Court;
- (b) the Vendor is not a non-resident of Canada within the meaning of the *Income Tax Act* (Canada);

- (c) the Vendor is a registrant for the purposes of the tax imposed under Part IX of the *Excise Tax Act*;
- (d) the aggregate value of the Subject Assets in Canada, determined as of the time and in the manner prescribed pursuant to the *Competition Act* (Canada) and regulations thereunder, and the gross value from sales in Canada, determined for the annual period and in the manner that is prescribed pursuant to such Act and regulations, does not exceed the amount of \$92,000,000.00; and
- (e) save and except for the ROFR and the Option, the Property is not subject to any rights of first refusal, rights of first opportunity, options to purchase or similar rights in favour of any third parties.

6.2 Purchaser's Representations and Warranties

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

- (a) the Purchaser has been duly formed or incorporated and is validly subsisting under the Laws of the jurisdiction of its formation or incorporation, and has all requisite corporate or other capacity, power and authority to carry on its business as now conducted by it and to own its properties and assets and is qualified to carry on business under the Laws of the jurisdictions where it carries on a material portion of its business;
- (b) the Purchaser is not a non-resident of Canada within the meaning of the *Income Tax Act* (Canada);
- (c) the Purchaser is a registrant for the purposes of the tax imposed under Part IX of the *Excise Tax Act*;
- (d) the execution, delivery and performance by the Purchaser of this Agreement:
 - (i) has been duly authorized by all necessary corporate or other action on the part of the Purchaser;
 - (ii) does not (or would not with the giving of notice, the lapse of time or the happening of any other event or condition) require any consent or approval under, result in a breach or a violation of, or conflict with, any of the terms or provisions of its constating documents or by-laws or any contracts or instruments to which it is a party or pursuant to which any of its assets or property may be affected; and
 - (iii) will not result in the violation of any Laws;
- (e) this Agreement has been duly executed and delivered by the Purchaser and constitutes legal, valid and binding obligations of the Purchaser, enforceable against it in accordance with their respective terms subject only to any limitation under applicable Laws relating to (i) bankruptcy, winding-up, insolvency,

arrangement and other similar Laws of general application affecting the enforcement of creditors' rights, and (ii) the discretion that a court may exercise in the granting of equitable remedies such as specific performance and injunction; and

- (f) the Purchaser has, and will have at Closing, all funds on hand necessary to pay the Purchase Price and any Taxes payable and that are not self-assessed and remitted by the Purchaser.

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

6.3 Purchaser's Covenants

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

6.4 Vendor's Covenants

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

6.5 Tax Matters

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

- (a) the Purchaser is duly registered under Subdivision (d) of Division V of Part IX of the *Excise Tax Act* with respect to the harmonized sales tax and that its registration

number is 132210741 RT001 (HST), which registration shall be in full force and effect and shall not have been cancelled or revoked on the Closing Date;

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

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

6.6 Survival of Covenants,

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

ARTICLE 7 CLOSING

7.1 Conditions of Closing for the Benefit of the Purchaser

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

- (a) the representations and warranties of the Vendor in Section 6.1 shall be true and correct as of the Closing Date with the same force and effect as if such representations and warranties were made on and as of such date;
- (b) the Vendor shall have performed and complied with all of the other terms and conditions in this Agreement on its part to be performed or complied with at or before Closing in all material respects and shall have executed and delivered or caused to have been executed and delivered to the Purchaser at Closing all the Closing Documents contemplated or required to be so executed and delivered in this Agreement; and
- (c) the Purchaser shall have received the Closing Documents.

7.2 Conditions of Closing for the Benefit of the Vendor

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

- (a) the representations and warranties of the Purchaser in Section 6.2 shall be true and correct as of the Closing Date with the same force and effect as if such representations and warranties were made on and as of such date;
- (b) the Purchaser shall have paid the Balance in its entirety to the Monitor in escrow and shall have performed and complied with all of the terms and conditions in this Agreement on its part to be performed or complied with at or before Closing in all material respects and shall have executed and delivered or caused to have been executed and delivered to the Vendor at Closing all the documents contemplated required to be so executed and delivered in this Agreement; and
- (c) the Vendor shall have received the Closing Documents.

7.3 Conditions of Closing for the Mutual Benefit of the Parties

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

- (a) the Approval and Vesting Order, substantially in the form attached hereto as Schedule “D”, shall have been issued and entered by the Court and no Order shall have been issued which restricts or prohibits the completion of the Transaction or amends, modifies, suspends or stays the provisions of or the application of the said Approval and Vesting Order; and
- (b) the Monitor shall have delivered the Monitor’s Certificate.

7.4 Closing Documents

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

- (a) By the Vendor and the Purchaser:
 - (i) the Assignment and Assumption of Realty Tax Appeals;
 - (ii) the Assignment and Assumption of Warranties, Permits and Permitted Encumbrances; and
 - (iii) such other documents as each Party or each Party’s solicitors shall reasonably require in good faith in accordance with this Agreement or as may be required under applicable Laws.
- (b) By the Vendor:
 - (i) the Approval and Vesting Order;
 - (ii) the statement of adjustments evidencing the adjustments made at Closing;
 - (iii) a statutory declaration of an authorized signing officer of the Vendor (which statutory declaration may be sworn by such authorized signing officer without personal liability) declaring that the Vendor is not a non-resident within the meaning of section 116 of the *Income Tax Act* (Canada);
 - (iv) all master keys relating to the Buildings, if any, all security cards and access cards relating to the Buildings, if any, and all combinations and passwords to vaults and combination locks and other security features located in the Buildings, if any, in each case, to the extent in the possession of the Vendor;

- (v) a copy or an original, if available, of each of the Permits and the Warranties and the Books and Records, in each case to the extent in the possession of the Vendor and not located on the Property or in the Data Site; and
 - (vi) such other documents as the Purchaser or the Purchaser's solicitors shall reasonably require in good faith in accordance with this Agreement or as may be required under applicable Laws.
- (c) By the Purchaser:
- (i) the Balance plus all Taxes, if any, thereon;
 - (ii) a written waiver of the ROFR from the Purchaser, or its successor or assign, as counterparty to the Operating Agreement and beneficiary of the ROFR, in form satisfactory to the Vendor, acting reasonably;
 - (iii) a written waiver of the Option from the Purchaser, or its successor or assign, as beneficiary of the Option, in form satisfactory to the Vendor, acting reasonably;
 - (iv) an assumption agreement in favour of the Vendor in accordance with the terms of the Operating Agreement and in form and substance acceptable to the Vendor, acting reasonably, including the Purchaser's assumption of any amounts owing under the Operating Agreement;
 - (v) a release of the Vendor from the Purchaser from all of the Vendor's obligations under the Operating Agreement, in form and substance acceptable to the Vendor, acting reasonably;
 - (vi) HST Certificate, Undertaking and Indemnity;
 - (vii) if applicable, the PE Assumption Agreements along with any deliveries to the Holders that are consistent with Section 5.3 that may be required in respect of the Permitted Encumbrances; and
 - (viii) such other documents as the Vendor or the Vendor's solicitors shall reasonably require in good faith in accordance with this Agreement or as may be required under applicable Laws.

7.5 Closing Date

- (a) The completion of the Transaction contemplated by this Agreement (the "**Closing**") shall take place prior to 6:00 p.m. (Toronto time) on the Closing Date at the Toronto office of Osler, Hoskin and Harcourt LLP, or at such other place as may be agreed upon by the Vendor and the Purchaser in writing.
- (b) Subject to satisfaction or waiver by the relevant Party or Parties, as applicable, of the conditions of closing in its favour contained in this Article 7, at Closing, the Purchaser will pay or satisfy the Purchase Price in accordance with Article 3, and

the Closing of the Transaction will take effect, pursuant to the Approval and Vesting Order, upon delivery of the Monitor's Certificate.

7.6 Confirmation of Satisfaction of Conditions

On the Closing Date, subject to satisfaction or waiver by the relevant Party or Parties, as applicable, of the conditions of Closing in its favour contained in Article 7, the parties or their respective solicitors shall confirm to the Monitor the satisfaction of all conditions to Closing and upon the Monitor receiving such confirmation and the Balance and any Taxes payable to the Vendor and that are not self-assessed and remitted by the Purchaser, the Monitor shall deliver copies of the Monitor's Certificate to the Parties hereto and release from escrow, in accordance with Section 7.7(c), the Deposit and the Balance and any Taxes payable to the Vendor and that are not self-assessed and remitted by the Purchaser and pay such sums to the Vendor and following Closing file the Monitor's Certificate with the Court.

