

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

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

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**MOTION RECORD OF THE APPLICANTS
(Motion for Approval of Phase II Liquidation,
returnable October 13, 2017)**

October 10, 2017

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**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

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

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

Applicants

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Tab 1

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF SEARS CANADA INC., CORBEIL
ÉLECTRIQUE INC., S.L.H. TRANSPORT INC., THE CUT INC.,
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4201531 CANADA INC., 168886 CANADA INC., AND 3339611
CANADA INC.

Applicants

**NOTICE OF MOTION
(Motion for Approval of Phase II Liquidation)**

The Applicants will make a motion before a judge of the Ontario Superior Court of Justice (Commercial List) on October 13, 2017 at 10:00 a.m., or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

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

THE MOTION IS FOR:

1. An Order substantially in the form of the draft Order 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 Amended and Restated Agency Agreement dated as of October 10, 2017 (the “**Amended and Restated Agency Agreement**”) entered into between Sears Canada Inc. (“**Sears Canada**”) and a contractual joint venture comprised of Gordon Brothers Canada ULC, Merchant Retail Solutions ULC, Tiger Capital Group, LLC and GA Retail Canada ULC (together, the “**Syndicated Agent**”) in the form attached at Tab 2B of the Motion Record, and the transactions contemplated thereunder;
- (c) approving the updated sale guidelines (the “**Sale Guidelines**”) in the form attached as Schedule “A” to the draft Order;
- (d) authorizing the Syndicated Agent to conduct a liquidation sale in accordance with the draft Order, the Amended and Restated Agency Agreement and the Sale Guidelines;
- (e) granting a Court-ordered charge in favour of the Syndicated Agent (the “**Second Agent’s Charge**”) on all of the Merchandise, the Proceeds, the FF&E Proceeds (to the extent of the FF&E Commission) the Designated Sundry Goods and Consignment Goods Proceeds (to the extent of the Designated Sundry and Consignment Goods Commission) and proceeds from the sale of Cosmetic Products (to the extent of the applicable commission as set out in the Amended and Restated Agency Agreement), provided that until payment in full to Sears Canada of all amounts owing to Sears Canada under the Amended and Restated Agency Agreement (including the Bid Protections), the Second Agent’s Charge shall be junior and subordinate to all Encumbrances (each term as defined in the draft Order);
- (f) authorizing and directing Sears Canada to take any and all actions as may be necessary or desirable to implement the Amended and Restated Agency Agreement and the transactions contemplated therein;

- (g) authorizing the Applicants and the Hometown Dealers to conduct a liquidation sale of Merchandise and FF&E located at their respective Hometown Dealer stores in accordance with the draft Order and the Sale Guidelines;
 - (h) sealing from the public record certain commercially-sensitive information and documents (as described below); and
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;
3. Beginning on June 26, 2017, BMO Nesbitt Burns Inc. (the "**Sale Advisor**"), on behalf of the Applicants and with the assistance of the Monitor, conducted a process to solicit proposals from third party liquidators to assist the Applicants in the orderly liquidation of the inventory and furniture, fixtures and other store equipment ("**FF&E**") at 45 retail store locations which had been identified for closure at the outset of the CCAA proceedings (the "**Initial Closing Locations**") through the conduct of "liquidation" or similar themed sales;
4. On July 13, 2017, the Court approved a process (the "**SISP**") by which 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;
5. On July 18, 2017, the Court issued an Order (the "**July Liquidation Order**") which approved a process for the liquidation of inventory and FF&E at the Initial Closing Locations at that time;

6. In the course of implementing the SISP, the Sale Advisor and the Applicants initiated a process to solicit liquidation proposals for a potential second phase of the liquidation of the Inventory and FF&E located in Sears Canada's remaining store locations and Corbeil locations;

7. It was necessary to solicit bids for a phase II liquidation concurrently with the SISP in order to, among other things, comply with the Applicants' obligations under the DIP Credit Agreements (as amended from time to time), as well as to ensure that any liquidation sale could be conducted during the December holiday season in order to maximize recovery for all stakeholders;

8. On August 8, 2017, the Sale Advisor, on behalf of the Applicants and with the assistance of the Monitor, commenced a request for proposal process (the "**Second RFP Process**") to solicit proposals from third party liquidators to assist the Applicants in the orderly liquidation of inventory and associated assets, including certain FF&E, located at all leased and owned store and distribution centre locations that are not currently being liquidated, excluding dealer-managed and franchisee stores, (collectively, the "**Remaining Closing Locations**") through the conduct of "liquidation" or similar themed sales.

9. On August 31, 2017, three sets of proposals were received from potential liquidators, and all three proposals were subsequently updated as part of the negotiation process;

10. After considering all three of the proposals submitted, the Applicants selected Gordon Brothers Canada ULC and Merchant Retail Solutions ULC (collectively, the "**Agent**") as the successful bidder;

11. The Applicants, the Sale Advisor and the Monitor are of the view that the Agent's proposal was the most favourable of those submitted;

12. The process of selecting the Syndicated Agent was fair and reasonable in the circumstances and was approved by the Monitor;

13. Following the RFP process, Sears Canada and the Agent negotiated and executed, subject to Court approval, an agency agreement dated as of October 7, 2017 (the "**Agency Agreement**"),

pursuant to which the Agent would serve as the Applicants' exclusive agent and mandatary for the purpose of disposing of the Merchandise and liquidating the FF&E located in the Remaining Closing Locations;

14. On October 10, 2017, the Agent provided Sears Canada with notice that the transactions contemplated by the Agency Agreement would be syndicated with Tiger Capital Group, LLC and GA Retail Canada ULC;

15. Sears Canada and the Syndicated Agent subsequently entered into the Amended and Restated Agency Agreement, subject to Court approval;

16. The Amended and Restated Agency Agreement contemplates the sale of the Merchandise and FF&E to commence on October 19, 2017 and to conclude no later than January 21, 2018, or such other dates agreed to by Sears Canada, the Syndicated Agent, the Monitor and the DIP Lenders;

17. The proposed liquidation sale under the Amended and Restated Agency Agreement will be conducted in accordance with the Sale Guidelines, which are substantially similar to the sale guidelines previously approved in these CCAA proceedings in the July Liquidation Order;

18. The Syndicated Agent has extensive experience conducting retail liquidations;

19. The terms of the Amended and Restated Agency Agreement and the process and transactions contemplated thereunder are fair and reasonable;

20. Similar to the first liquidation process that was approved by the July Liquidation Order, the remaining Hometown stores were not part of the Second RFP Process;

21. The Applicants, in consultation with the Sale Advisor, determined that it would not be appropriate to engage a third-party liquidator to liquidate the remaining 37 Hometown Dealer stores that were identified for closure given the particularities associated with their independent ownership and operation;

22. Accordingly, the Applicants propose that the Applicants and the remaining Hometown Dealers, as applicable, will run their own liquidation in accordance with the Sale Guidelines;

23. The process and transactions contemplated under the Amended and Restated Agency Agreement were designed by the Applicants and the Sale Advisor in consultation with the Monitor, and are expected to maximize the value of the Applicants' Inventory and FF&E in the closing stores for the benefit of the Applicants' stakeholders;

24. The Amended and Restated Agency Agreement is conditional on the Second Agent's Charge being approved by the Court;

25. The Amended and Restated Agency Agreement is in the best interests of the creditors and other stakeholders of the Applicants;

26. The relief sought on this motion is supported by the Monitor, the Sale Advisor and the DIP Lenders;

27. The Confidential Appendix to the Fourth Report of the Monitor, to be filed in respect of this motion, contains confidential and commercially sensitive information, including a summary of the three liquidation proposals received, which if made public would be materially prejudicial to Sears Canada and the bidders and detrimental if the proposed transaction is not completed;

28. There is no reasonable alternative measure to sealing this information from the public record;

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

30. The provisions of the CCAA, in particular Section 11 thereof, and the inherent and equitable jurisdiction of this Honourable Court;

31. 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

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

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

1. The Affidavit of Mark Caiger sworn September 28, 2017 and the exhibits attached thereto;
2. The Affidavit of Mark Caiger sworn October 10, 2017 and the exhibits attached thereto;
3. The Fourth Report of the Monitor (to be filed); and
4. Such further and other evidence as counsel may advise and this Court may permit.

October 10, 2017

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

Applicants

Ontario
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceeding commenced at Toronto

NOTICE OF MOTION
(Motion for Approval of Phase II Liquidation)

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Tab 2

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
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CANADA INC.

APPLICANTS

AFFIDAVIT OF MARK CAIGER
(Sworn October 10, 2017)

(Phase II Liquidation)

I, Mark Caiger, of the City of Toronto, in the Province of Ontario, MAKE OATH
AND SAY:

1. I am a Managing Director of Mergers and Acquisitions at BMO Nesbitt Burns Inc. operating as BMO Capital Markets (“**BMO CM**” or the “**Sale Advisor**”) and have been with BMO CM for the past 17 years. I have a broad range of mergers and acquisitions and restructuring experience, including the recapitalization/restructuring of Postmedia, MEG Energy, Connacher Oil & Gas, Yellow Media, AbitibiBowater, Bell Canada International, Ivaco Inc., and

Lightstream Resources. I am a Chartered Professional Accountant, a CFA Charterholder, and a member of the Board of Directors of the Insolvency Institute of Canada.

2. I have been directly involved in planning, managing and implementing (together with the rest of the Sale Advisor team) the Applicants' court-approved sale process (the "**SISP**"), the Applicants' previous court-approved liquidation process (the "**First Liquidation Process**"), and the liquidator selection process for the proposed phase II liquidation described herein. 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 members of my team, members of the senior management team of Sears Canada Inc. ("**Sears Canada**" or the "**Company**"), legal advisors to the Applicants, and representatives of FTI Consulting Canada Inc. ("**FTI**" or the "**Monitor**").

3. This Affidavit is made in support of a motion brought by the Applicants seeking an Order substantially in the form attached as Schedule "A" to the Notice of Motion, among other things, approving the Amended and Restated Agency Agreement and the Sale Guidelines (each as defined below). The Amended and Restated Agency Agreement provides for the liquidation of Sears Canada's remaining locations, including 74 Full-Line stores and 8 Home Stores. The Sale Advisor and the Applicants believe that the Amended and Restated Agency Agreement provides the Applicants and their stakeholders with the best possible outcome in the circumstances, as more fully set out below.

Background

4. The Applicants were granted protection from their creditors under the CCAA pursuant to an initial order of the Ontario Superior Court of Justice (Commercial List) dated June 22, 2017, as amended and restated on July 13, 2017 (the “**Initial Order**”). FTI was appointed in the Initial Order to act as the Monitor in the CCAA proceedings. I understand that the Initial Order provides that the Applicants have the right to, among other things:

- (a) cease, downsize or shut down any of their Business (as defined in the Initial Order) or operations, and to dispose of redundant or non-material assets not exceeding \$2 million in any one transaction or \$5 million in the aggregate in any series of related transactions, subject to certain conditions; and
- (b) pursue all avenues of refinancing, restructuring, selling and reorganizing the Business or Property (as defined in the Initial Order), in whole or in part, subject to prior approval of the Court.

5. On July 13, 2017, the Court issued an order approving the SISP whereby 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 (the “**Special Committee**”) and the Monitor, would seek bids and proposals for a broad range of transaction alternatives with respect to the Business, Property, Assets and/or Leases of the Applicants (each as defined in the SISP).

6. On July 18, 2017, the Court issued the July Liquidation Order (as defined below) which approved a process for the liquidation of inventory and furniture, fixtures and other store

equipment (“**FF&E**”) at certain locations scheduled for closure at that time, pursuant to the First Agency Agreement and the Consulting Agreement (each as defined below).

7. On October 4, 2017, the Court granted a number of Approval and Vesting Orders in respect of various sale, lease surrender and lease transfer transactions arising from the SISP.

8. Further details regarding the background to these CCAA proceedings are set out in Affidavits of Billy Wong sworn June 22, 2017 (the “**Initial Order Affidavit**”), July 5, 2017 (the “**Second Wong Affidavit**”) and July 12, 2017 (the “**Third Wong Affidavit**”). In particular, further details regarding the First Liquidation Process are set out in the Third Wong Affidavit. A description regarding the SISP conducted by the Sale Advisor and Sears Canada is set out in my affidavit sworn September 28, 2017 (the “**Sale Process Affidavit**”) and the various affidavits sworn by Mr. Wong in respect of the transactions arising from the SISP. Except where so stated, capitalized terms not otherwise defined herein have the meaning given to them in these affidavits. Unless otherwise indicated, all amounts in this Affidavit are in Canadian dollars.

First Liquidation Process

9. On June 26, 2017, the Sale Advisor, on behalf of the Applicants and with the assistance of the Monitor, commenced a request for proposal process (the “**First RFP Process**”) to solicit proposals from third party liquidators to assist the Applicants in the orderly liquidation of the inventory and FF&E at 45 retail store locations which had been identified for closure at the outset of the CCAA proceedings (collectively, the “**Initial Closing Locations**”) through the conduct of “liquidation” or similar themed sales. Further details regarding the First RFP Process are set out in the Third Wong Affidavit.

10. On July 18, 2017, the Court, among other things, approved the proposed liquidation sale transactions contemplated under the following agreements:

- (a) the Amended and Restated Agency Agreement entered into between Sears Canada and a contractual joint venture comprised of Gordon Brothers Canada ULC, Merchant Retail Solutions ULC, Tiger Capital Group, LLC and GA Retail Canada ULC (collectively, the “**First Syndicated Agent**”) dated July 12, 2017 and amended and restated on July 14, 2017 (the “**First Agency Agreement**”); and
- (b) the Amended and Restated Consulting Agreement entered into between Sears Canada and the First Syndicated Agent dated July 12, 2017 and amended and restated on July 14, 2017 (the “**Consulting Agreement**”).

11. The liquidation sale with respect to the Initial Closing Locations commenced on July 21, 2017 and had a projected sale termination date of no later than October 12, 2017. I understand that the liquidation sales at all 15 Sears Home stores were completed by September 4, 2017, and the liquidation sales at all remaining Initial Closing Locations were completed by October 1, 2017.

Selection of a Liquidator for Phase II Liquidation

12. In the course of implementing the SISP, the Applicants and the Sale Advisor, in consultation with the Monitor and the DIP Lenders, initiated a process to solicit liquidation proposals for a potential second phase of the liquidation of the Inventory and FF&E located in Sears Canada’s remaining locations and Corbeil locations, for a number of reasons, including:

- (a) to prepare for a potential liquidation in the event that no bidder made a going concern bid, that a going concern bid was not capable of being consummated, or that the selected going-concern bid ultimately failed to close;
- (b) to prepare for the potential result that some stores may not be included as part of a going concern bid and that the inventory and FF&E located in those stores would need to be liquidated; and
- (c) to be able to properly evaluate the value of any potential going concern sale by comparison to the value of a total liquidation alternative.

13. It was also necessary to solicit proposals for a phase II liquidation concurrently with the SISP to comply with the Applicants' obligations under the DIP Credit Agreements (as amended from time to time), as well as to ensure that any liquidation sale could be conducted during the December holiday season in order to maximize recovery for all stakeholders.

14. On August 8, 2017, in accordance with paragraph 4 of the SISP Approval Order, the Sale Advisor, on behalf of the Applicants and with the assistance of the Monitor, commenced a request for proposal process (the "**Second RFP Process**") to solicit proposals from third party liquidators to assist the Applicants in the orderly liquidation of inventory and associated assets, including certain FF&E, located at all leased and owned stores and distribution centre locations that were not currently being liquidated, excluding the remaining dealer-managed and franchisee stores, (collectively, the "**Remaining Closing Locations**") through the conduct of "liquidation" or similar themed sales (the "**Sale**") at the Remaining Closing Locations.

15. The Sale Advisor contacted seven potential liquidators with prior experience handling large-scale liquidations, informing them of the Second RFP Process. These parties include some of the most experienced liquidation firms operating in the North American marketplace. All the parties had previously been solicited in the context of the First RFP Process and had expressed interest. This solicitation also included all of the liquidation firms that were party to the First Agency Agreement and the Consulting Agreement. A copy of the request for proposal dated August 8, 2017 is attached as Exhibit "A" to this Affidavit. Seven parties (either on an individual basis or in the context of a proposed joint venture or other arrangements), all of whom had executed non-disclosure agreements ("NDAs"), were provided with a template draft agency agreement for Full-Line and Home store locations on August 22, 2017 and for Corbeil store locations on August 29, 2017.

16. The solicitation letter invited the liquidation firms to each submit a comprehensive proposal with: (i) a value delineated for the liquidation of inventory at the Remaining Closing Locations; (ii) an offer to assist the Applicants in its disposition of the FF&E located in the Remaining Closing Locations; and (iii) an indication of whether the liquidation was to be on a guaranteed minimum basis, fee-for-service basis, or some other structure to be agreed upon by the parties in each case separated by retail line (Full-Line, Home Stores, and Corbeil) and, where applicable, outlining the separate assumptions used for each business line. The letter stated that all proposals were to be received by the Sale Advisor by no later than 5:00 pm on August 31, 2017. Bidders were told to assume that the Sale at the Remaining Closing Locations that: (i) are Full-Line stores will take place over a 12-week period; (ii) are Home Stores will take place over a six-week period; and (iii) are Corbeil stores will take place over a six-week period.

17. Each party who returned an executed NDA was given access to an electronic diligence data room which contained relevant financial and operational data in respect of the Applicants' inventory and FF&E. The Sale Advisor and the Applicants answered questions and provided follow-up information to the potential liquidators upon their request. Representatives of six parties (either on an individual basis or in the context of a proposed joint venture or other arrangements) conducted a number of site visits as a part of their due diligence.

Results of the Liquidator Selection Process

18. On August 31, 2017, three sets of proposals were received from potential liquidators. Two of the proposals contemplated a sale commencement date of September 29, 2017, and one proposal contemplated a sale commencement date of October 5, 2017. The Sale Advisor, counsel for the Applicants and the Monitor immediately commenced a comprehensive review of the three proposals. The Sale Advisor, in consultation with the Monitor and the DIP Lenders, provided feedback to the bidders, and negotiations ensued in respect of financial and legal aspects of their proposals. Draft documents were exchanged by the parties, and numerous follow up discussions were held.

19. In parallel and as part of the SISP process, the Sale Advisor and the Applicants undertook efforts to solicit and conclude a transaction for the sale of the Corbeil business as a going concern, in an effort to maximize value to the estate, preserve employment and continue operations of the Corbeil owned store and franchise network. These efforts were successful, and a going concern sale transaction for the Corbeil business was approved by the Court on October 4, 2017. Further details regarding this transaction are set out in the Affidavit of Billy Wong dated

October 1, 2017 (Motion for Approval of Asset Purchase Agreement with Am-Cam Électroménagers Inc.).

20. Concurrently, on August 31, 2017, the Sale Advisor and the Monitor received numerous other bids and proposals in connection with the SISP, including a potential going concern bid for Sears Canada's full-line business (the "**Initial Management Bid**") put forward by a group led by Brandon Stranzl, Sears Canada's executive chairman (the "**Stranzl Group**"). Further details regarding the Initial Management Bid are set out in my earlier Sale Process Affidavit. The status of this bid was also described in the Third Report of the Monitor dated October 2, 2017. In that report, the Monitor noted that a revised form of Asset Purchase Agreement for the Initial Management Bid was delivered on September 29, 2017 with a number of critical economic terms omitted.

21. In order to allow for continued discussions concerning the Initial Management Bid and permit the Company to take certain preparatory steps, while ensuring that a liquidation could commence as soon as possible should no viable going concern option materialize, the three potential liquidators were subsequently asked to resubmit their proposals with later sale commencement dates. The Applicants, the Monitor and the Sale Advisor worked together throughout the process to provide updated information (including inventory estimates) to the liquidation bidders and to respond to inquiries in a timely manner.

22. On October 3, 2017, the Stranzl Group provided Sears Canada and the Monitor with updated economic terms for their bid. These economic terms reflected the removal of the stores that were subject to definitive transaction agreements and resulted in less consideration being offered as part of the going concern bid. The Sale Advisor, the Applicants, the Monitor

and the Special Committee considered these lower economic terms, along with the conditionality, execution risk and timing concerns associated with the going concern bid and the liquidity issues facing the Applicants. These concerns were communicated to the Stranzl Group. Extensive consultations with respect to the revised bid were also held with representatives of the DIP Lenders and the Pension Benefits Guarantee Fund, as well as Pension Representative Counsel and Employee Representative Counsel and their financial advisor.

23. On October 3, 2017, the Applicants entered into the Seventh Amendments to the DIP Credit Agreements to: (i) modify minimum inventory balance thresholds; and (ii) amend certain milestones which required the selection of successful bids in the SISP by September 25, 2017 and the commencement of store closure sales for all locations not the subject of those bids by September 27, 2017. As set out in the Supplement to the Third Report of the Monitor dated October 3, 2017, the Seventh Amendments include the following new milestones:

- (a) a bid that is satisfactory to the DIP Lenders providing for a liquidation sale in respect of the stores for which Sears Canada has already entered into agreements and agreed to surrender its leases must be delivered to the DIP Lenders by October 6, 2017;
- (b) an agreement in form and substance acceptable to the DIP Lenders must be entered into with a liquidator to undertake liquidations of the remaining Sears Canada locations on or before October 7, 2017 (the “**Acceptable Liquidation Agreement**”);

- (c) the Acceptable Liquidation Agreement must be approved by the Court no later than October 13, 2017; and
- (d) the Acceptable Liquidation Agreement must provide for the commencement of a liquidation sale at the remaining Sears Canada locations by October 19, 2017, which date can be extended to October 26, 2017 in the DIP Lenders' discretion.

24. In order to provide the Applicants with maximum flexibility to consider to pursue a viable going concern proposal for the business of Sears Canada, if any, or alternatively, a more favourable proposal for the liquidation of the inventory and FF&E, if any, the Special Committee, the Sale Advisor and the Monitor, after consulting with the representatives of the Applicants' unsecured creditors, determined it was necessary and appropriate to continue to include a provision in the draft agency agreement which provides Sears Canada with the ability to terminate the agency agreement upon payment of a break-fee and reimbursement of certain expenses.

25. While the Amended and Restated Agency Agreement described below provides for a break fee and expense reimbursement, and as such for the possibility of an alternate going concern transaction materializing for Sears Canada prior to the Sale Commencement Date, no executable going concern transaction currently exists. The Stranzl Group has requested that its deposit provided in support of the going concern transaction be returned, and the Monitor has initiated the return of the deposit. However, I understand that Mr. Stranzl continues to have communications with certain stakeholders regarding a potential going concern transaction.

26. As part of the phase II liquidation negotiation process, all three of the liquidation bidders updated their proposals. During this negotiation process, consultations took place with respect to the bids with representatives of the DIP Lenders and the Pension Benefits Guarantee Fund, as well as Pension Representative Counsel and Employee Representative Counsel and their financial advisor. On October 6, 2017, counsel to the DIP Lenders advised that the proposal submitted by a joint venture comprised of Gordon Brothers Canada ULC and Merchant Retail Solutions ULC (collectively, the “**Agent**”) was the only liquidation proposal received that was satisfactory to the DIP Lenders.

27. In subsequent negotiations, further improvements were made to the Agent’s proposal. Ultimately, after careful consideration of all available proposals, the Sale Advisor recommended to the Special Committee, and the Special Committee subsequently recommended to the Board, that Sears Canada select the Agent’s proposal. After carefully considering the Agent’s proposal, the Board determined that it was in the best interests of the Applicants and its stakeholders.

