

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

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF SEARS CANADA INC., 9370-2751 QUEBEC INC.,  
191020 CANADA INC., THE CUT INC., SEARS CONTACT SERVICES INC.,  
INITIUM LOGISTICS SERVICES INC., 9845488 CANADA 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.

**MOTION RECORD  
OF EMPLOYEE REPRESENTATIVE COUNSEL  
(Returnable March 18, 2019  
Motion for Directions)**

March 12, 2018

**URSEL PHILLIPS FELLOWS HOPKINSON LLP**  
555 Richmond Street West, Suite 1200  
Toronto ON M5V 3B1

**Susan Ursel (LSO# 26024G)**  
Tel: (416) 969-3515  
Fax: (416) 968-0325  
sursel@upfhlaw.ca

**Kathryn O'Rourke (LSO# 66420K)**  
Tel: (416) 969-3507  
Fax: (416) 968-0325  
korourke@upfhlaw.ca

Employee Representative Counsel

**TO: THE SERVICE LIST**

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

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF SEARS CANADA INC., 9370-2751 QUEBEC INC., 191020  
CANADA INC., THE CUT INC., SEARS CONTACT SERVICES INC., INITIUM  
LOGISTICS SERVICES INC., 9845488 CANADA 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.

**MOTION RECORD  
OF EMPLOYEE REPRESENTATIVE COUNSEL  
(Returnable March 18, 2019)**

**TABLE OF CONTENTS**

<b>TAB</b>	<b>DESCRIPTION</b>	<b>PAGE NOS.</b>
<b>1.</b>	Notice of Motion dated March 12, 2019	<b>1</b>
<b>2.</b>	Affidavit of Kathryn O'Rourke dated March 12, 2018	<b>8</b>
<b>A</b>	Initial Order dated June 22, 2017	<b>16</b>
<b>B</b>	Employee Representative Counsel Order dated July 13, 2017	<b>45</b>
<b>C</b>	Group Insurance Policy, Basic and Optional (83160-Life)	<b>61</b>
<b>D</b>	Group Insurance Policy, (83160-Flex)	<b>84</b>
<b>E</b>	Sears Benefits Program Guide	<b>110</b>
<b>F</b>	Financial Letter of Agreement dated January 1, 2016	<b>126</b>
<b>G</b>	Proof of Claim Form dated April 9, 2018	<b>142</b>
<b>H</b>	Notice of Disallowance dated July 30, 2018	<b>154</b>
<b>I</b>	Notice of Dispute dated August 29, 2018	<b>158</b>
<b>J</b>	Twenty-Ninth Report of the Monitor with Appendix "A"	<b>173</b>

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

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF SEARS CANADA INC., 9370-2751 QUEBEC INC.,  
191020 CANADA INC., THE CUT INC., SEARS CONTACT SERVICES INC.,  
INITIUM LOGISTICS SERVICES INC., 9845488 CANADA 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.

(the "**Applicants**")

**NOTICE OF MOTION  
(Directions re. Life Insurance Surplus Claim)  
(Returnable March 18, 2019)**

Ursel Phillips Fellows Hopkinson LLP, in its capacity as representative counsel ("**Employee Representative Counsel**") to certain non-unionized active and former employees of Sears Canada Inc. and its affiliates (together, the "**Sears Canada Entities**") in their proceeding (the "**CCAA Proceeding**") under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") will bring a motion before a Judge of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") on March 18, 2019, at 10:00 a.m. or as soon thereafter as the matter may 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 for directions under the Financial Letter of Agreement (“**FLA**”) between Sears Canada and Sun Life, both defined below, with respect to Employee Representative Counsel’s claim to an approximately eight-hundred and fifty thousand dollar (\$850,000) surplus available for refund pursuant to the termination of insurance coverage for employees of Sears Canada Inc. and certain of its subsidiaries (specifically S.L.H. Transport Inc., now 191020 Canada Inc., and Sears Contact Services Inc.) (collectively referred to herein as “**Sears Canada**”) provided by Sun Life Assurance Company of Canada (“**Sun Life**”).
2. An order abridging the time for and validating service of this motion and dispensing with further service thereof.
3. Such further and other relief as counsel may request and this Court may deem just.