7.7 Closing

- (a) Subject always to Section 3.2 hereof, the Deposit and the Balance and any Taxes payable to the Vendor and that are not self-assessed and remitted by the Purchaser shall be held by the Monitor, in trust in a separate interest bearing account, pending completion of the Transaction or earlier termination of this Agreement. In holding and dealing with the funds paid to the Monitor in trust and any interest earned thereon pursuant to this Agreement, the Monitor is not bound in any way by any agreement other than Section 3.2 and this Section 7.7 and the Monitor shall not assume or be deemed to assume any duty, liability or responsibility other than to hold the trust funds and any interest earned thereon in accordance with the provisions of this Section 7.7 and to pay the funds, and any interest earned thereon, to the Party becoming entitled thereto in accordance with the terms of this Agreement, except in the event of a dispute between the parties as to entitlement to the trust funds, of which the Monitor has been given notice in writing, the Monitor may, in its sole, subjective and unreviewable discretion, or shall, if requested by either of the parties, pay the trust funds and any and all interest earned thereon into court, whereupon the Monitor shall have no further obligations relating to the trust funds or any interest earned thereon or otherwise hereunder.
- (b) The Monitor shall not, under any circumstances, be required to verify or determine the validity of any written notice or other document whatsoever delivered to the Monitor in connection with the trust funds and the Monitor is hereby relieved of any liability or responsibility for any loss or damage which may arise as a result of the acceptance by the Monitor of any such written notice or other document.
- (c) On or before Closing, the parties' respective solicitors shall exchange the Closing Documents in escrow and the Balance and any Taxes payable to the Vendor and that are not self-assessed and remitted by the Purchaser shall be delivered to or paid to the order of the Monitor, in trust, and the Deposit and the Balance and any Taxes payable to the Vendor and that are not self-assessed and remitted by the Purchaser shall remain in escrow with the Monitor until the Monitor has delivered the Monitor's Certificate to the Vendor and the Purchaser, upon the occurrence of which the escrow shall be lifted, the Closing Documents shall take effect as of the

date and time set out in the Monitor's Certificate, the entire amount of the Deposit and the Balance and any Taxes payable to the Vendor and that are not self-assessed and remitted by the Purchaser shall be forthwith released to the Vendor and the Closing shall be deemed to have occurred as of such date and time set out in the Monitor's Certificate and fully signed Closing Documents shall be released to each of the Vendor and Purchaser.

- (d) If, at the time the Purchaser registers the Approval and Vesting Order on title to the Lands, title to the Subject Assets is subject to any Encumbrances registered prior to the registration of the Approval and Vesting Order (other than the Permitted Encumbrances) that are not otherwise expressly set forth in Schedule "B" to the Approval and Vesting Order to be discharged, expunged or vacated, then the Vendor shall, at the Purchaser's sole cost and expense, reasonably cooperate with the Purchaser and shall supply such assistance as may be reasonably requested by the Purchaser, which shall include if necessary the Vendor's consent to an Order of the Court to discharge, expunge or vacate, as the case may be, such Encumbrances from title to the Lands. For greater certainty, registration of the Approval and Vesting Order is not a condition of Closing.
- (e) The parties acknowledge that, notwithstanding that the Monitor is not a party to this Agreement, the Monitor may rely upon the provisions of Section 3.2 hereof and this Section 7.7.
- (f) This Section 7.7 shall survive the Closing or termination of this Agreement.

7.8 Filings and Authorizations

- (a) Each of the Vendor and the Purchaser, as promptly as practicable after the execution of this Agreement, will make, or cause to be made, all such filings and submissions under all Laws applicable to it, as may be required for it to consummate the purchase and sale of the Subject Assets in accordance with the terms of this Agreement (other than the motion seeking approval of the Transaction and the issuance of the Approval and Vesting Order). The Vendor and the Purchaser shall co-ordinate and cooperate with one another in exchanging such information and supplying such assistance as may be reasonably requested by each in connection with the foregoing including, providing each other with all notices and information supplied to or filed with any Governmental Authority (except for notices and information which the Vendor or the Purchaser, in each case acting reasonably, considers highly confidential and sensitive which may be filed on a confidential basis), and all notices and correspondence received from any Governmental Authority.
- (b) The Parties acknowledge and agree that the Monitor shall be entitled to deliver to the parties and file the Monitor's Certificate with the Court, without independent investigation, upon receiving written confirmation from the Vendor and the Purchaser or their respective solicitors that all conditions of Closing have been satisfied or waived and upon receipt of the Balance and any Taxes payable to the Vendor and that are not self-assessed and remitted by the Purchaser, and the

Monitor shall have no liability to the Vendor or the Purchaser or any other Person as a result of filing the Monitor's Certificate.

7.9 Court Matters

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

7.10 Termination

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

- (a) by mutual consent of the Purchaser and the Vendor (in respect of which the Vendor shall require the consent of the Monitor to provide its consent) or on further order of the Court;
- (b) by the Purchaser if any of the conditions in Section 7.1 have not been satisfied on or before the Closing Date and the Purchaser has not waived such condition;
- (c) by the Vendor with the consent of the Monitor if any of the conditions in Section 7.2 have not been satisfied on or before the Closing Date and the Vendor has not waived such condition; or
- (d) by either Party if any of the conditions precedent in Section 7.3 have not been satisfied on or before the Closing Date and the parties have not waived such condition; or
- (e) by the Vendor (with the consent of the Monitor) or the Purchaser if Closing has not occurred on or before the Outside Date, provided that the Vendor or the Purchaser may not terminate this Agreement pursuant to this Section 7.10(e) if it has failed to perform any one or more of its respective obligations or covenants under this Agreement and the Closing has not occurred because of such failure.

ARTICLE 8 OTHER PROVISIONS

8.1 Confidentiality

The Vendor shall be entitled to disclose this Agreement and all information provided by the Purchaser in connection herewith to the Court, the Monitor, and parties in interest to the CCAA Proceedings. The NDA shall survive and not merge on Closing, provided that effective as of the Closing Date, the parties agree that the NDA shall not apply to or govern the Closing Documents which shall not be subject to any confidentiality restrictions.

8.2 Time of the Essence

Time shall be of the essence of this Agreement.

8.3 Entire Agreement

This Agreement and the NDA constitute the entire agreement between the parties with respect to the Transaction and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the parties with respect to the subject matter of this Agreement. There are no representations, warranties, covenants, conditions or other agreements, legal or conventional, express or implied, collateral, statutory or otherwise, between the parties in connection with the subject matter of this Agreement, except as specifically set forth in this Agreement. The parties have not relied and are not relying on any other information, discussion or understanding in entering into and completing the Transaction. Notwithstanding the foregoing, in accordance with Section 8.1, effective as of the Closing Date, the NDA shall not apply to or govern the Closing Documents which shall not be subject to any confidentiality restrictions.

8.4 Waiver

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

8.5 Further Assurances

Each of the parties covenants and agrees to do such things, to attend such meetings and to execute such further conveyances, transfers, documents and assurances as may be deemed necessary or advisable from time to time in order to effectively transfer the Subject Assets to the Purchaser and carry out the terms and conditions of this Agreement in accordance with their true intent. The provisions of this Section 8.5 shall survive and shall not merge on Closing.

8.6 Severability

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

8.7 Governing Law

This Agreement shall be governed by and interpreted and enforced in accordance with the laws of the Province in which the Property is located and the federal laws of Canada applicable therein. Each Party irrevocably and unconditionally waives, to the fullest extent permitted by applicable Laws, any objection that it may now or hereafter have to the venue of any action or proceeding arising out of or relating to this Agreement or the Transaction in any court of the Province of Ontario. Each of the Parties hereby irrevocably waives, to the fullest extent permitted by applicable Laws, the defence of an inconvenient forum to the maintenance of such action or proceeding in any such court.

8.8 English Language

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

8.9 Statute References

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

8.10 Headings

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

8.11 References

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

8.12 Number and Gender

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

8.13 Business Days

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

8.14 Currency and Payment Obligations

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

8.15 Notice

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

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

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

Attn: Philip Mohtadi
Email: pmohtad@sears.ca

With a copy to:

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

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

With a copy to:

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

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

With a copy to:

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

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

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

HOOPP Realty Inc.
 1 York Street
 Suite 1900
 Toronto, ON M5J 0B6

Attn: Lisa Lafave, Senior Portfolio Manager
 Email: LLafave@hoopp.com

With a copy to:

McLean & Kerr LLP
 130 Adelaide Street West
 Suite 2800
 Toronto, ON M5H 3P5

Attn: Scott Campbell
 Email: scampbell@mcleankerr.com

With a copy to:

Camelino Galessiere LLP
 6 Adelaide Street East
 Suite 220
 Toronto, ON M5C 1H6

Attn: Linda Galessiere
 Email: lgalessiere@cglegal.ca

A Notice is deemed to be given and received (i) if sent by personal delivery or same day courier, on the date of delivery if it is a Business Day and the delivery was made prior to 5:00 p.m. (local time in the place of receipt) and otherwise on the next Business Day, (ii) if sent by overnight courier, on the next Business Day, or (iii) if transmitted by facsimile, on the Business Day

following the date of confirmation of transmission by the originating facsimile, or (iv) if sent by email, when the sender receives an email from the recipient acknowledging receipt, provided that an automatic “read receipt” does not constitute acknowledgment of an email for purposes of this Section. Any Party may change its address for service from time to time by providing a Notice in accordance with the foregoing. Any subsequent Notice must be sent to the Party at its changed address. Any element of a Party’s address that is not specifically changed in a Notice will be assumed not to be changed. Subject to Section 8.17, sending a copy of a Notice to a Party’s legal counsel as contemplated above is for information purposes only and does not constitute delivery of the Notice to that Party. The failure to send a copy of a Notice to legal counsel does not invalidate delivery of that Notice to a Party.