28. In the view of Sears Canada, the Special Committee and the Sale Advisor, the Agent’s proposal was the most favorable of the three proposals submitted, considering the experience of the Agent and its familiarity with Sears Canada’s business, the success of the First Liquidation Process and that on a risk-adjusted basis the Agent’s proposal is expected to maximize value for the Applicants’ stakeholders. Financial details and a comparison of the three proposals will be attached to a Confidential Appendix to the Monitor’s Report to be served in connection with this motion.

29. Moreover, the Agent was a member of the syndicate comprising the First Syndicated Agent that conducted the liquidation sales at the Initial Closing Locations, pursuant to the First Agency Agreement and the Consulting Agreement. As a result, the Agent is familiar with the business and operations of Sears Canada, including the inventory and FF&E, the numerous landlords, the distribution logistics and the key personnel, and has experience working with Sears Canada and the Monitor in this regard.

30. In addition, the Agent's proposal for the phase II liquidation is economically superior to the liquidation sale transaction contemplated by the First Agency Agreement which was approved by the Court for the First Liquidation Process. In particular, as described further below, the Agent's proposal provides that: (i) Sears Canada will receive a net minimum guarantee of 83% of the aggregate Cost Value of the Full-Line Merchandise (as opposed to 80% under the First Agency Agreement); (ii) the Agent's fee is 4% (as opposed to 5% under the First Agency Agreement); (iii) the remaining proceeds of the sale will be shared 25% to the Agent and 75% to Sears Canada (as opposed to 50% to each under the First Agency Agreement); and (iv) the Agent will receive 15% commission on the proceeds of all sales of FF&E (as opposed to 17.5% in the First Agency Agreement).

31. Moreover, as set out in the Third Wong Affidavit, the members of the contractual joint venture have extensive experience conducting retail liquidations. Among the members of the contractual joint venture, they have led the inventory dispositions for a wide variety of former retailers, including Target Canada and Eatons, and have conducted nearly all major retail liquidations in Canada, including BCBG, Ben Moss Western Jewellers Ltd., Bombay, Borders, Circuit City, Linens 'N Things, Saan Stores, Joggers, Athletes World, Bernard Trottier, Sport

Mart, and Mexx. In addition, members of the contractual joint venture conducted the liquidation of the inventory and FF&E in certain of the Zellers stores.

Proposed Phase II Liquidation Process

32. The Agent and Sears Canada entered into an agency agreement dated as of October 7, 2017 (the “**Agency Agreement**”), which was subject to Court approval. The Agency Agreement provided that the Agent had the right to syndicate the transaction contemplated by the agreement with Tiger Capital Group, LLC and GA Retail Canada ULC by providing Sears Canada with written notice of such syndication.

33. On October 10, 2017, the Agent provided Sears Canada with notice that the transactions contemplated by the Agency Agreement will be syndicated with Tiger Capital Group, LLC and GA Retail Canada ULC. Attached as Exhibit “B” to this Affidavit is a copy of the Amended and Restated Agency Agreement dated as of October 10, 2017 (the “**Amended and Restated Agency Agreement**”) between Sears Canada and a contractual joint venture comprised of Gordon Brothers Canada ULC, Merchant Retail Solutions ULC, Tiger Capital Group, LLC and GA Retail Canada ULC (together, the “**Syndicated Agent**”), which is subject to Court approval. The only substantive amendments to the Agency Agreement were inclusion of the new parties, deletion of the provision which provided the Agent the right to syndicate, and certain assignment rights. Capitalized terms that are not otherwise defined in this section have the meaning given to them in the Amended and Restated Agency Agreement.

34. The proposed liquidation sale under the Amended and Restated Agency Agreement will be conducted in accordance with an updated version of the sale guidelines which

were approved by an Order of this Court dated July 18, 2017 (the “**July Liquidation Order**”) and attached as Schedule “A” to that Order. The updated sale guidelines (the “**Sale Guidelines**”) are substantially similar in all respects to the version approved by the July Liquidation Order. The key elements of the Sale Guidelines were described in the Second Wong Affidavit. The Sale Guidelines, along with a blackline to the previous version approved by the Court, are attached as Exhibit “C” to this Affidavit, and were provided by Applicants’ counsel to certain landlords’ counsel on October 6, 2017.

35. The Amended and Restated Agency Agreement contemplates the sale of applicable inventory, sundry goods, and FF&E to commence on October 19, 2017 and to conclude by no later than January 21, 2018, or such other dates agreed to by the Company and the Syndicated Agent, with the approval of the Monitor and the DIP Lenders.

36. The Amended and Restated Agency Agreement does not authorize the Syndicated Agent to supplement or augment the Merchandise during the Sale Term.

37. The Amended and Restated Agency Agreement further provides that the Syndicated Agent will serve as the Applicants’ exclusive agent and mandatary for the limited purpose of conducting the Sale, disposing of the Merchandise and liquidating the FF&E in the Remaining Closing Locations, as well as the FF&E located in Sears Canada’s distribution centers, if Sears Canada so elects.

38. As a guaranty of the Syndicated Agent’s performance in respect of Full-Line Stores, the Amended and Restated Agency Agreement provides that Sears Canada shall receive a net minimum guarantee of 83% of the aggregate Cost Value of the Full-Line Merchandise (the

“**Full-Line Guaranteed Amount**”), computed in accordance with the Amended and Restated Agency Agreement and subject to certain adjustments if: (i) the aggregate Cost Value of the Full-Line Merchandise is less than \$391 million or more than \$411 million; and/or (ii) the Cost Value of the Full-Line Merchandise as a percentage of the Retail Price of the Merchandise exceeds 52.5%.

39. As a guaranty of the Syndicated Agent’s performance in respect of Home Stores, the Syndicated Agent guarantees that Sears Canada shall receive a net minimum guarantee of 52.5% of the aggregate Cost Value of the Home Store Merchandise (the “**Home Store Guaranteed Amount**”, and together with the Full-Line Guaranteed Amount, the “**Guaranteed Amount**”), computed in accordance with the Amended and Restated Agency Agreement, and subject to certain adjustments if: (i) the aggregate Cost Value of the Home Store Merchandise is less than \$9 million or more than \$10 million; and/or (ii) the Cost Value of the Home Store Merchandise as a percentage of the Retail Price of the Merchandise exceeds 59.9%.

40. The Amended and Restated Agency Agreement provides that, on the date that is one business day prior to the Sale Commencement Date, the Syndicated Agent shall pay to Sears Canada an amount equal to 80% of the estimated Guaranteed Amount with respect to Merchandise (other than In-Transit Merchandise) and Distribution Center Merchandise.

41. To secure the Syndicated Agent’s obligations under the Amended and Restated Agency Agreement, including the obligation to pay the balance of the Guaranteed Amount and the Expenses, the Syndicated Agent shall deliver to Sears Canada one or more irrevocable and unconditional standby letters of credit in the aggregate original face amount equal to 20% of the estimated Guaranteed Amount, plus an amount equal to three weeks’ estimated Expenses, in

accordance with the terms of the Amended and Restated Agency Agreement. The face amount of the letter of credit will, upon the Syndicated Agent's request, be reduced by payments received by Sears Canada on account of the Guaranteed Amount after the commencement of the Sale provided that the face amount of the letter of credit will not be reduced to less than the parties' estimate of three weeks' worth of Expenses.

42. Some of the other key terms of the Amended and Restated Agency Agreement include:

- (a) All Sales in the Remaining Closing Locations will be recorded using the Applicants' existing point-of-sale systems to ensure accurate sales audit functions, as well as accurate calculations of Proceeds. All Proceeds will be collected by Sears Canada and deposited in its existing accounts on a daily basis and reconciled on a weekly basis.
- (b) Proceeds of the Sale will be first used to repay the Syndicated Agent for amounts paid on account of the Guaranteed Amount and to pay Expenses. All remaining proceeds shall be allocated in the following order: (i) to the Syndicated Agent in an amount equal to the sum of 4% of the aggregate Cost Value of the Merchandise, plus an amount equal to the Sales Taxes, if any, collectible by the Syndicated Agent; and (ii) as to any remainder, 25% to the Syndicated Agent and 75% to Sears Canada.
- (c) In consideration of its services in selling the FF&E, the Syndicated Agent will be paid a commission equal to 15% of the proceeds of all sales of FF&E. In addition,

Sears Canada will reimburse the Syndicated Agent for its reasonable out of pocket expenses reasonably attributed to the sale or disposition of FF&E which are not duplicative of the Expenses set out in the Amended and Restated Agency Agreement and are in accordance with the Budget. All gross proceeds of FF&E will be deposited by the Syndicated Agent on a daily basis in an account to be designated by Sears Canada.

- (d) To the extent that there is Merchandise or FF&E remaining at the applicable Sale Termination Date or FF&E Removal Deadline, respectively, such remaining Merchandise or FF&E shall be deemed transferred to the Syndicated Agent free and clear of all Encumbrances and the Syndicated Agent shall use commercially reasonable efforts to dispose of all such remaining Merchandise or FF&E. The proceeds received by the Syndicated Agent from such disposition shall constitute Proceeds or FF&E Proceeds, as applicable, under the Amended and Restated Agency Agreement. To the extent that any of the remaining Merchandise includes any Merchandise with logos, brand names or other intellectual property of or under license to Sears Canada, the Syndicated Agent and Sears Canada shall agree on the disposition of such Merchandise.
- (e) The Syndicated Agent shall be unconditionally responsible for all Expenses incurred in conducting the Sale during the Sale Term, which Expenses shall be paid by the Syndicated Agent in accordance with the Amended and Restated Agency Agreement. As more fully detailed in the Amended and Restated Agency Agreement, Expenses include occupation costs, sale employee wages and benefits

and other expenses incurred in connection with the Sale, all of which shall be paid by the Syndicated Agent in the ordinary course until the Sale Termination Date at each Closing Location.

- (f) Sears Canada will retain all rights and responsibilities in respect of any “**Excluded Goods**”, including, among other goods: (i) goods which belong to third parties, including sublessees, franchisees, concessionaires or licensees; (ii) goods held by the Company as bailee, including, among other such goods, Company Consignment Goods; (iii) Excluded Defective Merchandise; (iv) FF&E; (v) Excluded FF&E; (vi) Delayed Delivery Goods; (vii) Designated Sundry Goods; and/or (viii) In-Transit Merchandise that is not received in the Closing Locations on or before the Merchandise Receipt Deadline. The Syndicated Agent will assist Sears Canada in dealing with any Excluded Goods, including, without limitation, the removal or return of any of the Excluded Goods to such parties as may be identified by Sears Canada, all at Sears Canada’s sole cost and expense.

- (g) With the approval of the Monitor, Sears Canada and the Syndicated Agent may mutually agree to include as part of the Sale goods located at the Remaining Closing Locations that do not otherwise constitute Merchandise or FF&E. In consideration for its services in selling such goods, the Syndicated Agent is entitled to receive a commission (the “**Designated Sundry and Consignment Goods Commission**”) equal to 15% of the gross proceeds (net of sales tax) resulting from the disposition of such goods.

- (h) Cosmetic Products will not constitute Merchandise and may, at the option of Sears Canada, be sold as part of the Sale. The Syndicated Agent shall retain 7.5% of the proceeds for all sales of Cosmetic Products, and Sears Canada shall receive 92.5% of such proceeds. Cosmetic Products shall be sold at existing retail prices for the first four weeks of the Sale and thereafter at prices mutually agreed upon by Sears Canada and the Syndicated Agent.

- (i) All sales of Merchandise and FF&E will be “final sales” and “as is”, and all advertisements and sales receipts will reflect the same. For the first thirty days following the Sale Commencement Date, the Syndicated Agent shall accept returns of goods sold by Sears Canada at the Stores provided that such return is in compliance with Sears Canada’s return policy in effect at the time of the purchase of the Returned Merchandise and further provided that an original receipt of purchase for any such item is presented. Returns will not be permitted for goods sold after the Sale Commencement Date or as part of the First Liquidation Process. Sears Canada’s price match guarantee will no longer be in effect.

- (j) The Syndicated Agent will not accept or honour any coupons issued by Sears Canada or its competitors. During the Sale Term, all employees, current and former, of Sears Canada and the Syndicated Agent shall not be entitled to take advantage of any employee discounts at the Closing Locations. The Syndicated Agent will honour Sears Canada’s layaway obligations and will accept Sears Canada’s gift cards and Loyalty Points issued prior to the Sale Commencement Date.

- (k) Subject to the provisions of the proposed Approval Order approving the Amended and Restated Agency Agreement, Sears Canada will provide such employees as the Syndicated Agent may designate (the “**Retained Employees**”) from time to time in connection with the conduct of the Sale. The Syndicated Agent may, in its discretion and upon seven calendar days’ notice, stop using any such employees in connection with the conduct of the Sale. The Retained Employees shall at all times remain the employees of Sears Canada.
- (l) The Syndicated Agent may pay, as an Expense, retention bonuses. The amount of such retention bonuses shall be in an amount mutually agreed to by the Syndicated Agent and Sears Canada, and shall not be duplicative of and shall not take into account any KERP payments.
- (m) Sears Canada and the Monitor will have the right to monitor the Sale and activities attendant thereto and be present in all Closing Locations at all times and to share information with the DIP Lenders concerning the Sale.
- (n) The Amended and Restated Agency Agreement is conditional upon Sears Canada having obtained the Approval Order by no later than October 13, 2017, substantially in the form of the draft Order attached to the agreement.
- (o) The Amended and Restated Agency Agreement provides Sears Canada with the option of terminating the agreement, with approval of the Monitor and the Court: (i) at any time prior to 5:00 p.m. EST on the date that is one day immediately prior to the Sale Commencement Date solely for the purpose of

pursuing a going concern transaction; or (ii) at any time if Sears Canada is pursuing an alternative liquidation transaction, provided that any such proposal is received by Sears Canada prior to 5:00 p.m. EST on October 11, 2017. In the event that Sears Canada terminates the Amended and Restated Agency Agreement on the basis on the foregoing, the Syndicated Agent will be entitled to receive a \$2.5 million break fee and certain expense reimbursements up to a maximum amount of \$2.05 million.

43. The Amended and Restated Agency Agreement contemplates the creation of a first ranking Court-ordered charge (the “**Second Agent’s Charge**”) in favour of the Syndicated Agent on all of the Merchandise, the Proceeds, the FF&E Proceeds (to the extent of the FF&E Commission), the Designated Sundry Goods and Consignment Goods Proceeds (to the extent of the Designated Sundry and Consignment Goods Commission) and proceeds from the sale of Cosmetic Products (to the extent of the applicable commission as set out in the Amended and Restated Agency Agreement), provided that until payment in full to Sears Canada of all amounts owing to Sears Canada under the Amended and Restated Agency Agreement (including the Bid Protections), the Second Agent’s Charge shall be junior and subordinate to all Encumbrances (but solely to the extent of such unpaid amounts). Pursuant to the Amended and Restated Agency Agreement, the Applicants are seeking Court approval of the Second Agent’s Charge.

44. Similar to the previous liquidation process that was approved by the July Liquidation Order, the remaining 37 Hometown stores were not part of the Second RFP process. As described in the Third Wong Affidavit, the Applicants, in consultation with the Sale Advisor, determined that it would not be appropriate to engage a third-party liquidator to liquidate the


Hometown stores, given the particularities associated with their independent ownership and operation. Accordingly, the Applicants propose in the draft Order that the Applicants and the Hometown Dealers will run their own liquidation in their respective stores as set out on Schedule “C” to the draft Order and in accordance with the Sale Guidelines.

Conclusion

45. The Applicants and the Sale Advisor believe that the proposed liquidation sale under the Amended and Restated Agency Agreement is in the Applicants’ best interests and, on a risk-adjusted basis, is expected to maximize the value of the Applicants’ Merchandise and FF&E in the Remaining Closing Locations and Distribution Centres for the benefit of the Applicants’ stakeholders. The Applicants believe that engaging a professional liquidator to undertake the Sale will produce better results for the Applicants than an attempt to sell Merchandise and FF&E without professional assistance.

46. Therefore, the Applicants are seeking the Court’s approval of the proposed liquidation process, including the Amended and Restated Agency Agreement and the Sale Guidelines. I am advised that the Monitor supports the proposed liquidation process, including the approval of the Amended and Restated Agency Agreement and the Sale Guidelines.

SWORN BEFORE ME at the City of Toronto, on the 10th day of October, 2017.



Commissioner for taking Affidavits
SONJA PAVIC



Mark Caiger

Tab A

**THIS IS EXHIBIT "A" TO THE AFFIDAVIT
OF MARK CAIGER SWORN BEFORE ME
ON THIS 10th DAY OF OCTOBER, 2017.**



A commissioner for taking Affidavits

RE: SEARS CANADA INC. ET AL

August 8, 2017

Confidential Request for Proposals to Conduct Store Closing Sales

I. Introduction

On June 22, 2017, Sears Canada Inc. (“Sears Canada”), Corbeil Électrique Inc. (“Corbeil” and together with Sears Canada, the “Company”), S.L.H. Transport Inc., The Cut Inc., Sears Contact Services Inc., Initium Logistics Services Inc., Initium Commerce Labs Inc., Initium Trading and Sourcing Corp., Sears Floor Covering Centres Inc., 173470 Canada Inc., 2497089 Ontario Inc., 6988741 Canada Inc., 10011711 Canada Inc., 1592580 Ontario Limited., 955041 Alberta Ltd., 4201531 Canada Inc., 168886 Canada Inc., and 3339611 Canada Inc. (together, the “Applicants”) sought and obtained an initial order (as amended from time to time, the “Initial Order”) from the Ontario Superior Court of Justice (Commercial List) (the “Court”) under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (“CCAA”). Pursuant to the Initial Order, FTI Consulting Canada Inc. (“FTI”) was appointed as monitor (the “Monitor”) of the Applicants and the engagement of BMO Nesbitt Burns Inc. (“BMO CM”) as financial advisor to Sears Canada was approved.

On July 13, 2017, a Sale and Investment Solicitation Process (a “SISP”) was approved by the Court. The SISP is being conducted by BMO CM on behalf of Sears Canada under the supervision of the Monitor. In conjunction with the SISP, the Company is also seeking proposals from third party liquidators in relation to certain of its stores.

We are writing to advise you that Sears Canada has requested that BMO CM, with the assistance of the Company and the Monitor, solicit bids for purposes of selecting a liquidator, on an exclusive basis, to assist the Company in the liquidation of inventory and associated assets, including certain furniture, fixtures and other store equipment (“FF&E”), located at all store leased and owned store locations that are not currently being liquidated, excluding dealer-managed stores, (collectively, the “Closing Locations”) through the conduct of “going out-of-business” or similar themed sales (the “Sale”) at the Closing Locations.

This Request for Proposals and the form of Agreement to be provided in connection therewith are confidential.

Joint venture proposals will not be considered unless previously approved by Sears Canada and the Monitor and, for greater certainty, bidders shall not consult with other potential bidders in respect of the Sale without the prior approval of Sears Canada and the Monitor.

II. Request For Proposals

1. The Company desires to receive a single proposal with value delineated for the liquidation of inventory located at the Closing Locations. Bidders should assume that the Sale at Closing Locations that (i) are Full Line stores will take place over a 12-week period, (ii) are Home Stores will take place over a 6-week period, and (iii) are Corbeil stores will take place over a 6-week period.
2. Upon entering into non-disclosure arrangements acceptable to the Company and the Monitor, bidders will be provided with access to a virtual data room with relevant financial and operational data.

RE: SEARS CANADA INC. ET AL

Confidential Request for Proposals to Conduct Store Closing Sales

3. Each bidder shall also include as part of its proposal an offer to assist the Company in its disposition of the FF&E owned by the Company and located in the Closing Locations.
4. Proposals should contemplate the liquidation of the Company's inventory on a guaranteed minimum basis, fee-for-service basis, or other structure to be agreed upon by the parties, in each case separated by retail line (Full-Line, Home Stores, and Corbeil) and, where applicable, outlining the separate assumptions used for each line.
5. In preparing a proposal, bidders are permitted to visit the Closing Locations provided that they may only contact employees and representatives of the Company that are designated by the Company after receiving approval to do so from BMO CM. Bidders are strictly prohibited from contacting any other employees or representatives of the Company.
6. All proposals to be considered must be received, in writing, **no later than 5:00 PM (Eastern Daylight Time) on August 31, 2017** (the "Proposal Deadline") and must stipulate that they are open for acceptance **proposal is irrevocable for a period of at least 20 business days after the Proposal Deadline**. All proposals must be submitted using the provided form of Agreement, redlined to show proposed changes from the original. Electronic copies of the form of Agreement may be obtained from FTI.
7. Proposals must be marked as "**Strictly Confidential**" and delivered by email simultaneously to each of the following on or before the Proposal Deadline:

BMO Nesbitt Burns Inc., as financial advisor to the Company
 100 King Street East, 4th floor
 Toronto, ON M5X 1H3

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

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

FTI Consulting Canada Inc., as Monitor of the Applicants
 79 Wellington Street West, Suite #2010
 Toronto, ON M5K 1G8

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

Osler, Hoskin & Harcourt LLP, as counsel to the Applicants
 100 King Street West, Suite #6200
 Toronto, ON M5X 1B8

Marc Wasserman, Partner
 Email: mwasserman@osler.com

RE: SEARS CANADA INC. ET AL

Confidential Request for Proposals to Conduct Store Closing Sales

Sandra Abitan, Partner
 Email: sabitan@osler.com

8. BMO CM, in consultation with the Company and the Monitor (and their respective advisors), will review each proposal and may provide feedback to each bidder about its proposal. The Company may share any proposal with certain of its key constituents.
9. The proposal that the Company wishes to accept (the “**Final Accepted Proposal**”) shall form the basis of an agreement (the “**Liquidation Agreement**”) to be negotiated between the Company and the successful bidder.
10. Any Final Accepted Proposal shall be subject to the approval of the Court. The Company intends to seek Court authorization and approval of the Liquidation Agreement as soon as reasonably practicable following execution of any Liquidation Agreement (the “**Approval Motion**”). The Approval Motion may be adjourned or rescheduled by the Company, with the consent of the Monitor, at any time.
11. The Company reserves the right, in its sole discretion, to modify or terminate this Request for Proposals, to accept or reject any and all proposals or any terms or conditions of a proposal, to seek clarification or enhancement of any proposal, to negotiate the terms of any proposal with any bidder, to withdraw any of the Closing Locations at any time prior to the execution of a definitive agreement or to exclude any bidder from any further participation in this Request for Proposal process and shall have no obligation to disclose any reason therefor.

The description of Sale terms in this letter is for illustrative purposes only. The terms of any Sale will be in all respects governed by the terms of the Liquidation Agreement.


Public information regarding Sears Canada’s CCAA proceedings is available at: <http://cfcanada.fticonsulting.com/SearsCanada/default.htm>. Any requests for additional information or clarification of the matters addressed herein shall be directed to the persons identified above. No other contact with any representative of the Sears Canada or any other party shall be made without the express prior consent of BMO CM.

BMO NESBITT BURNS INC.,
 in its capacity as financial advisor to the Company,
 and not in its personal or Corporate capacity

Per: Mark Caiger, Managing Director

Tab B

**THIS IS EXHIBIT "B" TO THE AFFIDAVIT
OF MARK CAIGER SWORN BEFORE ME
ON THIS 10th DAY OF OCTOBER, 2017.**



A commissioner for taking Affidavits

SEARS CANADA INC.

(Company)

- and -

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

(Agent)

AMENDED AND RESTATED AGENCY AGREEMENT

Dated as of October 10, 2017

Prepared by:

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

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AMENDED AND RESTATED AGENCY AGREEMENT

This AMENDED AND RESTATED AGENCY AGREEMENT is dated as of October 10, 2017.

