

**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**

(Stay Extension, Suspension of Special Payments and other  
Post-Retirement Benefits, Approval of SISP, Amended and Restated Initial Order)  
Returnable July 13, 2017

July 5, 2017

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TAB 1

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF SEARS CANADA INC., CORBEIL  
ÉLECTRIQUE INC., S.L.H. TRANSPORT INC., THE CUT INC.,  
SEARS CONTACT SERVICES INC., INITIUM LOGISTICS  
SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM  
TRADING AND SOURCING CORP., SEARS FLOOR  
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

**NOTICE OF MOTION**

(Stay Extension, Suspension of Special Payments and other  
Post-Retirement Benefits, Approval of SISF, Amended and Restated Initial Order)  
(Returnable July 13, 2017)

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

**THE MOTION IS FOR:**

1. An Order substantially in the form attached hereto as Schedule "A":
  - (a) abridging the time for, and validating service of, this Notice of Motion and supporting materials such that the motion is properly returnable on July 13, 2017 and dispensing with further service thereof;

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- (b) extending the Stay Period, as defined in paragraph 14 of the Initial Order (as defined below) until and including October 4, 2017;
  - (c) authorizing the suspension of the special payments with respect to the defined benefit portion of the Sears Pension Plan (as defined below) during the pendency of the Applicants' CCAA Proceedings;
  - (d) declaring that the directors, officers, officials and agents of the Applicants shall not incur any liability as a result of the suspension of the special payments;
  - (e) approving the suspension of payments with respect to the Supplemental Plan (defined below);
  - (f) approving the suspension of payments with respect to other post-retirement benefits under the PRB Plan (defined below);
2. An Order approving the SISP (defined below) substantially in the form attached hereto as Schedule "B";
  3. An Amended and Restated Initial Order substantially in the form attached hereto as Schedule "C"; and
  4. Such further and other relief as counsel may advise and as this Honourable Court deems just.

**THE GROUNDS FOR THE MOTION ARE:**

1. On June 22, 2017, this Honourable Court granted protection to Sears Canada Inc. ("Sears Canada") and certain affiliated companies (collectively, the "Sears Canada Group" or the

“Applicants”) under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36 as amended (the “**CCAA**”) pursuant to an initial order (the “**Initial Order**”);

2. Since the granting of the Initial Order, the Sears Canada Group has been operating its business as a going concern in close consultation with the Monitor;

**A. Suspension of Special Payments, Supplemental Plan Payments and Other Post-Retirement Benefits**

3. The Sears Canada Group maintains a number of pension arrangements including:

(a) Sears Canada Inc. Registered Retirement Plan, a pension plan registered under the *Ontario Pension Benefits Act*, R.S.O. 1990, c. P.8 (the “**PBA**”) and the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp) (the “**ITA**”) with a defined benefit component (the “**DB Component**”) and a defined contribution component (collectively with the DB Component, the “**Sears Pension Plan**”); and

(b) Sears Canada Inc. Supplementary Retirement Plan, a non-registered supplemental pension plan maintained to provide supplementary benefits to eligible participants in the defined benefit component of the Sears Pension Plan (the “**Supplemental Plan**”);

4. Sears Canada also maintains a post-retirement benefit plan, which provides life insurance, medical and dental benefits to eligible retired employees of the Sears Canada Group through an employee health and welfare trust (the “**PRB Plan**”);

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5. The most recent pension valuation report indicates that the hypothetical wind-up deficit under the DB Component of the Sears Pension Plan was approximately \$266.8 million;
6. The PBA currently requires that the Sears Canada Group make special payments in respect of the DB Component of the Sears Pension Plan in equal monthly installments of approximately \$3.7 million due at the end of each month;
7. The special payments and PRB Plan benefit payments are a significant strain on the liquidity available to the Applicants to conduct going-concern operations;
8. In light of the request to suspend special payments, it would not be equitable to continue to make payments in respect of Supplemental Plan benefits;
9. The Sears Canada Group's debtor-in-possession ("**DIP**") credit agreements require that the Sears Canada Group: (i) comply with a budget (the "**DIP Budget**") that is based on the Cash Flow Forecast subject to permitted variances and (ii) use any DIP advances in accordance with the DIP Budget subject to permitted variances;
10. Neither the special payments, the Supplemental Plan payments nor PRB Plan benefit payments are included in the Cash Flow Forecast or in the DIP Budget after the comeback hearing;
11. The continuation of special payments significantly increases the risk that the permitted variance thresholds under the DIP Agreements, which were meant to provide for contingencies that may arise for a business of the Applicants' size and scope, will be exceeded;
12. The Sears Canada Group provided notice to parties that may be affected;

**B. Approval of the SISP**

13. The Applicants are seeking the Court's approval of a comprehensive and flexible sale and investment solicitation process (the "SISP"), to be conducted by the Financial Advisor, under the supervision of the Monitor and a Special Committee of the Board of Directors of Sears Canada comprised solely of independent directors;

14. The purpose of the SISP is to seek out proposals for the acquisition of or investment in the Applicants' business, property and/or leases, and to implement one or a combination of such proposals;

15. The proposed SISP will identify the best opportunities in the circumstances for maximizing value for the Applicants' stakeholders;

16. The Monitor has advised that it supports the request to approve and implement the SISP;

17. The SISP has also been designed to comply with the milestone dates set out in the DIP credit agreements;

**C. Amended and Restated Initial Order**

18. Before making any advances under the DIP credit facilities, the DIP lenders require that the Initial Order be amended and restated to include a provision which provides that: (i) the Initial Order is subject to provisional execution; and (ii) any subsequent variations to the Initial Order will not impair or limit the priority, protections, rights or remedies of the DIP lenders in the Initial Order or under the DIP credit agreements prior to the DIP lenders receiving notice of the variation;

19. The proposed language of the amendment is set out in the draft Amended and Restated Initial Order appended to this Notice of Motion as Schedule “C”;

**D. Stay Extension**

20. In the Initial Order, the Court, among other things, granted a stay of proceedings in favour of the Sears Canada Group until and including July 22, 2017, or such later date as the Court may order (the “**Stay Period**”);

21. Since the granting of the Initial Order, the Sears Canada Group, in close consultation and with the assistance of the Monitor, has acted and continues to act in good faith and with due diligence to complete a restructuring under the CCAA;

22. The Sears Canada Group has provided information to, and answered inquiries from, its various stakeholders and has contacted many of its vendors and suppliers;

23. Notices of termination were delivered to a number of the Applicants’ employees;

24. The Sears Canada Group anticipates that it will begin the process of conducting liquidation sales in closing stores shortly following the comeback hearing;

25. It is necessary and in the best interests of the Sears Canada Group and its stakeholders that the Stay Period be extended until October 4, 2017 in the circumstances as it will allow the Sears Canada Group, in close consultation with the Monitor, to commence and conduct the SISP and to continue to engage in discussions and consultations with its stakeholders including landlords, employees, suppliers and creditors;

26. The DIP credit agreements contain a milestone of October 4, 2017 for the Court to approve any successful bids pursuant to the SISP;

27. It is forecast that the Sears Canada Group has sufficient liquidity to be able to continue operating in the ordinary course during the requested Stay Period;

28. The extension of the Stay Period is supported by the Monitor;

**E. General**

29. The provisions of the CCAA and, in particular, Section 11 thereof;

30. The inherent and equitable jurisdiction of this Honourable Court;

31. Rules 1.04, 1.05, 2.03, 3.02, 16, 37 and 39 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended and section 106 of the *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 Honourable Court may permit.

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

1. The Affidavit of Billy Wong, sworn July 5, 2017 and the exhibits attached thereto;
2. The Affidavit of Billy Wong, sworn June 22, 2017 and the exhibits attached thereto;
3. The Pre-Filing Report of the Proposed Monitor, dated June 22, 2017;



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4. The First Report of the Monitor; and
5. Such further and other material as counsel may advise and this Honourable Court may permit.

July 5, 2017

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Lawyers for the Applicants

**TO: THE SERVICE LIST**

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

Court File No: CV-17-11846-00CL  
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SEARS CANADA INC., CORBEIL ÉLECTRIQUE INC., S.L.H. TRANSPORT INC., THE CUT INC., SEARS CONTACT SERVICES INC., INITIUM LOGISTICS SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM TRADING AND SOURCING CORP., SEARS FLOOR COVERING CENTRES INC., 173470 CANADA INC., 2497089 ONTARIO INC., 6988741 CANADA INC., 10011711 CANADA INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA LTD., 4201531 CANADA INC., 168886 CANADA INC., AND 3339611 CANADA INC.

Applicants

*Ontario*  
**SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**NOTICE OF MOTION**

(Stay Extension, Suspension of Special Payments  
and other Post-Retirement Benefits, Approval of SISF,  
Amended and Restated Initial Order)

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Lawyers for the Applicants

# **SCHEDULE A**

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR.	)	THURSDAY, THE 13 <sup>TH</sup>
	)	
JUSTICE HAINEY	)	DAY OF JULY, 2017

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

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

(each, an "Applicant", and collectively, the "Applicants")

**ORDER**

**(Suspension of Special Payments, Supplemental Plan Payments and PRB Plan Payments,  
Stay Extension and Amended and Restated Initial Order)**

THIS MOTION, made by the Applicants pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. c-36, as amended (the "CCAA"), for an order, *inter alia*: (i) authorizing the suspension of the Special Payments (as defined below); (ii) approving the suspension of the Supplemental Plan Payments (as defined below); (iii) approving the suspension of the PRB Plan Payments (as defined below); (iv) declaring that the directors, officers, officials and agents of the Applicants shall not incur any liability as a result of the failure of the Applicants to make any of the Special Payments during the Stay Period (as defined below), and during any extension of same; (v) extending the Stay Period to and including October 4, 2017; and (vi),

amending and restating the Initial Order, and certain related relief, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion of the Applicants, the Affidavit of Billy Wong sworn July 5, 2017 including the exhibits thereto (the “**Second Wong Affidavit**”), the First Report of FTI Consulting Canada Inc., in its capacity as Monitor (the “**Monitor**”) filed, and on hearing the submissions of respective counsel for the Applicants and Sears Connect LP (collectively, the “**Sears Canada Entities**”), counsel to the Monitor, counsel to the Board of Directors and the Special Committee of the Board of Directors of Sears Canada Inc., counsel to Wells Fargo Capital Finance Corporation Canada as administrative agent under the DIP ABL Credit Agreement, counsel to GACP Finance Co., LLC as administrative agent under the DIP Term Credit Agreement, and such other counsel as were present, no one else appearing although duly served as appears from the Affidavit of Service of ● sworn July ●, 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 Second Wong Affidavit.

#### **SUSPENSION OF SPECIAL PAYMENTS**

3. THIS COURT ORDERS that the obligation of the Sears Canada Entities to make special payments (whether pursuant to the Ontario *Pension Benefits Act*, RSO 1990, c. P-8 and regulations made thereunder or to the terms of the Sears Pension Plan) in respect of the defined benefit component of the Sears Pension Plan (such payments being the “**Special Payments**”), shall be suspended effective immediately for the duration of the Sears Canada Entities’ CCAA proceedings (the “**CCAA Proceedings**”). For greater certainty, the suspension of the Special Payments does not constitute a disclaimer or termination by the Sears Canada Entities of any component of the Sears Pension Plan.

4. THIS COURT ORDERS that for the duration of the CCAA Proceedings, no Person (as defined in the Initial Order), including employees and former employees of the Sears Canada Entities (or the surviving spouse of any such person) entitled to a benefit under the defined benefit component of the Sears Pension Plan (whether or not such member was represented by a union when the member was employed by the Sears Canada Entities) (the “Retirees”) or the Superintendent of Financial Services, shall commence any action or other proceeding in connection with the suspension of the Special Payments or because the Sears Canada Entities have not made the Special Payments.

5. THIS COURT ORDERS that the Sears Canada Entities and each of their respective directors, officers, officials, and agents shall not incur any obligation or liability, whether by way of debt, damages for breach of any duty whether statutory, fiduciary, common law or otherwise, or for breach of trust, nor shall any trust be imposed, whether express, implied, constructive, resulting, deemed or otherwise, as a result of the suspension of the Special Payments in accordance with the terms of this Order.

6. THIS COURT ORDERS that if any claim, lien, charge or trust, including deemed trust, arises as a result of the suspension of the Special Payments, no such claim, lien, charge or trust, including deemed trust, shall have priority over the Charges (as defined in the Initial Order) in these CCAA Proceedings, or in any subsequent receivership, interim receivership or bankruptcy of the Sears Canada Entities.

#### **SUSPENSION OF SUPPLEMENTAL PLAN PAYMENTS**

7. THIS COURT ORDERS that the obligation of the Sears Canada Entities to make (i) any payments in respect of the Supplemental Plan to the Post-2010 SP Pensioners and (ii) any payment required in respect of any SP Shortfall Amounts in respect of the Pre-2010 SP Pensioners (collectively, such payments being the “**Supplemental Plan Payments**”), shall be suspended effective immediately for the duration of the CCAA Proceedings. For greater certainty, the suspension of the Supplemental Plan Payments does not constitute a disclaimer or termination by the Sears Canada Entities of the Supplemental Plan.

8. THIS COURT ORDERS that for the duration of the CCAA Proceedings, no Person, including employees and former employees of the Sears Canada Entities (or the surviving spouse

of any such person) entitled to a benefit under the Supplemental Plan (whether or not such member was represented by a union when the member was employed by the Sears Canada Entities) shall commence any action or other proceeding in connection with the suspension of the Supplemental Plan Payments or because the Sears Canada Entities have not made the Supplemental Plan Payments.

#### **SUSPENSION OF PRB PLAN PAYMENTS**

9. THIS COURT ORDERS that the obligation of the Sears Canada Entities to make any payments in respect of the post-retirement health and dental benefits under the PRB Plan (such payments being the “**PRB Health and Dental Payments**”), shall be suspended effective on and after July 31, 2017, for all claims submitted and received after such date.

10. THIS COURT ORDERS that the obligation of the Sears Canada Entities to make any payments in respect of the life insurance benefits under the PRB Plan, including premiums for life insurance coverage (such payments, together with the PRB Health and Dental Payments, the “**PRB Plan Payments**”), shall be suspended effective immediately. For greater certainty, the suspension of the PRB Plan Payments does not constitute a disclaimer or termination by the Sears Canada Entities of the PRB Plan.

11. THIS COURT ORDERS that for the duration of the CCAA Proceedings, no Person, including the Retirees and surviving spouses who have coverage with respect to post-retirement health and dental benefits and/or with respect to life insurance benefits under the PRB Plan (whether or not such member was represented by a union when the member was employed by the Sears Canada Entities) shall commence any action or other proceeding in connection with the suspension of the PRB Plan Payments or due to the Sears Canada Entities having not made the PRB Plan Payments.

#### **EXTENSION OF STAY PERIOD**

12. THIS COURT ORDERS that the Stay Period (as defined in paragraph 14 of the Initial Order) is hereby extended from July 22, 2017 until and including October 4, 2017.

**AMENDED AND RESTATED INITIAL ORDER**

13. THIS COURT ORDERS AND DECLARES that an Amended and Restated Initial Order in the form attached as Schedule "C" to the Notice of Motion shall be issued and entered.

**GENERAL**

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

15. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body, having jurisdiction in Canada or in the United States 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 B**

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR.	)	THURSDAY, THE 13 <sup>th</sup>
	)	
JUSTICE HAINEY	)	DAY OF JULY, 2017

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

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

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

**SISP APPROVAL ORDER**

THIS MOTION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. c-36, as amended (the “CCAA”) for an order, *inter alia*, approving the Sales Process (as defined below) and certain related relief, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion of the Applicants, the Affidavit of Billy Wong sworn July 5, 2017 including the exhibits thereto (the “Second Wong Affidavit”), the First Report of FTI Consulting Canada Inc., in its capacity as Monitor (the “Monitor”) filed, and on hearing the submissions of respective counsel for the Applicants, counsel to the Monitor, counsel to the Board of Directors and the Special Committee of the Board of Directors of Sears Canada Inc., counsel to Wells Fargo Capital Finance Corporation Canada as administrative agent under the DIP ABL

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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 ● sworn July ●, 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 (the “**Initial Order**”) or the Sales Process (as described below), as applicable.

#### **APPROVAL OF THE SALES PROCESS**

3. THIS COURT ORDERS that the Sales Process attached hereto as Schedule “A” is hereby approved. The Applicants, the Monitor and the Financial Advisor are hereby authorized and directed to take any and all actions as may be necessary or desirable to implement and carry out the Sales Process, subject to the milestones contained in the Definitive Documents (as defined in the Initial Order), in order to select one or more Successful Bids which shall be consummated no later than October 25, 2017 or such other later date as agreed to by the Applicants, the Monitor and the DIP Lenders or as otherwise ordered by the Court.
4. THIS COURT ORDERS that the Applicants shall, unless otherwise ordered by the Court or agreed to by the Monitor and the DIP Lenders, by no later than September 27, 2017 seek bids for the liquidation of inventory and FF&E not otherwise included in a Successful Bid, (as defined in the Sales Process), if any, with such liquidation(s) to commence no later than November 1, 2017.
5. THIS COURT ORDERS that each of the Applicants, the Monitor, the Financial Advisor and their respective affiliates, partners, directors, employees, and agents shall have no liability with respect to any and all losses, claims, damages or liability of any nature or kind to any person in connection or as a result of performing their duties under the Sales Process, except to the extent

of such losses, claims, damages or liabilities resulting from gross negligence or willful misconduct of the Applicants, the Monitor or the Financial Advisor, as applicable, as determined by this Court.

6. THIS COURT ORDERS that, in connection with the Sales Process and pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Applicants, the Financial Advisor and the Monitor are authorized and permitted to disclose personal information of identifiable individuals to prospective investors, financiers, purchasers or bidders and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more investment, finance or sale transaction (each, a “**Transaction**”). Each prospective investor, financier, purchaser, or bidder to whom such information is disclosed shall maintain and protect the privacy of such information and shall limit the use of such information to its evaluation of the Transaction, and if it does not complete a Transaction, shall: (i) return all such information to the Applicants or the Monitor; or (ii) destroy all such information that is not electronically stored and, in the case of such information that is electronically stored, destroy all such information to the extent it is reasonably practical to do so. The purchaser in any Transaction shall be entitled to continue to use the personal information provided to it, and related to the property purchased, in a manner which is in all material respects identical to the prior use of such information by the Applicants, and shall return all other personal information to the Applicants or the Monitor, or ensure that all other personal information is destroyed.

7. THIS COURT ORDERS that at any time during the Sales Process, the Monitor, the Applicants or the DIP Lenders may apply to the Court for directions with respect to the Sales Process.

#### **GENERAL**

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

9. 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

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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 C**

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR.	)	THURSDAY, THE 22 <sup>ND</sup>
	)	
JUSTICE HAINEY	)	DAY OF JUNE, 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”)

**AMENDED AND RESTATED INITIAL ORDER**

**THIS APPLICATION**, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the affidavit of Billy Wong sworn June 22, 2017, and the Exhibits thereto (collectively, the “**Wong Affidavit**”), and the pre-filing report dated June 22, 2017 of FTI Consulting Canada Inc. (“**FTI**”), in its capacity as the proposed Monitor of the Applicants (the “**Pre-Filing Report**”), and on hearing the submissions of counsel to the Applicants and Sears Connect LP (the “**Partnership**”, and collectively with the Applicants, the “**Sears Canada**

Entities”), counsel to the Board of Directors (the “**Board of Directors**”) of Sears Canada Inc. (“**SCI**”) and the Special Committee of the Board of Directors (the “**Special Committee**”) of SCI, counsel to FTI, counsel to Wells Fargo Capital Finance Corporation Canada (the “**DIP ABL Agent**”), as administrative agent under the DIP ABL Credit Agreement (as defined herein), and counsel to GACP Finance Co., LLC (the “**DIP Term Agent**”), as administrative agent under the DIP Term Credit Agreement (as defined herein), Koskie Minsky LLP as counsel for Store Catalogue Retiree Group, counsel for the Financial Services Commission of Ontario, and on reading the consent of FTI to act as the Monitor.

### **SERVICE**

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

### **APPLICATION**

2. **THIS COURT ORDERS AND DECLARES** that the Applicants are companies to which the CCAA applies. Although not an Applicant, the Partnership shall enjoy the benefits of the protections and authorizations provided by this Order.

### **PLAN OF ARRANGEMENT**

3. **THIS COURT ORDERS** that the Applicants, individually or collectively, shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the “**Plan**”).

### **POSSESSION OF PROPERTY AND OPERATIONS**

4. **THIS COURT ORDERS** that the Sears Canada Entities shall remain in possession and control of their respective current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “**Property**”). For greater certainty, the “**Property**” includes all inventory, assets, undertakings and property of the Sears Canada Entities in the possession or control of the Hometown Dealers (as defined in the Wong Affidavit) and all inventory, assets, undertakings and property of the Sears Canada



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Entities in the possession or control of the Corbeil Franchisees (as defined in the Wong Affidavit). Subject to further Order of this Court, the Sears Canada Entities shall continue to carry on business in a manner consistent with the preservation of the value of their business (the “**Business**”) and Property. The Sears Canada Entities shall each be authorized and empowered to continue to retain and employ the employees, independent contractors, advisors, consultants, agents, experts, accountants, counsel and such other persons (collectively, “**Assistants**”) currently retained or employed by them, with liberty, subject to the terms of the Definitive Documents (as defined herein) to retain such further Assistants, as they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. **THIS COURT ORDERS** that the Sears Canada Entities shall be entitled to continue to utilize the central cash management services currently in place as described in the Wong Affidavit, or, with the consent of the Monitor, the DIP ABL Agent on behalf of the DIP ABL Lenders (as defined herein) and the DIP Term Agent on behalf of the DIP Term Lenders (as defined herein), replace it with another substantially similar central cash management services (the “**Cash Management System**”) and that any present or future bank or other institution providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Sears Canada Entities of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Sears Canada Entities, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System; provided, however, that no bank or other institution providing such Cash Management System shall be obliged to extend any overdraft credit, on an aggregate net basis, directly or indirectly in connection therewith and further provided that, to the extent any overdraft occurs, on an aggregate net basis, the Sears Canada Entities shall make arrangements to repay such overdraft forthwith.

6. **THIS COURT ORDERS** that the Sears Canada Entities, subject to availability under, and in accordance with the terms of the DIP Facilities (as defined herein) and the Definitive Documents, and subject to further Order of this Court, shall be entitled but not required to pay the following expenses whether incurred prior to, on or after this Order to the extent that such expenses are incurred and payable by the Sears Canada Entities:

- (a) all outstanding and future wages, salaries, commissions, employee and retiree benefits (including, without limitation, medical, dental, life insurance and similar benefit plans or arrangements), pension benefits or contributions, vacation pay, expenses, and director fees and expenses, payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements (but not including termination or severance payments), and all other payroll, pension and benefits processing and servicing expenses;
- (b) all outstanding and future amounts owing to or in respect of Persons working as independent contractors in connection with the Business;
- (c) all outstanding or future amounts owing in respect of customer rebates, refunds, discounts or other amounts on account of similar customer programs or obligations;
- (d) all outstanding or future amounts related to honouring customer obligations, whether existing before or after the date of this Order, including customer financing, product warranties, pre-payments, deposits, gift cards, Sears Club programs (including redemptions of Sears Club points) and other customer loyalty programs, offers and benefits, in each case incurred in the ordinary course of business and consistent with existing policies and procedures;
- (e) the fees and disbursements of any Assistants retained or employed by the Sears Canada Entities at their standard rates and charges; and
- (f) with the consent of the Monitor, amounts owing for goods or services actually supplied to the Sears Canada Entities prior to the date of this Order by:

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- (i) logistics or supply chain providers, including customs brokers and freight forwarders, fuel providers, repair, maintenance and parts providers, and security and armoured truck carriers, and including amounts payable in respect of customs and duties for goods;
- (ii) providers of information, internet, and other technology, including e-commerce providers and related services;
- (iii) providers of credit, debit and gift card processing related services; and
- (iv) other third party suppliers up to a maximum aggregate amount of \$25 million, if, in the opinion of the Sears Canada Entities, the supplier is critical to the business and ongoing operations of the Sears Canada Entities.

7. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein and subject to the terms of the Definitive Documents, the Sears Canada Entities shall be entitled but not required to pay all reasonable expenses incurred by them in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order and any other Order of this Court, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors' and officers' insurance), maintenance (including environmental remediation) and security services; and
- (b) payment for goods or services actually supplied to the Sears Canada Entities following the date of this Order.

8. **THIS COURT ORDERS** that the Sears Canada Entities shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from the Sears Canada Entities' employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;

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- (b) all goods and services taxes, harmonized sales taxes or other applicable sales taxes (collectively, "Sales Taxes") required to be remitted by the Sears Canada Entities in connection with the sale of goods and services by the Sears Canada Entities, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order;
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business, workers' compensation or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Sears Canada Entities; and
- (d) taxes under the *Income Tax Act* (Canada) or other relevant taxing statutes to the extent that such taxing statutes give rise to statutory deemed trust amounts in favour of the Crown in right of Canada or any Province thereof or any political subdivision thereof or any other taxation authority.

9. **THIS COURT ORDERS** that, except as specifically permitted herein, the Sears Canada Entities are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by any one of the Sears Canada Entities to any of their creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of the Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business or pursuant to this Order or any further Order of this Court.

#### **RESTRUCTURING**

10. **THIS COURT ORDERS** that the Sears Canada Entities shall, subject to such requirements as are imposed by the CCAA, and subject to the terms of the Definitive Documents, have the right to:

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- (a) permanently or temporarily cease, downsize or shut down any of their Business 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, provided that, with respect to leased premises, the Sears Canada Entities may, subject to the requirements of the CCAA and paragraphs 11 to 13 herein, vacate, abandon or quit the whole (but not part of) and may permanently (but not temporarily) cease, downsize or shut down any of their Business or operations in respect of any leased premises;
- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as the relevant Sears Canada Entity deems appropriate; and
- (c) pursue all avenues of refinancing, restructuring, selling and reorganizing the Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing, restructuring, sale or reorganization,

all of the foregoing to permit the Sears Canada Entities to proceed with an orderly restructuring of the Sears Canada Entities and/or the Business (the “**Restructuring**”).

#### **REAL PROPERTY LEASES**

11. **THIS COURT ORDERS** that until a real property lease is disclaimed or resiliated in accordance with the CCAA, the Sears Canada Entities shall pay, without duplication, all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under its lease, but for greater certainty, excluding accelerated rent or penalties, fees or other charges arising as a result of the insolvency of any or all of the Sears Canada Entities or the making of this Initial Order) or as otherwise may be negotiated between the applicable Sears Canada Entity and the landlord from time to time (“**Rent**”), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

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12. **THIS COURT ORDERS** that the Sears Canada Entities shall provide each of the relevant landlords with notice of the relevant Sears Canada Entity's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the entitlement of a Sears Canada Entity to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the relevant Sears Canada Entity, or by further Order of this Court upon application by the Sears Canada Entities on at least two (2) days' notice to such landlord and any such secured creditors. If any of the Sears Canada Entities disclaims or resiliates the lease governing such leased premises in accordance with Section 32 of the CCAA, 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 Section 32(5) of the CCAA), and the disclaimer or resiliation of the lease shall be without prejudice to the relevant Sears Canada Entity's claim to the fixtures in dispute.

13. **THIS COURT ORDERS** that if a notice of disclaimer or resiliation is delivered pursuant to Section 32 of the CCAA by any of the Sears Canada Entities, 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 the relevant Sears Canada Entity and the Monitor 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 leased premises without waiver of or prejudice to any claims or rights such landlord may have against the relevant Sears Canada Entity in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

**NO PROCEEDINGS AGAINST THE SEARS CANADA ENTITIES, THE BUSINESS OR THE PROPERTY**

14. **THIS COURT ORDERS** that until and including July 22, 2017, or such later date as this Court may order (the "Stay Period"), no proceeding or enforcement process in any court or tribunal (each, a "Proceeding") shall be commenced or continued against or in respect of the

Sears Canada Entities or the Monitor or their respective employees and representatives acting in such capacities, or affecting the Business or the Property, except with the written consent of the Sears Canada Entities and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Sears Canada Entities or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

15. **THIS COURT ORDERS** that during the Stay Period, no Person having any agreements or arrangements with the owners, operators, managers or landlords of commercial shopping centres or other commercial properties (including retail, office and industrial (warehouse) properties) in which there is located a store, office or warehouse owned or operated by the Sears Canada Entities shall take any Proceedings or exercise any rights or remedies under such agreements or arrangements that may arise upon and/or as a result of the making of this Order, the insolvency of, or declarations of insolvency by, any or all of the Sears Canada Entities, or as a result of any steps taken by the Sears Canada Entities pursuant to this Order and, without limiting the generality of the foregoing, no Person shall terminate, accelerate, suspend, modify, determine or cancel any such arrangement or agreement or be entitled to exercise any rights or remedies in connection therewith.

16. **THIS COURT ORDERS** that during the Stay Period, no Person having any agreements or arrangements with the Hometown Dealers or the Corbeil Franchisees shall take any Proceedings or exercise any rights or remedies under such agreements or arrangements that may arise upon and/or as a result of the making of this Order, the insolvency of, or declarations of insolvency by, any or all of the Sears Canada Entities, or as a result of any steps taken by the Sears Canada Entities pursuant to this Order and, without limiting the generality of the foregoing, no Person shall terminate, accelerate, suspend, modify, determine or cancel any such arrangement or agreement or be entitled to exercise any rights or remedies in connection therewith.

17. **THIS COURT ORDERS** that during the Stay Period all rights and remedies, of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being “Persons” and each being a “Person”) against or in respect of the Sears Canada Entities or the Monitor or their respective employees and representatives acting in

such capacities, or affecting the Business or the Property, are hereby stayed and suspended, except with the written consent of the Sears Canada Entities and the Monitor, or leave of this Court, provided that nothing in this Order shall: (a) empower the Sears Canada Entities to carry on any business that the Sears Canada Entities are not lawfully entitled to carry on; (b) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA; (c) prevent the filing of any registration to preserve or perfect a security interest; or (d) prevent the registration of a claim for lien.

#### **NO INTERFERENCE WITH RIGHTS**

18. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, lease, sublease, licence or permit in favour of or held by the Sears Canada Entities, except with the written consent of the Sears Canada Entities and the Monitor, or leave of this Court. Without limiting the foregoing, no right, option, remedy, and/or exemption in favour of the relevant Sears Canada Entity shall be or shall be deemed to be negated, suspended, waived and/or terminated as a result of this Order.

#### **CONTINUATION OF SERVICES**

19. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Sears Canada Entities or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all trademark license and other intellectual property, computer software, communication and other data services, centralized banking services, payroll and benefit services, insurance, warranty services, transportation services, freight services, security and armoured truck carrier services, utility, customs clearing, warehouse and logistics services or other services to the Business or the Sears Canada Entities are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply or license of such goods, services, trademarks and other intellectual property as may be required by the Sears Canada Entities, and that the Sears Canada Entities shall be entitled to the continued use of the trademarks and other intellectual property currently licensed to, used or owned by the Sears Canada Entities, premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by



the Sears Canada Entities in accordance with normal payment practices of the Sears Canada Entities or such other practices as may be agreed upon by the supplier or service provider and each of the Sears Canada Entities and the Monitor, or as may be ordered by this Court.

#### **NON-DEROGATION OF RIGHTS**

20. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Sears Canada Entities. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

#### **KEY EMPLOYEE RETENTION PLAN**

21. **THIS COURT ORDERS** that the Key Employee Retention Plan (the “**KERP**”), as described in the Wong Affidavit, is hereby approved and the Sears Canada Entities are authorized to make payments contemplated thereunder in accordance with the terms and conditions of the KERP.

22. **THIS COURT ORDERS** that the key employees referred to in the KERP (the “**Key Employees**”) shall be entitled to the benefit of and are hereby granted the following charges on the Property, which charges shall not exceed: (a) an aggregate amount of \$4.6 million (the “**KERP Priority Charge**”) to secure the first \$4.6 million payable to the Key Employees under the KERP; and (b) an aggregate amount of \$4.6 million (the “**KERP Subordinated Charge**”) to secure any other payments to the Key Employees under the KERP. The KERP Priority Charge and the KERP Subordinated Charge shall have the priority set out in paragraphs 47, 48 and 50 hereof.

#### **APPROVAL OF FINANCIAL ADVISOR AGREEMENT**

23. **THIS COURT ORDERS** that the agreement dated May 15, 2017 engaging BMO Nesbitt Burns Inc. (the “**Financial Advisor**”) as financial advisor to SCI and attached as Confidential Appendix C to the Pre-Filing Report (the “**Financial Advisor Agreement**”), and the retention of the Financial Advisor under the terms thereof, is hereby ratified and approved

and SCI is authorized and directed *nunc pro tunc* to make the payments contemplated thereunder in accordance with the terms and conditions of the Financial Advisor Agreement.

24. **THIS COURT ORDERS** that the Financial Advisor shall be entitled to the benefit of and is hereby granted a charge (the “FA Charge”) on the Property, which charge shall not exceed an aggregate amount of \$3.3 million, as security for the fees and disbursements payable under the Financial Advisor Agreement, both before and after the making of this Order in respect of these proceedings. The FA Charge shall have the priority set out in paragraphs 47, 48 and 50 hereof.

#### **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

25. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Sears Canada Entities with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Sears Canada Entities whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Sears Canada Entities, if one is filed, is sanctioned by this Court or is refused by the creditors of the Sears Canada Entities or this Court.

#### **DIRECTORS’ AND OFFICERS’ INDEMNIFICATION AND CHARGE**

26. **THIS COURT ORDERS** that the Sears Canada Entities shall jointly and severally indemnify their directors and officers against obligations and liabilities that they may incur as directors or officers of the Sears Canada Entities after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director’s or officer’s gross negligence or wilful misconduct.

27. **THIS COURT ORDERS** that the directors and officers of the Sears Canada Entities shall be entitled to the benefit of and are hereby granted the following charges on the Property, which charges shall not exceed: (a) an aggregate amount of \$44 million (the “Directors’

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Priority Charge”); and (b) an aggregate amount of \$19.5 million (the “Directors’ Subordinated Charge”), respectively, and in each case, as security for the indemnity provided in paragraph 26 of this Order. The Directors’ Priority Charge and the Directors’ Subordinated Charge shall have the priority set out in paragraphs 47, 48 and 50 hereof.

28. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary: (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors’ Priority Charge and the Directors’ Subordinated Charge; and (b) the Sears Canada Entities’ directors and officers shall only be entitled to the benefit of the Directors’ Priority Charge and the Directors’ Subordinated Charge to the extent that they do not have coverage under any directors’ and officers’ insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 26 of this Order.

#### **APPOINTMENT OF MONITOR**

29. **THIS COURT ORDERS** that FTI is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the Business and financial affairs of the Sears Canada Entities with the powers and obligations set out in the CCAA or set forth herein and that the Sears Canada Entities and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Sears Canada Entities pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor’s functions.

30. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Sears Canada Entities’ receipts and disbursements;
- (b) liaise with the Sears Canada Entities and the Assistants and, if determined by the Monitor to be necessary, the Hometown Dealers and Corbeil Franchisees, with respect to all matters relating to the Property, the Business, the Restructuring and such other matters as may be relevant to the proceedings herein;

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- (c) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, the Restructuring and such other matters as may be relevant to the proceedings herein;
- (d) assist the Sears Canada Entities, to the extent required by the Sears Canada Entities, in their dissemination of financial and other information to the DIP ABL Agent, the DIP ABL Lenders, the DIP Term Agent, the DIP Term Lenders and each of their respective counsel and financial advisors, pursuant to and in accordance with the Definitive Documents;
- (e) advise the Sears Canada Entities in their preparation of the Sears Canada Entities' cash flow statements and any reporting required by the Definitive Documents, which information shall be reviewed with the Monitor and delivered to the DIP ABL Agent, the DIP ABL Lenders, the DIP Term Agent, the DIP Term Lenders and each of their respective counsel and financial advisors, pursuant to and in accordance with the Definitive Documents;
- (f) advise the Sears Canada Entities in their development of the Plan and any amendments to the Plan;
- (g) assist the Sears Canada Entities, to the extent required by the Sears Canada Entities, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (h) have full and complete access to the Property (including any Property in the possession of the Hometown Dealers and the Corbeil Franchisees), including the premises, books, records, data, including data in electronic form, and other financial documents of the Sears Canada Entities, to the extent that is necessary to adequately assess the Business and the Sears Canada Entities' financial affairs or to perform its duties arising under this Order;
- (i) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;

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- (j) assist the Sears Canada Entities, to the extent required by the Sears Canada Entities, with any matters relating to any foreign proceeding commenced in relation to any of the Sears Canada Entities, including retaining independent legal counsel, agents, experts, accountants, or such other persons as the Monitor deems necessary or desirable respecting the exercise of this power; and
- (k) perform such other duties as are required by this Order or by this Court from time to time.

31. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

32. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, “**Possession**”) of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the “**Environmental Legislation**”), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor’s duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

33. **THIS COURT ORDERS** that the Monitor shall provide any creditor of the Sears Canada Entities, the DIP ABL Agent, the DIP ABL Lenders, the DIP Term Agent and the DIP Term Lenders with information provided by the Sears Canada Entities in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor

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shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Sears Canada Entities is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Sears Canada Entities may agree.

34. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

35. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, counsel to the Sears Canada Entities and counsel to the Board of Directors and the Special Committee shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, whether incurred prior to or subsequent to the date of this Order, by the Sears Canada Entities as part of the costs of these proceedings. The Sears Canada Entities are hereby authorized and directed to pay the accounts of the Monitor, counsel to the Monitor, counsel to the Sears Canada Entities and counsel to the Board of Directors and the Special Committee on a weekly basis and, in addition, the Sears Canada Entities are hereby authorized to pay to the Monitor, counsel to the Monitor, counsel to the Sears Canada Entities and counsel to the Board of Directors and the Special Committee, retainers in the aggregate amount of \$700,000, to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

36. **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

37. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, counsel to the Sears Canada Entities and counsel to the Board of Directors and the Special Committee shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$5 million, as security for their professional fees and disbursements incurred at their respective standard rates and charges, both

before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 47, 48 and 50 hereof.

#### DIP FINANCING

38. **THIS COURT ORDERS** that the Sears Canada Entities are hereby authorized and empowered to obtain and borrow or guarantee, as applicable, on a joint and several basis, under:

- (a) the Senior Secured Superpriority Debtor-in-Possession Amended and Restated Credit Agreement dated as of June 22, 2017 and attached to the Wong Affidavit as Exhibit K, among the Sears Canada Entities, the DIP ABL Agent and the lenders from time to time party thereto (the “**DIP ABL Lenders**”) (as may be amended, restated, supplemented and/or modified, subject to approval of this Court in respect of any amendment that the Monitor determines to be material, the “**DIP ABL Credit Agreement**”), in order to finance the Sears Canada Entities’ working capital requirements and other general corporate purposes and capital expenditures, all in accordance with the Definitive Documents, provided that borrowings under DIP ABL Credit Agreement shall not exceed \$300 million unless permitted by further Order of this Court (the “**DIP ABL Credit Facility**”); and
- (b) the Senior Secured, Superpriority Debtor-in-Possession Credit Agreement dated as of June 22, 2017 and attached to the Wong Affidavit as Exhibit K, among the Sears Canada Entities, the DIP Term Agent and the lenders from time to time party thereto (the “**DIP Term Lenders**”) (as may be amended, restated, supplemented and/or modified, subject to approval of this Court in respect of any amendment that the Monitor determines to be material, the “**DIP Term Credit Agreement**”), in order to finance the Sears Canada Entities’ working capital requirements and other general corporate purposes and capital expenditures, all in accordance with the Definitive Documents, provided that borrowings under the DIP Term Credit Agreement shall not exceed \$150 million unless permitted by further Order of this Court (the “**DIP Term Credit Facility**”, and together with the DIP ABL Credit Facility, the “**DIP Facilities**”).

39. **THIS COURT ORDERS** that the DIP Facilities shall be on the terms and subject to the conditions set forth in the DIP ABL Credit Agreement, the DIP Term Credit Agreement and the other Definitive Documents.
40. **THIS COURT ORDERS** that the Sears Canada Entities are hereby authorized and empowered to execute and deliver the DIP ABL Credit Agreement, the DIP Term Credit Agreement and such mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, and including any schedules (as amended and updated from time to time) thereto, the “**Definitive Documents**”), as are contemplated by the DIP ABL Credit Agreement and the DIP Term Credit Agreement or as may be reasonably required by the DIP ABL Agent on behalf of the DIP ABL Lenders and the DIP Term Agent on behalf of the DIP Term Lenders pursuant to the terms thereof, as applicable, and the Sears Canada Entities are hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP ABL Agent, the DIP ABL Lenders, the DIP Term Agent and the DIP Term Lenders under and pursuant to the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.
41. **THIS COURT ORDERS** that the DIP ABL Agent and the DIP ABL Lenders shall be entitled to the benefit of and are hereby granted a charge (the “**DIP ABL Lenders’ Charge**”) on the Property as security for any and all Obligations (as defined in the DIP ABL Credit Agreement) other than the Prepetition Obligations (as defined in the DIP ABL Credit Agreement) (including on account of principal, interest, fees, expenses and other liabilities, and the aggregate of all such obligations, the “**DIP ABL Obligations**”), which DIP ABL Lenders’ Charge shall be in the aggregate amount of the DIP ABL Obligations outstanding at any given time under the DIP ABL Credit Agreement. The DIP ABL Lenders’ Charge shall not secure an obligation that exists before this Order is made. The DIP ABL Lenders’ Charge shall have the priority set out in paragraphs 47, 48 and 50 hereof.
42. **THIS COURT ORDERS** that the DIP Term Agent and the DIP Term Lenders shall be entitled to the benefit of and are hereby granted a charge (the “**DIP Term Lenders’ Charge**”) on the Property as security for any and all Obligations (as defined in DIP Term Credit Agreement) (including on account of principal, interest, fees, expenses and other liabilities, and the aggregate of all such obligations, the “**DIP Term Obligations**”), which DIP Term Lenders’ Charge shall



be in the aggregate amount of the DIP Term Obligations outstanding at any given time under the DIP Term Credit Agreement. The DIP Term Lenders' Charge shall not secure an obligation that exists before this Order is made. The DIP Term Lenders' Charge shall have the priority set out in paragraphs 47, 48 and 50 hereof.