8.16 Subdivision Control Legislation

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

8.17 Solicitors as Agent and Tender

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

8.18 No Registration of Agreement

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

8.19 Third Party Costs

Each of the Parties hereto shall be responsible for the costs of their own solicitors, respectively, in respect of the Transaction. The Purchaser shall be solely responsible for and shall pay, in addition to the Purchase Price, any land transfer taxes and transfer duties payable on the transfer of the Subject Assets, all registration taxes, fees and other costs payable in respect of registration of any documents to be registered by the Purchaser at Closing and all federal and provincial sales and other taxes payable upon or in connection with the conveyance or transfer of the Subject Assets, including, goods and services tax, harmonized sales tax or other similar value added or multi-

staged tax imposed by any applicable provincial or territorial legislation, as the case may be, and any other provincial sales taxes. This Section 8.19 shall survive and shall not merge on Closing and shall survive the termination of this Agreement.

8.20 Interpretation

The parties hereto acknowledge and agree that: (a) each Party and its counsel reviewed and negotiated the terms and provisions of this Agreement and have contributed to their revision, (b) the rule of construction to the effect that any ambiguities are resolved against the drafting Party shall not be employed in the interpretation of this Agreement, and (c) the terms and provisions of this Agreement shall be construed fairly as to all parties hereto and not in favour of or against any Party, regardless of which Party was generally responsible for the preparation of this Agreement.

8.21 No Third Party Beneficiaries

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

8.22 Enurement

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

8.23 Amendments

This Agreement may only be amended, supplemented or otherwise modified by written agreement signed by the Vendor and the Purchaser, except that the time for doing or completing of any matter provided for herein may be extended or abridged by an agreement in writing signed by the Vendor or the Vendor's solicitors on one hand and the Purchaser or the Purchaser's solicitors on the other.

8.24 Existing Agreements

Notwithstanding anything contained in this Agreement to the contrary and for greater certainty, nothing contained in this Agreement shall nullify, terminate, amend, waive, limit or affect in any way, any agreement, right, servitude or obligation existing between the Vendor and the Purchaser on or prior to the date of this Agreement ("**Existing Agreements**"), including without limiting the foregoing any right of first refusal, which Existing Agreements shall continue in full force and effect and unamended.

8.25 Counterparts and Delivery

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

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF the parties have executed this Agreement.

SEARS CANADA INC.

By: P. MONTADI
 Name: P. MONTADI
 Title: SECRETARY

By: _____
 Name:
 Title:

Executed by the undersigned as of the _____ day of July, 2018.

HOOPP REALTY INC.

By: Stephen Taylor
 Name: STEPHEN TAYLOR
 Title: PRESIDENT

By: Nicholas Macrae
 Name: NICHOLAS MACRAE
 Title: VICE PRESIDENT

**SCHEDULE "A"
LANDS**

FIRSTLY:

PIN 01561-2832 (LT)

PCL 86-2 SEC WINDSOR SE-3; PT LTS 86 TO 88 CON 3 (FORMERLY TOWNSHIP OF SANDWICH) PTS 1 & 2 EXR99 S/T LT3937, LT3939, LT180373 & LT9839; WINDSOR

SECONDLY:

PIN 01561-0100 (LT)

LT 21 PL 1415 SANDWICH EAST S/T R424812, R482458, R1260987; WINDSOR

**SCHEDULE “B”
EXCLUDED ASSETS**

1. All intellectual property or proprietary rights, whether registered or not, and any intangible property, owned, used or held by the Vendor.
2. All items, materials and signs bearing the logo, trade-mark, trade-name or business name or other mark or design of the Vendor.
3. All FF&E and Inventory which have been removed from the Property by or on behalf of the Vendor or its agents or their respective representatives prior to the Closing Date.
4. All insurance policies of the Vendor.
5. All rights and interests in trade-marks, trade-names, logos, commercial symbols and business names containing “Sears” or any other proprietary wording or intellectual property rights of the Vendor or any of its affiliates (including, the websites).
6. All rights of the Vendor against the Purchaser pursuant to this Agreement.

SCHEDULE "C"
PURCHASE PRICE ALLOCATION

100% of the Purchase Price is allocated to the Property.

**SCHEDULE “D”
FORM OF APPROVAL AND VESTING ORDER**

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.)	●, THE ● TH
)	
JUSTICE HAINEY)	DAY OF ●, 2018

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., 9370-2751 QUEBEC INC., 191020 CANADA INC., THE CUT INC., SEARS CONTACT SERVICES INC., INITIUM LOGISTICS SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM TRADING AND SOURCING CORP., SEARS FLOOR COVERING CENTRES INC., 173470 CANADA INC., 2497089 ONTARIO INC., 6988741 CANADA INC., 10011711 CANADA INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA LTD., 4201531 CANADA INC., 168886 CANADA INC., AND 3339611 CANADA INC.

(each, an “**Applicant**”, and collectively, the “**Applicants**”)

APPROVAL AND VESTING ORDER – DEVONSHIRE MALL (STORE #●)

THIS MOTION, made by the Applicants, pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. c-36, as amended (the “**CCAA**”) for an order, *inter alia*, approving: the sale of lands and buildings located at 3050 Howard Ave., Windsor, Ontario, together with certain ancillary assets (the “**Transaction**”) contemplated by an Agreement of Purchase and Sale between Sears Canada Inc. (“**Sears Canada**”), as vendor, and HOOPP Realty Inc. (the “**Purchaser**”), as purchaser, dated ●, 2018 (the “**APS**”) 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 ● sworn on ●, 2018 including the exhibits thereto (the “● **Affidavit**”), and the ● Report of FTI Consulting

Canada Inc., in its capacity as Monitor (the “**Monitor**”), filed, and on hearing the submissions of respective counsel for the Applicants, the Monitor, the Purchaser and such other counsel as were present, no one else appearing although duly served as appears from the Affidavit of Service of ● sworn ●, 2018, filed:

SERVICE AND DEFINITIONS

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

APPROVAL OF THE APS

3. THIS COURT ORDERS AND DECLARES that the entering into of the Transaction by Sears Canada is hereby approved and ratified and that the execution of the APS by Sears Canada is hereby authorized, approved and ratified with such minor amendments as Sears Canada (with the consent of the Monitor) and the Purchaser may agree to in writing. Sears Canada is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction, including the sale, assignment and transfer by Sears Canada of its right, title and interest in and to the Subject Assets to the Purchaser and the Monitor shall be authorized to take such additional steps in furtherance of its responsibilities under the APS and this Order, and shall not incur any liability as a result thereof. The legal descriptions and applicable land registry offices with respect to the Subject Assets are as set out on Schedule “B” hereto.
4. THIS COURT ORDERS AND DECLARES that upon the delivery of a Monitor’s certificate to the Purchaser substantially in the form attached as Schedule “A” hereto (the “**Monitor’s Certificate**”), all of Sears Canada’s right, title and interest in and to the Subject Assets shall be sold, assigned and transferred to the Purchaser, without further instrument of transfer or assignment, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or

otherwise), liens, executions, charges or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise in respect of the Subject Assets (collectively, the “**Claims**”), including, without limiting the generality of the foregoing:

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

(all of which are collectively referred to as the “**Encumbrances**”, which term shall not include the Permitted Encumbrances listed on Schedule “C” hereto), and, for greater certainty, this Court orders that (i) all construction liens and certificates of action registered against the Subject Assets, including the construction liens and certificates of action listed on Schedule “B” (collectively, the “**Liens**”), are hereby vacated, as if an order had been made on motion by Sears Canada to vacate them by the posting of security for claim and costs pursuant to s. 44(1) of the *Construction Lien Act*, and (ii) the remaining Claims and Encumbrances affecting or relating to the Subject Assets are hereby expunged and discharged as against the Subject Assets including the real or immovable property identified in Schedule “B”.

5. THIS COURT ORDERS that upon the registration in the Land Registry Office for the Land Titles Division of Essex (No. 12) of an Application for Vesting Order in the manner prescribed by the *Land Titles Act* (Ontario), the Land Registrar is hereby directed to enter HOOPP REALTY INC. as owner of the subject real property described in Schedule “B” hereto in fee simple, and is hereby directed to specifically (i) vacate the Liens, and (ii) discharge, cancel, delete and expunge from title to the real property described in Schedule “B” hereto all of the Encumbrances that are

not Liens listed in Part 1 of Schedule “B” hereto, notwithstanding that the time for appeal of this Order has not yet expired.

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

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

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

SEALING

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

GENERAL PROVISIONS

10. THIS COURT ORDERS that, notwithstanding:

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

the sale, assignment and transfer of the Subject Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy or receiver that may be appointed in respect of any of the Applicants and shall not be void or voidable by creditors of any of the Applicants, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance,

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

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

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

SCHEDULE “A”

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SEARS CANADA INC., 9370-2751 QUEBEC INC., 191020 CANADA INC., THE CUT INC., SEARS CONTACT SERVICES INC., INITIUM LOGISTICS SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM TRADING AND SOURCING CORP., SEARS FLOOR COVERING CENTRES INC., 173470 CANADA INC., 2497089 ONTARIO INC., 6988741 CANADA INC., 10011711 CANADA INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA LTD., 4201531 CANADA INC., 168886 CANADA INC., AND 3339611 CANADA INC.
(each, an “**Applicant**”, and collectively, the “**Applicants**”)

MONITOR’S CERTIFICATE

RECITALS

A. All undefined terms in this Monitor’s Certificate have the meanings ascribed to them in the Order of the Court dated ●, 2018 (the “**Approval and Vesting Order**”) approving the Agreement of Purchase and Sale between Sears Canada Inc. (“**Sears Canada**”), as vendor, and HOOPP Realty Inc. (the “**Purchaser**”) as purchaser dated ●, 2018 (the “**APS**”), a copy of which is attached as Exhibit ● to the Affidavit of ● dated ●, 2018.