A M O N G:

Sears Canada Inc. (the “Company”)

- and -

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

RECITALS:

- A. On June 22, 2017, the Company and certain related entities commenced court-supervised restructuring proceedings under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA Proceedings**”) and obtained an initial order (as amended from time to time, the “**Initial Order**”) from the Ontario Superior Court of Justice (Commercial List) (the “**Court**”).
- B. Pursuant to the Initial Order, FTI Consulting Canada Inc. was appointed as monitor (the “**Monitor**”) in the CCAA Proceedings and the engagement of BMO Nesbitt Burns Inc. (“**BMO**”) as financial advisor to the Company was approved.
- C. The Company currently operates a network of retail stores across Canada.
- D. The Agent, as part of a contractual joint venture with Tiger Capital Group, LLC and GA Retail Canada ULC, previously entered into (i) an amended and restated agency agreement with the Company dated July 14, 2017 (the “**Original Agency Agreement**”); and (ii) an amended and restated consulting agreement with the Company dated July 14, 2017 (the “**Original Consulting Agreement**”), pursuant to which collectively, 45 of the Company’s stores would be closed.
- E. On July 18, 2017, the Court approved the Original Agency Agreement and the Original Consulting Agreement. The Sales contemplated thereby commenced on July 21, 2017 and remain ongoing as of the date hereof.
- F. The Company and has identified certain stores for liquidation and closure.

- G. A contractual joint venture comprised of Gordon Brothers Canada ULC and Merchant Retail Solutions ULC entered into an agency agreement with the Company dated as of October 7, 2017 (the “**Original Phase II Agency Agreement**”).
- H. On October 7, 2017, Gordon Brothers Canada ULC and Merchant Retail Solutions ULC exercised their right to syndicate the transactions contemplated by the Original Phase II Agency Agreement as provided for in Section 18.15 thereof.
- I. The Company and the Agent, in consultation with the Monitor and BMO, and subject to the approval of the Court, wish to enter into this amended and restated agency agreement (this “**Agreement**”) in accordance with the terms hereof, pursuant to which an additional number of the Company’s stores will be closed.

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

ARTICLE 1 INTERPRETATION

1.1 Definitions

In this Agreement:

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

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

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

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

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

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

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

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

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

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

“**Alternative Going Concern Transaction**” means a going concern transaction involving a recapitalization, merger, amalgamation, purchase or other acquisition of some

or all or any portion of the assets of the Company (including, but not limited to, the Merchandise and the FF&E), or equity interests in the Company, or other similar transaction or business combination involving the Company, provided however, that an Alternative Going Concern Transaction shall not include and shall expressly exclude an Alternative Liquidation Transaction;

“Alternative Liquidation Transaction” means a transaction in connection with the liquidation of some or all or any portion of the assets of the Company (including, but not limited to, the Merchandise and the FF&E), or other similar transaction(s) involving the Company, which, in whole or in part, directly or indirectly, contemplates or includes one or more transaction(s) or series of transactions identical or similar to the transactions contemplated by this Agreement, which the Company, in its sole discretion, has determined to be superior to the transactions contemplated by this Agreement taking into account payment by the Company of the Bid Protections;

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

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

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

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

“Bid Protections” means, collectively, the Break-Up Fee, the Expense Reimbursement, and the Signage Costs;

“Break-Up Fee” means an amount equal to \$2.5 million dollars;

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

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

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

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

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

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

“Central Services Expenses” means the costs and expenses for the Central Services;

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

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

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

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

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

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

“**Cosmetic Products**” means all of the Company’s cosmetic products inventory identified as “Division 8” products in the Merchandise File;

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

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

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

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

“**Defective Merchandise**” means any item of inventory that is not saleable as first quality inventory because it is dented, worn, scratched, torn, tailored, soiled, ripped, faded, mismatched, missing pieces, mis-mated, out of box (if normally sold as new in-the-box), or near-sized, items typically sold as a set which are incomplete, or merchandise affected by other similar defects rendering it not first quality or items specifically referencing Canada’s 150th Anniversary of Confederation, and as to which Agent and Company mutually agree on its value to define its Cost Value;

“**Delayed Delivery Goods**” means any goods located in the Locations or Distribution Centers as at the Sale Commencement Date that were purchased and paid for, in full or in part, prior to the Sale Commencement Date, and those reflected in the file “2.3.1.60 - Unshipped Sales_Sep Month End.xlsx” uploaded to the Company’s data room on October 6, 2017, as updated on the date immediately preceding to the Sale Commencement Date;

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

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

“**Designated Locations**” means the Locations listed in Schedule “N”;

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

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

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

“Distribution Center Merchandise” means all new, finished, first-quality saleable goods reflected in the file named “Warehouse Item Summary by Store - Sept 29.csv” available on the Company’s datasite as of the date hereof and located in the Distribution Centers;

“Distribution Centers” means any of the Company’s distribution centers, storage facility and warehouses identified on Schedule “I”;

“Encumbrances” shall mean all security interests (whether contractual, statutory or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory or otherwise), liens, executions, levies, charges or other financial or monetary claims, priorities, prior claims, and encumbrances, including, without limitation, the charges granted by the Court under the CCAA Proceedings (including, but not limited to, the Administration Charge, the KERP Priority Charge, the Directors’ Priority Charge, the DIP Term Lenders’ Charge, the DIP ABL Lenders’ Charge, the KERP Subordinated Charge, and the Directors’ Subordinated Charge, each as defined in the Initial Order);

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

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

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

“Excluded FF&E” means (i) all furnishings, removable trade fixtures, equipment and improvements to real immovable property identified in Schedule “J”, and (ii) any DC FF&E (unless otherwise included in FF&E pursuant to Section 5.1(i) hereof);

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

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

“**Expense Reimbursement**” means reasonable and documented fees and expenses incurred by Agent in connection with the negotiation, documentation and implementation of this Agreement and the transactions contemplated hereby in an amount not to exceed \$200,000 in the aggregate;

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

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

Cap”). For the purposes herein, “base payroll” shall include commissions and bonuses payable under the Company’s compensation policy in effect as at the Sale Commencement Date; provided, however, Agent shall be obligated to pre-fund payroll-related expenses consistent with the Company’s customary payroll funding practices and timing, it being understood that the Agent will never be the employer;

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

- (xiv) postage, courier and overnight mail charges to and from or among the Locations and the Corporate Office (to the extent relating to the Sale);
- (xv) to the extent not included in per diem Occupancy Expense totals, Locations' snow and trash removal; provided however, in connection with the conduct of the Sale and/or Agent's vacating of the Locations (but not in connection with the disposition of any unsold FF&E or other non-Merchandise assets being abandoned or otherwise disposed of by the Company), to the extent that the Company incurs additional trash removal charges at a Location, other than the fixed charge component of the Company's lease obligation for a particular Location provided for in the per diem Occupancy Expense totals (the "**Non-CAM Trash Removal Charges**"), such Non-CAM Trash Removal Charges shall be paid by Agent as an Expense of the Sale, in addition to any trash removal charges as may be set forth in Occupancy Expense totals.
- (xvi) third party payroll processing fees;
- (xvii) cost of all security in the Locations (to the extent customarily provided in the Locations), including, without limitation, armored car service, security personnel and monthly alarm services for the Locations;
- (xviii) cost of Agent's actual cost of capital, letter of credit fees and currency conversion expenses related to the Sale, including wire transfer and bank charges related to the Initial Guaranty Payment, the Guaranteed Amount, any Overfunded Amount, if applicable, and the Agent L/C;
- (xix) Agent's reasonable out-of-pocket fees and expenses, including but not limited to, legal fees and expenses incurred in connection with the review of data and preparation, negotiation and execution of this Agreement, the Approval Order, Sales Guidelines, any ancillary documents, and other diligence costs incurred prior to and during the Sale Term in an amount not to exceed \$200,000;
- (xx) to the extent not included in per diem Occupancy Expense totals, third party cleaning expenses related to the Locations;
- (xxi) all costs and expenses of providing such additional Location-level services, including, without limitation, (i) the employment of temporary help (which shall be coordinated and implemented through the Company's human resources department), which Agent and the Company consider appropriate, and (ii) the actual cost of any delivery or repair services, to the extent provided by the Agent pursuant to section 10.1(a)(ix), below;
- (xxii) an amount equal to \$25,000 per week of the Sale Term on account of the Central Services Expenses;

- (xxiii) actual cost of Agent's insurance;
- (xxiv) the actual amount of any Retention Bonuses for Retained Employees paid by the Agent in accordance with Section 11.1(d) hereof; and
- (xxv) for the Sale Term a pro rata portion of the Company's premiums in respect of general liability, casualty, property, inventory, and other insurance policies attributable to the Merchandise and the Locations.

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

"**FF&E**" means all furnishings, removable trade fixtures, equipment, and improvements to real immovable property that are located in the Locations and Distribution Centers (if so included in FF&E pursuant to Section 5.1(i) hereof) and are owned by the Company, but excluding the Excluded FF&E;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Home Furnishings” means those goods categorized as ‘HF’ in the columns labeled ‘DP Category’ and/or ‘Category’ in the file “Product Hierarchy Mar 29.xlsx”;

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

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

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

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

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

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

“**In-Transit Merchandise**” means all new, finished, first-quality saleable goods reflected in the file named “2.3.1.59 - 2017.10 – On Order Detail.xlsx” posted to the Company’s data room on October 6, 2017;

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

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

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

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

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

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

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

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

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

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

“**Major Appliances**” means those goods categorized as ‘MA’ in the columns labeled ‘DP Category’ and/or ‘Category’ in the file “Product Hierarchy Mar 29.xlsx”;

“**Merchandise**” means collectively, all Full-Line Merchandise and Home Store Merchandise.

“**Merchandise File**” means with respect to Full-Line Stores and Home Stores, the Company’s files identified on Schedule “M” for the respective store concept and for any warehouse goods designated for such store concepts and any other file provided by Company to Agent following execution of this Agreement;

“**Merchandise Receipt Deadline**” means the date that is the earlier of (i) sixty (60) days after the Sale Commencement Date, or (ii) twenty-one (21) days prior to the applicable Vacate Date at any particular Location;

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

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

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

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

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

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

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

“**Original Agency Agreement**” has the meaning ascribed to it in the Recitals;

“**Original Consulting Agreement**” has the meaning ascribed to it in the Recitals;

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

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

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

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

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

“**Proceeds**” means all cash and non-cash consideration from (i) a sale or other disposition of Merchandise and Remaining Merchandise made under this Agreement, (ii) all proceeds of Company’s insurance for loss or damage to Merchandise arising from events occurring during the Sale Term; and (iii) Accepted Credits, but exclusive of (a) Sales Taxes, (b) credit card and bank card fees and chargebacks, and (c) allowances and customer credits. For the avoidance of doubt, (i) proceeds from the sale of Excluded

Goods, (ii) FF&E Proceeds; (iii) Designated Sundry And Consignment Goods Proceeds, and (iv) proceeds from the sale of Cosmetic Products, shall not be “Proceeds”;

“**Promotional Calendar**” means the sales and promotions reflected in the file named “2.1.1.10 Marketing September-October-November.xlsx” and “2.1.1.3 2017 Marketing Calendar” available in the Company’s data room as of the date hereof;

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

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

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

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

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

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

“**Sale**” means the sale by the Agent of the Merchandise, Designated Sundry Goods, Designated Company Consignment Goods, Cosmetic Products (if so elected pursuant to Section 4.5), and FF&E (including if the Company so elects pursuant to Section 5.1(i), the DC FF&E) during the Sale Term, and, solely with respect to the FF&E, also during the FF&E Removal Period, in accordance with this Agreement;

“**Sale Commencement Date**” means October 19, 2017, or such other date as may be agreed to by Company and Agent with the approval of the Monitor and consent of the Lenders;

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

“**Sale Termination Date**” means the date on which the Sale terminates at each Location, which date shall be no later than January 21, 2018 (except in respect of the Designated Locations, in which case the Sale Termination Date shall be the dates specified in Schedule “N”), subject to further extension as may be mutually agreed upon, in writing, by the Agent and the Company, with the approval of the Monitor and the Lenders; provided, however, that the Agent may extend the Sale Termination Date at the one or more Designated Locations to date(s) on or prior to the FF&E Removal Deadline for such Designated Location(s) if, and only if, the Agent complies with its obligations under Article 5 with respect to the FF&E at the Designated Location(s) by the FF&E Removal Deadline for each such Designated Location;

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

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

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

“**Signage Costs**” means an amount equal to the reasonable and documented third party costs, fees, and expenses incurred by Agent in acquiring signage and other advertising and promotional material in connection with the Sale (excluding any cost of capital incurred in connection therewith, but including freight charges) in an aggregate amount not to exceed \$1,850,000;

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

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

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

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

1.2 Extended Meanings

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

1.3 Schedules

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

| | |
|---------------|------------------------------------|
| Schedule “A”: | Occupancy Expenses |
| Schedule “B”: | Locations |
| Schedule “C”: | Merchandise Threshold Adjustments |
| Schedule “D”: | Cost Factor Thresholds Adjustments |
| Schedule “E”: | Agent L/C |
| Schedule “F”: | Intentionally Omitted |
| Schedule “G”: | Sales Guidelines |
| Schedule “H”: | Form of Approval Order |
| Schedule “I”: | Distribution Centers |
| Schedule “J”: | Excluded FF&E |
| Schedule “K”: | Company’s Designated Account |
| Schedule “L”: | Company Consignment Goods |

| | |
|--------------|----------------------|
| Schedule "M" | Merchandise Files |
| Schedule "N" | Designated Locations |

ARTICLE 2 APPOINTMENT OF AGENT

2.1 Appointment of Agent

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

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

2.2 No Warranty

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

ARTICLE 3 CONSIDERATION TO COMPANY AND AGENT

3.1 Guaranteed Amount

(a) Full-Line Stores.

- (i) As a guaranty of Agent's performance hereunder in respect of Full-Line Stores, Agent guarantees that the Company shall receive eighty-three percent (83%) (the "**Full-Line Guaranty Percentage**") of the aggregate Cost Value of the Full-Line Merchandise (the "**Full-Line Guaranteed Amount**"), which Full-Line Guaranteed Amount shall be paid at such times and in such manner as shall hereinafter be provided. The Full-Line Guaranteed Amount will be calculated based upon the aggregate Cost Value of the Full-Line Merchandise as determined by the aggregate Cost Value of the Full-Line Merchandise subject to Gross Rings and subject to

any other adjustments to Cost Value as expressly contemplated by this Agreement.

- (ii) The Full-Line Guaranty Percentage has been fixed based upon the aggregate Cost Value of the Full-Line Merchandise included in the Sale being not less than \$391.0 million and not more than \$411.0 million (the “**Full-Line Merchandise Threshold**”) as of the Sale Commencement Date without regard to the Prevailing Discount Adjustment. To the extent that the aggregate Cost Value of the Full-Line Merchandise included in the Sale is less than, or greater than, the Full-Line Merchandise Threshold, the Full-Line Guaranty Percentage shall be adjusted in accordance with Schedule “C” annexed hereto.
 - (iii) The Full-Line Guaranty Percentage has also been fixed based upon the aggregate Cost Value of the Full-Line Merchandise included in the Sale as a percentage of the aggregate Retail Price of the Full-Line Merchandise included in the Sale, such percentage being 52.5% (the “**Full-Line Cost Factor Threshold**”). To the extent that the ratio of the aggregate Cost Value of the Full-Line Merchandise included in the Sale to the aggregate Retail Price of the Full-Line Merchandise included in the Sale is a percentage greater than the Full-Line Cost Factor Threshold, the Full-Line Guaranty Percentage shall be adjusted in accordance with Schedule “D” annexed hereto.
 - (iv) The adjustments to the Full-Line Guaranty Percentage contemplated by Section 3.1(a)(ii) and Section 3.1(a)(iii) shall be independent and cumulative.
- (b) Home Stores.
- (i) As a guaranty of Agent’s performance in respect of Home Stores hereunder, Agent guarantees that the Company shall receive fifty-two-and-one-half percent (52.5%) (the “**Home Store Guaranty Percentage**”) of the aggregate Cost Value of the Home Store Merchandise (the “**Home Store Guaranteed Amount**”), which Home Store Guaranteed Amount shall be paid at such times and in such manner as shall hereinafter be provided. The Home Store Guaranteed Amount will be calculated based upon the aggregate Cost Value of the Home Store Merchandise as determined by the aggregate Cost Value of the Home Store Merchandise subject to Gross Rings, subject to any other adjustments to Cost Value as expressly contemplated by this Agreement.
 - (ii) The Home Store Guaranty Percentage has been fixed based upon the aggregate Cost Value of the Home Store Merchandise included in the Sale being not less than \$9.0 million and not more than \$10.0 million (the “**Home Store Merchandise Threshold**”) as of the Sale Commencement Date without regard to the Prevailing Discount Adjustment. To the extent that the aggregate Cost Value of the Home Store Merchandise included in

the Sale is less than, or greater than, the Home Store Merchandise Threshold, the Home Store Guaranty Percentage shall be adjusted in accordance with Schedule "C" annexed hereto.

- (iii) The Home Store Guaranty Percentage has also been fixed based upon the aggregate Cost Value of the Home Store Merchandise included in the Sale as a percentage of the aggregate Retail Price of the Home Store Merchandise included in the Sale, such percentage being 59.9% (the "**Home Store Cost Factor Threshold**"). To the extent that the ratio of the aggregate Cost Value of the Home Store Merchandise included in the Sale to the aggregate Retail Price of the Home Store Merchandise included in the Sale is a percentage greater than the Home Store Cost Factor Threshold, the Home Store Guaranty Percentage shall be adjusted in accordance with Schedule "D" annexed hereto.
- (iv) The adjustments to the Home Store Guaranty Percentage contemplated by Section 3.1(b)(ii) and Section 3.1(b)(iii) shall be independent and cumulative.

3.2 Payment of Guaranteed Amount

On the date that is one Business Day immediately prior to the Sale Commencement Date (the "**Payment Date**"), Agent shall pay to Company an amount equal to eighty percent (80%) of the estimated Guaranteed Amount with respect to (i) Merchandise (other than any In-Transit Merchandise), and (ii) Distribution Center Merchandise (without duplication of subsection 3.2(i)), (calculated based upon (x) the estimated aggregate Cost Value of the Full-Line Merchandise, (y) the estimated aggregate Cost Value of the Home Store Merchandise, and (z) the estimated aggregate Cost Value of the Distribution Centre Merchandise (without duplication of subsections 3.2(x) and 3.2(y)) to be included in the Sale as reflected on the Company's books and records maintained in the ordinary course as of the date immediately preceding the Payment Date) (the "**Initial Guaranty Payment**") by wire transfer to the Company's Designated Account. The balance of the Guaranteed Amount, if any, shall be paid by Agent by wire transfer to the Company's Designated Account on the second Business Day following the issuance of the final report of the aggregate Cost Value of the Full-Line Merchandise and the aggregate Cost Value of the Home Store Merchandise included in the Sale, after review, reconciliation and mutual written verification thereof by Agent and Company and satisfactory to the Monitor and the Lenders (the "**Final Inventory Report**"); provided, however, that if the Final Inventory Report has not been mutually verified by the Agent and Company and in a form satisfactory to the Monitor and the Lenders by the date that is thirty (30) days after the Sale Termination Date, the Agent shall pay the undisputed portion of the balance of the Guaranteed Amount (if any) on the first Business Day following the parties' mutual identification of such disputed and undisputed aspects of the Final Inventory Report. To the extent that the Guaranteed Amount has not been paid in full by the date of the Final Inventory Report, Agent shall tender payment of the undisputed portion only on account of any remaining portion of the Guaranteed Amount and any remaining amounts shall be paid upon the resolution of any dispute or as part of the Final Reconciliation.

3.3 Letter of Credit

- (a) To secure the Agent's obligations under this Agreement including, *inter alia*, Agent's obligation to pay the balance of the Guaranteed Amount and the Expenses, and in addition to the Agent indemnification obligations under this Agreement, the Agent shall deliver to the Company, no later than one (1) Business Day after the Payment Date, one or more irrevocable and unconditional standby letters of credit in an aggregate original face amount equal to twenty percent (20%) of the estimated Guaranteed Amount, plus an amount equal to three (3) weeks' estimated Expenses, as estimated by the Agent and the Company, each acting reasonably and in consultation with the Monitor, naming the Company as beneficiary (the "**Beneficiary**"), to the extent it is allowed by the Approval Order, substantially in the form of Schedule "E" attached hereto (the "**Agent L/C**"). The Agent L/C shall be issued by Bank of America, N.A. or another bank selected by the Agent and reasonably acceptable to the Company and the Monitor. The Agent L/C shall have an expiry date of no earlier than 60 days after the Sale Termination Date (the "**L/C Date**").
- (b) Unless the parties shall have confirmed that they have completed the Final Reconciliation under this Agreement, then, at least ten (10) days prior to the L/C Date or any subsequent expiry date, the Beneficiary shall receive an amended Agent L/C, with the sole amendment being the extension of the L/C Date (or further extending, as the case may be) by no less than sixty (60) days from the L/C Date (or any subsequent extension thereof). If the Beneficiary fails to receive such amended Agent L/C no later than ten (10) days prior to the expiry date, then all amounts hereunder (including, without limitation, the balance of the Guaranteed Amount, the Company Sharing Recovery Amount and Expenses) shall become immediately due and payable and the Beneficiary shall be entitled to immediately draw the full amount of the Agent L/C and apply such amount to all amounts due and owing hereunder. After applying such draw on the Agent L/C to the amounts owing to the Company under this Agreement, the balance of the amount drawn shall be held as security for amounts that may become due and payable to the Company hereunder and once any and all such amounts have been paid to the Company, the balance, if any, shall be paid to the Agent.
- (c) In the event that Agent fails to pay the undisputed portion of the Guaranteed Amount, the Company Sharing Recovery Amount, or any portion thereof, or any Expenses or other obligation hereunder when due, the Company may draw on the Agent L/C in an amount equal to such unpaid obligations after providing the Agent with two (2) Business Days advance notice and provided the Agent has not paid the undisputed portion of such unpaid obligations prior to the expiration of such two (2) Business Day period.
- (d) The Company and the Agent agree that, from time to time upon the Agent's request, subject to the consent of the Monitor and the Lenders, the face amount of the Agent L/C shall be reduced by the aggregate amount of payments made by the Agent or received by the Company on account of the Guaranteed Amount to the time of each such request provided that at no time shall the face amount of the

Agent L/C be reduced to an amount less than the parties' mutually agreed upon estimate of three weeks of estimated Expenses.

3.4 Cash

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

3.5 Compensation to Agent and Sharing of Proceeds

After Proceeds are used to repay Agent for amounts paid on account of the Guaranteed Amount and to pay Expenses, all remaining Proceeds shall be allocated in the following order of priority: FIRST: to the Agent in an amount equal to four percent (4%) of the aggregate Cost Value of the Merchandise ("**Agent's Base Fee**"); and THEREAFTER as to any remainder, determined net of Sales Taxes, if any, collectible by the Agent on such amounts: twenty-five percent (25%) to Agent ("**Agent Sharing Recovery Amount**") and seventy-five percent (75%) to Company ("**Company Sharing Recovery Amount**" and together with the Agent Sharing Recovery Amount, the "**Sharing Amounts**"). To the extent that Company is entitled to receive any funds on account of the Company Sharing Recovery Amount due to Company, Agent shall pay such Company Sharing Recovery Amount as part of the Final Reconciliation under Section 7.1(c).