43. **THIS COURT ORDERS** that SCI's reimbursement obligation with respect to the letters of credit outstanding under the Wells Fargo Credit Agreement (as defined in the Wong Affidavit) prior to the date of this Order and which are drawn upon on or after the date of this Order shall be deemed to form part of the DIP ABL Credit Facility and shall be included as DIP ABL Obligations for the purposes of determining the amount of the DIP ABL Lenders' Charge.

44. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

- (a) the DIP ABL Agent on behalf of the DIP ABL Lenders, as applicable, may take such steps from time to time as they may deem necessary or appropriate to file, register, record or perfect the DIP ABL Lenders' Charge, the DIP ABL Credit Agreement or any of the other Definitive Documents;
- (b) the DIP Term Agent on behalf of the DIP Term Lenders, as applicable, may take such steps from time to time as they may deem necessary or appropriate to file, register, record or perfect the DIP Term Lenders' Charge, the DIP Term Credit Agreement or any of the other Definitive Documents;
- (c) upon the occurrence of an event of default under the DIP ABL Credit Agreement, the other related Definitive Documents or the DIP ABL Lenders' Charge, the DIP ABL Agent and the DIP ABL Lenders, as applicable, may, subject to the provisions of the DIP ABL Credit Agreement with respect to the giving of notice or otherwise, and in accordance with the DIP ABL Credit Agreement, the other related Definitive Documents and the DIP ABL Lenders' Charge, as applicable, cease making advances to the Sears Canada Entities, make demand, accelerate payment and give other notices; provided that, the DIP ABL Agent and the DIP ABL Lenders must apply to this Court on seven (7) days' prior written notice (which may include the service of materials in connection with such an application to this Court) to the Sears Canada Entities, the DIP Term Agent, the DIP Term Lenders and the Monitor, to enforce

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- against or exercise any other rights and remedies with respect to the Sears Canada Entities or any of the Property (including to set off and/or consolidate any amounts owing by the DIP ABL Agent and the DIP ABL Lenders to the Sears Canada Entities against the obligations of the Sears Canada Entities to the DIP ABL Agent and the DIP ABL Lenders under the DIP ABL Credit Agreement, the other related Definitive Documents or the DIP ABL Lenders' Charge), to appoint a receiver, receiver and manager or interim receiver, or to seek a bankruptcy order against the Sears Canada Entities and to appoint a trustee in bankruptcy of the Sears Canada Entities;
- (d) upon the occurrence of an event of default under the DIP Term Credit Agreement, the other related Definitive Documents or the DIP Term Lenders' Charge, the DIP Term Agent and the DIP Term Lenders, as applicable, may, subject to the provisions of the DIP Term Credit Agreement with respect to the giving of notice or otherwise, and in accordance with the DIP Term Credit Agreement, the other related Definitive Documents and the DIP Term Lenders' Charge, as applicable, cease making advances to the Sears Canada Entities, make demand, accelerate payment and give other notices; provided that, the DIP Term Agent and the DIP Term Lenders must apply to this Court on seven (7) days' prior written notice (which may include the service of materials in connection with such an application to this Court) to the Sears Canada Entities, the DIP ABL Agent, the DIP ABL Lenders and the Monitor, to enforce against or exercise any other rights and remedies with respect to the Sears Canada Entities or any of the Property (including to set off and/or consolidate any amounts owing by the DIP Term Agent and the DIP Term Lenders to the Sears Canada Entities against the obligations of the Sears Canada Entities to the DIP Term Agent and the DIP Term Lenders under the DIP Term Credit Agreement, the other related Definitive Documents or the DIP Term Lenders' Charge), to appoint a receiver, receiver and manager or interim receiver, or to seek a bankruptcy order against the Sears Canada Entities and to appoint a trustee in bankruptcy of the Sears Canada Entities; and
- (e) the foregoing rights and remedies of the DIP ABL Agent, the DIP ABL Lenders, the DIP Term Agent and the DIP Term Lenders shall be enforceable against any trustee

in bankruptcy, interim receiver, receiver or receiver and manager of the Sears Canada Entities or the Property.

45. **THIS COURT ORDERS AND DECLARES** that the DIP ABL Agent, the DIP ABL Lenders, the DIP Term Agent and the DIP Term Lenders shall be treated as unaffected in any plan of arrangement or compromise filed by the Sears Canada Entities or any of them under the CCAA, or any proposal filed by the Sears Canada Entities or any of them under the *Bankruptcy and Insolvency Act* of Canada (the “BIA”), with respect to any advances made under the DIP ABL Credit Agreement, the DIP Term Credit Agreement and the other Definitive Documents.

46. **THIS COURT ORDERS AND DECLARES** that this Order is subject to provisional execution and that if any of the provisions of this Order in connection with the DIP ABL Credit Agreement, the DIP Term Credit Agreement, the other Definitive Documents, the DIP ABL Lenders’ Charge or the DIP Term Lenders’ Charge shall subsequently be stayed, modified, varied, amended, reversed or vacated in whole or in part (collectively, a “Variation”) whether by subsequent order of this Court on or pending an appeal from this Order, such Variation shall not in any way impair, limit or lessen the priority, protections, rights or remedies of the DIP ABL Agent, the DIP ABL Lenders, the DIP Term Agent and the DIP Term Lenders whether under this Order (as made prior to the Variation), under the DIP ABL Credit Agreement, the DIP Term Credit Agreement and the other Definitive Documents, with respect to any advances made prior to the DIP ABL Agent, the DIP ABL Lenders, the DIP Term Agent or the DIP Term Lenders being given notice of the Variation and the DIP ABL Agent, the DIP ABL Lenders, the DIP Term Agent and the DIP Term Lenders shall be entitled to rely on this Order as issued (including, without limitation, the DIP ABL Lenders’ Charge and the DIP Term Lenders’ Charge) for all advances so made.

#### **VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

47. **THIS COURT ORDERS** that the priorities of the Administration Charge, the FA Charge, the DIP ABL Lenders’ Charge, the DIP Term Lenders’ Charge, the Directors’ Priority Charge, the Directors’ Subordinated Charge, the KERP Priority Charge and the KERP Subordinated Charge (collectively, the “Charges”), as among them, with respect to ABL Priority Collateral (as defined in the Intercreditor Agreement dated March 20, 2017 and attached as Exhibit J to the Wong Affidavit) shall be as follows:

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First – Administration Charge, to the maximum amount of \$5 million, and the FA Charge, to the maximum amount of \$3.3 million, on a *pari passu* basis;

Second – KERP Priority Charge, to the maximum amount of \$4.6 million;

Third – Directors' Priority Charge, to the maximum amount of \$44 million;

Fourth – DIP ABL Lenders' Charge, to the maximum amount of the quantum of the DIP ABL Obligations at the relevant time;

Fifth – the DIP Term Lenders' Charge, to the maximum amount of the quantum of the DIP Term Obligations at the relevant time;

Sixth – KERP Subordinated Charge, to the maximum amount of \$4.6 million; and

Seventh – the Directors' Subordinated Charge, to the maximum amount of \$19.5 million.

48. **THIS COURT ORDERS** that the priorities of the Charges as among them, with respect to all Property other than the ABL Priority Collateral shall be as follows:

First – Administration Charge, to the maximum amount of \$5 million, and the FA Charge, to the maximum amount of \$3.3 million, on a *pari passu* basis;

Second – KERP Priority Charge, to the maximum amount of \$4.6 million;

Third – Directors' Priority Charge, to the maximum amount of \$44 million;

Fourth – DIP Term Lenders' Charge, to the maximum amount of the quantum of the DIP Term Obligations at the relevant time;

Fifth – DIP ABL Lenders' Charge, to the maximum amount of the quantum of the DIP ABL Obligations at the relevant time;

Sixth – KERP Subordinated Charge, to the maximum amount of \$4.6 million; and

Seventh – the Directors' Subordinated Charge, to the maximum amount of \$19.5 million.

49. **THIS COURT ORDERS** that the filing, registration or perfection of the Charges shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.
50. **THIS COURT ORDERS** that each of the Charges shall constitute a charge on the Property, and such Charges shall rank in priority to all other security interests, trusts (including constructive trusts), liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (including without limitation any deemed trust that may be created under the Ontario *Pension Benefits Act*) (collectively, “**Encumbrances**”) other than (a) any Person with a properly perfected purchase money security interest under the *Personal Property Security Act* (Ontario) or such other applicable provincial legislation that has not been served with notice of this Order; and (b) statutory super-priority deemed trusts and liens for unpaid employee source deductions.
51. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Sears Canada Entities shall not grant any Encumbrances over any of the Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Sears Canada Entities also obtain the prior written consent of the Monitor, the DIP ABL Agent on behalf of the DIP ABL Lenders, the DIP Term Agent on behalf of the DIP Term Lenders and the other beneficiaries of affected Charges, or further Order of this Court.
52. **THIS COURT ORDERS** that the Charges, the DIP ABL Credit Agreement, the DIP Term Credit Agreement, and the other Definitive Documents shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the “**Chargees**”) thereunder shall not otherwise be limited or impaired in any way by: (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; 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,

sublease, offer to lease or other agreement (collectively, an “**Agreement**”) that binds the Sears Canada Entities, and notwithstanding any provision to the contrary in any Agreement:

- (i) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the DIP ABL Credit Agreement, the DIP Term Credit Agreement or the other Definitive Documents shall create or be deemed to constitute a breach by the Sears Canada Entities of any Agreement to which it is a party;
- (ii) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Sears Canada Entities entering into the DIP ABL Credit Agreement and the DIP Term Credit Agreement, the creation of the Charges, or the execution, delivery or performance of the other Definitive Documents; and
- (iii) the payments made by the Sears Canada Entities pursuant to this Order, the DIP ABL Credit Agreement, the DIP Term Credit Agreement or the other Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

53. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the relevant Sears Canada Entity’s interest in such real property leases.

54. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order, the L/C Collateral Account (as defined in the DIP ABL Credit Agreement) shall be deemed to be subject to a lien, security, charge and security interest in favour of the DIP ABL Agent solely for the reimbursement obligation of SCI related to the letters of credit issued under the Wells Fargo Credit Agreement which remain undrawn from and after the Comeback Motion (as defined herein). The Charges as they may attach to the L/C Collateral Account, including by operation of law or otherwise: (a) shall rank junior in priority to the lien, security, charge and security interest in favour of the DIP ABL Agent in respect of the L/C Collateral Account; and (b) shall attach to the L/C Collateral Account only to the extent of the rights, if any, of any Sears Canada Entity to the return of any cash from the L/C Collateral Account in accordance with the DIP ABL Credit Agreement.

**CORPORATE MATTERS**

55. **THIS COURT ORDERS** that SCI be and is hereby relieved of any obligation to call and hold an annual meeting of its shareholders until further Order of this Court.

56. **THIS COURT ORDERS** that SCI be and is hereby relieved of any obligation to appoint any new directors until further Order of this Court.

**SERVICE AND NOTICE**

57. **THIS COURT ORDERS** that the Monitor shall: (a) without delay, publish in The Globe and Mail (National Edition) and La Presse a notice containing the information prescribed under the CCAA; and (b) within five days after the date of this Order, (i) make this Order publicly available in the manner prescribed under the CCAA, (ii) send or cause to be sent, in the prescribed manner, a notice to every known creditor who has a claim against the Sears Canada Entities of more than \$1,000 (excluding individual employees, former employees with pension and/or retirement savings plan entitlements, and retirees and other beneficiaries who have entitlements under any pension or retirement savings plans), and (iii) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder, provided that the Monitor shall not make the claims, names and addresses of the individuals who are creditors publicly available.

58. **THIS COURT ORDERS** that the Monitor shall create, maintain and update as necessary a list of all Persons appearing in person or by counsel in this proceeding (the “**Service List**”). The Monitor shall post the Service List, as may be updated from time to time, on the Monitor’s Website (as defined herein) as part of the public materials to be made available thereon in relation to this proceeding. Notwithstanding the foregoing, the Monitor shall have no liability in respect of the accuracy of or the timeliness of making any changes to the Service List.

59. **THIS COURT ORDERS** that any employee of any of the Sears Canada Entities that receives a notice of termination from any of the Sears Canada Entities shall be deemed to have received such notice of termination by no more than the seventh day following the date such

notice of termination is delivered, if such notice of termination is sent by ordinary mail, courier or registered mail.

60. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the “Protocol”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05, this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: [cfcanada.fticonsulting.com/searscanada](http://cfcanada.fticonsulting.com/searscanada) (the “Monitor’s Website”).

61. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Sears Canada Entities and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the Sears Canada Entities’ creditors or other interested parties at their respective addresses as last shown on the records of the Sears Canada Entities and that any such service or distribution by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

62. **THIS COURT ORDERS** that the Applicants, the Monitor, the Financial Advisor, the DIP Term Agent on behalf of the DIP Term Lenders and the DIP ABL Agent on behalf of the DIP ABL Lenders, and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Applicants’ creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the Electronic Commerce Protection Regulations, Reg. 81000-2-175 (SOR/DORS).



**COMEBACK MOTION**

63. **THIS COURT ORDERS** that the comeback motion shall be heard on July 13, 2017 (the “Comeback Motion”).

**GENERAL**

64. **THIS COURT ORDERS** that the Sears Canada Entities or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

65. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Sears Canada Entities, the Business or the Property.

66. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Sears Canada Entities, 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 Sears Canada Entities 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 Sears Canada Entities and the Monitor and their respective agents in carrying out the terms of this Order.

67. **THIS COURT ORDERS** that each of the Applicants and the Monitor be at liberty and are hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada, including acting as the foreign representative of the Applicants to apply to the United States Bankruptcy Court for relief pursuant to Chapter 15 of the *United States Bankruptcy Code*, 11 U.S.C. §§ 101-1515, as amended, and to act as foreign

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representative in respect of any such proceedings and any ancillary relief in respect thereto, and to take such other steps as may be authorized by the Court.

68. **THIS COURT ORDERS** that any interested party (including the Sears Canada Entities and the Monitor) may apply to this Court to vary or amend this Order at the Comeback Motion on not less than seven (7) calendar days' notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

69. **THIS COURT ORDERS** that Confidential Appendix B and Confidential Appendix C to the Pre-Filing Report shall be and are hereby sealed, kept confidential and shall not form part of the public record pending further Order of this Court.

70. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.

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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. (collectively, the "Applicants")

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
(Commercial List)

Proceeding commenced at Toronto

**AMENDED AND RESTATED INITIAL ORDER**

**OSLER, HOSKIN & HARCOURT LLP**  
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Toronto, Canada M5X 1B8

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Lawyers for the Applicants

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  
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

**AFFIDAVIT OF BILLY WONG**  
(Sworn July 5, 2017)

I, Billy Wong, of the City of Toronto, in the Province of Ontario, MAKE OATH  
AND SAY:

1. I am the Executive Vice-President and Chief Financial Officer of the Applicant  
Sears Canada Inc. (“**Sears Canada**”). I am also a director of each of the other Applicants  
(together with Sears Canada, the “**Sears Canada Group**”). As such, I have personal knowledge  
of the matters deposed to in this Affidavit. Where I have relied on other sources for information,  
I have specifically referred to such sources and believe them to be true. In preparing this  
Affidavit, I have consulted with legal, financial and other advisors to Sears Canada and other  
members of the senior management team of Sears Canada.

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2. This Affidavit is made in support of a motion by the Applicants for:
  - (a) an order substantially in the form attached as Schedule “A” to the Notice of Motion, among other things: (i) extending the Stay Period to and including October 4, 2017; (ii) authorizing the suspension of the special payments with respect to the defined benefit portion of the Sears Pension Plan; (iii) approving the suspension of payments with respect to the Supplemental Plan; (iv) approving the suspension of payments with respect to other post-retirement benefits under the PRB Plan; and (v) declaring that the directors, officers, officials and agents of the Applicants shall not incur any liability as a result of the failure of the Applicants to make special payments during the Stay Period, and during any extension of same;
  - (b) an Order approving the SISP (defined below) substantially in the form attached as Schedule “B” to the Notice of Motion; and
  - (c) an Amended and Restated Initial Order substantially in the form attached as Schedule “C” to the Notice of Motion.
  
3. Except where so stated, capitalized terms used in this affidavit but not defined herein have the meaning given to them in my affidavit sworn on June 22, 2017 (the “**Initial Order Affidavit**”), a copy of which is attached without exhibits as Exhibit “A”. Unless otherwise indicated, all amounts in this affidavit are in Canadian dollars.
  
4. This affidavit is organized in the following sections:

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## Background

5. On June 22, 2017 (the “**Filing Date**”), the Sears Canada Group was granted protection under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) pursuant to an initial order of the Ontario Superior Court of Justice (Commercial List) (the “**Initial Order**”). The Initial Order, a copy of which is attached as Exhibit “B”, among other things:

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- (a) appointed FTI Consulting Canada Inc. (“**FTI**”) to act as Monitor;
  - (b) approved the engagement of BMO Nesbitt Burns Inc. as financial advisor (the “**Financial Advisor**”) to the Sears Canada Group;
  - (c) granted a stay of proceedings in favour of the Sears Canada Group until and including July 22, 2017, or such later date as the Court may order (the “**Stay Period**”); and
  - (d) approved two debtor-in-possession loan facilities (collectively, the “**DIP Facility**”) and associated charges over the Property of the Sears Canada Group, which DIP Facility provides that no draws can be made thereunder prior to the Comeback Hearing (as defined in the Initial Order).
6. The Initial Order also provides that the Comeback Hearing shall be held on July 13, 2017.

#### **Appointment of Representative Counsel**

7. In addition to granting the Initial Order, the Court made an endorsement (the “**Representative Counsel Endorsement**”) on the Filing Date. The Representative Counsel Endorsement provided that: (i) Koskie Minsky LLP would be appointed representative counsel (the “**Pension Representative Counsel**”) for active employees and retirees with respect to certain pension and post-employment benefit matters; and (ii) Ursel Phillips Fellows Hopkinson LLP would be appointed as representative counsel (“**Employee Representative Counsel**”, and collectively with the Pension Representative Counsel, the “**Representative Counsel**”) for current and former employees whose rights are affected by the Initial Order with respect to



matters not within the scope of the Pension Representative Counsel, subject to (a) the comeback rights of any interested person to be heard on July 13, 2017 and (b) the terms of engagement to be reflected in one or more further orders of the Court (collectively, the “**Representative Counsel Orders**”).

8. The Sears Canada Group is in discussions with the Monitor and Representative Counsel to negotiate the final terms of the Representative Counsel Orders.

#### **Overview of the Sears Canada Group’s Activities Since the Initial Order**

9. Since the granting of the Initial Order, the Sears Canada Group, in close consultation and with the assistance of the Monitor, has been working diligently to stabilize its businesses and operations as part of these CCAA proceedings. The Sears Canada Group has responded and continues to respond to numerous creditor and stakeholder inquiries on a daily basis.

10. Two hundred and twenty-two of the Sears Canada Group’s stores have remained operational since the granting of the Initial Order. As part of its stabilization efforts, the Sears Canada Group has worked closely with the Monitor to establish lines of communication with many of its stakeholders with a view to, among other things, ensure the ongoing supply of goods and services to the Applicants.

11. In accordance with the Initial Order, on June 22, 2017, the Monitor made the Initial Order publicly available on the Monitor’s website (the “**Website**”) at <http://cfcanada.fticonsulting.com/Searscanada> in the manner prescribed under the CCAA. On June 24, 2017 and June 27, 2017, respectively, the Monitor published a notice in La Presse and

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the Globe and Mail (National Edition) containing the information prescribed under the CCAA. On June 27, 2017, the Monitor sent a notice to, among others, all of the Sears Canada Group's known creditors who had claims over \$1,000. Additionally, on June 26, 2017, the Monitor made publically available on the Website a list containing the names and addresses of those creditors and the estimated amounts of their claims (subject to the exclusions required by the Initial Order). In addition, a general hotline and an email address were established by the Monitor to deal with inquiries from stakeholders related to the CCAA proceedings.

12. The efforts of the Sears Canada Group and the Monitor have been focused on stabilizing the business, and management continues, with the assistance of the Monitor, to work with its vendors and other stakeholders to address issues that have arisen in the context of these CCAA proceedings.

A. Employees

13. On the Filing Date, the Sears Canada Group advised all of its employees that the Sears Canada Group had applied for protection from its creditors under the CCAA and provided them with information about the CCAA proceedings. Additionally, Sears Canada held town hall meetings for its head office employees in Toronto.

14. On June 22, 2017, the Sears Canada Group provided notices of termination to approximately 300 head office employees. On that same day, the Sears Canada Group also provided notices of termination to approximately 2,500 of its store-level employees who work in stores that will be closed, with the vast majority of these employees receiving 15 weeks' working notice of termination to coincide with the projected end date for the liquidation of the inventory in those stores.

15. Since the granting of the Initial Order, the Sears Canada Group has had numerous discussions and communications with Employee Representative Counsel, both directly and through its counsel, Osler, Hoskin & Harcourt LLP (“Osler”). I am advised by Sven Poysa of Osler and believe that Employee Representative Counsel has taken the following steps in accordance with its mandate: (i) drafted a letter to employees concerning the CCAA proceedings and the appointment of Employee Representative Counsel to be sent to active employees by way of mail, email, and/or posting on the my.sears portal, in each case facilitated by the Sears Canada Group, and to former employees by way of mail and posting on the my.sears portal; (ii) established a toll-free dedicated phone line and a dedicated email address through which the Sears Canada Group employees can obtain information about this CCAA proceeding; (iii) created a dedicated webpage and posted information for the Sears Canada Group employees on its webpage, which is being regularly updated; and (iv) responded to inquiries from employees.

**B. Pensioners**

16. In the Initial Order Affidavit, I noted that the Applicants intended to provide specific notice of the Comeback Hearing to individuals who are members, former members or retired members with entitlements under the DB Component of the Sears Pension Plan and to individuals who are surviving spouses of a deceased member, former member or retired member where such surviving spouse has an entitlement to a benefit under the DB Component of the Sears Pension Plan (collectively, the “**DB Participants**”).

17. On June 29, 2017, the Sears Canada Group sent a letter by way of email to current employee DB Participants (the “**DB Continuing Employee Notice Letter**”). A copy of the DB Continuing Employee Notice Letter (both English and French) is attached to this affidavit as Exhibit “C”.

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18. Between June 29 and June 30, 2017, the Sears Canada Group sent a letter by way of mail to all of the approximately 15,000 retirees, surviving spouses and former employees who are DB Participants and/or who had entitlement to receive benefits under the PRB Plan (the “**DB Former Employee Notice Letter**”). A copy of the DB Former Employee Notice Letter (both English and French) is attached to this affidavit as Exhibit “D”.
19. On June 29, 2017, a letter was sent to the four individuals receiving a pension under the Supplemental Plan who were either terminated or retired on or after January 1, 2010 (the “**Supplemental Plan Notice Letter**”, and collectively with the DB Continuing Employee Notice Letters and DB Former Employee Notice Letters, the “**Notice Letters**”). A copy of the Supplemental Plan Notice Letter (both English and French) is attached to this affidavit as Exhibit “E”. All individuals who were sent the Supplemental Plan Notice Letter were also sent the DB Former Employee Notice Letter.
20. The Notice Letters were sent following consultation with the Pension Representative Counsel. The Sears Canada Group enclosed a letter from the Pension Representative Counsel with each of the Notice Letters. A copy of this letter (both English and French) is attached to this affidavit as Exhibit “F”.
21. All of the Notice Letters provide notice that: (i) the Sears Canada Group was granted creditor protection under the CCAA; (ii) Koskie Minsky was appointed as the Pension Representative Counsel; and (iii) the Comeback Hearing will be on July 13, 2017, at which time the Court may deal with issues of interest to the recipient including, among other things, the suspension of special payment contributions by Sears Canada to the Sears Pension Plan, the suspension of retiree health and dental benefit payments, and the suspension of premium

payments with respect to retiree life insurance benefits. The Supplemental Plan Notice Letter specifically notes that the Comeback Hearing may address these issues and additionally the issue of suspending payments under the Supplemental Plan.

22. The DB Former Employee Notice Letter specifically indicates that any further notice of changes to retiree benefits (including retiree health and dental benefits and retiree life insurance benefits) will be provided following the Comeback Hearing by way of an update to the Website. In particular, recipients were notified that it may be advisable to refer to the Website or to contact the Pension Representative Counsel immediately after the Comeback Hearing with respect to the potential ability to convert health, dental and life insurance benefits under the PRB Plan.

23. Additionally, copies of all Notice Letters were provided to the five unions described in the Initial Order Affidavit on June 29, 2017.

**C. Customers**

24. The Sears Canada Group has communicated with its customers regarding these CCAA proceedings, including in a communication to customers from the Chief Executive Officer and through its customer call centre.

**D. Suppliers and Other Third Parties**

25. Since filing for CCAA protection, the Sears Canada Group, in close consultation with the Monitor, has been in contact with an extensive number and wide variety of vendors and suppliers. On June 22, 2017, the Sears Canada Group sent an email notification to its vendors and suppliers to advise them of the CCAA proceedings and to advise them that the Sears Canada

Group will continue going concern operations during its restructuring and that it intends to pay its suppliers and vendors in the normal course post-filing.

26. The Sears Canada Group's senior management has also spoken directly with a number of the Sears Canada Group's vendors and suppliers. The Monitor participated in many of these calls. Further, counsel for the Sears Canada Group, the Monitor and counsel for the Monitor have communicated with counsel representing a number of suppliers to discuss various supplier issues.

27. The Sears Canada Group is working diligently with the Monitor to attempt to consensually resolve creditor and supplier issues as they arise as part of the stabilization of the business. This includes considering requests for payment of pre-filing obligations and for security deposits to secure post-filing obligations, dealing with the ongoing needs of the business and operations, and answering general questions about the CCAA process and how it will affect particular suppliers or other creditors.

28. A number of the Sears Canada Group's suppliers have continued to supply goods to the Sears Canada Group post-filing based on existing arrangements or variations negotiated between the Sears Canada Group and the suppliers.

29. The Sears Canada Group has begun the process of disclaiming agreements, including a variety of agreements relating to business lines that will no longer be continuing as part of the go-forward business. These disclaimers will require the consent of the Monitor.

**E. Regulators**

30. Counsel to the Sears Canada Group notified the Investment Industry Regulatory Organization of Canada (“**IROC**”), the Toronto Stock Exchange (“**TSX**”) and the NASDAQ Stock Market LLC (“**NASDAQ**”) of the pending CCAA proceedings, on the morning of the Filing Date. IROC temporarily suspended trading in Sears Canada shares on the TSX pending the announcement of the CCAA proceeding. On June 28, 2017, the TSX determined to delist Sears Canada’s common shares effective at the close of market on July 28, 2017, unless Sears Canada requested an appeal of that decision to delist the shares. Sears Canada does not intend to appeal the decision.

31. On the Filing Date, Sears Canada received notice from the Listing Qualifications Department of the NASDAQ indicating that Sears Canada’s common shares would be delisted and that it would suspend trading in the common shares at the opening of business on July 3, 2017, unless Sears Canada requested an appeal of that decision to delist the shares. Sears Canada did not appeal the decision.

32. Sears Canada has also notified the Financial Services Commission of Ontario (“**FSCO**”) and the Superintendent of Financial Services (the “**Superintendent**” and together with FSCO, the “**Ontario Pension Regulators**”) of these CCAA proceedings. Counsel for the Superintendent attended the initial Court hearing on June 22, 2017. Sears Canada has and will continue to engage in discussions with the Ontario Pension Regulators.

**F. Landlords**

33. The Sears Canada Group and the Monitor have engaged in discussions with various landlords and their counsel in respect of these CCAA proceedings. The Sears Canada

Group, with the assistance of the Monitor and the Financial Advisor, intends to continue to discuss matters with landlords throughout these CCAA proceeding.

**G. DIP Facility**

34. Consistent with the provisions of the DIP Credit Agreements, the Sears Canada Group has not drawn on the DIP Facility since the Filing Date and it is not permitted to do so until after the Comeback Hearing. For clarity, the issuance of orders satisfactory to the DIP Lenders on the Comeback Hearing is a condition precedent to the initial draws under the DIP Credit Agreements.

35. Before making any advances under the DIP Facility, the DIP Lenders require that the Initial Order be amended and restated to include a provision which provides that: (i) the Initial Order is subject to provisional execution; and (ii) any subsequent variations to the Initial Order will not impair or limit the priority, protections, rights or remedies of the DIP Lenders in the Initial Order or under the DIP Credit Agreements prior to the DIP Lenders receiving notice of the variation. As such, the Sears Canada Group is seeking to amend the Initial Order to include such a provision. The proposed language of the amendment is set out in the draft Amended and Restated Initial Order appended to the Motion Record as Schedule "C" to the Notice of Motion.

**Request to Suspend Special Payments for the DB Component of the Sears Pension Plan**

36. As noted in the Initial Order Affidavit, the Sears Pension Plan consists of a defined benefit component ("**DB Component**") and a defined contribution component ("**DC Component**") and is registered under the Ontario *Pension Benefits Act*, R.S.O. 1990, c. P.8 (the "**PBA**") and the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp) (the "**ITA**"). The DB Component



was closed to new entrants as of June 30, 2008. Further information regarding the Sears Pension Plan is set out in the Initial Order Affidavit.

37. As at December 31, 2015, the hypothetical wind-up deficit under the DB Component of the Sears Pension Plan was approximately \$266.8 million and the transfer (wind-up) ratio was 81%. Pursuant to the PBA and regulations made under the PBA, and based on the actuarial valuation report for the Sears Pension Plan as at December 31, 2015, Sears Canada is currently obligated to make special payments to the Sears Pension Plan in equal monthly installments of approximately \$3.7 million in respect of the DB Component of the Sears Pension Plan. The Sears Canada Group has met all of its contribution obligations to the Sears Pension Plan under the legislation to date, including making a special payment of approximately \$3.7 million on June 30, 2017.

38. The special payment obligations are a significant strain on the liquidity available to the Applicants in order to conduct going-concern operations, and accordingly the Cash Flow Forecast does not provide for any special payments beyond the June 30, 2017 payment. The Cash Flow Forecast currently projects a negative net cash flow for all forecast months, even without the payment of special payments.

39. The Sears Canada Group generally requires a minimum of \$30 million in available cash in order to function with sufficient cushion to meet its ongoing obligations and the contingencies which may occur in the regular course of business. For instance, the Sears Canada Group's payroll payments result in the outflow of approximately \$27 million per month, which is only one of many significant transactions that occur throughout the month.

40. During the CCAA proceedings, the Applicants' projections rely on the financing available under the DIP Credit Agreements to maintain a minimum cash balance each month and for their continued operations. The DIP Credit Agreements require that the Sears Canada Group: (i) comply with a budget (the "**DIP Budget**") that is based on the Cash Flow Forecast subject to permitted variances; and (ii) use any DIP advances in accordance with the DIP Budget subject to permitted variances. When the DIP Budget was prepared, given the strain which the special payments place on the Applicants' cash and credit availability, it did not provide for the continuation of the special payments after June 30, 2017. The permitted variances were meant to provide for contingencies that may arise for a business of this size and scope during the CCAA proceedings, and the continuation of special payments significantly increases the risk that these permitted variance thresholds will be exceeded. The DIP Lenders have advised that they will not agree to a modification of the DIP Budget that would include continuing special payments.

41. Pursuant to the DIP Credit Agreements, should the Applicants' actual performance vary from the DIP Budget in excess of the permitted variances, during applicable testing periods, there will be an event of default under the DIP Credit Agreements after the expiry of a three day cure period.

42. In the absence of an order suspending special payments, the likelihood that the Sears Canada Group will exceed the variances permitted under the DIP Facility will significantly increase. In this event, the Sears Canada Group will no longer be able to access funds under the DIP Facility and will therefore be unable to maintain sufficient liquidity or achieve the necessary stability required to continue operating as a going concern during these proceedings. Absent the ability to draw on the DIP Facility in accordance with the Cash Flow Forecast, the Sears Canada

Group will likely be forced to shut down its operations, which would have a catastrophic impact on its employees, suppliers, landlords and other stakeholders.

43. The Applicants intend to continue to make normal contributions with respect to the DC Component of the Sears Pension Plan, as well as the other defined contribution pension plans described in the Initial Order Affidavit.

44. The Sears Canada Group is therefore seeking an order authorizing the suspension of the special payments with respect to the DB Component of the Sears Pension Plan.

#### **Suspension of Supplemental Plan Payments**

45. As described in greater detail in the Initial Order Affidavit, the Supplemental Plan provides enhanced pension benefits to certain members of the DB Component of the Sears Pension Plan that are in excess of the benefits that are permitted to be provided under the Sears Pension Plan as a result of the maximum pension benefit limits under the ITA. As with the DB Component of the Sears Pension Plan, the Supplemental Plan only provides pension benefits to participating employees in respect of periods of pensionable service prior to July 1, 2008.

46. The Supplemental Plan is not a registered plan and is not subject to the solvency/wind up funding requirements under the PBA. Benefits under the Supplemental Plan are paid in two ways:

- (a) **For individuals that terminated active service prior to January 1, 2010 (“Pre-2010 SP Pensioners”):** Supplemental Plan benefits are provided from assets held in a trust fund (also known as a retirement compensation arrangement (“RCA”). The trustee of the assets in the RCA is CIBC Mellon Trust Company (the “RCA

Trustee”). As at the Filing Date, the RCA Trustee held a letter of credit with a face value of \$6.8 million; and

- (b) **For individuals whose active service ended on or after January 1, 2010 (“Post-2010 SP Pensioners”):** Supplemental Plan benefits are paid directly by Sears Canada through its general revenues on a pay-as-you-go basis.

47. With respect to the Post-2010 SP Pensioners, the Sears Canada Group has continued to pay Supplemental Plan benefits following the granting of the Initial Order in the amount of approximately \$7,000 per month. However, in light of the request to suspend special payments, the Sears Canada Group believes that it would not be equitable to continue to make payments in respect of Supplemental Plan benefits. Moreover, the Cash Flow Forecast and the DIP Budget do not provide for these payments to continue following the Comeback Hearing.

48. With respect to the Pre-2010 SP Pensioners, the terms of the RCA trust agreement require the RCA Trustee to continue to make pension payments pursuant to the Supplemental Plan. On June 26, 2017, the RCA Trustee provided notice to Sears Canada that the CCAA proceedings amounted to an event of default under the RCA trust agreement. Pursuant to the RCA trust agreement, upon an event of default, the RCA Trustee must take steps to terminate the RCA trust and distribute the assets to the beneficiaries. This process includes demanding payment under the RCA letter of credit and requiring the actuary to prepare a final actuarial report for the funded portion of the Supplemental Plan.

49. As at December 31, 2015, the funded portion of the Supplemental Plan (without taking into account any letters of credit) had a wind-up deficit of approximately \$8.4 million. In

addition to the \$6.8 million letter of credit, Sears Canada made a cash contribution to the RCA trust of approximately \$1.8 million in December 2016. Until the final actuarial report is completed, it is uncertain whether there will be any deficit in respect of those Supplemental Plan beneficiaries whose benefits are provided for pursuant to the RCA.

50. In the event that the assets of the RCA trust are insufficient to fully provide for the wind-up liability relating to each Pre-2010 SP Pensioner, then each Pre-2010 SP Pensioner has a claim against Sears Canada for the amount that the assets distributed to each Pre-2010 SP Pensioner are less than the wind-up liability relating to that Pre-2010 SP Pensioner (“**SP Shortfall Amount**”). I am advised by Anthony Devir of Osler and believe that there is no deemed trust arising under the PBA that is created by the wind-up of the RCA trust because it is not a registered pension plan.

51. For similar reasons as described above with respect to the special payments, and because any SP Shortfall Amount is uncertain, the Cash Flow Forecast and the DIP Budget do not provide for these payments.

52. The Sears Canada Group is therefore seeking a declaration approving the suspension of: (i) any payments in respect of the Supplemental Plan to the Post-2010 SP Pensioners; and (ii) any payments required in respect of any Shortfall Amounts in respect of the Pre-2010 SP Pensioners.

### **PRB Plan**

53. Certain full-time associates hired by the Sears Canada Group prior to 1999 that met the requisite age and service requirements by December 31, 2008 are eligible for coverage

for post-retirement life, health and dental benefits under the PRB Plan. Benefits under the PRB Plan are provided through a health and welfare trust on a pay-as-you-go basis. There are currently no assets in the health and welfare trust. The administration of these benefits is done by Sun Life Assurance Company of Canada (“Sun Life”).

**A. Suspension of Post-Retirement Health and Dental Benefits**

54. Approximately 4,350 retirees and surviving spouses have coverage with respect to post-retirement health and dental benefits under the PRB Plan. The average cost of continuing to pay post-retirement health and dental benefits amounts to approximately \$765,000 monthly, plus tax, with an additional monthly payment of approximately \$39,000 for Sun Life’s administration fees. These amounts fluctuate depending on the amount of claims made.

55. The Sears Canada Group has continued to pay post-retirement health and dental benefits following the granting of the Initial Order. However, for the same reasons as outlined above with respect to the special payments, the Sears Canada Group cannot continue to make these payments. The Cash Flow Forecast and the DIP Budget do not provide for these payments to continue following the Comeback Hearing.

56. The Sears Canada Group is therefore seeking a declaration approving the suspension of any further payments in respect of the post-retirement health and dental benefits effective July 31, 2017 for all claims submitted and received after such date.

**B. Suspension of Post-Retirement Life Insurance Premium Payments**

57. Approximately 3,700 individuals are entitled to life insurance benefits through a group life insurance policy with Sun Life under the PRB Plan. The cost of continuing to make

life insurance premium payments under the policy amounts to approximately \$245,000 monthly, plus tax.

58. Historically, the Sears Canada Group has made these premium payments quarterly in arrears. As at the Filing Date, pursuant to an arrangement between Sun Life and the Sears Canada Group that supplemented the life insurance policy, Sun Life was holding the approximate amount of the quarterly arrears payment due on June 30, 2017 in a Deposit Fund. Under the terms of the arrangement with Sun Life, the Sears Canada Group is able to direct Sun Life as to the use of the funds held in the Deposit Fund. Therefore, the Sears Canada Group has directed Sun Life to apply the amount it holds as a credit in satisfaction of the June 30<sup>th</sup> payment, and Sun Life is in the process of implementing that direction. Sun Life has requested that the Sears Canada Group now pay the premium payments monthly in advance in accordance with the terms of the policy. The Sears Canada Group intends to pay the premium payment for July prior to the Comeback Hearing.

59. For the same reasons as outlined above with respect to the special payments, the Sears Canada Group cannot continue to make payments in respect of the life insurance benefits, including premiums for life insurance coverage. The Cash Flow Forecast and the DIP Budget do not provide for these payments to continue following the Comeback Hearing.

60. The Sears Canada Group is therefore seeking a declaration approving the suspension of any further payments in respect of the life insurance benefits, including premiums for life insurance coverage, effective immediately. As the July premium payment will be made but the August premium payment will not be made, life insurance coverage under the policy will

terminate as of the end of the 31 day grace period under the life insurance policy, that is as of August 31, 2017.

### **Update on Liquidation Process**

61. As described in the Initial Order Affidavit, the Sears Canada Group identified 59 store locations for closure as part of its operational restructuring in these CCAA proceedings. The store closures, which include a number of Hometown dealer locations, will take effect after the liquidation of inventory and goods (“**Inventory**”), including certain furniture, fixtures and other store equipment (“**FF&E**”), located at the closing store locations.

62. The Sears Canada Group, in consultation with the Monitor and the Financial Advisor, and with input from the counsel to the DIP Lenders, has prepared a set of standard guidelines (the “**Sale Guidelines**”) that will apply to the liquidation of Inventory and FF&E. A copy of the Sales Guidelines is appended as Exhibit “G” to this Affidavit. Capitalized terms that are not otherwise defined in this section of my Affidavit have the meaning given to them in the Sale Guidelines.

63. The Sales Guidelines provide, among other things, that:

- (a) the Sale shall be conducted in accordance with the terms of the applicable leases or other occupancy agreements for each of the affected Stores, except as otherwise set out in a court order, the Sales Guidelines, or any subsequent written agreement between Sears Canada and the applicable Landlord;



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- (b) the Sale shall be conducted so that each of the Stores remains open during their normal hours of operation provided for in the applicable lease until the Vacate Date for each Store, and in all cases no later than October 5, 2017;
- (c) all display and hanging signs used in connection with the Sale shall be professionally produced and all hanging signs shall be hung in a professional manner. Signs shall not advertise the Sale as a “bankruptcy”, “liquidation” or “going out of business” sale;
- (d) with the exception of small FF&E items that will fit into a shopping bag, the purchasers of FF&E shall only be permitted to remove the FF&E through the back shipping areas designated by the Landlord or through other areas after regular store business hours, with the Landlords’ supervision as required by the Landlord, in accordance with the Initial Order and the proposed Approval Order;
- (e) Sears Canada 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 Sears Canada to identify the FF&E that is subject to the Sale; and
- (f) Sears Canada shall not conduct any auctions of merchandise or FF&E at any of the Stores.

64. The Sears Canada Group, in consultation with the Financial Advisor and the Monitor, is evaluating its options for the best way to maximize the value of the Applicants’

Inventory and FF&E in the closing stores for the benefit of its stakeholders. The Applicants expect to file motion materials in the next few days seeking the Court's approval of a process to liquidate the affected Inventory and FF&E, including the approval of the Sale Guidelines. In the event the Applicants seek court approval to use a third party to conduct the liquidation, the Sale Guidelines will be modified accordingly.