B. Pursuant to the Approval and Vesting Order the Court approved the APS and provided for the sale, assignment and transfer to the Purchaser of Sears Canada’s right, title and interest in and to the Subject Assets (as defined in the APS), which sale, assignment and transfer is to be effective with respect to the Subject Assets upon the delivery by the Monitor to the Purchaser and Sears Canada of a certificate confirming that (i) the conditions to Closing as set out in sections 7.1, 7.2 and 7.3 of the APS have been satisfied or waived by the Purchaser and Sears Canada, as

applicable, and (ii) the Purchase Price and any Taxes payable (each as defined in the APS) to Sears Canada that are not self-assessed and remitted by the Purchaser have been received by the Monitor.

THE MONITOR CERTIFIES the following:

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

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

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

Per: _____
Name:
Title:

SCHEDULE "B"

1. Land Registry Office

No.	Location/ Address	Province	Land Registry Office	Legal Description	Encumbrances to be Expunged/ Deleted/Vacated, as applicable
Section 1.	Devonshire Mall, 3050 Howard Ave, Windsor	Ontario	Essex (no. 12)	<p>PIN 01561-2832 (LT) PCL 86-2 SEC WINDSOR SE-3; PT LTS 86 TO 88 CON 3 (FORMERLY TOWNSHIP OF SANDWICH) PTS 1 & 2 EXR99 S/T LT3937, LT3939, LT180373 & LT9839; WINDSOR</p> <p>PIN 01561-0100 (LT) LT 21 PL 1415 SANDWICH EAST S/T R424812, R482458, R1260987; WINDSOR</p>	See below

Encumbrances to be Expunged/Deleted/Vacated, as applicable, from Title:

- (a) Construction Lien in favour of Kone Inc. in the amount of \$11,756.07, which Construction Lien was registered as Instrument No. CE796328 on October 3, 2017.
- (b) Notice of Certificate of Action in favour of Kone Inc. registered as Instrument No. CE805186 on November 24, 2017, which Certificate of Action relates to construction lien registered as Instrument No. CE796328.

2. *Personal Property Security Act (Ontario)*

PPSA File No.	Registration No.	Secured Party
725643558	20170315 1622 1590 9711	GACP Finance Co., LLC as agent

**SCHEDULE “C”
PERMITTED ENCUMBRANCES**

“Permitted Encumbrances” means, collectively, (a) any Encumbrances resulting from the Purchaser’s actions or omissions; and (b) the items identified in Schedule “H” of the APS.

**SCHEDULE “E”
PURCHASER’S HST CERTIFICATE, UNDERTAKING AND INDEMNITY**

TO: Sears Canada Inc. (the “Vendor”)

AND TO: Osler, Hoskin & Harcourt LLP, the Vendor’s solicitors

RE: Agreement of Purchase and Sale dated ●, 2018, made between the Vendor, as Vendor, and HOOPP Realty Inc., as Purchaser, (the “Purchaser”), as amended from time to time (the “Purchase Agreement”), for the purchase and sale of the Property and other Subject Assets (as such terms are defined in the Purchase Agreement)

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

- a) the Subject Assets are being purchased by the Purchaser as principal for its own account and not as an agent, nominee, trustee or otherwise on behalf of or for another Person;
- b) the Purchaser is registered under Subdivision (d) of Division V of Part IX of the *Excise Tax Act* (Canada) (the “*Excise Tax Act*”) for the collection and remittance of goods and services tax (“HST”) and its registration number is 132210741 RT001 (HST) and such registration is in good standing and has not been varied, cancelled or revoked;
- c) the Purchaser shall be liable for, shall self-assess and shall remit to the appropriate governmental authority, all HST which is payable under the *Excise Tax Act* in connection with the transfer of the Subject Assets, all in accordance with the *Excise Tax Act*;
- d) the Purchaser shall indemnify and save harmless the Vendor from and against any and all HST, penalties, interest and/or other costs which may become payable by or be assessed against the Vendor as a result of any failure by the Vendor to collect and remit any HST applicable on the sale and conveyance of the Subject Assets by the Vendor to the Purchaser or as a result of any inaccuracy, misstatement or misrepresentation by the Purchaser in this HST Certificate, Undertaking and Indemnity or any failure by the Purchaser to comply with the provisions of this HST Certificate, Undertaking and Indemnity; and
- e) this HST Certificate, Undertaking and Indemnity shall survive and not merge upon closing of the above-noted transaction.

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

DATED _____, 2018.

HOOPP REALTY INC.

By: _____

Name:

Title:

By: _____

Name:

Title:

SCHEDULE “F”

**FORM OF ASSIGNMENT AND ASSUMPTION OF WARRANTIES, PERMITS AND
PERMITTED ENCUMBRANCES**

THIS AGREEMENT is made as of the _____ day of _____, 2018 (the “**Effective Date**”)

B E T W E E N:

SEARS CANADA INC.

(the “**Vendor**”)

- and –

HOOPP REALTY INC.

(the “**Purchaser**”)

RECITALS:

A. The Vendor and certain of its affiliates and subsidiaries applied for and were granted protection from their creditors under the CCAA pursuant to the Initial Order of the Court. Pursuant to the Initial Order, the Court appointed FTI Consulting Canada Inc. as Monitor in connection with the CCAA Proceedings.

B. The Vendor and the Purchaser entered into an agreement of purchase and sale dated ●, 2018 (the “**Purchase Agreement**”), whereby, among other things, the Vendor agreed to assign to the Purchaser all of the Vendor’s right, title and interest in and to the Property described in Schedule “A” hereto.

C. The Purchase Agreement was approved by the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) pursuant to the Approval and Vesting Order issued in court file No. CV-17-11846-00CL dated ● (the “**Approval and Vesting Order**”).

D. The Vendor and the Purchaser are entering into this Agreement to provide for the assignment and assumption of the Warranties and the Permits (other than Excluded Permits) as well as of any real rights created pursuant to Permitted Encumbrances (but excluding, for greater certainty, personal obligations thereunder) by the Vendor to the Purchaser in accordance with the Purchase Agreement and the Approval and Vesting Order.

E. Unless otherwise expressly provided for herein, all capitalized terms when used in this Agreement have the same meaning given to such terms in the Purchase Agreement.

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

ARTICLE 1 ASSIGNMENT

1.1 Assignment by Vendor

The Vendor assigns and transfers to the Purchaser, as of the Effective Date, all of the Vendor's obligations, rights, title and interest, both at law and at equity, in and to the Warranties and the Permits (other than the Excluded Permits) as well as of any real rights created pursuant to Permitted Encumbrances (but excluding, for greater certainty, personal obligations thereunder) and all related rights, benefits and advantages thereto (collectively, the "Assigned Interest").

1.2 Assumption by Purchaser

The Purchaser hereby accepts the assignment of the Assigned Interest provided for in this Agreement and assumes all of the Vendor's obligations, right, title and interest in and to the Assigned Interest from and after the Effective Date.

1.3 Paramountcy

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

ARTICLE 2 GENERAL

2.1 Time of the Essence

Time shall be of the essence of this Agreement.

2.2 Enurement

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

2.3 Entire Agreement

This Agreement and the Purchase Agreement constitute the entire agreement between the parties with respect to the assignment and assumption of the Permitted Encumbrances contemplated in the Purchase Agreement and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, of the parties with respect to the subject matter of this Agreement. There are no representations, warranties, covenants, conditions or other agreements, legal or conventional, express or implied, collateral, statutory or otherwise, between the parties in

connection with the subject matter of this Agreement, except as specifically set forth in this Agreement and the Purchase Agreement. The parties have not relied and are not relying on any other information, discussion or understanding in entering into and completing the transactions contemplated by this Agreement and the Purchase Agreement.

2.4 Waiver

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

2.5 Further Assurances

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

2.6 Severability

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

2.7 Governing Law

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

2.8 CCAA Proceedings

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

2.9 English Language

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

2.10 Statute References

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

enacted from time to time.

2.11 Headings

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

2.12 References

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

2.13 Number and Gender

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

2.14 Business Days

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

2.15 Notice

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

2.16 Counterparts and Delivery

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

[Signature pages follow.]

IN WITNESS WHEREOF the Vendor has executed this Agreement.

SEARS CANADA INC.

By: _____
Name:
Title:

By: _____
Name:
Title:

IN WITNESS WHEREOF the Purchaser has executed this Agreement.

HOOPP REALTY INC.

