

**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

**MOTION RECORD OF THE APPLICANTS
(Motion for an Assignment Order and Approval and Vesting Order relating to the Asset Purchase Agreement between S.L.H. Transport Inc. / Transports S.L.H. Inc. and 8507597 Canada Inc. returnable November 21, 2017)**

November 13, 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
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INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA LTD.,
4201531 CANADA INC., 168886 CANADA INC., AND 3339611
CANADA INC.

Applicants

NOTICE OF MOTION

**(Motion for an Assignment Order and Approval and Vesting Order relating to the Asset
Purchase Agreement between S.L.H. Transport Inc. / Transports S.L.H. Inc. and
8507597 Canada Inc.)**

The Applicants will make a motion before a judge of the Ontario Superior Court of
Justice (Commercial List) on November 21, 2017 at 10:00 a.m., or as soon after that time as the
motion can be heard, at 330 University Avenue, Toronto, Ontario.

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

THE MOTION IS FOR:

1. An Order substantially in the form attached hereto at Tab 3:
 - (a) if necessary, abridging the time for service of this Notice of Motion and the Motion Record and dispensing with service on any person other than those served;

- (b) assigning the rights and obligations under certain contracts and leases held by S.L.H. Transport Inc. / Transports S.L.H. Inc. (“**SLH**”) or Sears Canada Inc. (“**Sears Canada**”), as applicable;
 - (c) vesting in and to 8507597 Canada Inc. (the “**Buyer**”) all of SLH’s and Sears Canada’s right, title and interest in and to the two Additional Leases (as defined in the Affidavit of Billy Wong sworn November 13, 2017 (the “**Wong Affidavit**”), as applicable;
 - (d) ordering that certain financial documentation referred to in the Wong Affidavit and attached as confidential appendices to the Seventh Report of the Monitor be sealed and kept confidential pending further order of the Court; and
2. 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 the Applicants under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36 as amended (the “**CCAA**”) in the form of an initial order, as amended and restated on July 13, 2017 (the “**Initial Order**”);
2. FTI Consulting Canada Inc. was appointed to act as the monitor in this CCAA proceeding (the “**Monitor**”);
3. On October 4, 2017, this Court approved a sale of the Purchased Assets of SLH to the Buyer (the “**Transaction**”) pursuant to an asset purchase agreement between SLH, Sears Canada, 168886 Canada Inc. and the Buyer, made as of September 29, 2017, as amended (the “**Asset Purchase Agreement**”);
4. Under the terms of the Asset Purchase Agreement, SLH must use commercially reasonable efforts to obtain consents to the assignment to the Buyer of all Assumed Contracts, Real Property Leases, Personal Property Leases (as such terms are defined in the Asset Purchase

Agreement) and Additional Leases, to the extent the same is required by the terms of those contracts. In total, there are 205 such contracts;

5. In the event that the requisite consents cannot be obtained, SLH is required to seek an Order assigning all of the rights and obligations of SLH under the applicable contracts to the Buyer;

6. Further, under the terms of the Asset Purchase Agreement, it is a condition of closing that SLH obtain consents to the assignment to the Buyer of all of the 59 Key Contracts (as defined in the Asset Purchase Agreement). The Key Contracts represent a subset of the total number of Assumed Contracts, Real Property Leases, and Personal Property Leases.

7. There are a total of an additional 146 Assumed Contracts and Additional Leases, other than the Key Contracts, for which SLH is required to use commercially reasonable efforts to obtain the consent of the applicable counterparty to an assignment or, failing that, an Assignment Order (the “**Additional Contracts**”). The assignment of these Additional Contracts is not a condition of closing the Transaction and, to the extent that the consent of the counterparty or an Assignment Order is not obtained, the Transaction will close with no adjustment to the Purchase Price;

8. The Applicants and their counsel have engaged in intensive efforts to solicit the consents of the respective counterparties to the applicable contracts, and, as a result, consents to the assignment of 14 of the 59 Key Contracts have been obtained (the remaining 45 contracts being with only two counterparties). In addition, SLH has obtained consents to the assignment of 57 of the Additional Contracts, including one of the two Additional Leases;

9. The Buyer and SLH have subsequently agreed that SLH will not seek an assignment order in respect of certain of SLH’s contracts that were initially identified (*e.g.*, contracts between SLH and its customers based solely on SLH’s Standard Terms & Conditions). As a result, there are a total of 61 contracts in respect of which SLH has not obtained counterparty consent that SLH is not seeking to assign on this motion.

10. In addition, the Asset Purchase Agreement contemplates that the Buyer may designate after the Closing Date (with SLH's consent) any or all of the nine additional Real Property Leases listed on Schedule L-3 to the Asset Purchase Agreement for inclusion in the Transaction. The Buyer made this designation before the Closing Date, and, accordingly, SLH and the Buyer agreed that, for purposes of efficiency and expediency, SLH will seek as a part of this motion an Approval and Vesting Order in respect of the two Additional Leases;

11. It is appropriate to assign the rights and obligations under the remaining 45 Key Contracts and 28 Additional Contracts (the "**Remaining Contracts**") to the Buyer;

12. The Buyer has advised that it is able to comply with the covenants and obligations under the respective assigned contracts;

13. No amendments are being sought in respect of the Remaining Contracts;

14. Any Cure Costs related to the Remaining Contracts will be paid;

15. The Applicants are continuing to work diligently to obtain the requested consents, and the number of Remaining Contracts to be assigned pursuant to the Order will be reduced by the number of consents obtained prior to the return date for this motion;

16. It is in the best interests of the Applicants' stakeholders that the requested Order be granted;

17. The relief requested herein is supported by the Monitor;

Sealing Order

18. The confidential financial documentation referred to in the Wong Affidavit and attached as confidential appendices to the Seventh Report of the Monitor contains commercially sensitive information, the disclosure of which would be harmful to the Applicants and the Buyer;

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

20. The salutary effects of sealing this information outweigh the deleterious effects of doing so;
21. The provisions of the CCAA and, in particular, Section 11.3 thereof;
22. The inherent and equitable jurisdiction of this Honourable Court;
23. 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
24. 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 this motion:

1. The Wong Affidavit and the exhibits attached thereto;
2. The Seventh Report of the Monitor (to be filed); and
3. Such further and other evidence as counsel may advise and this Court may permit.

November 13, 2017

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TO: SERVICE LIST AND SUPPLEMENTARY SERVICE LIST (SLH)

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

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

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

Applicants

Ontario
**SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**
Proceeding commenced at Toronto

NOTICE OF MOTION

(Motion For Assignment Order and Approval and Vesting Order relating to S.L.H. Transport Inc. / Transports S.L.H. Inc.)

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TAB 2

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

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4201531 CANADA INC., 168886 CANADA INC., AND 3339611
CANADA INC.

Applicants

**AFFIDAVIT OF BILLY WONG
(Sworn November 13, 2017)**

**(Motion for an Assignment Order and Approval and Vesting Order relating to the Asset
Purchase Agreement between S.L.H. Transport Inc. / Transports S.L.H. Inc. and
8507597 Canada Inc.)**

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

AND SAY:

1. I am the Executive Vice-President and Chief Financial Officer of the Applicant Sears Canada Inc. ("**Sears Canada**"). I am also a director of each of the other Applicants. As such, I have personal knowledge of the matters deposed to herein. Where I have relied on other sources for information, I have specifically referred to such sources and believe them to be true. In preparing this Affidavit, I have consulted with members of the senior management team of Sears Canada and S.L.H. Transport Inc. / Transports S.L.H. Inc. ("**SLH**"), a wholly-owned subsidiary

of Sears Canada, legal, financial and other advisors of Sears Canada, and representatives of FTI Consulting Canada Inc. (“**FTI**” or the “**Monitor**”).

Overview

2. I swear this Affidavit in support of the motion brought by the Applicants seeking an Order, substantially in the form attached to the Motion Record, assigning the rights and obligations under certain contracts and leases, set out below, to 8507597 Canada Inc. (“**8507597**”), and approving the transfer of and vesting in and to 8507597 all of SLH’s or Sears Canada’s (as applicable) right, title and interest in and to the two Additional Leases, as defined and described below (the “**Approval, Vesting and Assignment Order**”).

3. SLH is a wholly-owned subsidiary of Sears Canada. It carries on business providing domestic and cross-border truckload delivery and freight management services within North America, both to Sears Canada (and certain of its related businesses, such as Corbeil Électrique Inc.) and to various third-party customers. SLH is a Canadian corporation and federally-regulated business with its operations headquartered in Kingston, Ontario.

4. On October 4, 2017, this Court approved a sale of assets related to the business of SLH (and, as applicable, certain assets of Sears Canada) to 8507597 (the “**Transaction**”) pursuant to the Asset Purchase Agreement between SLH, Sears Canada (for limited purposes), 168886 Canada Inc. (a wholly-owned subsidiary of SLH, for limited purposes) and 8507597 made as of September 29, 2017 (as subsequently amended, the “**Asset Purchase Agreement**”). As described in greater detail below, SLH is a stand-alone trucking and logistics company operating with independent management within the Sears Group. Capitalized terms used in this Affidavit that are not otherwise defined have the meaning given to them in the Asset Purchase Agreement, attached to my affidavit

sworn September 29, 2017 in support of the Transaction (the “**SLH Sale Affidavit**”), which is attached hereto as **Exhibit “A”**.

5. Under the Asset Purchase Agreement, SLH must use commercially reasonable efforts to obtain the written consent of the counterparties to the assignment to 8507597 of the various contracts that are included in the Purchased Assets. Specifically, SLH must use commercially reasonable efforts to obtain:

- (a) the written consent of the counterparties to the Assumed Contracts. The Assumed Contracts include: (i) all of the 160 Contracts between SLH and its customers (other than Sears Canada); and (ii) the leases between SLH and ARI Financial Services Inc. (“**ARI**”), pursuant to which SLH leases 39 vehicles from ARI (the “**ARI Leases**”). The ARI Leases are the only Personal Property Leases included in the Purchased Assets.
- (b) the written consent of the applicable landlords to the assignment of the Assumed Real Property Leases to 8507597. There are four Assumed Real Property Leases included in the Purchased Assets, not including the Additional Leases.
- (c) the written consent of the applicable landlords to the assignment of the two additional Real Property Leases that 8507597 has designated for inclusion in the Purchased Assets (and to which designation SLH has consented) pursuant to section 7.12 of the Asset Purchase Agreement (the “**Additional Leases**”).

6. Collectively, there are a total of 205 Assumed Contracts, Assumed Real Property Leases and Additional Leases in respect of which SLH must use commercially reasonable efforts to obtain the applicable counterparty’s consent to an assignment. To the extent that such consent cannot be

obtained, SLH is required under the Asset Purchase Agreement to make a motion for an Assignment Order assigning all of SLH's (or Sears Canada's, as the case may be) rights and obligations under these contracts to 8507597.

7. Of the 199 Assumed Contracts, four Real Property Leases and two Additional Leases at issue, the Parties have agreed to designate a subset of 59 as "Key Contracts". Under the Asset Purchase Agreement, it is a condition of the closing of the Transaction that SLH obtain either consents to the assignment to 8507597 of all Key Contracts by agreement of the relevant counterparty, or an order of the Court under section 11.3 of the CCAA, compelling the assignment of the Key Contracts. The Key Contracts are those 59 contracts specifically listed in Schedule N of the Asset Purchase Agreement and consist of 16 contracts between SLH and its customers (together with related contracts, amendments and renewals), four Real Property Leases between Sears Canada and the applicable landlords (together with related leases, amendments and renewals), and the 39 ARI Leases.

8. There are a total of an additional 146 Assumed Contracts and Additional Leases, other than the Key Contracts, for which SLH is required to use commercially reasonable efforts to seek the consent of the applicable counterparty to an assignment or, failing that, an Assignment Order (the "**Additional Contracts**"). The assignment of these Additional Contracts is not a condition of closing the Transaction and, to the extent that the consent of the counterparty or an Assignment Order is not obtained, the Transaction will close with no adjustment to the Purchase Price.

9. After an intensive effort to solicit consents from counterparties over a compressed timeframe, SLH has, to date, obtained consents to the assignment of 14 of the 59 Key Contracts, including all of the four Real Property Leases designated as Key Contracts. The remaining 45 Key Contracts are with only two counterparties, namely, the 39 ARI Leases, and six contracts between

SLH and Canada Post Corporation (“**Canada Post**”). I am advised by Brent Fowler, Vice President of SLH, and believe, that Canada Post has advised that it intends to provide its formal written consent to these assignment of these six contracts, but requires additional time in order to do so. Discussions with ARI are ongoing, as described below. In addition, SLH has obtained consents to the assignment of 57 of the Additional Contracts, including one of the two Additional Leases.

10. 8507597 and SLH have subsequently agreed that SLH will not seek an Assignment Order in respect of certain of SLH’s contracts that were initially identified (*e.g.*, contracts between SLH and its customers based solely on SLH’s Standard Terms & Conditions). As a result, there are a total of 61 contracts in respect of which SLH has not obtained counterparty consent that SLH is not seeking to assign on this motion.

11. Accordingly, the Applicants make this motion for an Assignment Order authorizing the assignment of the remaining 45 Key Contracts and 28 of the Additional Contracts, including one Additional Lease (collectively, the “**Remaining Contracts**”) pursuant to section 11.3 of the CCAA. A copy of the list of Remaining Contracts as of the date of swearing this Affidavit is attached as **Exhibit “B”**. SLH is continuing to work diligently to obtain consents, and the number of Remaining Contracts to be assigned pursuant to the Assignment Order will be reduced by the number of consents obtained prior to the November 21, 2017 return date of this motion. The categories and numbers of Remaining Contracts are set out in the following table:

Category	Contract Consent Remaining
Key Contracts	45
Customer Contracts	6 (Canada Post)
Real Property Leases	0

Category	Contract Consent Remaining
Personal Property Leases	39 (ARI Leases)
Additional Contracts	28
Customer Contracts	27
Additional Leases (real property)	1

12. The assignment of the Key Contracts is critical for the completion of the Transaction, since it is a condition of closing that the Key Contracts are assigned. As described below, 8507597 has made offers of employment to 457 (or approximately 80%) of the 572 total employees who were employed by SLH and SLH's subsidiary as at the date of the execution of the Asset Purchase Agreement, which offers are conditional on closing of the Asset Purchase Agreement. To date, 448 individuals have accepted these offers of employment. Accordingly, assignment of the Key Contracts is essential for 8507597 to be able to provide employment to these individuals on a going-forward basis.

13. In addition, having regard to the context of the Transaction as a whole, it is important for the success of the Transaction and the SLH business going forward that all of the Remaining Contracts be assigned. While many of the individual Remaining Contracts with SLH's customers that are not Key Contracts are relatively small in terms of the proportion of the total business of SLH that they represent, taken collectively, these customer contracts are significant.

14. Furthermore, as noted above, the Asset Purchase Agreement contemplates that 8507597 may designate after the Closing Date (with SLH's and Sears Canada's consent) any of the nine additional Real Property Leases listed on Schedule L-3 to the Asset Purchase Agreement for inclusion in the Transaction. The Asset Purchase Agreement requires that SLH or Sears Canada

use commercially reasonable efforts to seek a further Approval and Vesting Order (and, if applicable, a further Assignment Order) from this Court in respect of any additional Real Property Leases that 8507597 may designate in this manner. On October 20, 2017, 8507597 advised SLH that it wished to designate the two Additional Leases (among other additional Real Property Leases in respect of which SLH and Sears Canada did not consent to such designation). Because 8507597 made this designation before the Closing Date, SLH and 8507597 agreed that, for purposes of efficiency and expediency, SLH would seek as a part of this motion an approval and vesting order in respect of these Additional Leases (in addition to an assignment order in respect of one of these Additional Leases, as described above).

15. The Monitor has expressed its support for the proposed Assignment Order, and for the proposed Approval and Vesting Order in relation to the Additional Leases.

Background

16. On June 22, 2017, the Applicants were granted protection from their creditors under the CCAA pursuant to an initial order of the Ontario Superior Court of Justice (Commercial List), as amended and restated on July 13, 2017 (the “**Initial Order**”). FTI was appointed in the Initial Order to act as the Monitor in the CCAA proceedings. Further details regarding the background to these proceedings are set out in my affidavits sworn June 22, 2017, July 5, 2017 and July 12, 2017.

17. On July 13, 2017, the Court issued an order (the “**SISP Approval Order**”) approving the SISP, whereby BMO Capital Markets on behalf of Sears Canada and under the supervision of both the Special Committee of the Board of Directors of Sears Canada (the “**Special Committee**”) and the Monitor would seek bids and proposals for a broad range of transactions alternatives with respect to the Business, Property, Assets and/or Leases of the Applicants (each as defined as the SISP).

18. As described in greater detail in the SLH Sale Affidavit and in the affidavit of Mark Caiger sworn September 28, 2017 (the “**Caiger Affidavit**”), BMO Capital Markets sought bids from a number of potentially interested bidders with respect to the SLH business. A comprehensive description of the sales process as it relates to SLH is set out in the SLH Sale Affidavit and in the Caiger Affidavit.

19. On October 4, 2017, this Court approved the Transaction pursuant to the Asset Purchase Agreement and granted the Approval and Vesting Order, a copy of which is attached as **Exhibit “C”**.

20. Since the granting of the Initial Order, SLH has been operating its business as a going concern in close consultation with the Monitor.

Update on Regulatory Approvals

21. Pursuant to the Asset Purchase Agreement, it is a condition of closing that the Parties obtain approval under the *Competition Act*, (R.S.C., 1985, c. C-34) (the “**Competition Act**”) and the *Canada Transportation Act*, (S.C. 1996, c. 10) (the “**CTA**”). The Parties have agreed to use commercially reasonable efforts to obtain these approvals.

(a) Competition Act Approval

22. On October 16, 2017, SLH and 8507597 each filed with the Competition Bureau their respective statutory notifications pursuant to Part IX of the *Competition Act*. On the same day, 8507597 filed with the Competition Bureau a request for an advance ruling certificate (or, in the alternative, a no action letter). The 30-day statutory waiting period commenced on October 19, 2017 and was originally set to end on November 20, 2017.

23. On October 20, 2017, the Competition Bureau sent a request for information (“RFI”) to the Parties, requesting further details concerning the Parties’ overlapping business segments. The Parties responded to all RFIs by October 27, 2017.

24. On October 30, 2017, the Competition Bureau advised the Parties that the Transaction had been designated as “complex.” For such files, I understand that the corresponding service standard period is 45 days. As a result, I anticipate that the Parties will hear from the Competition Bureau with respect to an advance ruling certificate or a no action letter on or before November 30, 2017.

(b) CTA Approval

25. The Parties have also sought CTA Approval in accordance with the Asset Purchase Agreement. On October 16, 2017, 8507597 filed with Transport Canada the statutory notification required pursuant to section 53.1 of the CTA, seeking the issuance of a notice that the Proposed Transaction does not raise issues with respect to the public interest as it relates to national transportation. In light of the CCAA proceedings, the Parties requested that such notice be issued as soon as possible.

26. On October 25, 2017, Transport Canada requested further information concerning the Transaction, including details of the Parties’ respective service offerings, 8507597’s post-acquisition plans, and public interest implications. The Parties are in the process of responding to these requests.

27. The 42-day statutory waiting period will end on November 27, 2017, and the Parties anticipate receiving CTA Approval on or about that date.

28. By letter dated October 20, 2017, in view of the anticipated timing of the receipt of the requisite regulatory approvals, among other considerations, SLH advised 8507597 that SLH would

extend the outside date referenced in the definition of “Closing Date” in section 1.1(w) of the Asset Purchase Agreement by 40 days, from October 25, 2017 to December 4, 2017. A copy of this letter is attached as **Exhibit “D”**.

Key Terms of the Transaction

29. As noted in the SLH Sale Affidavit, the completion of the Transaction will result in numerous benefits to the Applicants and their stakeholders, including that SLH’s business will continue as a standalone transportation business following the closing, that 457 of SLH’s employees have been extended offers of employment by 8507597, and that the Applicants and their creditors will realize the highest available value for the SLH business through receipt of the Purchase Price.

30. The details of the terms of the Transaction are set out in the SLH Sale Affidavit and the Third Report of the Monitor. Some of the key aspects of the Transaction include the following:

- (a) 8507597 will purchase a range of SLH’s assets, including all of its contracts with customers, all of its vehicles, and certain Real Property Leases.
- (b) Under the Asset Purchase Agreement, 8507597 agreed to make offers of employment to at least the majority of the Employees of SLH and its subsidiary. I am advised by Mr. Fowler, and believe, that as of the date of this Affidavit, offers of employment have been made to 457 Employees, which is a greater number of offers of employment than 8507597 committed to make under the terms of the Asset Purchase Agreement (being only 362 such offers). To date, 448 of these offers of employment have been accepted.

- (c) 8507597 will assume and will pay, discharge and perform, as of the Closing Time, the obligations and liabilities of SLH with respect to the Acquired Business and the Purchased Assets as set out and listed in section 2.3 of the Asset Purchase Agreement, including, among other things, all liabilities and obligations arising under all of the agreements to be assigned under the Assignment Order, and all Cure Costs related thereto.

- (d) SLH and 8507597 will, as a condition of closing, negotiate and enter into a Transition Services Agreement under which 8507597 will continue to provide transportation services to Sears Canada over the coming months. I understand that the Parties have been and continue to negotiate the Transition Services Agreement, and that they expect to be able to execute such agreement prior to the Closing Date.

The Assignment of Agreements

31. The Transaction contemplates the assignment of Assumed Contracts, Assumed Real Property Leases and Additional Leases by obtaining the consent of the relevant counterparty to such contract, or, if necessary, through an order of the court pursuant to section 11.3 of the CCAA.

32. It is a condition of the closing of the Transaction that SLH obtain consents or an Assignment Order for the assignment of all of the contracts listed as Key Contracts. Accordingly, the assignment of the remaining Key Contracts in respect of which consent has not yet been obtained is critical to the completion of the Transaction.

33. The contracts that are not designated under the Asset Purchase Agreement as Key Contracts are not required to be assigned as a condition of closing. In particular, section 2.5 of the Asset Purchase Agreement requires SLH to use commercially reasonable efforts to obtain any necessary

consents or approvals in order to assign the Assumed Contracts to 8507597, but does not condition the completion of the Transaction on obtaining such consents or approvals.

Discussions with Counterparties to the Contracts

34. I am advised by Mr. Fowler and believe that subsequent to the execution of the Asset Purchase Agreement, SLH and its representatives contacted each counterparty to advise them of the Transaction and to seek their consent to the assignment of their respective agreements.

35. I am advised by Mr. Fowler and believe that on or about October 11, 2017, SLH sent a letter to each of the counterparties to the Key Contracts (other than the four Key Contracts that are the Assumed Real Property Leases) to advise them of the Transaction and request their consent to the assignment of the applicable Assumed Contract. A copy of the form of letter sent to these counterparties is attached as **Exhibit "E"**. Shortly thereafter, on or about October 13, 2017, SLH sent a similar letter and draft Landlord Consent to Assignment and Assumption of Lease Agreement to each of the landlords under the Assumed Real Property Leases. A copy of this form of letter is attached as **Exhibit "F"**.

36. On or about October 13, 16 and 17, SLH sent a similar letter to each of the counterparties to the Additional Contracts, the form of which was the same as the letter attached as Exhibit "E". Similarly, on or about October 24, 2017, shortly after receiving 8507597's notice designating the Additional Leases for inclusion in the Transaction, SLH sent a similar letter and draft agreement to the landlords under these Additional Leases, the form of which was the same as the letter and draft agreement attached as Exhibit "F".

37. On or about October 27, 2017, Sears Canada sent a follow up letter to the landlords under the Assumed Real Property Leases and the Additional Leases clarifying that Sears Canada, and

not SLH, is the tenant under these leases, and reiterating the request for consent to an assignment. A copy of this form of letter is attached as **Exhibit "G"**.