### **Sale and Investment Solicitation Process**

65. The Initial Order granted the Applicants the right to pursue a refinancing, restructuring, sale and/or reorganization of the Business or Property (as defined therein), subject to prior approval of the Court. The Court also approved the engagement of the Financial Advisor in connection with the implementation of a restructuring plan. Since the commencement of these CCAA proceedings, the Applicants have been working with the Financial Advisor and Monitor to design and implement a comprehensive and flexible sale and investment process as part of these CCAA proceedings.

66. The Applicants are therefore seeking the Court's approval of a sale and investment solicitation process (the "SISP") which will be conducted by the Financial Advisor on behalf of Sears Canada, under the supervision of the Monitor and the Special Committee of the Board of Directors of Sears Canada, comprised solely of independent directors (the "Special Committee"). The purpose of the SISP is to seek out proposals for the acquisition of or investment in the Applicants' business, property and/or leases, and to implement one or a combination of such proposals.

67. References to Sears Canada in the SISP shall refer to the Special Committee in circumstances where the integrity of the SISP so requires, as determined by the Special

Committee or any of the advisors, the Financial Advisor or the Monitor. The Special Committee or its designate may participate in the negotiations under the SISP and shall give instructions to Sears Canada's advisors in respect of or relating to this process.

68. I am advised by the Financial Advisor and believe that the proposed SISP will help identify the best opportunities in the circumstances for maximizing value for the Applicants' stakeholders. The Monitor has advised that it supports the Applicants' request to approve and implement the SISP. The proposed SISP is attached as Exhibit "H" to this Affidavit. Capitalized terms that are not otherwise defined in this section of my Affidavit have the meaning given to them in the SISP.

69. The SISP provides that the Financial Advisor and Sears Canada, with the assistance of its advisors and in consultation with the Monitor, will solicit interest from parties to enter into non-disclosure agreements ("NDAs") which will allow them to participate in the SISP and to access an electronic data room of due diligence information.

70. The Financial Advisor may also, in consultation with Sears Canada and the Monitor, engage local market leasing agents or real estate brokers to solicit Binding Bids or Binding Lease Proposals for discrete assets or assignments of leases.

71. The SISP provides for two concurrent bid / proposal deadlines:

- (a) Landlords that wish to make a proposal in connection with existing Leases to which they are a party may submit binding proposals (a "**Binding Lease Proposal**") to the Financial Advisor by no later than 5:00 p.m. EST on August

15, 2017 (the “**Binding Lease Proposal Deadline**”), with a contemporaneous copy delivered to the Monitor; and

- (b) Other parties interested in pursuing a transaction may submit binding offers based on the relevant forms of Transaction Documents (a “**Binding Bid**”), to the attention of the Financial Advisor by no later than 5:00 p.m. EST on August 31, 2017 (the “**Binding Bid Deadline**”), with a contemporaneous copy delivered to the Monitor.

72. The requirements for a Binding Lease Proposal and a Binding Bid are set out in the SISP. A Binding Lease Proposal must include, among other things: (a) an offer letter stating that the proposal is irrevocable for a period of 20 business days after the Binding Bid Deadline; (b) written evidence of a firm, irrevocable commitment for financing; and (c) a duly executed transaction agreement. A lease proposal cannot be conditional on due diligence or financing. In addition, to the extent that a landlord intends to submit a proposal contemplating a material modification of the Lease (a “**Lease Modification Proposal**”), such Lease Modification Proposal must contain landlord consent that the Financial Advisor and Sears Canada may share such Lease Modification Proposal with other bidders in the SISP who have signed NDAs.

73. Among other things, a Binding Bid must include: (a) an offer letter stating that the bid is irrevocable for a period of 20 business days after the Binding Bid Deadline; (b) written evidence of a firm, irrevocable commitment for financing; (c) a separate allocation of value to each individual Asset or Lease subject to the bid that is the subject of a valid and enforceable right of first refusal, option or similar right; (d) a cash deposit of 10% of the total cash purchase price contemplated by the bid (to be paid to the Monitor and held in trust); and (e) a duly

executed transaction agreement. A Binding Bid cannot be conditional on due diligence or financing, and cannot include any request for or entitlement to any break fee, expense reimbursement or similar type of payment.

74. Sears Canada, with the consent of the Monitor, the Financial Advisor and the DIP Lenders, may waive compliance with any of the requirements set out in the SISP and deem a non-compliant bid or lease proposal to be a Binding Bid or Binding Lease Proposal, respectively, with the exception of a bid or proposal that is received after the Binding Bid Deadline or Binding Lease Proposal Deadline, as applicable.

75. Following the Binding Lease Proposal Deadline and the Binding Bid Deadline, as applicable, Sears Canada shall consult with the Financial Advisor, the Monitor, and the DIP Lenders and decide whether to continue negotiations with a selected number of bidders that have submitted Binding Bids and/or Binding Lease Proposals, with a view to selecting one or more non-overlapping Bindings Bids and/or Binding Lease Proposals (collectively, the “**Successful Bid(s)**”), upon approval of the Board of Directors of Sears Canada.

76. Sears Canada has no obligation under the SISP to conclude a sale or investment transaction arising out of the process. It reserves the right to reject any bid or proposal, with the approval of the Monitor and after consultation with the DIP Lenders. If Sears Canada does select any Successful Bid(s), it will not be under any obligation to accept the highest bid.

77. If one or more Successful Bid(s) is selected, Sears Canada and its advisors, in consultation with the Monitor, will take steps to finalize any necessary definitive agreement(s) with respect to the Successful Bid(s) in a form and substance acceptable to the DIP Lenders and

the Board of Directors of Sears Canada. Sears Canada will then apply to the Court for an order approving the Successful Bid(s) and authorizing it to: (i) enter into any and all necessary agreements with respect to the Successful Bid (s); (ii) undertake such other actions as may be necessary to give effect to such Successful Bid(s); and (iii) implement the transaction(s) contemplated in such Successful Bid(s).

78. Any sale will be on an “as is, where is” basis and without surviving representations or warranties of any kind, nature, or description, except to the extent set forth in a definitive transaction agreement executed by an Applicant with a Successful Bidder.

79. Sears Canada may amend the SISP at any time, but only with the written consent of the Special Committee, the Monitor and the DIP Lenders, or by further order of the Court.

80. In addition, Sears Canada, in its reasonable business judgment and in consultation with the Financial Advisor, the Monitor and the DIP Lenders may, from time to time, withdraw any Leases or Assets from the SISP in accordance with the CCAA or the Initial Order.

81. If a DIP Lender intends to participate as a bidder in the SISP, such party must provide written notice of such intention (the “**Participation Notice**”) to the Financial Advisor, with a copy to the Monitor, on or before July 17, 2017 (the “**Participation Notice Deadline**”). A DIP Lender who delivers a Participation Notice shall not be entitled to any Bid Information or Confidential Information (each as defined below). A DIP Lender who has not delivered a Participation Notice by the Participation Deadline cannot participate as a bidder in the SISP.

82. Pursuant to the proposed SISP, the Financial Advisor will provide regular updates to the DIP Lenders and their advisors with respect to matters related to the process. However, any information relating to the SISP that is provided by the Financial Advisor, Sears Canada, the Monitor or their advisors to any of the DIP Lenders or their advisors, including regarding any participants or bids received (“**Confidential Information**”) is not permitted to be shared with anyone other than any other DIP Lenders or the DIP Lenders’ advisors, without the consent of Sears Canada and the Financial Advisor, in consultation with the Monitor.

83. The Monitor will maintain a list of personnel and/or categories of personnel who have a need to know the Bid Information (the “**Restricted Process Observers**”). This list will include representatives of the Financial Advisor, Osler, the Monitor, the Monitor’s counsel and the DIP Lenders. Certain highly sensitive information will be provided on a strictly confidential basis only to the Restricted Process Observers, including: the identity of the bidders; the particular assets, leases and/or business that are the subject of the bid or proposal; the proposed purchase price; the number of bidders that are considering or have submitted binding bids or proposals; and copies of the bids or proposals received (“**Bid Information**”). Restricted Process Observers shall only be permitted to share such confidential Bid Information with other Restricted Process Observers, unless the prior written consent of the Monitor, in consultation with the Financial Advisor, is obtained. The Monitor has expressed its support for this protocol.

84. Members of Sears Canada’s management team that are involved in the design and development of any bid or proposal will not be provided with Confidential Information or Bid Information, including information about any Binding Bids or Binding Lease Proposals that third parties have made or information about whether any particular party has made a Binding Bid or

Binding Lease Proposal. The SISP provides that an interested party shall not communicate with management of Sears Canada without one of the Financial Advisor, the Monitor or Osler present. All communications relating to a potential bid must be addressed to the Financial Advisor. All interested parties must adhere to the following communication protocol:

- (a) members of Sears Canada's management team will only be available to prospective bidders at times scheduled by the Financial Advisor as it deems necessary to advance the SISP, provided that such meetings or other communications with management are supervised by one of the Financial Advisor, the Monitor or Osler; and
- (b) members of Sears Canada's management and outside advisory teams have been instructed to direct any and all inquiries from prospective bidders to the Financial Advisor.

85. The SISP provides that failure to adhere to the communication protocol may result in disqualification of the interested party from the process and/or the rejection of any bid or proposal made by such party. The Financial Advisor has advised that the communication protocol is prudent and reasonable in the circumstances.

86. The SISP has an anticipated completion date for all transactions by October 25, 2017. The Financial Advisor is of the view that the timeframes set out in the SISP are reasonable in the circumstances. The SISP has also been designed to comply with the milestone dates set out in the DIP Credit Agreements, as described in the Initial Order Affidavit.




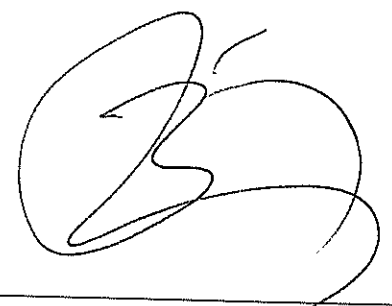
### **Extension of the Stay Period is Appropriate**

87. The Sears Canada Group is seeking to extend the Stay Period up to and including October 4, 2017. The extension of the Stay Period is necessary and appropriate in the circumstances to allow for the continued operation of the Sears Canada Group's business during the implementation of the proposed SISP, the implementation of a liquidation process for the closing stores, and the continuation of discussions with the Applicants' stakeholders. October 4, 2017 is the deadline provided in the DIP Credit Agreements for the Sears Canada Group to obtain court approval of Successful Bid(s).
88. I believe that the Sears Canada Group has acted and is continuing to act in good faith and with due diligence in these CCAA proceedings since the granting of the Initial Order. As described above, the Sears Canada Group has been working diligently with the Financial Advisor, in consultation with the Monitor and with input from the DIP Lenders, to prepare the SISP and Sale Guidelines and has been in discussions with many of its stakeholders, including landlords, employees, suppliers and creditors.
89. I understand that the Monitor will be providing an updated Cash Flow Forecast which will demonstrate that, with the DIP Facilities, and provided that the Court approves the cessation of special payments, payments under the Supplemental Plan and other post-retirement benefits in the manner described above, the Applicants will have access to sufficient liquidity to fund operations during the requested extension of the Stay Period.

90. The Monitor and the DIP Lenders have each expressed their support for the extension of the Stay Period to October 4, 2017.

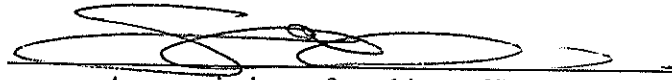
SWORN BEFORE ME at the City of  
Toronto, in the Province of Ontario on  
July 5, 2017.

  
\_\_\_\_\_  
*Commissioner for Taking Affidavits*  
SONJA PAVIC

  
\_\_\_\_\_  
Billy Wong

**TAB A**

**THIS IS EXHIBIT "A" TO THE AFFIDAVIT  
OF BILLY WONG SWORN BEFORE ME  
ON THIS 5<sup>th</sup> DAY OF JULY, 2017.**

A handwritten signature in black ink, consisting of several overlapping loops and a horizontal line at the end, positioned above the printed text.

A commissioner for taking Affidavits

SONJA PAVIC

Court File No.

*Ontario*  
**SUPERIOR COURT OF JUSTICE**  
**COMMERCIAL LIST**

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

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

APPLICANTS

**AFFIDAVIT OF BILLY WONG**  
(Sworn June 22, 2017)

I, Billy Wong, of the City of Toronto, in the Province of Ontario, MAKE OATH  
AND SAY:

1. This Affidavit is made in support of an Application by Sears Canada Inc. (“**Sears Canada**”), Corbeil Électrique Inc. (“**Corbeil**”), 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” or the “Sears Canada Group”) for relief under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “CCAA”).

2. I am the Executive Vice-President and Chief Financial Officer of Sears Canada and have held this position since December 2016. Prior to that, I was the interim Chief Financial Officer from July 2016 and before that held the position of Senior Vice-President, Corporate Financial Planning. I have been employed in Sears Canada’s finance department since March 2015. I am also a director of each of the other Applicants. As such, I have personal knowledge of the matters deposed to in this Affidavit. Where I have relied on other sources for information, I have specifically referred to such sources and believe them to be true. In preparing this Affidavit, I have consulted with legal, financial and other advisors to Sears Canada and other members of the senior management team of Sears Canada. Unless otherwise indicated, all amounts in this Affidavit are in Canadian dollars.

3. This Affidavit is organized in the following sections:

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**Introduction**

4. The Sears Canada Group is one of Canada's largest multi-format retailers, employing approximately 17,000 people at 225 stores across Canada and at its head office in Toronto, Ontario. Sears Canada is a public company listed on the Toronto Stock Exchange and NASDAQ. The principal activities of Sears Canada and its subsidiaries include the sale of goods and services through its full-line department stores, Sears Home, Sears Hometown, Sears Outlet, and Corbeil stores, and via its online sales platform.

5. In addition to its approximately 17,000 employees, the Sears Canada Group's stakeholder groups include customers, vendors of inventory, suppliers of services, franchisees operating Corbeil stores, dealer operators of Hometown stores, retirees, landlords, tenants to whom the Sears Canada Group leases space, and others.

6. In recent years, the Sears Canada Group has experienced a sustained decline in its performance, including substantial declines in revenue, as well as recurring operating losses and net losses, and an erosion of its cash position, which has now resulted in significant liquidity pressures. The Sears Canada Group has considered and implemented a wide range of initiatives over the past few years to transform the business in an attempt to address the serious challenges facing the company and the retail industry more generally.

7. In particular, the Sears Canada Group has taken steps to transform its business from a bricks and mortar chain of retail stores supported by an e-commerce platform to an e-commerce based retailer with supporting stores. These steps include: launching the Initium Commerce Lab, an innovation hub, to design and implement a modernized technology platform



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for Sears Canada; reducing square footage and changing the product mix in its stores through the Sears 2.0 program; launching a new off-price retail business called “The Cut”; closing numerous underperforming stores; improving the efficiency of logistics networks; and reducing costs.

8. In order to provide sufficient funds to implement this operational transformation and to fund its ongoing business operations, the Sears Canada Group has taken a number of actions, including the monetization of real estate assets, sale of joint venture interests, and additional borrowings. Recently, Sears Canada negotiated a new term loan credit facility with two available tranches. The first tranche of the term loan in the amount of US\$93.9 million (CAN \$125 million) was advanced on March 20, 2017. However, the second tranche of up to the U.S. dollar equivalent of CAN\$175 million could not be funded in a timely manner and the anticipated closing was extended from May 4, 2017 to June 30, 2017.

9. As set out in Sears Canada’s press release date June 13, 2017, based on the status of negotiations with the term loan lenders, the amount that Sears Canada could expect to borrow under the second tranche was reduced to an amount up to \$109.1 million before transaction fees. Ultimately, Sears Canada concluded that it was not prudent to encumber its remaining real estate assets for borrowings that were significantly less than \$175 million.

10. On June 13, 2017, Sears Canada also filed its consolidated quarter-end financial statements, which noted that there was significant doubt as to the company’s ability to continue as a going concern. Management was uncertain as to Sears Canada’s ability to continue to satisfy its obligations and implement its business plan in the ordinary course due to Sears Canada’s inability to borrow the full amount of the second tranche of funding and the lack of timely, available alternative sources of liquidity. Without additional liquidity, the Sears Canada Group

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can no longer continue to transform its business and rationalize its footprint outside of a CCAA proceeding.

11. Accordingly, as part of the relief sought in this application, the Applicants are seeking approval of two debtor-in-possession loan facilities (collectively, the “**DIP Facility**”) with its existing lenders. I believe that the DIP Facility is the only available option for the Applicants to keep the vast majority of its workers employed and maintain going concern operations for the benefit of its stakeholders. The proposed DIP Facility is intended to provide the Sears Canada Group with stability, additional time, and the necessary liquidity to complete its operational restructuring as part of these CCAA proceedings.

12. The Sears Canada Group is entering these proceedings with the intention of emerging as a stronger, more focused competitor in the Canadian retail industry. It plans to continue to operate a large number of stores, maintain significant employment, and service its customers across Canada. However, in order to complete the Sears Canada Group’s transformation and to right-size its business, the Sears Canada Group will be closing a number of stores, exiting business lines, reducing operating costs, and implementing headcount reductions. Management expects that the company that emerges from this CCAA proceeding will be well-positioned to capitalize on the opportunities that exist in the Canadian retail marketplace. The Sears Canada Group is already seeing promising signs of growth as Sears Canada’s same store sales increased by 2.9% in the first quarter of Fiscal 2017, compared to the same quarter last year.

13. The Applicants require a stay of proceedings and related relief under the CCAA in order to continue operating and restructuring their businesses, with the ultimate goal of

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maximizing enterprise value through one or more restructuring transactions for the benefit of their stakeholders, including potentially developing a plan of compromise and arrangement as part of these CCAA proceedings.

14. If an Initial CCAA Order is granted, the Applicants intend to promptly serve a motion or motions seeking this Court's approval of:

- (a) a comprehensive and flexible sale and investor solicitation process that will seek and evaluate a broad range of potential transactions (the "SISP"), to be conducted by BMO Nesbitt Burns Inc. ("**BMO Capital Markets**") under the supervision of the Proposed Monitor. It is contemplated that the process will be open to both third parties and the company's landlords;
- (b) the liquidation of inventory in certain stores that will be closing as part of these proceedings and associated sale guidelines; and
- (c) the Sears Canada Group ceasing to: (i) make special payments with respect to the defined benefit portion of the Sears Pension Plan (defined below) and (ii) make payments with respect to other post-retirement benefits under the PRB Plan (defined below).

#### **Corporate Structure of the Sears Canada Group**

15. Sears Canada was incorporated under the laws of Canada by letters patent dated September 17, 1952 and was continued under the *Canada Business Corporations Act* by articles of continuance effective May 15, 1980. By articles of amendment effective May 31, 1984, it

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changed its name from Simpsons-Sears Limited to Sears Canada Inc. By articles of amalgamation dated January 1, 1994, December 29, 1996 and December 30, 1999, Sears Canada was amalgamated with various wholly-owned subsidiaries.

16. Sears Canada is the ultimate parent company of the Sears Canada Group and the other Applicants are all direct or indirect wholly-owned subsidiaries of Sears Canada. A chart showing the organizational structure of the Sears Canada Group as of today's date is attached as Exhibit "A" to this Affidavit. The corporate chart also shows Sears Canada's relationship with its major shareholders.

**A. Sears Canada's Subsidiaries**

17. The following are descriptions of Sears Canada's key subsidiaries, which are all Applicants in this proceeding:

- (a) **Corbeil Électrique Inc.** – a Quebec corporation that carries on the Corbeil specialty retail business from Corbeil branded corporate and franchised stores. Corbeil has a separate management structure from the rest of the Sears Canada Group's retail business, although Sears Canada provides Corbeil with legal and financial support services. It employs approximately 170 people directly. Additionally, approximately 130 people are employed by Corbeil franchisees;
- (b) **S.L.H. Transport Inc. ("SLH") and 168886 Canada Inc.** – SLH is a Canadian corporation that transports merchandise to and from stores and merchandise pick-up locations for Sears Canada. It also provides transportation services to various third party customers. SLH employs approximately 380 people located in Ontario

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and Quebec. Additionally, SLH wholly-owns 168886 Canada Inc. which employs approximately 240 employees in other provinces. In addition, SLH contracts with approximately 185 independent contractors who own and operate (or oversee the operation of) their own trucks.

- (c) **The Cut Inc.** – a Delaware corporation that operates as a procurement agent for sourcing off-price inventory for Sears Canada’s new off-price brand that launched in Spring 2017. The Cut Inc. employs approximately 27 full-time employees in New York. The Cut Inc.’s office is embedded within one of Sears Canada’s vendors in New York. Sears Canada funds The Cut Inc.’s payroll and other expenses;
- (d) **Sears Contact Services Inc. (“Sears Contact”)** – a Canadian corporation that operates call centres related to Sears Canada’s business. As part of a return of the call centres to Canada, Sears Contact is in the process of hiring and training employees and currently employs approximately 300 people; and
- (e) **173470 Canada Inc.** – a Canadian corporation that owns 1% of Sears Connect LP, a limited partnership which sells mobile phones, phone plans and long distance plans with various third parties. It has no employees. Sears Canada owns 99% of Sears Connect LP.

18. . Sears Canada’s additional subsidiaries are listed in Schedule A to this affidavit. I am a director for each of the subsidiaries listed above and in Schedule A, along with Philip

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Mohtadi (General Counsel). One or more of Becky Penrice (Chief Operating Officer), Pamela Murphy, Jeff Abbott and Claude De Luca is also a director of the above subsidiaries.

19. With respect to the subsidiaries of Sears Canada: (i) none of them has total assets exceeding 15% of the consolidated assets of the Sears Canada Group, or sales and operating revenues in excess of 10% of the consolidated sales and operating revenues of the Sears Canada Group; and (ii) when taken together, they do not have assets exceeding 20% of the consolidated assets of the Sears Canada Group, or sales and operating revenues exceeding 20% of the consolidated sales and operating revenues of the Sears Canada Group.

20. The wireless, phone and long distance business run by the Sears Canada Group is run by Sears Connect LP. While the limited partnership Sears Connect LP is not an Applicant in this proceeding, the Applicants seek to have a stay of proceedings and other provisions of an Initial Order under the CCAA extended to Sears Connect LP in order to maintain stability through this restructuring process. The business and operations of the Applicants are heavily intertwined with that of Sears Connect LP, as it is wholly-owned by the Applicants and the wireless business run by Sears Connect LP operates out of Sears Canada's stores and online platform.

**B. Sears Canada's Major Shareholders**

21. Sears Canada currently has outstanding 101,877,662 common shares and 2,302,000 options to acquire common shares. No dividends have been paid since 2013.

22. ESL Investments, Inc. and investment affiliates, including Edward S. Lampert, (collectively "ESL"), form the largest shareholder of Sears Canada, both directly through

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ownership in Sears Canada, and indirectly through shareholdings in Sears Holdings Corporation (“Sears Holdings”), a U.S. public company. The major shareholders are as follows:

	# of outstanding common shares	% of outstanding common shares
ESL	46,162,515	45.3%
Sears Holdings	11,962,391	11.7%
Fairholme Capital Management, LLC	20,375,533	20%

23. The directors and officers of Sears Canada, as a group, beneficially own, directly or indirectly, or exercise control or direction over 5,220 common shares, representing less than 1% of Sears Canada’s issued and outstanding common shares.

24. Sears Canada’s most significant agreement with Sears Holdings is a royalty-free license from Sears Holdings’s wholly-owned subsidiary, Sears, Roebuck and Co., to use the name “Sears” as part of its corporate name as well as a royalty-free license to use other brand names, such as Kenmore® and DieHard® (the “**Trademark License Agreement**”). The Trademark License Agreement was amended in October 2014 and in March 2017. A copy of the Trademark License Agreement and the amendments thereto are attached as Exhibit “B” to this Affidavit.

25. Pursuant to the October 2014 amendment, the Trademark License Agreement will continue to apply for so long as Sears Holdings continues to own at least 10% of the voting shares of Sears Canada. In the event Sears Holdings’ ownership interest in Sears Canada is reduced to less than 10%, Sears Canada would continue to have the right to use the trademarks on a royalty-free basis for a period of five years, after which Sears Canada would incur a cost to

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continue to use the “Sears” name and certain other brand names for a transition period not to exceed four years.<sup>1</sup>

26. In January 2017, Sears Holdings agreed to sell the Craftsman® brand to Stanley, Black & Decker, Inc. and to use its reasonable best efforts either to obtain from Sears Canada a waiver of its then-exclusivity in Canada for the Craftsman® brand name or reduce the Sears Holdings ownership interest in Sears Canada below 10% and therefore trigger the process for the termination of Sears Canada’s license of the Craftsman® brand name and the other trademarks governed by the Trademark License Agreement. The March 2017 amendment removed the Craftsman® brand name from the Trademark License Agreement. Concurrently with that amendment, Sears Canada entered into a license agreement with Stanley, Black & Decker, Inc. for a non-exclusive license (the first 15 years of which are royalty-free) to use the Craftsman® brand name in Canada.

27. In addition to the Trademark License Agreement, Sears Canada is party to an international merchandise purchasing agreement with Sears Holdings. This agreement is described in further detail below in the section regarding Merchandising and Sourcing.

28. Sears Canada and Sears Holdings are also parties to an information technology agreement for the sharing of information technology and software development, ownership and costs, which agreement, as amended on October 7, 2014, terminated when Sears Holdings ceased

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<sup>1</sup> Sears, Roebuck & Co will extend the agreement for this further transition period not to exceed four years, at a royalty rate to be agreed equal to the lesser of a fair market rate based on the value of the trademarks or the lowest rate which will provide a reasonable incentive to induce Sears Canada to phase out the use of the trademarks.



to control 50% of the voting shares of Sears Canada in October 2014, subject to a three year transition period.

29. Additionally, Sears Canada and ESL are parties to an agreement where ESL will provide, at Sears Canada's request and without charge, investment, business and real estate consulting services to Sears Canada.

30. While Sears Canada's business requires use of the licenses provided pursuant to the Trademark License Agreement, the daily operations of the business of the Sears Canada Group, including those of Sears Canada, are not dependent upon the operation of the business of Sears Holdings. Rather, the two businesses are operated independently of one another by separate management teams.

#### **Chief Place of Business**

31. The chief place of business of the Sears Canada Group is Ontario. Sears Canada's head office and corporate headquarters is located in Toronto, Ontario. Approximately 7,500 employees work in Ontario. There are 65 operating Sears Canada retail stores located in Ontario as of April 29, 2017, which is the largest number of stores in any province where Sears Canada operates. Two of Sears Canada's five primary distribution centres are also located in Ontario.

#### **The Business of the Applicants**

32. The Sears Canada Group is a multi-channel retailer with a proud history of operating across Canada. Its merchandising operations include the sale of goods and services through its various retail channels and its "Direct" (catalogue/internet) channels. The Sears Canada Group's major competitors in Canada include traditional full-line department stores,

discount department stores, wholesale clubs, “big-box” retailers, internet retailers and specialty stores offering alternative retail formats.

33. The following is a brief description of the Sears Canada Group’s retail channels:

- **Full-Line Department Stores** – Sears Canada’s full-line department stores are located primarily in suburban enclosed shopping centres and range in size from approximately 30,000 to 300,000 square feet. The major merchandise categories include the following:
  - *Apparel & Accessories* - women’s, men’s and children’s apparel, nursery products, cosmetics, jewellery, footwear and accessories.
  - *Home & Hardlines* - home furnishings and mattresses, home décor, lawn and garden, hardware, leisure, seasonal products, toys, floorcare, sewing and major appliances.

Although merchandise varies by store, the merchandise sales mix between the two major categories is approximately 60% Apparel & Accessories and 40% Home & Hardlines. Full-line department stores include a Sears catalogue and online merchandise pick-up location. Sears Travel offices and other licensed businesses, such as optical centres and portrait studios, are also located in many of Sears Canada’s full-line department stores.

- **Sears Home Stores** – Sears Home stores are typically located in power centres (large unenclosed shopping centres) and carry an extensive selection of furniture, mattresses box-springs, and major appliances. The majority of these stores range in size from 35,000 to 60,000 square feet.
- **Sears Hometown stores** – Almost all Hometown stores are independently owned and operated through a network of dealers, which have been appointed by Sears Canada for a specified period and subject to the terms and conditions of a dealer agreement. Most Hometown stores are located in markets that lack the population to support a full-line department store. These stores offer major appliances, furniture, mattresses and box-springs, outdoor power equipment as well as a catalogue and online merchandise pickup location. Hometown stores range in size from 2,000 to 10,000 square feet.
- **Outlet stores** – Outlet stores provide Sears Canada’s customers with in-store access to a broad assortment of surplus merchandise at prices that are significantly lower than Sears Canada’s retail prices. Clearance merchandise is sourced primarily from Sears Canada’s full-line department stores and Direct channel, with surplus big-ticket items sourced from all channels. Sears Canada anticipates that, going forward, it will not continue to operate Outlet stores.

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- **Corbeil** – Corbeil is a chain of major appliance specialty stores located throughout Québec, the Greater Toronto Area and Eastern Ontario. There are 32 stores in the chain, 16 of which are independently owned and operated through a network of franchisees. The chain also includes two liquidation centres and one distribution centre in Montreal. Stores average approximately 6,500 square feet in size.
34. Sears Canada is in the process of transitioning its Direct sales channel from a catalogue and e-commerce business to solely an online sales / e-commerce platform. Sears Canada's website, sears.ca, enables Sears Canada to provide merchandise offers directly to online customers and highlights Sears Canada's extensive general merchandise selection. It is one of Canada's leading online shopping destinations with over 91.3 million visits in the fiscal year ended January 28, 2017 ("Fiscal 2016"). Sears Canada has continued to invest in its online capabilities to improve the user experience, and engage new customers and demographics, launching a new digital e-commerce platform, Initium, in November 2016.
35. As of April 29, 2017, Sears Canada had 705 order fulfilment / pick-up locations across Canada (of which 514 were independently owned and operated, and a further 191 were located within existing Sears Canada locations). Sears Canada also delivers its products directly to its customers' homes.
36. Additionally, the Sears Canada Group has a number of other sources of revenue:
- (a) **Service Revenue** – the Sears Canada Group provides a number of services to its customers, including logistics and transportation services, protection agreements, home improvement services, and product repair services.
    - (i) Logistics and Transportation Services: In addition to providing logistics and transportation services to Sears Canada, SLH provides these services

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to a diverse base of third party commercial customers. SLH's business is discussed in more detail in the section regarding Distribution, below.

- (ii) Protection Agreements: Sears Canada sells a variety of protection (*i.e.*, warranty) and replacement plans, including single- or multi-year coverage on major appliances, small appliances, electronics, vacuums, lawn and garden products, fitness products, and heating, ventilating and air conditioning products, as well as furniture and mattresses.
  - (iii) Parts and Repair Services: Sears Canada provides a number of repair services to its customers, including servicing of items covered under a Sears Protection Plan, cash calls (service fee-based repairs), as well as in-warranty service for select Kenmore<sup>®</sup>, Craftsman<sup>®</sup> and national brand products. Sears Canada has a network of home specialists that provide parts and repair services for home appliances and equipment (including HVAC products). These services are provided in part by Sears Canada employees and in part by third party contract technicians.
- (b) **Commission Revenue** – the Sears Canada Group receives commissions on revenue generated by other product offerings within Sears Canada stores and under the Sears brand, including travel services, home improvement services, insurance, and wireless and long distance plans. As Sears Canada is not the primary obligor in these transactions, these commissions are recognized upon sale of the related product or service. The Sears Canada Group expects as part of these proceedings to exit some or all of its commission-generating businesses.

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- (c) **License Revenue** – the Sears Canada Group receives revenue comprised of license fee payments received from licensees that operate primarily within its stores, such as optical service centres. Revenue earned is based on a percentage of licensee sales. The Sears Canada Group expects as part of these proceedings to exit some or all of its license revenue generating businesses.

**A. Store Formats and Locations**

37. As noted above, the Sears Canada Group's different retail channels have varying store formats, locations and square footage. For its full-line department stores, Sears Canada is usually an anchor tenant for the mall or shopping centre. The following chart summarizes the Sears Canada Group's current number of store locations by region as at April 29, 2017:

	Pacific	Prairies	Ontario	Quebec	Atlantic	TOTAL
Full-Line Department Store	12	17	33	23	10	95
Sears Home Stores	2	3	14	4	0	23
Outlet Stores	1	1	4	3	1	10
Hometown Stores	17	21	8	4	15	65
Corbeil	0	0	6	26	0	32
National Logistics Centres	1	1	2	1	0	5
Direct Purchase Pick-Up	67	178	223	155	82	705

38. Since April 29, 2017, certain additional stores have closed or are in the process of closing.

39. As part of the completion of the operational restructuring to be implemented as part of these CCAA proceedings, the Applicants also intend to close 59 stores (20 full-line, 15 Sears Home stores, 10 Outlet stores and 14 Hometown stores) after liquidating the inventory and implementing an orderly wind-down of these stores, a list of which can be found in Exhibit "C".

40. After the store closures described above are complete, it is anticipated that the Sears Canada Group will have 75 full-line department stores (including one pop-up shop), 8 Sears Home stores, 49 Hometown stores, 32 Corbeil stores, and 0 Outlet stores.

**B. Hometown Dealers**

41. The Sears Canada Group also has a network of dealers who independently own and operate 62 of its Hometown stores (collectively, the "**Hometown Dealers**").<sup>2</sup> Hometown Dealers sell Sears Canada-supplied inventory in their stores and receive a range of commissions for such sales. Sears Canada makes a profit on the sale of inventory in Hometown stores, and Sears Canada maintains ownership of the inventory until it has been sold and delivered to the customer; however, ownership is regained by Sears Canada if and when the customer returns any inventory to the Hometown store.

42. Hometown Dealers are generally responsible for their own leases, employees, insurance costs, certain store fixtures, furnishings, equipment and upkeep. Hometown Dealers do not pay fees to use the Sears name and be part of the Hometown store network.

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<sup>2</sup> The other three stores are corporate stores.

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43. Hometown stores are an integral part of the Sears Canada Group's go-forward plan, and the businesses of the Hometown Dealers and the Sears Canada Group are intertwined in a number of ways. Areas of inter-connection and inter-dependence include:

- (a) Hometown Dealers exclusively sell Sears Canada inventory;
- (b) Sears Canada continues to hold title to the inventory located in the Hometown stores, and this inventory is taken into account when calculating the borrowing base under Sears Canada's credit facilities (as described in greater detail below); and
- (c) Sears Canada provides information technology, point of sale systems, and marketing and branding services.

**C. Corbeil Franchisees**

44. In 1997, Corbeil adopted a franchise model to facilitate the company's expansion. In consideration for the license to use the "Corbeil Appliances Concept" and the receipt of certain services from Corbeil, Corbeil franchisees (the "**Corbeil Franchisees**") pay Corbeil: (i) an initial franchise fee; (ii) a royalty based on gross income; (iii) marketing fees; and (iv) accounting and IT charges. The services that Corbeil provides its franchisees include: initial and ongoing training; site selection; lease negotiation assistance; layout planning; an operations manual; construction and furnishings; bid management; supply of display goods; advertising management; and consulting for financial management, marketing, and general business operations. All products and services sold at the franchise stores must be supplied by Corbeil.

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45. Three of the Corbeil Franchisees own their own store premises, four franchisees lease from third party landlords, and the other nine franchisees sublease from Corbeil. It is currently intended that all of the Corbeil stores remain operational during the CCAA proceedings.

**D. Real Estate and Leases**

46. The Sears Canada Group owns the properties where eight full-line department stores, two Outlet stores, and one Sears Home store operate: five in Ontario, four in Quebec, and one in each of Manitoba and Prince Edward Island.

47. The majority of the other stores are held under long-term leases with Sears Canada or Corbeil as tenant. As of April 29, 2017, Sears Canada and Corbeil leased and owned the following stores:

	Leased	Owned	TOTAL
Full-Line Department Store	87	8	95
Sears Home Stores	22	1	23
Outlet stores	8	2	10
Hometown stores <sup>3</sup>	3	0	3
Corbeil <sup>4</sup>	23	0	23
<b>Total</b>	<b>143</b>	<b>11</b>	<b>154</b>

<sup>3</sup> Only Hometown stores that are not independently owned and operated are included. Hometown Dealers are responsible for their own leases.

<sup>4</sup> This figure includes 13 corporate stores and 1 liquidation centre (which is located in the same space as Corbeil's distribution centre) that are leased, as well as 9 stores which Corbeil leases and then subleases to its franchisees. Two other corporate stores are located within Sears Home stores and Corbeil pays rent to Sears Canada for those locations.



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48. Catalogue and online merchandise pick-up locations are located in other Sears Canada stores or local businesses, and are therefore not included. As at April 29, 2017, the gross square footage of corporate store locations (both owned and leased) and Sears Canada's national logistics centres was approximately 19.7 million square feet.

i. *Landlords*

49. Many of Sears Canada's store leases are held or managed by large landlords. Several of these landlords lease multiple locations to Sears Canada. The leases are generally for a current term of 1 to 10 years, with some leases granting Sears Canada multiple options to renew after that date.

50. Typical of retail store leases in Canada, many of the leases contain provisions that impact Sears Canada store operations. Sears Canada has operating covenants with landlords for a significant number of its stores. An operating covenant generally requires Sears Canada, during normal operating hours, to operate a store continuously as per the identified format in the lease agreement. The remaining term of the various operating covenants ranges from less than one year to 28 years, with an average remaining term of approximately five years, excluding options to extend leases. In addition, many of the retail leases include use and other similar restrictions.

51. Certain of Sears Canada's store leases also contain restrictions that relate to going out of business sales in one form or another, including in certain cases blanket prohibitions on "bankruptcy sales", "going out of business sales", "liquidation sales", and other similar terms. Additionally, many leases provide that Sears Canada will be in default if it becomes insolvent.

ii. *Rights of Other Tenants in Third Party Leases*

52. Many third-party retail leases provide that tenants have certain rights against their landlords upon an anchor tenant's insolvency or upon an anchor tenant ceasing operations. For tenants of commercial properties where the Applicants' stores, offices or warehouses are located, the Applicants are asking the Court to stay rights, including but not limited to termination rights and reduction or abatement of rent, that tenants may have against the landlords, owners, operators or managers of the commercial properties that arise as a result of the Applicants' insolvency, or as a result of any steps taken by the Applicants pursuant to the proposed Initial Order. This relief is necessary to mitigate the effect of the Applicants' insolvency on their landlords and to maintain the status quo while restructuring negotiations continue.

iii. *Owned and Leased National Logistics Centres*

53. Sears Canada operates five national logistics centres strategically located across the country, each referred to as an "NLC", of which one is owned and four are leased. The NLCs are located in Montreal, Québec, Vaughan and Belleville (owned), Ontario, Calgary, Alberta and Port Coquitlam, British Columbia.<sup>5</sup> The total floor area of these logistics centres is approximately 5.1 million square feet of which approximately 4.4 million square feet is devoted to warehouse and logistics operations. The remainder of the space is utilized for other Sears Canada operations, including the buying centre for The Cut Inc.

54. In addition to the NLCs, Corbeil leases a multipurpose distribution centre/warehouse/liquidation centre/office space in Montreal, Québec.

iv. *Office and Other Leases*

55. Sears Canada leases the office and other space for its corporate headquarters in Toronto, Ontario. Sears Canada also leases the two call centres in New Brunswick used by Sears Contact.

56. SLH leases seven shipping terminals: 2 in Ontario and 1 each in Alberta, Quebec, Manitoba, Saskatchewan, and Nova Scotia. In addition, SLH leases office premises in Kingston.

v. *Other Owned Properties*

57. Additionally, Sears Canada owns certain other real estate assets with no operating activity. As of April 29, 2017, the fair value of these properties was \$2.8 million.

vi. *Subleases and Licenses to Third Parties*

58. Sears Canada has entered into a number of agreements to sub-lease premises to third parties. For instance, Sears Canada subleases store premises in Burlington, Ontario to the Hudson's Bay Company and store premises in Burnaby, B.C. to Toys R' Us. Sears Canada also subleases space to seven Active Green + Ross auto centres as well as to five KalTire tire dealers.

59. All sub-leases to third parties are classified as operating leases. Rental income from operating leases is recognized as a reduction of rent expense on a straight-line basis over the term of the lease. During Fiscal 2016, total sub-lease income from leased premises was \$2.0

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<sup>5</sup> Sears Canada also leases an additional NLC in Calgary, Alberta that is operated by a third party. Sears Canada has terminated this contract and will no longer be using this facility as at August 18, 2017.

million. As at January 28, 2017, future minimum lease payments receivable from third party tenants totaled \$12.9 million.

**E. Merchandising and Sourcing**

60. The sourcing and purchasing of goods sold by Sears Canada is conducted at its head office by the merchandise buying and corporate procurement teams. Sears Canada purchases its merchandise from approximately 3,300 domestic and international suppliers, many of which have long-standing relationships with Sears Canada.

61. Although Sears Canada's business is not substantially dependent on any one supplier, its relationship with certain suppliers is of significance to Sears Canada's merchandising strategy, including attracting customers to its locations, cross segment sales and image. Sears Canada is dependent upon a significant number of products that originate from non-Canadian markets. For the twelve months ended April 29, 2017, Sears Canada paid approximately USD \$118.8 million for direct purchases of overseas merchandise. (excluding commissions paid for merchandise purchasing services).

62. For the majority of the merchandise it purchases directly from overseas vendors, Sears Canada utilizes the international merchandise purchasing services of Sears Holdings, provided pursuant to an agreement between Sears Holdings and Sears Canada dated January 1, 1995. Sears Holdings may provide assistance to Sears Canada with respect to monitoring and facilitating the production, inspection and delivery of imported merchandise and the payment to vendors. Although Sears Holdings essentially acts as Sears Canada's purchasing agent, Sears Canada does not coordinate its merchandise purchasing with Sears Holdings. Sears Canada pays Sears Holdings a fee based on a stipulated percentage (5.5%) of the value of the imported

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merchandise. In Fiscal 2016, Sears Canada paid \$2.8 million to Sears Holdings in connection with this agreement.