By: _____
Name:
Title:

By: _____
Name:
Title:

Schedule "A"
Description of the Property

FIRSTLY:

PIN 01561-2832 (LT)

PCL 86-2 SEC WINDSOR SE-3; PT LTS 86 TO 88 CON 3 (FORMERLY TOWNSHIP OF SANDWICH) PTS 1 & 2 EXR99 S/T LT3937, LT3939, LT180373 & LT9839; WINDSOR

SECONDLY:

PIN 01561-0100 (LT)

LT 21 PL 1415 SANDWICH EAST S/T R424812, R482458, R1260987; WINDSOR

**SCHEDULE “G”
FORM OF ASSIGNMENT AND ASSUMPTION OF REALTY TAX APPEALS**

THIS AGREEMENT is made as of the _____ day of _____, 2018 (the “**Effective Date**”)

B E T W E E N:

SEARS CANADA INC.

(the “**Vendor**”)

- and -

HOOPP REALTY INC.

(the “**Purchaser**”)

RECITALS:

A. The Vendor and certain of its affiliates and subsidiaries applied for and were granted protection from their creditors under the CCAA pursuant to the Initial Order of the Court. Pursuant to the Initial Order, the Court appointed FTI Consulting Canada Inc. as Monitor in connection with the CCAA Proceedings.

B. The Vendor and the Purchaser entered into an agreement of purchase and sale dated ●, 2018 (the “**Purchase Agreement**”), whereby, among other things, the Vendor agreed to assign to the Purchaser all of the Vendor’s right, title and interest in and to the Property described in Schedule “A” hereto.

C. The Purchase Agreement was approved by the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) pursuant to the Approval and Vesting Order issued in court file No. CV-17-11846-00CL dated ● (the “**Approval and Vesting Order**”).

D. The Vendor and the Purchaser are entering into this Agreement to provide for the assignment of the Realty Tax Appeals and Realty Tax Refunds by the Vendor to the Purchaser in accordance with the Purchase Agreement and the Approval and Vesting Order.

E. Unless otherwise expressly provided for herein, all capitalized terms when used in this Agreement have the same meaning given to such terms in the Purchase Agreement.

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

ARTICLE 1 ASSIGNMENT

1.1 Assignment and Assumption

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

1.2 Carriage of Realty Tax Appeals

From and after the Closing Date, the Purchaser may, at its sole cost and expense but without any obligation to do so, assume or retain the carriage of the Realty Tax Appeals and continue as the appellant in the Realty Tax Appeals. At the request of the Purchaser and at the Purchaser's sole cost and expense, the Vendor agrees to co-operate with the Purchaser with respect to the Realty Tax Appeals and to provide the Purchaser with access to any reasonably necessary documents or materials required to continue any Realty Tax Appeals. If the Realty Tax Appeals may only be prosecuted in the name of the Vendor, at the request of the Purchaser, the Vendor shall cooperate with the Purchaser, including granting such authorizations as may be reasonably required, to enable the Purchaser to pursue and prosecute such Realty Tax Appeals, at the Purchaser's sole cost and expense. Notwithstanding the foregoing, the Purchaser's obligation to assume the costs and expenses of the Vendor shall be limited to reasonable and documented out-of-pocket costs or expenses actually paid by the Vendor to arm's length third parties and shall not include any internal costs or expenses of the Vendor nor any costs or expenses for time spent by the Vendor's or its Affiliates' directors, officers, employees or agents. In addition, nothing herein shall restrict the Vendor from winding down and terminating all operations even if by so doing the Vendor ceases to be capable of providing the cooperation, authorizations and assistance contemplated by this Section.

1.3 Authorization and Direction

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

1.4 Paramountcy

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

ARTICLE 2 GENERAL

2.1 Time of the Essence

Time shall be of the essence of this Agreement.

2.2 Enurement

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

2.3 Entire Agreement

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

2.4 Waiver

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

2.5 Further Assurances

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

2.6 Severability

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

force and effect.

2.7 Governing Law

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

2.8 CCAA Proceedings

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

2.9 Statute References

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

2.10 Headings

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

2.11 References

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

2.12 Number and Gender

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

2.13 Business Days

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

2.14 English Language

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

2.15 Currency and Payment Obligations

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

2.16 Notice

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

2.17 Counterparts and Delivery

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

[Signature pages follow.]

IN WITNESS WHEREOF the Vendor has executed this Agreement.

SEARS CANADA INC.

By: _____
Name:
Title:
By: _____
Name:
Title:

IN WITNESS WHEREOF the Purchaser has executed this Agreement.

HOOPP REALTY INC.

By: _____
Name:
Title:

By: _____
Name:
Title:

Schedule "A"
Description of the Property

FIRSTLY:

PIN 01561-2832 (LT)

PCL 86-2 SEC WINDSOR SE-3; PT LTS 86 TO 88 CON 3 (FORMERLY TOWNSHIP OF SANDWICH) PTS 1 & 2 EXR99 S/T LT3937, LT3939, LT180373 & LT9839; WINDSOR

SECONDLY:

PIN 01561-0100 (LT)

LT 21 PL 1415 SANDWICH EAST S/T R424812, R482458, R1260987; WINDSOR

SCHEDULE “H”

PERMITTED ENCUMBRANCES

GENERAL ENCUMBRANCES

- (a) The reservations, limitations, exceptions, provisos and conditions, if any, expressed in any original grants from the Crown including, without limitation, the reservation of any royalties, mines and minerals in the Crown or in any other person.
- (b) Subdivision agreements, site plan control agreements, development agreements, heritage easements and agreements relating thereto, servicing agreements, utility agreements, permits, licenses, airport zoning regulations and other similar agreements in each case with Governmental Authorities or private or public utilities affecting the development or use of any Property.
- (c) Rail siding agreements or facility, cost sharing, servicing, reciprocal use or other similar agreements.
- (d) Any easements, servitudes, or rights-of-way in favour of any Governmental Authority, and any easements, servitudes, or rights-of-way in favour of any private or public utility, any railway company or any adjoining owner which do not materially impair the current use, operation or marketability of the Property.
- (e) Any unregistered easements, servitudes, rights-of-way or other unregistered interests or claims not disclosed by registered title in respect of the provision of utilities to the Property.
- (f) Any rights of expropriation, access or use or any other similar rights conferred or reserved by applicable Law.
- (g) Restrictive covenants, private deed restrictions and other similar land use control agreements that are Disclosed to the Purchaser.
- (h) Minor encroachments by the Property over neighbouring lands and/or permitted under agreements with neighbouring landowners and minor encroachments over the Property by improvements of neighbouring landowners and/or permitted under agreements with neighbouring landowners which do not materially impair the current use, operation or marketability of the Property.
- (i) The provisions of all applicable Laws, including by-laws, regulations, ordinances and similar instruments relating to development and zoning of the Property.
- (j) The exceptions and qualifications contained in Section 44(1) of the *Land Titles Act* (Ontario) (other than paragraphs 3, 4, 6 and 11)
- (k) Rights arising from applicable Laws given to a public utility or any municipality or governmental or other public authority when required by the operations of the

- 2 -

Property in the ordinary course of business, including, without limitation, the right of the municipality to acquire portions of the Property for road widening or interchange construction and the right of the municipality to complete improvements, landscaping or remedy deficiencies in any pedestrian walkways or traffic control or monitoring to be provided to the Property.

- (l) Any minor title defects, irregularities, easements, servitudes, encroachments, rights-of-way or other discrepancies in title or possession relating to the Property which would be disclosed by an up-to-date plan of survey, real property report, certificate of location, or technical description which do not materially impair the current use, operation or marketability of the Property.
- (m) To the extent any of the following are Disclosed to the Purchaser, permits, licenses, agreements, servitudes, easements, (including, without limitation, heritage easements and agreements relating thereto), restrictions, restrictive covenants, options, rights-of-way, public ways, rights in the nature of an easement or servitude and other similar rights in land granted to or reserved by other persons (including, without in any way limiting the generality of the foregoing, permits, licenses, agreements, easements, rights-of-way, sidewalks, public ways, and rights in the nature of easements or servitudes for sewers, drains, steam, gas and water mains or electric light and power or telephone and telegraph conduits, poles, wires and cables) (other than those described in paragraph (d) and (e) of this Schedule) which do not materially impair the current use, operation or marketability of the Property.
- (n) Any reference plans or plans registered pursuant to the Boundaries Act (Ontario).
- (o) All Off-Title Compliance Matters.
- (p) All rights of first refusal, option to purchase or similar rights relating to the Property that are Disclosed to the Purchaser.
- (q) Any instruments which are registered against title to the Property that are: (i) otherwise agreed to by the Purchaser; or (ii) permitted by this Agreement, except in each case for those Encumbrances to be discharged, cancelled, deleted and expunged from title to the Property pursuant to the Approval and Vesting Order.

SPECIFIC ENCUMBRANCES

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

1. Notice of an Agreement dated August 15, 1969, between Simpsons-Sears Limited, Geptor Limited and Steinberg's Limited, which Agreement was registered as Instrument No. R449414 on September 8, 1969. 1.
2. Notice of Airport Zoning Regulations registered as Instrument No. R137437 on July 17, 1956.