38. In each of these letters, the landlords and other applicable counterparties to the contracts were advised that if they did not provide their consent, SLH would be required to seek an order of the Court pursuant to section 11.3 of the CCAA to assign the lease or contract, as applicable, without their consent.

39. I am further advised by Mr. Fowler, and I believe, that SLH and its counsel have undertaken extensive efforts in connection with the consent solicitation process. Among other things, SLH and its counsel have sought to engage in subsequent discussions by telephone and email with all counterparties to the Key Contracts whose consent remained outstanding following the issuance of SLH's initial request, in an effort to obtain such consent.

40. In a period of just over one month, from October 4, 2017 to November 13, 2017, SLH was able to obtain consent in respect of 14 Key Contracts, including all of the four Assumed Real Property Leases designated as Key Contracts. Further, SLH was able to obtain consents in respect of 56 Additional Contracts, including one Additional Lease.

41. As noted above, the 39 ARI Leases are Key Contracts. I am advised by Mr. Fowler, and believe, that SLH has paid required amounts to acquire 12 of the vehicles subject to the 39 ARI Leases at the end of the lease term, and, accordingly, SLH is in the process of taking title to these vehicles. It is also SLH's intention to pay the required amounts to acquire the vehicles subject to the remaining 27 ARI Leases by the end of November 2017, and thereafter take title to those vehicles. Should SLH complete the process of taking title to any of the vehicles subject to the ARI Leases prior to the hearing date, such ARI Leases will no longer need to be assigned pursuant to the Assignment Order.

42. With respect to the Remaining Contracts for which SLH has not yet obtained consent, Mr. Fowler has advised me, and I believe, that no counterparty has indicated its opposition to the assignment of their contract. Given the terms of the Asset Purchase Agreement, and the narrow timeframe in which to close the Transaction, the consents provided to date are not sufficient to fulfill SLH's closing obligation under the Asset Purchase Agreement in respect of the Key Contracts. Given the importance of completing the Transaction on the terms agreed to, SLH seeks an Assignment Order assigning the rights and obligations under the Remaining Contracts to 8507597. Between the date of the swearing of this Affidavit and the hearing of the motion on November 21, 2017, SLH intends to work diligently to obtain consents for the Remaining Contracts on a consensual basis. To the extent that SLH is able to obtain such consents, the relevant counterparty and agreement will be removed from the schedule of the draft Assignment Order.

The Assignment Should be Approved

A. The Purchaser is Able to Perform the Obligations under the Leases and Contracts

43. 8507597 has advised, and SLH and Sears Canada believe, that 8507597 has the financial ability to perform the obligations under the contracts to be assigned.

44. I understand that 8507597 is an affiliate of C.A.T. Inc. ("CAT"). Founded in 1978 and headquartered in Coteau-du-Lac, Quebec, CAT is a national and cross-border freight carrier with significant operations throughout North America. The sole purpose of 8507597 is to effect the Transaction. It does not currently carry on any business and, accordingly, does not have financial statements.

45. 8507597 has represented that it has a firm commitment from a lender pursuant to an executed commitment letter of an amount sufficient to allow 8507597 to pay the Purchase Price,

and all other costs and expenses in connection with completing the Transaction, including any Cure Costs. In addition, 8507597 has advised, and I believe, that it anticipates that an excess amount of approximately \$2 million will remain available to 8507597 under this commitment letter following the payment of the Purchase Price, which 8507597 intends to use to help finance its operations following closing, as necessary.

46. In addition, as shown in SLH's unaudited statements of net earnings for 2012-2016, a copy of which will be attached as a confidential appendix to the Seventh Report of the Monitor, SLH has achieved positive EBITDA (earnings before interest, tax, depreciation and amortization) in each of the last five years. SLH management have advised me, and I believe, that the recent and anticipated reduction in revenues from the Sears Canada component of its operations has negatively impacted SLH's EBITDA, particularly given that SLH has not yet significantly reduced its employee workforce or otherwise materially scaled back its operations in line with this reduction in revenues.

47. However, 8507597 has advised, and I believe, that 8507597 intends to significantly reduce SLH's costs in view of the eventual elimination of revenues from Sears Canada, including by reducing employee headcount, day cab and trailer fleet, and real property leases, among other things. 8507597 and SLH have prepared a pro forma income statement and balance sheet, and projected cash flow summary, which show that 8507597 will generate positive cash flow and have sufficient liquidity to meet its obligations through its current fiscal year, ending in August 2018, including performing its obligations under the contracts to be assigned. A copy of this financial information will be attached as a confidential appendix to the Seventh Report of the Monitor.

48. Finally, the vast majority of the Remaining Contracts are contracts with SLH's customers, pursuant to which SLH (and, following assignment, 8507597) is obligated to perform freight

carrier services or similar services. 8507597 has advised, and I believe, that 8507597 will acquire sufficient assets from SLH pursuant to the Asset Purchase Agreement (including Vehicles, IT Assets and Real Property Leases, among other things), and will retain sufficient employees of SLH and its subsidiaries, in order to be able to comply with its non-financial obligations under these contracts.

B. 8507597 Will Remedy All Monetary Defaults in relation to the Leases and the Contracts

49. 8507597 has agreed to pay all Cure Costs in connection with the Assumed Contracts, the Assumed Real Property Leases, and the Additional Leases, namely, all amounts necessary to cure any monetary defaults as a condition to assuming these contracts and leases other than those monetary defaults arising only by reason of the Seller's insolvency, the commencement of CCAA Proceedings, or the failure to perform a non-monetary obligations. I am advised by Mr. Fowler and believe that, to the best of SLH's knowledge, there are no Cure Costs owing in respect of any of the Remaining Contracts to be assigned.

C. The Assignment is Appropriate

50. The advantages to the Applicants' stakeholders of assigning the Remaining Contracts far outweigh any disadvantages to the counterparties to those contracts. The advantages include the following:

- (a) The assignment of the Key Contracts is a condition of closing and, therefore, absent an alternative agreement between the Parties, the Transaction cannot close without the assignment of the Key Contracts and the Applicants will not receive the Purchase Price. Among other things, the closing of the Transaction will result in the employment by 8507597 of at least 448 employees of SLH and its subsidiary;

- (b) Based on information received from 8507597, it is and will be able to comply with the covenants and obligations under the Remaining Contracts. By contrast, following the closing of the Asset Purchase Agreement, SLH will no longer be able to comply with the covenants and obligations under the Remaining Contracts; and
- (c) Any Cure Costs will be paid by 8507597.

51. In addition:

- (a) No amendments are being sought in respect of the Remaining Contracts pursuant to the proposed Approval, Vesting and Assignment Order;
- (b) The Remaining Contracts do not include any eligible financial contracts, contracts entered into post-filing or collective agreements, whose court-ordered assignment would otherwise be prohibited under section 11.3(2) of the CCAA;
- (c) Of the counterparties to the 73 Remaining Contracts in respect of which SLH is seeking the Assignment Order, none has advised the Applicants that they oppose the assignment; and
- (d) All counterparties under the Remaining Contracts will be provided with notice of the motion to assign the Remaining Contracts.

52. The Applicants therefore believe that it is appropriate for this Court to grant the Assignment Order to assign the rights and obligations under the Remaining Contracts to 8507597. There have been frequent and extensive discussions with the contractual counterparties throughout these CCAA proceedings, including with respect to the assignment of the Remaining Contracts. In addition, under the Transaction, 8507597 has agreed to assume all liabilities and obligations of

SLH in connection with the performance of the Remaining Contracts on an “as is, where is” basis, without any modifications to any provisions of the Remaining Contracts.


Sealing of Confidential Information

53. The Monitor will be filing the confidential financial documentation referred to above as appendices to its Seventh Report. These documents disclose certain commercially sensitive financial information about SLH and 8507597. The Applicants request that the sensitive commercial information be sealed from the public record and kept confidential as its disclosure would be harmful to the Applicants and 8507597.

Relief Requested

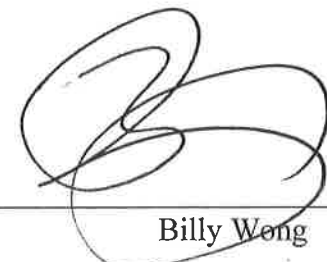
54. Accordingly, the Applicants request that this Honourable Court approve the relief requested herein.

SWORN BEFORE ME at the City of Toronto, on the 13th day of November, 2017.



Commissioner for Taking Affidavits

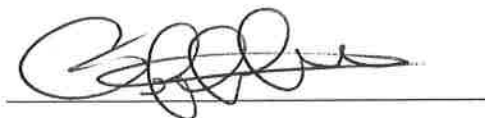
GEORGEY ERNIE



Billy Wong

TAB A

**THIS IS EXHIBIT "A" TO THE AFFIDAVIT
OF BILLY WONG SWORN BEFORE ME ON
THIS 13th DAY OF NOVEMBER, 2017**

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke, positioned above a solid horizontal line.

A Commissioner for taking Affidavits

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 September 29, 2017)**

**(Motion for Approval of Asset Purchase Agreement with S.L.H. Transport Inc. /
Transports S.L.H. Inc.)**

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

1. I am the Executive Vice-President and Chief Financial Officer of the Applicant Sears Canada Inc. ("Sears Canada"). I am also a director of each of the other Applicants. As such, I have personal knowledge of the matters deposed to herein. Where I have relied on other sources for information, I have specifically referred to such sources and believe them to be true. In preparing this Affidavit, I have consulted with members of the senior management team of Sears Canada and S.L.H. Transport Inc. / Transports S.L.H. Inc. ("SLH"), a wholly-owned subsidiary

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of Sears Canada, legal, financial and other advisors of Sears Canada, and representatives of FTI Consulting Canada Inc. (the "**Monitor**").

2. I swear this Affidavit in support of the motion brought by the Applicants seeking an Order, substantially in the form attached to the Motion Record, approving the Asset Purchase Agreement made as of September 27, 2017 (the "**Asset Purchase Agreement**") between SLH (as seller), 8507597 Canada Inc. ("**8507597**") (as buyer), Sears Canada (solely for purposes of Article 1, Article 2, Section 7.5(e), Section 7.12 and Article 11 of the Asset Purchase Agreement) and 168886 Canada Inc. ("**168886**") (a wholly-owned subsidiary of SLH, solely for purposes of Article 1, Article 2, Section 7.8, Section 7.12 and Article 11 of the Asset Purchase Agreement), and vesting in and to 8507597 all of SLH's (and, as applicable, Sears Canada's and 168886's) right, title and interest in and to the Purchased Assets. As described in greater detail below, SLH is a stand-alone trucking and logistics company operating with independent management within the Sears Group.

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

4. This Affidavit should be read in conjunction with the Affidavit of Mark Caiger sworn September 28, 2017 (the "**Caiger Affidavit**"), which describes in more detail the sales efforts undertaken by Sears Canada and BMO Nesbitt Burns Inc. (the "**Sale Advisor**") pursuant to the Court-approved Sale and Investment Solicitation Process (the "**SISP**"), which efforts resulted in, among other things, 8507597's bid and the Asset Purchase Agreement which is the subject of this Motion.

5. I understand from the Monitor that the consideration that SLH will receive in this proposed transaction (the "**Purchase Price**") is set out in a Confidential Appendix to the

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Monitor's Report that will be filed in connection with this motion. In the view of the Applicants and the Sale Advisor, the Purchase Price is confidential information that could be materially prejudicial to the Applicants in connection with the SISP generally, and in connection with any further marketing of SLH's assets in particular, if the proposed transaction does not proceed to close as anticipated. In addition, in the view of the Applicants and the Sale Advisor, the Schedules to the Asset Purchase Agreement also contain confidential information. In particular, the Schedules contain financial and other commercially sensitive information that, if disclosed, would be materially prejudicial to SLH and 8507597. As such, the Asset Purchase Agreement, which is attached as Exhibit "A" to this Affidavit (excluding Schedules), has been redacted to protect the confidential information and the Applicants are requesting that a sealing order be granted with respect to the Confidential Appendix.

6. The Asset Purchase Agreement designates the contracts set out in Schedule N to the Asset Purchase Agreement as "Key Contracts"; and requires as a condition of Closing that SLH obtain either the written consent of the counterparties to the Key Contracts (defined in the Asset Purchase Agreement as the "Key Consents") or Assignment Orders assigning such Key Contracts to 8507597. If SLH is unable to obtain a Key Consent from any counterparty to a Key Contract, SLH will seek an Assignment Order from the Court in respect of such Key Contract pursuant to section 11.3 of the CCAA. SLH will also seek Assignment Orders for any other Assumed Contracts requiring consent and for which consent is not obtained; however, obtaining such Assignment Orders in respect of the Assumed Contracts that are not Key Contracts is not a condition to Closing.

7. In order to provide flexibility to the Applicants and to 8507597, including the flexibility to be a potential service provider to a potential going-concern purchaser of the Sears Canada

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business, the Asset Purchase Agreement provides that 8507597 will have the option to designate additional Contracts for inclusion in the Purchased Assets before Closing, and a further option to designate additional Real Property Leases for inclusion in the Purchased Assets following Closing (each for nominal consideration), as follows.

- (a) The first option must be exercised prior to the Closing Date. In particular, section 7.11 of the Asset Purchase Agreement provides that, subject to SLH's consent, 8507597 may designate any or all of the additional Contracts listed on Schedule D-2 (namely, six capital leases for Vehicles) by delivering notice to SLH. While 8506597 is permitted to designate any such additional Contracts up to the Closing Date, in order to allow sufficient time for SLH to seek any required consents to the assignment of such Contracts prior to a motion that SLH may make for an Assignment Order, the Asset Purchase Agreement states that SLH shall not be required to seek Court approval for the assignment of any additional Contracts pursuant to section 7.11 unless such Contracts are designated by 8506597 on or before October 6, 2017. The proposed Approval and Vesting Order that the Applicants are seeking on this motion includes an order approving the purchase and sale of, and vesting SLH's right title and interest in, the Purchased Assets, which include any additional Contracts listed on Schedule D-2 that 8507597 may designate up to the Closing Date in accordance with the terms and conditions of the Asset Purchase Agreement.
- (b) The second such option may be exercised within a limited time following the Closing Date. In particular, section 7.12 of the Asset Purchase Agreement provides that, subject to the consent of SLH and Sears Canada, 8507597 may

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designate additional Real Property Leases listed on Schedule L-3 (namely, nine terminal leases to which either SLH or Sears Canada are parties) for acquisition, following which 8507597 and SLH or Sears Canada, as applicable, shall negotiate in good faith and, if agreed, enter into an agreement for the transfer of each such additional Real Property Lease for nominal consideration. In the event that such further agreement between the parties is reached, SLH or Sears Canada will use commercially reasonable efforts to seek a further approval and vesting order and, if applicable, a further assignment order from this Court. This post-Closing mechanism is designed to allow 8507597 the flexibility to acquire additional Real Property Leases from SLH or Sears Canada, as applicable, depending on, among other things, the outcome of the CCAA process.

8. Sears Canada is a party to the Asset Purchase Agreement for purposes of (i) 8507597's option to designate for acquisition certain additional Real Property Leases following Closing, given that certain of these Real Property Leases are contracts to which Sears Canada is a party; (ii) Sears Canada agreeing to use commercially reasonable efforts to enter into a Transition Services Agreement with 8507597 prior to the Closing Date; and (iii) Sears Canada agreeing to use commercially reasonable efforts to facilitate negotiations, following Closing, between 8507597 and Sears Canada's employees, or counterparties to any Real Property Leases that 8507597 may wish to designate for acquisition.

9. 168886 is a party to the Asset Purchase Agreement because, as described below, Employees located in provinces other than Ontario and Quebec are employed directly by 168886. Certain of the Assumed Employees under the Asset Purchase Agreement are employed by 168886, and 168886 holds certain Employee Plans that 8507597 may designate as Assumed

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Employee Plans under the Asset Purchase Agreement. In addition, 168886 has agreed to use commercially reasonable efforts to facilitate negotiations, following Closing, between 8507597 and 168886's employees.

10. The Applicants and the Sale Advisor believe that this transaction is in the best interests of the Applicants and their stakeholders, and that the Purchase Price to be paid in respect of the transaction is fair and reasonable. Moreover, the Applicants and the Sale Advisor believe that the process leading to the transaction, as described in the Caiger Affidavit and herein, was reasonable in the circumstances.

11. It is my understanding that the Monitor approves the process that has been followed by Sears Canada and the Sale Advisor, and supports the Applicants' motion seeking approval of the Asset Purchase Agreement.

The SLH Business Line

12. SLH carries on business providing domestic and cross-border truckload delivery and freight management services within North America, both to Sears Canada (and certain of its related businesses, such as Corbeil Électrique Inc. ("Corbeil")) and to various third-party customers. SLH is a Canadian corporation and federally-regulated business with its operations headquartered in Kingston, Ontario.

13. SLH is a wholly-owned subsidiary of Sears Canada. While Sears Canada provides SLH with certain procurement, legal services, payroll services and funding, SLH operates on a stand-alone basis, with separate management and operations from the Sears Canada retail business.

14. SLH provides logistics services for Sears Canada's merchandising operations and is responsible for transporting merchandise to Sears Canada's national logistics centres ("NLCs"),

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stores and catalogue/internet merchandise pick-up locations. SLH also provides some transportation and distribution services to Corbeil.

15. Additionally, SLH provides contract carrier services to over 300 commercial customers who are unrelated to the Sears Group. This 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 addition to the Sears Canada NLCs, SLH leases seven other strategically-located shipping terminals across Canada: two in Ontario and one each in Alberta, Quebec, Manitoba, Saskatchewan, and Nova Scotia. In addition, SLH leases office premises in Kingston.

16. SLH currently employs approximately 329 people located in Ontario and Quebec. Additionally, 168886 currently employs approximately 243 employees in other provinces and holds the Employee Plans relating to such employees. 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 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.

Background to 8507597's Bid

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

18. The purpose of the SISP was to seek out proposals for the acquisition of, or an investment in, Sears Canada's business, property and/or leases, and to implement one or a

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combination of such proposals with the objective of maximizing value for the benefit of Sears Canada's stakeholders.

19. The Caiger Affidavit provides details regarding the steps that were taken to market and solicit interest in Sears Canada's assets pursuant to the SISP, including efforts to divest SLH's business line.

20. With specific regard to the SLH business line, I am advised by Mr. Caiger and believe that pursuant to the SISP, BMO contacted 24 potentially interested bidders, including all parties who had previously contacted Sears Canada to express an interest in SLH in the pre-filing period. I am advised by Mr. Caiger and believe that 17 potentially interested bidders signed non-disclosure agreements and 17 accessed the data room, which was populated with extensive disclosure regarding SLH. Mr. Caiger further advised me, and I believe, that during this period, BMO engaged in numerous discussions with 8507597 and other interested parties about SLH in an effort to secure bids for the business and its assets.

21. On August 31, 2017, in accordance with the SISP, 8507597 submitted a bid in respect of SLH, in which 8507597 offered to purchase certain assets of SLH, and to assume certain liabilities of SLH, on the terms and conditions set out in 8507597's proposed form of asset purchase agreement.

22. I am advised by Mr. Caiger and believe that negotiations ensued with 8507597 in respect of financial and legal aspects of its bid, draft documents were exchanged by the parties, and follow-up calls were held as necessary. As a result of those negotiations, and after considering 8507597's offer and alternative transactions available, the Sale Advisor recommended to the Special Committee, and the Special Committee subsequently recommended to the Board, that SLH enter into a transaction with 8507597 in respect of the Purchased Assets. After carefully

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considering 8507597's offer, including being satisfied that the Purchase Price being offered is fair and reasonable, the Board determined that 8507597's offer was in the best interests of the Applicants and its stakeholders.

23. In addition, I understand that in reaching the view that SLH should enter into the Asset Purchase Agreement, the Special Committee took into consideration that 8507597 has represented that it has the financial ability to close the transaction and is otherwise qualified to perform its obligations in respect of the Purchased Assets.

24. Sears Canada and the Special Committee also considered that the transaction will result in 8507597 making firm offers of employment to at least the majority of the Employees. Moreover, as described in greater detail below, the Asset Purchase Agreement provides that 8507597 may, following the execution of the Asset Purchase Agreement, deliver to SLH a list of additional Employees to whom 8507597 will offer employment. In addition, I understand that, depending on the outcome of the CCAA process, 8507597 may wish to make offers of employment directly to other individuals currently employed by SLH, Sears Canada and/or 168886.

The Asset Purchase Agreement

25. On September 28, 2017, SLH, 8507597, Sears Canada and 168886 entered into the Asset Purchase Agreement.

26. Among other things, the Asset Purchase Agreement provides for the following:

- (a) 8507597 will pay the Purchase Price in cash and by the assumption of the Accrued Liability (as defined in the Asset Purchase Agreement), with the possibility of an additional "top up" cash payment if the Accrued Liability is less

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than the threshold amount specified in the Asset Purchase Agreement. The Purchase Price is subject to certain adjustments in respect of accounts receivable and Vehicles as set out in the Asset Purchase Agreement.

- (b) 8507597 has paid a Deposit equal to approximately 10% of the Purchase Price (including the amount notionally attributed to the Accrued Liability) to the Monitor to be held in trust in an interest-bearing account in accordance with the terms of the SISP. On Closing, the Deposit and all earnings thereon will be paid to SLH and applied to the Purchase Price. If the Closing does not occur by any reason other than the default of SLH, the Deposit will be forfeited to SLH.
- (c) 8507597 has obtained a commitment letter from a lender for an amount that is sufficient to permit 8507597 to pay the Purchase Price, and all other costs and expenses in connection with the consummation of the transactions contemplated in the Asset Purchase Agreement.
- (d) On the Closing Date, upon the terms and conditions set out in the Asset Purchase Agreement, SLH will sell and 8507597 will purchase all of SLH's right, title and interest in, to and under, or relating to, the assets, property and undertaking owned or used or held for use by SLH in connection with the logistics business of transportation services relating to the domestic and cross-border truckload delivery, freight management and shunt operations provided or carried on by SLH, as applicable (defined in the Asset Purchase Agreement as the "Purchased Assets"). The Purchased Assets include, without limitation, the following properties, assets and rights: Accounts Receivable; prepaid expenses (calculated in a manner consistent with Schedule E to the Asset Purchase Agreement);

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deposits (as listed on Schedule E to the Asset Purchase Agreement); inventory (calculated in a manner consistent with Schedule E to the Asset Purchase Agreement); Vehicles (as set out in Schedule B to the Asset Purchase Agreement); Fixed Assets and Equipment; Personal Property Leases; Assumed Real Property Leases (namely, four Assumed Real Property Leases as set out in Schedule L-1 to the Asset Purchase Agreement); Assumed Contracts (including all customer contracts and those contracts listed on Schedule D-1 to the Asset Purchase Agreement); Intellectual Property; information technology services / IT Assets of SLH; goodwill; employee records relating to the Assumed Employees; business records of the Acquired Business; insurance; actions etc.; loans; and Plan assets (to the extent any Plans are designated as Assumed Employee Plans by 8507597).

- (e) The Purchased Assets shall not include any of the following assets of SLH: Cash and Cash Equivalents; any Real Property Lease except for the Assumed Real Property Leases; any real or immovable property owned by SLH; corporate records; Excluded Contracts (defined in the Asset Purchase Agreement as all Contracts of SLH that are not Assumed Contracts); collateral, rights under agreements; director and officer insurance policies; securities; licenses and registrations; tax refunds; avoidance Claims; ordinary course assets; and Employee contributions made by Employees of SLH or 168886 that are not Assumed Employees.
- (f) As of the Closing Time, 8507597 shall assume from SLH and shall pay, discharge and perform, as the case may be, from and after the Closing Time, the Assumed

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Liabilities, which consist of the following: all liabilities and obligations arising under the Assumed Contracts and the Assumed Real Property Leases; all other liabilities and obligations relating to the Purchased Assets and the operation of the Acquired Business; all liabilities arising out of or relating to services, products or product or service warranties of SLH; various liabilities and obligations relating to Employees; any liabilities arising out of the Acquired Business' or the Purchased Assets' non-compliance with Environmental Law or a Release to the Environment; various liabilities relating to Taxes; and all liabilities, if any, arising from the Permitted Encumbrances.