ARTICLE 4

GROSS RINGS, VALUATION AND EXCLUDED GOODS

4.1 Intentionally Omitted

4.2 Valuation

- (a) For purposes of this Agreement, "**Cost Value**" shall mean, with respect to each item of Merchandise (as determined on a SKU by SKU basis), the lower of (i) the lowest cost of such item as reflected in the Merchandise File and (ii) the Retail Price.
 - (i) For purposes of this Agreement, "**Retail Price**" shall mean with respect to each item of Merchandise, as determined on a SKU by SKU basis, the lowest of (x) the lowest ticketed, marked, shelf, hang-tag, stickered, or other hard marked price as at the Sale Commencement Date, (y) the lowest SKU or PLU as at the Sale Commencement Date; and (z) the lowest PLU, SKU, article number or file price contained in the Merchandise File, or other file price as reflected in Company's books and records for such item; provided, however that the definition of Retail Price expressly excludes all Excluded Price Adjustments (whether or not reflected in the Merchandise File). Notwithstanding the foregoing, for the

sole purpose of calculating the Retail Price in respect of Major Appliances and Home Furnishings, the Retail Price shall be the lowest price in the field "PROMO" for such goods contained in the Merchandise File.

- (ii) For purposes of calculating Retail Price, if an item of Merchandise of the same SKU has more than one ticketed price, file price (as reflected on the Merchandise File), marked price, shelf price, hang-tag price, stickered price, or other hard marked price or if multiple items of the same SKU have different ticketed, file (as reflected on the Merchandise File), marked, shelf, hang-tag, stickered, or other hard marked prices and such pricing does not otherwise qualify as an Excluded Price Adjustment, the lowest ticketed price, file price (as reflect on the Merchandise File), marked price, shelf price, hang-tag price, stickered price, or other hard marked price, on any such item shall prevail for such item or for all such items within the same SKU, as the case may be, that are located within the same Location (as the case may be, the "**Lowest Location Price**"), unless it is determined by Company and Agent, acting reasonably, that the applicable Lowest Location Price was mismarked, normal course markdowns had not been reflected or taken, or such item was priced because it was damaged or marked as "as is," in which case the correct price shall control; provided, however, in determining the Lowest Location Price with respect to any item of Merchandise at a Location, the Lowest Location Price shall be determined based upon the lowest Retail Price for such item on a per location basis. No adjustment to Retail Price shall be made with respect to different Retail Prices for items located in different Locations.
- (iii) "**Excluded Price Adjustments**" means the following discounts or price adjustments offered by the Company by any means: (i) point of sale discounts or similar adjustments regardless of timing or duration; (ii) member or customer appreciation points or coupons; (iii) multi-unit purchase discounts; (iv) adjustments for damaged, defective or "as-is" items; (v) coupons (Company's or competitors') or similar type coupons/promotions, catalog, website, or circular prices, or "buy one get one" type discounts, or similar type discounts or promotions; (vi) customer savings pass discounts or "bounce back" coupons, or discounts for future purchases based on dollar value of past purchases; (vii) obvious ticketing or marking errors; (viii) instant (in-store) or mail in rebates; (ix) similar customer specific, temporary, or employee non-product specific discounts or pricing accommodations; or (x) prices in the field "PROMO" contained in the Merchandise File (save and except for Major Appliances and Home Furnishings, in which case the Retail Price shall be calculated as provided in Section 4.2(a)(i)).
- (iv) The Cost Value and Retail Price of any item of Distribution Center Merchandise or In-Transit Merchandise that is shipped from the Distribution Centers to a Location after the 21st day after the Sale

Commencement Date (without regard as to whether or not any such Distribution Center Merchandise or In-Transit Merchandise transits through another Distribution Center for 'cross-dock' purposes in a manner consistent with the Company's historical practices), but received on or before the Merchandise Receipt Deadline, shall be the otherwise applicable Cost Value and Retail Price of such item (determined in accordance with this Section 4.2(a)), multiplied by the inverse of the excess of (i) the prevailing Sale discount in effect on the date such item is shipped to the applicable Location over (ii) the Retail Price (the "**Prevailing Discount Adjustment**").

- (b) Notwithstanding the provisions of Section 4.2(a), with respect to each item of Defective Merchandise, the parties shall mutually agree upon the Cost Value (and if Agent and Company are unable to mutually agree on the Cost Value of any one or more items of Defective Merchandise, such items shall be deemed Excluded Defective Merchandise).
- (c) To the extent that there is any material discrepancy in the Merchandise File or the Company's books and records that is a manifest error, the Cost Value should be determined in a manner that is mutually agreed upon by the Company and the Agent.
- (d) For greater certainty, any adjustment to the Cost Value as a result of Section 4.2(a)(iv) shall not be factored into the calculation for the purposes of determining whether the aggregate Cost Value of the Merchandise satisfies the Full-Line Merchandise Threshold or Home Store Merchandise Threshold.

4.3 Gross Rings

At each Location, for the period from the Sale Commencement Date until the Vacate Date for such Location, Agent and Company shall jointly keep (i) a strict count of gross register receipts less applicable Sales Taxes but excluding any prevailing Sale discounts offered by Agent ("**Gross Rings**"), and (ii) cash reports of sales within such Location to determine the actual Cost Value of the Merchandise sold by SKU or article number. Registered receipts shall show for each item sold the Retail Price for such item and the mark-down or discount, if any, specifically granted by Agent in connection with the Sale. Subject to the adjustments contemplated by Sections 3.1(a), 3.1(b), and 4.2, Agent shall pay the Guaranteed Amount calculated on the Gross Rings basis, to account for shrinkage, on the basis of 101% of the aggregate Cost Value of Merchandise (without taking into account any of the Agent's point of sale discount or point of sale mark-downs) sold during the Gross Rings period. All such records and reports shall be made available to Agent and Company during regular business hours upon reasonable notice. Any Merchandise included in the Sale using the Gross Rings method shall be included as Merchandise.

4.4 Excluded Goods

- (a) The Company shall retain all rights and responsibilities in respect of any Excluded Goods. Agent shall cooperate with and assist the Company in dealing

with any Excluded Goods, as may be required by the Company, including without limitation, the removal or return of any Excluded Goods to such parties as may be identified by the Company, all at the Company's sole cost and expense (and not as an Expense). Except as expressly provided in this Section, Agent shall have no cost or expense in connection with any Excluded Goods. If the Company does not elect to have the Agent sell any goods or merchandise (as contemplated by Section 4.4(b)) that are otherwise Excluded Goods, then all such Excluded Goods (other than FF&E and Excluded FF&E) will be segregated and removed by the Company (or the third-party owner of any such Excluded Goods) from the Locations, at the Company's or third party's expense (as applicable), as soon as is practicable; provided, however, that all FF&E and Excluded FF&E (other than Excluded FF&E owned by third parties) shall remain in the Locations during the Sale Term or any portion thereof (unless disposed of in accordance with this Agreement).

- (b) With the approval of the Monitor, the Company and the Agent may mutually agree to include as part of the Sale such Company-owned goods located at the Locations that do not otherwise constitute Merchandise or FF&E ("**Designated Sundry Goods**") and such Company Consignment Goods as may be designated by the Company to be included in the Sale (provided the Company has obtained all necessary approvals, or authorizations as may be required) (the "**Designated Company Consignment Goods**"), in which case the Agent shall sell such Designated Sundry Goods and such Designated Company Consignment Goods at prices established by the Agent, in consultation with the Company. In consideration for its services in selling the Designated Sundry Goods and such Designated Company Consignment Goods, the Agent shall be entitled to receive a commission (the "**Designated Sundry And Consignment Goods Commission**") from the Company on the sale of such Designated Sundry Goods and such Designated Company Consignment Goods equal to fifteen percent (15%) of the Designated Sundry And Consignment Goods Proceeds. For greater certainty, (i) goods that would otherwise constitute Merchandise but are not received at the Locations prior to the Merchandise Receipt Deadline, and (ii) items specifically referencing Canada's 150th Anniversary of Confederation may constitute Designated Sundry Goods if so agreed upon by the Company and Agent pursuant to this Section 4.4(b).
- (c) All gross proceeds from the disposition of the Designated Sundry Goods and the Designated Company Consignment Goods shall be deposited by the Agent in the Designated Deposit Accounts on a daily basis. All amounts owing to the Agent and the Company hereunder shall be reconciled and paid as part of the Weekly Sale Reconciliation conducted pursuant to Section 7.1(b), and subject to the Final Reconciliation under Section 7.1(c). All Net Designated Sundry And Consignment Goods Proceeds paid to the Company or as it may direct as a result of the sale of any Designated Sundry Goods and any Designated Company Consignment Goods by the Agent during the Sale shall not be included in the calculation of the Guaranteed Amount.

4.5 Cosmetic Products

If the Company includes Cosmetic Products, Cosmetic Products shall be sold as part of the Sale at existing Retail Prices for the first four (4) weeks of the Sale and thereafter at prices mutually agreed upon by the Company and Agent. Agent shall receive seven-and-one-half percent (7.5%) of the proceeds (less applicable Sales Taxes) for all sales of Cosmetic Products, and the Company shall receive ninety-two-and-one-half percent (92.5%) of such proceeds (less applicable Sales Taxes). All amounts owing to the Company and Agent shall be reconciled and paid as part of the Weekly Sale Reconciliation conducted pursuant to Section 7.1(b), and subject to the Final Reconciliation pursuant to Section 7.1(c). If the Company and Agent are unable to mutually agree upon pricing for Cosmetic Products, will be segregated and removed by the Company from the Locations, at the Company's expense, as soon as is practicable.

ARTICLE 5 FF&E

5.1 Sale of FF&E

- (a) The Agent shall have the exclusive right to dispose of all FF&E. In consideration of its services in selling the FF&E, the Agent shall be entitled to receive a commission (the "**FF&E Commission**") from the Company on the sale of any FF&E by the Agent during the course of the Sale equal to fifteen percent (15%) of the FF&E Proceeds. In addition, the Company shall reimburse the Agent for the Agent's reasonable out of pocket expenses attributable to the sale or disposition of FF&E which are not duplicative of the Expenses set out herein and are in accordance with the Budget (the "**FF&E Expenses**"). The removal of any FF&E shall be done in a manner consistent with the Sales Guidelines.
- (b) Subject to Section 5.1(h), no later than five (5) days after the relevant Vacate Date for each Home Store and no later than fourteen (14) days after the relevant Vacate Date for each Full-Line Store (in each case, the "**FF&E Removal Deadline**" and the period commencing on the Vacate Date and ending on the FF&E Removal Deadline, the "**FF&E Removal Period**"), the Agent shall remove all FF&E (other than Excluded FF&E).
- (c) During the FF&E Removal Period for each Location, the Company shall provide the Agent and its invitees with peaceful use and occupancy and access to each such Location for purposes of selling, disposing, and/or removing the FF&E free of all expenses, including occupancy costs and expenses associated with each such Location, and for Retained Employees, if any, utilized during the FF&E Removal Period, any such expenses will be treated as an FF&E Expense and subject to the Budget.
- (d) All gross proceeds from the disposition of the FF&E shall be deposited by the Agent in the Designated Deposit Accounts on a daily basis. All amounts owing to the Agent (together with Sales Taxes, if any, collectible by Agent thereon) and the Company hereunder shall be reconciled and paid as part of the Weekly Sale Reconciliation conducted pursuant to Section 7.1(b), and subject to the Final

Reconciliation under Section 7.1(c). All Net FF&E Proceeds paid to the Company or as it may direct as a result of the sale of any FF&E by the Agent during the Sale shall not be included in the calculation of the Guaranteed Amount.

- (e) Notwithstanding Section 2.1 and subject to Section 5.1(h), any FF&E located in any of the Locations that is not sold by the Agent prior to the applicable FF&E Removal Deadline in Section 5.1(b) (the “**Remaining FF&E**”) shall be removed by the Agent from the applicable Location by no later than such applicable FF&E Removal Deadline. Subject to Section 5.1(h), the Agent, shall be entitled to dispose of the Remaining FF&E, free and clear of all Encumbrances, at Agent’s discretion and all proceeds from the sale or other disposition of such Remaining FF&E will be treated as FF&E Proceeds and any expenses of such removal will be treated as an FF&E Expense and subject to the Budget. The removal of any Remaining FF&E from the Locations shall be done in a manner consistent with the Sales Guidelines.
- (f) Notwithstanding Sections 5.1(a) and 5.1(b) above, the Agent and the Company, with the consent of the Monitor and Lenders, may agree in lieu of the FF&E Commission, upon a lump sum guaranty with respect to the FF&E, in which case all FF&E Expenses shall be the Agent’s sole and exclusive obligation with respect to the sale of such FF&E. For clarity, the obligations of the Agent with respect to Expenses (including Occupancy Expenses for the Locations) as provided for in this Agreement shall be unaffected by this Section 5.1(f).
- (g) Notwithstanding anything in this Agreement to the contrary, Agent shall not have any obligation whatsoever to cap any electrical or plumbing outlets or purchase, sell, make, store, handle, treat, dispose, or remove any Hazardous Materials from the Locations or otherwise. Agent shall have no liability to any party for any environmental action brought: (i) that is related to the storage, handling, treatment, disposition, generation, or transportation of Hazardous Materials, or (ii) in connection with any remedial actions associated therewith or the Locations. The Company (and not Agent) shall be solely responsible to cap all electrical items and plumbing outlets and to remove all Hazardous Materials from the Locations.
- (h) Notwithstanding anything herein to the contrary, the Company may, in its entire discretion, instruct Agent to abandon any Remaining FF&E in any of the Locations by providing written notice to the Agent by no later than three (3) days after the receipt of the applicable notice of Vacate Date. If so instructed, as of the FF&E Removal Deadline, the Agent may abandon in place, in a neat and orderly manner, any unsold FF&E at the applicable Location and the Budget and FF&E Expenses shall be reduced by such amounts that would have been spent in connection with the removal of such unsold FF&E. If the Agent chooses to remove any Remaining FF&E notwithstanding receipt of the aforementioned notice from the Company, the Agent shall assume all costs and expenses relating to the removal of such FF&E, which costs and expenses shall not constitute FF&E Expenses, and shall retain any proceeds from such sale of Remaining FF&E for its own account.

- (i) The Company may, in its discretion and with the consent of the Monitor and the Lenders, determine to include the DC FF&E in the Sale prior to the Sale Termination Date. If the Company so determines, it shall advise the Agent in writing prior to the Sale Termination Date (which Sale Termination Date, FF&E Removal Deadline, and FF&E Removal Period may be extended and the Budget may be modified by mutual agreement of the parties subject to the consent of the Monitor and the Lenders to allow for the Sale of the DC FF&E) and, except as otherwise agreed to by the parties in writing, the provisions of this Agreement relating to the Sale of FF&E shall apply *mutatis mutandis* to the Sale of all DC FF&E which shall be deemed to be FF&E for all purposes hereunder, save and except that the Sale Guidelines shall not apply to any DC FF&E in all respects.

ARTICLE 6 CONTROL OF PROCEEDS

6.1 Deposit of Proceeds

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

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

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

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

to Agent hereunder, and (ii) Company holds any amounts due to Agent under this Agreement, Agent may, in its discretion, after two (2) Business Days' notice to the Company, offset such amounts being held by the Company against any undisputed amounts due and owing by, or required to be paid by, Agent to the Company hereunder.

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

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

6.2 Credit Card and Debit Card Proceeds

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

**ARTICLE 7
SALE RECONCILIATION**

7.1 Reconciliation

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

with the provisions set forth in Section 3.3.

ARTICLE 8 EXPENSES

8.1 Expenses

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

ARTICLE 9 REMAINING MERCHANDISE

9.1 Remaining Merchandise

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

**ARTICLE 10
CONDUCT OF SALE**

10.1 Rights of Agent

- (a) Subject to the issuance of the Approval Order as provided by Section 14.1(a)(i), the Agent shall have the right to peaceful use and occupancy of the Locations and Distribution Centers for the purpose of conducting the Sale for the duration of the Sale Term and shall be permitted to conduct the Sale as a “**store closing**”, “**everything on sale**”, “**everything must go**”, “**going out of business**”, or **similar themed** sale throughout the Sale Term, it being understood that the term “**going out of business**” shall not be used by Agent in any Location signage. The Agent shall conduct the Sale in the name of and on behalf of the Company in a commercially reasonable manner and in compliance with the Initial Order, the Approval Order, and any further orders of the Court or other court of competent jurisdiction. In addition to any other rights granted to the Agent hereunder, in conducting the Sale, the Agent, in consultation with the Company and the Monitor (and subject to their consent solely where expressly required herein), shall have the following rights, subject to the immediately preceding sentence:
- (i) subject to the Sale Guidelines, to establish and implement advertising, signage (including exterior banners and signs), and promotion programs consistent with the above noted themes, and as otherwise provided in the Approval Order and the Sales Guidelines;
 - (ii) to establish Sale prices and discounts (provided that Agent shall provide adequate advanced notice to the Company in respect of any discounts to be implemented through the Company’s point of sale systems); and Location hours which are consistent with the terms of applicable Occupation Agreements and local laws or regulations;
 - (iii) subject to the Company’s Privacy Policies, to have access to, throughout the Sale Term, central office facilities, central administrative services and personnel to process and perform central services for the Sale consistent with historical practices, such as (but not limited to) accounting, point-of-sale administration, inventory handling and processing, warehouse management, information technology, management information system services, sales audit, cash management services, cash and inventory reconciliation, email preparation and distribution, and payroll processing, including any such services as may be provided by third parties or related entities to the Company; (collectively, the “**Central Services**”);
 - (iv) subject to the Company’s Privacy Policies, to use without charge during the Sale Term, and solely for the purposes of the Sale, point of sale systems, advertising materials, Designated Deposit Accounts, computer hardware and software, intangible assets (including the Company’s name, logo and tax identification numbers), Location keys, case keys, security

codes, and safe and lock combinations required to gain access to and operate the Locations, and mailing services;

- (v) to use reasonably sized offices at the Corporate Office to effect the Sale;
 - (vi) Subject to the Company's approval, which shall not be unreasonably withheld, and subject to Section 10.10, to use (through the Company and its existing procedures and not directly) such customer lists, mailing lists, email lists and web and social networking sites utilized by the Company in connection with its business, if any so exist, (and in all circumstances, solely in connection with the Sale). Without limiting the generality of the foregoing, in connection with such use, Agent shall have the right, with the Company's approval, which shall not be unreasonably withheld, to determine the content and timing of such communications and posts and to include, from time to time, Sale related advertising, coupons, and information. Company shall not grant to any third-party buyer the right to use, during the Sale Term, such lists or sites in any manner inconsistent with the foregoing, and any agreement with any such buyer shall include a negative covenant that such buyer and its affiliates will not, during the Sale Term, publicly advertise their business in any manner inconsistent with Agent's advertisement of the Sale.
 - (vii) to use (through the Company and its existing procedures and not directly) all logos, trademarks, brand names, and other intellectual property utilized by the Company in connection with its business (but solely in connection with the Sale);
 - (viii) to utilize the services of subcontractors and/or licensees in connection with the performance of its obligations under this Agreement;
 - (ix) to continue to offer third party delivery, repair and related services that Agent may elect, with the consent of the Company not to be unreasonably withheld, if such relevant services have been terminated or concluded by the third-party service provider, in which case any actual associated expenses and revenue shall constitute "Expenses" and "Proceeds", respectively, hereunder; and
 - (x) subject to an agreement between the Company and the Agent, including in respect of any expenses relating thereto, which shall constitute "Expenses" hereunder for all purposes, the Company shall make available its online store locator and a landing page for advertising the Sale.
- (b) All sales of Merchandise, Designated Sundry Goods, Designated Company Consignment Goods, Cosmetic Products, and FF&E will be "final sales" and "as is," and all advertisements and sales receipts will reflect the same. The Agent shall not warrant the Merchandise, Designated Sundry Goods, Designated Company Consignment Goods, Cosmetic Products, and FF&E in any manner

whatsoever. The sale of Merchandise, Designated Sundry Goods, Designated Company Consignment Goods, Cosmetic Products, and FF&E and the Proceeds, Designated Sundry And Consignment Goods Proceeds, proceeds from the sale of Cosmetic Products, and FF&E Proceeds shall be free and clear of Encumbrances (other than, with respect to the Proceeds, Designated Sundry And Consignment Goods Proceeds, proceeds from the sale of Cosmetic Products and FF&E Proceeds, the Agent's Charge and Security Interest). All sales will be made only for cash and by debit cards, by approved cheque and by credit cards (including "Sears" private label credit cards) currently accepted by the Company, and by gift cards as provided for in Section 10.3. The Agent shall clearly mark all receipts for the Merchandise, Cosmetic Products, Designated Sundry Goods, and Designated Company Consignment Goods sold during the Sale Term so as to clearly distinguish such Merchandise, Cosmetic Products, Designated Sundry Goods, and Designated Company Consignment Goods from the goods sold prior to the Sale Commencement Date.

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

10.2 Trade-marks, Trade Names and Advertising

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

10.3 Other Sale Matters and Employee Discounts

- (a) Administration of matters such as the Loyalty Program, gift cards, and layaway purchases in connection with the Merchandise shall be the responsibility of the Company; provided however that the Agent shall honour the Company's layaway obligations and shall accept the Company's gift cards and Loyalty Points issued by the Company prior to the Sale Commencement Date (the "Accepted Credits")

and the Company shall reimburse Agent in cash therefor. The Agent agrees to cooperate fully with the Company in the administration of such matters. Any adjustments required in connection with the Accepted Credits shall be paid for by the Company, accounted for and increase Proceeds on a dollar for dollar basis as part of the Weekly Sale Reconciliation set out in Section 7.1(b).

- (b) It is understood and agreed that during the Sale Term, all current and/or former employees of the Company and Agent, including the Retained Employees, shall not be entitled to take advantage of any employee or retiree discounts at the Locations.
- (c) Subject to Section 10.3(a), as and from the Sale Commencement Date and during the Sale Term, no gift certificates, Company or third party gift cards or Merchandise credits shall be issued or sold by the Agent or the Company and Agent shall not accept any return of Merchandise, Cosmetic Products, Designated Sundry Goods, Designated Company Consignment Goods or FF&E sold in the Sale nor accept or honor any coupons issued by the Company or the Company's competitors, nor honour the Company's price match guarantee.
- (d) For the first thirty days following the Sale Commencement Date, Agent shall accept returns of goods sold by the Company at the Locations prior to the Sale Commencement Date ("**Returned Merchandise**"), provided that such return is in compliance with the Company's return policy in effect at the time of the purchase of the Returned Merchandise and further provided that an original receipt of purchase for any such item is presented. If such Returned Merchandise is otherwise "Merchandise" it shall be included in the Sale at its Cost Value and Retail Price, multiplied by the inverse of the then prevailing sale discount on the date of the return. The aggregate Cost Value of the Merchandise shall be increased by the adjusted Cost Value of any Returned Merchandise included in the Merchandise (determined in accordance with this Section 10.3(d)). Any cash adjustments required in respect of any Returned Merchandise shall be paid for by the Company and reimbursed to the Agent in cash thereof, accounted for and increase Proceeds on a dollar for dollar basis, as part of the Weekly Sale Reconciliation set out in Section 7.1(b). Except to the extent that the Company and the Agent agree that the Company's point-of-sale or other applicable systems can account for return of goods, all returns must be noted and described in a mutually agreeable Returned Merchandise log on a weekly basis during the Sale. For avoidance of doubt, no returns of (i) Merchandise sold during the Sale Term shall be accepted or (ii) goods sold at locations subject to the Original Agency Agreement or Original Consulting Agreement shall be accepted.
- (e) At the Company's sole cost and expense, and provided the Company reimburses the Agent as appropriate, the Agent agrees to cooperate fully with the Company in satisfying its obligations in respect of Delayed Delivery Goods. As soon as is reasonably practicable, and in no event later than fourteen (14) days following the Sale Commencement Date, the Company shall notify all customers having purchased Delayed Delivery Goods that pick-up of such Delayed Delivery Goods must be made by no later than (i) sixty (60) days following the Sale

Commencement Date, or (ii) in the case of Designated Locations with Sale Termination Dates listed on Schedule “N” that will occur on or before December 31, 2017, thirty (30) days following the Sale Commencement Date (such later date being the “**Retrieval Date**”). If a customer has failed to pick up their Delayed Delivery Goods by the Retrieval Date (“**Unclaimed Delayed Delivery Goods**”), such Unclaimed Delayed Delivery Goods shall be retrieved by the Company by no later than fourteen (14) days following the Retrieval Date (unless other arrangements in respect of such goods have been mutually agreed to by the Agent and the Company).