63. Sears Canada's international merchandise purchasing arrangement with Sears Holdings is complemented by merchandise purchasing services provided by William E. Connor and Associates Ltd. Similar to the arrangement with Sears Holdings, Sears Canada pays the Connor buying group a fee based on a stipulated percentage (5.5%) of the value of the imported merchandise.

64. Corbeil has a separate merchandise purchasing program that is run out of Corbeil's head office in Montreal.

65. Title to goods purchased by Sears Canada passes based on the terms of the agreement with the specific vendor. For direct purchases of merchandise that are shipped from outside of North America, title generally passes to Sears Canada once the merchandise is loaded onto ships or airplanes for transit to Sears Canada. For all other purchases of merchandise, title generally passes when SLH (or a third party transportation service) picks up merchandise from the manufacturer or it is delivered to Sears Canada's NLCs or stores.

66. A portion of Sears Canada's merchandise is purchased in U.S. currency. As a result, exchange rate fluctuations between the Canadian and U.S. dollars may pose a risk to Sears Canada's business. In order to minimize the cost of its U.S. dollar requirements, Sears Canada uses foreign currency forward contracts to hedge exchange rate risk.

**F. Distribution**

67. All merchandise sold through the Retail (full-line department, Sears Home, Sears Hometown, Sears Outlet) and Direct (catalogue and internet) channels are distributed from Sears Canada's NLCs. Corbeil has a separate distribution centre in Montreal.
68. Sears Canada operates its own NLCs,<sup>6</sup> which are used for receiving, verifying and inspecting shipments; preparing outbound shipments for transportation to Sears Canada's stores; and inventory management. As of May 30, 2017, the NLCs held Sears Canada merchandise with a cost of approximately \$174 million.
69. Sears Canada's wholly-owned subsidiary, SLH, provides logistics services for Sears Canada's merchandising operations and is responsible for transporting merchandise to Sears Canada's NLCs, stores and catalogue/internet merchandise pick-up locations. SLH also provides some transportation and distribution services to Corbeil. SLH is a federally-regulated business with its operations headquartered in Kingston, Ontario. While Sears Canada provides certain procurement, legal services, payroll services and funding, SLH's management and operations are separate from the Sears Canada retail business.
70. Additionally, SLH provides contract carrier services to over 300 commercial customers who are unrelated to the Sears Canada Group. Approximately 55% of SLH's business is with these third party customers. The third party business increases SLH's fleet utilization and improves the efficiency of its operations. SLH has developed an extensive domestic and cross-border distribution network to provide better and more consistent service to its customers. In

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<sup>6</sup> With the exception of the additional NLC in Calgary which is operated by a third-party. This contract has been terminated and Sears Canada will no longer use this facility after August 18, 2017.

addition to the Sears Canada NLCs, SLH has seven other strategically-located terminals across Canada.

71. SLH owns and operates a fleet of more than 268 trucks and 2,700 trailers. SLH also works with approximately 185 independent contractors who own and operate their own trucks. SLH has its own independent operating system which is used to track freight services, including pick up, routing, storage and final delivery of materials to Sears Canada and third-party customers.

72. Sears Canada must pay customs brokers, clearing houses, freight forwarders and other supply chain providers for costs incurred in transporting products from their sources inside and outside of North America. As of May 30, 2017, Sears Canada estimates that merchandise at cost of approximately \$23 million was in transit to North America.

73. Sears Canada also has over 514 independent merchandise pick-up locations across Canada for its Direct line of business. These are located in stores in smaller communities and provide a convenient pick-up point for customers. Operators of these locations are paid a commission on any merchandise sent to them, as well as a fee for handling any returns.

**G. Consignment Goods**

74. A small proportion of product sold by Sears Canada, such as jewelry, women's apparel, and magazines, are delivered directly to Sears Canada stores under consignment arrangements by which the vendor holds title to the inventory until immediately before the sale, at which time title passes to Sears Canada.

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## H. Employees

75. As of May 30, 2017, the Sears Canada Group employed approximately 17,000 people, of which approximately 6,500 were full time and 10,500 were part time. In addition, the Sears Canada Group has relationships with approximately 775 independent contractors. Corbeil Franchisees and Hometown Dealers also employ approximately 250 people.

76. The following chart shows the approximate number of people employed by the Sears Canada Group in each province and in the U.S. as of May 30, 2017.<sup>7</sup>

Location	Full Time Part Time	Full-Line/ Home/ Outlet	Corbeil	SLH	Other Services	Call Centre	Head Office	Total
Alberta	FT	375	0	113	191	0	0	679
	PT	873	0	0	94	0	0	967
British Columbia	FT	326	0	23	64	0	0	413
	PT	1,020	0	0	117	0	0	1,137
Manitoba	FT	87	0	25	4	0	0	116
	PT	356	0	0	7	0	0	363
New Brunswick	FT	77	0	22	3	294	0	396
	PT	290	0	0	0	5	0	295
Newfoundland	FT	49	0	0	3	0	0	52
	PT	192	0	0	2	0	0	194
Nova Scotia	FT	69	0	54	9	0	0	132
	PT	263	0	0	0	0	0	263
Ontario	FT	1,076	0	237	552	128	1,078	3,071
	PT	3,828	0	27	503	7	107	4,472
PEI	FT	15	0	0	0	0	0	15

<sup>7</sup> This chart does not include individuals employed by third parties such as the Corbeil franchisees, Hometown Dealers or third party licensees.



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	PT	77	0	0	0	0	0	77
Quebec	FT	661	179	100	345	92	72	1,449
	PT	2,172	0	3	249	18	8	2,450
Saskatchewan	FT	94	0	16	8	0	0	118
	PT	234	0	0	3	0	0	237
U.S.	FT	0	0	0	0	0	26	26
	PT	0	0	0	0	0	1	1
<b>Total</b>	<b>FT</b>	<b>2,829</b>	<b>179</b>	<b>590</b>	<b>1,179</b>	<b>514</b>	<b>1,176</b>	<b>6,467</b>
	<b>PT</b>	<b>9,305</b>	<b>0</b>	<b>30</b>	<b>975</b>	<b>30</b>	<b>116</b>	<b>10,456</b>

77. The Sears Canada Group intends to eliminate approximately 500 non-store level positions immediately upon filing. Additional headcount reductions in the amount of approximately 2,400 will result from store closures. At this time, it is expected that some or all of these store level employees will be provided with working notice of termination. Further, it is anticipated that adjustments to compensation arrangements for certain store level employees will be made during the CCAA proceedings.

i. *Sears Canada Store Level*

78. The majority of Sears Canada employees are “associates” who perform customer facing functions such as sales and service. As of May 30, 2017, Sears Canada employed approximately 1,795 full-time and approximately 9,267 part-time associates at the store level for a total of approximately 11,062 associates. Associates are paid hourly rates, commissions or some combination thereof. Subject to eligibility based on length of service and hours worked, associates may receive benefits packages (as described below).

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79. In addition, each store has a certain number of “leaders”, who have a management role. As of May 30, 2017, Sears Canada employed approximately 1,072 leaders. Of those leaders, approximately 540 are paid at hourly rates and may be eligible for benefits, and approximately 532 are compensated through base salary and benefits. Leaders are eligible for a semi-annual incentive pay based on key store performance metrics.

80. A small number of Sears Canada employees from five stores and from one service team in Product Repair Services are represented by unions. These employees – which represent approximately 2% of the total Sears Canada employee population – are governed by various collective bargaining agreements with Unifor (Ontario), the International Brotherhood of Electrical Workers (British Columbia), and the Syndicat des Métallos (Québec).

ii. *Sears Canada Management Group and Other Salaried Employees*

81. As of May 30, 2017, Sears Canada employed approximately 1,185 people at its headquarters in Toronto, Ontario, and approximately 107 people in its other local offices. All of these employees are compensated through base salary and benefits.

82. In addition, some of these individuals are eligible to receive performance bonuses and are eligible to participate in an equity-based compensation plan that includes stock options and Performance Share Units (“PSUs”). There are currently outstanding 2,302,000 options to purchase common shares and 758,170 PSUs.

iii. *Corbeil Employees*

83. Corbeil has approximately 60 head office and warehouse employees, and another approximately 120 corporate store employees. Employee compensation is based upon responsibility level and salary scale. Sales associates are paid hourly rates and commissions on the products that they sell.

84. Management employees receive a base salary. Additionally, Corbeil offers both an Annual Incentive Plan and Contribution to Business Results (“CTBR”) system to eligible management employees in order to promote performance. Payouts under the Annual Incentive Plan are based on achieving sales and EBITDA targets while the CTBR system determines a portion of any merit increase to salary.

iv. *Sears Contact Employees*

85. The Sears Canada Group is currently in the process of moving its call centres from the Philippines and Bulgaria<sup>8</sup> to New Brunswick, with the aim of improving services as well as creating 530 new jobs. The New Brunswick call centres are operated by Sears Contact.

86. The New Brunswick government agreed to provide Sears Contact with (i) a forgivable loan of up to \$2 million (which would be secured by a letter of credit and corporate guarantee from Sears Canada) for building improvements, equipment and employee training, which will earn forgiveness based on incremental payroll over six years and (ii) a payroll rebate of up to \$3,356,800 for any annual incremental payroll over and above \$5,555,550 to be disbursed over six years.

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v. *U.S.-Based Employees*

87. Approximately 27 employees of The Cut Inc. are based in the U.S. Those employees are generally paid a base salary and are eligible for an annual incentive bonus based on their performance.

vi. *Payroll*

88. Sears Canada manages its own payroll processing and remits employee taxes and deductions as required. Sears Canada employees, Sears Contact employees and SLH employees who are salaried are paid monthly on the third week of each month. Sears Canada employees, Sears Contact employees and SLH employees who are hourly workers are paid bi-weekly. All these employees are paid through various RBC sub-accounts (described below in the cash management section).

89. 168886 Canada Inc employees are paid bi-weekly, and 168886 Canada Inc. uses ADP to provide payroll services for these employees.

90. The Cut Inc. and Corbeil use third party providers of payroll services (Trinet Group Inc. and Desjardins, respectively) to process payroll. The Cut Inc. employees are paid twice a month. Corbeil head office and warehouse employees are paid bi-weekly and corporate store employees are paid weekly. Employee wages, taxes and deductions are funded to ADP, Trinet Group Inc. or Desjardins on a gross basis, which then make the required payments.

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<sup>8</sup> The call centres in the Philippines and Bulgaria were outsourced to a third party.

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91. Although Sears Canada's payroll fluctuates on a monthly basis due primarily to the change in hourly staffing levels to reflect seasonality, the average monthly wage costs of the work-force during the first quarter of Fiscal 2017 was approximately \$31 million per month, excluding costs relating to pension and benefits.

vii. *Health and Wellness Benefits*

92. The Sears Canada Group provides programs designed to enhance the health, wellness and quality of life of its employees. The programs include discounts on fitness facilities across Canada, weight loss services, home and auto insurance, tax preparation services, transportation and vehicle discounts as well as discounts on a wide range of entertainment and attractions, sporting events, magazine subscriptions and more. These programs operate at no cost to the Sears Canada Group and it intends to continue these programs during the CCAA proceedings.

93. The Sears Canada Group also provides eligible employees with disability, health and dental coverage. The Sears Canada Group pays for the coverage provided to full-time employees, and part-time employees may purchase coverage. The Sears Canada Group intends to continue this coverage during the CCAA proceedings.

I. Pension and Other Post-Retirement Benefit Plans

94. The Sears Canada Group currently maintains the following pension arrangements:

- (a) Sears Canada Inc. Registered Retirement Plan, a pension plan registered under the Ontario *Pension Benefits Act*, R.S.O. 1990, c. P.8 (the "PBA") and the *Income Tax Act*, R.S.C. 1985, c. 1 (5<sup>th</sup> Supp) (the "ITA") with a defined benefit

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component and a defined contribution component, and which is maintained for employees of Sears Canada, Sears Contact, Corbeil and SLH (the “**Sears Pension Plan**”);

- (b) Sears Canada Inc. Supplementary Retirement Plan, a non-registered supplemental pension plan maintained to provide benefits to eligible participants in the defined benefit component of the Sears Pension Plan (the “**Supplemental Plan**”);
- (c) Pension Plan for the eligible Employees of 168886 Canada Inc., a pension plan registered under the *Pension Benefits Standards Act*, R.S.C. 1985, c. 32 (2nd. Supp.) (the “**PBSA**”) and the ITA which provides defined contribution pension benefits to employees in the Eastern Division of 168886 Canada Inc. (the “**168886 Eastern Plan**”);
- (d) Pension Plan for the eligible Employees of 168886 Canada Inc., a pension plan registered under the PBSA and the ITA which provides defined contribution pension benefits to employees in the Western Division of 168886 Canada Inc. (the “**168886 Western Plan**”); and
- (e) A U.S. defined contribution pension plan for the employees of The Cut Inc. (the “**401K Plan**”) that is provided through a third party administrator, Trinet.

95. In addition, all permanent employees of the Sears Canada Group are eligible to join a group registered retirement savings plan (the “**Group RRSP**”) on a voluntary basis. No

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member of the Sears Canada Group is required to make any contributions in respect of any of its employees that participate in the Group RRSP.

96. Sears Canada also maintains a post-retirement benefit plan, which provides life insurance, medical and dental benefits to eligible retired employees of the Sears Canada Group through an employee health and welfare trust (the “**PRB Plan**”).<sup>9</sup>

i. *Sears Pension Plan*

97. The Sears Pension Plan consists of a defined benefit component (“**DB Component**”) and a defined contribution component (“**DC Component**”). Sears Canada acts as both the sponsor employer and as the “administrator” of the Sears Pension Plan for the purposes of the PBA. The DB Component of the Sears Pension Plan was closed to new entrants as of June 30, 2008 and all members of the DB Component ceased to accrue pensionable service after June 30, 2008.<sup>10</sup> However, earnings increases continue to be recognized for participants in the DB Component while such members are in active employment with Sears Canada.

98. Contributions to the DB Component of the Sears Pension Plan are required to be made in accordance with the most recent actuarial valuation report that has been filed with the pension regulator, the Financial Services Commission of Ontario, which was prepared as at December 31, 2015 and dated September 2016 (the “**Pension Valuation Report**”). The Pension Valuation Report indicates that, as at December 31, 2015, the hypothetical wind-up deficit under

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<sup>9</sup> Short-term disability payments for active employees are also paid through the health and welfare trust.

<sup>10</sup> Only Sears Canada or SLH employees are members of the DB Component of the Pension Plan.

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the DB Component of the Sears Pension Plan was \$266,805,000 and the transfer (wind-up) ratio was 81%.

99. The Pension Valuation Report indicates that, in accordance with temporary funding relief options available in Ontario, Sears Canada elected to consolidate the existing solvency special payments established prior to December 31, 2015 into a new five-year payment schedule and elected to defer by 12 months (*i.e.*, to December 31, 2016) the commencement of special payments relating to the new solvency deficiency established through the Pension Valuation Report. The combined effect of these two elections resulted in the minimum annual special payments required to be made to the Sears Pension Plan being approximately \$44.2 million for the calendar years 2017-2020 and approximately \$30.5 million for the 2021 calendar year. These special payment obligations may be modified pursuant to the next valuation report for the DB Component of the Sears Pension Plan, which is required to be performed no later than as at December 31, 2018. These special payments are currently required to be made in equal monthly installments of approximately \$3.7 million and are due at the end of each month.

100. As service accruals ceased under the DB Component of the Sears Pension Plan effective July 1, 2008, no normal cost contributions are required for the DB Component of the Sears Pension Plan (however, as noted below, normal cost contributions continue to be made under the Sears Pension Plan in respect of the employees in the Sears Canada Group that participate in the DC Component of the Sears Pension Plan). As of December 31, 2016, there were 16,921 members in the DB Component of the Sears Pension Plan (3,025 active/disabled members; 160 transferred members; 195 suspended members; 396 deferred vested members; and 13,121 retired members).



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101. Based on the significantly constrained liquidity position of the Applicants, the Applicants intend to serve a motion in the near term seeking court approval to cease making the monthly special payments for the DB Component of the Sears Pension Plan. The Sears Canada Group can no longer afford to make these special payments in respect of the DB Component of the Sears Pension Plan as it attempts to restructure under the CCAA. The cash forecasts described below do not include making any special payments beyond June 2017.

102. Eligible active employees of Sears Canada, Sears Contact, Corbeil and SLH<sup>11</sup> are eligible to participate in the DC Component of the Sears Pension Plan. Under the DC Component of the Sears Pension Plan, employees can select a contribution level from 1% to 7% of earnings (which includes base pay, variable pay, overtime pay and commissions). The participating employers under the DC Component of the Sears Pension Plan are required to make a matching contribution equal to 50% of the contributions made by an employee (*i.e.*, subject to a maximum match of 3.5% of earnings). There were 5,409 associates enrolled in the DC Component of the Sears Pension Plan as at May 25, 2017, with an additional 7,476 associates that were eligible to participate in the DC Component of the Sears Pension Plan but who had not enrolled. In Fiscal 2016, the Sears Canada Group made contributions of \$4.8 million to the DC Component of the Sears Pension Plan.

103. As at the time of swearing this affidavit, to the best of my knowledge, the Sears Canada Group has paid to the Sears Pension Plan all contributions that are due (under both the DB Component and the DC Component of the Sears Pension Plan).

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<sup>11</sup> There are two separate defined contribution pension plans for employees of 168886 Canada Inc. (SLH's wholly-owned subsidiary), which are described in further detail below.

ii. *Supplemental Plan*

104. The Supplemental Plan provides pension benefits to members of the DB Component of the Sears Pension Plan that are in excess of the benefits that are permitted to be provided under the Sears Pension Plan as a result of the maximum pension benefit limits under the ITA. As with the DB Component of the Sears Pension Plan, the Supplemental Plan only provides pension benefits to participating employees in respect to periods of pensionable service prior to July 1, 2008. The Supplemental Plan is not a registered plan and is not subject to the solvency/wind up funding requirements under the PBA.

105. In connection with the Supplemental Plan, Sears Canada has established a retirement compensation arrangement (“RCA”) with CIBC Mellon Trust Company (the “**Supplemental Plan Trustee**”) through which Supplemental Plan benefits (including ongoing monthly supplementary pension payments) are provided to individuals that terminated active service prior to January 1, 2010. Under the terms of the Supplemental Plan, benefits secured under the RCA are funded through a combination of letters of credit and cash. For individuals whose active service ended on or after January 1, 2010, Supplemental Plan benefits are paid directly by Sears Canada through its general revenues on a pay-as-you-go basis.

106. In fiscal 2012, Sears Canada amended the Supplemental Plan to allow the use of letters of credit to satisfy its funding requirements in respect of the benefits under the Supplemental Plan that are secured by the RCA. An actuarial valuation report prepared in respect of the Supplemental Plan as at December 31, 2015 (the “**Supplemental Plan Valuation Report**”) indicates that the funded portion of the Supplemental Plan (without taking into account any letters of credit) had a wind-up deficit of \$8,405,249 as of December 31, 2015. The

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Supplemental Plan Valuation Report does not deal with liabilities under the Supplemental Plan that are not funded through the RCA (i.e., liabilities in respect of the members who terminated from active status on or after January 1, 2010). Between December 31, 2015 and December 31, 2016, Sears Canada made a cash contribution to the RCA of approximately \$1 million. In addition, as at May 26, 2017 a letter of credit with a face value of approximately \$6.8 million was on deposit with the Supplemental Plan Trustee.

107. As of today's date, to the best of my knowledge, the Sears Canada Group has satisfied its funding requirements in respect of the benefits under the Supplemental Plan that are secured by the RCA and is current on its payment of benefits under the Supplemental Plan.

iii. *168886 Eastern Plan*

108. Employees in the Eastern Division of 168886 Canada Inc. are eligible to participate in the 168886 Eastern Plan, which is a defined contribution pension plan that is registered under the federal PBSA and the ITA. There were 58 members of the 168886 Eastern Plan as at December 31, 2016. In Fiscal 2016, 168886 Canada Inc. made contributions of \$78,844 to the 168886 Eastern Plan.

109. As of today's date, to the best of my knowledge, 168886 Canada Inc. has paid all contributions that are due to the 168886 Eastern Plan.

iv. *168886 Western Plan*

110. Employees in the Western Division of 168886 Canada Inc. are eligible to participate in the 168886 Western Plan, which is a defined contribution pension plan that is

registered under the federal PBSA and the ITA. There were 153 members of the 168886 Western Plan as at December 31, 2016. For the payroll year ending December 17, 2016, 168886 Canada Inc. made contributions of \$190,426.73 to the 168886 Western Plan.

111. As of today's date, to the best of my knowledge, 168886 Canada Inc. has paid all contributions that are due to the 168886 Western Plan.

v. *PRB Plan*

112. Certain full-time associates hired by the Sears Canada Group prior to 1999 that met the requisite age and service requirements by December 31, 2008 are eligible for coverage for post-retirement life, health and dental benefits under the PRB Plan. Benefits under the PRB Plan are provided through a health and welfare trust on a pay-as-you-go basis.

113. In December 2009, Sears Canada made the decision to use the surplus in the health and welfare trust to make benefit payments (including benefit payments for short term disability benefits for active employees which are also provided under the trust). Beginning in February 2015, Sears Canada resumed funding the PRB Plan benefit payments since the surplus in the health and welfare trust had been depleted. There are currently no assets in the health and welfare trust.

114. An actuarial valuation of the PRB Plan is performed at least every three years, with the last valuation completed as of January 31, 2014 (the "**PRB Plan Valuation Report**"). As of January 31, 2017, Sears Canada's post-retirement benefit liabilities under the PRB Plan on an accounting basis were approximately \$196 million. As at the time of swearing this affidavit,

to the best of my knowledge, Sears Canada is current on its payment of post-retirement life, health and dental benefits under the PRB Plan.

115. Similar to the above with respect to the anticipated request for the cessation of the special payments to the DB Component of the Sears Pension Plan, the Applicants intend to serve a motion in the near term seeking court approval to cease paying post-retirement benefits under the PRB Plan. The Sears Canada Group can no longer afford to make these payments as it attempts to restructure under the CCAA and the Cash Flow Forecast (defined below) does not include payments for the amounts going forward.

vi. *The Cut Inc. 401K*

116. The Cut Inc. offers the 401K Plan to its employees through Trinet, a third party administrator. The Cut Inc. matches certain employee contributions to the 401K Plan. Contributions to the 401K Plan vest immediately.

117. As of today's date, to the best of my knowledge, The Cut Inc. has paid all contributions that are due to the 401K Plan.

vii. *Retiree Group*

118. A group of former Sears Canada executives has formed a retiree group to advance their interests in respect of the Sears Pension Plan (the "**Retiree Group**"). The Retiree Group has retained Koskie Minsky LLP as their counsel and Sears Canada has recently started paying their reasonable legal fees. Sears Canada has been communicating with the Retiree Group with respect to the funded status and ongoing administration of the DB Component of the Sears Pension Plan.

The Applicants intend to continue this dialogue and engage with the Retiree Group as part of these CCAA proceedings.

viii. *Notice to Pension Plan Beneficiaries*

119. As set out above, I understand that Sears Canada acts as both the sponsor employer and the administrator of the Sears Pension Plan for purposes of the PBA. I am informed by Tony Devir of Osler, Hoskin & Harcourt LLP and believe that these roles impose differing responsibilities and duties on Sears Canada, and that these responsibilities and duties may come into conflict during the course of these CCAA proceedings.

120. In view of this potential conflict, and because the Applicants are seeking that the Initial Order give Court-ordered charges including the DIP Lenders' Charges (as defined below) priority over the Encumbrances (as defined in the proposed Initial Order), including any deemed trusts created by the PBA, the Applicants intend to provide specific notice to individuals who are members, former members or retired members with entitlements under the DB Component of the Sears Pension Plan and individuals who are surviving spouses of a deceased member, former member or retired member where such surviving spouse has an entitlement to a benefit under the DB Component of the Sears Pension Plan.

121. In particular, should the Initial Order be granted, in addition to immediately engaging with Koskie Minsky LLP in its capacity as counsel to the Retiree Group, the Applicants intend to provide notice to those members of the DB Component of the Sears Pension Plan who are employees of Sears Canada through an e-mail communication and to provide notice to all other participants in the DB Component of the Sears Pension Plan (being former

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members or retired members with entitlements under the DB Component of the Sears Pension Plan and individuals who are surviving spouses of a deceased member, former member or retired member where such surviving spouse has an entitlement to a benefit under the DB Component of the Sears Pension Plan) through sending letters advising them of the commencement of the CCAA proceedings, the date of the comeback hearing and the fact that issues relating to the Sears Pension Plan will be dealt with at that hearing. The notice will also direct the recipient to the Monitor's website as the place to obtain information with respect to the CCAA proceedings. The Applicants will also provide notice of the comeback hearing to the Ontario Superintendent of Financial Services.

122. I believe that this proposed notification procedure is a reasonable method of ensuring that notice of the comeback hearing and the relief to be sought therein is reasonably likely to come to the attention of the intended recipients.

**J. Loyalty Program, Gift Cards and Warranties**

123. In November 2015, Sears Canada launched a new Sears Club Points Program (the "Loyalty Program") which allows customers to earn points on purchases at Sears Canada using cash or any debit or credit card accepted by Sears Canada. Customers can then redeem points in accordance with the Loyalty Program rewards schedule for merchandise. Over 1.2 million customers are members of the Loyalty Program. A third party service provider, Exchange Solutions Inc., tracks and maintains the Loyalty Program. When points are earned, Sears Canada defers revenue equal to the fair value of the awards adjusted for expected redemptions. When awards are redeemed, the redemption value of the awards is charged against deferred revenue and recognized as revenue. The expected future redemption rates are reviewed on an ongoing basis and are adjusted based upon expected future activity. In Fiscal 2016, revenue recognized

from points redemption under the Loyalty Program totaled \$22.7 million, and deferred revenue related to points issuances totaled \$18.7 million. Sears Canada intends to honour the redemption of points, but customers will not be able to earn new points, during the CCAA proceedings.

124. Sears Canada also sells gift cards through its retail stores, websites and third parties with no administrative fee charges or expiration dates. A third party processor tracks the outstanding gift cards. No revenue is recognized at the time gift cards are sold. Revenue is recognized when the gift card is redeemed by the customer. Sears Canada also recognizes income when the likelihood of the gift card being redeemed by the customer is remote, which is generally at the end of 18 months subsequent to issuance, estimated based on historical redemption patterns. Sears Canada intends to continue to honour, but not sell, gift cards during the CCAA proceedings.

125. Sears Canada also sells extended warranty service contracts (with warranty coverage provided by Sears Canada or by third parties) with terms of coverage generally between 12 and 60 months. Revenue from the sale of each contract is deferred and amortized on a straight-line basis over the term of the related contract. Sears Canada intends to continue selling and honouring these warranties during the CCAA proceedings, with limited exceptions.

126. Sears Canada also intends to continue to honour the 30 day returns policy in continuing stores during the CCAA proceedings.

#### K. Royalty Contracts

127. Sears Canada has a number of royalty agreements pursuant to which it sells branded merchandise from various third parties. Sears Canada pays these third parties royalty



fees. As part of their operational restructuring, the Applicants intend to discontinue some or all of these royalty arrangements.

**L. Critical Suppliers**

128. The Applicants rely on a number of vendors and third-party service providers in operating their businesses. For instance, customs brokers, clearing houses, freight forwarders, fuel providers, and other supply chain providers are all essential to the Applicants' ability to continue running their business.

129. The Sears Canada Group relies on a number of third parties to process credit card, debit card, and other forms of electronic payment. Without these services, the Sears Canada Group would be unable to accept credit and debit cards in its retail stores, without which it would not be able to continue operating.

**M. Charitable Efforts**

130. For over sixty years, the Sears Canada Group has been supporting both national and local community-based initiatives through its investment in non-profit organizations. The Sears Canada Group has two main mandates for which funds are raised: children's education (emphasizing after-school programs) and children's health (emphasizing the fight against childhood cancer).

131. The Sears Canada Group has partnerships with organizations such as the Boys and Girls Clubs of Canada, Scouts Canada and Girl Guides of Canada which help children develop and reach their full potential. In addition, initiatives such as the Sears Drama Festival

and the Sears Canadian High School Design Competition also contribute to the healthy development of Canadian youth.

132. The Sears Canada Group also works with children's hospitals across the country and helps to raise funds to provide the special care required for children living with cancer as well as much needed research in the field of pediatric oncology. As an example, the Sears Canada Charitable Foundation provides funding for the Sears Cancer Clinic at the Hospital for Sick Children in Toronto. It also sponsored the ninth annual Sears National Kids Cancer Ride, in cooperation with the Coast to Coast Against Cancer Foundation.

133. Over the past year, the Sears Canada Group, its customers, vendors and employees raised or facilitated the donation of approximately \$5.3 million for various charitable organizations through a variety of events and initiatives.

N. **Outstanding Litigation Claims**

134. The Sears Canada Group is subject to ongoing litigation from time-to-time. Unresolved litigation claims include the following:

- (a) **Claims Against Sears Canada:** These include claims regarding real estate and/or environmental contamination disputes, breach of contract, constructive/wrongful dismissal, an inquiry being conducted by the Competition Bureau of Canada with respect to mattress sales, and various class actions regarding pricing practices, warranty practices, and alleged practices with a chain of dealers.

- (b) **Claims Against Corbeil:** Claims include two class action claims regarding warranty practices.

135. Additionally, the Sears Canada Group is currently remediating various locations throughout Canada where it operated gas bars, auto centres and a logistics facility. The Sears Canada Group intends to continue these remediation activities during the CCAA proceedings.

### **The Financial Position of the Sears Canada Group**

136. As a publicly traded company, Sears Canada files consolidated financial statements with the Canadian Securities Administrators through the SEDAR filing system and with the Securities and Exchange Commission in the United States. A copy of the Sears Canada Group's audited financial statements as of January 28, 2017 is attached as Exhibit "D" to this Affidavit. These are the most recent set of annual audited financial statements prepared and filed by Sears Canada.

137. In addition, a copy of the Sears Canada Group's unaudited financial statements for the first quarter ended April 29, 2017 is attached as Exhibit "E" to this affidavit. These are the most recent set of unaudited quarterly financial statements prepared and filed by Sears Canada. Certain information contained in the unaudited quarterly financial statements is summarized below.

#### **A. Assets**

138. As at April 29, 2017, the Sears Canada Group had total assets of approximately \$1,187 million. This included current assets of approximately \$942 million and non-current assets of approximately \$245 million.

i. *Current Assets*

139. As at April 29, 2017, the Sears Canada Group's current assets consisted of the following:

- (a) Cash: \$164.4 million;
- (b) Accounts receivable, net: \$61.5 million;
- (c) Income taxes recoverable: \$12.8 million;
- (d) Inventories: \$658.3 million;
- (e) Prepaid expenses: \$38.8 million;
- (f) Derivative financial assets: \$1.4 million; and
- (g) Assets classified as held for sale: \$5.2 million.

140. As of June 17, 2017, the Sears Canada Group had cash on hand of approximately \$125.3 million. As set out above, inventory comprises the majority of the Sears Canada Group's current assets. As of June 17, 2017, the Sears Canada Group had inventory with a cost value of approximately \$648.1 million.

ii. *Non-Current Assets*

141. As at April 29, 2017, the Sears Canada Group's non-current assets consisted of the following:

- (a) Property, plant and equipment: \$233.2 million;
- (b) Investment properties: \$2.0 million ;
- (c) Intangible assets: \$2.5 million;

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- (d) Deferred tax assets: \$0.6 million; and
- (e) Other long-term assets: \$6.7 million.

**B. Liabilities**

142. As at April 29, 2017, the Sears Canada Group had total liabilities of approximately \$1,108 million. This included current liabilities of approximately \$528 million and non-current liabilities of approximately \$580 million.

i. *Current Liabilities*

143. As at April 29, 2017, the Sears Canada Group's current liabilities consisted of the following:

- (a) Accounts payable and accrued liabilities: \$333.0 million;
- (b) Deferred revenue: \$130.1 million;
- (c) Provisions: \$55.9 million;
- (d) Income taxes payable: \$0.6 million;
- (e) Other taxes payable: \$4.2 million; and
- (f) Current portion of long-term obligations: \$4.0 million.

ii. *Non-Current Liabilities*

144. As at April 29, 2017, the Sears Canada Group's non-current liabilities consisted of the following:

- (a) Long-term debt: \$120.4 million;
- (b) Long-term obligations: \$17.2 million;

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- (c) Deferred revenue: \$68.1 million;
- (d) Retirement benefit liability: \$294.9 million; and
- (e) Other long-term liabilities: \$79.4 million.

145. The Sears Canada Group's long-term liabilities consist primarily of the approximately \$120.4 million obligation in respect of long-term debt and the approximately \$294.9 million obligation in respect of Sears Canada's retirement plans.

### C. Revenue

146. The Sears Canada Group has incurred significant losses and experienced negative operating cash flows for the past several years. The following table provides a five year "snapshot" of key financial measures of the Sears Canada Group:

<i>(in Millions)</i>	Fiscal 2016	Fiscal 2015	Fiscal 2014	Fiscal 2013	Fiscal 2012
Total Revenue	\$2,613.6	\$3,145.7	\$3,424.5	\$3,991.8	\$4,346.5
Adjusted EBITDA	\$(282.9)	\$(160.5)	\$(122.4)	\$35.7	\$73.5
Net Earnings (Loss)	\$(321.0)	\$(67.9)	\$(338.8)	\$446.5	\$101.2
Capital Expenditures	\$27.4	\$45.4	\$54.0	\$70.8	\$101.6
A/R (Net)	\$67.1	\$59.4	\$73.0	\$83.3	\$77.7
Inventories	\$598.5	\$664.8	\$641.4	\$774.6	\$851.4
PP&E	\$227.1	\$444.1	\$567.6	\$785.5	\$1,118.5
Total Assets	\$1,244.4	\$1,633.2	\$1,774.1	\$2,392.3	\$2,504.7
Working Capital	\$460.6	\$543.0	\$522.0	\$567.0	\$410.7
Dividends	\$0	\$0	\$0	\$509.4	\$101.9

147. The decrease in revenue from Fiscal 2015 to Fiscal 2016 was attributable to sales declines in all product categories in Home & Hardlines and Apparel & Accessories, including:

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- (a) a decrease in the Direct channel of \$203.0 million compared to Fiscal 2015, primarily due to a decrease in catalogues, catalogue pages and distribution, as well as challenges experienced with the launch of the new website;
- (b) a decrease of \$136.5 million as the result of store closures during and subsequent to Fiscal 2015;
- (c) a decrease of commission and licensee revenue of \$75.7 million, primarily due to reduced revenues after the termination of the credit card marketing and servicing agreement with JPMorgan Chase Bank, N.A. (Toronto Branch) (“**JPMorgan Chase**”) in November 2015; and
- (d) a decrease in services and other revenue of \$8.0 million, primarily due to reduced shipping fees on sales to customers through Sears Canada’s Direct channel and Sears Home stores due to store closures.

148. The Sears Canada Group’s Adjusted Net Loss Before Interest, Taxes, Depreciation and Amortization (“**Adjusted EBITDA**”) for Fiscal 2016 was negatively impacted by the termination of the credit card marketing and servicing agreement with JPMorgan Chase described above, by \$59.5 million due to the weakening of the Canadian dollar compared to the U.S. dollar, and by \$24.3 million from expenses incurred for the Initium initiative (discussed below) and challenges experienced with the launch of the new website. These negative impacts were partially offset by a \$23.0 million release of a sales tax provision, savings of \$14.9 million related to the closure of underperforming stores subsequent to Fiscal 2015, and a decrease of

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\$5.6 million in severance costs. Excluding the impact of these items, Adjusted EBITDA for Fiscal 2016 declined by \$5.9 million compared to Fiscal 2015.

149. Additionally, in the first quarter of Fiscal 2017, the Sears Canada Group experienced net losses of \$144.4 million. Adjusted EBITDA was a loss of \$133.9 million in the first quarter compared to a loss of \$75.4 million for the same quarter last year. Revenue was \$505.5 million in the first quarter, a decline of 15.2% compared to the same quarter last year.

**D. Secured Debt and Credit Facilities**

i. *Summary of Sears Canada's Credit Facilities as of June 5, 2017*

	<i>Type</i>	<i>Current Facility</i>	<i>Amount Outstanding</i>
Wells Fargo Credit Agreement	Revolver based on borrowing base and letter of credit availability	Up to CAN \$300.0 million	CAN \$33 million plus (as of May 26, 2017) \$136.6 million of outstanding letters of credit
GACP Credit Agreement	Term facility with two tranches	US\$93.9 million plus up to the US\$ equivalent of CAN \$175 million	US\$93.9 million

ii. *Description of Credit Facilities*

(a) *Wells Fargo Revolving Credit Facility*

150. On September 10, 2010, Sears Canada entered into a Credit Agreement (as amended, the "Wells Fargo Credit Agreement") with (i) Wells Fargo Capital Finance Corporation Canada ("Wells Fargo") as Administrative Agent, Co-Collateral Agent and Swingline Lender, (ii) GE Canada Finance Holding Company as Co-Collateral Agent and Documentation Agent, (iii) CIBC Asset Based Lending Inc. and Bank of Montreal as Co-Syndication Agents, (iv) Wells Fargo, GE Capital Markets (Canada) Limited, GE Capital



Markets, Inc., CIBC Asset-Based Lending Inc. and BMO Capital Markets as Joint Lead Arrangers and Bookrunners, and (v) the lenders currently participating in the syndicate (the “**Revolving Facility Lenders**”). The obligations of Sears Canada under the Wells Fargo Credit Agreement are guaranteed on a secured basis by Corbeil (and together with Sears Canada, the “**Loan Parties**”).

151. The Wells Fargo Credit Agreement originally provided for an \$800.0 million senior secured revolving credit facility (the “**Revolving Credit Facility**”) with a maturity date of September 10, 2015. On May 28, 2014, the term of the Revolving Credit Facility was extended to May 28, 2019 and the total credit limit was reduced to \$300.0 million. Advances under the Revolving Credit Facility are available by way of direct advances or letters of credit (each an “**LOC**”). A copy of the Wells Fargo Credit Agreement, including the amendments thereto, is attached as Exhibit “F”.

152. Availability under the Revolving Credit Facility is determined pursuant to a borrowing base formula, up to a maximum availability of \$300.0 million. The borrowing base formula is linked to the value of 85% of the Loan Parties’ eligible credit card receivables plus 85% of the net orderly liquidation value of the Loan Parties’ eligible inventory less the amount of reserves relating to liens or charges that could rank *pari passu* or in priority to Wells Fargo’s liens and including in particular a reserve in respect of the estimated net pension deficit in the event of a wind-up of the DB Component of the Pension Plan (the “**Pension Reserve**”).

153. Accordingly, borrowing availability under the Wells Fargo Credit Agreement fluctuates from month to month. Sears Canada calculates its borrowing base monthly to

determine the amount that Sears Canada can draw upon under the Revolving Credit Facility in accordance with the Wells Fargo Credit Agreement.

154. On June 5, 2017, Sears Canada completed a draw of \$33 million under the Revolving Credit Facility and there is currently no material additional availability after application of the reserves. Interest on cash drawings under the Revolving Credit Facility is determined based on bankers' acceptance rates, LIBOR or prime rates plus an applicable margin. Margins range from 1.75% to 2.25% per annum depending on the type of advance subject to adjustment in accordance with a pricing grid. LOCs issued under the Revolving Credit Facility are subject to a fee of 1.75% per annum for commercial letters of credit or 2.25% per annum for standby letters of credit. Letters of credit are also subject to a fronting fee payable to the issuing bank on the undrawn and unexpired amount of such letters of credit. Interest amounts and letter of credit fees under the Revolving Credit Facility are due monthly or on the last day of the applicable interest period in the case of banker acceptance or LIBOR advances.

155. Sears Canada has a number of outstanding LOCs issued under the Revolving Credit Facility, which fluctuate in quantity and amount from time to time. As of May 26, 2017, there were 35 standby LOCs outstanding in the aggregate principal amount of approximately \$117.3 million and merchandise LOCs outstanding in the aggregate principal amount of approximately US\$14.3 million. Five of the standby LOCs were issued in relation to Sears Canada's sale and lease back transactions and amount to approximately \$36.1 million. Ten of the standby LOCs were issued in favour of various Sears Canada suppliers and amount to approximately \$27.8 million. Other beneficiaries of standby LOCs include Canadian banks,

utilities providers, and insurers. The largest amount of any single LOC is approximately \$18.9 million.

156. The Revolving Credit Facility includes a requirement for mandatory repayments to the extent the loans outstanding exceed the line cap (determined by reference to the lesser of the borrowing base minus reserves and the maximum amount of the loan) or if Sears Canada's liquidity falls below a specified level. Such mandatory repayments do not reduce the credit limit. Advances and unused commitments under the Revolving Credit Facility may be optionally prepaid or reduced without premium or penalty (subject to payment of customary breakage costs in respect of banker's acceptance or LIBOR drawings prepaid before the end of the applicable interest period).

157. Due primarily to the Pension Reserve, the Revolving Credit Facility provides insufficient liquidity for Sears Canada. As such, Sears Canada evaluated additional financing opportunities that would provide additional capital relative to the collateral available.