- (g) As described above, section 7.11 of the Asset Purchase Agreement provides that 8507597 may designate additional Contracts listed on Schedule D-2 for inclusion in the Purchased Assets by delivering a Schedule Update Notice to SLH. Upon receipt by 8507597 of SLH's consent to any Schedule Update Notice, any Contract listed on such Schedule Update Notice shall irrevocably be deemed to be included on Schedule D-1 and deemed to be an Assumed Contract. SLH shall not be required to seek Court approval for the assignment of any Contracts pursuant to section 7.11 unless 8507597 designates such Contracts on or before October 6, 2017.
- (h) In addition, section 7.12 provides that, at least 45 days prior to the TSA Termination Date (as described below), subject to the consent of SLH and Sears Canada, 8507597 may designate additional Real Property Leases listed on Schedule L-3 for acquisition by 8507597 in exchange for the assumption of all liabilities with respect thereto and other nominal consideration by delivering a

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Post-Closing Acquisition Notice. Upon delivery of a Post-Closing Acquisition Notice, SLH or Sears Canada, as applicable, and 8507597 shall negotiate and, if agreed, enter into an agreement for the purchase and sale and, if applicable, assignment of such Real Property Leases. SLH or Sears Canada, as applicable, will thereafter use commercially reasonable efforts to promptly seek an approval and vesting order and, if applicable, an assignment order from the Court with respect to such Real Property Leases. In addition, if 8507597 notifies SLH and Sears Canada that it wishes to enter into negotiations with the counterparty to any such Real Property Lease or any Employee that is an employee of SLH, Sears Canada or 168886, then SLH or Sears Canada will use commercially reasonable efforts to facilitate such negotiations.

- (i) No later than two (2) Business Days following the date of the issuance of the proposed Approval and Vesting Order, and conditional on Closing and with effect as of the Closing Time, 8507597 shall:
 - (i) Offer employment to at least the majority of the Employees, consistent with the headcount information listed on Schedule P to the Asset Purchase Agreement, on terms and conditions that are substantially similar in the aggregate to those currently enjoyed by such Employees; and
 - (ii) Deliver to SLH a list of any additional Employees to whom 8507597 will offer continuing employment on terms and conditions that are substantially similar in the aggregate to those currently enjoyed by such Employees.

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- (j) 8507597 may provide notice to SLH at least two (2) Business Days before the Closing Date that 8507597 wishes to assume one or more Employee Plans (to the extent transferable and exclusive to SLH), and SLH shall assign such Assumed Employee Plans to 8507597 effective as of the Closing Date. To the extent Assumed Employees participate in any of 8507597's employee plans, as opposed to any Assumed Employee Plans, 8507597 shall recognize the service date of each such Employee, to the same extent that service credit would be given under the analogous Employee Plan.
- (k) 8507597 and Sears Canada will negotiate and use their respective commercially reasonable efforts to enter into a Transition Services Agreement, pursuant to which 8507597 will continue to provide services to Sears Canada under the terms, conditions and rate structure currently in place between SLH and Sears Canada, which terms, conditions and rate structure are set out in Schedule O to the Asset Purchase Agreement, for the period from the Closing Date until December 31, 2017 (the "TSA Termination Date"), subject to Sears Canada's option to extend the TSA Termination Date by an additional 120 days after December 31, 2017. If the TSA Termination Date is so extended, the terms and conditions of such transitional services will be as set forth in Schedule O-1 and the rate structure will remain as set forth in Schedule O.
- (l) Subject to the terms of the Asset Purchase Agreement, SLH has agreed to carry on its business in the ordinary course, in all material respects consistent with past practice, during the period between signing and Closing.

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- (m) Subject to the terms of the Asset Purchase Agreement, the Buyer is purchasing, accepting and assuming the Purchased Assets on an "as is, where is" basis.
- (n) The Asset Purchase Agreement and transaction contemplated therein is subject to obtaining relevant Regulatory Approvals (including approval under the *Competition Act* and from the Canadian Minister of Transport), the Court issuing the proposed Approval and Vesting Order, the delivery by 8507597 to SLH of the Transition Services Agreement duly executed by 8507597, and the obtaining by SLH of the Key Consents, either through written consents or Assignment Orders.
- (o) The Closing will take place on the date that is five (5) Business Days after the conditions set forth in Article 6 of the Asset Purchase Agreement have been satisfied, or at such other date as may be agreed upon in writing by the parties.
- (p) As a condition of Closing, SLH has agreed to use commercially reasonable efforts to obtain the written consent of the Landlords to the assignment of the Assumed Real Property Leases to 8507597, to the extent such consent is required by the terms of the Assumed Real Property Leases. Where SLH is unable to obtain the necessary Landlord Consents, SLH agrees to make an application for an Assignment Order, assigning all of its rights and obligations under the applicable Assumed Real Property Lease(s) to 8507597 and compelling or deeming the applicable consents to have been provided, and 8507597 agrees to accept such assignment. The parties further agree that where they are unable to obtain the Landlord's Consent or an Assignment Order in respect of any Assumed Real Property Leases, they will nonetheless close the transaction in respect of any Assumed Real Property Leases for which the Landlord's Consent or an

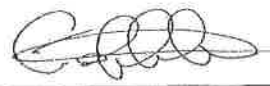
Assignment Order has been obtained, and the Purchase Price will be adjusted accordingly.

Proposed Distribution of Proceeds of Transaction

19. The proposed Approval and Vesting Order provides that the Monitor will distribute any net proceeds from the Transaction ("Net Proceeds") to repay amounts owing under the DIP ABL Credit Agreement or the DIP Term Credit Agreement after filing the Monitor's Certificate (a "Distribution"). Any Distribution will be made free and clear of all Claims and Encumbrances. If all amounts owing under the DIP Credit Agreements have been repaid, the Monitor will retain any Net Proceeds remaining on behalf of the Applicants pending further Order of the Court.

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

SWORN BEFORE ME at the City of Toronto, on the 29th day of September, 2017.



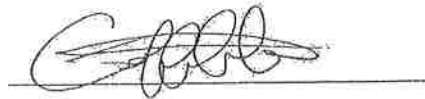
Commissioner for Taking Affidavits

Geoffrey Crave



Billy Wong

**THIS IS EXHIBIT "A" TO THE AFFIDAVIT
OF BILLY WONG SWORN BEFORE ME ON
THIS 29TH DAY OF SEPTEMBER, 2017**

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

A Commissioner for taking Affidavits

Geoffrey Esau

ASSET PURCHASE AGREEMENT

THIS AGREEMENT is made as of September 29, 2017.

BETWEEN:

S.L.H. TRANSPORT INC. / TRANSPORTS S.L.H. INC., a corporation governed by the laws of Canada (the “**Seller**”)

- and -

8507597 CANADA INC., a corporation governed by the laws of Canada (the “**Buyer**”)

- and, solely for purposes of Article 1, Article 2, Section 7.5(e), Section 7.12 and Article 11 -

SEARS CANADA INC., a corporation governed by the laws of Canada (“**SCI**”)

- and, solely for purposes of Article 1, Article 2, Section 7.8, Section 7.12 and Article 11 -

168886 CANADA INC., a corporation governed by the laws of Canada (“**168886**”)

RECITALS:

- A. On the Filing Date, SCI and certain of its affiliates and subsidiaries, including the Seller (collectively, the “**Sears Group**”), applied for and were granted protection from their creditors under the CCAA pursuant to the Initial Order of the CCAA Court. Pursuant to the Initial Order, the CCAA Court appointed FTI Consulting Canada Inc. as “Monitor” in connection with the CCAA Proceedings.
- B. On the SISP Order Date, the CCAA Court granted the SISP Order which, among other things, approved the SISP. The SISP Order and the SISP govern the process for soliciting and selecting bids for the sale of the Business, Assets and/or Leases (each as defined in the SISP) of the Sears Group.
- C. The Buyer has been selected as a Successful Bidder (as defined in the SISP) in accordance with the SISP.
- D. The Seller wish to sell to the Buyer, and the Buyer wishes to purchase from the Seller, the Purchased Assets, and the Buyer further wishes to assume from the Seller the Assumed Liabilities, subject to the terms and conditions of this Agreement.

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

**ARTICLE 1
INTERPRETATION**

1.1 Definitions

In this Agreement,

- (a) **"Accounts Receivable"** means (i) any and all accounts receivable, bills receivable, trade accounts, unbilled revenues and book debts relating to the Acquired Business or the Purchased Assets (excluding overdue accounts receivable and receivables from any member of the Sears Group and any other affiliate of any members of the Sears Group), recorded as receivable in the books and records of the Seller relating to the Acquired Business or the Purchased Assets, and other amounts due or deemed to be due to the Seller relating to the Acquired Business or the Purchased Assets, including refunds and rebates receivable relating to the Acquired Business or the Purchased Assets; (ii) the full benefit of all security and guarantees for such accounts or rights to payment; and (iii) any and all claims, remedies or other rights relating to any of the foregoing, together with any interest or unpaid financing charges accrued thereon, in each case calculated in a manner consistent with Schedule G.
- (b) **"Accrued Liability"** means the health, dental and vacation liabilities and obligations in respect of the Assumed Employees that have accrued as of the Closing Time, calculated in accordance with the methodology set forth in Schedule M.
- (c) **"Acquired Business"** means the logistics business of transportation services relating to the domestic and cross-border truckload delivery, freight management services and shunt operations provided or carried on by the Seller.
- (d) **"affiliate"** of any Person means, at the time such determination is being made, any other Person controlling, controlled by or under common control with such first Person, in each case, whether directly or indirectly through one or more intermediaries, and "control" and any derivation thereof means the control by one Person of another Person in accordance with the following: a Person ("A") controls another Person ("B") where A has the power to determine the management and policies of B by contract or status (for example, the status of A being the general partner of B) or by virtue of beneficial ownership of a majority of the voting interests in B; and, for certainty and without limitation, if A owns shares to which are attached more than 50% of the votes permitted to be cast in the election of directors (or other Persons performing a similar role) of B, then A controls B for this purpose.
- (e) **"Agreement"** means this Asset Purchase Agreement, in each case as the same may be supplemented, amended, restated or replaced from time to time, and the

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expressions "hereof", "herein", "hereto", "hereunder", "hereby" and similar expressions refer to this Asset Purchase Agreement, and unless otherwise indicated, references to Articles and Sections are to Articles and Sections in this Asset Purchase Agreement.

- (f) **"Applicable Law"** means any transnational, domestic or foreign, federal, provincial, territorial, state, local or municipal (or any subdivision of any of them) law (including without limitation the common law), statute, ordinance, rule, regulation, restriction, standard, by-law (zoning or otherwise), judgment, order, direction or any consent, exemption, Governmental Authorizations, or any other legal requirements of, or agreements with, any Governmental Authority, that applies in whole or in part to the transactions contemplated by this Agreement, the Seller, the Buyer, the Acquired Business, or any of the Purchased Assets or the Assumed Liabilities.
- (g) **"Approval and Vesting Order"** means an order granted by the CCAA Court, in substantially the form attached as Schedule A hereto (with only such changes as the Buyer and the Seller approve in their reasonable discretion, but in all cases in form and substance acceptable to the Lenders and the Monitor), and served on those Persons identified by the Seller and the Buyer, which will, among other things:
- (i) authorize and approve this Agreement and the execution and delivery thereof by the Seller;
 - (ii) authorize and direct the Seller to complete the transactions contemplated by this Agreement; and
 - (iii) provide for the vesting of title to the Purchased Assets in and to the Buyer in accordance with the terms and conditions of this Agreement, free and clear of any and all claims against the Purchased Assets of every nature or kind whatsoever and howsoever arising, including all Encumbrances, save for Permitted Encumbrances, upon the delivery of the Monitor's Certificate to the Buyer indicating that the conditions precedent to the consummation of the transactions contemplated by this Agreement have been satisfied or waived (where permissible).
- (h) **"Assignment Order"** means an order or orders of the CCAA Court pursuant to applicable provisions of the CCAA, in form and substance acceptable to the Seller, the Buyer, the Lenders and the Monitor, each acting in a commercially reasonable manner, authorizing and approving the assignment to the Buyer of any Assumed Contract or Assumed Real Property Lease for which a required consent has not been obtained and preventing any counterparty to the Assumed Contract or Assumed Real Property Lease from exercising any right or remedy under the Assumed Contract or Assumed Real Property Lease by reason of any default(s) arising from the CCAA Proceedings, the insolvency of the Seller, the assignment of the Assumed Contract or Assumed Real Property Lease, or the failure of the Seller to perform a non-monetary obligation under the Assumed Contract or Assumed Real Property Lease.

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- (i) "Assumed Contracts" has the meaning given to such term in Section 2.1(h).
- (j) "Assumed Employee Plans" has the meaning given to such term in Section 7.8(d).
- (k) "Assumed Employees" has the meaning given to such term in Section 7.8(c).
- (l) "Assumed Liabilities" has the meaning given to such term in Section 2.3.
- (m) "Assumed Real Property Leases" has the meaning given to such term in Section 2.1(g).
- (n) "Business Day" means any day, other than a Saturday or Sunday, on which the principal commercial banks in Toronto, Ontario are open for commercial banking business during normal banking hours.
- (o) "Buyer" has the meaning given to such term in the preamble to this Agreement.
- (p) "Buyer Employee Plans" means any Plans maintained or otherwise contributed to, or required to be maintained or contributed to, by or on behalf of the Buyer with respect to its employees.
- (q) "Cash and Cash Equivalents" means cash, bank balances, moneys in possession of banks and other depositories, bank term deposits, marketable securities, bankers' acceptance, commercial paper, security entitlements, securities accounts, commodity Contracts, commodity accounts, government securities and any other cash equivalents of, owned or held by or for the account of the Seller (but specifically excluding any cash payable by the Buyer to any Seller pursuant to this Agreement).
- (r) "CCAA" means the *Companies' Creditors Arrangement Act* (Canada).
- (s) "CCAA Court" means the Ontario Superior Court of Justice (Commercial List).
- (t) "CCAA Proceedings" means the proceedings commenced under the CCAA by, among others, the Seller pursuant to the Initial Order (Court File No. CV-17-11846-00CL).
- (u) "Claims" includes all claims, demands, complaints, grievances, actions, applications, suits, causes of action, Orders, charges, indictments, prosecutions, informations or other similar processes, assessments or reassessments, judgments, debts, liabilities, expenses, costs, damages or losses, contingent or otherwise, whether liquidated or unliquidated, matured or unmatured, disputed or undisputed, contractual, legal or equitable, including loss of value, professional fees, including fees and disbursements of legal counsel on a full indemnity basis, and all costs incurred in investigating or pursuing any of the foregoing or any proceeding relating to any of the foregoing.
- (v) "Closing" means the completion of the sale and purchase of the Purchased Assets pursuant to this Agreement at the Closing Time, and all other transactions

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contemplated by this Agreement that are to occur contemporaneously with the sale and purchase of the Purchased Assets.

- (w) “**Closing Date**” means a date no later than five (5) Business Days after the conditions set forth in Article 6 have been satisfied (or such other date agreed to by the Parties in writing), other than the conditions set forth in Article 6 that by their terms are to be satisfied or waived at the Closing; provided that, the Closing Date shall be no later than October 25, 2017 or such later date (which shall not be later than 60 days following October 25, 2017 without the further consent of the Buyer), as the Seller (with the consent of the Lenders and the Monitor) may advise the Buyer in writing or as otherwise ordered by the CCAA Court.
- (x) “**Closing Documents**” means all contracts, agreements and instruments required by this Agreement to be delivered by or on behalf of a Party at or before the Closing.
- (y) “**Closing Time**” means 10:00 a.m. (Toronto time) on the Closing Date or such other time on the Closing Date as the Parties agree in writing that the Closing Time shall take place.
- (z) “**Commissioner**” means the Commissioner of Competition appointed under the *Competition Act*.
- (aa) “**Commitment Letter**” has the meaning given to such term in Section 5.3.
- (bb) “**Competition Act**” means the *Competition Act* (Canada).
- (cc) “**Competition Act Approval**” means any of:
 - (i) the Commissioner shall have issued an advance ruling certificate under Section 102 of the *Competition Act* with respect to the transactions contemplated by this Agreement;
 - (ii) each of the Parties shall have filed all notices and information required under Part IX of the *Competition Act* and the applicable waiting periods shall have expired or been terminated; or
 - (iii) the obligation to give the requisite notice has been waived pursuant to subsection 113(c) of the *Competition Act*;

and, in the case of (ii) or (iii), the Commissioner or his delegate shall have advised the Buyer in writing that he does not, at that time, intend to make an application under Section 92 of the *Competition Act* in respect of the transactions contemplated herein.
- (dd) “**Confidential Information**” means non-public, confidential, personal or proprietary information which is furnished to the Buyer by the Seller or any of the Seller’s representatives or the Monitor, including, without limitation, information about identifiable individuals, any information relating to the Seller and its affiliates, or any customer or supplier of the Seller, but does not include

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

- (ee) **"Contracts"** means contracts, agreements, obligations, promises, undertakings, understandings, arrangements, documents, commitments, entitlements or engagements to which any of the Seller is a party or by which the Seller is bound or under which the Seller has, or will have, any right or any liability or contingent right or liability (in each case, whether written or oral, express or implied) relating to the Acquired Business or the Purchased Assets and includes quotations, orders, proposals or tenders which remain open for acceptance and warranties and guarantees, but excluding the Real Property Leases.
- (ff) **"Contracts Assignment and Assumption Agreements"** means the assignment and assumption agreements for the Assumed Contracts, in a form satisfactory to the Seller and the Buyer acting in a commercially reasonable manner.
- (gg) **"CTA"** means the *Canada Transportation Act* (Canada).
- (hh) **"CTA Approval"** means:
 - (i) the Buyer and the Seller shall have received a notice from the Canadian Minister of Transport, as provided for under subsection 53.1(4) of the CTA advising that such transactions do not raise issues with respect to the public interest as it relates to national transportation; or
 - (ii) the Governor in Council shall have approved such transactions pursuant to subsection 53.2(7) of the CTA.
- (ii) **"Cure Costs"** means all amounts necessary to cure any monetary defaults as a condition to assuming the Assumed Contracts and the Assumed Real Property Leases other than those monetary defaults arising only by reason of the Seller's insolvency, the commencement of the CCAA Proceedings, or the failure to perform a non-monetary obligation.
- (jj) **"Deposit"** means the amount of [REDACTED] delivered by the Buyer to the Monitor in accordance with the SISP.
- (kk) **"DIP ABL Credit Agreement"** means the senior secured superpriority debtor-in-possession amended and restated credit agreement among SCI (as borrower), Wells Fargo Capital Finance Corporation Canada (as administrative and collateral agent) and the lenders party thereto dated as of June 22, 2017, and as may be amended, restated, supplemented and/or modified from time to time.

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- (ll) **“DIP ABL Facility”** means the revolving credit facilities in an aggregate principal amount not to exceed \$300 million under the DIP ABL Credit Agreement.
- (mm) **“DIP Credit Agreement”** means collectively, the DIP ABL Credit Agreement and the DIP Term Credit Agreement.
- (nn) **“DIP Facility”** means collectively, the DIP ABL Facility and the DIP Term Facility.
- (oo) **“DIP Term Credit Agreement”** means the senior secured superpriority debtor-in-possession credit agreement among SCI (as borrower), certain subsidiaries and affiliates of SCI (as guarantors), GACP Finance Co., LLC (as administrative and syndication agent) and the lenders party thereto dated as of June 22, 2017, and as may be amended, restated, supplemented and/or modified from time to time.
- (pp) **“DIP Term Facility”** means the term loan facilities in an aggregate principal amount not to exceed \$150 million under the DIP Term Credit Agreement.
- (qq) **“Draft Closing Date Accounts Receivables”** has the meaning given to such term in Section 3.4(a).
- (rr) **“Draft Vehicle Location List”** has the meaning given to such term in Section 3.5(a).
- (ss) **“Employee Pension Plans”** means any Pension Plan sponsored or, directly or indirectly, contributed to by the Seller or 168886.
- (tt) **“Employee Plans”** means any Plan sponsored or maintained by the Seller or 168886.
- (uu) **“Employees”** means, in respect of the Acquired Business and Purchased Assets, any and all: (i) Employees of the Seller or 168886 who are actively at work (including full-time, part-time or temporary employees); and (ii) Employees of the Seller or 168886 who are on statutory or approved leaves of absence (including maternity leave, parental leave, workers’ compensation and other statutory leaves, and those who are absent on short-term or long-term disability leave).
- (vv) **“Employees of the Seller or 168886”** means all current employees, individual consultants and service providers of the Seller or 168886.
- (ww) **“Encumbrance”** means any security interest, lien (statutory or otherwise), prior claim, charge, hypothec, reservation of ownership, pledge, encumbrance, liability, mortgage, right-of-way, easement, lease, restriction, development or similar agreement, option or adverse claim or encumbrance of any nature or kind including any and all CCAA Court ordered charges granted in the CCAA Proceedings.

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- (xx) “**Environment**” means the environment or natural environment as defined in any Environmental Laws and includes air, surface water, ground water, land surface, soil and subsurface strata.
- (yy) “**Environmental Approvals**” means permits, certificates, licences, authorizations, consents, agreements, instructions, directions, registrations or approvals required by a Governmental Authority pursuant to an Environmental Law relating to the Acquired Business or the Purchased Assets.
- (zz) “**Environmental Law**” means Applicable Laws relating to the protection of human health and the Environment, and includes Applicable Laws relating to the storage, generation, use, handling, manufacture, processing, transportation, treatment, Release, remediation, management and disposal of Hazardous Substances.
- (aaa) “**Excluded Assets**” has the meaning given to such term in Section 2.2.
- (bbb) “**Excluded Contracts**” has the meaning given to such term in Section 2.2(e).
- (ccc) “**Excluded Liabilities**” has the meaning given to such term in Section 2.4.
- (ddd) “**Filing Date**” means June 22, 2017.
- (eee) “**Final**” with respect to any order of any court of competent jurisdiction, means that such order shall not have been stayed, appealed, varied (except with the consent of the Buyer and Seller, each acting in a commercially reasonable manner) or vacated, and all time periods within which such order could at law be appealed shall have expired.
- (fff) “**Final Closing Date Accounts Receivable List**” has the meaning given to such term in Section 3.4(b)(ii).
- (ggg) “**Final Vehicle Location List**” has the meaning given to such term in Section 3.5(b)(ii).
- (hhh) “**GACP Credit Agreement**” means the term loan credit agreement dated March 20, 2017, as amended by amendment no. 1 to credit agreement dated May 5, 2017, between SCI (as borrower), certain subsidiaries and affiliates of SCI (as guarantors), GACP Finance Co., LLC (as administrative agent and syndication agent), KKR Capital Markets LLC and GACP Finance Co., LLC (as joint lead arrangers), TPG Specialty Lending, Inc. (as documentation agent), and the lenders party thereto, as the same may be amended, restated, supplemented and/or modified from time to time.
- (iii) “**General Assignments and Bills of Sale**” means the general assignments and bills of sale for the Purchased Assets, in a form reasonably satisfactory to the Seller and the Buyer.
- (jjj) “**Governmental Authority**” means any applicable transnational, federal, provincial, municipal, state, local, national or other government, regulatory

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authority, governmental department, agency, commission, board, tribunal, bureau, ministry, court, system operator, judicial body, arbitral body or other law, rule or regulation-making entity, or any entity; officer, inspector, investigator or examiner exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to any government or any court, in each case:

- (i) having jurisdiction over the Seller, the Buyer, the Acquired Business, the Purchased Assets or the Assumed Liabilities on behalf of any country, province, state, locality, or other geographical or political subdivision thereof; or
 - (ii) exercising or entitled to exercise any administrative, judicial, legislative, regulatory or taxing authority or power.
- (kkk) **“Governmental Authorizations”** means authorizations, approvals (including the Environmental Approvals), plans, franchises, orders, certificates, consents, directives, notices, licenses, permits, variances, registrations or other rights issued to or required by the Seller relating to the Acquired Business or any of the Purchased Assets by or from any Governmental Authority.
- (lll) **“GST”** means goods and services tax payable under the GST and HST Legislation.
- (mmm) **“GST/HST and QST Certificate, Undertaking and Indemnity”** has the meaning given to such term in Section 7.7(h).
- (nnn) **“GST and HST Legislation”** means Part IX of the *Excise Tax Act* (Canada).
- (ooo) **“Hazardous Substances”** means pollutants, contaminants, wastes of any nature, hazardous substances, hazardous materials, toxic substances, prohibited substances, dangerous substances or dangerous goods regulated by or under Environmental Laws.
- (ppp) **“HST”** means harmonized sales tax payable under the GST and HST Legislation.
- (qqq) **“including”** and **“includes”** shall be interpreted on an inclusive basis and shall be deemed to be followed by the words “without limitation”.
- (rrr) **“Initial Order”** means the Initial Order granted by the CCAA Court on June 22, 2017 pursuant to which SCI and certain of its affiliates and subsidiaries were granted protection from their creditors under the CCAA (as amended, restated, supplemented and/or modified from time to time).
- (sss) **“Insolvency Proceedings”** means any action, application, petition, suit or other proceeding under any bankruptcy, arrangement, reorganization, dissolution, liquidation, insolvency, winding-up or similar law of any jurisdiction now or hereafter in effect, for the relief from or otherwise affecting creditors of the Seller, including without limitation under the *Bankruptcy and Insolvency Act* (Canada) (including the filing of a notice of intention to make a proposal), CCAA

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(including the CCAA Proceedings), the *Winding-Up and Restructuring Act* (Canada), the *Canada Business Corporations Act* or *United States Bankruptcy Code* by, against or in respect of the Seller.