**THE GROUNDS FOR THE MOTION ARE:**

*Background*

1. The Sears Canada Entities were granted protection from their creditors under the CCAA pursuant to the Initial Order of this Court dated June 22, 2017 (as amended and restated, the “**Initial Order**”).
2. FTI Consulting Canada Inc. was appointed in the Initial Order to act as the Monitor in these CCAA proceedings (the “**Monitor**”).
3. On July 13, 2017, the Court approved an order (the “**Employee Representative Counsel Order**”) appointing Employee Representative Counsel to represent the interests of the non-

unionized Active Employees and Former Employees of the Sears Canada Entities, as each such term is defined in the Employee Representative Counsel Order (the “**Employees**”). The Employee Representative Counsel Order also appointed five individuals as representatives of the Employees to act in the overall best interests of the Employees, and to advise and where appropriate instruct Employee Representative Counsel (the “**Employee Representatives**”).

### *Life Insurance Surplus*

4. Employee Representative Counsel was advised on September 12, 2017 by counsel to the Sears Canada Entities that one of the benefits that had been available to Employees during their employment was life insurance coverage. The life insurance coverage was an insured benefit provided through Sun Life under a life insurance policy.

5. The life insurance coverage had several components: i) a “basic” life insurance component for which, in general, Sears Canada paid the premiums; and ii) Optional Life, Optional Spousal Life and Optional Child Life coverage (“**Optional Insurance**”), for which participating Employees paid the premiums. Of the annual life insurance premiums paid to Sun Life under these policies, up to 80% were paid by the participating Employees under the Optional Insurance policies.

6. Sears Canada entered into an FLA with Sun Life under which each year a calculation was performed taking the premium payments received by Sun Life and deducting Insured Claims, Retention Charges and Commissions and taking into account Net Interest (all capitalized words are defined in the FLA). Any surplus left after this calculation was transferred either to the Claims Fluctuation Reserve (“**CFR**”) or, if not necessary to maintain the CFR’s funding level, to a deposit fund (“**Deposit Fund**”), both of which were maintained by Sun Life.

7. Over the last few years, there have been consistent transfers into the Deposit Fund. As of today's date, the balance in the Deposit Fund is \$854,565.50 (the "**Surplus**").

8. In September 2017, Employee Representative Counsel exchanged correspondence and legal support with counsel to the Sears Canada Entities and the Monitor regarding whether the Surplus ought to be returned to the estate of the Sears Canada Entities or distributed to the Employees that contributed to the Surplus.

9. Employee Representative Counsel, the Sears Canada Entities and the Monitor could not agree to whom the Surplus ought to be returned and agreed to defer resolution of the matter until after the liquidation of the remainder of the Sears Canada Entities' assets and the implementation of a claims process.

#### ***Life Insurance Surplus Claim***

10. On February 22, 2018, the Court issued an Employee and Retiree Claims Procedure Order (the "**E&R Claims Procedure Order**") approving a process for the identification, determination and adjudication of claims of employees and retirees of the Sears Canada Entities.

11. On April 9, 2018, Employee Representative Counsel filed a Proof of Claim Form pursuant to the E&R Claims Procedure Order submitting that Sears Canada ought to surrender that percentage of the Surplus that corresponds to the percentage of premiums paid by Employees and that portion of the Surplus ought to be distributed to participating Employees on a *pro rata* basis (the "**Surplus Claim**"), consistent with the case law in similar situations, the principles of equity, and Sears Canada's fiduciary obligations.

12. On July 30, 2018, the Monitor issued a Notice of Disallowance.

13. On August 29, 2018, Employee Representative Counsel filed a Notice of Dispute.

14. The Surplus Claim remains an Unresolved Claim as defined in the proposed joint plan of compromise and arrangement (the “**Plan**”) filed with the Court on February 6, 2019. Employee Representative Counsel maintains that the Surplus Claim ought to be allowed as a restructuring period claim.