- (f) For the duration of the Sale Term and to the extent that these services continue to be available at each of the relevant Locations, the Company shall provide such delivery, repair and related services as was customarily provided in such Locations as of the date of this Agreement and any associated expenses and revenue shall be paid by and inure to the sole benefit of Company. To the extent possible, such services shall be consistent with the Company’s historical practices as to manner and scheduling of delivery and repairs.

10.4 Movement of Merchandise and FF&E

- (a) The Agent may move or consolidate Merchandise, Designated Sundry Goods, Cosmetic Products, and Designated Company Consignment Goods and FF&E from Location to Location, in consultation with the Company and the Monitor, in connection with the closing of Locations or the conduct of the Sale during the Sale Term; provided, however, that (i) Home Store Merchandise may only be transferred between and among Home Stores and Full-Line Merchandise may only be transferred between and among Full-Line Stores, unless otherwise consented to in writing by the Company, and (ii) adequate records of the Merchandise, Cosmetic Products, Designated Sundry Goods, Designated Company Consignment Goods or FF&E being moved are maintained.
- (b) The shipment of any Distribution Center Merchandise and In-Transit Merchandise from the Company’s Distribution Centers or any other originating location to the Locations shall be done pursuant to an allocation schedule mutually agreed upon by the Company and Agent.

10.5 Access to Locations

- (a) The Company shall provide the Agent with access to the Locations and Distribution Centers for the purposes of carrying out the Sale. The Company shall be responsible for payment of and shall pay all Occupancy Expenses for the Locations and Distribution Centers, which are required to ensure the continued occupation of the Locations and Distribution Centers pursuant to the Occupation Agreements for the purposes of this Agreement until the Sale Termination Date with respect to all of the Locations and Distribution Centers, subject to being reimbursed for same by the Agent to the extent provided for herein as an Expense.

- (b) The Agent shall also allow such parties as may be identified by the Company or the Monitor, including any potential purchaser of the Company's leases in respect of the Locations, reasonable access to the Locations during normal business hours during the Sale Term to conduct reasonable inspections of such Locations, provided there is no interference with the Sale as determined by the Agent, acting reasonably.
- (c) Agent acknowledges that the Company has entered into agreements with various third parties, including licencees, concession vendors, and subleasees, as the case may be, pursuant to which such parties have been granted access to and occupation of certain premises within certain Locations. To the extent that the Agent shall have access to said Locations pursuant to the terms of this Agreement, the Agent undertakes to not interfere nor disrupt the continued access and peaceful occupation of such premises by such parties.

10.6 Sale Term and Surrender of Locations

Subject to the issuance of the Approval Order as provided in Section 14.1(a)(i) hereof, the Sale at each Location shall commence on the Sale Commencement Date and terminate on the Sale Termination Date. The Agent shall be entitled to terminate the Sale at any Location by providing to the Company prior written notice of its intention to do so by 11:59 pm (EST) on or before the twenty-first (21st) day prior to such termination (as to each such Location, as applicable, the "Vacate Date"). On the Vacate Date, the Agent shall vacate the Location in favour of the Company or its representatives or assignee, and remove all Remaining Merchandise. From and after the Vacate Date, the Agent shall continue with the disposal and removal of the FF&E as provided for in Article 5 of this Agreement and leave the applicable Location in "broom clean" condition (ordinary wear and tear excepted) by the FF&E Removal Deadline. The Agent's obligations to pay all Expenses, including Occupancy Expenses, for each Location shall continue until the applicable Vacate Date for such Location. All assets of the Company used by the Agent in the conduct of the Sale (e.g., supplies, etc.) shall be returned by the Agent to the Company or left at the Locations, or disposed of as may be directed by the Company. Where reference is made in this Section to vacating the Locations, such shall mean vacating the Locations, as applicable, in favour of the Company, its representatives or assignee and shall not mean vacating possession or disclaimer of lease in favour of the landlord or owner of the relevant Location. The Agent agrees that it shall be obligated to repair any damage caused by the Agent (or any representative, agent or licensee thereof) to any Location during the Sale Term, ordinary wear and tear excepted.

10.7 Extension of Credit

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

10.8 Security

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

10.9 Right to Monitor

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

10.10 Company Personal Information

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

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

10.11 Force Majeure

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

ARTICLE 11 EMPLOYEE MATTERS

11.1 Personnel

- (a) Subject to the applicable provisions of the Approval Order and any other provisions in this Agreement relating to employees, the Company shall provide to the Agent such employees as the Agent may designate from time to time in connection with the conduct of the Sale (each such employee, a "**Retained Employee**"). Retained Employees shall at all times remain employees of the Company, and shall not be considered or deemed to be employees of the Agent. The Company and the Agent agree that except to the extent that wages and benefits of Retained Employees constitute Expenses hereunder, nothing contained in this Agreement and none of Agent's actions taken in respect of the Sale shall be deemed to constitute an assumption by the Agent of any of the Company's obligations or any obligations relating to any of the Retained Employees including, without limitation, Excluded Benefits, notice and severance claims and other obligations, or any other amounts required to be paid by statute or law; nor shall Agent or Company become liable under any collective bargaining or employment agreement or be deemed a joint or successor employer with respect to such Retained Employees. The Company shall not, without the Agent's prior written consent, raise the salary or wages or increase the benefits for, or pay any bonuses or make any other extraordinary payments to, any of the Retained Employees, except as otherwise provided in this Agreement. The Company shall not transfer any Retained Employee during the Sale Term without the Agent's prior consent.
- (b) The Agent may, in its discretion, stop using any Retained Employee at any time during the Sale. In the event the Agent determines to discontinue its use of any Retained Employee in connection with the conduct of the Sale, Agent will provide written notice to Company at least seven (7) calendar days prior thereto. In the event that the Agent no longer requires the assistance of a Retained Employee due to cause (such as dishonesty, fraud or breach of employee duties), the Agent shall notify the Company forthwith and no prior notice shall be required. Until the Sale Termination Date, the Company shall not transfer or

dismiss the Retained Employees except 'for cause' without the Agent's prior consent.

- (c) During the Sale Term, the Company shall process and pay the base payroll and all related payroll taxes, worker's compensation, employment and unemployment insurance, and benefits for all Retained Employees (except for Agent's employees and independent contractors hired by Agent) in accordance with its usual and customary procedures. At the Agent's expense, Company shall also process payroll for additional personnel hired by the Agent for the Sale. For greater clarity, the Company shall have no liability with respect to such additional personnel hired by Agent for the Sale, whether as to salary, notice, pay in lieu of notice, separation pay, severance or any other claim the Company's obligation being limited to providing a payroll service.
- (d) Subject to the prior consent of the Company and the Monitor, which shall not be unreasonably withheld, delayed or denied, Agent may pay, as an Expense, retention bonuses ("**Retention Bonuses**") (which bonuses shall be inclusive of payroll taxes, but as to which no benefits shall be payable). The amount of such Retention Bonuses shall be in an amount to be mutually agreed to by the Agent and Company, and such Retention Bonuses shall be processed through the Company's payroll system and shall not be duplicative of and shall take into account any KERP payments.
- (e) The Agent acknowledges and agrees that the Company shall have the right to terminate employees that are not Retained Employees at any time prior to or during the Sale Term provided that the termination of such employee shall not have a materially adverse effect on the Company's ability to perform its obligations hereunder.

ARTICLE 12 SALES TAX AND INSURANCE MATTERS

12.1 Authorizations and Remittance of Taxes

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

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

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

by the Agent on any disposition of the Remaining Merchandise and Remaining FF&E by the Agent.

12.2 Insurance

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

Agent shall deliver to Company certificates evidencing such insurance policies setting forth the duration thereof and naming Company as an additional insured, in form and substance reasonably satisfactory to Company. In the event of a claim under any such policies, Agent shall be responsible for the payment of all deductibles, retentions or self-insured amounts thereunder, unless it is determined that liability arose by reason of the willful misconduct or grossly negligent acts or omissions of Company or Company's employees, independent contractors or agents (other than Agent or Agent's employees, agents or independent contractors). Agent shall not make any change in the amount of any deductibles or self-insurance amounts prior to the Sale Termination Date without Company's prior written consent.

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

**ARTICLE 13
AGENT'S CHARGE**

13.1 Grant of Agent's Charge and Security Interest

- (a) In consideration of and subject to the payment of the Initial Guaranty Payment and the issuance of the Agent L/C, to secure its obligations to Agent hereunder and all amounts owing by Company to Agent pursuant to the terms of this Agreement, including the Bid Protections, effective as of the Payment Date, the Company hereby grants to the Agent a first ranking priority charge and security interest in and lien, ranking ahead of all Encumbrances, upon the Merchandise, the Proceeds, the Designated Sundry And Consignment Goods Proceeds (to the extent of the Designated Sundry And Consignment Goods Commission), and the FF&E Proceeds (to the extent of the FF&E Commission) ("**Agent's Charge and Security Interest**") provided, however, that until payment in full to the Company of the Guaranteed Amount, the Company's Sharing Recovery Amount, the Net FF&E Proceeds, the Net Designated Sundry And Consignment Goods Proceeds and all other amounts owing to the Company by the Agent hereunder (collectively, the "**Unpaid Company's Entitlement**"), the Agent's Charge and Security Interest shall be junior and subordinate in all respects to all Encumbrances, but solely to the extent of any Unpaid Company's Entitlement.
- (b) The Approval Order shall provide that the Agent's Charge and Security Interest shall be effective as of the Payment Date and shall be automatically perfected without the necessity of the filing or registration of financing statements or other documents and valid and enforceable and deemed perfected as against all charged property and against all persons, including, without limitation, any trustee in bankruptcy, receiver, receiver and manager or interim receiver of the Company, for all purposes without the need for any further action by or on behalf of the Company or the Agent. The Company shall execute and deliver all such documents and take all such other actions as are reasonably required to perfect and maintain such charge and security interest as a valid and perfected first ranking priority security interest.

**ARTICLE 14
ORDERS**

14.1 Orders

- (a) The obligations of the Company and the Agent hereunder are subject to and conditional upon the following:
- (i) the Company shall have obtained by no later than October 13, 2017 (the "**Court Condition Date**") an Order of the Court, substantially in the form attached hereto as Schedule "H" and otherwise satisfactory to the Company, the Agent, the Monitor, and the Lenders authorizing the Sale and the transactions contemplated under this Agreement in accordance with the terms hereof (the "**Approval Order**"); and the Approval Order

shall not have been stayed, varied, or vacated and no Appeal shall have been launched; and

- (ii) no Order shall have been made which in any material respect limits or impairs the ability of the Agent to carry out the terms of this Agreement and to obtain the benefits therefrom.
- (b) The Company covenants and agrees to proceed as expeditiously as possible and to use reasonable commercial efforts to obtain the Approval Order.
- (c) In the event that the Company is unsuccessful in obtaining the Approval Order by the Court Condition Date, then the Company, the Monitor, and the Agent may elect, in writing and with the consent of the Lenders, to extend the Court Condition Date to allow the Company to continue to attempt to obtain the Approval Order.
- (d) If the conditions contained in this section are not satisfied at the time or during the time periods specified therein, or if applicable, waived by the parties, then the parties agree that:
 - (i) all the obligations of the Company, the Monitor, and the Agent pursuant to this Agreement shall be at an end; and
 - (ii) neither party shall have a right to specific performance or other remedy against, or any right to recover damages or expenses from the other.

ARTICLE 15 DEFAULTS AND TERMINATION

15.1 Events of Default

The following shall constitute "Events of Default" hereunder:

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

terminated or materially impaired for any reason other than (i) an Event of Default by the Agent, or (ii) any other material breach or action by the Agent not authorized hereunder.

15.2 Termination upon Event of Default

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

ARTICLE 16 REPRESENTATIONS

16.1 Representations of the Company

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

- (a) subject to the issuance of the Approval Order:
 - (i) the Company has the right, power and authority to execute and deliver this Agreement and each other document and agreement contemplated hereby (collectively, together with this Agreement, the "Agency Documents") and to perform its obligations thereunder;
 - (ii) the Company has taken all necessary actions required to authorize the execution, delivery and performance of the Agency Documents, and no further consent or approval is required for the Company to enter into and deliver the Agency Documents, to perform its obligations thereunder, and to consummate the transactions contemplated hereby;
 - (iii) each of the Agency Documents has been duly executed and delivered by the Company and constitutes the legal, valid and binding obligation of the Company enforceable in accordance with its terms;
 - (iv) no court order or decree of any federal, provincial or local governmental authority or regulatory body is in effect that would prevent or impair, or is required for the Company's consummation of, the transactions contemplated by this Agreement, and no consent of any third party which has not been obtained is required therefor; and
 - (v) no contract or other agreement to which the Company is a party or by which the Company is otherwise bound will prevent or impair the

consummation of the Sale and the other transactions contemplated by this Agreement;

- (b) other than as disclosed by the Company to the Agent in writing during the Agent's diligence process, it has maintained its pricing files (including the Merchandise File) in the ordinary course of business and has not and shall not alter such files outside the ordinary course of business;
- (c) other than as disclosed by the Company to the Agent in writing during the Agent's diligence process, including disclosure of the Company's price scraping practices (which the Agent acknowledges has been appropriately disclosed), as and from October 1, 2017, it has not marked up, increased, or removed the ticket price affixed to Merchandise or any indicia of clearance at the Locations, and, except as disclosed to the Agent in writing, has discontinued its price scraping practices, and as of the date of this Agreement to the Sale Commencement Date, it shall not mark up or raise the price of any items of Merchandise or remove any indicia of sale or clearance at the Locations, nor resume its price scraping practices, without the consent of the Agent;
- (d) as and from October 1, 2017 until the Sale Commencement Date, the Company has not and shall not implement any promotions, markdowns or discounts of Merchandise at the Locations (including, without limitation, point-of-sale discounts and other similar promotions, regardless of whether consistent with Company's ordinary course of business), without the consent of the Agent, except as provided for in the Promotional Calendar or otherwise disclosed to Agent in writing, and shall ticket or mark all items of Distribution Center Merchandise and In-Transit Merchandise received at the Locations prior to the Sale Commencement Date or to be received at the Locations during the Sale Term, (i) in a manner consistent with similar Merchandise located at the Locations, (ii) in accordance with the Company's historic practices and policies relative to pricing and marking inventory, and (iii) readable by the point of sale system in the applicable Location.
- (e) to the best of Company's knowledge, all Merchandise is in compliance with all applicable federal, provincial or local product safety laws, rules and standards. Upon request, the Company shall, as soon as is practicable, provide the Agent with the Company's historic policies and practices, if any, regarding product recalls prior to the Sale Commencement Date;
- (f) the Company has not and shall not, throughout the Sale Term, take any action which may result in materially increasing the cost of operating the Sale, including, without limitation, increasing salaries or other amounts payable to Retained Employees;
- (g) to the best of Company's knowledge, it has paid, shall pay and shall continue to pay, all self-insured or company-funded employee benefits programs, including health benefits and insurance, including all proper claims made or to be made

under such programs, in respect of the Retained Employees the whole subject to and in accordance with the CCAA Proceedings;

- (h) to the best of Company's knowledge, no action, arbitration, suit, notice, or legal, administrative or other proceeding before any court or governmental body has been instituted by or against the Company, or has been settled or resolved, or to the Company's knowledge affects the Company, relative to the Company's business or properties, or which questions the validity of this Agreement, or that if adversely determined, would adversely affect the conduct of the Sale;
- (i) to the best of Company's knowledge, the Company (i) is not a party to any collective bargaining agreements with its employees at the Locations or Distribution Centers other than stores 1322 (Fairview), 1017 (Windsor), 1321 (Oakville), and 1020 (Peterborough), and (ii) there are currently no strikes, work stoppages or other labour disturbances affecting the Locations or Distribution Centers; and
- (j) from and after the date of this Agreement, the Company shall not ship any goods to the Locations except for Distribution Center Merchandise and In-Transit Merchandise in accordance with the mutually agreed upon allocation schedule, nor shall it ship any goods from the Locations except with Agent's consent.

16.2 Representations of the Agent

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

- (i) Each entity comprising Agent (i) is an unlimited liability company or corporation, as the case may be, duly organized, and validly existing and in good standing under the laws of the jurisdiction of its formation; (ii) has all requisite power and authority to carry on its business as presently conducted and to consummate the transactions contemplated hereby; (iii) is entering into this Agreement as principal and not as agent for another person; and (iv) during the Sale Term will continue to be, duly authorized and qualified to do business and in good standing in each jurisdiction where the nature of its business or properties requires such qualification, including all jurisdictions in which the Locations are located, except, in each case, to the extent that the failure to be in good standing or so qualified could not reasonably be expected to have a material adverse effect on the ability of Agent to execute and deliver this Agreement and perform fully its obligations hereunder.
- (ii) Agent has the right, power and authority to execute and deliver each of the Agency Documents to which it is a party and to perform fully its obligations thereunder. Agent has taken all necessary actions required to authorize the execution, delivery and performance of the Agency Documents, and no further consent or approval is required on the part of Agent for Agent to enter into and deliver the Agency Documents, to

perform its obligations thereunder and to consummate the Sale. Each of the Agency Documents has been duly executed and delivered by the Agent and constitutes the legal, valid and binding obligation of Agent enforceable in accordance with its terms. No court order or decree of any federal, provincial or local governmental authority or regulatory body is in effect that would prevent or impair, or is required for, Agent's consummation of the transactions contemplated by this Agreement, and no consent of any third party which has not been obtained is required therefor, other than as provided herein. No contract or other agreement to which Agent is a party or by which Agent is otherwise bound will prevent or impair the consummation of the transactions contemplated by this Agreement.

- (iii) No action, arbitration, suit, notice or legal administrative or other proceeding before any court or governmental body has been instituted by or against Agent, or has been settled or resolved or, to Agent's knowledge, has been threatened against or affects Agent, which questions the validity of this Agreement or any action taken or to be taken by Agent in connection with this Agreement or which, if adversely determined, would have a material adverse effect upon Agent's ability to perform its obligations under this Agreement.
- (iv) The Sale shall be conducted in compliance with this Agreement, the Approval Order, and the Sale Guidelines.
- (v) Absent prior consent by the Company, Agent will not cause any non-emergency repairs or maintenance (emergency repairs are repairs necessary to preserve the security of a Location premise or to ensure customer safety) to be conducted at the Locations.
- (vi) Each entity comprising Agent shall be duly registered, by no later than the Sale Commencement Date, under Subdivision (d) of Division V of Part IX of the *Excise Tax Act* (Canada) with respect to the goods and services tax and harmonized sales tax and under Division I of Chapter VIII of Title I of *An Act respecting the Quebec sales tax* with respect to the Quebec sales tax. The Agent's registration number is as follows: (i) 814418836 RT0001 for Gordon Brothers Canada ULC; (ii) 810929034 RT0001 for Merchant Retail Solutions ULC; (iii) 845025105 RT0001 for Tiger Capital Group, LLC; and (iv) 814306783 RT0001 for GA Retail Canada ULC.
- (vii) Each entity comprising Agent is not a non-resident of Canada for purposes of the *Income Tax Act* (Canada).

ARTICLE 17 INDEMNIFICATION

17.1 Company Indemnification

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

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

17.2 Agent Indemnification

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

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

**ARTICLE 18
GENERAL**

18.1 Notices

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

in the case of the Agent:

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

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

And

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

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

And

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

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

And

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

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

with a copy to:

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

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

and with a copy to:

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

Attention: Guy P. Martel
Email: gmartel@stikeman.com

in the case of the Company:

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

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

with a copy to:

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

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

in the case of the Monitor:

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

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

with a copy to:

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

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

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

18.2 Time of Essence

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

18.3 Currency

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

18.4 Further Assurances

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

18.5 Obligations to Survive

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

18.6 Entire Agreement

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

18.7 Governing Law

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

18.8 Benefit of Agreement

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. Except as otherwise provided for in this Section 18.8, the Agent shall not assign the benefit of, or any rights under, this Agreement without the prior written consent of the Company and approval of the Court. With the consent of the Company to confirm such assignment is not of a beneficial interest, which consent shall not be unreasonably withheld, any JV Member may pledge or assign a security interest in its rights to receive its pro rata portion of amounts due under this Agreement to secure obligations of such JV Member. With the consent of the Company but without any requirement for court approval, the Agent shall be permitted to assign the benefit of this Agreement to a Canadian affiliate.

Notwithstanding the consent of the Company to any assignment, the JV Member shall not be relieved of any of its obligations or indemnities as Agent under this Agreement.

18.9 Severability

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

18.10 Counterparts

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

18.11 Language

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

18.12 Canadian Withholding Tax

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

18.13 Dispute Resolution Mechanism

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

18.14 Joint and Several Liability

To the extent that there are multiple entities that comprise the Agent, each of the entities that comprise the Agent hereunder hereby irrevocably and unconditionally agree that it is jointly and severally liable for all of the liabilities, obligations, covenants and agreements of the Agent hereunder, whether now or hereafter existing or due or to become due. The obligations of each of the entities that comprise the Agent hereunder may be enforced by the Company against any such entity comprising the Agent or all of the entities that comprise the Agent in any manner or order as determined by the Company in its sole discretion. Each entity comprising the Agent

hereby irrevocably waives, for the benefit of the Company, any defense to payment based on (i) any rights of subrogation, (ii) any rights of contribution, indemnity or reimbursement, and (iii) all suretyship defenses generally, in each case, that it may acquire or that may arise against the Company due to any payment or performance made under this Agreement.

18.15 Intentionally Omitted

18.16 Termination at Company's Election; Bid Protections

- (a) Notwithstanding anything to the contrary contained in this Agreement, the Company may, at its election (with the approval of the Monitor and the Court), terminate this Agreement (i) at any time prior to 5:00 p.m. EST on the date that is one day immediately prior to the Sale Commencement Date solely on the basis of pursuing an Alternative Going Concern Transaction, or (ii) if an Alternative Liquidation Transaction is received by the Company prior to 5:00 p.m. EST on October 11th, 2017. If this Agreement is terminated pursuant to this Section 18.16, the Agent shall be entitled to receive payment of the Bid Protections and the Company shall pay such amounts within five (5) Business Days following termination hereof; provided, however, that the Agent shall not incur any Signage Costs prior to October 12, 2017. The Parties further agree that if this Agreement is terminated pursuant to this Section 18.16, the Bid Protections shall be the sole and exclusive remedies and recourse available to the Agent, whether at law, equity or otherwise, and the Company shall have no other liability in respect of or obligations under this Agreement.
- (b) From the date of this Agreement and ending at 5:00 p.m. EST on the date that is one day immediately prior to Sale Commencement Date, the Parties agree that the Company, the Monitor, and their respective advisors, representatives, and affiliates, shall be entitled to directly or indirectly, make, solicit, consider, initiate, contact, or encourage inquiries from, submissions of or proposal or offers from any person in connection with any Alternative Going Concern Transaction or participate in any discussions or negotiations regarding, or furnish to any other person, any information in respect of, or otherwise cooperate in any way with, respond to any inquiries regarding, or assist or participate in, facilitate or encourage, any effort or attempt by any other person to do or seek any Alternative Going Concern Transaction.
- (c) From the date of this Agreement and ending at 5:00 p.m. EST on October 11th, 2017, the Parties agree that the Company, the Monitor, and their respective advisors, representatives, and affiliates, shall be entitled to directly or indirectly, make, solicit, consider, initiate, contact, or encourage inquiries from, submissions of or proposal or offers from any person in connection with any Alternative Liquidation Transaction or participate in any discussions or negotiations regarding, or furnish to any other person, any information in respect of, or otherwise cooperate in any way with, respond to any inquiries regarding, or assist or participate in, facilitate or encourage, any effort or attempt by any other person to do or seek any Alternative Liquidation Transaction.