- (ttt) “**Intellectual Property**” means any and all intellectual property or similar proprietary rights used or held by the Seller for use in or relating to the Acquired Business, including all patents, patent applications, trademarks, industrial designs, trade names, service marks (and all goodwill associated with any of the foregoing), copyrights, technology, software, data and database rights, trade secrets, proprietary information, domain names, know-how and processes and other intellectual property, whether registered or not, throughout the world, including, without limitation, trademark number TMA486374.
- (uuu) “**Investment Canada Act**” means the *Investment Canada Act* (Canada).
- (vvv) “**IP Assignment and Assumption Agreements**” means the intellectual property assignment and assumption agreements for Intellectual Property and rights in Intellectual Property owned by the Seller and that is used or held for use in or otherwise relates to the Acquired Business, in a form reasonably satisfactory to the Seller and the Buyer.
- (www) “**IT Assets**” has the meaning given to such term in Section 2.1(j).
- (xxx) “**Key Consents**” means the consents to the assignment of the Key Contracts to the Buyer to be received from the various counterparties to such Key Contracts.
- (yyy) “**Key Contracts**” means the agreements listed in Schedule N.
- (zzz) “**Landlord Consent**” has the meaning given to such term in Section 7.4.
- (aaaa) “**Landlords**” means, collectively, the landlords under the Assumed Real Property Leases.
- (bbbb) “**Lease Assignment and Assumption Agreements**” means the lease assignment and assumption agreements for the Personal Property Leases and Assumed Real Property Leases, in a form reasonably satisfactory to the Seller and the Buyer.
- (cccc) “**Leased Property**” means collectively, the real or immovable property of which the Premises form part for the purposes of the Assumed Real Property Leases and includes the Landlords’ freehold or other ownership interest, ground leasehold interest or right of emphyteusis therein.
- (dddd) “**Lender Claims**” means the aggregate amount owing to the Lenders arising from or related to the DIP Credit Agreement, the Wells Fargo Credit Agreement and the GACP Credit Agreement, which shall include to the maximum extent permissible under applicable documentation and law, without limitation, all accrued and unpaid principal, interest, default interest, premiums, fees and reasonable costs, charges and expenses all as may be due and payable under the aforementioned credit facilities and any ancillary documents.

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- (eeee) “**Lenders**” means the secured lenders under the DIP Credit Agreement, the Wells Fargo Credit Agreement and the GACP Credit Agreement.
- (ffff) “**Material Adverse Effect**” means any change, event, occurrence or circumstance, individually or in the aggregate that: (i) has, or would reasonably be expected to have, a material adverse effect on the business, assets, operations, results of operations or condition (financial or otherwise) of the Acquired Business, (ii) materially and adversely impairs the Purchased Assets or the Acquired Business or materially and adversely increases the Assumed Liabilities, each taken as a whole, or (iii) materially and adversely impedes the consummation of the transactions contemplated by this Agreement, but excluding, in the case of each of clauses (i), (ii) and (iii) any such change, event, occurrence or circumstance that results from or arises out of (A) changes in general economic conditions (B) changes affecting the industries and markets in which the Acquired Business operates, (C) changes in macroeconomic factors, interest rates, currency exchange rates or general financial or credit market conditions, (D) acts of God, war, terrorism, civil unrest or hostilities, (E) any change in law or its interpretation, administration or application or non-application by any Governmental Authority or in generally acceptable accounting principles, (F) any failure to meet any internal or publicly disclosed projections, forecasts, estimates or budgets of, or guidance relating to, revenue, cash flow, earnings or other financial metrics for any period, (G) any action taken (or omitted to be taken) by any Seller that is permitted under this Agreement or consented to by the Buyer, (H) any announcement of the transactions contemplated by this Agreement, (I) any change or development in respect of any Excluded Asset, Excluded Liability or any matter disclosed pursuant to the terms of this Agreement, or (J) the pendency of the CCAA Proceedings and any action approved by, or motion made before, the CCAA Courts; provided, however, that in the case of clauses (B) or (D), any such change, effect, event or condition shall nevertheless be considered as constituting or contributing to a Material Adverse Effect to the extent such change, effect, event or circumstance, individually or in the aggregate, has a materially disproportionate adverse effect on the business, assets, operations, results of operations or condition (financial or otherwise) of the Seller taken as whole relative to other companies operating in the same industry as the Seller.
- (gggg) “**Material Contracts**” means, collectively:
- (i) any Contract that is reasonably likely to involve payment to or by the Seller in excess of \$350,000 in any fiscal year; and
 - (ii) any Contract, which if terminated, would have a Material Adverse Effect.
- (hhhh) “**Milestones**” means the milestones set forth in the DIP Facility.
- (iiii) “**Monitor**” means FTI Consulting Canada Inc., in its capacity as CCAA Court-appointed monitor of, among others, the Seller pursuant to the Initial Order and not in its personal capacity.

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- (jjj) **“Monitor’s Certificate”** means the certificate filed with the CCAA Court by the Monitor certifying that the Monitor has received written confirmation in form and substance satisfactory to the Monitor from the Seller and the Buyer that all conditions to Closing have been satisfied or waived by the applicable Parties and that the cash portion of the Purchase Price and all applicable sales and transfer Taxes payable by the Buyer to the Seller have been received by the Monitor.
- (kkk) **“NDA”** means the confidentiality, non-disclosure and non-use agreement between C.A.T. Inc., an indirect related party of the Buyer, and SCI dated July 5, 2017.
- (lll) **“Off-Title Compliance Matters”** means open permits or files, work orders, Orders, deficiency notices, directives, notices of violation, non-compliance and/or complaint and/or other outstanding matters or matters of non-compliance with the zoning and/or other requirements of any Governmental Authorities or any open building permits.
- (mmm) **“Order”** means any order, directive, judgment, decree, injunction, decision, ruling, award or writ of any Governmental Authority.
- (nnn) **“Parties”** means the Seller and the Buyer together, and **“Party”** means either the Seller or the Buyer, as the context requires; provided that SCI shall also be deemed to be a Party solely for purposes of Article 1, Article 2, Section 7.5(e), Section 7.12 and Article 11, and 168886 shall also be deemed to be a Party solely for purposes of Article 1, Article 2, Section 7.8, Section 7.12 and Article 11.
- (ooo) **“Payment Order”** has the meaning given to such term in Section 3.3(b).
- (ppp) **“Pension Plan”** means “registered pension plan”, “pooled pension plan”, “pooled registered pension plan”, or “registered retirement savings plan”, as those terms are defined under the *Income Tax Act*.
- (qqq) **“Permitted Encumbrances”** means, except to the extent otherwise provided in the Approval and Vesting Order:
- (i) reservations, limitations, provisos and conditions, if any, expressed in any original grants of land from the Crown and any statutory limitations, exceptions, reservations and qualifications;
 - (ii) statutory liens for current property Taxes, assessments or other governmental charges not yet due and payable or being disputed in good faith;
 - (iii) subdivision agreements, site plan control agreements, development agreements, heritage easements and agreements relating thereto, servicing agreements, utility agreements, permits, licenses, airport zoning regulations and other similar agreements with Governmental Authorities or private or public utilities affecting the development or use of any property registered on title to a Leased Property;

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- (iv) any rights of expropriation, access or use or any other similar rights conferred or reserved by Applicable Law;
- (v) undetermined or inchoate liens incidental to construction, renovations or current operations, a claim for which shall not at the time have been registered against the Leased Property or of which notice in writing shall not at the time have been given to the Seller pursuant to the *Construction Lien Act* (Ontario) or similar Applicable Law and in respect of any of the foregoing, the Seller have, where applicable, complied with the holdback or other similar provisions or requirements of the relevant construction contracts;
- (vi) Encumbrances associated with, and financing statements evidencing, the rights of equipment lessors under any Personal Property Leases which are Assumed Contracts;
- (vii) Encumbrances associated with, and financing statements evidencing, the rights of equipment lessors under any Personal Property Leases entered into from the date of this Agreement to the Closing Date in compliance with Section 7.2, provided such Encumbrances do not breach the terms of the DIP Facility and are listed by the Buyer as Assumed Contracts;
- (viii) any easements, servitudes or rights-of-way in favour of any Governmental Authority, any private or public utility, any railway company or any adjoining owner;
- (ix) Encumbrances for charges for electricity, power, gas, water and other services and utilities in connection with the Leased Property that have accrued but are not yet due and owing;
- (x) restrictive covenants, private deed restrictions and other similar land use control agreements;
- (xi) all Off-Title Compliance Matters;
- (xii) all instruments which are registered against title to Leased Property: (A) as of the date of this Agreement; (B) agreed to by the Buyer in writing; or (C) permitted by this Agreement;
- (xiii) the Encumbrances and other rights in favour of the Landlords contained in the Assumed Real Property Leases;
- (xiv) the Encumbrances which the Assumed Real Property Leases and/or any Leased Property are stated to be subject to or bound by pursuant to the terms of the Assumed Real Property Leases;
- (xv) any ground lease, emphyteutic lease, head lease or other lease which is superior to any Assumed Real Property Lease (each a "Head Lease"), any Encumbrances or other rights in favour of the applicable landlord

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contained in any Head Lease, and any Encumbrances which the Head Leases and/or leasehold interests created thereby are stated to be subject to or bound by pursuant to the terms of the applicable Head Lease;

- (xvi) Encumbrances encumbering the intervening leasehold interest pursuant to a Head Lease;
 - (xvii) all Encumbrances affecting a Landlord's freehold interest in any Leased Property; and
 - (xviii) the provisions of all Applicable Laws, including by-laws, regulations, ordinances and similar instruments relating to the development or zoning of any Leased Property.
- (rrr) **"Person"** means any individual, partnership, limited partnership, limited liability company, joint venture, syndicate, sole proprietorship, company or corporation with or without share capital, unincorporated association, trust, trustee, executor, administrator or other legal personal representative, Governmental Authority or other entity, however designated or constituted.
- (sss) **"Personal Property Leases"** has the meaning given to such term in Section 2.1(f).
- (ttt) **"Plan"** means any plan, arrangement, agreement, program, policy, practice or undertaking, whether oral or written, formal or informal, funded or unfunded, insured or uninsured, registered or unregistered, that provides any employee benefit, fringe benefit, supplemental unemployment benefit, bonus, incentive, profit sharing, termination, change of control, stock option, stock purchase, stock appreciation, share unit, phantom stock, deferred compensation, health, welfare, medical, dental, disability, life insurance and any similar plans, programmes, arrangements or practices, which, for greater certainty, does not include any Pension Plan.
- (uuu) **"Post-Closing Acquisition Notice"** has the meaning given to such term in Section 7.12.
- (vvv) **"Post-Closing Tax Period"** has the meaning given to such term in Section 7.7(b).
- (www) **"Pre-Closing Tax Period"** has the meaning given to such term in Section 7.7(b).
- (xxx) **"Premises"** means, collectively, the lands and premises which are leased to the Seller pursuant to the Real Property Leases.
- (yyy) **"Purchase Price"** has the meaning given to such term in Section 3.1.
- (zzz) **"Purchased Assets"** has the meaning given to such term in Section 2.1.
- (aaaa) **"QST"** means the Québec sales tax payable under the QST Legislation.

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- (bbbb) “**QST Legislation**” means *An Act Respecting the Québec Sales Tax* (Québec).
- (cccc) “**Real Property Leases**” means the leases and other agreements to occupy the Premises entered into by, or assigned in favour of the Seller, including all purchase options, prepaid rents, security deposits, rights to appurtenances and improvements, licenses and permits relating thereto and all leasehold improvements thereon.
- (dddd) “**Regulatory Approvals**” means *Competition Act* Approval and CTA Approval.
- (eeee) “**Release**” has the meaning prescribed in any Environmental Law and includes any release, spill, leak, pumping, pouring, emission, emptying, discharge, injection, escape, leaching, disposal, dumping, deposit, spraying, burial, abandonment, incineration, seepage, placement or introduction.
- (ffff) “**Restricted Rights**” has the meaning given to such term in Section 2.5.
- (gggg) “**Sears Group**” has the meaning given to such term in the preamble to this Agreement.
- (hhhh) “**Sears Registered Pension Plan**” means the Sears Canada Inc. Registered Retirement Plan, Registration Number 0360065.
- (iiii) “**Seller**” has the meaning given to such term in the preamble to this Agreement.
- (jjjj) “**Seller Parties**” has the meaning given to such term in Section 7.6(c).
- (kkkk) “**SISP**” means the Sale and Investment Solicitation Process approved by the SISP Order (as amended, restated, supplemented and/or modified from time to time).
- (llll) “**SISP Order**” means the Order granted by the CCAA Court on the SISP Order Date (as amended, restated, supplemented and/or modified from time to time), which, among other things, approved the SISP.
- (mmmm) “**SISP Order Date**” means July 13, 2017.
- (nnnn) “**Sunset Date**” has the meaning given to such term in Section 9.1(b).
- (oooo) “**Tax**” and “**Taxes**” includes:
- (i) taxes, duties, fees, premiums, assessments, imposts, levies and other charges of any kind whatsoever (including withholding on amounts paid to or by any Person) imposed by any Governmental Authority, including all interest, penalties, fines, additions to tax or other additional amounts imposed by any Governmental Authority in respect thereof, and including those levied on, or measured by, or referred to as, income, gross receipts, profits, capital, transfer, land transfer, sales, goods and services,

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harmonized sales, use, value-added, excise, stamp, withholding, business, franchising, property, development, occupancy, employer health, payroll, employment, health, disability, severance, unemployment, social services, education and social security taxes, all surtaxes, all customs duties and import and export taxes, countervail and anti-dumping, all license, franchise and registration fees and all employment insurance, health insurance and Canada, Ontario and other government pension plan premiums or contributions; and

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

(ppppp) **“Transition Services Agreement”** means a transition services agreement between SCI and the Buyer, as may be amended as contemplated by Section 7.15, pursuant to which the Buyer will continue to provide services to SCI under the terms, conditions and rate structure as set forth in Schedule O currently in place between the Seller and SCI for the period from the Closing Date until the TSA Termination Date; provided, however, that in the event that the TSA Termination Date is subsequent to December 31, 2017, the terms and conditions shall be as set forth in Schedule O-1 and the rate structure will remain as set forth in Schedule O.

(qqqqq) **“TSA Termination Date”** means December 31, 2017, subject to SCI's option to extend the TSA Termination Date for an additional 120 days after December 31, 2017 in accordance with the terms and conditions of the Transition Services Agreement.

(rrrrr) **“Vehicles”** has the meaning given to such term in Section 2.1(e).

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

1.2 Statutes

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

1.3 Headings and Table of Contents

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

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1.4 Gender and Number

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

1.5 Currency

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

1.6 Invalidity of Provisions

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

1.7 Knowledge

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

1.8 Entire Agreement

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

1.9 Waiver, Amendment

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

1.10 Governing Law; Jurisdiction and Venue

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This Agreement, the rights and obligations of the Parties under this Agreement, and any claim or controversy directly or indirectly based upon or arising out of this Agreement or the transactions contemplated by this Agreement (whether based on contract, tort or any other theory), including all matters of construction, validity and performance, shall in all respects be governed by, and interpreted, construed and determined in accordance with, the laws of the Province of Ontario and the federal laws of Canada applicable therein, without regard to the conflicts of law principles thereof. The Parties consent to the exclusive jurisdiction and venue of the CCAA Court prior to a Final Order of the CCAA Court closing the CCAA Proceedings and thereafter to the courts of Ontario for the resolution of any such disputes arising under this Agreement. Each Party agrees that service of process on such Party as provided in Section 11.8 shall be deemed effective service of process on such Party.

1.11 Schedules

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

<u>Schedule</u>	<u>Description</u>
Schedule A	Form of Approval and Vesting Order
Schedule B	Purchased Vehicles
Schedule C	Fixed Assets and Equipment
Schedule D-1	Assumed Contracts
Schedule D-2	Contracts Subject to Section 7.11
Schedule E	Inventory and Prepaid Expenses/Deposits
Schedule F	IT Assets
Schedule G	Accounts Receivable List
Schedule H	Pension Plans
Schedule I	Intentionally Deleted.
Schedule J	Intentionally Deleted.
Schedule K	List of Business Names
Schedule L-1	Assumed Real Property Leases
Schedule L-3	Real Property Leases Subject to Section 7.12
Schedule M	Accrued Liabilities Methodology
Schedule N	Key Contracts
Schedule O	Transition Services

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Schedule O-1	Terms and Conditions for Transition Services Provided Subsequent to December 31, 2017
Schedule P	Employees Subject to Section 7.8(b)

**ARTICLE 2
PURCHASE AND SALE**

2.1 Agreement to Purchase and Sell Purchased Assets

Upon and subject to the terms and conditions of this Agreement (including the provisions of Section 2.5), at the Closing and effective as of the Closing Time, the Seller shall sell, convey, transfer, assign and deliver, or cause to be sold, conveyed, transferred, assigned and delivered, pursuant to the Approval and Vesting Order, and the Buyer shall purchase, free and clear of all Encumbrances other than Permitted Encumbrances, all of the Seller's right, title and interest in, to and under, or relating to, the assets, property and undertaking owned or used or held for use by the Seller in connection with the Acquired Business, as applicable (collectively, the "Purchased Assets"), including without limitation the following properties, assets and rights:

- (a) *Accounts Receivable* – the Accounts Receivable and the benefit of all security (including cash deposits), guarantees and other collateral held by the Seller relating to the Acquired Business;
- (b) *Prepaid Expenses* – all prepaid expenses and deposits, including *ad valorem* Taxes, of the Seller relating to the Acquired Business or the Purchased Assets, and all deposits of the Seller with any supplier, public utility, lessor under any Assumed Real Property Lease, Assumed Contract or Governmental Authority, including any such prepaid expenses provided on or after the Filing Date, such prepaid expenses to be calculated in a manner consistent with Schedule E in an aggregate amount not to be materially less than the aggregate dollar amount set forth on Schedule E, and the deposits listed on Schedule E;
- (c) *Inventory* – all items that are owned by the Seller for sale, license, rental, lease or other distribution in the ordinary course of business, of every kind and nature and wheresoever situated relating to the Acquired Business including inventories of raw materials, spare parts, work in progress, finished goods, fuel, gasoline, petroleum and by-products, operating supplies and packaging materials, such inventory to be calculated in a manner consistent with Schedule E in an aggregate amount not to be materially less than the aggregate dollar amount set forth on Schedule E;
- (d) *Fixed Assets and Equipment* – all machinery, equipment, geopositioning equipment, furnishings, furniture, parts, dies, molds, tooling, tools, computer hardware, supplies, accessories, office equipment and other tangible personal and moveable property (other than inventory) owned by the Seller for use in or relating to the Acquired Business, whether located on the Seller's premises or elsewhere, including, without limitation, those items listed in Schedule C, and all rights of the Seller under warranties, indemnities, licenses, and all similar rights

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of the Seller against third Persons with respect to the equipment, fixed assets and tangible assets referenced herein;

- (e) *Vehicles* – all motor vehicles, including all trucks, shunt trucks, light trucks, rolling equipment, vans, trailers, skirted trailers, cars, tractors and forklifts, including, without limitation, additions, parts and accessories, owned by the Seller for use in or relating to the Acquired Business (collectively, the “**Vehicles**”), including, without limitation, those items listed in Schedule B hereto, and all rights of the Seller under warranties, indemnities, licenses and all similar rights of the Seller against third Persons with respect to the Vehicles;
- (f) *Personal Property Leases* – all leases of personal or moveable property of the Seller that relate to the Acquired Business specifically listed as Assumed Contracts, including all benefits, rights and options of the Seller pursuant to such leases and all leasehold improvements forming part thereof (collectively, the “**Personal Property Leases**”);
- (g) *Real Property Leases* – the Real Property Leases listed in Schedule L-1 (collectively, the “**Assumed Real Property Leases**”). If the Premises comprise more than one leased location, the Real Property Leases related to any one leased location are referred to as an “Assumed Real Property Lease”;
- (h) *Assumed Contracts* – (i) all Contracts with customers of Acquired Business to which the Seller is a party, as such Contracts may have been amended, assigned, restated, supplemented or otherwise modified up to and including the Closing Date in compliance with this Agreement, but excluding any Contracts under which any member of the Sears Group is a customer and (ii) the Contracts to which the Seller is a party that are specifically set out in Schedule D-1 hereto (the “**Assumed Contracts**”);
- (i) *Intellectual Property* – all Intellectual Property and rights in Intellectual Property that is owned by the Seller and that is used in or otherwise relates to the Acquired Business, including:
 - (i) the rights of the Seller under all trade-marks, trade names, business names, including those business names listed and described in Schedule K, websites and domain names, certification marks, service marks, and other source indicators, and the goodwill of any business symbolized thereby, patents, copyrights, code, applications, systems, databases, data, website content, know-how, formulae, processes, inventions, technical expertise, research data, trade secrets, industrial designs and other similar property or proprietary rights;
 - (ii) all registrations and applications for registration thereof;
 - (iii) the right to obtain renewals, extensions, substitutions, continuations, continuations-in-part, divisions, re-issues, re-examinations or similar legal protections related thereto; and

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- (iv) the right to bring an action at law or equity for the infringement of the foregoing before the Closing Time, including the right to receive all proceeds and damages therefrom;
- (j) *Information Technology Systems* – all software (including source code and object code form); computer hardware, licenses, and documentation therefor and rights therein used in the Acquired Business, and any other information technology systems used in the Acquired Business, including all electronic data processing systems, program specifications, source codes, object code, input data, global positioning systems, tracking and cargo sensors, report layouts, formats, algorithms, record file layouts, diagrams, functional specifications, narrative descriptions, flow charts, operating manuals, training manuals and other related material (collectively, the “IT Assets”), including those IT Assets listed and described in Schedule F, in each case (x) to the extent owned by the Seller or (y) if owned by SCI, to the extent actually transferred to the Buyer pursuant to Section 7.15;
- (k) *Goodwill* – the goodwill of the Acquired Business and relating to the Purchased Assets, and information and documents of the Seller relevant thereto, including lists of customers and suppliers, trucking contracts, credit information, telephone and facsimile numbers, research materials, research and development files, Confidential Information and the exclusive right of the Buyer to represent itself as carrying on the Acquired Business in succession to the Seller;
- (l) *Employee Records* – personnel and employment records relating to the Assumed Employees;
- (m) *Business Records* – all business and financial records and files of the Acquired Business, including the general ledger and accounting records relating to the Acquired Business, marketing materials, market research, all customer lists and lists of suppliers, all maintenance records, information relating to any Tax imposed on the Purchased Assets, all operating manuals, plans and specifications and all of the right, interest and benefit, if any, thereunder and to and in the domain names, telephone numbers and facsimile numbers used by the Seller in the conduct of the Acquired Business, and all records, files and information necessary for the Buyer to conduct or pursue the rights described in Section 2.1(o); provided, however, that the Seller may retain copies of all books and records included in the Purchased Assets to the extent necessary or useful for the administration of the CCAA Proceedings or any Insolvency Proceedings in respect of any of the Seller or the filing of any Tax return or compliance with any Applicable Law or the terms of this Agreement or related to the Excluded Assets;
- (n) *Insurance* –
 - (i) the Contracts of insurance, insurance policies and insurance plans of the Seller relating to the Purchased Assets or the Acquired Business, to the extent transferable;

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- (ii) any insurance proceeds net of any deductibles and retention recovered by the Seller under all other Contracts of insurance, insurance policies (excluding proceeds paid directly by the insurer to or on behalf of directors and officers under director and officer policies) and insurance plans relating to the Purchased Assets or the Acquired Business between the date of this Agreement and the Closing Date; and
- (iii) the full benefit of the Seller's rights to insurance claims (excluding proceeds paid directly by the insurer to or on behalf of directors and officers under director and officer policies) relating to the Purchased Assets or the Acquired Business and amounts recoverable in respect thereof net of any deductible;
- (o) *Actions, etc.* – any claims, refunds, causes of action, rights of recovery, rights of set-off, subrogation and rights of recoupment of the Seller related to the Acquired Business or any of the Purchased Assets or any of the Assumed Liabilities, and the interest of the Seller in any litigation and in the proceeds of any judgment, order or decree issued or made in respect thereof in respect of occurrences, events, accidents or losses suffered prior to the Closing Time (but excluding any of the foregoing in respect of any of the Excluded Assets or Excluded Liabilities);
- (p) *Loans* – any loans or debts due prior to the Closing Time from any Person to the Seller; and
- (q) *Plan Assets* – all trust funds or other entities holding assets (or, in the case of a dedicated bank account held by the Seller, the assets of such account) that consist of contributions made by Assumed Employees or by the Seller or predecessors of Seller on behalf of such Employees under any Assumed Employee Plans, in each case that are intended to fund, in whole or in part, any obligation owed to any such Employee under any Assumed Employee Plans.