(b) *GACP Term Loans*

158. On March 20, 2017, Sears Canada entered into a Credit Agreement (the "**GACP Credit Agreement**") and, together with the Wells Fargo Credit Agreement, the "**Credit Agreements**") with, (i) GACP Finance Co., LLC ("**GACP**") as Administrative Agent and Syndication Agent, (ii) KKR Capital Markets LLC and GACP Finance Co., LLC as Joint Lead Arrangers, (iii) TPG Specialty Lending, Inc. as Documentation agent, and (iv) the lenders currently participating in the syndicate (the "**Term Loan Lenders**"). The GACP Credit Agreement terminates on the earliest of (i) March 20, 2022, (ii) the termination date of the Wells

Fargo Credit Agreement if it is not refinanced under certain terms and (iii) the date that an earlier termination event occurs. The obligations of Sears Canada under the GACP Credit Agreement are guaranteed on a secured basis by Corbeil. A copy of the GACP Credit Agreement, including amendment thereto, is attached as Exhibit "G".

159. The GACP Credit Agreement is a term loan credit facility with two available tranches. An initial term loan of approximately US\$93.9 million (CAN \$125 million) was advanced on March 20, 2017 (the "**Initial Term Loan**") against a borrowing base of 10% of the Loan Parties' eligible credit card receivables plus 20% of the Loan Parties' eligible inventory (the "**Personal Property Borrowing Base Portion**"), less the amount of reserves, including the Pension Reserve under the Revolving Credit Facility.

160. The GACP Credit Agreement also provides for a delayed draw term loan available at Sears Canada's option subject to the grant of a first charge on certain owned and leased real property acceptable to Sears Canada and the Term Loan Lenders (the "**Delay Draw Term Loan**" and, together with the Initial Term Loan, the "**Term Loans**"). The amount of the Delayed Draw Term Loan cannot exceed the lesser of (a) the U.S. dollar equivalent of CAN\$175 million and (b) a borrowing base of 50% of the fair market value of owned real property and 30% of the fair market value of leasehold real property, in each case with a first priority charge in favour of the Term Loan Lenders (the "**Real Property Borrowing Base Portion**"), less reserves (including the Pension Reserve). Interest on the Term Loans is determined based on the LIBOR rate (with a floor of 1%) plus a margin of 9.5% or the prime rate plus a margin of 8.5% and is payable monthly. The anticipated closing date with respect to the Delay Draw Term Loan was extended from May 4, 2017 to June 30, 2017.

161. The GACP Credit Agreement includes a requirement for mandatory repayments to the extent the loans outstanding exceed the loan cap (determined by reference to the lesser of the full borrowing base, being the Personal Property Borrowing Base Portion and the Real Property Borrowing Base Portion (if any at such time) minus the reserves, and the maximum amount of the loan) or if Sears Canada's liquidity falls below a specified level (but subject to an aggregate \$20 million threshold before such repayment is required). The GACP Credit Agreement also includes prepayment penalties.

162. The GACP Credit Agreement may impact on the availability of financing under the Revolving Credit Facility. Pursuant to the GACP Credit Agreement, if the amount advanced in the Term Loans exceeds the borrowing base, the difference between those amounts becomes a reserve against the Revolving Credit Facility (the "**Push Down Reserve**"). The Push Down Reserve consequently reduces the amount of financing available to Sears Canada under the Revolving Credit Facility.

163. As noted above, based on the status of negotiations with the Term Loan Lenders, the amount that Sears Canada could expect to borrow under the Delay Draw Term Loan was reduced to an amount up to \$109.1 million before transaction fees. Ultimately, Sears Canada concluded that it was not prudent to encumber its remaining real estate assets for borrowings that were significantly less than \$175 million. The inability to access the full amount of this funding contributed to Sears Canada's liquidity problems and is one of the catalysts for the Applicants' decision to seek relief under the CCAA.

(c) *Collateral under the Credit Agreements*

164. The obligations of Sears Canada and Corbeil under or in connection with the Credit Agreements are secured by Sears Canada's and Corbeil's:

- (a) credit card account receivables, inventory, most accounts, cash and cash equivalents and proceeds of the foregoing, and four real estate properties in Belleville, Ontario, Peterborough, Ontario, City of Trois-Rivieres, Quebec and Charlottetown, Prince Edward Island (the "**Initial Real Property Collateral**", and together with the credit card account receivables, inventory, most accounts, cash and cash equivalents and proceeds of the foregoing, the "**Wells Fargo Priority Collateral**"); and
- (b) equipment, certain goods (including furniture and fixtures), accounts relating to the GACP Credit Agreement and proceeds of the foregoing and any real property collateral subsequently secured (the "**GACP Priority Collateral**" and, together with the Wells Fargo Priority Collateral, the "**Collateral**").

165. Wells Fargo has security over the Collateral pursuant to a guarantee and collateral agreement dated as of September 10, 2010 as amended and restated as of April 19, 2017, as well as deeds of hypothec and debentures with respect to the Initial Real Property Collateral (collectively, the "**Wells Fargo Collateral Agreements**"). A copy of the amended and restated Wells Fargo Collateral Agreement is attached as Exhibit "H".

166. GACP has security over the Collateral pursuant to a guarantee and collateral agreement dated as of March 20, 2017 and amended and restated as of April 19, 2017, as well as

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deeds of hypothec and debentures with respect to the Initial Real Property Collateral (collectively, the “**GACP Collateral Agreements**”). A copy of the amended and restated GACP Collateral Agreements is attached as Exhibit “I”.

167. The respective priorities of Wells Fargo and GACP with respect to the Collateral are governed by an Intercreditor Agreement dated as of March 20, 2017 made between Wells Fargo and GACP and acknowledged by Sears Canada and Corbeil. A copy of the Intercreditor Agreement is attached as Exhibit “J”. Subject to two limited inventory suppliers, (i) Wells Fargo has first priority over the Wells Fargo Priority Collateral and has second priority over the GACP Priority Collateral, and (ii) GACP has first priority over the GACP Priority Collateral and has second priority over the Wells Fargo Priority Collateral.

168. As at January 28, 2017, restricted cash of \$100 million was pledged voluntarily as collateral under the Revolving Credit Facility to provide additional security to the Revolving Facility Lenders. This amount was then reduced to \$30 million. Subsequently, the \$30 million in restricted cash was returned to the company.

### **Cash Management System**

169. In the ordinary course of business, Sears Canada uses a centralized cash management system to monitor account activity and balances for itself and each of its subsidiaries with the exception of Corbeil and SLH, which have their own cash management systems (the “**Sears Cash Management System**”). These accounts are monitored daily and managed centrally at Sears Canada’s head office in Toronto. The Sears Cash Management System facilitates cash forecasting and reporting, monitoring, collection and disbursement of funds, and control over the administration of various bank accounts required to effect the

collection, disbursement and movement of cash. There are various blocked account agreements in place, but none have been activated at this time.

170. The Sears Cash Management System involves four main banks with over 80 bank accounts. In general, Royal Bank of Canada (“RBC”) and Bank of Montreal (“BMO”) provide the primary accounts for receipts of credit, debit and EFT transactions as well as the primary accounts for disbursements. Canadian Imperial Bank of Commerce (“CIBC”) provides the primary accounts for cash receipts from the Sears Canada stores. Sears Canada uses BMO for Canadian dollar EFT disbursements to its North American vendors, while HSBC Canada (“HSBC”) and RBC are used for USD EFT disbursements to North American and international vendors.

171. Sears Canada uses a variety of receipt and disbursement sub-accounts which are consolidated on a monthly basis into central accounts at each bank referred to as “Concentrator Accounts”.<sup>12</sup> The RBC Canadian and US dollar Concentrator Accounts are Sears Canada’s main operating accounts. Funds are transferred from the Concentrator Accounts at CIBC and BMO either directly to the RBC USD Concentrator or else into the RBC Canadian dollar accounts by way of the RBC treasury account. When funds must be transferred out of the RBC Concentrator Account to other Concentrator Accounts (e.g. BMO or HSBC) or other entities (e.g. Corbeil), these funds are transferred through the RBC treasury account.

172. Corbeil has a largely independent cash management system (the “Corbeil Cash Management System”) that is managed from Corbeil’s head office in Montreal. Similarly, SLH

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<sup>12</sup> The sub-accounts are each designated to process a certain type of transaction (e.g. Visa card settlements, direct deposit payroll payments) to simplify the reconciliation of the account activity.



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also has a largely independent cash management system (the “**SLH Cash Management System**”) that is managed from SLH’s head office in Kingston. All of the Corbeil and SLH accounts are with RBC. Sears Canada will fund or remove excess cash from the SLH or Corbeil accounts when needed or available.

173. Except for The Cut Inc.’s bank account at RBC Bank (Georgia) NA, all of the accounts are located in Canada, regardless of the financial institution. The Cut Inc. also has a USD denominated bank account located in Canada.

A. **Sears Canada Receipts**

i. *Credit/Debit Payments*

174. Debit and credit card settlements represent approximately 90% of receipts from Sears Canada store sales.<sup>13</sup> Additionally, sales from Sears Canada’s online platform are all credit card transactions and Sears Canada has a number of other receipt streams where customers pay using credit cards.

175. All card transaction settlements except for MasterCard are deposited into various deposit-only sub-accounts at RBC. Funds are swept automatically from these sub-accounts at the end of each day into the RBC Treasury Account and then to the RBC Concentrator Account. MasterCard settlements are deposited into a sub-account at BMO and swept into the main BMO account (the “**BMO Concentrator Account**”) at the end of each day.

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<sup>13</sup> Sears Canada uses a third party, Moneris Solutions Corporation (“**Moneris**”), to process the card transactions.

ii. *Cash Receipts*

176. Cash receipts represent approximately 10% of receipts from Sears Canada's store sales.<sup>14</sup> All retail stores, other than independent Direct pick-up locations and Hometown Dealer locations, use CIBC as their depository bank. All Canadian funds are deposited into sub-accounts which are swept monthly to a CIBC Canadian Concentrator Account. All US funds are deposited into sub-accounts which are swept monthly to a CIBC USD Concentrator Account. Periodically, the CIBC USD Concentrator Account is swept into an RBC account which is, in turn, swept into an RBC USD Concentrator Account.

177. Independent Direct pick-up locations and Sears Hometown Dealers utilize banks that are convenient to their locations as many stores are in rural areas with limited banking options, and store staff is responsible for depositing cash receipts. On a regular basis, funds in the depository bank accounts of the independent Direct pick-up and Hometown Dealer locations are transferred by EFT transactions into a single bank account at RBC, which is then swept on a regular basis into the RBC Concentrator Account.

iii. *Other Receipts*

178. Sears Canada has a number of other sources of receipts which are deposited into sub-accounts (either with CIBC (cheques/cash) or RBC (EFT)) which are swept into the applicable Concentrator Accounts (e.g. Head Office Deposits, Western Union Receipts, etc.).

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<sup>14</sup> Sears Canada uses a third party, Brinks, to collect cash from the stores. The pickups typically occur once per week.

**B. Sears Canada Disbursements**

179. Sears Canada uses separate sub-accounts at various banks to process disbursements. These accounts run negative balances as payments are made and are funded by a transfer of funds from the associated Concentrator Account. The relevant banking institution monitors the overall cash position of Sears Canada, which allows for these accounts to run a negative balance at any given time. Sears Canada generally maintains a consolidated \$5 million float of cash when considering making payments from the Concentrator Account. It reviews the net balance of funds with each institution on a daily basis.

**i. *Payroll***

180. Payroll for Sears Canada employees and SLH employees is funded through two RBC sub-accounts depending on whether the employee is paid by cheque or the funds are deposited directly into their individual bank account.<sup>15</sup>

181. The Cut Inc. has its own bank account with RBC that is used to make payroll related disbursements to its third party payroll processing service provider.

**ii. *Health Benefits***

182. Sears Canada has an account at RBC which it uses to fund its obligations to employees on sick leave. Funds are transferred to this account from the RBC Treasury Account.

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<sup>15</sup> 168886 Canada Inc. employees are paid by third-party service provider ADP, which is paid by SLH through its own cash management system.

iii. *Vendor Payments*

183. Payments to vendors by EFT are processed through Sears Canada's accounts with BMO and HSBC. Canadian denominated EFT payments to North American vendors are made directly from the BMO Concentrator Account. US dollar denominated EFT payments to North American or international vendors are paid from either a BMO sub-account or an HSBC sub-account which is funded from an RBC USD account.

184. Payments to North American vendors paid by cheque are processed from the various sub-accounts of the RBC CAD and USD Concentrator Accounts.

iv. *Revolving Credit Facility Repayments*

185. Any repayments on the Revolving Credit Facility are processed directly from the RBC Treasury account. Sears Canada does not have a bank account with Wells Fargo.

v. *Other Disbursements*

186. Sears Canada has a number of other disbursement accounts for various purposes, such as a CIBC sub-account for coin purchases as well as RBC and CIBC accounts to fund chargebacks and "not sufficient funds" customer purchases. Additionally, Sears Canada has bank accounts with Toronto Dominion Bank ("TD"), National Bank and the Bank of Nova Scotia ("BNS") in order to pay the bank fees payable on the individual dealer bank accounts provided by these institutions.

**C. Corbeil Cash Management System**

187. Corbeil has its own group of bank accounts with RBC and funds its own operations primarily from its cash receipts. Sears Canada will also provide funding to Corbeil on an as needed basis throughout the year. Corbeil has two main accounts at RBC, a "Chequing" account and a "Receipts/Non-Cheque Disbursement" account. Cash receipts and credit card settlements are deposited into two RBC sub-accounts and swept into the RBC Chequing account at the end of each day. Cash transfers from Sears Canada are deposited directly into the RBC Chequing account. Miscellaneous corporate receipts (e.g., tax refunds etc.) are deposited into the RBC Receipts/Non-Cheque Disbursement account.

188. Disbursements to suppliers made by cheque or by EFT are processed through the RBC Chequing account.

**D. SLH Cash Management System**

189. SLH has its own group of bank accounts with RBC and funds its own operations directly from cash receipts and from funding provided by Sears Canada.

190. SLH collections on its third party customer accounts are deposited into two accounts at RBC (one Canadian dollar and one USD). The Canadian dollar account is swept automatically every day into SLH's main RBC Concentrator Account.

191. SLH has five Canadian dollar and one US dollar denominated RBC sub-accounts that it uses for SLH disbursements. The Canadian dollar sub-accounts are funded from SLH's main RBC Concentrator Account and the US dollar disbursement account is funded from the SLH USD deposits account.

**E. Intercompany Debt**

192. Intercompany balances between members of the Sears Canada Group exist as a result of, among other things: (i) inter-company cash management and finance functions; (ii) the provision of services among Sears Canada Group members; and (iii) the payment of certain subsidiaries' operating costs by Sears Canada. In the ordinary course of business, these intercompany amounts fluctuate from time to time.

**The Urgent Need for Relief under the CCAA**

193. The Sears Canada Group has experienced many years of declining sales and significant losses, with net losses beginning in 2014.

194. Factors contributing to this decline in financial performance include: (i) a general weakening of the traditional Canadian retail industry; (ii) unsustainable fixed costs from an overly broad footprint; (iii) the decline of the catalogue business; (iv) lower than expected conversion of catalogue customers to online customers; (v) the inability to secure an agreement with a financial institution for the management of its credit and financial services operations; and (vi) the weakening of the Canadian dollar.

195. The Sears Canada Group has been able to maintain liquidity during this time of transformation through monetizing the value in its real estate and other assets. The dispositions of assets by the Sears Canada Group have resulted in the following cash receipts (in \$ millions) in recent years:

	2013	2014	2015	2016
Proceeds from sale of joint ventures	\$315.4	\$71.7	\$0.0	\$0.0
Proceeds from credit card termination	\$0.0	\$0.0	\$174.0	\$0.0

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Proceeds from sale and leaseback	\$0.0	\$0.0	\$130.0	\$257.1
Proceeds from lease terminations	\$590.5	\$0.0	\$0.0	\$37.9
Proceeds from sale of Assets	\$1.9	\$1.2	\$0.3	\$3.1
Total	\$907.8	\$72.9	\$304.3	\$298.1

196. The Sears Canada Group has used the proceeds from these transactions to, among other things, pay dividends (prior to 2014) and fund the strategic initiatives detailed below.

197. As a result of the Sears Canada Group's poor financial performance and considerable negative press, vendors supplying inventory to Sears Canada have increasingly been imposing reduced terms on the company. This has further exacerbated liquidity issues.

198. Additionally, the Sears Canada Group faces certain challenges with respect to its pension and postretirement benefit obligations. While the Sears Canada Group is up-to-date with the current required contributions to the Sears Pension Plan, the DB Component of the Sears Pension Plan has a large funding deficit when calculated on a wind-up basis and the monthly special payments place a significant strain on the liquidity available to conduct ongoing operations. The funding deficit has become a significant risk and impediment to the Sears Canada Group's ongoing business, including through the pension reserves taken by its lenders.

199. The Sears Canada Group continues to face significant challenges. The Canadian retail market remains highly competitive as key players and new entrants compete for market share, including as a result of the growth of luxury retailers entering the market and the continued expansion of online sales. Certain international retailers continue to expand into Canada while existing retailers enhance their product offerings and become direct competitors. In addition, the weakening of the Canadian dollar continues to present additional challenges for

Canadian retailers, as this generally leads to higher costs for the company as many goods are purchased with US dollars.

200. The timing of this CCAA application is principally a function of declining liquidity. The Applicants cannot complete the implementation of their operational restructuring without additional liquidity and the stability created by a stay of proceedings under the CCAA. The Applicants simply do not have sufficient cash and projected cash going forward to continue their restructuring initiatives without the benefit of court protection.

201. In addition, the Applicants need to “right size” their operations through negotiations with stakeholders, the disclaimer of a number of unprofitable store locations, reducing the store footprint, staffing reductions, and eliminating a number of businesses and product lines. Right-sizing the business will also have ancillary implications on the Applicants’ purchasing, distribution and logistics functions, among others. All of this will be assisted through court-supervised restructuring proceedings.

202. A stay of proceedings is needed while the Sears Canada Group navigates its restructuring and to otherwise ensure the stability and preservation of the going concern value of the business.

203. The success of the Applicants’ restructuring efforts will depend principally upon: (i) addressing long term liquidity issues so as to ensure future viability of operations (which may entail a sale of all or parts of the business or securing a source of exit financing sufficient to adequately capitalize the business going forward); and (ii) completing the operational transformation of the Sears Canada Group.



204. The Sears Canada Group has recently taken steps to engage a number of parties to assist in formulating and executing on potential restructuring strategies, including: (i) Osler, Hoskin & Harcourt LLP (“**Osler**”), counsel to the Sears Canada Group; (ii) FTI Consulting Canada Inc. (“**FTI**”), as prospective CCAA Monitor (in such capacity and if so appointed by the Court, the “**Monitor**”); (iii) Bennett Jones LLP (“**Bennett Jones**”), as independent counsel to Sears Canada’s board of directors and the Special Committee of Sears Canada’s board of directors, described below; and (iv) BMO Capital Markets, as investment banker and financial advisor (the “**Financial Advisor**”).

205. Additionally, the board of directors of Sears Canada recently constituted a special committee of independent directors (the “**Special Committee**”) to consider various strategic alternatives, including obtaining sources of capital, the recapitalization or restructuring of the Sears Canada Group or the sale of material assets or all of its business, or any alternatives to the aforementioned transactions, which may include insolvency-related proceedings.

206. Due to, among other things, Sears Canada’s inability to draw the full amount of the Delayed Draw Term Loan, and the continuing and mounting operating losses being faced by the company, the Sears Canada Group is facing a looming liquidity crisis and will be unable to meet its obligations as they become due without court protection. Further, the Sears Canada Group does not have sufficient liquidity to pay the claims that will be triggered through the last phase of the operational restructuring described herein.

207. The Applicants are therefore insolvent and will be unable to meet their obligations as they come due without the benefit of an Initial CCAA Order and the receipt of DIP financing. If the Applicants are not permitted the opportunity to restructure under the CCAA or are not able

to successfully restructure and instead proceeded to bankruptcy, the expected proceeds of the Applicants' assets and business would in all likelihood be insufficient to pay in full the claims of their creditors (including those claims arising by virtue of the Applicants ceasing to operate).

208. The Special Committee has spent considerable time considering strategic alternatives for the Sears Canada Group with a view to making a recommendation on such alternatives to the full board of directors. The Special Committee has received presentations and/or information from senior management, the Financial Advisor, the Proposed Monitor, and Osler in the course of discharging its mandate. It has also received independent legal advice from Bennett Jones. After a thorough consideration of the options facing the company, and based on advice of its and Sears Canada's professional advisors referred to above, the Special Committee resolved to recommend the filing of this CCAA application to the board of directors.

209. Following a review of the Sears Canada Group's performance described above, the careful consideration of all options, and the recommendation of the Special Committee, the board of directors of Sears Canada has determined that, in its business judgement, and based on advice of its and Sears Canada's professional advisors referred to above, it is in the best interest of its business and its stakeholders to file for CCAA protection.

### **Restructuring Efforts to Date**

210. In response to the losses incurred over the last several years, the Sears Canada Group has taken a number of actions to re-engineer its business for long-term growth. The initiatives to achieve this objective have been established within five primary workstreams, which are designed to drive the Sears Canada Group's business goals of increasing revenue and maintaining a strong balance sheet. The five primary workstreams are as follows:

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- (a) **Sears 2.0** - Moving Sears Canada's physical retail stores to a more productive model, with a customer-focused and relevant assortment of products, faster inventory turns, and an assessment of the required square footage per store.
- (b) **Initium** - Building a new technology architecture to run Sears Canada with an upgraded e-commerce experience and logistics capabilities. The platform has the potential to structure Sears Canada as a digital commerce company with a network of stores attached, as opposed to a network of stores and legacy technology with a separate e-commerce business.
- (c) **Real Estate** - Matching the Sears Canada Group's real estate portfolio to better suit its needs for a profitable store-based retail business.
- (d) **Cost Reduction** - Bringing the Sears Canada Group's Selling, General and Administrative expense structure in line with its revenue.
- (e) **New Off-Price Business, Fast Fashion and Sears Label Essentials** - Launching Sears Canada's new off-price business – The Cut @ Sears – as well as its new fast fashion offering and rebranding Sears Canada's private label businesses.

211. As described below, the Sears Canada Group has made progress on these key workstreams:

A. Sears 2.0

- **Prototype Stores:** In 2016, Sears Canada launched its first new Sears 2.0 prototype stores at four locations in Ontario. The stores underwent significant

changes in their layout and offerings all designed to deliver quality products at affordable prices. Sears Canada plans to convert ten more stores to the Sears 2.0 format in 2017.

- **Price Scraping:** Sears Canada implemented a program whereby it researches competitor pricing daily to seek to ensure Sears Canada offers the lowest price on comparative appliances and mattresses.
- **Financing:** Sears Canada entered into a new loan processing and servicing agreement with easyFinancial Services Inc. to extend financing options to Sears Canada's customers purchasing major appliances and other home appliances.
- **Operational Reorganization:** Sears Canada has made several changes to its store structures to improve efficiency and increase the effectiveness of the chain of communication between management and the store associate teams within its retail stores. For instance, in January 2017, Sears Canada announced that it would separate the leadership structure of its full-line department stores into (i) Apparel and Accessories and (ii) Home and Hardlines so that leaders can manage smaller areas of the store more efficiently and with greater expertise.
- **New Logo:** Sears Canada unveiled a new logo during the third quarter of 2016 as part of its plan to re-invigorate and revitalize Sears Canada across all lines of business.

**B. Initium**

212. In the first quarter of Fiscal 2016, Sears Canada launched Initium Commerce Lab, an innovation hub, to design and implement a modernized technology platform for Sears Canada. Initium is an open-concept, creative environment, physically located away from head office operations to more easily facilitate the generation of new ideas and focus on delivering customer-centric, digital solutions.

- **New Website:** The new digital e-commerce platform launched the new Sears Canada website nationally in November 2016. While the transition to the new website initially encountered some significant technical difficulties, these difficulties are in the process of being addressed.
- **Technology Infrastructure:** In the second quarter of 2016, Sears Canada announced that it had entered into an agreement with a third party vendor to help streamline and update Sears Canada's current technology infrastructure and mainframe applications with the goal of reducing costs and improving efficiency, enabling the company to decommission legacy systems concurrent to establishing Initium. This agreement will also protect Sears Canada's technology environments with advanced cybersecurity solutions, and assist Sears Canada with elements of its new technology architecture.

**C. Real Estate**

213. Commencing in or about Fiscal 2012, the Sears Canada Group has undertaken a series of property sales and location closures in order to streamline its operations and eliminate unprofitable locations. This "right-sizing" strategy has included: (i) selling owned property that

was no longer required, (ii) selling owned property that was still required and leasing-back the property; and (iii) closing leased locations.

214. Since the beginning of Fiscal 2016 alone, the Sears Canada Group completed the following real estate transactions:

- Closed and self-liquidated numerous underperforming stores;
- Completed sale and leaseback transactions with respect to its NLCs located in Vaughan, Ontario, Calgary, Alberta, Port Coquitlam, British Columbia, and Montreal, Quebec;
- Completed sale and leaseback transactions with respect to certain retail stores;
- Completed a lease termination of the office floors at the Toronto Eaton Centre;
- Sold two former NLCs located in Regina, Saskatchewan; and
- Assigned eight of its Sears Home banner store leases to Leon's Furniture Ltd.

**D. Cost Reduction**

215. The Sears Canada Group achieved annualized cost reductions of \$159.6 million in Fiscal 2016, which exceeded the upper range of its target of \$155.0 million in annualized cost reductions. These reductions were primarily achieved through: store closures, headcount reductions and exiting unprofitable lines of business.

E. **New Off-Price Business, Fast Fashion and Sears Label Essentials**

216. In early 2017, Sears Canada officially launched its off-price business as “The Cut @ Sears”. The Cut @ Sears has a dedicated merchandising team to bring deals on designer products to Sears Canada’s customers. This merchandise is available online as well as in specific sections of certain Sears Canada full-line stores.

217. Sears Canada also launched a new fast fashion offering which features trendy, high-fashion apparel aimed at a millennial lifestyle audience.

218. In March 2017, Sears Canada also began rebranding its private label businesses with the introduction of a new line of everyday favorites on the Sears Label – key essentials for women, men, kids and the home. Sears Label essentials are positioned at elevated quality with prices designed to turn the inventory quickly.

F. **Additional Efforts to Boost Liquidity**

219. In addition to the efforts noted above, Sears Canada has sought to enhance its financial flexibility by entering into the GACP Credit Agreement.

**Relief Sought**

220. The Sears Canada Group has made significant efforts to pursue a restructuring outside of a formal insolvency proceeding. The Sears Canada Group’s liquidity position continues to deteriorate and a going concern note was included in its first quarter financial statements for Fiscal 2017. The Sears Canada Group does not have adequate liquidity to fulfill current business objectives and maintain going concern operations without commencing a

CCAA process, including the DIP Facility. As set out above, the Sears Canada Group will be unable to meet its liabilities as they become due and is therefore insolvent.

A. Stay of Proceedings

221. In order to provide breathing space to the Applicants while they restructure and to permit the Sears Canada Group to continue to operate as a going concern, the Applicants require a stay of proceedings. The Applicants are concerned about the potential termination of contracts by key suppliers and the inability to require suppliers to provide future product in accordance with contractual arrangements. It would be detrimental to the Sears Canada Group's ability to restructure if proceedings were commenced or continued or rights and remedies were exercised against the Applicants.

222. The Applicants request that the benefit of the stay of proceedings be extended to the Hometown Dealers and the Corbeil Franchisees with respect to any claims against them arising out of the Applicants' insolvency and the application for protection under the CCAA.

223. The operations of the Sears Canada Group, the Hometown Dealers and the Corbeil Franchisees are intertwined and the proposed limited extension of the stay is necessary to maintain stability and value in the CCAA process. Hometown Dealer stores allow Sears Canada to operate in smaller markets that cannot support a full-line department store and any third party actions that could affect their operations may result in a loss of revenue. Further, a significant portion of the Hometown Dealer stores are projected to be part of the reconfigured Sears footprint on a go-forward basis. Similarly, Corbeil Franchisees account for half of the Corbeil store footprint and are integral to the continued success of the Corbeil business going forward.



224. Any proceedings commenced against Hometown Dealers or Corbeil Franchisees would necessarily require the participation of key personnel of the Applicants – for example, to provide evidentiary support for the defence of such claims through witnesses or documents. The need to provide such support could be a very significant distraction for the Applicants' key personnel during the restructuring and would materially detract from the paramount goal of achieving the timely restructuring of the business. Additionally, it would negatively affect the Sears Canada Group's plan to continue with its Hometown Dealer stores and Corbeil Franchisees, and would hamper ongoing business relations at this critical time.

225. The stay will allow management to develop and oversee an orderly restructuring of the business with less disruption to the Applicants' current business operations, as well as to continue implementing the operational restructuring initiatives. This, in turn, will help to protect the interests of the Sears Canada Group's stakeholders, including employees, suppliers, landlords, customers and lenders. Having regard to the circumstances, and in an effort to preserve the going concern value of the Sears Canada Group's business, I believe that the granting of a stay of proceedings is in the best interests of the Sears Canada Group and its stakeholders.

226. As noted above, the Applicants are also seeking to stay rights, including but not limited to termination rights and reduction or abatement of rent, that tenants may have against the landlords, owners, operators or managers of the commercial properties where the Sears Canada Group's stores, offices or warehouses are located that arise as a result of the Applicants' insolvency, or as a result of any steps taken by the Applicants pursuant to the proposed Initial Order.

**B. DIP Financing**

227. Because of its current liquidity challenges, and as demonstrated in the Cash Flow Forecast (discussed below), the Sears Canada Group requires interim financing to provide stability, continue going concern operations and to restructure its business as part of this CCAA proceeding.

228. As part of the Sears Canada Group's consideration of strategic alternatives, Sears Canada's current lenders were canvassed on their willingness to provide DIP financing. In the view of the Financial Advisor, the existing lenders would be in the best position to provide DIP financing in a timely manner as they were already familiar with the Sears Canada Group, its complex business and collateral base. Although discussions were held with another potential financier, the Financial Advisor was of the view that, given the rapidly deteriorating financial position of the Applicants, any non-current lender would likely be unable to conduct due diligence and provide committed DIP financing in the urgent timeframe required. Further, a DIP facility provided by the current lenders would avoid potentially distracting litigation involving a third party priming DIP facility.

229. Subject to certain terms and conditions, the Term Loan Lenders and the Revolving Facility Lenders (collectively, the "**DIP Lenders**") have agreed to provide the DIP Facility to Sears Canada consisting of a \$300 million revolving credit facility (the "**DIP Revolver**") as well as a term loan in the amount of the US\$ equivalent of CAN\$150 million (the "**DIP Term Loan**"). The DIP Facility is guaranteed, jointly and severally, by the Applicants. The related credit agreements (the "**DIP Revolving Credit Agreement**" and the "**DIP Term Loan Credit Agreement**", collectively the "**DIP Credit Agreements**") and fee letters are attached to this affidavit as Exhibit "K".

230. The funds available under the DIP Facility will be used to meet the Sears Canada Group's funding requirements during the CCAA proceedings in accordance with the Cash Flow Forecast, including the payment of professional fees and other costs and expenses in connection with the CCAA proceedings.
231. The DIP Credit Agreements do not contemplate, or permit the Sears Canada Group to make, any draws on the DIP Facility until after the comeback hearing. The Cash Flow Forecast demonstrates that the Applicants will not require the additional liquidity provided by the DIP Facility until after the comeback hearing. Nevertheless, it is essential that the DIP Facility is approved at the commencement of the CCAA proceeding in order to provide stability and certainty to the CCAA proceedings.
232. The DIP Facility includes the following commercial terms:
- (a) **Interest:** DIP Term Loan: LIBOR + 11.0% (with a floor of 1%) or US prime rate + 10.0%; DIP Revolver (on cash advances) LIBOR + 4.50% or Prime rate + 3.50%; DIP Revolver (on LOCs): (a) 4.50% per annum, in the case of a Standby LOC, and (b) 4.00% per annum, in the case of a merchandise (commercial) LOC.
  - (b) **Commitment Fee:** DIP Term Loan: 3.5%, DIP Revolver: 1.25%;
  - (c) **Unused Line Fee:** DIP Revolver: 0.375%; and
  - (d) **Exit Fee:** DIP Term Loan 1.5%.

233. Certain prepayment and termination fees with respect to the Initial Term Loan (in the amount of approximately \$5 million) become due and payable as outstanding obligations under the GACP Credit Agreement upon the commencement of this CCAA proceeding. The DIP Term Loan Credit Agreement provides that these fees will not be payable provided that Sears Canada repay in full all amounts owing pursuant to the Initial Term Loan on or before a specified date using cash on hand or post-filing receipts.
234. As discussed above, there are a number of outstanding and undrawn LOCs under the Revolving Credit Facility. In the event that a beneficiary draws on an LOC from and after the commencement of these CCAA proceedings, Sears Canada's obligation to reimburse the Revolver Lenders is triggered (the "**Reimbursement Obligation**"). The DIP Facility provides that from and after the comeback hearing, the amount of any outstanding Reimbursement Obligation will be deemed to be an advance under the DIP Revolver secured by the DIP Revolver Charge (as defined below).
235. Undrawn LOCs remain obligations of Sears Canada under the Revolving Credit Facility. Pursuant to the DIP Agreement, the undrawn LOCs will be cash collateralized by Sears Canada following the comeback hearing from cash on hand or through use of the DIP Facility. The funds to cash collateralize the undrawn LOCs will be deposited into the L/C Collateral Account (as defined in the DIP Revolving Credit Agreement).
236. Pursuant to the DIP Credit Agreements, after the comeback hearing, any pre-filing amounts outstanding under the Revolving Credit Facility and Initial Term Loan will be repaid using cash on hand or post-filing receipts. Pre-filing amounts outstanding under the Revolving Credit Facility are to be paid down prior to pre-filing amounts outstanding under the

Initial Term Loan. The DIP Credit Agreements specifically provide that advances under the DIP Facility cannot be used to satisfy these pre-filing obligations.

237. It is a condition precedent to the availability of the DIP Facility that the Initial Order be in form and substance satisfactory to the DIP Lenders, including in respect of the granting of the DIP Lenders' Charges (as defined below). The maturity date of the DIP Facility is the earliest of (i) December 20, 2017, (ii) termination of the DIP Facility by Sears Canada, or (iii) the occurrence of an "Event of Default" to be defined in each applicable DIP Credit Agreement.

238. The DIP Credit Agreements require that the following milestones, among others, be met (all capitalized terms not previously defined as defined in the DIP Credit Agreements):

- (a) Sears Canada must commence CCAA proceedings and obtain the Initial Order on or prior to **June 23, 2017**;
- (b) The Comeback Motion in respect of the Initial Order, which shall be in form and substance satisfactory to each Agent, and which shall include seeking authority to implement the SISP and approve the DIP Lenders' Charges on a final basis, shall be heard on or before **July 13, 2017**;
- (c) On or before **July 21, 2017**, the Court shall enter an order approving the SISP (the "**SISP Order**"), which shall be in form and substance acceptable to each Agent;
- (d) **Within 3 Business Days** of the issuance of the SISP Order, Sears Canada shall forward process letters to potential bidders;

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- (e) On or before **September 25, 2017**, Sears Canada, with the consent of each Agent and the DIP Lenders, shall have selected the binding bid(s) (the “**Successful Bid(s)**”) and negotiated definitive documentation in respect of the Successful Bid(s) in form and substance acceptable to each Agent and the DIP Lenders;
- (f) On or before **September 27, 2017**, Sears Canada, with the consent of each Agent and the DIP Lenders, shall have identified store locations, if any, where the inventory at such locations are not included in any Successful Bid(s) and shall have sought the required authority to and shall have commenced store closure sales for all such locations and inventory located thereon;
- (g) On or before **September 29, 2017**, Sears Canada shall have served a motion seeking approval of the Successful Bid(s) by the Court;
- (h) On or before **October 4, 2017**, the Court shall have approved the Successful Bid(s); and
- (i) On or before **October 25, 2017**, Sears Canada shall have consummated the Successful Bid(s), which shall be in form and substance acceptable to the Agent and the DIP Lenders.

239. The DIP Revolver and the DIP Term Loan are proposed to be secured by Court-ordered security interests, liens and charges (the “**DIP Revolver Charge**” and the “**DIP Term Loan Charge**”, respectively, and together the “**DIP Lenders’ Charges**”) on all of the present and future assets, property and undertaking of the Applicants, including any cash on hand at the

day of the filing (the “**Property**”). The DIP Lenders’ Charges will not secure any obligation that exists before the Initial Order is made.

240. The DIP Lenders’ Charges are to have priority over all other security interests, charges and liens other than the Administration Charge, the FA Charge, the KERP Priority Charge and the Directors’ Priority Charge (all as defined below, and collectively with the KERP Subordinated Charge and the Directors’ Subordinated Charge the “**Charges**”). The DIP Revolver Charge is to have priority over the DIP Term Loan Charge with respect to the Wells Fargo Priority Collateral. The DIP Term Loan Charge is to have priority over the DIP Revolver Charge with respect to all other Property (all as set out in the proposed Initial Order).

241. Notwithstanding any other provision of the proposed Initial Order, the L/C Collateral Account shall be deemed to be subject to a lien, security, charge and security interest in favour of Wells Fargo in its capacity as Agent under the DIP Revolving Credit Agreement (the “**DIP Revolver Agent**”). The charges as they may attach to the L/C Collateral Account, including by operation of law or otherwise: (a) shall rank junior in priority to the lien, security, charge and security interest in favour of the DIP Revolver Agent in respect of the L/C Collateral Account; and (b) shall attach to the L/C Collateral Account only to the extent of the rights, if any, of any Sears Canada Group entity to the return of any cash from the L/C Collateral Account in accordance with the DIP Revolving Credit Agreement.

242. The DIP Facility is critical to the successful restructuring of the Sears Canada Group, as it will provide the Applicants with the necessary liquidity and stability to operate as a going concern during these proceedings. Absent an injection of cash in accordance with the Cash

Flow Forecast, the Sears Canada Group will be forced to shut down its operations, which will have a catastrophic impact on its employees, suppliers, landlords and other stakeholders.

**C. Monitor**

243. It is proposed that FTI will act as Monitor in the CCAA proceedings if the proposed Initial Order is issued. FTI has consented to act as the Monitor of the Applicants. A copy of the Monitor's consent is attached as Exhibit "L".

244. The Sears Canada Group, with the assistance of FTI, has prepared a 13-week cash flow forecast (the "**Cash Flow Forecast**"), as required by the CCAA. A copy of the Cash Flow Forecast is attached as Exhibit "M" to this Affidavit. They show that the Sears Canada Group can continue operations during the proposed initial stay period.

245. I understand that FTI will file an initial pre-filing report with the Court as proposed Monitor in conjunction with the Applicants' request for relief under the CCAA.

**D. Financial Advisor**

246. The Applicants engaged BMO Capital Markets as their independent Financial Advisor to assist them in developing a contingency plan and implementing it in the event of any restructuring. The engagement letter for BMO Capital Markets is attached as a confidential Appendix to the Pre-Filing Report of the Monitor (the "**BMO Engagement Letter**"). The Applicants are asking, as part of the proposed Initial Order, for the Court to approve Sears Canada's engagement of BMO Capital Markets as its financial advisor and are seeking a charge in the amount of \$3.3 million (the "**FA Charge**") to secure the amounts payable under the BMO Engagement Letter. The FA Charge is proposed to rank *pari passu* with the Administration



Charge. As the BMO Engagement Letter contains commercially sensitive information, the proposed Initial Order also includes a request that the confidential Appendix to the Pre-Filing Report be sealed and not form part of the court record pending further Order of the Court.

247. It is my belief, and the belief of senior management of the Applicants, that BMO Capital Markets' significant investment banking experience and expertise, its extensive experience in running sales processes in insolvency proceedings and its capabilities in the area of debt restructuring have greatly benefited the Applicants in their restructuring efforts to date. Further, BMO Capital Markets led the negotiations that resulted in the DIP Facility. If the Applicants were deprived of the benefit of BMO Capital Markets' continued advice and assistance and were required to retain a new financial advisor, it would likely take a significant period of time for such financial advisor to acquire a similar working knowledge of the business and would make it extremely difficult to implement a restructuring.

248. It is also my belief that the quantum and nature of the fee structure provided for in the BMO Engagement Letter is fair and reasonable in the circumstances. Pursuant to the BMO Engagement Letter, BMO Capital Markets is entitled to be paid:

- (a) an engagement fee of \$750,000, which was paid upon the execution of the BMO Engagement Letter;
- (b) a work fee of \$100,000 per month or part thereof payable in cash in advance;
- (c) a financing fee (the "Financing Fee") equal to 1.0% of the principal amount or commitment amount (as applicable) of secured debt amended or raised, and 2.5%

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of the amount of equity privately issued, sold or placed, if Sears Canada or any of its subsidiaries completes one or more Financings (as defined in the BMO Engagement Letter), including under the DIP Facility;

- (d) a success fee (the “**Contingency Plan Implementation Fee**”) in the amount of \$6.5 million payable in cash upon the implementation of a Contingency Plan (as defined in the BMO Engagement Letter) by Sears Canada or any of its subsidiaries; and
- (e) a fee of \$75,000 per lease payable upon the consummation of a Lease Negotiation (as defined in the BMO Engagement Letter) and an additional \$75,000 per such lease payable on the date that a Contingency Plan Implementation Fee becomes payable (collectively, the “**Lease Negotiation Fees**”). The minimum Lease Negotiation Fee is \$2.5 million in the event that a Contingency Plan Implementation Fee becomes payable and \$1.25 million in the event that the BMO Engagement Letter is terminated with no Contingency Plan Implementation Fee having become payable. The aggregate of all Lease Negotiation Fees shall not exceed \$5 million.

249. The BMO Engagement Letter also provides for the following credits for the benefit of Sears Canada: (i) in the event that a DIP Financing may be used as Exit Financing (as each such term is defined in the BMO Engagement Letter), then only one Financing Fee shall apply, but no Contingency Plan Credit (as defined below) shall apply in such circumstances; (ii) if a Financing Fee becomes payable with respect to an Exit Financing and a Contingency Plan Implementation Fee is also payable concurrently, then 50% of the lesser fee shall be creditable

against the higher fee (the “**Contingency Plan Credit**”); and (iii) Lease Negotiation Fees up to \$2.5 million shall be creditable against any Contingency Plan Implementation Fee payable.