15. Employee Representative Counsel seeks the Court’s direction regarding the resolution of the Surplus Claim.

16. The Court has broad inherent and equitable jurisdiction to provide the directions sought. The court’s residual source of powers may be drawn upon as necessary whenever it is just and equitable to do so, in particular, to do justice between the parties.

17. Section 11 of the *Companies’ Creditors Arrangement Act*, R.S.C 1985, c. C-36 (as amended).

18. Rule 37 of the *Rules of Civil Procedure*, RRO 1990, Reg. 194.

19. Section 96 of the *Courts of Justice Act*, RSO 1990, c. C-43.

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

1. Affidavit of Kathryn O’Rourke, affirmed March 12, 2019;
2. Such further and other material as counsel may advise and this Honourable Court deems just.

March 12, 2019

**URSEL PHILLIPS FELLOWS  
HOPKINSON LLP**  
555 Richmond Street West, Suite 1200  
Toronto ON M5V 3B1

**Susan Ursel (LSO# 26024G)**  
Tel: (416) 969-3515  
Fax: (416) 968-0325  
sursel@upfhlaw.ca

**Kathryn O'Rourke (LSO# 66420K)**  
Tel: (416) 969-3507  
Fax: (416) 968-0325  
korourke@upfhlaw.ca

Employee Representative Counsel

**TO: THE SERVICE LIST**



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

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SEARS CANADA  
INC., ET AL.

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

Proceeding commenced at TORONTO

**NOTICE OF MOTION  
EMPLOYEE REPRESENTATIVE COUNSEL  
(returnable March 18, 2019)**

**Ursel Phillips Fellows Hopkinson LLP**  
555 Richmond St. W., Suite 1200  
Toronto, Ontario M5V 3B1

**Susan Ursel (LSO# 26024G)**  
Tel: (416) 969-3515  
Fax: (416) 968-0325  
sursel@upflaw.ca

**Kathryn O'Rourke (LSO# 66420K)**  
Tel: (416) 969-3507  
Fax: (416) 968-0325  
korourke@upflaw.ca

Employee Representative Counsel

**Tab 2**

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

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF SEARS CANADA INC., 9370-2751 QUEBEC INC.,  
191020 CANADA INC., THE CUT INC., SEARS CONTACT SERVICES INC.,  
INITIUM LOGISTICS SERVICES INC., 9845488 CANADA 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.

(the “Applicants”)

I, Kathryn O’Rourke, of the City of Toronto, in the Province of Ontario, MAKE OATH  
AND SAY:

1. I am an Associate at Ursel Phillips Fellows Hopkinson LLP, Employee Representative Counsel in the above-captioned matter. As such, I have personal knowledge of the matters to which I herein depose, or where my knowledge is based upon information and belief, I refer to the source of that information, and believe it to be true.

2. This Affidavit is affirmed in support of a motion by the representative counsel to the court-appointed representatives of the non-unionized active and former employees of the Applicants (“**Employee Representative Counsel**”) seeking directions with respect to Employee Representative Counsel’s claim to an approximately eight-hundred and fifty thousand dollar (\$800,000) surplus available for refund following the termination of insurance coverage.

### ***Background***

3. Sears Canada Inc. and its affiliates (the “**Sears Canada Entities**”) were granted protection from their creditors under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) pursuant to the Initial Order of this Court dated June 22, 2017 (as amended and restated, the “**Initial Order**”). A copy of the Initial Order is attached hereto as **Exhibit “A”**.

4. FTI Consulting Canada Inc. was appointed in the Initial Order to act as the Monitor in these CCAA proceedings (the “**Monitor**”).

5. On July 13, 2017, the Court approved an order (the “**Employee Representative Counsel Order**”) appointing Employee Representative Counsel to represent the interests of the non-unionized Active Employees and Former Employees of the Sears Canada Entities, as each such term is defined in the Employee Representative Counsel Order (referred to herein as the “**Employees**”). A copy of the Employee Representative Counsel Order is attached hereto as **Exhibit “B”**. The Employee Representative Counsel Order also appointed five individuals as representatives of the Employees to act in the overall best interests of the Employees, and to advise and where appropriate instruct Employee Representative Counsel (the “**Employee Representatives**”).