2.2 Excluded Assets

Notwithstanding any provision of this Agreement to the contrary, the Purchased Assets shall not include any of the following assets of the Seller (collectively, the "Excluded Assets"):

- (a) *Cash and Cash Equivalents* – all Cash and Cash Equivalents;
- (b) *Real Property Leases* – except for the Assumed Real Property Leases, any other Real Property Lease;
- (c) *Real Property* – any real or immovable property owned by the Seller, or in which a Seller has a freehold interest, and the Seller's right, title and interest in all plants, buildings, structures, improvements, appurtenances and fixtures (excluding fixed machinery and fixed equipment) thereon, forming part thereof, or benefiting such real or immovable property;
- (d) *Corporate Records* – original Tax records and books and records pertaining thereto, minute books, share ledgers, organizational documents, corporate seals,

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taxpayer and other identification numbers and other documents, in each case, relating to the organization, maintenance and existence of each Seller as a Person; provided that the Buyer may take copies of all Tax records and books and records pertaining to such records (as redacted, if applicable) to the extent necessary or useful for the carrying on of the Acquired Business after Closing, including the filing of any Tax return to the extent permitted under Applicable Law;

- (e) *Excluded Contracts* – all Contracts of the Seller that are not Assumed Contracts;
- (f) *Collateral* – all letters of credit, cash or cash equivalents of the Seller granted by the Seller as collateral to secure outstanding letters of credit in respect of any Excluded Liability or Excluded Asset;
- (g) *Rights under Agreements* – all of the Seller's rights under this Agreement; the NDA; any confidentiality, non-disclosure or similar agreements entered into in connection with the CCAA Proceedings or the SISIP; the DIP Credit Agreement; the Wells Fargo Credit Agreement; the GACP Credit Agreement; the Excluded Contracts; the Closing Documents and the transactions contemplated by hereby and thereby;
- (h) *Director and Officer Insurance Policies* – all rights of the Seller and the directors and officers of the Seller under any director and officer insurance policies including any proceeds received or receivable by such Persons thereunder;
- (i) *Securities* – all issued and outstanding shares of any subsidiary of the Seller and any other interest held by the Seller in any Person, including as a member of a strategic alliance, partner, beneficiary, trustee, co-tenant, joint-venturer or other form of participant in any partnership, trust, joint venture, co-tenancy or similar jointly owned business undertaking;
- (j) *Licenses and Registrations* – extra-provincial, sales, excise or other licenses or registrations issued to or held by any of the Seller, whether relating to the Acquired Business or otherwise to the extent not transferable;
- (k) *Tax Refunds* – the benefit of the Seller to any refundable Taxes payable or paid by the Seller, net of any amounts withheld by any Governmental Authority, having jurisdiction over the assessment, determination, collection, or other imposition of any Tax, and the benefit of the Seller to any claim or right of the Seller to any refund, rebate, or credit of Taxes, to the extent that such refundable Taxes, refund, rebate or credit relates to Taxes paid or payable by the Seller in respect of a period ending on or before the Closing Date or a Pre-Closing Tax Period;
- (l) *Avoidance Claims* – all rights and Claims against any Person for any liability of any kind based on or arising out of the occurrence of any fraudulent conveyance, settlement, reviewable transaction, transfer at undervalue, fraudulent preference or similar claim;

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- (m) *Ordinary Course Assets* – any asset of the Seller that would otherwise constitute a Purchased Asset but for the fact that it is conveyed, leased or otherwise disposed of in the ordinary course of business in compliance with Section 7.2; and
- (n) *Employee Contributions* – all trust funds or other entities holding assets (or, in the case of a dedicated bank account held by the Seller, the assets of such account) that consist of contributions made by Employees of the Seller or 168886 that are not Assumed Employees, or by the Seller or predecessors of Seller on behalf of such Employees of the Seller or 168886, in each case that are intended to fund, in whole or in part, any obligation owed to any such Employees of the Seller or 168886 under any Employee Plan which is not part of the Assumed Employee Plans.

2.3 Assumption of Liabilities

The Buyer shall assume as of the Closing Time and shall pay, discharge and perform, as the case may be, from and after the Closing Time, the following obligations and liabilities of the Seller with respect to the Acquired Business or the Purchased Assets, other than the Excluded Liabilities (collectively, the “Assumed Liabilities”), which Assumed Liabilities shall only consist of:

- (a) *Obligations under Assumed Contracts and Assumed Real Property Leases, etc.* – (i) all liabilities and obligations arising under the Assumed Contracts and Assumed Real Property Leases to the extent first arising on or after the Closing Time, in each case, which are assigned to the Buyer hereunder and (ii) all Cure Costs relating thereto;
- (b) *Acquired Business and Purchased Assets* – all other liabilities and obligations relating to the Purchased Assets and the operation of the Acquired Business to the extent such liabilities and obligations consist of liabilities and obligations that arise in respect of and relate to the period after the Closing Time;
- (c) *Warranties* – all liabilities arising out of or relating to services, products, or product or service warranties of the Seller or any predecessors or affiliates of the Seller sold or distributed after the Closing Time;
- (d) *Employee Matters* – Accrued Liabilities of up to [REDACTED], in addition to all of the following liabilities and obligations: (i) of or expressly assumed by the Buyer pursuant to Section 7.8; (ii) the failure of the Buyer to satisfy its obligations under Section 7.8 with respect to any Assumed Employee; (iii) under any Buyer Employee Plan; (iv) relating to or arising from or in connection with any Assumed Employee Plan, or the liabilities of any Employee Plan that is not an Assumed Employee Plan which are otherwise transferred to the Buyer as contemplated by Section 7.8; and (v) related to the Assumed Employees which arise out of or result from any termination of employment, layoff, or the closing or relocation of worksites or the like of such Assumed Employees by the Buyer after the Closing Date;

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- (e) *Additional Employee Matters* – all liabilities relating to the Buyer’s employment or termination of employment (whether or not arising under or in respect of any Buyer Employee Plan) of any Assumed Employees, to the extent arising on or after the Closing Date of such Assumed Employees;
- (f) *Environmental* – any liabilities to the extent arising out of or relating to the Acquired Business’ or the Purchased Assets’ non-compliance with Environmental Law or a Release to the Environment, and in either case, whether in respect of any facts, conditions or circumstances existing or occurring after the Closing Time;
- (g) *Taxes* – personal property, and similar *ad valorem* obligations, in each case, relating to the Purchased Assets for a Tax period (or the portion thereof) beginning after the Closing Date, excluding, for the avoidance of doubt, any amounts described in this paragraph that are (i) income Tax or similar liabilities of the Seller for any Tax period, (ii) any Tax or similar liability related to the Excluded Assets;
- (h) *Other Taxes* – all liabilities for (i) Canadian federal and provincial source deductions or withholding Taxes in respect of Employees of a Seller arising after Closing; and (ii) any Tax that the Buyer is required to bear pursuant to Section 7.7; and
- (i) *Permitted Encumbrances* – all liabilities, if any, arising from or in relation to the Permitted Encumbrances.

2.4 Excluded Liabilities

Except as expressly assumed pursuant to Section 2.3, any and all debts, obligations, contracts and liabilities of or relating to the Acquired Business, Purchased Assets, the Seller or any predecessors of the Seller, and the Seller’s affiliates, of any kind or nature, existing or occurring prior to the Closing Time shall remain the sole responsibility of the Seller and their affiliates, and the Buyer shall not assume, accept or undertake, any debt, obligation, duty, contract or liability of the Seller and their affiliates of any kind whatsoever, except as expressly assumed pursuant to Section 2.3, whether accrued, contingent, known or unknown, express or implied, primary or secondary, direct or indirect, liquidated, unliquidated, absolute, accrued, contingent or otherwise, and whether due or to become due, and specifically excluding (without limitation) the following liabilities or obligations which shall be retained by, and which shall remain the sole responsibility of, the Seller and their affiliates (collectively, the “**Excluded Liabilities**”):

- (a) *General* – except as expressly included in Assumed Liabilities, all liabilities to the extent arising out of the operation of the Acquired Business or the Purchased Assets for periods prior to the Closing Time (including, for the avoidance of doubt, breaches of contract, infringement, violations of law, tortious conduct, Tax liabilities, indebtedness for borrowed money (except as expressly included in Assumed Liabilities) and intercompany liabilities);
- (b) *Contract and Real Property Leases Liabilities* – all liabilities of the Seller under any Contracts, Personal Property Leases and Real Property Leases, excluding the

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Cure Costs and any trade payables or other liabilities which, in each case, are Assumed Liabilities, incurred prior to the Closing Time;

- (c) *Excluded Assets* – all liabilities and obligations relating to the Excluded Assets (including any Excluded Contracts, this Agreement and the DIP Credit Agreement);
- (d) *Employee Matters* –
 - (i) The Employee Plans or any Employee Pension Plan, and any liabilities or other obligations arising under, relating to or with respect to any Employee Plan or any Employee Pension Plan, save and except for liabilities under the Assumed Employee Plans or the liabilities of any Employee Plan that is not an Assumed Employee Plan which are otherwise transferred to or assumed by the Buyer as contemplated by Section 7.8;
 - (ii) with the exception of any Assumed Liabilities described in Section 2.3(d) or Section 2.3(e), all liabilities related to Employees of the Seller or 168886, including any liability arising from Employees of the Seller or 168886 offered employment by the Buyer, in accordance with Section 7.8(b) herein, who refuse such offer of employment; and
 - (iii) Accrued Liabilities in excess of [REDACTED];
- (e) *Trade Debt* – all trade payables relating to the Acquired Business or the Purchased Assets;
- (f) *Intercompany Accounts Payable* – any debts due or accruing due prior to the Closing Time from the Seller to any shareholder, director, officer (except amounts owing to any officer for service to the Acquired Business as an employee) or affiliate of the Seller or to another Seller;
- (g) *Intellectual Property Claims* – any claims against the Seller for infringement, misappropriation or other violation of any Intellectual Property of any third Person relating to any period prior to the Closing Time;
- (h) *Pre-Filing Debt* – all liabilities, obligations and related guarantees relating to the Wells Fargo Credit Agreement and the GACP Credit Agreement;
- (i) *Taxes* – all liabilities for Taxes of the Seller; and
- (j) *Other* – Claims arising from or in relation to any facts, circumstances, events or occurrences existing or arising prior to the Closing Time, including without limitation liabilities relating to any breach of law and product liability claims, except, in each case, as specifically defined in Section 2.3 as an Assumed Liability.

2.5 Assignment of Purchased Assets

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- (a) Notwithstanding anything in this Agreement to the contrary, this Agreement shall not constitute an agreement to assign or transfer any Purchased Asset or any right thereunder if an attempted assignment or transfer (i) without the consent of a third Person, would constitute a breach or in any way adversely affect the rights of the Buyer thereunder or (ii) is not permitted or enforceable under Applicable Law (collectively, "**Restricted Rights**"), unless the assignment is subject to an Assignment Order. The Seller shall use commercially reasonable efforts to take all such action, and do or cause to be done all such things as are reasonably necessary or proper, following the Closing Time, in order that the obligations of the Seller under such Restricted Rights may be performed in such manner that the value of such Restricted Rights is preserved and enures to the benefit of the Buyer, and that any amounts due and payable, or which become due and payable, in and under the Restricted Rights are received by the Buyer and the liabilities are satisfied by the Buyer. Subject to payment of all liabilities in respect thereof by the Buyer, the Seller shall reasonably promptly pay to the Buyer all amounts collected by or paid to the Seller in respect of all such Restricted Rights. Subject to Section 7.2, the Seller shall not, without the prior written consent of the Buyer, agree to any modification of any Restricted Rights.
- (b) If a consent to transfer the Restricted Rights to the Buyer is not obtained by the Closing Time or such assignment is not attainable, the Seller and the Buyer will cooperate and use their respective commercially reasonable efforts, from and after the Closing Time, to implement a mutually agreeable arrangement pursuant to which the Buyer will obtain the benefits, and assume the liabilities and obligations, related to such Restricted Rights in accordance with this Agreement; provided, however, that the Buyer acknowledges and agrees that nothing in this Section 2.5 shall operate to prohibit or diminish in any way the right of a Seller to dissolve, windup or otherwise cease operations as it may determine in its sole discretion, or require any Seller to take any illegal action or commit fraud on any Person.
- (c) Notwithstanding the foregoing: (i) nothing in this Section 2.5 shall require any Seller to renew any Restricted Rights once they have expired, (ii) any efforts required of the Seller pursuant to this Section 2.5 shall (A) be subject to receipt of adequate compensation in respect of all direct incremental costs and expenses incurred in respect of or related to such arrangement, (B) be strictly on an interim basis and in no event required to continue for more than 90 days following Closing, and (C) to the extent not prohibited, be of an administrative nature only, without any substantive function. The Buyer shall reimburse the relevant Seller for any direct incremental cost incurred and indemnify and hold each Seller harmless from and against all Claims, incurred or asserted, as a result of any actions taken pursuant to this Section 2.5.
- (d) For the avoidance of doubt, the Parties acknowledge that the fact that any Purchased Asset constitutes a Restricted Right shall not (i) constitute a breach of any covenant hereunder, (ii) entitle Buyer to terminate this Agreement or (iii) result in any reduction of the Purchase Price payable hereunder. Any non-

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Restricted Right assigned pursuant to the terms of this Section 2.5 shall, when assigned, constitute an Assumed Contract hereunder from and after such date.

- (e) Subject to the terms and conditions of this Agreement, the Seller hereby agrees to assign to the Buyer on the Closing Date, effective as of the Closing Time, all of the Seller's rights, benefits and interests in, to and under the Assumed Contracts, in accordance with either this Agreement or an Assignment Order. The Seller shall use its commercially reasonable efforts to obtain any necessary consents or approvals in order to assign the Assumed Contracts. The Seller will use its commercially reasonable efforts to take such other actions necessary to cause the Assumed Contracts to be assigned by the Seller to the Buyer as of the Closing Time at the expense of the Buyer; provided, however that the Buyer shall only be required to pay the Cure Costs associated with the Assumed Contracts in seeking such consents and shall not be required to pay any other amounts in seeking such consents. The Buyer will use its commercially reasonable efforts to assist the Seller in obtaining any such consent.

ARTICLE 3 PURCHASE PRICE AND RELATED MATTERS

3.1 Purchase Price

Subject to the other terms and provisions of this Agreement (including Section 3.4 or Section 3.5), the aggregate purchase price payable to the Seller for the Purchased Assets (the "Purchase Price"), exclusive of all applicable sales and transfer taxes, shall be:

- (a) the amount of ██████████ in cash; plus
- (b) the amount of the Accrued Liability constituting an Assumed Liability, provided, however, that in the event that the Accrued Liability is less than ██████████, the amount of such Accrued Liability plus an amount of cash to equal a total of ██████████; plus or minus
- (c) the amount, if any, contemplated by Section 3.4; plus or minus
- (d) the amount, if any, contemplated by Section 3.5 (which amount together with the amounts referred to in Section 3.1(a), Section 3.1(b), to the extent cash is payable pursuant thereto, and Section 3.1(c) are collectively referred to as the "Cash Purchase Price").

3.2 Purchase Price Allocation

- (a) The Purchase Price shall be allocated by the Buyer and approved by the Seller, acting reasonably, at least two Business Days prior to the Closing Date.
- (b) The Seller and the Buyer acknowledge and agree that if there is an adjustment to the Purchase Price pursuant to Section 3.4 or Section 3.5, the amount of the increase or decrease required shall, if such amount cannot reasonably be allocated to a particular asset, be allocated solely to goodwill.

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- (c) Each of the Seller and the Buyer covenant and agree to file their respective Tax returns prepared in accordance with the allocation as referenced in Section 3.2(a).

3.3 Payment of Purchase Price and Treatment of Deposit

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

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- (iii) forfeited to the Seller, less any applicable withholding tax, if the Closing does not occur by any reason other than the default of the Seller in order to compensate the Seller for expenses incurred in connection with the transactions contemplated in this Agreement and the delay caused to the Seller's efforts to sell the Purchased Assets. The entitlement of the Seller to the Deposit in such circumstances shall not limit the Seller's right to exercise any other rights which the Seller may have against the Buyer; and
- (iv) returned to the Buyer, less any applicable withholding tax, if the Closing does not occur by reason of the default of the Seller and the Buyer shall have no further recourse against the Seller.

3.4 Accounts Receivable Adjustment

- (a) At least two (2) Business Days prior to the Closing Date, the Seller shall provide the Buyer with a list of Accounts Receivable owing to the Seller at the close of business on the Business Day immediately prior to the date such list of Accounts Receivable is delivered to the Buyer (the "Draft Closing Date Accounts Receivable List").
- (b) Following the delivery of the Draft Closing Date Accounts Receivable List up to and including the Closing Time:
 - (i) without limiting the generality of Section 7.1, the Seller shall reasonably cooperate with the Buyer to provide the Buyer full access to the books and records of the Seller, including the work papers of the Acquired Business, in connection with the review of the Draft Closing Date Accounts Receivable List, and the Seller shall make reasonably available to the Buyer the individuals necessary and/or responsible for the preparation of the Draft Closing Date Accounts Receivable List;
 - (ii) if the Buyer disagrees with any of the Accounts Receivable set forth on the Draft Closing Date Accounts Receivable List the Buyer and the Seller shall attempt, in good faith, to resolve their differences with respect thereto prior to the Closing Time and make any amendments to the Draft Closing Date Accounts Receivable List as mutually agreed to by the parties or as may be required by the Buyer (the "Final Closing Date Accounts Receivable List").
- (c) In the event that the Final Closing Date Accounts Receivable List states that the Accounts Receivable as at the Closing Time will be equal to or less than [REDACTED], the Cash Purchase Price shall be reduced on a dollar for dollar basis in an amount equal to the difference between [REDACTED] and the dollar amount of the Accounts Receivable set forth on the Final Closing Date Accounts Receivable List.
- (d) In the event that the Final Closing Date Accounts Receivable List states that the Accounts Receivable as at the Closing Time will be greater than [REDACTED], the Cash Purchase Price shall be increased in an amount equal to (i) the difference

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between the dollar amount of the Accounts Receivable set forth on the Final Closing Date Accounts Receivable List and [REDACTED], multiplied by (ii) 75%.

3.5 Vehicle Adjustment

- (a) At least two (2) Business Days prior to the Closing Date, the Seller shall provide the Buyer with a list of Vehicles (including the physical location thereof) in substantially the same form attached as Schedule B at the close of business on the Business Day immediately prior to the date such list of Vehicles is delivered to the Buyer (the "Draft Vehicle Location List").
- (b) Following the delivery of the Draft Vehicle Location List up to and including the Closing Time:
 - (i) without limiting the generality of Section 7.1, the Seller shall reasonably cooperate with the Buyer to permit the Buyer to conduct a physical inventory count of the Vehicles to verify the quantity and location of the Vehicles, including full access to the books and records of the Seller, in connection with the review of the Draft Vehicle Location List, and the Seller shall make reasonably available to the Buyer the individuals necessary and/or responsible for the preparation of the Draft Vehicle Location List or who are otherwise employed to track or maintain the Vehicles; and
 - (ii) if the Buyer disagrees with the quantity and location of the Vehicles set forth on the Draft Vehicle Location List the Buyer and the Seller shall attempt, in good faith, to resolve their differences with respect thereto prior to the Closing Time and make any amendments to the Draft Vehicle Location List as mutually agreed to by the parties or as may be required by the Buyer (the "Final Vehicle Location List").
- (c) In the event that the Final Vehicle Location List states that:
 - (i) the quantity of non-motorized Vehicles is less than 1% changed from the quantity of non-motorized Vehicles listed in Schedule B, then no adjustment to the Cash Purchase Price with respect to non-motorized Vehicles shall be made;
 - (ii) the quantity of non-motorized Vehicles is greater than 1% higher from the quantity of non-motorized Vehicles listed in Schedule B, then the Cash Purchase Price with respect to non-motorized Vehicles shall be increased by [REDACTED] for each non-motorized Vehicle of a nature and type as those non-motorized Vehicles listed in Schedule B that is in reasonable working condition that is greater than 1% higher from the quantity of non-motorized Vehicles listed in Schedule B;
 - (iii) the quantity of non-motorized Vehicles is greater than 1% lower from the quantity of non-motorized Vehicles listed in Schedule B, then the Cash Purchase Price with respect to non-motorized Vehicles shall be decreased

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by [REDACTED] for each non-motorized Vehicle of a nature and type as those non-motorized Vehicles listed in Schedule B that is in reasonable working condition that is lower than 1% lower from the quantity of non-motorized Vehicles listed in Schedule B;

- (iv) the quantity of motorized Vehicles is greater than the quantity of motorized Vehicles listed in Schedule B, then the Cash Purchase Price with respect to motorized Vehicles shall be increased by [REDACTED] for each motorized Vehicle of a nature and type as those motorized Vehicles listed in Schedule B that is in reasonable working condition that is greater than the quantity of motorized Vehicles listed in Schedule B; and
- (v) the quantity of motorized Vehicles is less than the quantity of motorized Vehicles listed in Schedule B, then the Cash Purchase Price with respect to motorized Vehicles shall be decreased by [REDACTED] for each motorized Vehicle of a nature and type as those motorized Vehicles listed in Schedule B that is in reasonable working condition that is less than the quantity of motorized Vehicles listed in Schedule B,

then the aggregate of each of the payments contemplated by Section 3.5(c)(ii) to Section 3.5(c)(v), inclusive, shall be aggregated and such aggregate amount shall increase or decrease, as the case may be, the Cash Purchase Price on a dollar for dollar basis.