250. As required by the BMO Engagement Letter, Sears Canada paid BMO Capital Markets \$4.2 million as a prepayment of amounts payable thereunder (the “**Prepayment Amount**”). Upon the termination of the BMO Engagement Letter and subject to a hold-back for amounts determined as payable thereunder by BMO Capital Markets, acting reasonably, the Prepayment Amount shall be returned to Sears Canada. In addition, to the extent that the FA Charge exceeds \$3.3 million, then, upon the expiry of any applicable appeal periods, BMO Capital Markets shall return to Sears Canada from the Prepayment Amount, an amount equal to the difference between the FA Charge and \$3.3 million.

**E. Key Employee Retention Plan**

251. The proposed Initial Order includes approval of a key employee retention plan (as set out below, the “**KERP**”) and the granting of a Court-ordered charge up to the maximum aggregate amount of \$9.2 million as security for payments under the KERP.

252. The KERP was developed by the Applicants, in consultation with Osler and with the involvement of FTI, to facilitate and encourage the continued participation of senior management and other key employees of the Applicants who are required to guide the business through the restructuring and preserve value for stakeholders. The KERP will provide its participants with additional payments as an incentive to continue their employment through the CCAA proceedings. These employees have significant experience and specialized expertise that cannot be easily replicated or replaced. Further, these key employees will likely have other, more certain employment opportunities and will be faced with a significantly increased workload

during the restructuring process. Additionally, certain senior store level employees are included in the KERP in order to facilitate a successful liquidation of the closing stores and an orderly exit from the premises.

253. The Applicants propose to include the following employees in the KERP:

Role	Approximate Number of Employees	Estimated Cost
HQ Employees	43	\$7.6 million
Closing Store Employees	116	\$1.6 million
Total	159	\$9.2 million

254. The KERP payments for the HQ employees will be made in three installments payable as follows: (i) 45 days after the filing date;<sup>16</sup> (ii) 90 days after the filing date;<sup>17</sup> and (iii) 180 days after the filing date.<sup>18</sup> In the event of the completion of a successful restructuring plan in this CCAA proceeding and (where applicable) the successful completion of specified Key

<sup>16</sup> In the case of nine executive employees who are KERP beneficiaries, this payment will be fully earned once the initial CCAA filing has been made, and will be payable to them on the earlier of: termination without cause or 45 days after the filing date. In the case of the other HQ employee KERP beneficiaries, if an employee is terminated without cause prior to 45 days after the CCAA filing, this first payment is prorated by the number of days employed from the filing date - for greater clarity it will be the number of days/45.

<sup>17</sup> If an employee is terminated without cause after 45 days and prior to 90 days after the CCAA filing, this second payment is prorated by the number of days employed from the first payment date - for greater clarity the number of days after the 45th day and before the 90th day/45.

<sup>18</sup> In the case of eight executive employees who are KERP beneficiaries, this third installment will only be paid upon completion of a successful restructuring plan. In the case of other HQ employee KERP beneficiaries, if an employee is terminated without cause between 90 and 180 days after the CCAA filing, this third payment is prorated by the number of days employed from the second payment date - for greater clarity the number of days after the 90th day and before the 180th day/90.

Performance Indicator (“KPI”) milestones (as determined by management), then all unpaid installments become payable.

255. The first, second and third installments will each be in an amount equal to 25 percent of the total KERP payment payable to the HQ employee in question. The final 25 percent of the total KERP payment only becomes payable upon the completion of the successful restructuring. The total KERP payments for the HQ employees range from 25 percent to 100 percent of the base salary of the relevant employees.

256. The KERP payments for the closing store employees will be made upon the closure of the store where the employee was employed and the successful achievement of certain KPIs. The KERP payments for the closing store employees are in an amount equal to 25 percent of the employees’ base salaries.

257. If the Sears Canada Group finds itself in a full liquidation scenario, any amounts not yet earned by HQ employees who are not part of the liquidation process would instead be eligible to be used to provide a KERP for store level personnel at the additional closing stores. The current version of the KERP only provides incentive payments for store level employees for stores that are known to be closing at the outset of the CCAA proceedings. It is therefore proposed that the Applicants, with the consent of the Monitor, be provided with the flexibility to transfer all or a portion of those unused KERP amounts for HQ employees who are not part of the liquidation process to store level employees in a full liquidation scenario. A copy of the KERP is attached as a confidential Appendix to the Pre-Filing Report of the Monitor. As the KERP contains commercially sensitive and personal information, the proposed Initial Order

includes a request that the confidential Appendix to the Pre-Filing Report be sealed and not form part of the court record pending further Order of the Court.

258. Assuming the Applicants are able to retain all of the key employees and all of the milestones are met, the total amount payable under the KERP would be a maximum of approximately \$9.2 million. The Applicants are seeking a charge (the “KERP Charge”) to secure the amounts payable under the KERP. A portion of the KERP Charge is proposed to rank immediately below the Administration Charge and FA Charge and immediately above the Directors’ Priority Charge (the “KERP Priority Charge”). The remainder of the KERP Charge is proposed to rank immediately below the DIP Lenders’ Charges and immediately above the Directors’ Subordinated Charge (the “KERP Subordinated Charge”).

**F. Administration Charge**

259. In connection with its appointment, it is proposed that the Monitor, along with its counsel, counsel to the Applicants, and counsel to Sears Canada’s board of directors and the Special Committee, will be granted a Court-ordered charge on all of the present and future assets, property and undertaking of the Applicants (the “Property”) as security for their respective fees and disbursements relating to services rendered in connection with this CCAA proceeding up to a maximum amount of \$5 million (the “Administration Charge”). The Administration Charge is proposed to rank *pari passu* with the FA Charge and to have priority over all other charges and security interests.

**G. Directors’ and Officers’ Protection**

260. A successful restructuring of the Sears Canada Group will only be possible with the continued participation of its directors (the “Directors”), management and employees. These

personnel are essential to the viability of the Applicants' continuing business and the preservation of enterprise value.

261. I am advised by Marc Wasserman of Osler and believe that, in certain circumstances, directors can be held liable for certain obligations of a company owing to employees and government entities, which may include unpaid accrued wages; unpaid accrued vacation pay; and unremitted sales, goods and services, and harmonized sales taxes. The Sears Canada Group estimates, with the assistance of FTI in its capacity as proposed Monitor, that these obligations may amount to as much as approximately \$64 million.

262. It is my understanding that the Sears Canada Group's present and former directors and officers who are or were employed by the Sears Canada Group are among the potential beneficiaries under liability insurance policies that cover an aggregate annual limit of USD \$50 million; however, I understand that the policy has various exceptions, exclusions and carve-outs where coverage may not be available. I do not believe that this insurance policy provides sufficient coverage against the potential liability that the directors and officers could incur in relation to this CCAA proceeding.

263. In light of the potential liabilities and the uncertainty surrounding available indemnities and insurance, I and the other directors and officers have indicated to the Applicants that our continued service and involvement in this proceeding is conditional upon the granting of an Order under the CCAA which grants a charge in favour of the directors and officers of Sears Canada in the amount of \$63.5 million on the Property (the "Directors' Charge"). The Directors' Charge would act as security for indemnification obligations for the Directors' and officers' potential liabilities as set out above. The Directors' Charge is bifurcated into a

“Directors’ Priority Charge” in the amount of \$44 million and the “Directors’ Subordinated Charge” in the amount of \$19.5 million. The Directors’ Priority Charge is proposed to stand in priority to the proposed DIP Lenders’ Charges and the KERP Subordinated Charge, but would be subordinate to the proposed Administration Charge, FA Charge, and KERP Priority Charge. The Directors’ Subordinated Charge is proposed to be subordinate to the DIP Lenders’ Charges and the KERP Subordinated Charge. The Directors’ Charge is necessary so that the Applicants may benefit from their directors’ and officers’ experience with the business and the multifaceted retail industry and so that its directors and officers can guide the Sears Canada Group’s restructuring efforts.

#### **H. Postponement Of Annual Meeting Of Shareholders**

264. As noted above, Sears Canada is a public company governed by the CBCA. As such, Sears Canada is required pursuant to section 133(1)(b) of the CBCA to call and, pursuant to the TSX rules, to hold an annual meeting of its shareholders by no later than July 28, 2017, being six months after the end of its preceding financial year which ended on January 28, 2017. Sears Canada’s annual meeting was scheduled to be held on June 14, 2017. On June 13, 2017, Sears Canada announced that, in light of recent developments, it was postponing the annual meeting to a date to be determined, the details of which would be announced when determined.

265. The management of Sears Canada are presently devoting their efforts to stabilizing the business of the Applicants with a view to implementing a going concern and value maximizing restructuring. Holding the annual meeting of shareholders during the CCAA proceedings would divert the attention of senior management away from the restructuring. Moreover, financial and other information is and will continue to be available to the public



through the Applicants' court filings which will be easily accessible on the proposed Monitor's website ([cfcananda.fticonsulting.com/searscanada](http://cfcananda.fticonsulting.com/searscanada)).

266. Under the circumstances, I believe it is impractical for Sears Canada to call and hold an annual meeting of shareholders during this CCAA proceeding. Therefore, the proposed Initial Order postpones the holding of such meeting until further order of the Court.

267. The articles of Sears Canada require a minimum of seven directors. As a result of recent resignations, Sears Canada currently has six directors. Nevertheless, Sears Canada's by-laws permit the board of directors to act as such provided there is a quorum in place (for which only three directors are required). As Sears Canada can still conduct business pursuant to its by-laws and the Applicants are focused on their restructuring, the proposed Initial Order provides that Sears Canada be relieved from the requirement to appoint any additional director until further order of the Court.

#### **I. Payments During this CCAA Proceeding**

268. During the course of this CCAA proceeding, the Applicants intend to make payments for goods and services supplied post-filing in the ordinary course as set out in the Cash Flow Forecast described above and as permitted by the draft Initial Order.

269. The Applicants expect third parties with contractual arrangements with the Sears Canada Group to continue to provide goods and services in accordance with the proposed Initial Order. However, in order to ensure uninterrupted business operations during the CCAA proceeding, the Applicants are proposing in the Initial Order that they be authorized, with the consent of the Monitor, but not required, to make certain payments, including payments owing in

arrears, to certain critical third parties that provide services that are integral to the Applicants' ability to operate during, and implement, their restructuring under these proceedings. These third parties include key logistics or supply chain providers, customs brokers and clearing houses, fuel providers, repair, maintenance and parts providers, armoured truck carriers, and providers of credit and debit processing services.

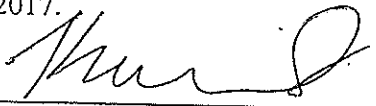
270. In addition, continued supply from certain overseas and domestic suppliers of both the Sears Canada Group's branded and private label merchandise is crucial to the success of this restructuring and the ordinary course operations of the Sears Canada Group's business. Thus, in order to ensure continued supply from certain suppliers during the CCAA proceedings and to preserve the Sears Canada Group's enterprise value, the Sears Canada Group is proposing, in limited circumstances, to pay such suppliers for amounts incurred before and after the commencement of these proceedings.

### **Conclusion**

271. I am confident that granting the draft Initial Order sought by the Applicants is in the best interests of the Applicants and their stakeholders. Although the Sears Canada Group has made significant strides in recent years to transition itself into a modern Canadian retailer, it is currently in a very challenging financial position. Without the relief requested, including the stay of proceedings, the Sears Canada Group faces a cessation of going concern operations, the liquidation of its assets and the loss of its employees' jobs. The Sears Canada Group requires an immediate and realistic dialogue to ensue with and among its stakeholders with the goal of maximizing the ongoing value of the business and continuing employment for as many of its employees as is reasonably possible. The granting of the requested stay of proceedings will

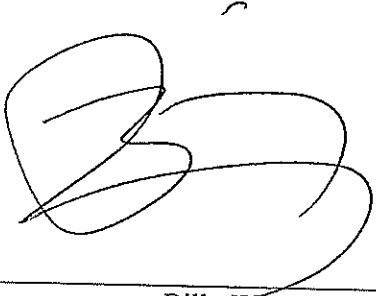
maintain the "status quo" and permit an orderly restructuring and analysis of the Sears Canada Group's affairs.

SWORN BEFORE ME at the City of  
Toronto, in the Province of Ontario on  
June 22, 2017.



*Commissioner for Taking Affidavits*

*Karin Sachar*



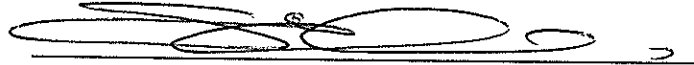
Billy Wong

**Schedule "A"**

- **Sears Floor Covering Centres Inc.** – an inactive Canadian company that used to operate the Sears Canada Group’s floor covering centres business;
- **Initium Logistics Services Inc., Initium Commerce Labs Inc., Initium Trading and Sourcing Corp.** – Canadian corporations created in relation to Sears Canada’s logistics services, e-commerce platform, and merchandise purchasing that are not currently conducting business. They have no employees and no assets;
- **2497089 Ontario Inc.** – a company that is used to facilitate intercompany transactions;
- **6988741 Canada Inc.** – an inactive land development company;
- **10011711 Canada Inc.**– companies providing transportation services
- **1592580 Ontario Limited, 955041 Alberta Ltd., 4201531 Canada Inc.** – these companies are presently inactive. They were incorporated in related to Sears Canada Bank, which is no longer active;
- **3339611 Canada Inc.** – an inactive company related to real estate joint ventures.

**TAB B**

THIS IS EXHIBIT "B" TO THE AFFIDAVIT  
OF BILLY WONG SWORN BEFORE ME  
ON THIS 5<sup>th</sup> DAY OF JULY, 2017.

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

A commissioner for taking Affidavits

SONJA PAVIC

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

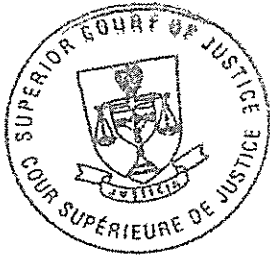
*ONTARIO*  
 SUPERIOR COURT OF JUSTICE  
 COMMERCIAL LIST

THE HONOURABLE MR. )

THURSDAY, THE 22<sup>ND</sup>

JUSTICE HAINEY )

DAY OF JUNE, 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")

INITIAL ORDER

THIS APPLICATION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Billy Wong sworn June 22, 2017, and the Exhibits thereto (collectively, the "Wong Affidavit"), and the pre-filing report dated June 22, 2017 of FFI Consulting Canada Inc. ("FTI"), in its capacity as the proposed Monitor of the Applicants (the "Pre-Filing Report"), and on hearing the submissions of counsel to the Applicants and Sears Connect LP (the "Partnership", and collectively with the Applicants, the "Sears Canada

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Entities”), counsel to the Board of Directors (the “**Board of Directors**”) of Sears Canada Inc. (“**SCI**”) and the Special Committee of the Board of Directors (the “**Special Committee**”) of SCI, counsel to FTI, counsel to Wells Fargo Capital Finance Corporation Canada (the “**DIP ABL Agent**”), as administrative agent under the DIP ABL Credit Agreement (as defined herein), and counsel to GACP Finance Co., LLC (the “**DIP Term Agent**”), as administrative agent under the DIP Term Credit Agreement (as defined herein), Koskie Minsky LLP as counsel for Store Catalogue Retiree Group, counsel for the Financial Services Commission of Ontario, and on reading the consent of FTI to act as the Monitor.

#### **SERVICE**

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

#### **APPLICATION**

2. **THIS COURT ORDERS AND DECLARES** that the Applicants are companies to which the CCAA applies. Although not an Applicant, the Partnership shall enjoy the benefits of the protections and authorizations provided by this Order.

#### **PLAN OF ARRANGEMENT**

3. **THIS COURT ORDERS** that the Applicants, individually or collectively, shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the “**Plan**”).

#### **POSSESSION OF PROPERTY AND OPERATIONS**

4. **THIS COURT ORDERS** that the Sears Canada Entities shall remain in possession and control of their respective current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “**Property**”). For greater certainty, the “**Property**” includes all inventory, assets, undertakings and property of the Sears Canada Entities in the possession or control of the Hometown Dealers (as defined in the Wong Affidavit) and all inventory, assets, undertakings and property of the Sears Canada



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Entities in the possession or control of the Corbeil Franchisees (as defined in the Wong Affidavit). Subject to further Order of this Court, the Sears Canada Entities shall continue to carry on business in a manner consistent with the preservation of the value of their business (the "Business") and Property. The Sears Canada Entities shall each be authorized and empowered to continue to retain and employ the employees, independent contractors, advisors, consultants, agents, experts, accountants, counsel and such other persons (collectively, "Assistants") currently retained or employed by them, with liberty, subject to the terms of the Definitive Documents (as defined herein) to retain such further Assistants, as they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. **THIS COURT ORDERS** that the Sears Canada Entities shall be entitled to continue to utilize the central cash management services currently in place as described in the Wong Affidavit, or, with the consent of the Monitor, the DIP ABL Agent on behalf of the DIP ABL Lenders (as defined herein) and the DIP Term Agent on behalf of the DIP Term Lenders (as defined herein), replace it with another substantially similar central cash management services (the "Cash Management System") and that any present or future bank or other institution providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Sears Canada Entities of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Sears Canada Entities, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System; provided, however, that no bank or other institution providing such Cash Management System shall be obliged to extend any overdraft credit, on an aggregate net basis, directly or indirectly in connection therewith and further provided that, to the extent any overdraft occurs, on an aggregate net basis, the Sears Canada Entities shall make arrangements to repay such overdraft forthwith.

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6. **THIS COURT ORDERS** that the Sears Canada Entities, subject to availability under, and in accordance with the terms of the DIP Facilities (as defined herein) and the Definitive Documents, and subject to further Order of this Court, shall be entitled but not required to pay the following expenses whether incurred prior to, on or after this Order to the extent that such expenses are incurred and payable by the Sears Canada Entities:

- (a) all outstanding and future wages, salaries, commissions, employee and retiree benefits (including, without limitation, medical, dental, life insurance and similar benefit plans or arrangements), pension benefits or contributions, vacation pay, expenses, and director fees and expenses, payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements (but not including termination or severance payments), and all other payroll, pension and benefits processing and servicing expenses;
- (b) all outstanding and future amounts owing to or in respect of Persons working as independent contractors in connection with the Business;
- (c) all outstanding or future amounts owing in respect of customer rebates, refunds, discounts or other amounts on account of similar customer programs or obligations;
- (d) all outstanding or future amounts related to honouring customer obligations, whether existing before or after the date of this Order, including customer financing, product warranties, pre-payments, deposits, gift cards, Sears Club programs (including redemptions of Sears Club points) and other customer loyalty programs, offers and benefits, in each case incurred in the ordinary course of business and consistent with existing policies and procedures;
- (e) the fees and disbursements of any Assistants retained or employed by the Sears Canada Entities at their standard rates and charges; and
- (f) with the consent of the Monitor, amounts owing for goods or services actually supplied to the Sears Canada Entities prior to the date of this Order by:

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- (i) logistics or supply chain providers, including customs brokers and freight forwarders, fuel providers, repair, maintenance and parts providers, and security and armoured truck carriers, and including amounts payable in respect of customs and duties for goods;
- (ii) providers of information, internet, and other technology, including e-commerce providers and related services;
- (iii) providers of credit, debit and gift card processing related services; and
- (iv) other third party suppliers up to a maximum aggregate amount of \$25 million, if, in the opinion of the Sears Canada Entities, the supplier is critical to the business and ongoing operations of the Sears Canada Entities.

7. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein and subject to the terms of the Definitive Documents, the Sears Canada Entities shall be entitled but not required to pay all reasonable expenses incurred by them in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order and any other Order of this Court, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors' and officers' insurance), maintenance (including environmental remediation) and security services; and
- (b) payment for goods or services actually supplied to the Sears Canada Entities following the date of this Order.

8. **THIS COURT ORDERS** that the Sears Canada Entities shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from the Sears Canada Entities' employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;

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- (b) all goods and services taxes, harmonized sales taxes or other applicable sales taxes (collectively, "Sales Taxes") required to be remitted by the Sears Canada Entities in connection with the sale of goods and services by the Sears Canada Entities, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order;
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business, workers' compensation or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Sears Canada Entities; and
- (d) taxes under the *Income Tax Act* (Canada) or other relevant taxing statutes to the extent that such taxing statutes give rise to statutory deemed trust amounts in favour of the Crown in right of Canada or any Province thereof or any political subdivision thereof or any other taxation authority.

9. **THIS COURT ORDERS** that, except as specifically permitted herein, the Sears Canada Entities are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by any one of the Sears Canada Entities to any of their creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of the Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business or pursuant to this Order or any further Order of this Court.

#### **RESTRUCTURING**

10. **THIS COURT ORDERS** that the Sears Canada Entities shall, subject to such requirements as are imposed by the CCAA, and subject to the terms of the Definitive Documents, have the right to:

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- (a) permanently or temporarily cease, downsize or shut down any of their Business 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, provided that, with respect to leased premises, the Sears Canada Entities may, subject to the requirements of the CCAA and paragraphs 11 to 13 herein, vacate, abandon or quit the whole (but not part of) and may permanently (but not temporarily) cease, downsize or shut down any of their Business or operations in respect of any leased premises;
- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as the relevant Sears Canada Entity deems appropriate; and
- (c) pursue all avenues of refinancing, restructuring, selling and reorganizing the Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing, restructuring, sale or reorganization,

all of the foregoing to permit the Sears Canada Entities to proceed with an orderly restructuring of the Sears Canada Entities and/or the Business (the “**Restructuring**”).

#### **REAL PROPERTY LEASES**

11. **THIS COURT ORDERS** that until a real property lease is disclaimed or resiliated in accordance with the CCAA, the Sears Canada Entities shall pay, without duplication, all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under its lease, but for greater certainty, excluding accelerated rent or penalties, fees or other charges arising as a result of the insolvency of any or all of the Sears Canada Entities or the making of this Initial Order) or as otherwise may be negotiated between the applicable Sears Canada Entity and the landlord from time to time (“**Rent**”), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

12. **THIS COURT ORDERS** that the Sears Canada Entities shall provide each of the relevant landlords with notice of the relevant Sears Canada Entity's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the entitlement of a Sears Canada Entity to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the relevant Sears Canada Entity, or by further Order of this Court upon application by the Sears Canada Entities on at least two (2) days' notice to such landlord and any such secured creditors. If any of the Sears Canada Entities disclaims or resiliates the lease governing such leased premises in accordance with Section 32 of the CCAA, 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 Section 32(5) of the CCAA), and the disclaimer or resiliation of the lease shall be without prejudice to the relevant Sears Canada Entity's claim to the fixtures in dispute.

13. **THIS COURT ORDERS** that if a notice of disclaimer or resiliation is delivered pursuant to Section 32 of the CCAA by any of the Sears Canada Entities, 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 the relevant Sears Canada Entity and the Monitor 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 leased premises without waiver of or prejudice to any claims or rights such landlord may have against the relevant Sears Canada Entity in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

**NO PROCEEDINGS AGAINST THE SEARS CANADA ENTITIES, THE BUSINESS OR THE PROPERTY**

14. **THIS COURT ORDERS** that until and including July 22, 2017, or such later date as this Court may order (the "Stay Period"), no proceeding or enforcement process in any court or tribunal (each, a "Proceeding") shall be commenced or continued against or in respect of the

Sears Canada Entities or the Monitor or their respective employees and representatives acting in such capacities, or affecting the Business or the Property, except with the written consent of the Sears Canada Entities and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Sears Canada Entities or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

15. **THIS COURT ORDERS** that during the Stay Period, no Person having any agreements or arrangements with the owners, operators, managers or landlords of commercial shopping centres or other commercial properties (including retail, office and industrial (warehouse) properties) in which there is located a store, office or warehouse owned or operated by the Sears Canada Entities shall take any Proceedings or exercise any rights or remedies under such agreements or arrangements that may arise upon and/or as a result of the making of this Order, the insolvency of, or declarations of insolvency by, any or all of the Sears Canada Entities, or as a result of any steps taken by the Sears Canada Entities pursuant to this Order and, without limiting the generality of the foregoing, no Person shall terminate, accelerate, suspend, modify, determine or cancel any such arrangement or agreement or be entitled to exercise any rights or remedies in connection therewith.
16. **THIS COURT ORDERS** that during the Stay Period, no Person having any agreements or arrangements with the Hometown Dealers or the Corbeil Franchisees shall take any Proceedings or exercise any rights or remedies under such agreements or arrangements that may arise upon and/or as a result of the making of this Order, the insolvency of, or declarations of insolvency by, any or all of the Sears Canada Entities, or as a result of any steps taken by the Sears Canada Entities pursuant to this Order and, without limiting the generality of the foregoing, no Person shall terminate, accelerate, suspend, modify, determine or cancel any such arrangement or agreement or be entitled to exercise any rights or remedies in connection therewith.
17. **THIS COURT ORDERS** that during the Stay Period all rights and remedies, of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "Persons" and each being a "Person") against or in respect of the Sears Canada Entities or the Monitor or their respective employees and representatives acting in

such capacities, or affecting the Business or the Property, are hereby stayed and suspended, except with the written consent of the Sears Canada Entities and the Monitor, or leave of this Court, provided that nothing in this Order shall: (a) empower the Sears Canada Entities to carry on any business that the Sears Canada Entities are not lawfully entitled to carry on; (b) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA; (c) prevent the filing of any registration to preserve or perfect a security interest; or (d) prevent the registration of a claim for lien.

#### **NO INTERFERENCE WITH RIGHTS**

18. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, lease, sublease, licence or permit in favour of or held by the Sears Canada Entities, except with the written consent of the Sears Canada Entities and the Monitor, or leave of this Court. Without limiting the foregoing, no right, option, remedy, and/or exemption in favour of the relevant Sears Canada Entity shall be or shall be deemed to be negated, suspended, waived and/or terminated as a result of this Order.

#### **CONTINUATION OF SERVICES**

19. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Sears Canada Entities or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all trademark license and other intellectual property, computer software, communication and other data services, centralized banking services, payroll and benefit services, insurance, warranty services, transportation services, freight services, security and armoured truck carrier services, utility, customs clearing, warehouse and logistics services or other services to the Business or the Sears Canada Entities are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply or license of such goods, services, trademarks and other intellectual property as may be required by the Sears Canada Entities, and that the Sears Canada Entities shall be entitled to the continued use of the trademarks and other intellectual property currently licensed to, used or owned by the Sears Canada Entities, premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by



the Sears Canada Entities in accordance with normal payment practices of the Sears Canada Entities or such other practices as may be agreed upon by the supplier or service provider and each of the Sears Canada Entities and the Monitor, or as may be ordered by this Court.

#### **NON-DEROGATION OF RIGHTS**

20. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Sears Canada Entities. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

#### **KEY EMPLOYEE RETENTION PLAN**

21. **THIS COURT ORDERS** that the Key Employee Retention Plan (the “KERP”), as described in the Wong Affidavit, is hereby approved and the Sears Canada Entities are authorized to make payments contemplated thereunder in accordance with the terms and conditions of the KERP.

22. **THIS COURT ORDERS** that the key employees referred to in the KERP (the “Key Employees”) shall be entitled to the benefit of and are hereby granted the following charges on the Property, which charges shall not exceed: (a) an aggregate amount of \$4.6 million (the “KERP Priority Charge”) to secure the first \$4.6 million payable to the Key Employees under the KERP; and (b) an aggregate amount of \$4.6 million (the “KERP Subordinated Charge”) to secure any other payments to the Key Employees under the KERP. The KERP Priority Charge and the KERP Subordinated Charge shall have the priority set out in paragraphs 46, 47 and 49 hereof.

#### **APPROVAL OF FINANCIAL ADVISOR AGREEMENT**

23. **THIS COURT ORDERS** that the agreement dated May 15, 2017 engaging BMO Nesbitt Burns Inc. (the “Financial Advisor”) as financial advisor to SCI and attached as Confidential Appendix C to the Pre-Filing Report (the “Financial Advisor Agreement”), and the retention of the Financial Advisor under the terms thereof, is hereby ratified and approved

and SCI is authorized and directed *nunc pro tunc* to make the payments contemplated thereunder in accordance with the terms and conditions of the Financial Advisor Agreement.

24. **THIS COURT ORDERS** that the Financial Advisor shall be entitled to the benefit of and is hereby granted a charge (the “FA Charge”) on the Property, which charge shall not exceed an aggregate amount of \$3.3 million, as security for the fees and disbursements payable under the Financial Advisor Agreement, both before and after the making of this Order in respect of these proceedings. The FA Charge shall have the priority set out in paragraphs 46, 47 and 49 hereof.

#### **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

25. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Sears Canada Entities with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Sears Canada Entities whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Sears Canada Entities, if one is filed, is sanctioned by this Court or is refused by the creditors of the Sears Canada Entities or this Court.

#### **DIRECTORS’ AND OFFICERS’ INDEMNIFICATION AND CHARGE**

26. **THIS COURT ORDERS** that the Sears Canada Entities shall jointly and severally indemnify their directors and officers against obligations and liabilities that they may incur as directors or officers of the Sears Canada Entities after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director’s or officer’s gross negligence or wilful misconduct.

27. **THIS COURT ORDERS** that the directors and officers of the Sears Canada Entities shall be entitled to the benefit of and are hereby granted the following charges on the Property, which charges shall not exceed: (a) an aggregate amount of \$44 million (the “Directors’

Priority Charge”); and (b) an aggregate amount of \$19.5 million (the “Directors’ Subordinated Charge”), respectively, and in each case, as security for the indemnity provided in paragraph 26 of this Order. The Directors’ Priority Charge and the Directors’ Subordinated Charge shall have the priority set out in paragraphs 46, 47 and 49 hereof.

28. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary: (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors’ Priority Charge and the Directors’ Subordinated Charge; and (b) the Sears Canada Entities’ directors and officers shall only be entitled to the benefit of the Directors’ Priority Charge and the Directors’ Subordinated Charge to the extent that they do not have coverage under any directors’ and officers’ insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 26 of this Order.

#### **APPOINTMENT OF MONITOR**

29. **THIS COURT ORDERS** that FTI is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the Business and financial affairs of the Sears Canada Entities with the powers and obligations set out in the CCAA or set forth herein and that the Sears Canada Entities and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Sears Canada Entities pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor’s functions.

30. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Sears Canada Entities’ receipts and disbursements;
- (b) liaise with the Sears Canada Entities and the Assistants and, if determined by the Monitor to be necessary, the Hometown Dealers and Corbeil Franchisees, with respect to all matters relating to the Property, the Business, the Restructuring and such other matters as may be relevant to the proceedings herein;

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- (c) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, the Restructuring and such other matters as may be relevant to the proceedings herein;
- (d) assist the Sears Canada Entities, to the extent required by the Sears Canada Entities, in their dissemination of financial and other information to the DIP ABL Agent, the DIP ABL Lenders, the DIP Term Agent, the DIP Term Lenders and each of their respective counsel and financial advisors, pursuant to and in accordance with the Definitive Documents;
- (e) advise the Sears Canada Entities in their preparation of the Sears Canada Entities' cash flow statements and any reporting required by the Definitive Documents, which information shall be reviewed with the Monitor and delivered to the DIP ABL Agent, the DIP ABL Lenders, the DIP Term Agent, the DIP Term Lenders and each of their respective counsel and financial advisors, pursuant to and in accordance with the Definitive Documents;
- (f) advise the Sears Canada Entities in their development of the Plan and any amendments to the Plan;
- (g) assist the Sears Canada Entities, to the extent required by the Sears Canada Entities, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (h) have full and complete access to the Property (including any Property in the possession of the Hometown Dealers and the Corbeil Franchisees), including the premises, books, records, data, including data in electronic form, and other financial documents of the Sears Canada Entities, to the extent that is necessary to adequately assess the Business and the Sears Canada Entities' financial affairs or to perform its duties arising under this Order;
- (i) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order.

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- (j) assist the Sears Canada Entities, to the extent required by the Sears Canada Entities, with any matters relating to any foreign proceeding commenced in relation to any of the Sears Canada Entities, including retaining independent legal counsel, agents, experts, accountants, or such other persons as the Monitor deems necessary or desirable respecting the exercise of this power; and
- (k) perform such other duties as are required by this Order or by this Court from time to time.

31. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

32. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

33. **THIS COURT ORDERS** that the Monitor shall provide any creditor of the Sears Canada Entities, the DIP ABL Agent, the DIP ABL Lenders, the DIP Term Agent and the DIP Term Lenders with information provided by the Sears Canada Entities in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor

shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Sears Canada Entities is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Sears Canada Entities may agree.

34. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

35. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, counsel to the Sears Canada Entities and counsel to the Board of Directors and the Special Committee shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, whether incurred prior to or subsequent to the date of this Order, by the Sears Canada Entities as part of the costs of these proceedings. The Sears Canada Entities are hereby authorized and directed to pay the accounts of the Monitor, counsel to the Monitor, counsel to the Sears Canada Entities and counsel to the Board of Directors and the Special Committee on a weekly basis and, in addition, the Sears Canada Entities are hereby authorized to pay to the Monitor, counsel to the Monitor, counsel to the Sears Canada Entities and counsel to the Board of Directors and the Special Committee, retainers in the aggregate amount of \$700,000, to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

36. **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

37. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, counsel to the Sears Canada Entities and counsel to the Board of Directors and the Special Committee shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$5 million, as security for their professional fees and disbursements incurred at their respective standard rates and charges, both

before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 46, 47 and 49 hereof.

#### **DIP FINANCING**

38. **THIS COURT ORDERS** that the Sears Canada Entities are hereby authorized and empowered to obtain and borrow or guarantee, as applicable, on a joint and several basis, under:

- (a) the Senior Secured Superpriority Debtor-in-Possession Amended and Restated Credit Agreement dated as of June 22, 2017 and attached to the Wong Affidavit as Exhibit K, among the Sears Canada Entities, the DIP ABL Agent and the lenders from time to time party thereto (the “**DIP ABL Lenders**”) (as may be amended, restated, supplemented and/or modified, subject to approval of this Court in respect of any amendment that the Monitor determines to be material, the “**DIP ABL Credit Agreement**”), in order to finance the Sears Canada Entities’ working capital requirements and other general corporate purposes and capital expenditures, all in accordance with the Definitive Documents, provided that borrowings under DIP ABL Credit Agreement shall not exceed \$300 million unless permitted by further Order of this Court (the “**DIP ABL Credit Facility**”); and
- (b) the Senior Secured, Superpriority Debtor-in-Possession Credit Agreement dated as of June 22, 2017 and attached to the Wong Affidavit as Exhibit K, among the Sears Canada Entities, the DIP Term Agent and the lenders from time to time party thereto (the “**DIP Term Lenders**”) (as may be amended, restated, supplemented and/or modified, subject to approval of this Court in respect of any amendment that the Monitor determines to be material, the “**DIP Term Credit Agreement**”), in order to finance the Sears Canada Entities’ working capital requirements and other general corporate purposes and capital expenditures, all in accordance with the Definitive Documents, provided that borrowings under the DIP Term Credit Agreement shall not exceed \$150 million unless permitted by further Order of this Court (the “**DIP Term Credit Facility**”). and together with the DIP ABL Credit Facility, the “**DIP Facilities**”).

39. **THIS COURT ORDERS** that the DIP Facilities shall be on the terms and subject to the conditions set forth in the DIP ABL Credit Agreement, the DIP Term Credit Agreement and the other Definitive Documents:
40. **THIS COURT ORDERS** that the Sears Canada Entities are hereby authorized and empowered to execute and deliver the DIP ABL Credit Agreement, the DIP Term Credit Agreement and such mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, and including any schedules (as amended and updated from time to time) thereto, the “**Definitive Documents**”), as are contemplated by the DIP ABL Credit Agreement and the DIP Term Credit Agreement or as may be reasonably required by the DIP ABL Agent on behalf of the DIP ABL Lenders and the DIP Term Agent on behalf of the DIP Term Lenders pursuant to the terms thereof, as applicable, and the Sears Canada Entities are hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP ABL Agent, the DIP ABL Lenders, the DIP Term Agent and the DIP Term Lenders under and pursuant to the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.
41. **THIS COURT ORDERS** that the DIP ABL Agent and the DIP ABL Lenders shall be entitled to the benefit of and are hereby granted a charge (the “**DIP ABL Lenders’ Charge**”) on the Property as security for any and all Obligations (as defined in the DIP ABL Credit Agreement) other than the Prepetition Obligations (as defined in the DIP ABL Credit Agreement) (including on account of principal, interest, fees, expenses and other liabilities, and the aggregate of all such obligations, the “**DIP ABL Obligations**”), which DIP ABL Lenders’ Charge shall be in the aggregate amount of the DIP ABL Obligations outstanding at any given time under the DIP ABL Credit Agreement. The DIP ABL Lenders’ Charge shall not secure an obligation that exists before this Order is made. The DIP ABL Lenders’ Charge shall have the priority set out in paragraphs 46, 47 and 49 hereof.
42. **THIS COURT ORDERS** that the DIP Term Agent and the DIP Term Lenders shall be entitled to the benefit of and are hereby granted a charge (the “**DIP Term Lenders’ Charge**”) on the Property as security for any and all Obligations (as defined in DIP Term Credit Agreement) (including on account of principal, interest, fees, expenses and other liabilities, and the aggregate of all such obligations, the “**DIP Term Obligations**”), which DIP Term Lenders’ Charge shall



be in the aggregate amount of the DIP Term Obligations outstanding at any given time under the DIP Term Credit Agreement. The DIP Term Lenders' Charge shall not secure an obligation that exists before this Order is made. The DIP Term Lenders' Charge shall have the priority set out in paragraphs 46, 47 and 49 hereof.

43. **THIS COURT ORDERS** that SCI's reimbursement obligation with respect to the letters of credit outstanding under the Wells Fargo Credit Agreement (as defined in the Wong Affidavit) prior to the date of this Order and which are drawn upon on or after the date of this Order shall be deemed to form part of the DIP ABL Credit Facility and shall be included as DIP ABL Obligations for the purposes of determining the amount of the DIP ABL Lenders' Charge.

44. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

- (a) the DIP ABL Agent on behalf of the DIP ABL Lenders, as applicable, may take such steps from time to time as they may deem necessary or appropriate to file, register, record or perfect the DIP ABL Lenders' Charge, the DIP ABL Credit Agreement or any of the other Definitive Documents;
- (b) the DIP Term Agent on behalf of the DIP Term Lenders, as applicable, may take such steps from time to time as they may deem necessary or appropriate to file, register, record or perfect the DIP Term Lenders' Charge, the DIP Term Credit Agreement or any of the other Definitive Documents;
- (c) upon the occurrence of an event of default under the DIP ABL Credit Agreement, the other related Definitive Documents or the DIP ABL Lenders' Charge, the DIP ABL Agent and the DIP ABL Lenders, as applicable, may, subject to the provisions of the DIP ABL Credit Agreement with respect to the giving of notice or otherwise, and in accordance with the DIP ABL Credit Agreement, the other related Definitive Documents and the DIP ABL Lenders' Charge, as applicable, cease making advances to the Sears Canada Entities, make demand, accelerate payment and give other notices; provided that, the DIP ABL Agent and the DIP ABL Lenders must apply to this Court on seven (7) days' prior written notice (which may include the service of materials in connection with such an application to this Court) to the Sears Canada Entities, the DIP Term Agent, the DIP Term Lenders and the Monitor, to enforce

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against or exercise any other rights and remedies with respect to the Sears Canada Entities or any of the Property (including to set off and/or consolidate any amounts owing by the DIP ABL Agent and the DIP ABL Lenders to the Sears Canada Entities against the obligations of the Sears Canada Entities to the DIP ABL Agent and the DIP ABL Lenders under the DIP ABL Credit Agreement, the other related Definitive Documents or the DIP ABL Lenders' Charge), to appoint a receiver, receiver and manager or interim receiver, or to seek a bankruptcy order against the Sears Canada Entities and to appoint a trustee in bankruptcy of the Sears Canada Entities;

- (d) upon the occurrence of an event of default under the DIP Term Credit Agreement, the other related Definitive Documents or the DIP Term Lenders' Charge, the DIP Term Agent and the DIP Term Lenders, as applicable, may, subject to the provisions of the DIP Term Credit Agreement with respect to the giving of notice or otherwise, and in accordance with the DIP Term Credit Agreement, the other related Definitive Documents and the DIP Term Lenders' Charge, as applicable, cease making advances to the Sears Canada Entities, make demand, accelerate payment and give other notices; provided that, the DIP Term Agent and the DIP Term Lenders must apply to this Court on seven (7) days' prior written notice (which may include the service of materials in connection with such an application to this Court) to the Sears Canada Entities, the DIP ABL Agent, the DIP ABL Lenders and the Monitor, to enforce against or exercise any other rights and remedies with respect to the Sears Canada Entities or any of the Property (including to set off and/or consolidate any amounts owing by the DIP Term Agent and the DIP Term Lenders to the Sears Canada Entities against the obligations of the Sears Canada Entities to the DIP Term Agent and the DIP Term Lenders under the DIP Term Credit Agreement, the other related Definitive Documents or the DIP Term Lenders' Charge), to appoint a receiver, receiver and manager or interim receiver, or to seek a bankruptcy order against the Sears Canada Entities and to appoint a trustee in bankruptcy of the Sears Canada Entities; and
- (e) the foregoing rights and remedies of the DIP ABL Agent, the DIP ABL Lenders, the DIP Term Agent and the DIP Term Lenders shall be enforceable against any trustee

in bankruptcy, interim receiver, receiver or receiver and manager of the Sears Canada Entities or the Property.