- (d) The Company undertakes to promptly provide the Agent with a copy of any Alternative Liquidation Transaction proposal.


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


SEARS CANADA INC.

By: P. MONTGOMERY
Name: P. MONTGOMERY
Title: Secretary

GORDON BROTHERS CANADA ULC

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

MERCHANT RETAIL SOLUTIONS ULC

By:  _____
Name: Jan S. Fredericks
Title: Vice President

TIGER CAPITAL GROUP, LLC

By: 
Name: Michael McGrail
Title: coo

GA RETAIL CANADA ULC

By: Scott K. Carpenter
Name: SCOTT K. CARPENTER
Title: MANAGING DIRECTOR

SCHEDULE A
Occupancy Expenses
(See attached)

SCHEDULE B

Locations

(See attached)

Schedule B

Locations

| Store # | Location Type | Name | Address | City | State | Zip | Owned / Leased | Gross Sq. Ft. | Selling Sq. Ft. |
|---------|---------------|----------------------------------|----------------------------------|----------------|-------|---------|----------------|---------------|-----------------|
| 1011 | Full Line | 001011-OTTAWA-CARLINGWOOD | 2165 Carling Avenue | Ottawa | ON | K2A 1S9 | Leased | 232,618 | 128,413 |
| 1012 | Full Line | 001012-FLEUR DE LYS | 500 Boulevard Wilfrid Hamel | Quebec City | QC | G1M 2S5 | Owned | 210,000 | 110,634 |
| 1013 | Full Line | 001013-KITCHENER | 200 Fairway Road | Kitchener | ON | N2C 1W9 | Leased | 175,577 | 103,606 |
| 1014 | Full Line | 001014-ST. CATHARINES | 221 Glendale Avenue | St Catharines | ON | L2T 2K6 | Leased | 197,175 | 123,012 |
| 1015 | Full Line | 001015-OTTAWA-ST. LAURENT | 1250 St. Laurent Boulevard | Ottawa | ON | K1K 3B9 | Leased | 137,141 | 106,118 |
| 1016 | Full Line | 001016-OSHAWA | 419 King Street West | Oshawa | ON | L1J 2K6 | Leased | 107,030 | 84,261 |
| 1017 | Full Line | 001017-WINDSOR | 3050 Howard Avenue | Windsor | ON | N8X 3Y7 | Owned | 305,428 | 123,943 |
| 1018 | Full Line | 001018-PLACE LAURIER | 2700 Boulevard Laurier | Ste. Foy | QC | G1V 2L7 | Leased | 153,972 | 103,985 |
| 1020 | Full Line | 001020-PETERBOROUGH | 637 Lansdowne Street West | Peterborough | ON | K9J 7C5 | Owned | 104,418 | 64,810 |
| 1022 | Full Line | 001022-GUELPH | 435 Stone Road West | Guelph | ON | N1G 3E5 | Leased | 116,694 | 81,005 |
| 1027 | Full Line | 001027-BELLEVILLE | 390 North Front Street | Belleville | ON | K8P 3E1 | Leased | 91,372 | 65,444 |
| 1031 | Full Line | 001031-BARRIE | 521 Bayfield Street | Barrie | ON | L4M 4Z8 | Owned | 117,754 | 90,874 |
| 1032 | Full Line | 001032-SHERBROOKE | 3150 Portland Boulevard | Sherbrooke | QC | J1L 1K3 | Leased | 115,558 | 77,999 |
| 1033 | Full Line | 001033-BRANTFORD | 84 Lynden Road | Brantford | ON | N3R 5V1 | Leased | 96,130 | 65,504 |
| 1034 | Full Line | 001034-PICKERING | 1355 Kingston Road | Pickering | ON | L1V 2B8 | Leased | 164,348 | 111,423 |
| 1035 | Full Line | 001035-ST JEROME | 900 Boulevard Grignon | St. Jerome | QC | J7Y 3S7 | Leased | 122,487 | 88,489 |
| 1037 | Full Line | 001037-ST. JEAN | 550 Pierre Caisse Street | St. Jean | QC | J3A 1M1 | Leased | 89,899 | 54,489 |
| 1040 | Full Line | 001040-KINGSTON 2 | 945 Gardiner's Rd. | Kingston | ON | K7M 7H4 | Leased | 124,933 | 90,106 |
| 1041 | Full Line | 001041-GRANBY | 60 Evangeline | Granby | QC | J2G 8K3 | Leased | 116,496 | 86,586 |
| 1045 | Full Line | 001045-NORTH BAY | 1500 Fisher Street | North Bay | ON | P1B 2H3 | Leased | 120,000 | 82,811 |
| 1049 | Full Line | 001049-BRAMALEA | 25 Peel Centre Drive | Brampton | ON | L6T 3R5 | Leased | 157,156 | 112,348 |
| 1057 | Full Line | 001057-JOLIETTE | 1195 Firestone Boulevard | Joliette | QC | J6E 2W4 | Leased | 100,836 | 76,115 |
| 1060 | Full Line | 001060-TROIS RIVIERES 2 | 4025 Boulevard des Forges | Trois Rivières | QC | G8Y 1W2 | Owned | 146,000 | 101,252 |
| 1083 | Full Line | 001083-SUDBURY | 1349 La Salle Boulevard | Sudbury | ON | P3A 1Z3 | Leased | 134,677 | 86,128 |
| 1085 | Full Line | 001085-LEVIS | 1200 Blvd. Alphonse des Jardins | Levis | QC | G6V 6Y8 | Owned | 125,258 | 76,309 |
| 1086 | Full Line | 001086-BROSSARD | 2151 Lapinière Boulevard | Brossard | QC | J4W 2T5 | Leased | 145,144 | 100,921 |
| 1087 | Full Line | 001087-ANJOU | 7451 Blvd Les Galeries D'Anjou | Anjou | QC | H1M 3A3 | Leased | 146,570 | 103,427 |
| 1088 | Full Line | 001088-TORONTO-NEWMARKET | 17600 Yonge St. N | Newmarket | ON | L3Y 4Z1 | Owned | 144,923 | 99,448 |
| 1093 | Full Line | 001093-HAMILTON-LIMERIDGE | 999 Upper Wentworth Street | Hamilton | ON | L9A 4X5 | Leased | 123,979 | 99,022 |
| 1094 | Full Line | 001094-LAVAL | 3003 Boulevard Le Carrefour | Laval | QC | H7T 1C7 | Leased | 150,850 | 118,595 |
| 1096 | Full Line | 001096-LASALLE | 7071 Boulevard Newman | Lasalle | QC | H8N 1X1 | Leased | 128,746 | 85,068 |
| 1097 | Full Line | 001097-TORONTO-PROMENADE | 1 Promenade Circle | Vaughan | ON | L4J 4P8 | Leased | 173,560 | 121,633 |
| 1098 | Full Line | 001098-OWEN SOUND | 1350 16th Street East | Owen Sound | ON | N4K 1Z3 | Leased | 69,975 | 47,137 |
| 1102 | Full Line | 001102-HAMILTON RELOCATION | 75 CENTENNIAL PKWY N, UNIT Y005 | Hamilton | ON | L8E 2P2 | Leased | 89,223 | 64,635 |
| 1112 | Full Line | 001112-POLO PARK | 1515 Portage Ave. | Winnipeg | MA | R3G 0W7 | Leased | 270,000 | 127,041 |
| 1241 | Full Line | 001241-ROSEMERE | 401 Labelle Boulevard | Rosemere | QC | J7A 3T2 | Leased | 138,162 | 96,407 |
| 1244 | Full Line | 001244-SARNIA - RELOCATION | 1380 London Road | Sarnia | ON | N7S 1P8 | Leased | 135,259 | 95,900 |
| 1305 | Full Line | 001305-POINTE CLAIRE RELOCATION | 6901 Trans Canada Highway | Pointe Claire | QC | H9R 5J2 | Leased | 181,795 | 118,509 |
| 1308 | Full Line | 001308-SCARBOROUGH 2 | 300 Borough Drive | Scarborough | ON | M1P 4P5 | Leased | 240,000 | 152,011 |
| 1310 | Full Line | 001310-STRATFORD RETAIL STORE | 1067 Ontario Street | Stratford | ON | N5A 6W6 | Leased | 82,543 | 66,208 |
| 1312 | Full Line | 001312-REPERTIGNY | 100 Boulevard Brien | Repentigny | QC | J6A 5N4 | Leased | 125,471 | 91,031 |
| 1319 | Full Line | 001319-ST BRUNO | 700 Boulevard Des Promenade | St. Bruno | QC | J3V 5J8 | Leased | 134,255 | 90,232 |
| 1321 | Full Line | 001321-OAKVILLE | 240 Leighland Avenue | Oakville | ON | L6H 3H6 | Leased | 104,165 | 88,098 |
| 1322 | Full Line | 001322-FAIRVIEW | 1800 Sheppard Avenue East | North York | ON | M2J 5A8 | Leased | 159,192 | 121,827 |
| 1323 | Full Line | 001323-ERIN MILLS | 5100 Erin Mills Parkway | Mississauga | ON | L5M 4Z5 | Leased | 139,137 | 99,895 |
| 1328 | Full Line | 001328-BURLINGTON | 900 Maple Avenue | Burlington | ON | L7S 2I8 | Leased | 139,590 | 99,814 |
| 1330 | Full Line | 001330-WESTMOUNT | 785 Wonderland Road South | London | ON | NGK 1M6 | Leased | 128,430 | 87,881 |
| 1331 | Full Line | 001331-LA CAPITAL QUEBEC | 5401 Boulevard Des Galeries | Quebec City | QC | G2K 1N4 | Leased | 184,993 | 133,754 |
| 1410 | Full Line | 001410-EDMONTON - KINGSWAY | 109St. & Princess Elizabeth Ave. | Edmonton | AB | T5G 0Y3 | Leased | 202,337 | 161,775 |
| 1411 | Full Line | 001411-CALGARY - NORTH HILL | 1616 14th Avenue North West | Calgary | AB | T2N 1M6 | Leased | 240,802 | 103,072 |
| 1414 | Full Line | 001414-SASKATOON | 1st Avenue and 20th Street | Saskatoon | SK | S7K 1K1 | Leased | 166,572 | 106,658 |
| 1416 | Full Line | 001416-EDMONTON - WEST EDMONTON | 8770 170th Street | Edmonton | AB | T5T 3J7 | Leased | 139,062 | 92,044 |
| 1418 | Full Line | 001418-THUNDER BAY | 880 Fort William Road | Thunder Bay | ON | P7B 3A5 | Leased | 136,808 | 90,162 |
| 1422 | Full Line | 001422-LETHBRIDGE | 401 1st Avenue South | Lethbridge | AB | T1J 4M1 | Leased | 103,193 | 66,185 |
| 1425 | Full Line | 001425-SOUTH CENTRE CALGARY | 100 Anderson Road South East | Calgary | AB | T2J 3V1 | Leased | 234,109 | 160,733 |
| 1429 | Full Line | 001429-SOUTHGATE EDMONTON | 11100 51st Avenue | Edmonton | AB | T6H 4M7 | Leased | 263,019 | 168,475 |
| 1432 | Full Line | 001432-WINNIPEG - KILDONAN | 1555 Regent Avenue West | Winnipeg | MA | R2C 4J2 | Leased | 119,479 | 80,526 |
| 1436 | Full Line | 001436-ST. VITAL CENTRE | 1225 A St. Mary's Road | Winnipeg | MA | R2M 5E5 | Leased | 131,513 | 97,555 |
| 1616 | Full Line | 001616-HALIFAX 2 | 7001 Mumford Road | Halifax | NS | B3L 2H8 | Leased | 162,974 | 98,851 |
| 1622 | Full Line | 001622-FREDERICTON | 1325 Regent Street | Fredericton | NB | E3C 1A2 | Leased | 83,934 | 62,322 |
| 1623 | Full Line | 001623-MONCTON | 43 Champlain Street | Moncton | NB | E1A 4T2 | Leased | 107,029 | 80,940 |
| 1639 | Full Line | 001639-ST. JOHN'S AVALON, NFLD | 48 KENMOUNT RD | St. John'S | NF | A1B 1W3 | Leased | 128,941 | 95,946 |
| 1655 | Full Line | 001655-CHARLOTTETOWN, PEI | 167 Malpeque Rd | Charlottetown | PEI | C1A 7J9 | Owned | 108,400 | 84,159 |
| 1811 | Full Line | 001811-LANGLEY, BRITISH COLUMB | 19705 Frazer Highway | Langley | BC | V3A 7E9 | Leased | 113,439 | 83,196 |
| 1812 | Full Line | 001812-COQUITLAM, BRITISH COLUMB | 2929 Barnet Highway | Coquitlam | BC | V3B 5R5 | Leased | 151,455 | 105,146 |
| 1816 | Full Line | 001816-VANCOUVER - CAPILANO | 943 Marine Drive | Vancouver | BC | V7P 1S1 | Leased | 109,654 | 80,867 |
| 1818 | Full Line | 001818-VICTORIA | 3190 SHELBOURNE STREET | Victoria | BC | V8T 3A8 | Leased | 141,873 | 90,504 |
| 1819 | Full Line | 001819-VANCOUVER - BURNABY | 4750 Kingsway | Burnaby | BC | V5H 2C2 | Leased | 256,277 | 116,911 |
| 1821 | Full Line | 001821-PRINCE GEORGE | 3199 Massey Drive | Prince George | BC | V2N 3M7 | Leased | 112,155 | 74,239 |
| 1822 | Full Line | 001822-VANCOUVER - CHILLIWACK | 45585 Luckakuck | Chilliwack | BC | V2R 1A1 | Leased | 97,014 | 66,385 |
| 1823 | Full Line | 001823-NANAIMO | 4750 Rutherford Road | Nanaimo | BC | V9T 4K6 | Leased | 129,198 | 87,729 |
| 1827 | Full Line | 001827-KELOWNA | 2271 Harvey Avenue | Kelowna | BC | V1Y 6H2 | Leased | 92,068 | 55,870 |
| 1828 | Full Line | 001828-GUILDFORD | 1730 Guildford Town Centre | Surrey | BC | V3R 7B8 | Leased | 141,345 | 103,520 |
| 1836 | Full Line | 001836-BRENTWOOD MALL | 4567 Lougheed Highway | Burnaby | BC | V5C 3Z6 | Leased | 176,088 | 124,419 |
| 1338 | Home | 001338-BURLINGTON HOME | 1035 Plains Rd. East | Burlington | ON | L7T 4K1 | Leased | 35,815 | 29,441 |

Schedule B
Locations

| Store # | Location Type | Name | Address | City | State | Zip | Owned / Leased | Gross Sq. Ft. | Selling Sq. Ft. |
|---------|---------------|------------------------------|-------------------------------------|-----------|-------|---------|----------------|---------------|-----------------|
| 1343 | Home | 001343-BARRIE HOME | 42 Caplan Ave., Unit A | Barrie | ON | L4M 4S7 | Leased | 44,346 | 35,749 |
| 1345 | Home | 001345-NEWMARKET HOME | 17700 Yonge St., Unit # 1 | Newmarket | ON | L3Y 8A8 | Owned | 35,596 | 29,375 |
| 1361 | Home | 001361-OTTAWA-PINECREST HOME | 2685 Iris Street | Ottawa | ON | K2C 3S4 | Leased | 50,002 | 42,488 |
| 1370 | Home | 001370-CALGARY NORTH HOME | 3630 Brentwood Road N.W., Suite 500 | Calgary | AB | T2L 1K8 | Leased | 46,207 | 37,329 |
| 1376 | Home | 001376-KELOWNA HOME | 2271 Harvey Avenue, Unit 1405 | Kelowna | BC | V1Y 6H2 | Leased | 49,612 | 38,137 |
| 1385 | Home | 001385-REGINA HOME | 3015 Quance Street. | Regina | SK | S4V 3B7 | Leased | 43,338 | 35,706 |
| 1393 | Home | 001393-WHITBY HOME | 1629 Victoria St. East | Whitby | ON | L1N 9W4 | Leased | 60,245 | 45,558 |

SCHEDULE C
Merchandise Threshold Adjustments
(See attached)

Schedule C Full Line
Merchandise Thresholds

| Merchandise Threshold Schedule | | |
|--------------------------------|-------------------|-------------------|
| Cost Value | Adjustment Points | Adjusted Guaranty |
| 441,000,000 | 0.35% | 77.50% |
| 439,500,000 | 0.35% | 77.85% |
| 438,000,000 | 0.35% | 78.20% |
| 436,500,000 | 0.35% | 78.55% |
| 435,000,000 | 0.35% | 78.90% |
| 433,500,000 | 0.30% | 79.25% |
| 432,000,000 | 0.30% | 79.55% |
| 430,500,000 | 0.30% | 79.85% |
| 429,000,000 | 0.30% | 80.15% |
| 427,500,000 | 0.30% | 80.45% |
| 426,000,000 | 0.25% | 80.75% |
| 424,500,000 | 0.25% | 81.00% |
| 423,000,000 | 0.25% | 81.25% |
| 421,500,000 | 0.25% | 81.50% |
| 420,000,000 | 0.25% | 81.75% |
| 418,500,000 | 0.20% | 82.00% |
| 417,000,000 | 0.20% | 82.20% |
| 415,500,000 | 0.20% | 82.40% |
| 414,000,000 | 0.20% | 82.60% |
| 412,500,000 | 0.20% | 82.80% |
| 411,000,000 | | 83.00% |
| 391,000,000 | | 83.00% |
| 389,500,000 | 0.03% | 82.97% |
| 388,000,000 | 0.03% | 82.94% |
| 386,500,000 | 0.03% | 82.91% |
| 385,000,000 | 0.06% | 82.85% |
| 383,500,000 | 0.06% | 82.79% |
| 382,000,000 | 0.06% | 82.73% |
| 380,500,000 | 0.11% | 82.62% |
| 379,000,000 | 0.11% | 82.51% |
| 377,500,000 | 0.11% | 82.40% |
| 376,000,000 | 0.21% | 82.19% |
| 374,500,000 | 0.21% | 81.98% |
| 373,000,000 | 0.21% | 81.77% |
| 371,500,000 | 0.26% | 81.51% |
| 370,000,000 | 0.26% | 81.25% |
| 368,500,000 | 0.26% | 80.99% |
| 367,000,000 | 0.31% | 80.68% |
| 365,500,000 | 0.31% | 80.37% |
| 364,000,000 | 0.31% | 80.06% |
| 362,500,000 | 0.35% | 79.71% |
| 361,000,000 | 0.35% | 79.36% |

Note(s):

- Adjustments between the increments shall be on a prorata basis.
- In the event that the Cost value of the Merchandise is greater than \$441,000,000, each \$1,500,000 (or pro rata portion thereof) increment shall decrease the Guaranty by 0.40%.
- In the event that the Cost value of the Merchandise is less than \$361,000,000, each \$1,500,000 (or pro rata portion thereof) increment shall decrease the Guaranty by 0.40%.

Schedule C Home
Merchandise Thresholds

Merchandise Threshold Schedule

| Cost Value | Adjustment Points | Adjusted Guaranty |
|------------|-------------------|-------------------|
| 11,000,000 | 0.25% | 49.00% |
| 10,950,000 | 0.25% | 49.25% |
| 10,900,000 | 0.25% | 49.50% |
| 10,850,000 | 0.25% | 49.75% |
| 10,800,000 | 0.25% | 50.00% |
| 10,750,000 | 0.20% | 50.25% |
| 10,700,000 | 0.20% | 50.45% |
| 10,650,000 | 0.20% | 50.65% |
| 10,600,000 | 0.20% | 50.85% |
| 10,550,000 | 0.20% | 51.05% |
| 10,500,000 | 0.15% | 51.25% |
| 10,450,000 | 0.15% | 51.40% |
| 10,400,000 | 0.15% | 51.55% |
| 10,350,000 | 0.15% | 51.70% |
| 10,300,000 | 0.15% | 51.85% |
| 10,250,000 | 0.10% | 52.00% |
| 10,200,000 | 0.10% | 52.10% |
| 10,150,000 | 0.10% | 52.20% |
| 10,100,000 | 0.10% | 52.30% |
| 10,050,000 | 0.10% | 52.40% |
| 10,000,000 | | 52.50% |
| 9,000,000 | | 52.50% |
| 8,950,000 | 0.20% | 52.30% |
| 8,900,000 | 0.20% | 52.10% |
| 8,850,000 | 0.20% | 51.90% |
| 8,800,000 | 0.20% | 51.70% |
| 8,750,000 | 0.25% | 51.45% |
| 8,700,000 | 0.25% | 51.20% |
| 8,650,000 | 0.25% | 50.95% |
| 8,600,000 | 0.25% | 50.70% |
| 8,550,000 | 0.30% | 50.40% |
| 8,500,000 | 0.30% | 50.10% |
| 8,450,000 | 0.30% | 49.80% |
| 8,400,000 | 0.30% | 49.50% |
| 8,350,000 | 0.35% | 49.15% |
| 8,300,000 | 0.35% | 48.80% |
| 8,250,000 | 0.35% | 48.45% |
| 8,200,000 | 0.35% | 48.10% |
| 8,150,000 | 0.40% | 47.70% |
| 8,100,000 | 0.40% | 47.30% |
| 8,050,000 | 0.40% | 46.90% |
| 8,000,000 | 0.40% | 46.50% |

Note(s):

- Adjustments between the increments shall be on a prorata basis.
- In the event that the Cost value of the Merchandise is greater than \$11,000,000, each \$50,000 (or pro rata portion thereof) increment shall decrease the Guaranty by 0.30%.
- In the event that the Cost value of the Merchandise is less than \$8,000,000, each \$50,000 (or pro rata portion thereof) increment shall decrease the Guaranty by 0.45%.

SCHEDULE D
Cost Factor Thresholds Adjustments
(See attached)

Schedule D Full Line
Cost Factor Adjustments

| Cost Factor | | |
|---------------|-------------------|-------------------|
| Cost Factor | Adjustment Points | Adjusted Guaranty |
| 52.50% | | 83.00% |
| 52.60% | 0.25% | 82.75% |
| 52.70% | 0.25% | 82.50% |
| 52.80% | 0.25% | 82.25% |
| 52.90% | 0.25% | 82.00% |
| 53.00% | 0.25% | 81.75% |
| 53.10% | 0.25% | 81.50% |
| 53.20% | 0.25% | 81.25% |
| 53.30% | 0.25% | 81.00% |
| 53.40% | 0.25% | 80.75% |
| 53.50% | 0.25% | 80.50% |
| 53.60% | 0.25% | 80.25% |
| 53.70% | 0.25% | 80.00% |
| 53.80% | 0.25% | 79.75% |
| 53.90% | 0.25% | 79.50% |
| 54.00% | 0.25% | 79.25% |
| 54.10% | 0.25% | 79.00% |
| 54.20% | 0.25% | 78.75% |
| 54.30% | 0.25% | 78.50% |
| 54.40% | 0.25% | 78.25% |
| 54.50% | 0.25% | 78.00% |

Notes:

- Adjustments between the increments shall be on a prorata basis.
- In the event that the Cost Factor of Merchandise is greater than 54.50%, each 0.10% (or pro rata portion thereof) increment shall decrease the Guaranty by 0.25%.