ARTICLE 4 REPRESENTATIONS AND WARRANTIES BY THE SELLER

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

4.1 Corporate Existence

The Seller is a corporation duly formed and validly existing under the laws of Canada. The Seller does not own, or have any interest in, any shares of any corporation which carries on, in whole or in part, the Acquired Business.

4.2 Due Authorization and Enforceability of Obligations

Subject to the issuance of the Approval and Vesting Order:

- (a) Seller has all necessary corporate power, authority and capacity to:
 - (i) enter into and deliver this Agreement and the Closing Documents;
 - (ii) carry out its obligations under this Agreement and the Closing Documents; and
 - (iii) own or lease and to operate and use the Purchased Assets and carry on the Acquired Business as now conducted by such Seller;

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- (b) the execution, delivery and performance of this Agreement and the Closing Documents, and the consummation of the transactions contemplated by this Agreement and the Closing Documents, have been duly authorized by all necessary corporate action of each Seller; and
- (c) assuming the accuracy of the representations and warranties of the Buyer in Article 5, this Agreement does and the Closing Documents when executed by the Seller will constitute valid and binding obligations of each Seller enforceable against it in accordance with its terms.

4.3 Residence of the Seller

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

4.4 Taxes

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

4.5 Employees

- (a) Neither the Seller nor 168886 is currently a party to any collective agreement and none of the Assumed Employees will be subject to any collective agreement on the Closing Date. No trade union, council of trade unions, employee bargaining agency or affiliated bargaining agent holds bargaining rights with respect to any of the Employees including by way of certification, interim certification, voluntary recognition, related employer or successor employer rights, nor, to the Seller's knowledge, has applied or threatened to apply to be certified as the bargaining agent of any of the Employees.
- (b) No Employees are subject to an employment contract with Seller or 168886, written or oral, which cannot be terminated with the provision of notice. To the Seller's knowledge, each consultant and service provider has been properly classified as an independent contractor by the Seller or 168886, as applicable, and neither the Seller nor 168886 has received any notice (in writing or oral notice) from the consultant, service provider or any Governmental Authority disputing such classification.

4.6 Pensions

- (a) Other than as set forth on Schedule H, neither the Seller nor 168886 sponsors or participates in any Employee Pension Plan, and none of the Employee Plans provide benefits beyond retirement or other termination of service to Employees or to the beneficiaries or dependants of the Employees.

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- (b) The consummation of the transactions contemplated by this Agreement shall not result in the Buyer becoming liable for any amounts with respect to: (i) any Employee Pension Plan set forth on Schedule H; or (ii) the Sears Registered Pension Plan, and any successor plan to such pension plans (with the exception of any Assumed Employee Plan or any successor pension plan that is a Buyer Employee Plan).

4.7 No Other Representations, Warranties or Covenants

Unless and solely to the extent expressly set forth in this Agreement, no representation, warranty or covenant is expressed or implied by the Seller, including any warranties as to title, Encumbrance, description, merchantability or fitness for a particular purpose, environmental compliance, condition, quantity or quality, or in respect of any other matter or thing whatsoever concerning the Acquired Business, the Purchased Assets, the Assumed Liabilities or the right of the Seller to sell or assign the same, as applicable. The disclaimer in this Section 4.5 is made notwithstanding the delivery or disclosure to the Buyer or its directors, officers, employees, agents or representatives of any documentation or other information (including any financial projections, estimates, budgets, offering memoranda, management presentations, due diligence materials or other supplemental data not included in this Agreement). Without limiting the generality of the foregoing, any and all conditions, warranties or representations, express or implied, pursuant to Applicable Law (including under Article 1716 of the *Civil Code of Québec*, the *Sale of Goods Act* (Ontario), the International Convention on Contracts for the Sale of Goods (Geneva Convention) and any other applicable sale of goods legislation) do not apply hereto and are hereby expressly waived by the Buyer.

ARTICLE 5 REPRESENTATIONS AND WARRANTIES OF THE BUYER

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

5.1 Corporate Existence

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

5.2 Residence of the Buyer

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

5.3 Financial Ability

- (a) As of the date hereof, subject to applicable borrowing conditions, the Buyer has a firm commitment from a lender of at least [REDACTED] pursuant to executed commitment letter (a "Commitment Letter") (a copy of which has been provided to the Seller), which is, and at Closing, will be sufficient to allow it to pay the

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Purchase Price, and all other costs and expenses in connection with the consummation of the transactions contemplated by this Agreement.

- (b) The Commitment Letter, in the form so delivered, is a valid and legally binding obligation of the Buyer, and to the knowledge of the Buyer, the other parties thereto, and is enforceable by the Buyer in accordance with its terms, and is in full force and effect. The Buyer has fully paid any and all commitment fees or other fees required to be paid by the Buyer prior to the date of this Agreement pursuant to the terms of the Commitment Letter. As of the date of this Agreement, no event has occurred which, with or without notice, lapse of time or both, would constitute a default on the part of the Buyer under the Commitment Letter. As of the date of this Agreement, the Buyer has no reason to believe that it will be unable to satisfy on a timely basis any term or condition of closing to be satisfied by it contained in the Commitment Letter. The Commitment Letter constitutes, as of the date of this Agreement, the entire and complete agreement between the parties thereto with respect to the financing contemplated thereby (other than any fee letter executed in connection therewith), and, except as set forth, described or provided for therein, as of the date of this Agreement, (i) there are no conditions precedent to the respective obligations of any financing provider to provide the financing contemplated under the Commitment Letter, and (ii) there are no contractual contingencies or other provisions under any agreement (including any side letters) relating to the transactions contemplated by this Agreement to which the Buyer or any of its affiliates is a party that would permit the financing provider to reduce the total amount of the financing contemplated under the Commitment Letter below the amount required to enable the Buyer to have sufficient funds available to pay the Purchase Price or impose any additional condition precedent to the availability of the financing under the Commitment Letter.

5.4 Absence of Conflicts

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

5.5 Due Authorization and Enforceability of Obligations

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

5.6 Approvals and Consents

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

5.7 GST, HST and QST Registration

The Buyer is or will be duly registered under subdivision (d) of Division V of the GST and HST Legislation with respect to the GST and HST, and QST Legislation with respect to the QST, and has provided or will prior to Closing provide its registration number to the Seller in accordance with Section 7.7(h).

5.8 Litigation

There are no Claims, investigations or other proceedings, including appeals and applications for review, in progress or, to the knowledge of the Buyer, pending or threatened against or relating to the Buyer which, if determined adversely to the Buyer, would

- (a) prevent the Buyer from paying the Purchase Price to the Seller;
- (b) enjoin, restrict or prohibit the transfer of all or any part of the Purchased Assets as contemplated by this Agreement; or
- (c) prevent the Buyer from or delay the Buyer in fulfilling any of its obligations set out in this Agreement or arising from this Agreement.

5.9 As Is, Where Is

- (a) The Buyer acknowledges and agrees that it has conducted to its satisfaction an independent investigation and verification of the Acquired Business, the Purchased Assets (including the state of title thereto and/or the state of any Encumbrances and Permitted Encumbrances), the Assumed Liabilities and all related operations of the Seller, and, based solely thereon, has determined to

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proceed with the transactions contemplated by this Agreement. The Buyer has relied solely on the results of its own independent investigation and verification, and the representations and warranties of the Seller expressly and specifically set forth in Article 4, and the Buyer understands, acknowledges and agrees that all other representations, warranties and statements of any kind or nature, expressed or implied (including any relating to the future or historical financial condition, results of operations, prospects, assets or liabilities of the Seller or the Acquired Business, or the quality, quantity or condition of the Purchased Assets) are specifically disclaimed by the Seller. Except for the representations and warranties of the Seller expressly and specifically set forth in Article 4, none of the Seller makes or provides any warranty or representation, express or implied, as to the quality, merchantability, fitness for a particular purpose, conformity to samples or condition of the Purchased Assets, or any part thereof. THE BUYER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT, EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES OF THE SELLER EXPRESSLY AND SPECIFICALLY SET FORTH IN ARTICLE 4: (A) THE BUYER IS ACQUIRING THE PURCHASED ASSETS ON AN "AS IS, WHERE IS" BASIS; AND (B) NONE OF THE SELLER, NOR ANY OTHER PERSON (INCLUDING ANY REPRESENTATIVE OF THE SELLER, WHETHER IN ANY INDIVIDUAL, CORPORATE OR ANY OTHER CAPACITY OR THE MONITOR) IS MAKING, AND THE BUYER IS NOT RELYING ON, ANY REPRESENTATIONS, WARRANTIES OR OTHER STATEMENTS OF ANY KIND WHATSOEVER, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, AS TO ANY MATTER CONCERNING THE SELLER, THE BUSINESS, THE PURCHASED ASSETS, THE ASSUMED LIABILITIES, THE EXCLUDED ASSETS, THE EXCLUDED LIABILITIES, THIS AGREEMENT OR THE TRANSACTIONS, OR THE ACCURACY OR COMPLETENESS OF ANY INFORMATION PROVIDED TO (OR OTHERWISE ACQUIRED BY) THE BUYER OR ANY OF ITS RESPECTIVE REPRESENTATIVES, INCLUDING WITH RESPECT TO, THE ASSUMED REAL PROPERTY LEASES AND THE STATUS OF ANY OF THE ASSUMED REAL PROPERTY LEASES, THE PERMITTED ENCUMBRANCES, THE RENTABLE AREA OF THE PREMISES, THE EXISTENCE OF ANY DEFAULT ON THE PART OF THE SELLERS OR LANDLORDS, THE USE PERMITTED AT ANY OF THE PREMISES, THE EXISTENCE OF ANY ENCUMBRANCE AND/OR OFF-TITLE COMPLIANCE MATTERS AFFECTING THE PURCHASED ASSETS, OR THE SELLER'S LEASEHOLD INTEREST THEREIN; AND WITHOUT LIMITING THE FOREGOING, ANY AND ALL CONDITIONS OR WARRANTIES EXPRESSED OR IMPLIED PURSUANT TO THE SALE OF GOODS ACT (ONTARIO), THE INTERNATIONAL CONVENTION ON CONTRACTS FOR THE SALE OF GOODS (GENEVA CONVENTION) AND ANY OTHER APPLICABLE SALE OF GOODS LEGISLATION, WILL NOT APPLY AND ARE HEREBY WAIVED BY THE SELLER AND THE PARTIES AGREE TO EXCLUDE THE EFFECT OF THE LEGAL WARRANTY PROVIDED FOR BY ARTICLE 1716 OF THE CIVIL CODE OF QUÉBEC AND THAT THE BUYER IS PURCHASING THE PURCHASED ASSETS AT ITS OWN RISK WITHIN THE MEANING OF ARTICLE 1733 OF

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THE CIVIL CODE OF QUÉBEC, AND ANY AND ALL CONDITIONS, WARRANTIES OR REPRESENTATIONS, REGARDING MERCHANTABILITY, PHYSICAL OR FINANCIAL CONDITION, DESCRIPTION, FITNESS FOR A PARTICULAR PURPOSE, EXISTENCE OF LATENT DEFECTS, QUALITY, QUANTITY, ANY NON-INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS, OR REGARDING THE SCOPE, VALIDITY OR ENFORCEABILITY OF ANY TRANSFERRED INTELLECTUAL PROPERTY, ACQUIRED COMPANY INTELLECTUAL PROPERTY OR LICENSED INTELLECTUAL PROPERTY RIGHTS, OR ANY OTHER THING AFFECTING THE ACQUIRED BUSINESS, ANY OF THE PURCHASED ASSETS OR THE ASSUMED LIABILITIES, OR IN RESPECT OF ANY OTHER MATTER OR THING WHATSOEVER, INCLUDING ANY AND ALL CONDITIONS, WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, PURSUANT TO ANY APPLICABLE LAW IN ANY JURISDICTION, WHICH THE BUYER CONFIRMS DO NOT APPLY TO THIS AGREEMENT, AND ARE HEREBY WAIVED IN THEIR ENTIRETY BY THE BUYER.

- (b) The Buyer has received a copy of the Assumed Real Property Leases and is familiar with the terms, agreements, covenants, obligations and conditions therein. The Buyer shall be solely responsible for negotiating with and attempting to obtain the agreement of any Landlord to amend a Assumed Real Property Lease as may be required by the Buyer to allow the Buyer to use the respective Premises for the Acquired Business or any other purposes. For greater certainty, such amendments are not a Closing delivery or a condition of Closing. Nothing contained in this Section 5.9(b) shall affect the obligation of the Seller relating to the obtaining of the applicable consents contemplated by Section 7.3 or Section 7.4.
- (c) Neither the Seller nor, except as set forth in the applicable Assumed Real Property Leases, the Landlords shall be responsible for making any repairs, replacements, renovations, alterations, improvements or upgrades or undertaking any remediation to address a Release in or to the Premises or any part thereof, and it shall be the sole responsibility of the Buyer to make, at the Buyer's sole cost and subject to the receipt of any necessary approvals from any Landlord, any repairs, replacements, renovations, alterations, improvements and upgrades in or to the Premises in accordance with the Assumed Real Property Leases as may be required by the Buyer to make the Premises suitable for the Acquired Business or any other purposes and to undertake any required, necessary or desired remediation to address a Release at, on, under or migrating from any such Premises or any part thereof.
- (d) Except as set forth in the applicable Assumed Real Property Leases, there is no rent free period or fixturing period under the Assumed Real Property Leases. Neither the Seller nor, except as set forth in the applicable Assumed Real Property Leases, the Landlords have any responsibility to pay any form of tenant inducement, tenant allowance, or other lease-takeover payment to the Buyer.

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- (e) The Buyer acknowledges that the Assumed Real Property Leases may be subject to the Permitted Encumbrances and the Seller shall not be responsible for rectifying any Permitted Encumbrances prior to the Closing Date, other than as contemplated by this Agreement.
- (f) The Buyer acknowledges and agrees that: (i) the representations and warranties of the Seller set forth in Article 4 will merge on, and shall not survive, the Closing; and (ii) the Seller will not have or be subject to any liability or indemnification obligation to the Buyer or any other Person resulting from (nor will the Buyer or any other Person have any claim with respect to) the distribution to the Buyer, the Buyer's use of, or reliance on, any information, documents, projections, forecasts or other material made available to the Buyer in certain "data rooms," confidential information memoranda or management presentations in expectation of, or in connection with, the transactions contemplated by this Agreement, regardless of the legal theory under which such liability or obligation may be sought to be imposed, whether sounding in contract or tort, or whether at law or in equity, or otherwise. None of the representatives of the Seller, whether in an individual, corporate or other capacity, will have or be subject to any such liability or indemnification obligations.
- (g) The remedies expressly set forth in this Agreement are the Buyer's sole and exclusive remedies relating to this Agreement, the Closing Documents, the transactions contemplated hereby and thereby, the Acquired Business, the Purchased Assets, the Assumed Liabilities and all related operations of the Seller or either of them.
- (h) This Section 5.9 will not merge on Closing and is deemed incorporated by reference in all Closing Documents.
- (i) The Buyer acknowledges and agrees that the enforceability of this Agreement against the Seller is subject to entry of the Approval and Vesting Order.

5.10 Investment Canada Act

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

ARTICLE 6 CONDITIONS

6.1 Conditions for the Benefit of the Buyer and the Seller

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

- (a) *No Law* – no provision of any Applicable Law and no judgment, injunction, order or decree that prohibits the consummation of the purchase of the Purchased Assets or any of the other transactions pursuant to this Agreement shall be in effect;

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- (b) *Regulatory Approvals* – the Regulatory Approvals shall have been obtained; and
- (c) *Court Orders* – the Approval and Vesting Order shall have been issued and entered and such order shall not have been reversed, modified, amended or stayed.

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

6.2 Conditions for the Benefit of the Buyer

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

- (a) *Compliance with Covenants* – there shall have been no breach or non-compliance with any of the covenants, agreements and conditions under this Agreement by the Seller if such breach or non-compliance has resulted in a Material Adverse Effect;
- (b) *Truth of Representations and Warranties* – the representations and warranties of the Seller contained in Article 4 shall be true and correct on and as of the Closing Date, as if made on and as of such date (except for representations and warranties made as of specified date, the accuracy of which shall be determined as of such specified date), except where the failure to be so true and correct would not, individually or in the aggregate, have a Material Adverse Effect;
- (c) *Officer's Certificate* – the Buyer shall have received a certificate confirming the satisfaction of the conditions contained in Sections 6.2(a) (*Compliance with Covenants*) and 6.2(b) (*Truth of Representations and Warranties*), signed for and on behalf of the Seller without personal liability by an executive officer of the Seller or other Persons acceptable to the Buyer, in each case in form and substance reasonably satisfactory to the Buyer;
- (d) *Transition Services Agreement* – the Seller shall have delivered to the Buyer the Transition Services Agreement duly executed by SCI; and
- (e) *Key Consents* – All Key Consents shall have been obtained by the Seller, either through written consents or Assignment Orders.

6.3 Conditions for the Benefit of the Seller

The obligation of the Seller to consummate the transactions contemplated by this Agreement is subject to the satisfaction of, or compliance with, or waiver where applicable by

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

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

ARTICLE 7 ADDITIONAL AGREEMENTS OF THE PARTIES

7.1 Access to Information and Customers

Until the Closing Time, the Seller shall give to the Buyer's personnel engaged in the transactions contemplated by this Agreement and their accountants, legal advisers, consultants, financial advisers and representatives during normal business hours reasonable access to its premises and to all of the books and records relating to the Acquired Business, the Purchased Assets and the Assumed Liabilities and to the Employees (who are actively at work), and shall furnish them with all such information relating to the Acquired Business, the Purchased Assets and the Assumed Liabilities as the Buyer may reasonably request in connection with the transactions contemplated by this Agreement; provided that any such access shall be conducted at the Buyer's expense, in accordance with Applicable Law, under the supervision of the Seller's personnel and in such a manner as to maintain confidentiality and not to unreasonably interfere with the normal operations of the Acquired Business, and the Seller will not be required to provide access to or copies of any such books and records if (a) the provision thereof would cause the Seller to be in contravention of any Applicable Law, (b) the Seller reasonably consider such information to be commercially sensitive, (c) making such information available would (A) result in the loss of any lawyer-client or other legal privilege, or (B) cause the Seller to be found in contravention of any Applicable Law, or contravene any fiduciary duty or agreement (including any confidentiality agreement to which the Seller or any of their affiliates are a party), it being understood that the Seller shall cooperate in any reasonable efforts and requests that would enable otherwise required disclosure to the Buyer to occur without so jeopardizing privilege or contravening such Applicable Law, duty or agreement. Without limiting the foregoing, the Seller shall, upon the Buyer's request and until the Closing Time, use its

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commercially reasonable efforts to facilitate discussions between the Purchaser and any third party customer of the Seller or any Landlord.

7.2 Conduct of Business Until Closing Time

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

- (a) (i) operate the Acquired Business only in the ordinary course of business in all material respects consistent with past practice, including, without limitation, the application or reliance on all prepaid expenses to fund the Seller's business and the withdrawal or reduction of any deposits; (ii) use commercially reasonable efforts to preserve the Purchased Assets; (iii) use commercially reasonable efforts to preserve its business organization, including the services of its officers and employees, and its business relationships and goodwill with customers, suppliers and others having business dealings with it; (iv) pay and discharge the debts authorized by the CCAA Court in accordance with the DIP Credit Agreement; and (v) use commercially reasonable efforts to maintain in full force and effect all material insurance policies and binders relating to the Acquired Business; and
- (b) not, without the prior written consent of the Buyer (the granting of such consent to be in the Buyer's sole discretion): (i) transfer, lease, license, sell, abandon, create any Encumbrance (other than Permitted Encumbrances and Encumbrances associated with or permitted by the DIP Credit Agreement) on or otherwise dispose of any of the Purchased Assets (except in the ordinary course of business, consistent with past practice); (ii) materially increase the compensation or benefits of any Employee, except for increases in all material respects consistent with past practice or in accordance with employment Contracts; (iii) establish, adopt, enter into, amend or terminate any Employee Plan or any plan, agreement, program, policy, trust, fund or other arrangement that would be an Employee Plan if it were in existence as of the date of this Agreement; (iv) (A) materially amend, terminate or assign any Personal Property Lease, Assumed Real Property Lease or other Material Contract, (B) enter into any lease, Contract, license or other commitment related to the Acquired Business that would constitute a Personal Property Lease, Assumed Real Property Lease or other Material Contract; (v) enter into any Contract which materially restricts the ability of the Acquired Business to engage in any business in any geographic area or channel of distribution; (vi) acquire any material businesses or assets outside of the ordinary course of business in all material respects; or (vii) agree or make a commitment, whether in writing or otherwise, to do any of the foregoing.

7.3 Approvals and Consents

- (a) Within ten (10) Business Days of the date of this Agreement,

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- (i) the Buyer shall file a request for an advance ruling certificate under the *Competition Act* or in the alternative a no action letter, and the Buyer and the Seller shall each file their pre-merger notification filing under the *Competition Act* unless the Parties mutually agree no such pre-merger notification filings shall be made or agree to make such pre-merger notification filings at a later date;
 - (ii) concurrently with the filings made under Section 7.3(a)(i), (x) each of the Buyer and the Seller shall file all such filings and notifications with the Minister of Transport; and (y) the Buyer shall prepare and the Parties shall file a submission in support of obtaining the CTA Approval with the Minister of Transport under the CTA; and
 - (iii) to the extent mutually determined to be required, the Seller and the Buyer shall make all filings and submissions necessary under any other applicable competition, merger, antitrust, or other similar law, and the Buyer will request any expedited processing available.
- (b) The Seller and the Buyer shall cooperate and furnish to the other such necessary information and reasonable assistance as the other may request in connection with its preparation of any filing or submission in connection with obtaining the Regulatory Approvals.
 - (c) The Seller, on the one hand, and the Buyer, on the other hand, will provide to the other Party copies of all submissions and filings provided to a Governmental Authority pursuant to the *Competition Act* and the CTA and will provide reasonable opportunity to comment on such filings and submissions prior to submitting same to the Governmental Authority; notwithstanding the foregoing, submissions, filings or other written communications to a Governmental Authority may be redacted as necessary before sharing with the other Party to address reasonable solicitor-client, attorney-client or other privilege or confidentiality concerns, provided that external legal counsel to the Buyer and the Seller shall receive non-redacted versions of drafts or final submissions, filings or other written communications to the Governmental Authority on the basis that the redacted information will not be shared with their respective clients.
 - (d) The Seller and the Buyer will promptly inform the other of any material communication received by such Party from any Governmental Authority or proposed to be made to any Governmental Authority, and shall provide the other Party and its counsel an opportunity to attend and participate in any meetings of a substantive nature with a Governmental Authority, with respect to the *Competition Act* and the CTA.
 - (e) The Seller and the Buyer will make and use commercially reasonable efforts to obtain the Regulatory Approvals and any other approval of any Governmental Authority required to consummate the transactions contemplated by this Agreement. Without limiting the generality of the foregoing, the Buyer and Seller shall each (i) use its respective commercially reasonable efforts to comply as expeditiously as possible with all requests of any Governmental Authority for

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additional information and documents, including, without limitation, information or documents requested under the *Competition Act* or other applicable antitrust regulation and the CTA; (ii) not (A) extend any waiting period under the *Competition Act* and the CTA or any applicable antitrust or foreign investment regulation; or (B) enter into agreement with any Governmental Authority not to consummate the transactions contemplated by this Agreement, except, in each case, with the prior consent of the other Parties hereto; and (iii) cooperate with the other Parties hereto and use commercially reasonable efforts to avoid, contest and resist any action, including legislative, administrative or judicial action, and to have vacated, lifted, reversed or overturned any order (whether temporary, preliminary or permanent) that delays, restricts, prevents or prohibits the consummation of the transactions contemplated by this Agreement. The Seller shall not agree to any settlements, undertakings, consent decrees, stipulations, Orders or other agreements with any Governmental Authority relating to the transactions contemplated by this Agreement except, in each case, with the prior written consent of the Buyer.