- 3 -

3. Notice of an Agreement for Right-of-Way in favour of Union Gas Company of Canada, Limited, which Agreement was registered as Instrument No. LT3937 on February 5, 1971.
4. Notice of an Agreement for Right-of-Way in favour of Union Gas Company of Canada, Limited, which Agreement was registered as Instrument No. LT3939 on February 5, 1971.
5. Notice of a Utilities Agreement dated February 8, 1973, between Simpsons-Sears Limited and The Windsor Utilities Commission, which Agreement was registered as Instrument No. LT9839 on February 15, 1973.
6. Notice of an Operating Agreement dated September 12, 1973, between Regional Shopping Centres Limited, Simpsons-Sears Limited and Simpsons, Limited, which Agreement was registered as Instrument No. LT11817 on September 24, 1973.
7. Notice of an Amendment to Operating Agreement dated March 1, 1976, between Regional Shopping Centres Limited, Simpsons-Sears Limited, Simpsons, Limited and The Prudential Insurance Company of America, which Agreement was registered as Instrument No. LT51643 on March 6, 1980.
8. Notice of a Confirmation of Operating Agreement dated September 17, 1979, between Regional Shopping Centres Limited, Simpsons-Sears Limited, Simpsons, Limited and The Prudential Insurance Company of America, which Agreement was registered as Instrument No. LT51714 on March 12, 1980.
9. Notice of an Amendment to Airport Zoning Regulations registered as Instrument No. LT58811 on October 27, 1981.
10. Notice of an Amendment to Airport Zoning Regulations registered as Instrument No. LT58812 on October 27, 1981.
11. Notice of an Amendment to Operating Agreement dated January 21, 1994, between multiple parties, which Agreement was registered as Instrument No. LT167606 on January 24, 1994.
12. Notice of an Option to Purchase dated January 21, 1994, between Sears Canada Inc. and Regional Shopping Centres Limited, which Agreement was registered as Instrument No. LT167608 on January 2, 1994.
13. Notice of Assignment of Option to Purchase dated January 21, 1994, between Regional Shopping Centres Limited and The Prudential Insurance Company of America, which Assignment was registered as Instrument No. LT167610 on January 24, 1994.
14. Notice of Assignment of Option to Purchase dated January 21, 1994, between Regional Shopping Centres Limited and Royal Bank of Canada, Canadian Imperial Bank of Commerce and The Toronto-Dominion Bank, which Assignment was

- 4 -

registered as Instrument No. LT167628 on January 24, 1994.

15. Notice of Assignment of Operating Agreement dated January 21, 1994, between Regional Shopping Centres Limited and Cambridge Leaseholds Limited, and Royal Bank of Canada, Canadian Imperial Bank of Commerce and The Toronto-Dominion Bank, which Assignment was registered as Instrument No. LT167629 on January 24, 1994.
16. Notice of Assignment of Operating Agreement dated September 30, 1995, between Royal Bank of Canada and Canadian Imperial Bank of Commerce and The Toronto-Dominion Bank, which Assignment was registered as Instrument No. LT190557 on November 10, 1995.
17. Notice of Assignment of Operating Agreement dated September 30, 1998, between Canadian Imperial Bank of Commerce and The Toronto-Dominion Bank, and The Toronto-Dominion Bank, Canadian Imperial Bank of Commerce and The Bank of Nova Scotia, which Assignment was registered as Instrument No. LT237273 on September 30, 1998.
18. Notice of Re-assignment of Operating Agreement dated February 13, 2002 by Canadian Imperial Bank of Commerce, The Toronto-Dominion Bank and The Bank of Nova Scotia, which Re-assignment was registered as Instrument No. LT344811 on April 26, 2002.
19. Transfer of Easement in favour of Ontario Hydro, which Easement was registered as Instrument No. LT180373 on January 10, 1995.
20. Notice of Assignment of Option to Purchase dated September 30, 1995, between Royal Bank of Canada and Canadian Imperial Bank of Commerce and The Toronto-Dominion Bank, which Assignment was registered as Instrument No. LT190556 on November 10, 1995.
21. Notice of Assignment of Option to Purchase dated September 30, 1998, between Canadian Imperial Bank of Commerce and The Toronto-Dominion Bank, and The Toronto-Dominion Bank, Canadian Imperial Bank of Commerce and The Bank of Nova Scotia, which Assignment was registered as Instrument No. LT237272 on September 30, 1998.
22. Notice of Re-assignment of Option to Purchase dated February 13, 2002 by Canadian Imperial Bank of Commerce, The Toronto-Dominion Bank and The Bank of Nova Scotia, which Re-assignment was registered as Instrument No. LT344810 on April 26, 2002.
23. Notice of Re-assignment of Option to Purchase dated January 18, 2002 by The Prudential Insurance Company of America, which Re-assignment was registered as Instrument No. LT350705 on June 3, 2002.
24. Notice of an Assignment of Option to Purchase dated April 3, 2008, between

- 5 -

OMERS Realty Corporation and HOOPP Realty Inc., which Assignment was registered as Instrument No. CE322250 on April 4, 2008.

25. Notice of an Assignment of Option to Purchase dated January 29, 2015, between Regional Shopping Centres Limited and HOOPP Realty Inc., which Assignment was registered as Instrument No. CE645636 on January 29, 2015.
26. The ROFR, the Operating Agreement and the Option.

SCHEDULE "I"
ASSUMED CONTRACTS

None

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SEARS CANADA INC., 9370-2751 QUEBEC INC., 191020 CANADA INC., THE CUT INC., SEARS CONTACT SERVICES INC., INITIUM LOGISTICS SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM TRADING AND SOURCING CORP., SEARS FLOOR COVERING CENTRES INC., 173470 CANADA INC., 2497089 ONTARIO INC., 6988741 CANADA INC., 10011711 CANADA INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA LTD., 4201531 CANADA INC., 168886 CANADA INC., AND 3339611 CANADA INC.

Applicants

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at Toronto

AFFIDAVIT OF PHILIP MOHTADI

Affirmed August 8, 2018

(Motion for Approval of Agreement of Purchase and Sale with
HOOPP Realty Inc. (Store #1017 - Windsor))

OSLER, HOSKIN & HARCOURT, LLP

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Toronto, ON M5X 1B8

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Jeremy Dacks LSO# 41851R
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Karin Sachar LSO# 59944E
Tel: 416.862.5949
Fax: 416.862.6666

Lawyers for the Applicants

Tab 3

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.)	MONDAY, THE 20 TH
)	
JUSTICE HAINEY)	DAY OF AUGUST, 2018

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., 9370-2751 QUEBEC INC., 191020 CANADA INC., THE CUT INC., SEARS CONTACT SERVICES INC., INITIUM LOGISTICS SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM TRADING AND SOURCING CORP., SEARS FLOOR COVERING CENTRES INC., 173470 CANADA INC., 2497089 ONTARIO INC., 6988741 CANADA INC., 10011711 CANADA INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA LTD., 4201531 CANADA INC., 168886 CANADA INC., AND 3339611 CANADA INC.

(each, an “**Applicant**”, and collectively, the “**Applicants**”)

APPROVAL AND VESTING ORDER – DEVONSHIRE MALL

THIS MOTION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. c-36, as amended (the “**CCAA**”) for an order, *inter alia*, approving: the sale of lands and buildings located at 3050 Howard Ave., Windsor, Ontario, together with certain ancillary assets (the “**Transaction**”) contemplated by an Agreement of Purchase and Sale between Sears Canada Inc. (“**Sears Canada**”), as vendor, and HOOPP Realty Inc. (the “**Purchaser**”), as purchaser, dated with effect as of July 25, 2018 (the “**APS**”) 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 Philip Mohtadi affirmed on August 8, 2018 including the exhibits thereto, and the ● Report of FTI Consulting Canada Inc., in its capacity as Monitor (the “**Monitor**”), filed, and on hearing the submissions of respective counsel for the Applicants, the Monitor, the Purchaser and such other counsel as were

present, no one else appearing although duly served as appears from the Affidavit of Service of ●
sworn ●, 2018, filed:

SERVICE AND DEFINITIONS

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

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

APPROVAL OF THE APS

3. THIS COURT ORDERS AND DECLARES that the entering into of the Transaction by Sears Canada is hereby approved and ratified and that the execution of the APS by Sears Canada is hereby authorized, approved and ratified with such minor amendments as Sears Canada (with the consent of the Monitor) and the Purchaser may agree to in writing. Sears Canada is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction, including the sale, assignment and transfer by Sears Canada of its right, title and interest in and to the Subject Assets to the Purchaser and the Monitor shall be authorized to take such additional steps in furtherance of its responsibilities under the APS and this Order, and shall not incur any liability as a result thereof. The legal descriptions and applicable land registry offices with respect to the Subject Assets are as set out on Schedule “B” hereto.