45. **THIS COURT ORDERS AND DECLARES** that the DIP ABL Agent, the DIP ABL Lenders, the DIP Term Agent and the DIP Term Lenders shall be treated as unaffected in any plan of arrangement or compromise filed by the Sears Canada Entities or any of them under the CCAA, or any proposal filed by the Sears Canada Entities or any of them under the *Bankruptcy and Insolvency Act* of Canada (the “BIA”), with respect to any advances made under the DIP ABL Credit Agreement, the DIP Term Credit Agreement and the other Definitive Documents.

#### **VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

46. **THIS COURT ORDERS** that the priorities of the Administration Charge, the FA Charge, the DIP ABL Lenders’ Charge, the DIP Term Lenders’ Charge, the Directors’ Priority Charge, the Directors’ Subordinated Charge, the KERP Priority Charge and the KERP Subordinated Charge (collectively, the “Charges”), as among them, with respect to ABL Priority Collateral (as defined in the Intercreditor Agreement dated March 20, 2017 and attached as Exhibit J to the Wong Affidavit) shall be as follows:

First – Administration Charge, to the maximum amount of \$5 million, and the FA Charge, to the maximum amount of \$3.3 million, on a *pari passu* basis;

Second – KERP Priority Charge, to the maximum amount of \$4.6 million;

Third – Directors’ Priority Charge, to the maximum amount of \$44 million;

Fourth – DIP ABL Lenders’ Charge, to the maximum amount of the quantum of the DIP ABL Obligations at the relevant time;

Fifth – the DIP Term Lenders’ Charge, to the maximum amount of the quantum of the DIP Term Obligations at the relevant time;

Sixth – KERP Subordinated Charge, to the maximum amount of \$4.6 million; and

Seventh – the Directors’ Subordinated Charge, to the maximum amount of \$19.5 million.

47. **THIS COURT ORDERS** that the priorities of the Charges as among them, with respect to all Property other than the ABL Priority Collateral shall be as follows:

First – Administration Charge, to the maximum amount of \$5 million, and the FA Charge, to the maximum amount of \$3.3 million, on a *pari passu* basis;

Second – KERP Priority Charge, to the maximum amount of \$4.6 million;

Third – Directors’ Priority Charge, to the maximum amount of \$44 million;

Fourth – DIP Term Lenders’ Charge, to the maximum amount of the quantum of the DIP Term Obligations at the relevant time;

Fifth – DIP ABL Lenders’ Charge, to the maximum amount of the quantum of the DIP ABL Obligations at the relevant time;

Sixth – KERP Subordinated Charge, to the maximum amount of \$4.6 million; and

Seventh – the Directors’ Subordinated Charge, to the maximum amount of \$19.5 million.

48. **THIS COURT ORDERS** that the filing, registration or perfection of the Charges shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

49. **THIS COURT ORDERS** that each of the Charges shall constitute a charge on the Property, and such Charges shall rank in priority to all other security interests, trusts (including constructive trusts), liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (including without limitation any deemed trust that may be created under the Ontario *Pension Benefits Act*) (collectively, “**Encumbrances**”) other than (a) any Person with a properly perfected purchase money security interest under the *Personal Property Security Act* (Ontario) or such other applicable provincial legislation that has not been served with notice of this Order; and (b) statutory super-priority deemed trusts and liens for unpaid employee source deductions.

50. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Sears Canada Entities shall not grant any Encumbrances over any of the Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Sears Canada Entities also obtain the prior written consent of the Monitor, the DIP ABL Agent on behalf of the DIP ABL Lenders, the DIP Term Agent on behalf of the DIP Term Lenders and the other beneficiaries of affected Charges, or further Order of this Court.

51. **THIS COURT ORDERS** that the Charges, the DIP ABL Credit Agreement, the DIP Term Credit Agreement, and the other Definitive Documents shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the “Chargees”) thereunder shall not otherwise be limited or impaired in any way by: (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; 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, sublease, offer to lease or other agreement (collectively, an “Agreement”) that binds the Sears Canada Entities, and notwithstanding any provision to the contrary in any Agreement:

- (i) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the DIP ABL Credit Agreement, the DIP Term Credit Agreement or the other Definitive Documents shall create or be deemed to constitute a breach by the Sears Canada Entities of any Agreement to which it is a party;
- (ii) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Sears Canada Entities entering into the DIP ABL Credit Agreement and the DIP Term Credit Agreement, the creation of the Charges, or the execution, delivery or performance of the other Definitive Documents; and
- (iii) the payments made by the Sears Canada Entities pursuant to this Order, the DIP ABL Credit Agreement, the DIP Term Credit Agreement or the other Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

52. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the relevant Sears Canada Entity's interest in such real property leases.

53. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order, the L/C Collateral Account (as defined in the DIP ABL Credit Agreement) shall be deemed to be subject to a lien, security, charge and security interest in favour of the DIP ABL Agent solely for the reimbursement obligation of SCI related to the letters of credit issued under the Wells Fargo Credit Agreement which remain undrawn from and after the Comeback Motion (as defined herein). The Charges as they may attach to the L/C Collateral Account, including by operation of law or otherwise: (a) shall rank junior in priority to the lien, security, charge and security interest in favour of the DIP ABL Agent in respect of the L/C Collateral Account; and (b) shall attach to the L/C Collateral Account only to the extent of the rights, if any, of any Sears Canada Entity to the return of any cash from the L/C Collateral Account in accordance with the DIP ABL Credit Agreement.

#### **CORPORATE MATTERS**

54. **THIS COURT ORDERS** that SCI be and is hereby relieved of any obligation to call and hold an annual meeting of its shareholders until further Order of this Court.

55. **THIS COURT ORDERS** that SCI be and is hereby relieved of any obligation to appoint any new directors until further Order of this Court.

#### **SERVICE AND NOTICE**

56. **THIS COURT ORDERS** that the Monitor shall: (a) without delay, publish in The Globe and Mail (National Edition) and La Presse a notice containing the information prescribed under the CCAA; and (b) within five days after the date of this Order, (i) make this Order publicly available in the manner prescribed under the CCAA, (ii) send or cause to be sent, in the prescribed manner, a notice to every known creditor who has a claim against the Sears Canada Entities of more than \$1,000 (excluding individual employees, former employees with pension and/or retirement savings plan entitlements, and retirees and other beneficiaries who have entitlements under any pension or retirement savings plans), and (iii) prepare a list showing the

names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder, provided that the Monitor shall not make the claims, names and addresses of the individuals who are creditors publicly available.

57. **THIS COURT ORDERS** that the Monitor shall create, maintain and update as necessary a list of all Persons appearing in person or by counsel in this proceeding (the “**Service List**”). The Monitor shall post the Service List, as may be updated from time to time, on the Monitor’s Website (as defined herein) as part of the public materials to be made available thereon in relation to this proceeding. Notwithstanding the foregoing, the Monitor shall have no liability in respect of the accuracy of or the timeliness of making any changes to the Service List.

58. **THIS COURT ORDERS** that any employee of any of the Sears Canada Entities that receives a notice of termination from any of the Sears Canada Entities shall be deemed to have received such notice of termination by no more than the seventh day following the date such notice of termination is delivered, if such notice of termination is sent by ordinary mail, courier or registered mail.

59. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the “**Protocol**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05, this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: [cfcanada.fticonsulting.com/searscanada](http://cfcanada.fticonsulting.com/searscanada) (the “**Monitor’s Website**”).

60. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Sears Canada Entities and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the Sears Canada Entities’ creditors or other

interested parties at their respective addresses as last shown on the records of the Sears Canada Entities and that any such service or distribution by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

61. **THIS COURT ORDERS** that the Applicants, the Monitor, the Financial Advisor, the DIP Term Agent on behalf of the DIP Term Lenders and the DIP ABL Agent on behalf of the DIP ABL Lenders, and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Applicants' creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the Electronic Commerce Protection Regulations, Reg. 81000-2-175 (SOR/DORS).

#### **COMEBACK MOTION**

62. **THIS COURT ORDERS** that the comeback motion shall be heard on July 13, 2017 (the "Comeback Motion").

#### **GENERAL**

63. **THIS COURT ORDERS** that the Sears Canada Entities or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

64. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Sears Canada Entities, the Business or the Property.

65. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Sears Canada Entities, 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



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the Sears Canada Entities 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 Sears Canada Entities and the Monitor and their respective agents in carrying out the terms of this Order.

66. **THIS COURT ORDERS** that each of the Applicants and the Monitor be at liberty and are hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada, including acting as the foreign representative of the Applicants to apply to the United States Bankruptcy Court for relief pursuant to Chapter 15 of the *United States Bankruptcy Code*, 11 U.S.C. §§ 101-1515, as amended, and to act as foreign representative in respect of any such proceedings and any ancillary relief in respect thereto, and to take such other steps as may be authorized by the Court.


67. **THIS COURT ORDERS** that any interested party (including the Sears Canada Entities and the Monitor) may apply to this Court to vary or amend this Order at the Comeback Motion on not less than seven (7) calendar days' notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

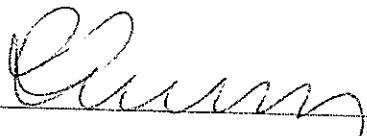
68. **THIS COURT ORDERS** that Confidential Appendix B and Confidential Appendix C to the Pre-Filing Report shall be and are hereby sealed, kept confidential and shall not form part of the public record pending further Order of this Court.

69. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.

ENTERED AT , INSCRIT À TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO:

JUN 22 2017

PER / PAR: 



C. Irwin  
Registrar

TAB C

**THIS IS EXHIBIT "C" TO THE AFFIDAVIT  
OF BILLY WONG SWORN BEFORE ME  
ON THIS 5<sup>th</sup> DAY OF JULY, 2017.**

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

A commissioner for taking Affidavits  
SONJA PAULC



**Private & Confidential**

**SENT BY E-MAIL**

June 28, 2017

[Name]

[Address]

Dear [name]:

As you may be aware, Sears Canada Inc. and certain of its affiliates and subsidiaries (collectively, "**Sears Canada**") filed for and were granted creditor protection under the *Companies' Creditors Arrangement Act* ("**CCAA**"), pursuant to an initial order (the "**Initial Order**") of the Superior Court (Commercial List) (the "**Court**") dated June 22, 2017 (the "**CCAA Proceedings**").

You are receiving this letter because, according to Sears Canada's records, you have an entitlement under the defined benefit component of the Sears Canada Inc. Registered Retirement Plan (Registration No. 0360065) (the "**Sears Pension Plan**").

The defined benefit assets of the Sears Pension Plan are held by CIBC Mellon, an independent trust company. Those assets are separate and apart from the assets of Sears Canada and, as such, are secure and not subject to claims by Sears Canada's creditors.

On June 22, 2017, Koskie Minsky LLP was appointed by the Court as Representative Counsel in the CCAA Proceedings to represent Sears Canada's retirees, active employees and former employees (e.g. deferred vested members under the Sears Pension Plan) with respect to their defined benefit entitlements under the Sears Pension Plan, the Sears Canada Inc. Supplementary Retirement Plan, and the post-employment benefits. We further expect Koskie Minsky LLP will be appointed by the Court as Representative Counsel in the CCAA Proceedings to represent Sears Canada's retirees, active employees and former employees with respect to their defined contribution entitlements under the Sears Pension Plan or any other registered defined contribution pension plan of Sears Canada. If you are a member of this group you may wish to contact Koskie Minsky by email at [searsrepcounsel@kmlaw.ca](mailto:searsrepcounsel@kmlaw.ca) or call their dedicated hotline for Sears retirees at 1-800-244-7120 or visit their website at [www.kmlaw.ca/searsrepcounsel](http://www.kmlaw.ca/searsrepcounsel). A letter from Koskie Minsky is enclosed.

The firm of Ursel Phillips Fellows Hopkinson LLP (UPFH) was appointed by the Court as Representative Counsel in the CCAA proceedings to represent the interests of current and former employees of the Company whose rights are affected by the CCAA Proceedings, with the exception of matters for which Koskie Minsky were appointed.

If you are in a union now, or were in a union when you worked for Sears Canada, your union continues to represent you in your employment matters. Questions about these CCAA proceedings and any employment issues should first be directed to your union representatives.

There is a hearing (the "**Comeback Hearing**") scheduled before the Court to be heard on July

- 2 -

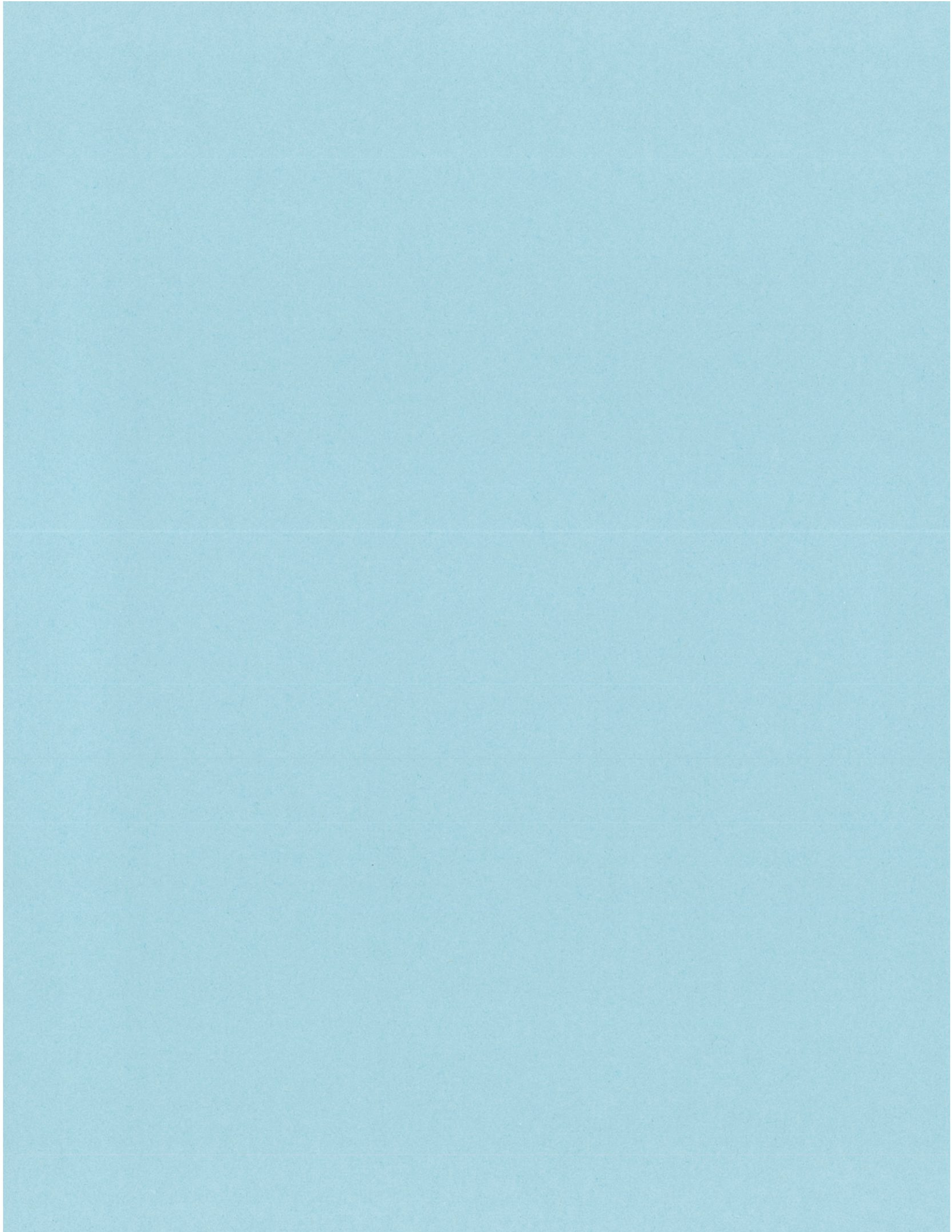
13, 2017 at which time several issues that may be of interest to you will be dealt with by the Court including, among other things, the issue of suspending special payments contributions by Sears Canada to the Sears Pension Plan. At the Comeback Hearing, any interested person may bring a motion to the Court, in accordance with the requirements of the Initial Order, asking the Court to reconsider any aspect of the Initial Order, including the impact of any provision of the Initial Order on the Sears Pension Plan and the beneficiaries of the Sears Pension Plan.

### **Questions**

As part of the proceedings and in connection with the CCAA filing, the Court has appointed FTI Consulting Canada Inc. as the Monitor to oversee the Company's CCAA Proceedings. Should you wish to receive information regarding the CCAA Proceedings, including Court materials in respect of the Comeback Hearing, please visit the Monitor's website at <http://cfcanda.fticonsulting.com/searscanada>.

The enclosed FAQ provides additional information on the CCAA Proceedings and other information that may be relevant to you.

Should you have a specific question in regards to the administration of your pension or benefits (i.e., address change, passing of spouse, etc.) please follow regular process and contact the HR Service Centre at [HRSC@sears.ca](mailto:HRSC@sears.ca) or 1-888-444-9444 (locally in Toronto 416-572-3700).





Privé et confidentiel

PAR COURRIEL

Le 28 juin 2017

[Nom]

[Adresse]

[Madame, Monsieur],

Vous êtes probablement au courant du fait que Sears Canada Inc. ainsi que certains membres de son groupe et certaines de ses filiales (collectivement, « **Sears Canada** ») se sont placés sous la protection de la *Loi sur les arrangements avec les créanciers des compagnies* (« **LACC** ») aux termes d'une ordonnance initiale (l'« **ordonnance initiale** ») rendue par la Cour supérieure (rôle commercial) (la « **Cour** ») en date du 22 juin 2017 (l'« **instance en vertu de la LACC** »).

Vous recevez cette lettre parce que, selon les dossiers de Sears Canada, vous avez un droit aux termes du volet à prestations déterminées du régime de retraite agréé de Sears Canada (n° d'agrément 0360065) (le « **régime de retraite de Sears** »).

CIBC Mellon, société de fiducie indépendante, détient les actifs du volet à prestations déterminées du régime de retraite de Sears. Ces actifs sont distincts des actifs de Sears Canada et, en tant que tels, sont en sécurité, et ne peuvent être visés par les réclamations des créanciers de Sears.

Le 22 juin 2017, la Cour a nommé le cabinet Koskie Minsky LLP à titre de conseiller juridique aux fins de l'instance en vertu de la LACC afin qu'il représente les retraités, ainsi que les employés actifs et les anciens employés de Sears Canada (p. ex. les membres bénéficiant d'un droit acquis à une rente différée aux termes du régime de retraite de Sears), relativement à leurs droits à des prestations déterminées aux termes du régime de retraite de Sears, du régime complémentaire de retraite de Sears Canada Inc. et des avantages postérieurs à l'emploi. Nous nous attendons également à ce que la Cour nomme le cabinet Koskie Minsky LLP à titre de conseiller juridique aux fins de l'instance en vertu de la LACC afin qu'il représente les retraités, ainsi que les employés actifs et les anciens employés de Sears Canada, relativement à leurs droits aux cotisations déterminées aux termes du régime de retraite de Sears ou de tout autre régime de retraite agréé à cotisation déterminée de Sears Canada. Si vous faites partie de ce groupe, vous devriez communiquer avec le cabinet Koskie Minsky par courriel à [searsrepcounsel@kmlaw.ca](mailto:searsrepcounsel@kmlaw.ca), appeler la ligne d'aide des retraités de Sears au 1 800 244-7120 ou consulter leur site Web à [www.kmlaw.ca/searscounsel](http://www.kmlaw.ca/searscounsel). Une lettre du cabinet Koskie Minsky est jointe aux présentes.

La Cour a nommé le cabinet Ursel Phillips Fellows Hopkinson LLP (UPFH) à titre de conseiller juridique aux fins de l'instance en vertu de la LACC afin qu'il défende les intérêts des employés actuels et anciens de la Société dont les droits sont touchés par l'instance, dans la mesure où il ne s'agit pas de questions à l'égard desquelles le cabinet Koskie Minsky a été nommé.

Si, à l'heure actuelle, vous êtes membre d'un syndicat ou si vous étiez membre d'un syndicat lorsque vous avez travaillé chez Sears Canada, votre syndicat continue de vous représenter concernant les questions reliées à votre emploi. Si vous avez des questions à propos de l'instance

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en vertu de la LACC ou des questions relatives à votre emploi, veuillez d'abord les adresser aux représentants de votre syndicat.

Une audience (la « **nouvelle audience** ») doit avoir lieu le 13 juillet 2017 et, au cours de celle-ci, plusieurs questions qui peuvent vous intéresser seront tranchées par la Cour, dont la question de la suspension des cotisations spéciales de Sears Canada au régime de retraite de Sears. À la nouvelle audience, toute personne intéressée peut présenter une requête à la Cour, conformément aux exigences de l'ordonnance initiale, demandant à la Cour de réexaminer un élément de l'ordonnance initiale, dont l'impact d'une disposition de l'ordonnance initiale sur le régime de retraite de Sears et les bénéficiaires du régime de retraite de Sears.

### Questions

Dans le cadre de l'instance en vertu de la LACC, la Cour a nommé FTI Consulting Canada Inc. à titre de contrôleur pour qu'elle supervise l'instance en vertu de la LACC visant la Société. Si vous souhaitez recevoir de l'information sur l'instance en vertu de la LACC, dont les documents de la Cour en ce qui concerne la nouvelle audience, veuillez visiter le site Web du contrôleur à <http://cfcanada.fticonsulting.com/searscanada>.

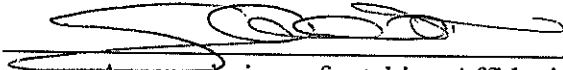
La liste de questions et réponses ci-jointe présente des renseignements supplémentaires sur l'instance en vertu de la LACC et d'autres renseignements susceptibles de vous intéresser.

Si vous avez une question précise concernant l'administration de votre régime de retraite ou de vos avantages (comme un changement d'adresse ou le décès d'un conjoint), veuillez suivre la procédure habituelle et communiquer avec le centre de services RH par courriel à [HRSC@sears.ca](mailto:HRSC@sears.ca) ou par téléphone au 1 888 444-9444 (appel local à Toronto : 416 572-3700).



**TAB D**

**THIS IS EXHIBIT "D" TO THE AFFIDAVIT  
OF BILLY WONG SWORN BEFORE ME  
ON THIS 5<sup>th</sup> DAY OF JULY, 2017.**

  
A commissioner for taking Affidavits  
Souda PAUC



**Private & Confidential**

**Delivered via Regular Mail**

June 28, 2017

[Name]

[Address]

Dear [Name]:

Sears Canada Inc. and certain of its affiliates and subsidiaries (collectively, “Sears Canada” or the “Company”) filed for and were granted creditor protection under the *Companies’ Creditors Arrangement Act* (“CCAA”), pursuant to an initial order (the “Initial Order”) of the Ontario Superior Court of Justice (Commercial List) (the “Court”) dated June 22, 2017 (the “CCAA Proceedings”).

You are receiving this letter as Sears Canada’s records indicate that you are a person who is entitled to one or more of the retiree benefits described below.

**Sears Pension Plan**

You may be a person who is in receipt of a pension from the defined benefit and/or defined contribution component of the Sears Canada Inc. Registered Retirement Plan (Registration No. 0360065) (the “Sears Pension Plan”). The defined benefit assets of the Sears Pension Plan are held by CIBC Mellon, an independent trust company. The defined contribution assets of the Sears Pension Plan are held by Sun Life Financial, an independent insurance company. These assets are separate and apart from the assets of Sears Canada and, as such, are not subject to claims by Sears Canada’s creditors.

We want to reassure you that any monthly pension payments that you are receiving are not affected by the Initial Order.

**Retiree Benefits – Health and Dental and Life Insurance**

You may be a person who is entitled to retiree health and dental benefits or retiree life insurance benefits. The Initial Order from the Court permits, but does not require, Sears Canada to make certain payments with respect to pre-existing obligations in order to reduce the financial strain on Sears Canada and to give Sears Canada the time and stability to enable it to restructure. Payments with respect to retiree health and dental benefits and retiree life insurance all fall under the description of payments with respect to pre-existing obligations.

At this time, Sears Canada has not suspended payments with respect to retiree health and dental benefits, and thus claims relating to retiree health and dental benefits will continue to be processed in the same manner as they were prior to the CCAA filing, until further notice.

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At this time, Sears Canada has also not suspended premium payments it makes with respect to retiree life insurance and Sears Canada expects the insurer – Sun Life – will continue to process retiree life insurance claims in the same manner as they were processed prior to the CCAA filing, until further notice.

### **Retiree Discount**

You may be a person who is entitled to a Sears retiree discount. The Initial Order from the Court permits, but does not require, Sears Canada to continue to provide the Sears retiree discount (it being a pre-existing obligation) in order to reduce the financial stress on Sears Canada and to give Sears Canada the time and stability to enable it to restructure. At this time, Sears Canada has not suspended the Sears retiree discount and thus the Sears retiree discount is currently still available, all in the same manner as it was prior to the CCAA filing, until further notice.

### **Appointment of Representative Counsel**

On June 22, 2017, Koskie Minsky LLP was appointed by the Court as Representative Counsel in the CCAA Proceedings to represent Sears Canada's retirees, active employees and former employees (e.g. deferred vested members under the Sears Pension Plan) with respect to their defined benefit entitlements under the Sears Pension Plan, the Sears Canada Inc. Supplementary Retirement Plan (the "**Supplementary Plan**"), and the post-employment benefits. We further expect Koskie Minsky LLP will be appointed by the Court as Representative Counsel in the CCAA Proceedings to represent Sears Canada's retirees, active employees and former employees with respect to their defined contribution entitlements under the Sears Pension Plan or any other registered defined contribution pension plan of Sears Canada. If you are a member of this group you may wish to contact Koskie Minsky by email at [searsrepcounsel@kmlaw.ca](mailto:searsrepcounsel@kmlaw.ca) or call their dedicated hotline for Sears retirees at 1-800-244-7120 or visit their website at [www.kmlaw.ca/searsrepcounsel](http://www.kmlaw.ca/searsrepcounsel). A letter from Koskie Minsky is enclosed.

If you are in a union now, or were in a union when you worked for Sears Canada, your union continues to represent you in your employment matters. Questions about these CCAA proceedings and any employment issues should first be directed to your union representatives.

### **Future Actions**

There is a hearing (the "**Comeback Hearing**") scheduled before the Court to be heard on July 13 at which time several issues that may be of interest to you will be dealt with by the Court including, among other things, the issue of suspending special payments contributions by Sears Canada to the Sears Pension Plan, suspending retiree health and dental benefit payments, and suspending premium payments with respect to retiree life insurance. The Comeback Hearing may also deal with suspending payments under the Supplementary Plan. At the Comeback Hearing, any interested person may bring a motion to the Court, in accordance with the requirements of the Initial Order, asking the Court to reconsider any aspect of the Initial Order, including the impact of any provision of the Initial Order on the Sears Pension Plan and the beneficiaries of the Sears Pension Plan.

Notice of any changes to your retiree benefits (including retiree health and dental benefits and retiree life insurance) with respect to any Order granted at the Comeback Hearing will be provided following the Comeback Hearing by way of an update to the Monitor's website at

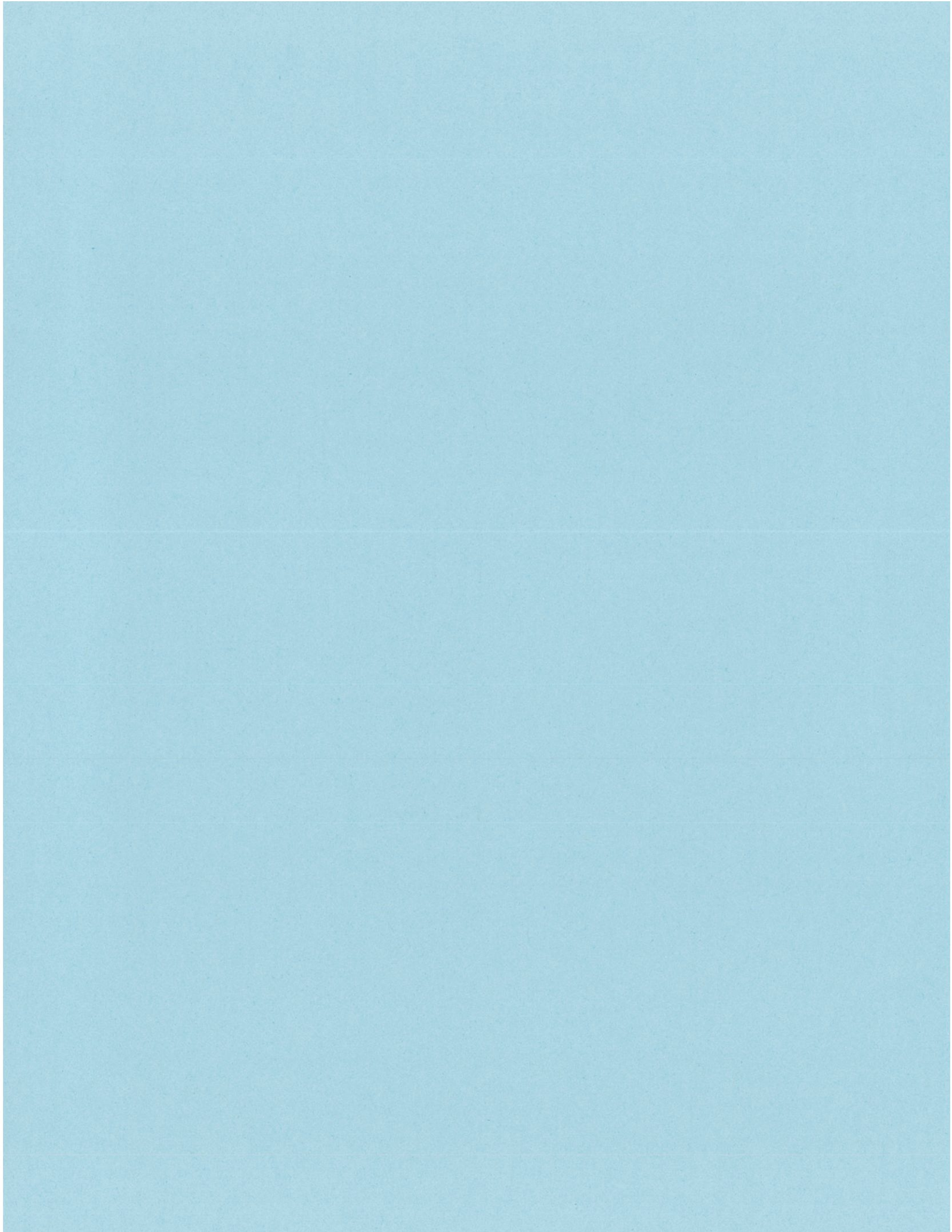
<http://cfcanada.fticonsulting.com/searscanada>. Your retiree benefit coverage may be directly affected by the results of the Comeback Hearing, and it may be advisable to refer to the Monitor's website or to contact Koskie Minsky immediately after the Comeback Hearing with respect to your potential ability to convert your Health, Dental and Life Insurance coverage with Sun Life Financial's Making Choices plan.

### Questions

As part of the proceedings and in connection with the CCAA filing, the Court has appointed FTI Consulting Canada Inc. as the Monitor to oversee the Company's CCAA Proceedings. Should you wish to receive information regarding the CCAA Proceedings, including Court materials in respect of the Comeback Hearing, please visit the Monitor's website at <http://cfcanada.fticonsulting.com/searscanada>.

The enclosed FAQ provides additional information on the CCAA Proceedings and other information that may be relevant to you.

Should you have a specific question in regards to the administration of your pension or benefits (i.e., address change, passing of spouse, etc.) please follow regular process and contact the HR Service Centre at [HRSC@sears.ca](mailto:HRSC@sears.ca) or 1-888-444-9444 (locally in Toronto 416-572-3700).





**Privé et confidentiel**

**Livré par courrier ordinaire**

Le 28 juin 2017

[Nom]

[Adresse]

[Madame/Monsieur],

Sears Canada Inc., certains des membres de son groupe et certaines de ses filiales (collectivement, « **Sears Canada** » ou la « **Société** ») ont demandé et obtenu une protection contre les créanciers en vertu de la *Loi sur les arrangements avec les créanciers des compagnies* (la « **LACC** »), aux termes d'une ordonnance initiale (l'« **ordonnance initiale** ») rendue par la Cour supérieure de justice de l'Ontario (rôle commercial) (la « **Cour** ») en date du 22 juin 2017 (l'« **instance en vertu de la LACC** »).

Vous recevez la présente lettre car les dossiers de Sears Canada indiquent que vous avez droit à un ou plusieurs des avantages à l'intention des retraités décrits ci-dessous.

### **Régime de retraite de Sears**

Vous pourriez être une personne qui reçoit une prestation au titre du volet à prestations déterminées et/ou du volet à cotisation déterminée du régime de retraite agréé de Sears Canada Inc. (n° d'agrément 0360065) (le « **régime de retraite de Sears** »). L'actif du volet à prestations déterminées du régime de retraite de Sears est détenu par CIBC Mellon, société de fiducie indépendante. L'actif du volet à cotisation déterminée du régime de retraite de Sears est détenu par Financière Sun Life, société d'assurance indépendante. Ces actifs sont distincts et séparés des actifs de Sears Canada et, ainsi, ils ne sont pas visés par les réclamations des créanciers de Sears Canada.

Nous voulons vous assurer que les prestations mensuelles que vous recevez ne sont pas touchées par l'ordonnance initiale.

### **Prestations de retraite – Assurance santé, dentaire et vie**

Vous pourriez être une personne qui a droit à des avantages au titre de l'assurance santé et dentaire et de l'assurance-vie à l'intention des retraités. L'ordonnance initiale de la Cour autorise, mais n'oblige pas, Sears Canada à effectuer certains versements concernant des obligations préexistantes afin de réduire la pression financière sur Sears Canada et de lui donner le temps et la stabilité nécessaires pour se restructurer. Les versements relatifs aux avantages au titre de l'assurance santé et dentaire et de l'assurance-vie à l'intention des retraités sont tous visés par la description des versements concernant les obligations préexistantes.

- 2 -

À l'heure actuelle, Sears Canada n'a suspendu aucun versement relatif aux avantages au titre de l'assurance santé et dentaire à l'intention des retraités et, ainsi, les réclamations relatives aux avantages au titre de l'assurance santé et dentaire à l'intention des retraités continueront d'être traitées tout comme elles l'étaient avant la demande de protection en vertu de la LACC, et ce, jusqu'à nouvel ordre.

Pour l'instant, Sears Canada n'a pas non plus suspendu les primes qu'elle verse au régime d'assurance-vie à l'intention des retraités et s'attend à ce que l'assureur - Sun Life - continue de traiter les réclamations au titre de l'assurance-vie à l'intention des retraités tout comme elles l'étaient avant la demande de protection en vertu de la LACC, et ce, jusqu'à nouvel ordre.

### **Réduction offerte aux retraités**

Vous pourriez être une personne qui a droit à une réduction offerte aux retraités de Sears. L'ordonnance initiale de la Cour autorise, mais n'oblige pas, Sears Canada à continuer d'offrir la réduction aux retraités de Sears (puisque'il s'agit d'une obligation préexistante) afin de réduire la pression financière sur Sears Canada et de lui donner le temps et la stabilité nécessaires pour se restructurer. Pour l'instant, Sears Canada n'a pas suspendu la réduction offerte aux retraités de Sears et, par conséquent, la réduction offerte aux retraités de Sears est toujours offerte, tout comme elle l'était avant la demande de protection en vertu de la LACC, et ce, jusqu'à nouvel ordre.

### **Nomination des conseillers juridiques**

Le 22 juin 2017, la Cour a nommé le cabinet Koskie Minsky LLP à titre de conseiller juridique aux fins de l'instance en vertu de la LACC afin qu'il représente les retraités, ainsi que les employés actifs et les anciens employés de Sears Canada (p. ex. les membres bénéficiant d'un droit acquis à une rente différée aux termes du régime de retraite de Sears), relativement à leurs droits à des prestations déterminées aux termes du régime de retraite de Sears, du régime complémentaire de retraite de Sears Canada Inc. (le « régime complémentaire ») et des avantages postérieurs à l'emploi. Nous nous attendons également à ce que la Cour nomme le cabinet Koskie Minsky LLP à titre de conseiller juridique aux fins de l'instance en vertu de la LACC afin qu'il représente les retraités, ainsi que les employés actifs et les anciens employés de Sears Canada, relativement à leurs droits aux cotisations déterminées aux termes du régime de retraite de Sears ou de tout autre régime de retraite agréé à cotisation déterminée de Sears Canada. Si vous faites partie de ce groupe, vous devriez communiquer avec le cabinet Koskie Minsky par courriel à [searsrepcounsel@kmlaw.ca](mailto:searsrepcounsel@kmlaw.ca), appeler leur ligne d'aide des retraités de Sears au 1 800 244-7120 ou consulter leur site Web à [www.kmlaw.ca/searscounsel](http://www.kmlaw.ca/searscounsel). Une lettre du cabinet Koskie Minsky est jointe aux présentes.

Si, à l'heure actuelle, vous êtes membre d'un syndicat ou si vous étiez membre d'un syndicat lorsque vous avez travaillé chez Sears Canada, votre syndicat continue de vous représenter concernant les questions reliées à votre emploi. Si vous avez des questions à propos de l'instance en vertu de la LACC ou des questions relatives à votre emploi, veuillez d'abord les adresser aux représentants de votre syndicat.

### **Prochaines mesures**

Une audience (la « nouvelle audience ») doit avoir lieu le 13 juillet, au cours de laquelle plusieurs questions qui peuvent vous intéresser seront traitées par la Cour, dont la question de la suspension



des cotisations spéciales de Sears Canada au régime de retraite de Sears, de la suspension des prestations au titre de l'assurance santé et dentaire à l'intention des retraités et de la suspension des versements de primes à l'égard de l'assurance-vie à l'intention des retraités. À la nouvelle audience, il se pourrait que l'on se penche également sur la possibilité de suspendre les versements aux termes du régime complémentaire. Toute personne intéressée peut présenter une requête à la Cour pendant la nouvelle audience, conformément aux exigences de l'ordonnance initiale, demandant à la Cour de réexaminer un élément de l'ordonnance initiale, dont l'impact d'une disposition de l'ordonnance initiale touchant le régime de retraite de Sears et les bénéficiaires du régime de retraite de Sears.

Après la nouvelle audience, une mise à jour sera faite sur le site Web du contrôleur à <http://cfcanada.fticonsulting.com/searscanada> pour vous aviser de toute modification apportée aux avantages à l'intention des retraités (ce qui comprend l'assurance santé et dentaire et l'assurance-vie à l'intention des retraités) dans le cadre de toute ordonnance rendue à la nouvelle audience. Il se pourrait que votre couverture d'avantages sociaux soit directement touchée par les résultats de la nouvelle audience, et vous devriez consulter le site Web du contrôleur ou communiquer avec le cabinet Koskie Minsky immédiatement après la nouvelle audience afin de déterminer s'il est possible de convertir votre assurance santé et dentaire et votre assurance-vie à l'aide des Régimes Mes CHOIX de Financière Sun Life.

### **Questions**


Dans le cadre de l'instance et de la demande de protection en vertu de la LACC, la Cour a nommé FTI Consulting Canada Inc. à titre de contrôleur pour qu'elle supervise l'instance en vertu de la LACC visant la Société. Si vous souhaitez recevoir de l'information sur l'instance en vertu de la LACC, dont les documents de la Cour en ce qui concerne la nouvelle audience, veuillez visiter le site Web du contrôleur à <http://cfcanada.fticonsulting.com/searscanada>.

La liste de questions et réponses ci-jointe présente des renseignements supplémentaires sur l'instance en vertu de la LACC et d'autres renseignements susceptibles de vous intéresser.

Si vous avez une question concernant l'administration de votre régime de retraite ou de vos avantages (comme un changement d'adresse ou un décès du conjoint), veuillez suivre la procédure habituelle et communiquer avec le centre de services des ressources humaines par courriel à [HRSC@sears.ca](mailto:HRSC@sears.ca) ou par téléphone au 1 888 444-9444 (appel local à Toronto : 416 572-3700).

# TAB E

THIS IS EXHIBIT "E" TO THE AFFIDAVIT  
OF BILLY WONG SWORN BEFORE ME  
ON THIS 5<sup>th</sup> DAY OF JULY, 2017.



A commissioner for taking Affidavits  
SONJA P.M.C.



**Private & Confidential**

June 28, 2017

[Name]

[Address]

Dear [name]:

A letter was recently mailed to you advising you that Sears Canada Inc. and certain of its affiliates and subsidiaries (collectively, "Sears Canada") filed for and were granted creditor protection under the *Companies' Creditors Arrangement Act* ("CCAA"), pursuant to an initial order (the "Initial Order") of the Superior Court (Commercial List) (the "Court") dated June 22, 2017 (the "CCAA Proceedings").

You are receiving this letter as Sears Canada's records indicate that you are currently in receipt of pension payments under the Sears Canada Inc. Supplementary Retirement Plan (the "Supplementary Plan") and either (i) you terminated employment or retired from Sears Canada on or after January 1, 2010, or (ii) you are the surviving spouse of a person who terminated employment or retired from Sears Canada on or after January 1, 2010.

**Supplementary Plan**

The Initial Order from the Court permits Sears Canada to suspend payments with respect to pre-existing obligations in order to reduce the financial strain on Sears Canada and to give Sears Canada the time and stability to enable it to restructure. Payments under the Supplementary Plan fall under the description of payments with respect to pre-existing obligations.

At this time, Sears Canada has not suspended payments it is making to you under the Supplementary Plan.