**Schedule D- Home
Cost Factor Adjustments**

| Cost Factor | | |
|------------------------|------------------------------|------------------------------|
| Cost Factor | Adjustment Points | Adjusted Guaranty |
| 59.90% | | 52.50% |
| 60.00% | 0.20% | 52.30% |
| 60.10% | 0.20% | 52.10% |
| 60.20% | 0.20% | 51.90% |
| 60.30% | 0.20% | 51.70% |
| 60.40% | 0.20% | 51.50% |
| 60.50% | 0.20% | 51.30% |
| 60.60% | 0.20% | 51.10% |
| 60.70% | 0.20% | 50.90% |
| 60.80% | 0.20% | 50.70% |
| 60.90% | 0.20% | 50.50% |
| 61.00% | 0.20% | 50.30% |
| 61.10% | 0.20% | 50.10% |
| 61.20% | 0.20% | 49.90% |
| 61.30% | 0.20% | 49.70% |
| 61.40% | 0.20% | 49.50% |
| 61.50% | 0.20% | 49.30% |
| 61.60% | 0.20% | 49.10% |
| 61.70% | 0.20% | 48.90% |
| 61.80% | 0.20% | 48.70% |
| 61.90% | 0.20% | 48.50% |

Notes:

1. Adjustments between the increments shall be on a prorata basis.
2. In the event that the Cost Factor of Merchandise is greater than 61.90%, each 0.10% (or pro rata portion thereof) increment shall decrease the Guaranty by 0.20%.

SCHEDULE E

Agent L/C

(See attached)

FORM OF LETTER OF CREDIT

Bank of America
100 Federal
Street
Boston, MA 02109

Irrevocable Standby Letter of Credit Number:

Beneficiary:

Original sent to:

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

Attn: Billy Wong, CFO

Credit Number:

Opener's Reference No:

Ladies and Gentlemen:

BY ORDER OF:

We hereby open in your favor our Irrevocable Standby Letter of Credit for the account of Gordon Brothers Canada ULC for a sum or sums not exceeding a total of [\$_____] Canadian dollars ([_____] Canadian dollars) available by your draft(s) at SIGHT on OURSELVES, effective immediately, and expiring at OUR COUNTERS on [_____], 201_ or such earlier date on which the Beneficiary shall notify us in writing that this Standby Letter of Credit shall be terminated accompanied by the original Letter of Credit (the "Expiry Date"). We are informed by the applicant that the Beneficiary may draw on the Letter of Credit in accordance with and subject to the terms of the Agency Agreement dated as of _____, 2017 (the "Agency Agreement") between the Beneficiary and the Agent (as defined in the Agency Agreement) or as otherwise authorized by order of the Court.

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

Partial and/or multiple drawings are permitted.

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

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

succeeding Business Day.

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

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

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

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

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

Very truly yours,

Authorized Official

Authorized Official

EXHIBIT A**TO IRREVOCABLE LETTER OF CREDIT NO.** _____**Re: Drawing for Amounts Due to:***Ladies and Gentlemen:*

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

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

[Account]

IN WITNESS WHEREOF, this instrument has been executed and delivered as of this _____ day of _____, 201_.

Very truly yours,

By: _____

Duly Authorized Officer

Print Name

EXHIBIT B

TO IRREVOCABLE STANDBY LETTER OF CREDIT NO.

Re: Reduction of Face Amount:

Ladies and Gentlemen:

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

IN WITNESS WHEREOF, this instrument has been executed and delivered as of this _____ day of _____, 201_.

Very truly yours,

By: _____
Duly Authorized Officer
Print Name:

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

Irrevocable Standby Letter of Credit

Number: _____
Issue Date: _____

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

Ladies and Gentlemen:

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

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

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

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

This Letter of Credit expires at our above office on _____, 2018 (the "Expiry Date").

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

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

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

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

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

Very Truly Yours,

WELLS FARGO BANK, N.A.

By: _____
Authorized Signature

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

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

at either

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

or

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

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

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

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

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

Re: Drawing for Amounts Due to:

Beneficiary Name
Attention: _____
Address
City, State Zip

Ladies and Gentlemen:

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

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

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

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

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

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

[insert bank]
ABA No: [insert number]
Further Credit to: [insert name]
Account No. [insert number]

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

Very truly yours,

Beneficiary Name

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

Title: [insert title]

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

Re: Reduction of Letter of Credit Amount:

Beneficiary Name
Attention: _____
Address
City, State Zip

Ladies and Gentlemen:

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

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

Very truly yours,

Beneficiary Name

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

[Schedule F Intentionally Omitted]

SCHEDULE G
Sales Guidelines

(See attached)

SALE GUIDELINES – INVENTORY AND FF&E

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

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

1. Except as otherwise expressly set out herein, and subject to: (i) an Order of the Court (the “**Liquidation Sale Order**”) approving, *inter alia*, (a) the Amended and Restated Agency Agreement between Sears Canada Inc. (“**Sears Canada**”) and a contractual joint venture comprised of Gordon Brothers Canada ULC, Merchant Retail Solutions ULC, Tiger Capital Group, LLC and GA Retail Canada ULC (the “**Agent**”) dated as of October 10, 2017 (the “**Agency Agreement**”), and (b) these Sale Guidelines; or (ii) any further Order of the Court; or (iii) any subsequent written agreement between Sears Canada and its applicable landlord(s) (each individually, a “**Landlord**” and, collectively, the “**Landlords**”), the Sale shall be conducted in accordance with the terms of the applicable lease or other occupancy agreements for each of the affected Stores (individually, a “**Lease**” and, collectively, the “**Leases**”). However, nothing contained herein shall be construed to create or impose upon Sears Canada or the Agent any additional restrictions not contained in the applicable Lease or other occupancy agreement.
2. The Sale shall be conducted so that each of the Stores remain open during their normal hours of operation provided for in the respective Leases for the Stores until the applicable premises vacate date for each Store under the Agency Agreement (the “**Vacate Date**”), and in all cases no later than January 21, 2018 (the “**Sale Termination Date**”). Rent payable under the respective Leases shall be paid as provided in the Initial Order.
3. The Sale shall be conducted in accordance with applicable federal, provincial and municipal laws, unless otherwise ordered by the Court.
4. All display and hanging signs used by the Agent in connection with the Sale shall be professionally produced and all hanging signs shall be hung in a professional manner. Notwithstanding anything to the contrary contained in the Leases, the Agent may advertise the Sale at the Stores as a “everything on sale”, “everything must go”, “store closing” or similar theme sale at the Stores (provided however that no signs shall advertise the Sale as a “bankruptcy”, a “liquidation” or a “going out of business” sale, it being understood that the French equivalent of “clearance” is “liquidation” and is permitted to be used). Forthwith upon request, the Agent shall provide the proposed signage packages along with proposed dimensions by e-mail or facsimile to the applicable Landlords or to their counsel of record and the applicable Landlord shall notify the Agent of any requirement for such signage to otherwise comply with the terms of the Lease and/or the Sale Guidelines and

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

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

as the Landlord chooses, without any liability whatsoever on the part of the Landlord. Nothing in this paragraph shall derogate from or expand upon the Agent's obligations under the Agency Agreement. Notwithstanding the foregoing, Sears Canada shall only exercise its rights to abandon FF&E pursuant to Section 5.1(h) of the Agency Agreement, provided that the applicable Landlord has consented thereto or upon further Order of the Court.

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

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

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

SCHEDULE H
Form of Approval Order

[To be provided by Company]

SCHEDULE I
Distribution Centers
(See attached)

Schedule I
DC Locations

| <u>Name</u> | <u>Address</u> | <u>City</u> | <u>State</u> | <u>Zip</u> |
|-------------|-----------------------------|----------------|--------------|------------|
| Montreal | 3075 Thimens | Montreal | QC | H4R 1Y3 |
| Vaughn | 9501 Highway 50 | Vaughn | ON | L4H 2B9 |
| Vancouver | 1488 Coast Meridian Road | Port Coquitlam | BC | V3C 6P7 |
| Belleville | 500-531 College Street East | Belleville | ON | K8N 0A3 |
| Calgary | 25 Dufferin Place | Calgary | AB | T2C 4W3 |

SCHEDULE J
Excluded FF&E

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

SCHEDULE K

Company's Designated Account

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

SCHEDULE L
Company Consignment Goods

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

SCHEDULE M
Merchandise Files
(See attached)

Schedule M
Merchandise Files

| <u>Name</u> |
|---|
| 2.3.1.47 On Order by Item v2 |
| 2.3.1.49 On Order by Item |
| Home Item Summary by Store - Sept 29.csv |
| SFL Item Summary by Store - Sept 29_v2.csv |
| Warehouse Item Summary by Store - Sept 29.csv |
| 2.3.1.56 CF item level Sep 29 with Shop Comm Lookup.zip |
| 2.3.1.59 2017.10 - On Order Detail.xlsx |

SCHEDULE N
Designated Locations
(See attached)

SCHEDULE "N"

Designated Locations

| Store # | Name | Mall Name | Location | Sale Termination Date ¹ |
|---------|--------------------------|------------------------------|-------------------|------------------------------------|
| 1836 | Brentwood Mall | Brentwood Town Centre | Burnaby, BC | 9-Jan-18 |
| 1823 | Nanaimo | Nanaimo North Town Centre | Nanaimo, BC | 9-Jan-18 |
| 1112 | Polo Park | CF Polo Park | Winnipeg, MB | 1-Dec-17 |
| 1093 | Hamilton-Limeridge | CF Lime Ridge | Hamilton, ON | 1-Dec-17 |
| 1305 | Pointe Claire Relocation | Fairview Pointe Claire | Pointe Claire, QC | 1-Dec-17 |
| 1322 | Fairview | CF Fairview Mall | North York, ON | 1-Dec-17 |
| 1376 | Kelowna Home | Orchard Park Shopping Centre | Kelowna, BC | 18-Jan-18 |
| 1827 | Kelowna Full Line | Orchard Park Shopping Centre | Kelowna, BC | 9-Jan-18 |
| 1321 | Oakville | Oakville Place | Oakville, ON | 17-Dec-17 |
| 1308 | Scarborough 2 | Scarborough Town Centre | Scarborough, ON | 9-Jan-18 |
| 1097 | Promenade | Promenade Mall | Vaughan, ON | 17-Jan-18 |

¹ Sale Termination Dates estimated using expected asset sale transaction closing dates. To the extent that actual closing dates differ from expected closing dates, the Company and the Agent may mutually agree to extend the Sale Termination Date at any such Location.

Tab C

**THIS IS EXHIBIT "C" TO THE AFFIDAVIT
OF MARK CAIGER SWORN BEFORE ME
ON THIS 10th DAY OF OCTOBER, 2017.**



A commissioner for taking Affidavits

SALE GUIDELINES – INVENTORY AND FF&E

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

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

1. Except as otherwise expressly set out herein, and subject to: (i) an Order of the Court (the “**Liquidation Sale Order**”) approving, *inter alia*, (a) the Amended and Restated Agency Agreement between Sears Canada Inc. (“**Sears Canada**”) and a contractual joint venture comprised of Gordon Brothers Canada ULC, Merchant Retail Solutions ULC, Tiger Capital Group, LLC and GA Retail Canada ULC (the “**Agent**”) dated as of October 10, 2017 (the “**Agency Agreement**”), and (b) these Sale Guidelines; or (ii) any further Order of the Court; or (iii) any subsequent written agreement between Sears Canada and its applicable landlord(s) (each individually, a “**Landlord**” and, collectively, the “**Landlords**”), the Sale shall be conducted in accordance with the terms of the applicable lease or other occupancy agreements for each of the affected Stores (individually, a “**Lease**” and, collectively, the “**Leases**”). However, nothing contained herein shall be construed to create or impose upon Sears Canada or the Agent any additional restrictions not contained in the applicable Lease or other occupancy agreement.
2. The Sale shall be conducted so that each of the Stores remain open during their normal hours of operation provided for in the respective Leases for the Stores until the applicable premises vacate date for each Store under the Agency Agreement (the “**Vacate Date**”), and in all cases no later than January 21, 2018 (the “**Sale Termination Date**”). Rent payable under the respective Leases shall be paid as provided in the Initial Order.
3. The Sale shall be conducted in accordance with applicable federal, provincial and municipal laws, unless otherwise ordered by the Court.
4. All display and hanging signs used by the Agent in connection with the Sale shall be professionally produced and all hanging signs shall be hung in a professional manner. Notwithstanding anything to the contrary contained in the Leases, the Agent may advertise the Sale at the Stores as a “everything on sale”, “everything must go”, “store closing” or similar theme sale at the Stores (provided however that no signs shall advertise the Sale as a “bankruptcy”, a “liquidation” or a “going out of business” sale, it being understood that the French equivalent of “clearance” is “liquidation” and is permitted to be used). Forthwith upon request, the Agent shall provide the proposed signage packages along with proposed dimensions by e-mail or facsimile to the applicable Landlords or to their counsel of record and the applicable Landlord shall notify the Agent of any requirement for such signage to otherwise comply with the terms of the Lease and/or the Sale Guidelines and

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

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

as the Landlord chooses, without any liability whatsoever on the part of the Landlord. Nothing in this paragraph shall derogate from or expand upon the Agent's obligations under the Agency Agreement. Notwithstanding the foregoing, Sears Canada shall only exercise its rights to abandon FF&E pursuant to Section 5.1(h) of the Agency Agreement, provided that the applicable Landlord has consented thereto or upon further Order of the Court.

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

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

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

SALE GUIDELINES – INVENTORY AND FF&E

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

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

1. Except as otherwise expressly set out herein, and subject to: (i) an Order of the Court (the “**Liquidation Sale Order**”) approving, *inter alia*, (a) the Amended and Restated Agency Agreement between Sears Canada Inc. (“**Sears Canada**”) and a contractual joint venture comprised of Gordon Brothers Canada ULC, Merchant Retail Solutions ULC, Tiger Capital Group, LLC and GA Retail Canada ULC (the “**Agent**”) dated ~~July 12, 2017 and amended and restated on July 14, 2017~~ as of October 10, 2017 (the “**Agency Agreement**”), and (b) the Amended and Restated Consulting Agreement between Sears Canada and the Agent dated July 12, 2017 and amended and restated on July 14, 2017 (the “**Consulting Agreement**”, and together with the Agency Agreement, the “**Liquidation Agreements**”), ~~and (e) these Sale Guidelines~~; or (ii) any further Order of the Court; or (iii) any subsequent written agreement between Sears Canada and its applicable landlord(s) (each individually, a “**Landlord**” and, collectively, the “**Landlords**”), the Sale shall be conducted in accordance with the terms of the applicable leases/ or other occupancy agreements for each of the affected Stores (individually, a “**Lease**” and, collectively, the “**Leases**”). However, nothing contained herein shall be construed to create or impose upon Sears Canada or the Agent any additional restrictions not contained in the applicable Lease or other occupancy agreement.
2. The Sale shall be conducted so that each of the Stores remain open during their normal hours of operation provided for in the respective Leases for the Stores until the applicable premises vacate date for each Store under the ~~Liquidation Agency Agreements~~ (the “**Vacate Date**”), and in all cases no later than ~~October 12, 2017~~ January 21, 2018 (the “**Sale Termination Date**”). Rent payable under the respective Leases shall be paid as provided in the Initial Order.
3. The Sale shall be conducted in accordance with applicable federal, provincial and municipal laws, unless otherwise ordered by the Court.
4. All display and hanging signs used by the Agent in connection with the Sale shall be professionally produced and all hanging signs shall be hung in a professional manner. Notwithstanding anything to the contrary contained in the Leases, the Agent may advertise the Sale at the Stores as a “everything on sale”, “everything must go”, “store

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

5. The Agent shall be permitted to utilize sign walkers and street signage; provided, however, such sign walkers and street signage shall not be located on the shopping centre or mall premises.
6. Conspicuous signs shall be posted in the cash register areas of each Store to the effect that all sales are “final” and customers with any questions or complaints are to call the Agent’s hotline number.
7. The Agent shall not distribute handbills, leaflets or other written materials to customers outside of any of the Stores on Landlord’s property, unless explicitly permitted by the applicable Lease or, if distribution is customary in the shopping centre in which the Store is located. Otherwise, the Agent may solicit customers in the Stores themselves. The Agent shall not use any giant balloons, flashing lights, or amplified sound to advertise the Sale or solicit customers, except as explicitly permitted under the applicable Lease or agreed to by the Landlord, and no advertising trucks shall be used on landlord property or mall ring roads, except as explicitly permitted under the applicable Lease or agreed to by the Landlord.
8. At the conclusion of the Sale in each Store, the Agent and Sears Canada shall arrange that the premises for each Store are in “broom-swept” and clean condition, and shall arrange

that the Stores are in the same condition as on the commencement of the Sale, ordinary wear and tear excepted. No property of any Landlord of a Store shall be removed or sold during the Sale. No permanent fixtures (other than FF&E (as defined below) for clarity) may be removed without the Landlord's written consent unless otherwise provided by the applicable Lease and in accordance with the Initial Order and the Liquidation Sale Order. Any trade fixtures or personal property left in a Store after the applicable Vacate Date in respect of which the applicable Lease has been disclaimed by Sears Canada shall be deemed abandoned, with the applicable Landlord having the right to dispose of the same as the Landlord chooses, without any liability whatsoever on the part of the Landlord. Nothing in this paragraph shall derogate from or expand upon the Agent's obligations under the ~~Liquidation Agency~~ Agreements. Notwithstanding the foregoing, Sears Canada shall only exercise its rights to abandon FF&E pursuant to ~~Section 5.1(h) of the Agency Agreement and section 3.4(d) of the Consulting Agreement~~, provided that the applicable Landlord has consented thereto or upon further Order of the Court.

9. Subject to the terms of paragraph 8 above, the Agent may sell furniture, fixtures and equipment owned by Sears Canada ("FF&E") and located in the Stores during the Sale. For greater certainty, FF&E does not include (i) any portion of the Stores' HVAC system or sprinkler ~~systems/ fire suppression system and fire alarm system~~; and (ii) any furniture, fixtures and equipment owned by the Hometown Dealers. Sears Canada and the Agent may advertise the sale of FF&E consistent with these Sale Guidelines on the understanding that the Landlord may require such signs to be placed in discreet locations within the Stores reasonably acceptable to the Landlord. Additionally, the purchasers of any FF&E sold during the Sale shall only be permitted to remove the FF&E either through the back shipping areas designated by the Landlord or through other areas after regular Store business hours or, through the front door of the Store during Store business hours if the FF&E can fit in a shopping bag, with Landlord's supervision as required by the Landlord and in accordance with the Initial Order and the Liquidation Sale Order. The Agent shall repair any damage to the Stores resulting from the removal of any FF&E by the Agent or by third party purchasers of FF&E from the Agent.
10. The Agent shall not make any alterations to interior or exterior Store lighting, except as authorized pursuant to the affected Lease. The hanging of exterior banners or other signage, where permitted in accordance with the terms of these Sale Guidelines, shall not constitute an alteration to a Store.
11. Sears Canada and the Agent hereby provides notice to the Landlords of Sears Canada's and the Agent's intention to sell and remove FF&E from the Stores. The Agent shall make commercially reasonable efforts to arrange with each Landlord represented by counsel on the Service List and with any other Landlord that so requests, a walk-through with the Agent to identify the FF&E subject to the Sale. The relevant Landlord shall be entitled to have a representative present in the applicable Stores to observe such removal. If the Landlord disputes the Agent's entitlement to sell or remove any FF&E under the provisions of the Lease, such FF&E shall remain on the premises and shall be dealt with as agreed between Sears Canada, the Agent and such Landlord, or by further Order of the Court upon application by Sears Canada on at least two (2) days' notice to such Landlord and the Monitor. If Sears Canada has disclaimed or resiliated the Lease governing such Store in accordance with the CCAA and the Initial Order, it shall not be required to pay

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rent under such Lease pending resolution of any such dispute (other than rent payable for the notice period provided for in the CCAA and the Initial Order), and the disclaimer or resiliation of the Lease shall be without prejudice to Sears Canada's or the Agent's claim to the FF&E in dispute.

12. If a notice of disclaimer or resiliation is delivered pursuant to the CCAA and the Initial Order to a Landlord while the Sale is ongoing and the Store in question has not yet been vacated, then: (a) during the notice period prior to the effective time of the disclaimer or resiliation, the Landlord may show the affected leased premises to prospective tenants during normal business hours, on giving Sears Canada, the Agent and the Monitor twenty-four (24) hours' prior written notice; and (b) at the effective time of the disclaimer or resiliation, the relevant Landlord shall be entitled to take possession of any such Store without waiver of or prejudice to any claims or rights such Landlord may have against Sears Canada in respect of such Lease or Store, provided that nothing herein shall relieve such Landlord of any obligation to mitigate any damages claimed in connection therewith.
13. The Agent and its agents and representatives shall have the same access rights to the Stores as Sears Canada under the terms of the applicable Lease, and the Landlords shall have the rights of access to the Stores during the Sale provided for in the applicable Lease (subject, for greater certainty, to any applicable stay of proceedings).
14. Sears Canada and the Agent shall not conduct any auctions of Merchandise or FF&E at any of the Stores.
15. The Agent shall designate a party to be contacted by the Landlords should a dispute arise concerning the conduct of the Sale. The initial contact person for the Agent shall be Ian Fredericks who may be reached by phone at 1-847-418-2075 or email at ifredericks@hilcoglobal.com. If a dispute should arise concerning the conduct of the Sale subject to a Hometown Dealer Sale, the respective Landlord should contact the relevant Hometown Dealer. If the parties are unable to resolve the dispute between themselves, the Landlord or Sears Canada shall have the right to schedule a "status hearing" before the Court on no less than two (2) days written notice to the other party or parties, during which time the Agent shall cease all activity in dispute other than activity expressly permitted herein, pending determination of the matter by the Court; provided, however, subject to paragraph 4 of these Sale Guidelines, if a banner has been hung in accordance with these Sale Guidelines and is the subject of a dispute, the Agent shall not be required to take any such banner down pending determination of any dispute.
16. Nothing herein or in the ~~Liquidation Agency~~ Agency Agreements is, or shall be deemed to be a consent by any Landlord to the sale, assignment or transfer of any Lease, or shall, or shall be deemed to, or grant to the Landlord any greater rights than already exist under the terms of any applicable Lease or related documents.
17. These Sale Guidelines may be amended by written agreement between Sears Canada, the Agent and the applicable Landlord.