4. THIS COURT ORDERS AND DECLARES that upon the delivery of a Monitor’s certificate to the Purchaser substantially in the form attached as Schedule “A” hereto (the “**Monitor’s Certificate**”), all of Sears Canada’s right, title and interest in and to the Subject Assets shall be sold, assigned and transferred to the Purchaser, without further instrument of transfer or assignment, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens (whether contractual, statutory, or otherwise), executions, writs of seizure and sale, leases, notices of lease, subleases, licenses, levies, restrictions, rights of retention, judgments,

notices of sale, contractual rights, options, liabilities (direct, indirect, absolute or contingent), obligations, cautions, charges, debentures, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise in respect of the Subject Assets (collectively, the “**Claims**”), including, without limiting the generality of the foregoing:

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

(all of which are collectively referred to as the “**Encumbrances**”, which term shall not include the Permitted Encumbrances listed on Schedule “C” hereto), and, for greater certainty, this Court orders that (i) all construction liens and certificates of action registered against the Subject Assets, including the construction liens and certificates of action listed on Schedule “B” (collectively, the “**Liens**”), are hereby vacated, as if an order had been made on motion by Sears Canada to vacate them by the posting of security for claim and costs pursuant to s. 44(1) of the *Construction Lien Act*, and (ii) the remaining Claims and Encumbrances affecting or relating to the Subject Assets are hereby expunged and discharged as against the Subject Assets including the real or immovable property identified in Schedule “B”.

5. THIS COURT ORDERS that upon the registration in the Land Registry Office for the Land Titles Division of Essex (No. 12) of an Application for Vesting Order in the manner prescribed by the *Land Titles Act* (Ontario), the Land Registrar is hereby directed to enter HOOPP REALTY INC. as owner of the subject real property described in Schedule “B” hereto in fee simple, and is hereby directed to specifically (i) vacate the Liens, and (ii) discharge, cancel, delete and expunge from title to the real property described in Schedule “B” hereto all of the Encumbrances that are

not Liens listed in Part 1 of Schedule “B” hereto, notwithstanding that the time for appeal of this Order has not yet expired.

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

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

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

9. THIS COURT ORDERS that notwithstanding anything else contained in the APS or the Closing of the Transaction, the Purchaser shall be bound by and benefit from the Initial Order until the earlier of (a) six months from the date of this Order, and (b) the duration of the period during which any other owners, operators, managers or landlords of commercial shopping centres or other commercial properties in which there is a store, office or warehouse owned or operated by Sears Canada, is bound by or obtains any benefit from same. Without limiting the generality of the foregoing, during such period, the Purchaser shall benefit from the stay of proceedings provision provided for at paragraph 15 of the Initial Order.

SEALING

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

GENERAL PROVISIONS

11. THIS COURT ORDERS that, notwithstanding:

- (a) the pendency of these proceedings;

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

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

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

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

SCHEDULE “A”

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SEARS CANADA INC., 9370-2751 QUEBEC INC., 191020 CANADA INC., THE CUT INC., SEARS CONTACT SERVICES INC., INITIUM LOGISTICS SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM TRADING AND SOURCING CORP., SEARS FLOOR COVERING CENTRES INC., 173470 CANADA INC., 2497089 ONTARIO INC., 6988741 CANADA INC., 10011711 CANADA INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA LTD., 4201531 CANADA INC., 168886 CANADA INC., AND 3339611 CANADA INC.
(each, an “**Applicant**”, and collectively, the “**Applicants**”)

MONITOR’S CERTIFICATE

RECITALS

A. All undefined terms in this Monitor’s Certificate have the meanings ascribed to them in the Order of the Court dated ●, 2018 (the “**Approval and Vesting Order**”) approving the Agreement of Purchase and Sale between Sears Canada Inc. (“**Sears Canada**”), as vendor, and HOOPP Realty Inc. (the “**Purchaser**”) as purchaser dated with effect as of July 25, 2018 (the “**APS**”), a copy of which is attached as Exhibit “A” to the Affidavit of Philip Mohtadi dated August 8, 2018.

B. Pursuant to the Approval and Vesting Order the Court approved the APS and provided for the sale, assignment and transfer to the Purchaser of Sears Canada’s right, title and interest in and to the Subject Assets (as defined in the APS), which sale, assignment and transfer is to be effective with respect to the Subject Assets upon the delivery by the Monitor to the Purchaser and Sears Canada of a certificate confirming that (i) the conditions to Closing as set out in sections 7.1, 7.2 and 7.3 of the APS have been satisfied or waived by the Purchaser and Sears Canada, as applicable,

- 2 -

and (ii) the Purchase Price and any Taxes payable (each as defined in the APS) to Sears Canada that are not self-assessed and remitted by the Purchaser have been received by the Monitor.

THE MONITOR CERTIFIES the following:

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

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

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

Per: _____

Name:

Title:

SCHEDULE "B"

1. Land Registry Office

No.	Location/ Address	Province	Land Registry Office	Legal Description	Encumbrances to be Expunged/ Deleted/Vacated, as applicable
Section 1.	Devonshire Mall, 3050 Howard Ave, Windsor	Ontario	Essex (no. 12)	<p>PIN 01561-2832 (LT) PCL 86-2 SEC WINDSOR SE-3; PT LTS 86 TO 88 CON 3 (FORMERLY TOWNSHIP OF SANDWICH) PTS 1 & 2 EXR99 S/T LT3937, LT3939, LT180373 & LT9839; WINDSOR</p> <p>PIN 01561-0100 (LT) LT 21 PL 1415 SANDWICH EAST S/T R424812, R482458, R1260987; WINDSOR</p>	See below

Encumbrances to be Expunged/Deleted/Vacated, as applicable, from Title:

- (a) Construction Lien in favour of Kone Inc. in the amount of \$11,756.07, which Construction Lien was registered as Instrument No. CE796328 on October 3, 2017.
- (b) Notice of Certificate of Action in favour of Kone Inc. registered as Instrument No. CE805186 on November 24, 2017, which Certificate of Action relates to construction lien registered as Instrument No. CE796328.

2. *Personal Property Security Act (Ontario)*

PPSA File No.	Registration No.	Secured Party
725643558	20170315 1622 1590 9711	GACP Finance Co., LLC as agent

**SCHEDULE “C”
PERMITTED ENCUMBRANCES**

“**Permitted Encumbrances**” means, collectively, (a) any Encumbrances resulting from the Purchaser’s actions or omissions; and (b) the following Encumbrances:

GENERAL ENCUMBRANCES

- (a) The reservations, limitations, exceptions, provisos and conditions, if any, expressed in any original grants from the Crown including, without limitation, the reservation of any royalties, mines and minerals in the Crown or in any other person.
- (b) Subdivision agreements, site plan control agreements, development agreements, heritage easements and agreements relating thereto, servicing agreements, utility agreements, permits, licenses, airport zoning regulations and other similar agreements in each case with Governmental Authorities or private or public utilities affecting the development or use of any Property.
- (c) Rail siding agreements or facility, cost sharing, servicing, reciprocal use or other similar agreements.
- (d) Any easements, servitudes, or rights-of-way in favour of any Governmental Authority, and any easements, servitudes, or rights-of-way in favour of any private or public utility, any railway company or any adjoining owner which do not materially impair the current use, operation or marketability of the Property.
- (e) Any unregistered easements, servitudes, rights-of-way or other unregistered interests or claims not disclosed by registered title in respect of the provision of utilities to the Property.
- (f) Any rights of expropriation, access or use or any other similar rights conferred or reserved by applicable Law.
- (g) Restrictive covenants, private deed restrictions and other similar land use control agreements that are Disclosed to the Purchaser.
- (h) Minor encroachments by the Property over neighbouring lands and/or permitted under agreements with neighbouring landowners and minor encroachments over the Property by improvements of neighbouring landowners and/or permitted under agreements with neighbouring landowners which do not materially impair the current use, operation or marketability of the Property.
- (i) The provisions of all applicable Laws, including by-laws, regulations, ordinances and similar instruments relating to development and zoning of the Property.
- (j) The exceptions and qualifications contained in Section 44(1) of the *Land Titles Act* (Ontario) (other than paragraphs 3, 4, 6 and 11)
- (k) Rights arising from applicable Laws given to a public utility or any municipality or governmental or other public authority when required by the operations of the

Property in the ordinary course of business, including, without limitation, the right of the municipality to acquire portions of the Property for road widening or interchange construction and the right of the municipality to complete improvements, landscaping or remedy deficiencies in any pedestrian walkways or traffic control or monitoring to be provided to the Property.

- (l) Any minor title defects, irregularities, easements, servitudes, encroachments, rights-of-way or other discrepancies in title or possession relating to the Property which would be disclosed by an up-to-date plan of survey, real property report, certificate of location, or technical description which do not materially impair the current use, operation or marketability of the Property.
- (m) To the extent any of the following are Disclosed to the Purchaser, permits, licenses, agreements, servitudes, easements, (including, without limitation, heritage easements and agreements relating thereto), restrictions, restrictive covenants, options, rights-of-way, public ways, rights in the nature of an easement or servitude and other similar rights in land granted to or reserved by other persons (including, without in any way limiting the generality of the foregoing, permits, licenses, agreements, easements, rights-of-way, sidewalks, public ways, and rights in the nature of easements or servitudes for sewers, drains, steam, gas and water mains or electric light and power or telephone and telegraph conduits, poles, wires and cables) (other than those described in paragraph (d) and (e) of this Schedule) which do not materially impair the current use, operation or marketability of the Property.
- (n) Any reference plans or plans registered pursuant to the Boundaries Act (Ontario).
- (o) All Off-Title Compliance Matters.
- (p) All rights of first refusal, option to purchase or similar rights relating to the Property that are Disclosed to the Purchaser.
- (q) Any instruments which are registered against title to the Property that are: (i) otherwise agreed to by the Purchaser; or (ii) permitted by the APS, except in each case for those Encumbrances to be discharged, cancelled, deleted and expunged from title to the Property pursuant to the Approval and Vesting Order.