- (f) The Seller and the Buyer will not to take any action that will have the effect of delaying, impairing or impeding the receipt of the Regulatory Approvals; provided, that the parties hereto understand and agree that the commercially reasonable efforts of any party hereto shall not be deemed to require (x) entering into any settlement, undertaking or consent agreement in connection with the transactions contemplated by this Agreement or (y) divesting or otherwise holding separate (including by establishing a trust or otherwise), or taking any other action (or otherwise agreeing to do any of the foregoing) with respect to any of its or any of its affiliates' businesses, assets or properties.
- (g) The Buyer shall be responsible for payment of any applicable filing fees under the *Competition Act*.
- (h) As soon as reasonably possible following the date hereof, the Seller and the Buyer shall:
 - (i) make all such filings and seek all such consents, approvals, permits and authorizations with any other Governmental Authorities whose consent is required for consummation of the transactions contemplated by this Agreement, and the Buyer will request any expedited processing available; and
 - (ii) use their reasonable best efforts to obtain the issuance of the Approval and Vesting Order on or before the relevant Milestones.
- (i) The Seller shall use their commercially reasonable efforts to obtain all consents, approvals and Governmental Authorizations with respect to, and provide any notices under, any Contracts required in connection with the completion of the transactions contemplated by this Agreement at or before the Closing Time on terms acceptable to the Buyer, acting reasonably. The Buyer shall use its commercially reasonable efforts to cooperate with the Seller in connection with the foregoing.

7.4 Landlord Consents

- (a) The Seller covenants and agrees to use commercially reasonable efforts to obtain by the Closing Date the written consent of the Landlords to the assignment of the Assumed Real Property Leases by the Seller to the Buyer, to the extent same is required by the terms of the Assumed Real Property Leases (collectively, the "Landlord Consents" and each a "Landlord Consent") subject to the terms of this Agreement as well as the terms of the Approval and Vesting Order and any Assignment Order.
- (b) The Buyer agrees to co-operate with and assist the Seller in pursuing and obtaining the Landlord Consents, the Approval and Vesting Order and any Assignment Order, for the sale of the Purchased Assets including, the assignment and assumption of the Assumed Real Property Leases. The Seller shall be solely responsible for negotiating with and attempting to obtain a release from the applicable Landlord; provided, however, for greater certainty, the receipt of such release by Seller is not a Closing delivery or a condition of Closing and nothing contained in this Section 7.3(b) shall affect the obligation of the Seller relating to the obtaining of the applicable consents contemplated by Section 7.3 or Section 7.4. The Buyer's co-operation includes, but is not limited to, providing any reasonable information requested by a Landlord or the Court (including reasonable financial information, financing structure and proposed management team for the business), providing certificates of insurance, posting replacement deposits and/or security with a Landlord, and executing and delivering any necessary acknowledgements and assumption agreements required by: (i) a Landlord as a condition to the issuance of its consent and/or release that are commercially reasonable or otherwise contemplated by the applicable Assumed Real Property Lease; or (ii) the Court as a condition to the issuance of the Approval and Vesting Order or an Assignment Order.
- (c) Without limiting the foregoing, the Buyer agrees to provide to the Seller within three (3) Business Days of the date hereof all such information as is necessary (including reasonable financial information, financing structure and proposed management team for the Buyer's business) or contemplated in the Assumed Real Property Leases to demonstrate to the Landlords that the Buyer is capable of performing all of the obligations of the Seller, as tenant under the Assumed Real Property Leases and that it would be appropriate to assign all of the rights and obligations of the tenant under the Assumed Real Property Leases to the Buyer. Thereafter, the Buyer agrees to provide to the Seller promptly upon request by the Seller such additional information as may be reasonably requested by any Landlord in connection with such Landlord's consideration of the Seller's request for consent to assign the applicable Assumed Real Property Lease to the Buyer.
- (d) The Buyer shall be solely responsible for any and all reasonable expenses and fees in connection with obtaining the Landlord Consents; provided, however that the Buyer shall only be required to pay the Cure Costs associated with the Assumed Real Property Leases in seeking such consents and shall not be required to pay any other amounts in seeking such consents. The Buyer will use its commercially reasonable efforts to assist the Seller in obtaining any such consent.

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Any Landlord Consent must be on terms which are acceptable to the Seller and the Buyer, each acting reasonably.

- (e) If the Seller are unable to obtain the written consent of a Landlord to the assignment of the respective Assumed Real Property Lease to the Buyer on terms acceptable to the Seller and the Buyer, each acting reasonably, the Seller covenants and agrees to make an application for an Assignment Order assigning all of the rights and obligations of the Seller under such Assumed Real Property Leases to the Buyer and compelling or deeming the applicable Landlord Consents or the equivalent thereof in a form of Assignment Order acceptable to the Buyer, acting reasonably. The Buyer agrees to accept such assignment of all of the rights and obligations of the Seller under the Assumed Real Property Leases pursuant to the Assignment Order.
- (f) For greater certainty, the Buyer acknowledges and agrees that: (i) it is not entitled to request any amendments of the terms of any Assumed Real Property Lease in connection with obtaining any Landlord Consent or court approval for the sale of any of the Purchased Assets or the assignment of any of the Assumed Real Property Leases; (ii) the applicable Landlord Consent will not be required if such Landlord's consent is not required to effect the transaction contemplated herein pursuant to the terms of such Assumed Real Property Lease or is granted, deemed granted or deemed not to be necessary as a result of the Approval and Vesting Order or Assignment Order; and (iii) the Buyer's rights and remedies in respect of the Assumed Real Property Leases and the Premises shall also be subject to the provisions of the Initial Order and the SISP Order.
- (g) The Parties agree that in the event they are not able to obtain the Landlord's Consent or an Assignment Order in respect of any Assumed Real Property Lease on or before the Closing Date, the Parties shall proceed to complete the transactions contemplated herein on the Closing Date in accordance with the terms of this Agreement with respect to those Assumed Real Property Leases for which the Parties have received an Assignment Order or Landlord's Consent and this Agreement shall be deemed amended to include such Assumed Real Property Lease for which the Assignment Order or Landlord's Consent has not been obtained in the definition of Excluded Assets.

The Seller shall not be obligated to obtain any acknowledgement, status certificate or estoppel certificate in respect of any Assumed Real Property Lease from any Landlord.

7.5 Covenants Relating to this Agreement

- (a) Each of the Parties shall perform, and shall cause their affiliates to perform, all obligations required to be performed by the applicable Party under this Agreement, co-operate with the other Parties in connection therewith and, subject to the directions of any applicable courts to the Seller, use commercially reasonable efforts to do all such other acts and things as may be necessary or desirable in order to consummate and make effective, as soon as reasonably practicable and in any event prior to the Sunset Date, the transactions

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contemplated by this Agreement and, without limiting the generality of the foregoing, each Party shall and, where appropriate, shall cause each of its affiliates to:

- (i) negotiate and use its commercially reasonable efforts to take or cause to be taken all actions and to do, or cause to be done, all things necessary, proper or advisable to satisfy the conditions precedent to the obligations of such Party hereunder (including, where applicable, negotiating in good faith with the applicable Governmental Authorities and/or third Persons in connection therewith), and to cause the fulfillment at the earliest practicable date of all of the conditions precedent to the other Party's obligations to consummate the transactions contemplated hereby; and
 - (ii) not take any action, or refrain from taking any action, and use commercially reasonable efforts to not permit any action to be taken or not taken, which would reasonably be expected to prevent, materially delay or otherwise impede the consummation of the transactions contemplated by this Agreement.
- (b) The Buyer hereby agrees, and hereby agrees to cause its representatives to, keep the Seller informed on a reasonably current basis, and no less frequently than on a weekly basis through teleconference or other meeting, and as reasonably requested by the Seller or the Monitor, as to the Buyer's progress in terms of the satisfaction of the conditions precedent contained herein.
 - (c) The Seller hereby agrees, and hereby agrees to cause its representatives to, keep the Buyer informed on a reasonably current basis, and no less frequently than on a weekly basis through teleconference or other meeting, and as reasonably requested by the Buyer, as to the Seller or the Monitor's progress in terms of the satisfaction of the conditions precedent contained herein.
 - (d) The Seller and the Buyer agree to execute and deliver such other documents, certificates, agreements and other writings, and to take such other actions as may be reasonably required to consummate or implement as soon as reasonably practicable, the transactions contemplated by this Agreement.
 - (e) Each of the Buyer and SCI shall, from and after the date of this Agreement, negotiate and use its respective commercially reasonable efforts to enter into the Transition Services Agreement prior to the Closing Date.

7.6 Release; Acknowledgements; Indemnity

- (a) Except as otherwise contained herein, effective as of the Closing, the Buyer hereby releases and forever discharges the Seller and its affiliates, and its successors and assigns, and all officers, directors, partners, members, shareholders, employees and agents of each of them, from any and all actual or potential Claims which such Person had, has or may have in the future to the extent relating to the Purchased Assets, the Assumed Liabilities, the Excluded Assets or the Excluded Liabilities.

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- (b) The Buyer shall use its commercially reasonable efforts to assist the Seller and shall co-operate with the Seller, as reasonably requested, to obtain from third parties, effective as of the Closing Time, a full release of the Seller's obligations under the Assumed Contracts, the Permitted Encumbrances and the Assumed Real Property Leases, and shall provide such financial and other information and enter into such assumption agreements as such third parties may reasonably require, in form and substance acceptable to each of the parties thereto acting reasonably and without delay.
- (c) The Buyer hereby agrees to indemnify the Seller, the Monitor, their affiliates and their respective trustees, officers, directors, employees, agents and shareholders (the "Seller Parties"), and saves each of them fully harmless from and against, and will reimburse or compensate each of them on demand for, all losses and Claims arising from, in connection with or related in any manner whatsoever to:
 - (i) the Buyer's failure to pay when due, and perform and discharge, the Assumed Liabilities; and
 - (ii) the Buyer's access in accordance with Section 7.1.

7.7 Tax Matters

- (a) For purposes of any income Tax return related to the transactions contemplated in this Agreement, the Buyer and the Seller agree to report the transactions contemplated in this Agreement in a manner consistent with the allocation of the Purchase Price pursuant to Section 3.2, and the Buyer and the Seller shall not voluntarily take any action inconsistent therewith in any such Tax return, refund claim, litigation or otherwise, unless required by applicable Tax laws. The Buyer and the Seller shall each be responsible for the preparation of their own statements required to be filed under the *Income Tax Act* (Canada) and other similar forms in accordance with applicable Tax laws.
- (b) All personal property Taxes and similar *ad valorem* obligations levied with respect to the Purchased Assets for a taxable period which includes (but does not end on) the Closing Date shall be apportioned between the Seller and the Buyer based on the number of days of such taxable period up to and including the Closing Date (such portion of such taxable period, the "Pre-Closing Tax Period") and the number of days of such taxable period after the Closing Date (such portion of such taxable period, the "Post-Closing Tax Period"). Except as otherwise provided herein, the Seller shall be liable for the proportionate amount of such Taxes that is attributable to the Pre-Closing Tax Period, and the Buyer shall be liable for the proportionate amount of such Taxes that is attributable to the Post-Closing Tax Period.
- (c) In respect of the purchase and sale of the Purchased Assets under this Agreement, to the extent permitted by Applicable Law, the Buyer shall pay direct to the appropriate Governmental Authority all sales and transfer Taxes, registration charges and transfer fees payable by it and, upon the reasonable request of the Seller, the Buyer shall furnish proof of such payment, and the Buyer shall

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otherwise be liable for and shall pay to the Seller an amount equal to any such Tax payable by the Buyer and collectible by the Seller including under the GST and HST Legislation and the QST Legislation and under any similar provincial or territorial legislation imposing a similar value-added or multi-staged Tax. The Buyer shall deliver to Seller any purchase exemption certificates being relied on by the Buyer in accordance with and in the form and manner as required under Applicable Laws governing provincial sales and transfer Taxes.

- (d) To the extent permitted under subsection 167(1) of the GST and HST Legislation, Section 75 of the QST Legislation and any equivalent or corresponding provision under any applicable provincial or territorial legislation imposing a similar value added or multi-staged Tax, the Buyer and the Seller shall jointly elect that no Tax be payable with respect to the purchase and sale of the Purchased Assets under this Agreement. The Buyer and the Seller shall make such election(s) in prescribed form containing prescribed information and the Buyer shall file such election(s) in compliance with the requirements of the applicable legislation. Notwithstanding such election(s), in the event it is determined by the Canada Revenue Agency or Revenue Quebec (or another applicable provincial Governmental Authority) that there is a liability of the Buyer to pay, or of a Seller to collect and remit, any Taxes payable under the GST and HST Legislation or the QST Legislation (or any applicable provincial legislation) in respect of the sale and transfer of the Purchased Assets, such Taxes shall be paid by the Buyer.
- (e) If requested by the Buyer and to the extent permitted thereunder, a Seller and the Buyer will jointly execute, and each of them will file promptly following the Closing Date, an election under Section 22 of the *Income Tax Act* (Canada), and any corresponding provisions of any applicable provincial income Tax legislation. For the purposes of such elections, the Buyer and the Seller will, acting reasonably, jointly determine the amount that the parties will designate as the portion of the Purchase Price allocable to the debts in respect of which such elections are made. For greater certainty, the Seller and the Buyer agree to prepare and file their respective Tax returns in a manner consistent with such election(s).
- (f) The Buyer hereby waives compliance by the Seller with Section 6 of the *Retail Sales Tax Act* (Ontario) and with any similar provision contained in any other Applicable Law in respect of all sales and transfer Taxes, registration charges and transfer fees payable.
- (g) If requested by the Buyer and to the extent permitted thereunder, a Seller and the Buyer will jointly execute an election in the prescribed manner and within the prescribed time limits, to have the rules in subsection 20(24) of the *Income Tax Act* (Canada), and any equivalent or corresponding provision under applicable provincial or territorial tax legislation, apply to the obligations of the Seller in respect of undertakings which arise from the operation of the Acquired Business and to which paragraph 12(1) (a) and 12(1)(e) of the *Income Tax Act* (Canada) apply. For the purposes of such election(s), the Buyer, acting reasonably, shall determine the elected amount and the Buyer and the Seller acknowledge that such Seller is transferring assets to the Buyer which have a value equal to such elected

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amount as consideration for the assumption by the Buyer of such obligations of such Seller.

- (h) On Closing, the Buyer shall have executed and delivered a certificate, undertaking and indemnity which includes its certification of its registration numbers issued under the GST and HST Legislation and QST Legislation, and incorporates the provisions of this Section 7.7 (the "GST/HST and QST Certificate, Undertaking and Indemnity"). The Buyer shall indemnify and save the Seller harmless from and against any and all Taxes including, transfer Taxes and goods and services tax or harmonized sales tax, as the case may be, imposed under the GST and HST Legislation, the QST Legislation and any other value added or multi-staged tax or sales tax, penalties, costs and/or interest which may become payable by or assessed against any of the Seller as a result of any failure by such Seller to collect and remit any goods and services tax or harmonized sales tax payable under the GST and HST Legislation and the QST Legislation or any similar value added or multi-staged tax or sales tax and applicable on the sale and conveyance of the Purchased Assets by the Seller to the Buyer or as a result of any inaccuracy, misstatement, or misrepresentation made by the Buyer in connection with any matter raised in this Section 7.7 or in the GST/HST and QST Certificate, Undertaking and Indemnity or any failure by the Buyer to comply with the provisions of this Section 7.7 or the GST/HST and QST Certificate, Undertaking and Indemnity.

7.8 Employee Matters

- (a) No more than ten (10) days after the date of this Agreement, the Seller will deliver a schedule of all Employees (without reference to names), together with, their positions and material terms of employment including wages/salary, incentive compensation, service date, age, benefits and vacation entitlement and accrual. Such schedule will be updated immediately prior to the Closing Time as reasonably requested by the Buyer.
- (b) No later than two (2) Business Days following the date on which the Approval and Vesting Order is granted, conditional on Closing and with effect as of the Closing Time, the Buyer shall (i) offer employment to a number of the Employees consistent with the headcount information listed under the heading "Retain w/ no Sears" in Schedule P (with the list of names of such Employees to be agreed in writing by the Seller and the Buyer no later than two (2) Business Days following the date of this Agreement), on terms and conditions in respect of compensation, benefits, hours of work and duties that are substantially similar in the aggregate to those currently enjoyed by such Employees, other than in respect of any entitlements to any Employee Pension Plans, and (ii) deliver the Seller a list of any additional Employees to whom the Buyer will offer continuing employment and an offer to continue such employment in a form agreed by the Seller and in compliance with Applicable Law, and shall physically offer continuing employment to such Employees on terms and conditions, including compensation, benefits, hours of work and duties, that are substantially similar in the aggregate to those they currently enjoy. Notwithstanding the foregoing, if on the Closing Date, an Employee referred to in clause (i) or (ii) of this Section 7.8(b) is on an

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approved short-term disability or long-term disability leave, Buyer's offer of employment may be conditional upon the Employee's return to work with or without accommodation within three (3) months of Closing. For purposes of this Agreement, to the extent certain terms and conditions of employment are required to be maintained under any Employee Plans in order to avoid the Seller's incurring severance or other employment termination obligations, such terms and conditions shall be deemed to be required by Applicable Law. Employees' employment with the Buyer after the Closing Date, shall not include a probationary period. Buyer shall notify the Seller of the acceptance and rejections of offers of employment that have been received from each of the Employees upon request of the Seller.

- (c) The Employees who are offered continuing employment by the Buyer and accept the Buyer's offer of employment in accordance with the terms and conditions thereof, shall hereinafter be collectively referred to as the "**Assumed Employees**". The Buyer shall recognize service of the Assumed Employees with the Seller or 168886, as the case may be. The Seller will cooperate with the Buyer in giving notice to the Employees of the Seller or 168886 concerning such matters referred to in this Section 7.8 as are reasonable under the circumstances.
- (d) The Buyer may, at its sole discretion, provide written notice to the Seller at least two (2) Business Days prior to the Closing Date that the Buyer wishes to assume one or more Employee Plans or Employee Pension Plans (to the extent transferable and exclusive to the Seller or 168886, as applicable) (the "**Assumed Employee Plans**"), and, effective as of the Closing Date, the Seller shall assign to the Buyer, and the Buyer assumes, the Assumed Employee Plans and all agreements and policies forming part of or relating to any Assumed Employee Plan and all of the Seller's rights, obligations and liabilities under and in relation to the Assumed Employee Plans and all agreements and policies forming part of or relating to any Assumed Employee Plan and the Seller and the Buyer agree to co-operate to take all reasonable steps to effect such assignment.
- (e) The Buyer shall be responsible for any and all Claims Incurred by the Assumed Employees (and their respective eligible spouses, beneficiaries and dependents) after the Closing Date. For these purposes, "Incurred" means, in relation to Claims under Employee Plans or Buyer Employee Plans, the date on which the event giving rise to such claim occurred and, in particular: (i) with respect to a death or dismemberment claim, shall be the date of the death or dismemberment; (ii) with respect to a short-term or long-term disability Claim, shall be the date that the period of short-term or long-term disability commenced; (iii) with respect to an extended health care claim, including, without limitation, dental and medical treatments, shall be the date of the treatment; and (iv) with respect to a prescription drug or vision care claim, the date that the prescription was filled.
- (f) After the Buyer has agreed to assume the Assumed Employee Plans in accordance with Section 7.8(d), the Seller and the Buyer shall cooperate promptly and in good faith in preparing the transition of the Assumed Employees as applicable from coverage under the Employee Plans to coverage under the Buyer Employee Plans effective as of the Closing Date. From and after the Closing Time, the

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Buyer shall be responsible for and make all required contributions and payments in relation to the Assumed Employees transitioned to coverage under the Buyer Employee Plans. If, at the Closing Date, the transition of any Assumed Employees to coverage under any Buyer Employee Plan has not been completed, the Buyer shall be responsible for all liabilities and obligations under any Employee Plan in respect of any such Assumed Employees until the Assumed Employees have been transitioned to coverage under the applicable Buyer Employee Plan.

- (g) For purposes of the Buyer Employee Plans in which any Assumed Employees participate, the Buyer shall recognize the service date of each such Employee, to the same extent that service credit would be given under the analogous Employee Plan, for purposes of eligibility and vesting, and with respect to any severance or vacation plan, the determination of levels of benefits, but not for purposes of benefit accrual. With respect to each Assumed Employee (and their eligible dependents, as applicable), the Buyer shall use best efforts to cause such Buyer Employee Plans to (i) waive any eligibility periods, evidence of insurability or pre-existing condition limitations and (ii) honor any deductibles, co-payments, co-insurance or out-of-pocket expenses paid or incurred by such Employees, including with respect to their dependents, under comparable Employee Plans.
- (h) For the avoidance of doubt, the Seller (or 168886, as applicable) shall retain, and the Buyer shall not assume at the Closing, any liabilities or obligations for Employees of the Seller or 168886 that are not Assumed Employees.

7.9 Certain Payments or Instruments Received from Third Persons

To the extent that, after the Closing Date: (a) Buyer or any of its affiliates receives any payment or instrument that is for the account of a Seller according to the terms of any Closing Document, Excluded Asset or Excluded Liability, the Buyer shall, and shall cause its affiliates to, promptly deliver such amount or instrument to the relevant Seller; or (b) any of the Seller or any of their controlled affiliates receives any payment or instrument that is for the account of the Buyer according to the terms of any Closing Document or that relates to the Acquired Business, Purchased Assets or Assumed Liabilities, the Seller shall, and shall cause their controlled affiliates to, promptly deliver such amount or instrument to the Buyer. All amounts due and payable under this Section 7.9 shall be due and payable by the applicable Party in immediately available funds, by wire transfer to the account designated in writing by the relevant Party. Notwithstanding the foregoing, the Seller, on the one hand, and the Buyer, on the other hand, hereby undertakes to, as reasonably requested and at the other's expense, direct or forward all bills, invoices or like instruments to the appropriate Party.

7.10 Intellectual Property Matters

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

7.11 Updates to Schedules

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- (a) Subject to the consent of the Seller (such consent not to be unreasonably withheld, conditioned or delayed), the Buyer may designate additional Contracts listed on Schedule D-2 for inclusion in the Purchased Assets, in each case by delivering a notice (a "Schedule Update Notice") to the Seller.
- (b) Upon receipt by the Buyer of the Seller's consent to any Schedule Update Notice, any Contract listed on such Schedule Update Notice shall irrevocably be deemed to be included on Schedule D-1 and deemed to be an Assumed Contract, and all such Contracts shall be deemed to be Assumed Contracts, as the case may be.
- (c) For the avoidance of doubt, all obligations and liabilities of the Seller with respect to any Contracts listed on any Schedule Update Notice shall irrevocably be deemed to be Assumed Liabilities to the extent provided in Section 2.3.
- (d) The Seller shall not be required to seek CCAA Court approval for the assignment of any Contracts pursuant to this Section 7.11 unless such Contracts are designated by the Buyer pursuant to this Section 7.11 on or before October 6, 2017.