Tab 3

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

| | | |
|----------------------------|---|----------------------|
| THE HONOURABLE [MR./MADAM] |) | ●DAY, THE ● |
| |) | |
| JUSTICE ● |) | DAY OF OCTOBER, 2017 |

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

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

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

**LIQUIDATION SALE APPROVAL ORDER
(Phase II Liquidation)**

THIS MOTION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. c-36, as amended (the “**CCAA**”) for an order, *inter alia*, approving: (i) the transactions contemplated under the Amended and Restated Agency Agreement entered into between Sears Canada Inc. (“**Sears Canada**”) and a contractual joint venture comprised of Gordon Brothers Canada ULC, Merchant Retail Solutions ULC, Tiger Capital Group, LLC and GA Retail Canada ULC (collectively, the “**Agent**”) dated as of October 10, 2017 (the “**Agency Agreement**”) and certain related relief; and (ii) the Sale, the Hometown Dealer Sale, and the Sale Guidelines (each as defined below) and certain related relief, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion of the Applicants, the Affidavit of Mark Caiger sworn October 10, 2017 including the exhibits thereto, the Fourth Report of FTI Consulting

Canada Inc., in its capacity as Monitor (the “**Monitor**”) filed October ●, 2017 and on hearing the submissions of respective counsel for the Applicants, counsel to the Monitor, counsel to the Board of Directors and the Special Committee of the Board of Directors of Sears Canada, counsel to Wells Fargo Capital Finance Corporation Canada as administrative agent under the DIP ABL Credit Agreement, counsel to GACP Finance Co., LLC as administrative agent under the DIP Term Credit Agreement, and such other counsel as were present, no one else appearing although duly served as appears from the Affidavit of Service of Sonja Pavic sworn October ●, 2017 filed:

SERVICE AND DEFINITIONS

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

THE AGENCY AGREEMENT

3. THIS COURT ORDERS that the Agency Agreement, including the Sale Guidelines attached hereto as Schedule “A” (the “**Sale Guidelines**”), and the transactions contemplated thereunder, including the Bid Protections (which, for greater certainty, includes the Break-Up Fee) (each as such term is defined in the Agency Agreement), are hereby approved, authorized and ratified and that the execution of the Agency Agreement by Sears Canada is hereby approved, authorized, and ratified with such minor amendments as Sears Canada (with the consent of the Monitor and, to the extent required under the Agency Agreement or the Definitive Documents, the DIP ABL Lenders and the DIP Term Lenders) and the Agent may agree to in writing. Subject to the provisions of this Order and the Initial Order, Sears Canada is hereby authorized and directed to take any and all actions as may be necessary or desirable to implement the Agency Agreement and each of the transactions contemplated therein. Without limiting the foregoing, Sears Canada is authorized to execute any other agreement, contract, deed or any

other document, or take any other action, which could be required or be useful to give full and complete effect to the Agency Agreement.

THE SALE

4. THIS COURT ORDERS that, subject to receipt of the Initial Guaranty Payment by Sears Canada and delivery of the Agent L/C to Sears Canada, the Agent is authorized to conduct the Sale (as defined in the Agency Agreement), including the liquidation of the Merchandise, Designated Sundry Goods, Designated Company Consignment Goods, Cosmetic Products (if so elected by Sears Canada pursuant to Section 4.5 of the Agency Agreement), and FF&E (including DC FF&E, if so included pursuant to Section 5.1(i) of the Agency Agreement) (each as defined in the Agency Agreement) (the “Sale”) at the Applicants’ retail stores as set out on Schedule “B” attached hereto (the “Stores”) in accordance with this Order, the Agency Agreement and the Sale Guidelines and to advertise and promote the Sale within the Stores in accordance with the Sale Guidelines. If there is a conflict between this Order, the Agency Agreement and the Sale Guidelines, the order of priority to resolve such conflicts is as follows: (1) this Order; (2) the Sale Guidelines; and (3) the Agency Agreement.

5. THIS COURT ORDERS that, subject to paragraph 12 of the Initial Order, the Agent, in its capacity as agent of Sears Canada is authorized to market and sell the Merchandise, Designated Sundry Goods, Designated Company Consignment Goods, Cosmetic Products, and FF&E (as such terms are defined in the Agency Agreement) on a “final sale” and “as is” basis and in accordance with the Sale Guidelines, and free and clear of all liens, claims, encumbrances, security interests, mortgages, charges, trusts, deemed trusts, executions, levies, financial, monetary or other claims, whether or not such claims have attached or been perfected, registered or filed and whether secured, unsecured, quantified or unquantified, contingent or otherwise, whensoever and howsoever arising, and whether such claims arose or came into existence prior to or following the date of this Order (in each case, whether contractual, statutory, arising by operation of law, in equity or otherwise) (all of the foregoing, collectively “Claims”), including, without limitation the Administration Charge, the FA Charge, the KERP Priority Charge, the Directors’ Priority Charge, the DIP ABL Lenders’ Charge, the DIP Term Lenders’ Charge, the KERP Subordinated Charge and the Directors’ Subordinated Charge (as such terms are defined in the Initial Order) and any other charges granted by this Court in these proceedings

(collectively, the “**CCAA Charges**”), and (ii) all Claims, charges, security interests or liens evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal or movable property registration system (all of such Claims, charges (including the CCAA Charges), security interests and liens collectively referred to herein as “**Encumbrances**”), which Encumbrances, subject to this Order, will attach instead to the Guaranteed Amount and any other amounts received or to be received by Sears Canada under the Agency Agreement, in the same order and priority as they existed on the Sale Commencement Date.

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

7. THIS COURT ORDERS that until the Vacate Date (as defined in the Sale Guidelines) for each Store (which shall be on or before January 21, 2018 (the “**Sale Termination Date**”)) the Agent shall have access to the Stores in accordance with the applicable Leases (as such term is defined in the Sale Guidelines) and the Sale Guidelines on the basis that the Agent is an agent of Sears Canada and Sears Canada has granted the right of access to the Stores to the Agent. To the extent that the terms of the applicable Leases are in conflict with any term of this Order or the Sale Guidelines, the terms of this Order and the Sale Guidelines shall govern.

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

9. THIS COURT ORDERS that, except as provided for in Section 4 hereof in respect of the advertising and promotion of the Sale within the Stores, subject to and in accordance with this Order, the Agency Agreement and the Sale Guidelines, the Agent, as agent for Sears Canada, is authorized to advertise and promote the Sale, without further consent of any Person (as defined in the Initial Order) other than Sears Canada and the Monitor as provided under the Agency Agreement or a Landlord as expressly provided under the Sale Guidelines.

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

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

shall comply with paragraph 12 of the Initial Order and the Sale Guidelines regarding the removal and/or sale of any FF&E or any Remaining FF&E.

12. THIS COURT ORDERS AND DIRECTS the Monitor to file with the Court a copy of the Monitor's Certificate forthwith after delivery thereof.

AGENT LIABILITY

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

- (a) the Agent shall not be deemed to be an owner or in possession, care, control or management of the Stores, of the assets located therein or associated therewith or of Sears Canada's employees (including the Retained Employees) located at the Stores or any other property of Sears Canada;
- (b) the Agent shall not be deemed to be an employer, or a joint or successor employer or a related or common employer or payor within the meaning of any legislation governing employment or labour standards or pension benefits or health and safety or other statute, regulation or rule of law or equity for any purpose whatsoever, and shall not incur any successorship liabilities whatsoever; and
- (c) Sears Canada shall bear all responsibility for any liability whatsoever (including without limitation losses, costs, damages, fines, or awards) relating to claims of customers, employees and any other persons arising from events occurring at the Stores during and after the term of the Agency Agreement, or otherwise in connection with the Sale, except to the extent that such claims are the result of events or circumstances caused or contributed to by the gross negligence or wilful misconduct of the Agent, or its employees, agents or independent contractors (other than Sears Canada's employees and the Retained Employees, agents or independent contractors) located at the Stores, or otherwise in accordance with the Agency Agreement.

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

AGENT AN UNAFFECTED CREDITOR

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

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

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

DESIGNATED DEPOSIT ACCOUNTS

18. THIS COURT ORDERS that no Person shall take any action, including any collection or enforcement steps, with respect to amounts deposited into the Designated Deposit Accounts

pursuant to the Agency Agreement, including any collection or enforcement steps, in relation to any Proceeds or FF&E Proceeds, that are payable to the Agent or in relation to which the Agent has a right of reimbursement or payment under the Agency Agreement.

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

AGENT'S CHARGE AND SECURITY INTEREST

20. THIS COURT ORDERS that subject to the receipt by Sears Canada of the Initial Guaranty Payment and the issue of the Agent L/C (except for the Bid Protections, in which case the charge shall be granted and be effective on the making of this Order without any further condition or formality), the Agent be and is hereby granted a charge (the "**Second Agent's Charge and Security Interest**") on all of the Merchandise, Proceeds, the FF&E Proceeds (to the extent of the FF&E Commission), the Designated Sundry And Consignment Goods Proceeds (to the extent of the Designated Sundry And Consignment Goods Commission), and proceeds from the sale of Cosmetic Products (to the extent of the applicable commission as set out in the Agency Agreement) (and, for greater certainty, the Second Agent's Charge and Security Interest shall not extend to other Property of the Applicants as defined in paragraph 4 of the Initial Order) as security for all of the obligations of Sears Canada to the Agent under the Agency Agreement, including, without limitation, all amounts owing or payable to the Agent from time to time under or in connection with the Agency Agreement, including the Bid Protections, which charge shall rank in priority to all Encumbrances including without limitation all charges created under the Initial Order; provided, however, that the Second Agent's Charge and Security Interest shall be junior and subordinate to all Encumbrances, but solely to the extent of any unpaid portion of the Unpaid Company's Entitlement due to Sears Canada under the Agency Agreement (the "**Subordinated Amount**").

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

22. THIS COURT ORDERS that the Second Agent's Charge and Security Interest shall constitute a mortgage, hypothec, security interest, assignment by way of security and charge over the Merchandise, the Proceeds, the FF&E Proceeds (to the extent of the FF&E Commission), the Designated Sundry And Consignment Goods Proceeds (to the extent of the Designated Sundry And Consignment Goods Commission), and proceeds from the sale of Cosmetic Products (to the extent of the applicable commission as set out in the Agency Agreement) and other than in relation to the Subordinated Amount, shall rank in priority to all other Encumbrances of or in favour of any Person.

23. THIS COURT ORDERS that notwithstanding:

- (a) the pendency of these proceedings;
- (b) any application for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* ("BIA") in respect of any of the Applicants, or any bankruptcy order made pursuant to any such applications;
- (c) any assignment in bankruptcy made in respect of any of the Applicants;
- (d) the provisions of any federal or provincial statute; or

(e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of encumbrances, contained in any existing loan documents, lease, mortgage, security agreement, debenture, sublease, offer to lease or other document or agreement to which an Applicant is a party;

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

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

DISTRIBUTION

25. THIS COURT ORDERS that, to the extent that obligations remain owing by the Applicants under the DIP ABL Credit Agreement and/or the DIP Term Credit Agreement, immediately following receipt of the Initial Guaranty Payment, any other portion of the Guaranteed Amount, or the Company Sharing Recovering Amount, Sears Canada be and is hereby authorized and directed, without further Order of the Court, to distribute from such amounts to the DIP ABL Agent and/or the DIP Term Agent, **[in accordance with the terms of the Definitive Documents and the Intercreditor Agreement (as defined in the DIP ABL Credit Agreement)]**, which distribution(s) shall be free and clear of all Claims and Encumbrances and (i) in respect of the DIP ABL Credit Agreement, shall be made as a full and

final repayment of all amounts then owing by the Applicants (subject to all outstanding letters of credit being dealt with as provided below) and immediately upon the repayment in full of all amounts then owing by the Applicants (and the cash collateralizing of all outstanding letters of credit as provided below) under the DIP ABL Credit Agreement in accordance with its terms, all obligations of the parties thereto shall terminate (except for those obligations specifically intended to survive termination in accordance with the terms of the DIP ABL Credit Agreement), including terminating all unfunded commitments to make loans or otherwise extend credit to the Borrower under the DIP ABL Credit Agreement, provided that all undrawn letters of credit issued under the DIP ABL Credit Agreement or under any prior ABL credit agreement that remain outstanding at the date of such repayment shall remain in place until their expiry in accordance with their terms, and provided that the Applicants shall provide to the DIP ABL Agent cash collateral in an amount equal to 105% of the sum of all such letters of credit to be held by the DIP ABL Agent in the L/C Collateral Account as security for such letters of credit and any fees or expenses related thereto in accordance with the DIP ABL Credit Agreement and pursuant to amended paragraph 54 of the Initial Order, and (ii) in respect of the DIP Term Credit Agreement, shall be made as full or partial repayment of amounts then owing by the Applicants under the DIP Term Credit Agreement.

26. THIS COURT ORDERS that, notwithstanding:

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

the distribution(s) permitted by paragraph 25 above shall be binding on any trustee in bankruptcy or receiver that may be appointed in respect of any of the Applicants and shall not be void or voidable by creditors of any of the Applicants, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other

applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

APPROVAL OF THE HOMETOWN DEALER SALE

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

SEALING

28. THIS COURT ORDERS that Confidential Appendix “●” to the Fourth 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

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

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



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SCHEDULE "A"
SALE GUIDELINES

(See attached)

SALE GUIDELINES – INVENTORY AND FF&E

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

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

1. Except as otherwise expressly set out herein, and subject to: (i) an Order of the Court (the “**Liquidation Sale Order**”) approving, *inter alia*, (a) the Amended and Restated Agency Agreement between Sears Canada Inc. (“**Sears Canada**”) and a contractual joint venture comprised of Gordon Brothers Canada ULC, Merchant Retail Solutions ULC, Tiger Capital Group, LLC and GA Retail Canada ULC (the “**Agent**”) dated as of October 10, 2017 (the “**Agency Agreement**”), and (b) these Sale Guidelines; or (ii) any further Order of the Court; or (iii) any subsequent written agreement between Sears Canada and its applicable landlord(s) (each individually, a “**Landlord**” and, collectively, the “**Landlords**”), the Sale shall be conducted in accordance with the terms of the applicable lease or other occupancy agreements for each of the affected Stores (individually, a “**Lease**” and, collectively, the “**Leases**”). However, nothing contained herein shall be construed to create or impose upon Sears Canada or the Agent any additional restrictions not contained in the applicable Lease or other occupancy agreement.
2. The Sale shall be conducted so that each of the Stores remain open during their normal hours of operation provided for in the respective Leases for the Stores until the applicable premises vacate date for each Store under the Agency Agreement (the “**Vacate Date**”), and in all cases no later than January 21, 2018 (the “**Sale Termination Date**”). Rent payable under the respective Leases shall be paid as provided in the Initial Order.
3. The Sale shall be conducted in accordance with applicable federal, provincial and municipal laws, unless otherwise ordered by the Court.
4. All display and hanging signs used by the Agent in connection with the Sale shall be professionally produced and all hanging signs shall be hung in a professional manner. Notwithstanding anything to the contrary contained in the Leases, the Agent may advertise the Sale at the Stores as a “everything on sale”, “everything must go”, “store closing” or similar theme sale at the Stores (provided however that no signs shall advertise the Sale as a “bankruptcy”, a “liquidation” or a “going out of business” sale, it being understood that the French equivalent of “clearance” is “liquidation” and is permitted to be used). Forthwith upon request, the Agent shall provide the proposed signage packages along with proposed dimensions by e-mail or facsimile to the applicable Landlords or to their counsel of record and the applicable Landlord shall notify the Agent of any requirement for such signage to otherwise comply with the terms of the Lease and/or the Sale Guidelines and

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

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

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as the Landlord chooses, without any liability whatsoever on the part of the Landlord. Nothing in this paragraph shall derogate from or expand upon the Agent's obligations under the Agency Agreement. Notwithstanding the foregoing, Sears Canada shall only exercise its rights to abandon FF&E pursuant to Section 5.1(h) of the Agency Agreement, provided that the applicable Landlord has consented thereto or upon further Order of the Court.

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

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

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

SCHEDULE "B"
AGENT'S STORES

(See attached)

| Channel | Store |
|-----------|---------------------------------|
| Full-Line | 001410-EDMONTON - KINGSWAY |
| Full-Line | 001429-SOUTHGATE EDMONTON |
| Full-Line | 001425-SOUTHCENTRE CALGARY |
| Full-Line | 001422-LETHBRIDGE |
| Full-Line | 001411-CALGARY - NORTH HILL |
| Full-Line | 001416-EDMONTON - WEST EDMONTON |
| Full-Line | 001819-VANCOUVER - BURNABY |
| Full-Line | 001821-PRINCE GEORGE |
| Full-Line | 001816-VANCOUVER - CAPILANO |
| Full-Line | 001828-GUILDFORD |
| Full-Line | 001836-BRENTWOOD MALL |
| Full-Line | 001818-VICTORIA |
| Full-Line | 001811-LANGLEY (BC) |
| Full-Line | 001822-VANCOUVER - CHILLIWACK |
| Full-Line | 001812-COQUITLAM (BC) |
| Full-Line | 001827-KELOWNA |
| Full-Line | 001823-NANAIMO |
| Full-Line | 001112-POLO PARK |
| Full-Line | 001432-WINNIPEG - KILDONAN |
| Full-Line | 001436-ST. VITAL CENTRE |
| Full-Line | 001623-MONCTON |
| Full-Line | 001622-FREDERICTON |
| Full-Line | 001639-ST. JOHN'S AVALON (NFLD) |
| Full-Line | 001616-HALIFAX 2 |
| Full-Line | 001014-ST. CATHARINES |
| Full-Line | 001020-PETERBOROUGH |
| Full-Line | 001017-WINDSOR |
| Full-Line | 001031-BARRIE |
| Full-Line | 001088-TORONTO-NEWMARKET |
| Full-Line | 001011-OTTAWA-CARLINGWOOD |
| Full-Line | 001098-OWEN SOUND |
| Full-Line | 001033-BRANTFORD |
| Full-Line | 001330-WESTMOUNT |
| Full-Line | 001045-NORTH BAY |
| Full-Line | 001015-OTTAWA-ST. LAURENT |
| Full-Line | 001027-BELLEVILLE |
| Full-Line | 001244-SARNIA - RELOCATION |
| Full-Line | 001102-HAMILTON RELOCATION |
| Full-Line | 001093-HAMILTON-LIMERIDGE |
| Full-Line | 001310-STRATFORD RETAIL STORE |
| Full-Line | 001040-KINGSTON 2 |
| Full-Line | 001022-GUELPH |
| Full-Line | 001418-THUNDER BAY |
| Full-Line | 001083-SUDBURY |

| | |
|-----------|---------------------------------|
| Full-Line | 001049-BRAMALEA |
| Full-Line | 001323-ERIN MILLS |
| Full-Line | 001308-SCARBOROUGH 2 |
| Full-Line | 001321-OAKVILLE |
| Full-Line | 001013-KITCHENER |
| Full-Line | 001322-FAIRVIEW |
| Full-Line | 001034-PICKERING |
| Full-Line | 001016-OSHAWA |
| Full-Line | 001097-TORONTO-PROMENADE |
| Full-Line | 001328-BURLINGTON |
| Full-Line | 001655-CHARLOTTETOWN (PEI) |
| Full-Line | 001037-ST. JEAN |
| Full-Line | 001086-BROSSARD |
| Full-Line | 001057-JOLIETTE |
| Full-Line | 001331-LA CAPITAL QUEBEC |
| Full-Line | 001018-PLACE LAURIER |
| Full-Line | 001305-POINTE CLAIRE RELOCATION |
| Full-Line | 001085-LEVIS |
| Full-Line | 001012-FLEUR DE LYS |
| Full-Line | 001060-TROIS RIVIERES 2 |
| Full-Line | 001087-ANJOU |
| Full-Line | 001035-ST JEROME |
| Full-Line | 001094-LAVAL |
| Full-Line | 001032-SHERBROOKE |
| Full-Line | 001312-REPENTIGNY |
| Full-Line | 001319-ST BRUNO |
| Full-Line | 001096-LASALLE |
| Full-Line | 001041-GRANBY |
| Full-Line | 001241-ROSEMERE |
| Full-Line | 001414-SASKATOON |

| Channel | Store |
|----------------|------------------------------|
| Home | 001370-CALGARY NORTH HOME |
| Home | 001376-KELOWNA HOME |
| Home | 001338-BURLINGTON HOME |
| Home | 001343-BARRIE HOME |
| Home | 001361-OTTAWA-PINECREST HOME |
| Home | 001393-WHITBY HOME |
| Home | 001345-NEWMARKET HOME |
| Home | 001385-REGINA HOME |

SCHEDULE "C"
HOMETOWN DEALER STORES

(See attached)

| Channel | Store |
|----------------|-------------------------------|
| Dealer | 7648-BROOKS (AB) |
| Dealer | 7590-CARDSTON (AB) |
| Dealer | 7699-EDSON (AB) |
| Dealer | 7634-WETASKIWIN (AB) |
| Dealer | 7586-DRAYTON VALLEY (AB) |
| Dealer | 7633-AIRDRIE (AB) |
| Dealer | 7583-GIBSONS (BC) |
| Dealer | 7545-NELSON (BC) |
| Dealer | 7564-TERRACE (BC) |
| Dealer | 7959-PRINCETON (BC) |
| Dealer | 7597-SMITHERS (BC) |
| Dealer | 7596-PARKSVILLE (BC) |
| Dealer | 7575-THOMPSON (MB) |
| Dealer | 3906-BEAUSEJOUR (MB) |
| Dealer | 7515-CAMPBELLTON (NB) |
| Dealer | 7624-TRACADIE (NB) |
| Dealer | 7860-SHIPAGAN (NB) |
| Dealer | 7054-CARAQUET (NB) |
| Dealer | 3921-DEER LAKE (NL) |
| Dealer | 7643-GRAND FALLS-WINDSOR (NL) |
| Dealer | 7567-GANDER (NL) |
| Dealer | 7184-CLARENVILLE (NL) |
| Dealer | 7529-KINGSTON (NS) |
| Dealer | 7549-PORT HAWKESBURY (NS) |
| Dealer | 3802-PERTH (ON) |
| Dealer | 7072-HALIBURTON (ON) |
| Dealer | 7957-GANANOQUE (ON) |
| Dealer | 7665-FORT ERIE (ON) |
| Dealer | 7915-KIRKLAND LAKE (ON) |
| Dealer | 7677-ELLIOT LAKE (ON) |
| Dealer | 7582-KAPUSKASING (ON) |
| Dealer | 7559-GASPE (QC) |
| Dealer | 7539-ESTEVAN (SK) |
| Dealer | 7516-MEADOW LAKE (SK) |
| Dealer | 7790-MELVILLE (SK) |
| Dealer | 7571-FORT ST JOHN (BC) |
| Dealer | 7587-PRINCE RUPERT (BC) |

SCHEDULE “D”

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

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

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

MONITOR’S CERTIFICATE**RECITALS**

All undefined terms in this Monitor’s Certificate have the meanings ascribed to them in the Amended and Restated Agency Agreement entered into between Sears Canada Inc. (“**Sears Canada**”) and a contractual joint venture comprised of Gordon Brothers Canada ULC, Merchant Retail Solutions ULC, Tiger Capital Group, LLC and GA Retail Canada ULC (collectively, the “**Agent**”) dated as of October 10, 2017, a copy of which is attached as Exhibit “●” to the Affidavit of Mark Caiger sworn October 10, 2017.

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

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

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

The Sale has ended.

The Guaranteed Amount, the Expenses, any Company's Sharing Recovery Amount, the Net FF&E Proceeds, the Net Designated Sundry And Consignment Goods Proceeds, proceeds from the sale of Cosmetic Products (less the applicable commission payable to the Agent), and all other amounts due to Sears Canada under the Agency Agreement have been paid in full to Sears Canada.

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

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

DATED as of this ● day of ●, 2017.

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

APPENDIX "A"
LIST OF REMAINING MERCHANDISE

APPENDIX "B"
LIST OF REMAINING FF&E

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

Applicants

Ontario
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceeding commenced at Toronto

LIQUIDATION SALE APPROVAL ORDER
(Phase II Liquidation)

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

Applicants

Ontario
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceeding commenced at Toronto

MOTION RECORD OF THE APPLICANTS
(Motion for Approval of Phase II Liquidation,
returnable October 13, 2017)

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