SPECIFIC ENCUMBRANCES

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

PIN 01561-2832 (LT)

1. Notice of an Agreement dated August 15, 1969, between Simpsons-Sears Limited, Geptor Limited and Steinberg's Limited, which Agreement was registered as Instrument No. R449414 on September 8, 1969. 1.

2. Notice of Airport Zoning Regulations registered as Instrument No. R137437 on July 17, 1956.
3. Notice of an Agreement for Right-of-Way in favour of Union Gas Company of Canada, Limited, which Agreement was registered as Instrument No. LT3937 on February 5, 1971.
4. Notice of an Agreement for Right-of-Way in favour of Union Gas Company of Canada, Limited, which Agreement was registered as Instrument No. LT3939 on February 5, 1971.
5. Notice of a Utilities Agreement dated February 8, 1973, between Simpsons-Sears Limited and The Windsor Utilities Commission, which Agreement was registered as Instrument No. LT9839 on February 15, 1973.
6. Notice of an Operating Agreement dated September 12, 1973, between Regional Shopping Centres Limited, Simpsons-Sears Limited and Simpsons, Limited, which Agreement was registered as Instrument No. LT11817 on September 24, 1973.
7. Notice of an Amendment to Operating Agreement dated March 1, 1976, between Regional Shopping Centres Limited, Simpsons-Sears Limited, Simpsons, Limited and The Prudential Insurance Company of America, which Agreement was registered as Instrument No. LT51643 on March 6, 1980.
8. Notice of a Confirmation of Operating Agreement dated September 17, 1979, between Regional Shopping Centres Limited, Simpsons-Sears Limited, Simpsons, Limited and The Prudential Insurance Company of America, which Agreement was registered as Instrument No. LT51714 on March 12, 1980.
9. Notice of an Amendment to Airport Zoning Regulations registered as Instrument No. LT58811 on October 27, 1981.
10. Notice of an Amendment to Airport Zoning Regulations registered as Instrument No. LT58812 on October 27, 1981.
11. Notice of an Amendment to Operating Agreement dated January 21, 1994, between multiple parties, which Agreement was registered as Instrument No. LT167606 on January 24, 1994.
12. Notice of an Option to Purchase dated January 21, 1994, between Sears Canada Inc. and Regional Shopping Centres Limited, which Agreement was registered as Instrument No. LT167608 on January 2, 1994.
13. Notice of Assignment of Option to Purchase dated January 21, 1994, between Regional Shopping Centres Limited and The Prudential Insurance Company of America, which Assignment was registered as Instrument No. LT167610 on January 24, 1994.
14. Notice of Assignment of Option to Purchase dated January 21, 1994, between Regional Shopping Centres Limited and Royal Bank of Canada, Canadian Imperial

Bank of Commerce and The Toronto-Dominion Bank, which Assignment was registered as Instrument No. LT167628 on January 24, 1994.

15. Notice of Assignment of Operating Agreement dated January 21, 1994, between Regional Shopping Centres Limited and Cambridge Leaseholds Limited, and Royal Bank of Canada, Canadian Imperial Bank of Commerce and The Toronto-Dominion Bank, which Assignment was registered as Instrument No. LT167629 on January 24, 1994.
16. Notice of Assignment of Operating Agreement dated September 30, 1995, between Royal Bank of Canada and Canadian Imperial Bank of Commerce and The Toronto-Dominion Bank, which Assignment was registered as Instrument No. LT190557 on November 10, 1995.
17. Notice of Assignment of Operating Agreement dated September 30, 1998, between Canadian Imperial Bank of Commerce and The Toronto-Dominion Bank, and The Toronto-Dominion Bank, Canadian Imperial Bank of Commerce and The Bank of Nova Scotia, which Assignment was registered as Instrument No. LT237273 on September 30, 1998.
18. Notice of Re-assignment of Operating Agreement dated February 13, 2002 by Canadian Imperial Bank of Commerce, The Toronto-Dominion Bank and The Bank of Nova Scotia, which Re-assignment was registered as Instrument No. LT344811 on April 26, 2002.
19. Transfer of Easement in favour of Ontario Hydro, which Easement was registered as Instrument No. LT180373 on January 10, 1995.
20. Notice of Assignment of Option to Purchase dated September 30, 1995, between Royal Bank of Canada and Canadian Imperial Bank of Commerce and The Toronto-Dominion Bank, which Assignment was registered as Instrument No. LT190556 on November 10, 1995.
21. Notice of Assignment of Option to Purchase dated September 30, 1998, between Canadian Imperial Bank of Commerce and The Toronto-Dominion Bank, and The Toronto-Dominion Bank, Canadian Imperial Bank of Commerce and The Bank of Nova Scotia, which Assignment was registered as Instrument No. LT237272 on September 30, 1998.
22. Notice of Re-assignment of Option to Purchase dated February 13, 2002 by Canadian Imperial Bank of Commerce, The Toronto-Dominion Bank and The Bank of Nova Scotia, which Re-assignment was registered as Instrument No. LT344810 on April 26, 2002.
23. Notice of Re-assignment of Option to Purchase dated January 18, 2002 by The Prudential Insurance Company of America, which Re-assignment was registered as Instrument No. LT350705 on June 3, 2002.
24. Notice of an Assignment of Option to Purchase dated April 3, 2008, between

OMERS Realty Corporation and HOOPP Realty Inc., which Assignment was registered as Instrument No. CE322250 on April 4, 2008.

25. Notice of an Assignment of Option to Purchase dated January 29, 2015, between Regional Shopping Centres Limited and HOOPP Realty Inc., which Assignment was registered as Instrument No. CE645636 on January 29, 2015.
26. The ROFR, the Operating Agreement and the Option.

PIN 01561-0100 (LT)

- (A) Instrument No. R137437 registered July 17, 1956 being a Notice of Windsor Airport Zoning Regulations as amended by Instrument No. R459284, as further amended by Instrument No. R844423, as further amended by Instrument No. R844424 and as further amended by Instrument No. LT2350.
- (B) Instrument No. R424812 registered November 7, 1968 being an Easement Agreement in favour of Regional Shopping Centres Limited.
- (C) Instrument No. R482458 registered October 23, 1970 being an Easement Agreement in favour of Union Gas Company of Canada Limited.
- (D) Instrument No. R580948 registered October 3, 1973 being a Notice of Agreement.
- (E) Instrument No. R1260987 registered January 19, 1994 being a Transfer of Easement in favour of Regional Shopping Centres Limited.
- (F) Instrument No. R1261338 registered January 24, 1994 being a Notice of Operating Agreement.
- (G) Instrument No. R1261340 registered January 24, 1994 being a Notice of Option to Purchase.
- (H) Instrument No. R1261341 registered January 24, 1994 being an Assignment General re SE73128 and R1261340.
- (I) Instrument No. R1261346 registered January 24, 1994 being an Assignment General re R167625 and R1261340.
- (J) Instrument No. R1261347 registered January 24, 1994 being an Assignment General re R1261338.
- (K) Instrument No. R1326485 registered November 8, 1995 being an Assignment General.
- (L) Instrument No. R1326486 registered November 8, 1995 being an Assignment General.
- (M) Instrument No. R1439742 registered September 30, 1998 being an Assignment General re 1261347 and 1326486.

- (N) Instrument No. R1439743 registered September 30, 1998 being an Assignment General re 1261346 and 1326485.
- (O) Instrument No. LT344759 registered April 26, 2002 being a Notice of Agreement between Canadian Imperial Bank of Commerce, The Toronto-Dominion Bank and The Bank of Nova Scotia and Regional Shopping Centres Limited and Ivanhoe Cambridge II Inc. relating to Instrument No. R1261340.
- (P) Instrument No. LT344760 registered April 26, 2002 being a Notice of Agreement between Canadian Imperial Bank of Commerce, The Toronto-Dominion Bank and The Bank of Nova Scotia and Regional Shopping Centres Limited and Ivanhoe Cambridge II Inc. relating to Instrument No. LT11817.
- (Q) Instrument No. LT350706 registered June 3, 2002 being a Notice of Agreement between The Prudential Insurance Company of America and Regional Shopping Centres Limited and Ivanhoe Cambridge II Inc. relating to Instrument No. LT73128.

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SEARS CANADA INC., 9370-2751 QUEBEC INC., 191020 CANADA INC., THE CUT INC., SEARS CONTACT SERVICES INC., INITIUM LOGISTICS SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM TRADING AND SOURCING CORP., SEARS FLOOR COVERING CENTRES INC., 173470 CANADA INC., 2497089 ONTARIO INC., 6988741 CANADA INC., 10011711 CANADA INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA LTD., 4201531 CANADA INC., 168886 CANADA INC., AND 3339611 CANADA INC.

Applicants

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

MOTION RECORD OF THE APPLICANTS

(Motion for Approval of Agreement of Purchase and Sale with
HOOPP Realty Inc. (Store #1017 - Windsor))

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