7.12 Post-Closing Matters

- (a) At any time on or prior to the date that is 45 days prior to the TSA Termination Date, subject to the consent of the Seller and SCI (such consent not to be unreasonably withheld), the Buyer may designate additional Real Property Leases listed on Schedule L-3 for acquisition pursuant to this Section 7.12 by the Buyer in exchange for the assumption of all liabilities with respect thereto and other nominal consideration, in each case by delivering a notice (a "Post-Closing Acquisition Notice") to the Seller and SCI.
- (b) Prior to the TSA Termination Date, to the extent that the Buyer notifies the Seller and SCI that it wishes to enter into negotiations with (i) the counterparty to any such Real Property Lease or (ii) any Employee that is an employee of the Seller, SCI or 168886 at such time, the Seller, SCI or 168886, as applicable, will use its commercially reasonable efforts to facilitate such negotiations between the Buyer and such counterparty or Employee, as applicable.
- (c) Upon delivery of a Post-Closing Acquisition Notice, the Seller or SCI, as applicable, and the Buyer shall negotiate and, if agreed, enter into an agreement for the purchase and sale and, if applicable, assignment of such Real Property Leases and thereafter shall use commercially reasonable efforts to promptly seek an approval and vesting order and, if applicable, an assignment order from the CCAA Court with respect to such Real Property Leases. The Buyer shall be responsible for (x) all fees and expenses incurred by the Seller or SCI in seeking such approval and vesting order and assignment order, (y) all amounts necessary to cure any monetary defaults as a condition to assuming Real Property Leases assigned pursuant to this Section 7.12 other than those monetary defaults arising only by reason of the Seller's or SCI's insolvency, the commencement of the CCAA Proceedings, or the failure to perform a non-monetary obligation, and (z)

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all other fees and expenses incurred by the Seller or SCI in respect of actions taken pursuant to this Section 7.12.

- (d) For the avoidance of doubt, for purposes of this Section 7.12, the term "Real Property Leases" shall also include Real Property Leases of SCI to the extent set forth on Schedule L-3.
- (e) On the TSA Termination Date, this Section 7.12 shall terminate and be of no further force or effect, and any obligations of the Seller, the Buyer and SCI under this Section 7.12 shall immediately cease without any further action by the Seller, the Buyer or SCI.

7.13 Notice of Certain Events

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

7.14 Risk of Loss

Until the Closing Time, the Purchased Assets will be and remain at the sole risk of the Seller. If prior to the Closing Date any of the Purchased Assets are destroyed or damaged by fire or any other casualty or shall be expropriated or seized by any Governmental Authority, the Purchase Price shall not be affected by such destruction or damage and the insurance proceeds for such destruction or damage or the compensation for such expropriation or seizure paid or payable to the Seller shall be deemed to be included in the Purchased Assets without any adjustment to the Purchase Price and the Purchaser shall accept such proceeds or compensation, or the right to recover the same in replacement for the Purchased Assets so destroyed, damaged, expropriated or seized. The Seller agrees that it or SCI will maintain insurance on the Purchased Assets until the Closing Time.

7.15 Information Technology Matters

- (a) The Seller shall, from and after the date of this Agreement and prior to the Closing Date, use its commercially reasonable efforts to take such steps as it determines, in consultation with the Buyer, are reasonably necessary to ensure that the IT Assets owned by SCI shall be transferred to the Buyer, at the Buyer's

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expense at the Closing and shall advise the Buyer in writing at least five (5) Business Days prior to the Closing Date if any of the IT Assets owned by SCI are not being transferred to the Buyer at the Closing.

- (b) In the event that less than all of the IT Assets owned by SCI are transferred to the Buyer at the Closing, the Seller and Buyer, each acting reasonably, shall amend the Transition Services Agreement to (i) provide that the Seller shall deliver the services associated with each such non-transferred IT Asset to the Buyer, at the Seller's expense, until the earlier of (A) the TSA Termination Date, (B) the date such IT Asset is transferred to the Buyer or (C) the date that the Buyer, acting reasonably, advises the Seller that it no longer requires such services and (ii) provide that with respect to each non-transferred IT Asset owned by SCI, the Seller shall continue to use commercially reasonable efforts to take such steps as it determines, in consultation with the Buyer, are reasonably necessary to cause each such IT Asset to be transferred to the Buyer, at the Buyer's expense, or if the Buyer and the Seller, each acting reasonably, agree that such transfer is impracticable, to cooperate with the Buyer's efforts to obtain, at the Buyer's expense, services similar to such IT Asset.

ARTICLE 8 COURT ORDERS

8.1 Court Orders

- (a) The Buyer shall cooperate with the Seller acting reasonably, as may be necessary, including by providing such information and taking such actions as may be reasonably requested, in obtaining the Approval and Vesting Order and any Assignment Order.
- (b) Notice of the motion seeking the issuance of the Approval and Vesting Order shall be served by the Seller on all Persons required to receive notice under Applicable Law and the requirements of the CCAA, the CCAA Court, and any other Person determined necessary by the Seller or the Buyer.
- (c) Notwithstanding any other provision herein, it is expressly acknowledged and agreed that in the event that the Approval and Vesting Order has not been issued and entered by the CCAA Court by October 4, 2017 or such later date agreed to in writing by the Buyer and the Seller (with the consent of the Lenders), the Seller may terminate this Agreement.

8.2 CCAA Process

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

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ARTICLE 9 TERMINATION

9.1 Termination

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

- (a) by mutual written consent of the Buyer and the Seller (with the consent of the Lenders and the Monitor) or on further order of the CCAA Court;
- (b) by the Seller (with the consent of the Lenders and the Monitor) if Closing has not occurred on or before the Closing Date (the "Sunset Date"); provided, that the Seller is not in breach of any representation, warranty, covenant or other agreement in this Agreement to cause the conditions in Article 6 to be satisfied;
- (c) by the Buyer (with the consent of the Lenders and the Monitor) if Closing has not occurred on or before the Sunset Date; provided, that the Buyer is not in breach of any representation, warranty, covenant or other agreement in this Agreement to cause the conditions in Article 6 to be satisfied;
- (d) by the Seller pursuant to Section 8.1(c);
- (e) by the Buyer or the Seller upon the dismissal or conversion of the CCAA Proceedings;
- (f) by the Buyer or the Seller upon permanent denial of the Approval and Vesting Order or any of the Regulatory Approvals;
- (g) by the Buyer or the Seller if a court of competent jurisdiction or other Governmental Authority has issued an order or taken any other action permanently restraining, enjoining or otherwise prohibiting the consummation of Closing and such order or action has become Final (provided the same was not initiated by the Buyer or the Seller);
- (h) by the Seller, if required under any Order of a court of competent jurisdiction including the CCAA Court;
- (i) by the Seller (with the consent of the Lenders and the Monitor), if there has been a material violation or breach by the Buyer of any covenant, representation or warranty which would prevent the satisfaction of the conditions set forth in Section 6.1 or Section 6.3, as applicable, by the Sunset Date and such violation or breach has not been waived by the Seller or cured within ten (10) Business Days after written notice thereof from the Seller, unless the Seller is in material breach of its obligations under this Agreement;
- (j) subject to Section 9.1(k), by the Buyer, if there has been a material violation or breach by the Seller of any covenant, representation or warranty which would prevent the satisfaction of the conditions set forth in Section 6.1 or Section 6.2, as applicable, by the Sunset Date and such violation or breach has not been waived by the Buyer or cured within ten (10) Business Days after written notice thereof

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from the Buyer, unless the Buyer is in material breach of its obligations under this Agreement; or

- (k) notwithstanding Section 9.1(j), by the Buyer if there has been a material violation or breach by the Seller of 4.6(a) and such violation or breach has not been waived by the Buyer or cured within ten (10) Business Days after written notice thereof from the Buyer, unless the Buyer is in material breach of its obligations under this Agreement,

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

9.2 Effect of Termination

In the event of termination of this Agreement pursuant to Section 9.1, this Agreement shall become void and of no further force or effect without liability of any Party to any other Party to this Agreement except that (a) this Section 9.2 and Sections 3.3(c), 11.1, 11.3, 11.4, 11.5, 11.7 and 11.8 shall survive, (b) the confidentiality, non-use and non-disclosure obligations under the NDA shall survive in accordance with the terms of the NDA, and (b) no termination of this Agreement shall relieve any Party of any liability for any wilful breach by it of this Agreement.

ARTICLE 10 CLOSING

10.1 Location and Time of the Closing

The Closing shall take place at the Closing Time on the Closing Date at the offices of Osler, Hoskin & Harcourt LLP located at Suite 6300, First Canadian Place, 100 King Street West, Toronto, Ontario, or at such other location as may be agreed upon by the Parties.

10.2 Seller's Deliveries at Closing

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

- (a) the Transition Services Agreement duly executed by the Seller;
- (b) a certified copy of the Approval and Vesting Order;
- (c) the Lease Assignment and Assumption Agreements for the Personal Property Leases and Assumed Real Property Leases duly executed by the applicable Seller;
- (d) to the extent actually obtained prior to the Closing, the Landlord Consents from each of the Landlords in respect of the Assumed Real Property Leases;
- (e) the General Assignments and Bills of Sale for the Purchased Assets duly executed by the Seller;

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- (f) the Contracts Assignment and Assumption Agreements for the Assumed Contracts duly executed by the Seller, if necessary;
- (g) assignment of any existing realty Tax appeals and any other documents required to permit the Buyer to continue such appeals and to receive payments resulting therefrom;
- (h) all documents of title and instruments of conveyance (duly executed by the Seller) necessary to transfer record and/or beneficial ownership to the Buyer of all vehicles owned by the Seller which are included in the Purchased Assets;
- (i) the IP Assignment and Assumption Agreements duly executed by the Seller;
- (j) certified copies of any Assignment Order(s) obtained by the Seller pursuant to this Agreement;
- (k) an executed copy of the Monitor's Certificate;
- (l) the certificates contemplated by Section 6.2(c);
- (m) a duly executed election pursuant to GST and HST Legislation and QST Legislation, and any certificates, elections or other documents required to be delivered pursuant to Section 7.7; and
- (n) all other documents required to be delivered by the Seller on or prior to the Closing Date pursuant to this Agreement or Applicable Law or as reasonably requested by the Buyer in good faith.

10.3 Buyer's Deliveries at Closing

At Closing, the Buyer shall deliver to the Seller:

- (a) the Purchase Price;
- (b) the Transition Services Agreement duly executed by the Buyer;
- (c) any sales or transfer Taxes payable on Closing by the Buyer to the Seller pursuant to Section 7.7(c) hereof;
- (d) the General Assignments and Bills of Sale for the Purchased Assets duly executed by the Buyer;
- (e) the Lease Assignment and Assumption Agreements for the Personal Property Leases and Assumed Real Property Leases duly executed by the Buyer;
- (f) the Contracts Assignment and Assumption Agreements for the Assumed Contracts duly executed by the Buyer, if necessary;
- (g) the IP Assignment and Assumption Agreements duly executed by the Buyer;

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- (h) an assumption of the Permitted Encumbrances;
- (i) the certificate contemplated by Section 6.3(c);
- (j) a duly executed election pursuant to GST and HST Legislation and QST Legislation, and any certificates, elections or other documents required to be delivered pursuant to Section 7.7;
- (k) the GST/HST and QST Certificate, Undertaking and Indemnity; and
- (l) all other documents required to be delivered by the Buyer on or prior to the Closing Date pursuant to this Agreement or Applicable Law or as reasonably requested by the Seller in good faith.

10.4 Possession of Assets

On Closing, the Buyer will take possession of the Purchased Assets wheresoever situated at Closing. In no event will the Purchased Assets be sold, assigned, transferred or set over to the Buyer until the conditions set out in the Approval and Vesting Order have been satisfied, and the Buyer has satisfied all delivery requirements outlined in Section 10.3.

10.5 Monitor

The Parties hereby acknowledge and agree that the Monitor will be entitled to file the Monitor's Certificate with the CCAA Court without independent investigation upon receiving written confirmation from the Seller and the Buyer that all conditions to Closing have been satisfied or waived and upon receiving the cash portion of the Purchase Price and any sales or transfer Taxes confirmed in writing by the Seller and the Buyer (on which the Monitor shall be entitled to rely without independent investigation) to be payable on Closing by the Buyer to the Seller pursuant to Section 7.7(c) hereof, and the Monitor will have no liability to the Seller or the Buyer or any other Person as a result of filing the Monitor's Certificate or otherwise in connection with this Agreement or the transactions contemplated hereunder (whether based on contract, tort or any other theory).

10.6 Simultaneous Transactions

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

10.7 Name of Seller

Forthwith following Closing, the Seller shall change its corporate names to its corporate number.

ARTICLE 11 GENERAL MATTERS

11.1 Confidentiality

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The Buyer shall keep confidential all Confidential Information relating to the Seller, the Acquired Business, the Purchased Assets, the Assumed Liabilities, the Excluded Assets and the Excluded Liabilities in accordance with the terms of the NDA.

11.2 Public Notices

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

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

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

11.3 Survival

None of the representations, warranties, covenants (except the covenants in Article 2, Article 3, Article 11 and Sections 7.6, 7.7, 7.8, 7.9, 7.10, 7.12, 7.15, 11.1 and 11.4 to the extent they are to be performed after the Closing) of any of the Parties set forth in this Agreement, in any Closing Document to be executed and delivered by any of the Parties (except any covenants included in such Closing Documents, which, by their terms, survive Closing) or in any other agreement, document or certificate delivered pursuant to or in connection with this Agreement or the transactions contemplated hereby shall survive the Closing.

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11.4 Expenses

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

11.5 Non-Recourse

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

11.6 Leasehold Interests

Notwithstanding any provision of this Agreement to the contrary, for purposes of this Agreement and each Closing Document, (i) all references to "Real Property Lease" include any sublease or agreement to sublease by which the Seller (as subtenant) holds its interest in, and/or right to occupy the related Premises, (ii) for the Premises which are subject to a sublease or agreement to sublease (rather than a lease) in favour of any of the Seller, all references to the Seller's "leasehold" interest in such Premises shall mean the Seller's "subleasehold" interest, where applicable (rather than a leasehold interest) in such Premises, any reference to "Landlord" shall mean the sublandlord under the applicable sublease or agreement to sublease pursuant to which a Seller (as subtenant) holds its interest in, and/or right to occupy such Premises, and any reference to "Sublease" shall mean a sub-sublease in such Premises in favour of the Seller, and (iii) all other similar references relating to the Real Property Leases and Premises shall be interpreted and construed in a similar manner.

11.7 Assignment; Binding Effect

No Party may assign its right or benefits under this Agreement without the consent of each of the other Parties, except that without such consent any Party may, upon prior notice to the other Parties: (a) assign this Agreement, or any or all of its rights and obligations hereunder, to one or more of its subsidiaries or affiliates; or (b) the Buyer may direct that title to all or some of the Purchased Assets be transferred to, and the corresponding Assumed Liabilities be assumed by, one or more of its subsidiaries or affiliates; provided, that no such assignment or direction shall relieve such assigning Party of its obligations hereunder. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective permitted successors and permitted assigns. Except as provided in Section 7.6 and Section 7.7(d), nothing in this Agreement shall create or be deemed to create any third Person beneficiary rights in any Person not a Party to this Agreement.

11.8 Notices

Any notice, consent or approval required or permitted to be given in connection with this Agreement (in this Section referred to as a "Notice") shall be in writing and shall be sufficiently

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given if delivered (whether in person, by courier service or other personal method of delivery), or if transferred by facsimile or email:

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

8507597 Canada Inc.
4, rue du Transport,
Coteau-du-Lac, Quebec J0P 1B0

Attention: Daniel Goyette
Telephone: 405-763-6366
Email: daniel@cat.ca

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

Aird & Berlis LLP
Brookfield Place
181 Bay Street
Suite 1800
Toronto, ON M5J 2T9

Attention: Kyle B. Plunkett and Jeffery Merk
Telephone: 416-865-3406
Email: kplunkett@airdberlis.com / jmerk@airdberlis.com

- (b) in the case of a Notice to the Seller, 168886 and SCI at:

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

Attention:
Telephone:
Facsimile:
Email:

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

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

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

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and the Monitor:

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

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

and counsel to the Monitor:

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

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

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

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

11.9 Counterparts; Facsimile Signatures

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

11.10 Performance on Non-Business Days

If any action is required to be taken pursuant to this Agreement on or by a specified date which is not a Business Day, then such action shall be valid if taken on or by the next succeeding Business Day.

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11.11 Language

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

[Signature pages follow]

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

S.L.H. TRANSPORT INC. / TRANSPORTS
S.L.H. INC.

By: P. Mousadi
Name: P. MOUSADI
Title: Secretary

8507597 CANADA INC.

By: _____
Name:
Title:

Solely for purposes of Article 1, Article 2,
Section 7.5(e), Section 7.12 and Article 11,
SEARS CANADA INC.

By: P. Mousadi
Name: P. MOUSADI
Title: Secretary

Solely for purposes of Article 1, Article 2,
Section 7.8, Section 7.12 and Article 11,
168886 CANADA INC.


By: P. Mousadi
Name: P. MOUSADI
Title: Secretary

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

S.L.H. TRANSPORT INC. / TRANSPORTS
S.L.H. INC.

By: _____
Name:
Title:

8507597 CANADA INC.

By: 
Name: DANIEL GOYETTE
Title: PRESIDENT

Solely for purposes of Article 1, Article 2,
Section 7.5(e), Section 7.12 and Article 11,
SEARS CANADA INC.

By: _____
Name:
Title:

Solely for purposes of Article 1, Article 2,
Section 7.3, Section 7.12 and Article 11,
168886 CANADA INC.

By: _____
Name:
Title:

SCHEDULE A
FORM OF APPROVAL AND VESTING ORDER

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.
JUSTICE HAINEY

)
)
)

THE TH
DAY OF , 2017

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

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

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

APPROVAL AND VESTING ORDER
(S.L.H. Transport Inc.)

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) approving the sale transaction (the "Transaction") contemplated by an Asset Purchase Agreement between S.L.H. Transport Inc. (the "Seller"), as vendor, and 8507597 Canada Inc. (the "Purchaser"), as purchaser, dated September ●, 2017 (the "APA") and certain related relief, and (ii) vesting in and to the Purchaser all right, title and interest of the Seller in and to the

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

ON READING the Notice of Motion of the Applicants, the Affidavit of Stephen Champion sworn on [REDACTED], 2017 including the exhibits thereto (the "Champion Affidavit"), and the [REDACTED] Report of FTI Consulting Canada Inc., in its capacity as Monitor (the "Monitor"), filed, and on hearing the submissions of respective counsel for the Applicants, the Monitor, the Purchaser, the DIP ABL Agent, the DIP Term Agent and such other counsel as were present, no one else appearing although duly served as appears from the Affidavit of Service of [REDACTED] sworn [REDACTED], 2017, filed:

SERVICE AND DEFINITIONS

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

APPROVAL OF THE APA

3. THIS COURT ORDERS AND DECLARES that the entering into of the Transaction by the Seller is hereby approved and ratified and that the execution of the APA by the Seller is hereby authorized, approved and ratified with such minor amendments as the Seller (with the consent of the Monitor after consultation with the DIP Lenders) and the Purchaser may agree to in writing. The Seller is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser and the Monitor shall be authorized to take such additional steps in furtherance of its responsibilities under the APA and this Order, and shall not incur any liability as a result thereof.
4. THIS COURT ORDERS AND DECLARES that upon the delivery of a Monitor's certificate to the Purchaser substantially in the form attached as Schedule "A" hereto (the "Monitor's Certificate"), all of the Seller's right, title and interest in and to the Purchased Assets

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

- (a) the Administration Charge, the FA Charge, the KERP Priority Charge, the Directors' Priority Charge, the DIP ABL Lenders' Charge, the DIP Term Lenders' Charge, the KERP Subordinated Charge and the Directors' Subordinated Charge (as such terms are defined in the Initial Order) and any other charges hereafter granted by this Court in these proceedings (collectively, the "CCAA Charges"); and
- (b) all charges, security interests or claims evidenced by registrations pursuant to any personal property registry system;

(all of which are collectively referred to as the "Encumbrances", which term shall not include the Permitted Encumbrances listed on Schedule "B" hereto), and, for greater certainty, this Court orders that all of the Claims and Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

5. THIS COURT ORDERS that from and after the delivery of the Monitor's Certificate, all Claims and Encumbrances shall attach to the net proceeds from the Transaction (the "Net Proceeds"), with the same priority as they had with respect to the Purchased Assets immediately prior to the Closing Date of the Transaction, as if the Transaction had not been completed.

6. THIS COURT ORDERS that, to the extent that obligations remain owing by the Applicants under the DIP ABL Credit Agreement and/or the DIP Term Credit Agreement, the Monitor be and is hereby authorized and directed to distribute, on behalf of the Applicants, on the day of filing the Monitor's Certificate or as soon as practicable thereafter, the Net Proceeds, in partial repayment of amounts then owing by the Applicants under the DIP ABL Credit Agreement or the DIP Term Credit Agreement, as applicable, in such amounts as agreed to by

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the DIP ABL Agent and DIP Term Agent, as applicable, or if no such applicable agreement can be reached, on further Order of the Court (a "Distribution").

7. THIS COURT ORDERS that any Distribution made pursuant to this Order shall be and shall be deemed to be made free and clear of all Claims and Encumbrances.

8. THIS COURT ORDERS that, notwithstanding:

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

the distribution permitted by paragraph 6 above shall be binding on any trustee in bankruptcy or receiver that may be appointed in respect of any of the Applicants and shall not be void or voidable by creditors of any of the Applicants, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

9. THIS COURT ORDERS that, if all obligations of the Applicants under the DIP ABL Credit Agreement or the DIP Term Credit Agreement have been satisfied in full the Monitor shall be entitled to retain the Net Proceeds or any remaining portion thereof on behalf of the Applicants to be dealt with by further Order of the Court.

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

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11. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Seller or the Monitor is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Seller's records pertaining to the Employees (as defined in the APA), including personal information of those Employees. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Seller.

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

- (a) the rights and obligations of Sears Canada Inc. ("Sears Canada") and a contractual joint venture comprised of Gordon Brothers Canada ULC, Merchant Retail Solutions ULC, Tiger Capital Group, LLC and GA Retail Canada ULC (the "Agent") under the Amended and Restated Agency Agreement between Sears Canada and the Agent dated July 12, 2017 and amended and restated on July 14, 2017;
- (b) the rights and obligations of Sears Canada and the Agent under the Amended and Restated Consulting Agreement between Sears Canada and the Agent dated July 12, 2017 and amended and restated on July 14, 2017; and
- (c) the terms of the Liquidation Sale Approval Order granted July 18, 2017 including the Sale Guidelines attached as Schedule "A" thereto.

SEALING

13. THIS COURT ORDERS ● Report of the Monitor
shall be and is hereby sealed, kept confidential and shall not form part of the public record pending further Order of this Court.

GENERAL PROVISIONS

14. THIS COURT ORDERS that, notwithstanding:

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

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

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

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

SCHEDULE "A"

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

ONTARIO

SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

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

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

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

MONITOR'S CERTIFICATE

RECITALS

A. All undefined terms in this Monitor's Certificate have the meanings ascribed to them in the Order of the Court dated [REDACTED], 2017 (the "Approval and Vesting Order") approving the Asset Purchase Agreement between S.L.H. Transport Inc. (the "Seller"), as vendor, and 8507597 Canada Inc. (the "Purchaser"), as purchaser, dated September 9, 2017 (the "APA"), a copy of which is attached as Exhibit [REDACTED] to the Affidavit of Stephen Champion dated [REDACTED], 2017.

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

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

THE MONITOR CERTIFIES the following:

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

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

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

By: _____
Name:
Title:

SCHEDULE "B"**PERMITTED ENCUMBRANCES**

"Permitted Encumbrances" means, collectively, (a) any Encumbrances resulting from the Buyer's actions or omissions; and (b) all Security/Registrations in favour of ARI Financial Services Inc. in respect of the Assumed Contracts.

§0523818.2

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

Applicants

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

**AFFIDAVIT OF BILLY WONG
(Motion for Approval of Asset Purchase Agreement
with S.L.H. Transport Inc. / Transports S.L.H. Inc.)**

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