**Appointment of Representative Counsel**

On June 22, 2017, Koskie Minsky LLP was appointed by the Court as Representative Counsel in the CCAA Proceedings to represent Sears Canada's retirees, active employees and former employees (e.g. deferred vested members under the Sears Pension Plan) with respect to their defined benefit entitlements under the Sears Pension Plan, the Supplementary Plan, and the post-employment benefits. We further expect Koskie Minsky LLP will be appointed by the Court as Representative Counsel in the CCAA Proceedings to represent Sears Canada's retirees, active employees and former employees with respect to their defined contribution entitlements under the Sears Pension Plan or any other registered defined contribution pension plan of Sears Canada. If you are a member of this group you may wish to contact Koskie Minsky by email at [searsrepcounsel@kmlaw.ca](mailto:searsrepcounsel@kmlaw.ca) or call their dedicated hotline for Sears retirees at 1-800-244-7120 or visit their website at [www.kmlaw.ca/searsrepcounsel](http://www.kmlaw.ca/searsrepcounsel). A letter from Koskie Minsky is enclosed.

If you are in a union now, or were in a union when you worked for Sears Canada, your union continues to represent you in your employment matters. Questions about these CCAA proceedings and any employment issues should first be directed to your union representatives.

**Future Actions**

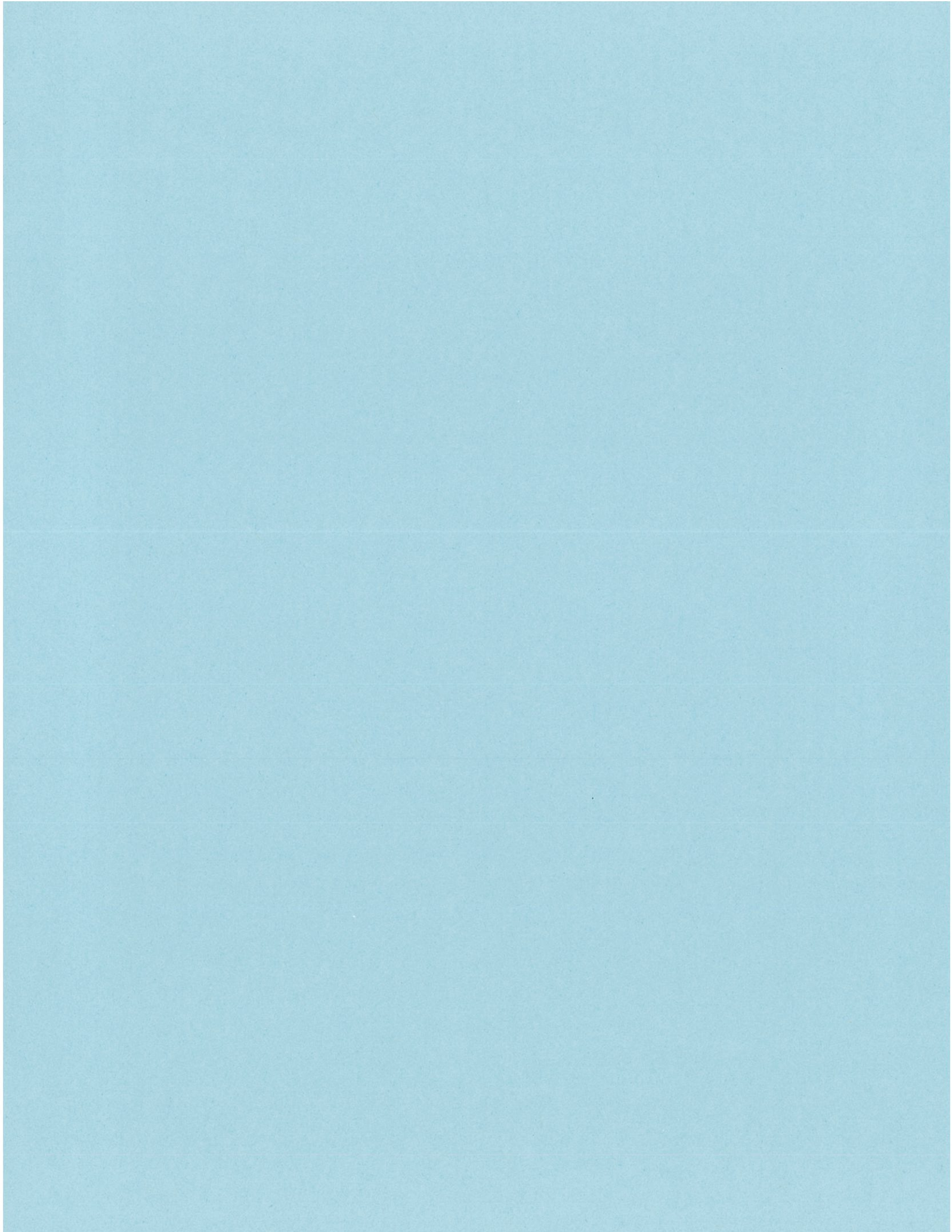
As the initial letter noted, there is a hearing (the “Comeback Hearing”) scheduled before the Court to be heard on July 13, 2017 at which time several issues that may be of interest to you will be dealt with by the Court including, among other things, the issue of suspending special payments contributions by Sears Canada to the Sears Pension Plan, suspending retiree health and dental benefit payments and suspending premium payments with respect to retiree life insurance. The Comeback Hearing may also deal with suspending payments under the Supplementary Plan. At the Comeback Hearing, any interested person may bring a motion to the Court, in accordance with the requirements of the Initial Order, asking the Court to reconsider any aspect of the Initial Order, including the impact of any provision of the Initial Order on the Sears Pension Plan and the beneficiaries of the Sears Pension Plan.

**Questions**

As part of the proceedings and in connection with the CCAA filing, the Court has appointed FTI Consulting Canada Inc. as the Monitor to oversee the Company’s CCAA Proceedings. Should you wish to receive information regarding the CCAA Proceedings, including Court materials in respect of the Comeback Hearing, please visit the Monitor’s website at <http://cfcanada.fticonsulting.com/searscanada>.

The enclosed FAQ provides additional information on the CCAA Proceedings and other information that may be relevant to you.

Should you have a specific question in regards to the administration of your pension or benefits (i.e., address change, passing of spouse, etc.) please follow regular process and contract the HR Service Centre at [HRSC@sears.ca](mailto:HRSC@sears.ca) or 1-888-444-9444 (locally in Toronto 416-572-3700).





**Privé et confidentiel**

Le 28 juin 2017

[Nom]

[Adresse]

[Madame, Monsieur],

Une lettre vous a récemment été postée dans le but de vous aviser que Sears Canada Inc. ainsi que certains membres de son groupe et certaines de ses filiales (collectivement, « Sears Canada ») se sont placés sous la protection de la *Loi sur les arrangements avec les créanciers des compagnies* (« LACC ») aux termes d'une ordonnance initiale (l'« ordonnance initiale ») rendue par la Cour supérieure (rôle commercial) (la « Cour ») en date du 22 juin 2017 (l'« instance en vertu de la LACC »).

Vous recevez cette lettre parce que, selon les dossiers de Sears Canada, vous recevez actuellement des prestations de retraite aux termes du régime de retraite complémentaire de Sears Canada Inc. (le « régime complémentaire ») et soit i) vous avez cessé de travailler chez Sears Canada Inc. ou avez pris votre retraite de Sears Canada Inc. le 1<sup>er</sup> janvier 2010 ou par la suite, soit ii) vous êtes le conjoint survivant d'une personne qui a cessé de travailler chez Sears Canada Inc. ou a pris sa retraite de Sears Canada Inc. le 1<sup>er</sup> janvier 2010 ou par la suite.

### **Régime complémentaire**

L'ordonnance initiale rendue par la Cour autorise Sears Canada à suspendre les paiements aux termes des obligations préexistantes afin de réduire les pressions financières exercées sur elle et lui permettre de bénéficier du temps et de la stabilité nécessaires pour procéder à sa restructuration. Les paiements aux termes du régime complémentaire sont visés par la description des paiements aux termes des obligations préexistantes.

Pour l'instant, Sears Canada n'a pas suspendu les paiements qu'elle vous verse aux termes du régime complémentaire.

### **Nomination des conseillers juridiques**

Le 22 juin 2017, la Cour a nommé le cabinet Koskie Minsky LLP à titre de conseiller juridique aux fins de l'instance en vertu de la LACC afin qu'il représente les retraités, ainsi que les employés actifs et les anciens employés de Sears Canada (p. ex. les membres bénéficiant d'un droit acquis à une rente différée aux termes du régime de retraite de Sears), relativement à leurs droits à des prestations déterminées aux termes du régime de retraite de Sears, du régime complémentaire et des avantages postérieurs à l'emploi. Nous nous attendons également à ce que la Cour nomme le cabinet Koskie Minsky LLP à titre de conseiller juridique aux fins de l'instance en vertu de la LACC afin qu'il représente les retraités, ainsi que les employés actifs et les anciens employés de Sears Canada, relativement à leurs droits aux cotisations déterminées aux termes du régime de retraite de Sears ou de tout autre régime de retraite agréé à cotisation déterminée de Sears Canada. Si vous faites partie de ce groupe, vous devriez communiquer avec le cabinet Koskie Minsky par courriel à [searsrepcounsel@kmlaw.ca](mailto:searsrepcounsel@kmlaw.ca), appeler leur ligne d'aide des retraités de Sears au

- 2 -

1 800 244-7120 ou consulter leur site Web à [www.kmlaw.ca/searscounsel](http://www.kmlaw.ca/searscounsel). Une lettre de Koskie Minsky est jointe aux présentes.

Si, à l'heure actuelle, vous êtes membre d'un syndicat ou si vous étiez membre d'un syndicat lorsque vous avez travaillé chez Sears Canada, votre syndicat continue de vous représenter concernant les questions reliées à votre emploi. Si vous avez des questions à propos de l'instance en vertu de la LACC ou des questions relatives à votre emploi, veuillez d'abord les adresser aux représentants de votre syndicat.

### **Mesures à venir**

Conformément à ce qui était indiqué dans la lettre initiale, une audience (la « nouvelle audience ») doit avoir lieu le 13 juillet 2017 et, au cours de celle-ci, plusieurs questions qui peuvent vous intéresser seront tranchées par la Cour, dont la question de la suspension des cotisations spéciales de Sears Canada au régime de retraite de Sears, la suspension des versements au titre de la couverture pour soins de santé et soins dentaires accordée aux retraités et la suspension du versement des primes relatives à l'assurance-vie des retraités. Il se pourrait que la question de la suspension des paiements aux termes du régime complémentaire soit tranchée à la nouvelle audience. À la nouvelle audience, toute personne intéressée peut présenter une requête à la Cour, conformément aux exigences de l'ordonnance initiale, demandant à la Cour de réexaminer un élément de l'ordonnance initiale, dont l'impact d'une disposition de l'ordonnance initiale sur le régime de retraite de Sears et les bénéficiaires du régime de retraite de Sears.

### **Questions**

Dans le cadre de l'instance en vertu de la LACC, la Cour a nommé FTI Consulting Canada Inc. à titre de contrôleur pour qu'elle supervise l'instance en vertu de la LACC visant la Société. Si vous souhaitez recevoir de l'information sur l'instance en vertu de la LACC, dont les documents de la Cour en ce qui concerne la nouvelle audience, veuillez visiter le site Web du contrôleur à <http://cfcanada.fticonsulting.com/searscanada>.

La liste de questions et réponses ci-jointe présente des renseignements supplémentaires sur l'instance en vertu de la LACC et d'autres renseignements susceptibles de vous intéresser.

Si vous avez une question précise concernant l'administration de votre régime de retraite ou de vos avantages (comme un changement d'adresse ou le décès d'un conjoint), veuillez suivre la procédure habituelle et communiquer avec le centre de services RH par courriel à [HRSC@sears.ca](mailto:HRSC@sears.ca) ou par téléphone au 1 888 444-9444 (appel local à Toronto : 416 572-3700).



**TAB F**

**THIS IS EXHIBIT "F" TO THE AFFIDAVIT  
OF BILLY WONG SWORN BEFORE ME  
ON THIS 5<sup>th</sup> DAY OF JULY, 2017.**



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A commissioner for taking Affidavits

Sonja Paul,

June 28, 2017

Andrew J. Hatnay  
ahatnay@kmlaw.ca

**Via Regular Mail**

Attention: Employees and Former Employees of Sears Canada Inc.

Dear Sirs and Mesdames:

**Re: Sears Canada Inc. - CCAA Proceedings**

As you know, on June 22, 2017, Sears Canada Inc. (the "**Company**") and certain of its affiliates and subsidiaries applied for and were granted protection from their creditors under the *Companies' Creditors Arrangement Act* ("**CCAA**"), pursuant to an initial order of the Ontario Superior Court of Justice (the "**Court**") dated June 22, 2017 (the "**CCAA Proceedings**"). While the Company is insolvent and unable to meet its ongoing payment obligations, the Company has not entered bankruptcy. It has obtained statutory protection under the CCAA which is available to insolvent companies to give them "breathing room" to restructure in order to avoid bankruptcy.

We have asked the Court to appoint Bill Turner, Ken Eady, and Larry Moore (the "**Representatives**") to represent your interest with respect to pension and other post-retirement benefits such as health and dental, group life or supplementary pensions where applicable.

Our firm has been appointed by the Court as Representative Counsel in respect of the pensions and post-retirement benefits for certain non-union current employees and former employees of the Company. We will take our instructions from the Representatives. The firm of Ursel Phillips Fellows Hopkinson LLP has been appointed as Representative Counsel to represent the non-union active and terminated employees in respect of employment matters.

An opt-out process will also be established if you do not wish our firm to represent you in the CCAA proceedings. Please note that legal representation by our firm will be paid by the Company at this time, but if you wish to opt out of representation and retain your own counsel, you will be personally liable for the costs of your legal representation.

The Company will be returning to Court on July 13, 2017 for what is known as a "Comeback Hearing". The purpose of the Comeback Hearing will be to extend the Company's protection against its creditors and to address the company's other requests for relief from the Court to

assist its restructuring. At that hearing we will be attending to represent the former employees and pensioners and their beneficiaries in respect of issues before the court.

For more information and to review the court documents in this proceeding, including the Initial Order of the Court, the Representative Counsel Order, the Comeback Hearing Materials and any subsequent materials filed in this matter, you can visit the website of the CCAA Monitor at: <http://cfcanada.fticonsulting.com/SearsCanada/>

We have established a toll-free line dedicated to current and former employees of the Company: 1-800-244-7120 and e-mail: [searsrepcounsel@kmlaw.ca](mailto:searsrepcounsel@kmlaw.ca). We have also created a webpage and will post important information on our webpage: [www.kmlaw.ca/searsrepcounsel](http://www.kmlaw.ca/searsrepcounsel).

We will provide updates on the CCAA proceedings on our webpage and in correspondence as their proceeding advances over the next several months. We hope to hold a webinar and some town hall meetings in major centers in the near future to advise you as events unfold. Please check our webpage for additional information. Please feel free to contact us at the above toll-free telephone number and email with your questions.

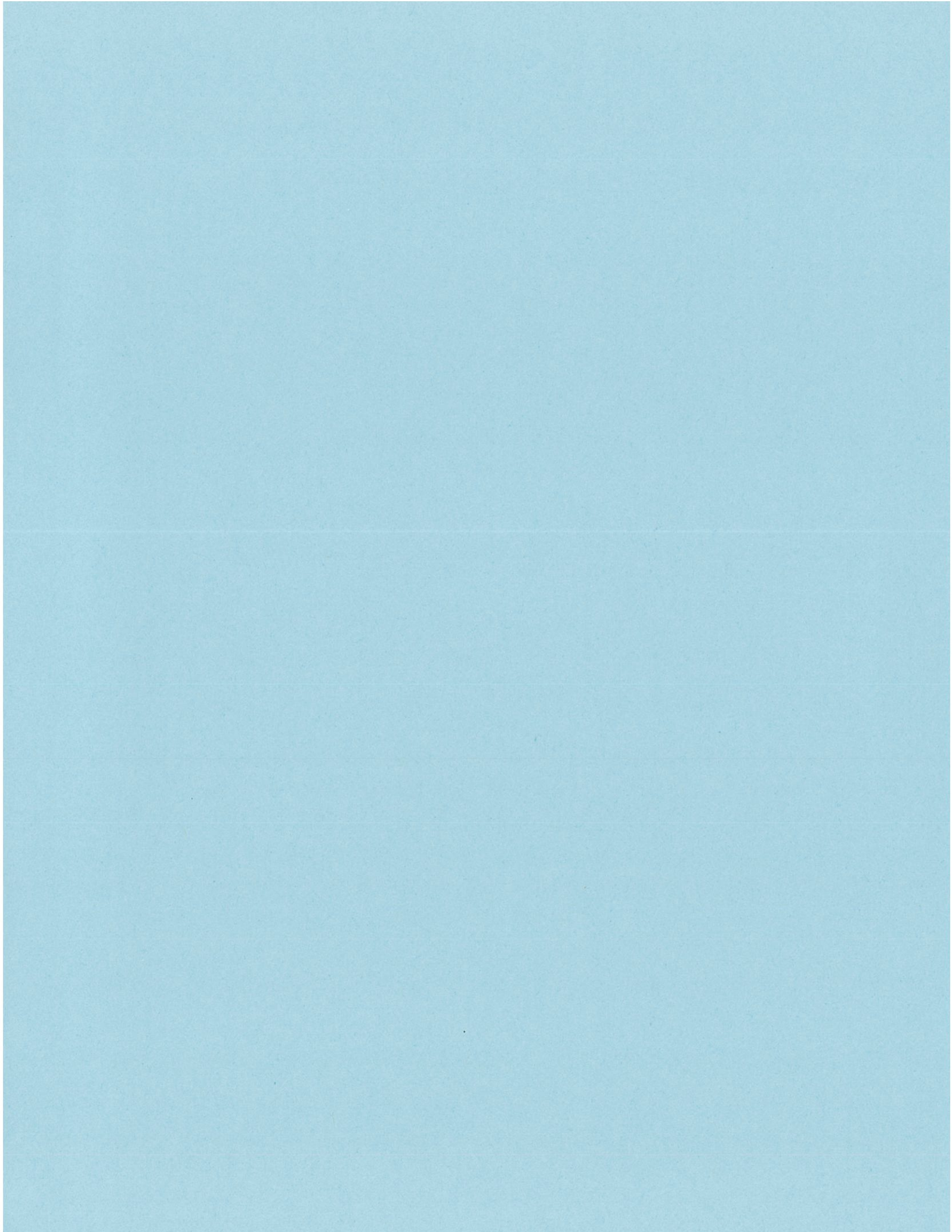
Yours truly,

**KOSKIE MINSKY LLP**

*Andrew J. Hatnay*

Andrew J. Hatnay  
AJH/vdl  
Enclosure

cc: SCRG



Le 28 juin 2017

Andrew J. Hatnay  
ahatnay@kmlaw.ca

**Par courrier ordinaire**

À l'attention des anciens employés et employés actuels de Sears Canada Inc.

**Objet : Sears Canada Inc. – Instance en vertu de la LACC**

Madame, Monsieur,

Vous le savez probablement, le 22 juin 2017, Sears Canada Inc. (la « **Société** ») et certains membres de son groupe et certaines de ses filiales se sont placés sous la protection de la *Loi sur les arrangements avec les créanciers des compagnies* (la « **LACC** ») aux termes d'une ordonnance initiale rendue par la Cour supérieure de justice de l'Ontario (la « **Cour** ») datée du 22 juin 2017 (l'« **instance en vertu de la LACC** »). Bien que la Société soit insolvable et qu'elle ne puisse respecter ses obligations de paiement courantes, elle n'a pas déclaré faillite. Elle a obtenu la protection prévue par la LACC qui est offerte aux entreprises insolubles dans le but de leur donner la latitude nécessaire pour procéder à une restructuration et ainsi éviter la faillite.

Nous avons demandé à la Cour de nommer Bill Turner, Ken Eady et Larry Moore (les « **représentants** ») pour défendre vos intérêts relativement à vos avantages de retraite et autres avantages postérieurs à la retraite, comme l'assurance santé et dentaire, ainsi que l'assurance-vie collective et le régime complémentaire, s'il y a lieu.

La Cour a nommé notre cabinet à titre de conseiller juridique relativement aux avantages de retraite et postérieurs à la retraite de certains anciens employés et employés actuels non syndiqués de la Société. Nos directives proviendront des représentants. Le cabinet Ursel Phillips Fellows Hopkinson LLP a été nommé à titre de conseiller juridique pour représenter les employés dont l'emploi a pris fin et les employés actifs non syndiqués relativement aux questions liées à leur emploi.

Vous aurez également la possibilité de refuser d'être représenté par notre cabinet dans le cadre de l'instance en vertu de la LACC, mais nous tenons à vous aviser que les services rendus par notre cabinet seront acquittés par la Société à ce moment-ci. Par contre, si vous refusez que nous vous représentions et que vous retenez les services de votre propre conseiller juridique, vous serez personnellement responsables des frais de ce dernier.

La Société retournera devant la Cour le 13 juillet 2017 pour la « nouvelle audience ». L'objectif de la nouvelle audience sera de prolonger le délai au cours duquel la Société bénéficie d'une

protection contre ses créanciers et de traiter les autres requêtes de la Société visant à faciliter sa restructuration. Nous assisterons à l'audience pour représenter les anciens employés et les retraités ainsi que leurs bénéficiaires relativement aux questions présentées au tribunal.

Pour de plus amples renseignements et pour examiner les documents de cour de cette procédure, dont l'ordonnance initiale de la Cour, l'ordonnance des conseillers juridiques, les documents de la nouvelle audience et les documents subséquents déposés dans cette affaire, vous pouvez consulter le site Web du contrôleur en vertu de la LACC à : <http://cfcanada.fticonsulting.com/SearsCanada/>.

Nous avons mis sur pied une ligne sans frais à l'intention des anciens employés et des employés actuels de la Société, soit 1 800 244-7120, ainsi qu'une adresse courriel : [searsrepcounsel@kmlaw.ca](mailto:searsrepcounsel@kmlaw.ca). Nous avons également créé une page Web où nous afficherons des renseignements importants : [www.kmlaw.ca/searsrepcounsel](http://www.kmlaw.ca/searsrepcounsel).

Nous vous ferons part des progrès de la procédure en vertu de la LACC au cours des prochains mois sur notre page Web et par voie de correspondance. Nous souhaitons présenter prochainement un webinaire et tenir des réunions dans des villes importantes pour vous informer des progrès de la situation. Veuillez consulter notre page Web pour des renseignements additionnels. Si vous avez des questions, n'hésitez pas à communiquer avec nous au numéro de téléphone sans frais qui précède ou par courriel.

Veuillez agréer l'expression de mes sentiments les meilleurs.

**KOSKIE MINSKY LLP**

*" Andrew J. Hatnay "*

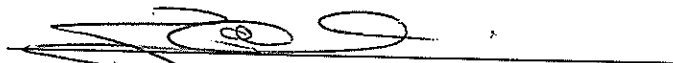
Andrew J. Hatnay  
AJH/vdl  
Pièce jointe

c.c. : SCRG

**TAB G**



**THIS IS EXHIBIT "G" TO THE AFFIDAVIT  
OF BILLY WONG SWORN BEFORE ME  
ON THIS 5<sup>th</sup> DAY OF JULY, 2017.**



A commissioner for taking Affidavits

SONJA PAVIC

## SALE GUIDELINES – INVENTORY AND SEARS FF&E

The following procedures shall apply to any liquidation sales (the “Sale”) of inventory and goods (“Merchandise”) to be held at Sears Canada’s retail stores or Hometown Dealer stores (as listed on Schedule “A” to the Sale Guidelines and SISP Order (as defined below), the “Stores”). Terms capitalized but not defined in these Sale Guidelines have the meanings ascribed to them in the initial order of the Ontario Superior Court of Justice (Commercial List) (the “Court”) dated June 22, 2017 (the “Initial Order”) or the Sale Guidelines and SISP Order.

1. Except as otherwise expressly set out herein, and subject to: (i) the Order of the Court approving, *inter alia* these Sale Guidelines (the “Sale Guidelines and SISP Order”); or (ii) any further Order of the Court; or (iii) any subsequent written agreement between Sears Canada and its applicable landlord(s) including any landlord of any Hometown Dealer as defined in the Initial Order (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 any Hometown Dealer 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 as determined by Sears Canada (the “Vacate Date”), provided however that in all cases the Vacate Date shall be no later than October 5, 2017 (the “Sale Termination Date”). Rent payable under the respective Leases shall be paid as provided in the Initial Order.
3. The Sale shall be conducted in accordance with applicable federal, provincial and municipal laws, unless otherwise ordered by the Court.
4. All display and hanging signs used by Sears Canada or by any Hometown Dealer, as applicable, 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, Sears Canada or any Hometown Dealer 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, Sears Canada or any Hometown Dealer 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 Sears Canada or the applicable Hometown Dealer 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. Sears Canada or any Hometown Dealer 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 and/or

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the Hometown Dealer (if applicable) 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, Sears Canada or any Hometown Dealer 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 explicitly 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 Sears Canada or the applicable Hometown Dealer.

5. Sears Canada or any Hometown Dealer 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 Sears Canada's hotline number.
7. Sears Canada or any Hometown Dealer 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, Sears Canada or any Hometown Dealer may solicit customers in the Stores themselves. Sears Canada or any Hometown Dealer 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.
8. At the conclusion of the Sale in each Store, Sears Canada and the Hometown Dealer, if applicable, 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 Sears 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 Sale Guidelines and SISP 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.

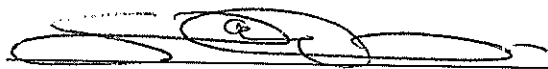
9. Subject to the terms of paragraph 8 above, Sears Canada or any Hometown Dealer may sell furniture, fixtures and equipment owned by Sears Canada ("Sears FF&E") and located in the Stores during the Sale. Sears Canada and any Hometown Dealer, if applicable, may advertise the sale of Sears FF&E consistent 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 Sears FF&E sold during the Sale shall only be permitted to remove the Sears 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 Sears 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 Sale Guidelines and SISP Order. Sears Canada or the applicable Hometown Dealer shall repair any damage to the Stores resulting from the removal of any Sears FF&E by Sears Canada, by any Hometown Dealer, or by third party purchasers of Sears FF&E.
10. Sears Canada or any Hometown Dealer 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 Hometown Dealers, where applicable, hereby provide notice to the Landlords of their intention to sell and remove Sears FF&E from the Stores. Sears Canada or the applicable Hometown Dealer 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 Sears Canada or the applicable Hometown Dealer to identify the Sears 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 Sears Canada's or applicable Hometown Dealer's entitlement to sell or remove any Sears FF&E under the provisions of the Lease, such Sears FF&E shall remain on the premises and shall be dealt with as agreed between Sears Canada, the Hometown Dealer, if applicable, 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 claim to the Sears 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 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.

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13. 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 any Hometown Dealer, if applicable, shall not conduct any auctions of Merchandise or Sears FF&E at any of the Stores.
15. Sears Canada 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 Sears Canada shall be ● who may be reached by phone at ● or email at ●. If a dispute should arise concerning the conduct of the Sale subject to a Hometown Dealer Liquidation, the Landlords 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 Sears Canada or the Hometown Dealer, if applicable, 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, Sears Canada or the Hometown Dealer, if applicable, shall not be required to take any such banner down pending determination of any dispute.
16. Nothing herein is, or shall be deemed to be a consent by any Landlord to the sale, assignment or transfer of any Lease, or shall, or shall be deemed to, or grant to the Landlord any greater rights than already exist under the terms of any applicable Lease.
17. These Sale Guidelines may be amended by written agreement between Sears Canada or the Hometown Dealer, as applicable, and the applicable Landlord.

TAB H

THIS IS EXHIBIT "H" TO THE AFFIDAVIT  
OF BILLY WONG SWORN BEFORE ME  
ON THIS 5<sup>th</sup> DAY OF JULY, 2017.



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A commissioner for taking Affidavits  
SONJA PAVIC

## Schedule "A" Sale Process

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On June 22, 2017, Sears Canada Inc. and certain of its subsidiaries (collectively, "**Sears Canada**") sought and obtained protection under the *Companies' Creditors Arrangement Act* (the "**CCAA**") pursuant to an initial order (the "**Initial Order**") granted by the Ontario Superior Court of Justice (Commercial List) (the "**Court**"). The Initial Order contemplates Sears Canada pursuing all avenues of refinancing, restructuring, selling and reorganizing their Business and Property (each as therein defined) subject to prior approval of the Court.

### Sale and Investment Solicitation Process

1. This sale and investment solicitation process (the "**Sale Process**") sets out the manner in which (i) bids and proposals for a broad range of transaction alternatives involving the Business, assets (the "**Assets**") and/or leases (the "**Leases**") of Sears Canada, whether *en bloc* or any portion(s) thereof, will be solicited from interested parties, (ii) any Binding Bids and/or Binding Lease Proposals (each as defined below) received will be considered and negotiated with interested parties, (iii) any Binding Bids and/or Binding Lease Proposals as subsequently negotiated, may be selected as Successful Bid(s) (as defined below), and (iv) the Court's approval of such Successful Bid(s) will be sought, with an anticipated completion date of all transactions by no later than October 25, 2017.
2. The Sale Process shall be conducted by BMO Nesbitt Burns Inc. ("**BMO Capital Markets**", 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 Inc. (the "**Special Committee**") and FTI Consulting Canada Inc. in its capacity as court-appointed monitor of Sears Canada (the "**Monitor**"). References to Sears Canada throughout this Sale Process shall mean the Special Committee in circumstances where the integrity of this Sale Process so requires (as determined by the Special Committee or any of the advisors, the Sale Advisor or the Monitor).
3. Parties who wish to have their bids or proposals considered with respect to the Business, Assets and/or Leases, whether as a whole or any portions thereof, shall participate in this Sale Process in accordance with the procedures set out herein.
4. The sale of the Business, Assets and/or Leases will be on an "as is, where is" basis and without surviving representations or warranties of any kind, nature, or description by Sears Canada, the Sale Advisor, the Monitor or any of their respective agents or estates, except to the extent set forth in a definitive transaction agreement executed by Sears Canada in accordance with this Sale Process.

### Solicitation Process

5. The Sale Process will be conducted as follows:
  - a. The Sale Advisor and Sears Canada with the assistance of its advisors and in consultation with the Monitor will:



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- (i) prepare a form of non-disclosure agreement acceptable to the Monitor ("**NDA**") to be executed by interested parties;
    - (ii) prepare forms of transaction documents to be used by interested parties in submitting bids and proposals to Sears Canada, the form and substance of such transaction documents to be acceptable to the Monitor after consultation with the DIP ABL Lenders and DIP Term Lenders (as defined in the Initial Order, and together the "**DIP Lenders**") (the "**Transaction Documents**");
    - (iii) solicit interest from parties to enter into NDAs, and begin analyzing the transaction alternatives;
    - (iv) require that all potential bidders that wish to participate in the Sale Process must sign an NDA in form acceptable to Sears Canada and the Monitor prior to participation in the Sale Process; and
    - (v) provide potential bidders who have executed an NDA with access to an electronic data room of due diligence information.
  - b. Landlords may submit to the Sale Advisor proposals in connection with existing Leases to which they are a party (the "**Binding Lease Proposals**") provided that all such proposals must be received in binding form on or before 5:00 p.m. Eastern Daylight Time on August 15, 2017 (the "**Binding Lease Proposal Deadline**"), with a contemporaneous copy delivered to the Monitor;
  - c. Parties interested in pursuing a transaction must submit binding offers based on the relevant forms of Transaction Documents including the items set out in paragraph 7 below (a "**Binding Bid**") by 5:00 p.m. Eastern Daylight Time on August 31, 2017 (the "**Binding Bid Deadline**") to the attention of the Sale Advisor as set out below, with a contemporaneous copy delivered to the Monitor; and
  - d. Subject to the terms set forth herein, following the Binding Bid Deadline and the Binding Lease Proposal Deadline, Sears Canada and its advisors, in consultation with the Monitor and the DIP Lenders, may seek to negotiate final terms with one or more parties, and may select one or more Successful Bid(s) subject to the approval of the Court, all in accordance with the timeline set out in the process letter, which shall be in a form acceptable to the Monitor and the DIP Lenders, to be delivered by the Sale Advisor to interested parties.
6. The Sale Advisor may, in consultation with Sears Canada and the Monitor, and subject to the terms of the Definitive Documents (as defined in the Initial Order), engage local market leasing agents or real estate brokers to solicit Binding Bids or Binding Lease Proposals for discrete assets or assignments of leases.

#### **Submission of Binding Offers**

7. In order for a bid to be considered a Binding Bid, it shall comply with the following:

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- (i) it shall contain:
    - a. duly executed Transaction Documents;
    - b. the identity and contact information of the bidder and the identities of each person or entity that will be sponsoring or participating in such bid, including direct and indirect owners;
    - c. a blackline showing changes to the relevant Transaction Documents provided to the interested party by Sears Canada; and
    - d. evidence of authorization and approval to submit and consummate the bid from the bidder's board of directors (or comparable governing body);
  - (ii) it includes a letter stating that the bid is irrevocable for a period of at least 20 business days after the Binding Bid Deadline;
  - (iii) it provides written evidence of a firm, irrevocable financial commitment for all required funding or financing in connection with the bid;
  - (iv) a separate allocation of value to each individual Asset or Lease subject to the bid that is the subject of a valid and enforceable right of first refusal, option or similar right;
  - (v) it is accompanied by a cash deposit (the "**Deposit**") of 10% of the total cash purchase price contemplated by such bid, which shall be paid to the Monitor by wire transfer (to a bank account specified by the Monitor) and held in trust in accordance with this Sale Process;
  - (vi) it does not include any request for or entitlement to any break fee, expense reimbursement or similar type of payment;
  - (vii) it is not conditional upon:
    - a. the outcome of unperformed due diligence by the bidder, and/or
    - b. obtaining financing; and
  - (viii) it is received by the Binding Bid Deadline.
8. A Binding Lease Proposal shall comply with the following:
- (i) it shall contain:
    - a. duly executed relevant Transaction Documents;
    - b. the identity and contact information of the landlord contact person;
    - c. a blackline showing changes to the relevant Transaction Documents provided to the interested party by Sears Canada; and
    - d. evidence of authorization and approval to submit and consummate the proposal from the landlord's board of directors (or comparable governing body);
  - (ii) it includes a letter stating that the proposal is irrevocable for a period of at least 20 business days after the Binding Bid Deadline;
  - (iii) it provides written evidence of a firm, irrevocable financial commitment for all required funding or financing;
  - (iv) it is not conditional upon:

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- a. the outcome of unperformed due diligence by the landlord, and/or
  - b. obtaining financing;
- (v) it is received by the Binding Lease Proposal Deadline; and
- (vi) to the extent that a landlord intends to submit a Binding Lease Proposal contemplating a material modification of the Lease (a "**Lease Modification Proposal**"), such Lease Modification Proposal must, in addition to the foregoing requirements, contain landlord consent that the Sale Advisor and Sears Canada may share such Lease Modification Proposal with other bidders in the Sale Process who have signed NDAs.
9. Sears Canada, with the consent of the Monitor, the Sale Advisor and the DIP Lenders, may waive compliance with any one or more of the requirements specified in section 7 and 8 and deem a non-compliant bid or lease proposal to be a Binding Bid or Binding Lease Proposal, respectively, with the exception of a bid that is received after the Binding Bid Deadline or a lease proposal that is received after the Binding Lease Proposal Deadline.

#### **Evaluation of Competing Bids and Proposals and Court Approval**

10. Following the Binding Bid Deadline and the Binding Lease Proposal Deadline, as applicable, Sears Canada shall consult with the Monitor, the Sale Advisor and the DIP Lenders and decide whether to (i) continue negotiations with a selected number of bidders that have submitted Binding Bids and/or Binding Lease Proposals, with a view to selecting one or more non-overlapping Bindings Bids and/or Binding Lease Proposals (collectively, the "**Successful Bid(s)**") upon approval of the Board of Directors of Sears Canada, and (ii) take such steps as are necessary to finalize and consummate the Successful Bid(s). Sears Canada shall have no obligation to conclude a sale arising out of this Sale Process and reserves the right and unfettered discretion to reject any bid or proposal (including any Binding Bid and any Binding Lease Proposal), but shall not do so without the approval of the Monitor after consultation with the DIP Lenders. If Sears Canada does select any Successful Bid(s), it shall be under no obligation to accept the highest bid.
11. Following selection of a Successful Bid(s), Sears Canada and its advisors in consultation with the Monitor shall seek to settle any necessary definitive agreement(s) with respect to the Successful Bid(s) in form and substance acceptable to the DIP Lenders and the Board of Directors of Sears Canada. Once all necessary definitive agreement(s) with respect to a Successful Bid have been finalized, Sears Canada will apply to the Court as soon as reasonably practicable for an order in form and substance acceptable to the Monitor and the DIP Lenders (an "**Approval and Vesting Order**") approving such Successful Bid and authorizing Sears Canada to (i) enter into any and all necessary agreements with respect to the Successful Bid, (ii) undertake such other actions as may be necessary to give effect to such Successful Bid, and (iii) implement the transaction(s) contemplated in such Successful Bid.

#### **Deposits**

12. All Deposits shall be retained by the Monitor and invested in an interest bearing trust account. If one or more Successful Bids are selected and an Approval and Vesting Order is granted in connection therewith, the Deposit paid in connection with such Successful Bid(s) (plus applicable interest) will be non-refundable and shall, upon closing of the transaction

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contemplated by such Successful Bid(s), be applied to the purchase price to be paid in connection with such Successful Bid(s) or be dealt with as otherwise set out in the definitive agreement(s) entered into in connection with such Successful Bid(s). Any Deposit (plus applicable interest) delivered with a Binding Bid that is not selected as a Successful Bid, will be returned to the applicable bidder within ten (10) business days of the date of expiration of such Binding Bid or an earlier date as may be determined by Sears Canada, in consultation with the Monitor and the Sale Advisor.

### **Consents and Information**

13. Any amendments to this Sale Process, including the relevant dates and deadlines set forth herein, may only be made with the written consent of the Special Committee, the Monitor and the DIP Lenders, or by further order of the Court.
14. Notwithstanding anything else contained herein, Sears Canada, in its reasonable business judgment and in consultation with the Sale Advisor, the Monitor and the DIP Lenders may, from time to time, withdraw any Leases or Assets from this Sale Process in accordance with the CCAA, and Sears Canada's rights under the Initial Order.
15. If any DIP Lender intends to participate as a bidder in this Sale Process, such party must provide written notice of such intention (the "**Participation Notice**") to the Sale Advisor, with a copy to the Monitor, on or before July 17, 2017 (the "**Participation Notice Deadline**"). Any DIP Lender who delivers a Participation Notice shall not be entitled to any Bid Information or Confidential Information (each as defined below). The failure of such parties to deliver a Participation Notice by the Participation Deadline shall render such parties unable to participate as a bidder in this Sale Process.
16. Subject to the confidentiality terms hereof, the Sale Advisor shall provide regular updates to the DIP Lenders and their advisors with respect to matters related to the Sale Process. Any information that is provided by the Sale Advisor, Sears Canada, the Monitor or their advisors to any of the DIP Lenders or their advisors, in respect of the Sale Process, including regarding any participants therein, any bids received or terms thereof or otherwise ("**Confidential Information**"), will be provided on a strictly confidential basis only and such parties shall not be permitted to share such Confidential Information with anyone other than any other DIP Lenders or the DIP Lenders' advisors, without the consent of Sears Canada and the Sale Advisor in consultation with the Monitor.

In addition, the following highly-sensitive information will solely be provided on a strictly confidential basis only to the Restricted Process Observers (as defined below), notwithstanding the terms of any bids or proposals received: the identity of the bidders; the particular Assets, Leases and/or Business that are the subject of a particular Binding Bid or Binding Lease Proposal; the proposed purchase price for the Business, Assets and/or Leases identified in a Binding Bid or Binding Lease Proposal; and the number of bidders that are considering or have submitted Binding Bids and/or Binding Lease Proposals for a particular Asset, Lease or Business, and copies of all bids or proposals received in the Sale Process (collectively, the "**Bid Information**"). The Monitor will maintain a list of personnel and/or categories of personnel who have a need to know the Bid Information, including personnel and/or categories of personnel of the financial and legal advisors to the DIP Lenders (the "**Restricted Process Observers**"). No Bid Information

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will be provided to any individual who is not a Restricted Process Observer and, notwithstanding the terms of the DIP Facilities (as defined in the Initial Order), Restricted Process Observers shall only be permitted to share such Bid Information with other Restricted Process Observers unless the prior written consent of the Monitor in consultation with the Sale Advisor is obtained.

17. Subject to the terms hereof, the Special Committee or its designate may participate in the negotiations under the Sale Process and shall give instructions to Sears Canada's advisors in respect of or relating to this Sale Process. Certain members of management of Sears Canada have advised the Special Committee and Sears Canada's advisors that they intend to submit a bid or proposal. Management of Sears Canada involved in the design and development of any bid or proposal will not be provided with Confidential Information or Bid Information, including information about Binding Bids or Binding Lease Proposals that third parties have made or information about whether any particular party has made a Binding Bid or Binding Lease Proposal, and may be subject to further restrictions as may be determined from time to time by the Special Committee in consultation with Sears Canada's advisors and the Monitor.
18. **Under no circumstances should an interested party communicate with management of Sears Canada without one of the Sale Advisor, the Monitor or Osler, Hoskin & Harcourt LLP ("Osler"), legal advisor to Sears Canada, present.**
19. All communications relating to a potential bid must be addressed to the Sale Advisor. Interested parties must adhere to the following communication protocol:
  - (i) members of Sears Canada's management team will only be available to prospective bidders at times scheduled by BMO Capital Markets as it determines necessary to advance the Sale Process, provided that such meetings or other communications with management must be supervised by any one of the Sale Advisor, the Monitor or Osler; and
  - (ii) members of Sears Canada's management and outside advisory teams have been instructed to direct any and all inquiries from prospective bidders to BMO Capital Markets.

**Failure to adhere to this communication protocol may result in disqualification of the interested party from the Sale Process and/or the rejection of any bid made by such interested party.**

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**

(Stay Extension, Suspension of Special Payments  
and other Post-Retirement Benefits, Approval of SISF,  
Amended and Restated Initial Order)

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