### ***Life Insurance Surplus***

6. Employee Representative Counsel was advised on September 12, 2017 by counsel to the Sears Canada Entities that one of the benefits available to Employees of Sears Canada Inc. and certain of its subsidiaries (specifically S.L.H. Transport Inc., now 191020 Canada Inc., and Sears Contact Services Inc.) (collectively referred to herein as “**Sears Canada**”) during their

employment with Sears Canada was life insurance coverage. The life insurance coverage was an insured benefit provided through Sun Life Assurance Company of Canada (“**Sun Life**”) under group life insurance policies. Copies of the group policies are attached as **Exhibit “C”** and **Exhibit “D”** hereto. Also attached as **Exhibit “E”** is a benefits guide provided by Sears Canada to Employees to explain the insured benefits available, including life insurance coverage.

7. The life insurance coverage had several components: i) a “basic” life insurance component for which, in general, Sears Canada paid the premiums; and ii) Optional Life, Optional Spousal Life and Optional Child Life coverage (“**Optional Insurance**”), for which participating Employees paid the premiums. According to counsel to the Sears Canada Entities, Sven Poysa, of the annual life insurance premiums paid to Sun Life under these policies, up to 80% were paid by the participating Employees.

8. Sears Canada entered into a Financial Letter of Agreement (“**FLA**”) with Sun Life under which each year a surplus/deficit calculation was performed taking the premium payments received by Sun Life and deducting Insured Claims, Retention Charges and Commissions and taking into account Net Interest (all capitalized words defined in the FLA). A copy of the FLA is attached hereto as **Exhibit “F”**.

9. Any surplus left after this calculation was transferred to either the Claims Fluctuation Reserve (“**CFR**”) or a deposit fund (“**Deposit Fund**”), both of which were maintained by Sun Life.

10. The CFR assisted in stabilizing rate fluctuations from adverse claims experienced from year to year. The FLA required Sears Canada to fund the CFR, which was to be kept at a target level of 25% of the annualized premiums. If the surplus/deficit calculation resulted in a surplus,

the portion of the yearly surplus that was not required to reduce any “Accumulated Deficit” was transferred to the CFR until the CFR balance reached the target level. The Deposit Fund was funded by the portion of the yearly surplus not required to bring the CFR to target level. The Deposit Fund operated as a “float” which Sears Canada could use to fund any deficit that accumulated as a result of the number and quantum of claims.

11. Over the last few years, there have been consistent transfers into the Deposit Fund. As of today’s date, the balance in the Deposit Fund is \$854,565.50 (the “**Surplus**”).

12. In September 2017, Employee Representative Counsel exchanged correspondence and legal support with counsel to the Sears Canada Entities and the Monitor regarding whether the Surplus ought to be returned to the estate of the Sears Canada Entities or distributed to the Employees that contributed to the Surplus.

13. Employee Representative Counsel, the Sears Canada Entities and the Monitor could not agree to whom the Surplus ought to be returned and agreed to defer resolution of the matter until after the liquidation of the remainder of the Sears Canada Entities’ assets and the implementation of a claims process.

***Life Insurance Surplus Claim***

14. On February 22, 2018, the Court issued an Employee and Retiree Claims Procedure Order (the “**E&R Claims Procedure Order**”) approving a process for the identification, determination and adjudication of claims of employees and retirees of the Sears Canada Entities.

15. On April 9, 2018, Employee Representative Counsel filed a Proof of Claim Form pursuant to the E&R Claims Procedure Order submitting that Sears Canada ought to surrender that percentage of the Surplus that corresponds to the percentage of premiums paid by

Employees and that portion of the Surplus ought to be distributed to participating Employees on a *pro rata* basis (the “**Surplus Claim**”), consistent with the case law in similar situations, the principles of equity, and Sears Canada’s fiduciary obligations. A copy of the Proof of Claim Form is attached hereto as **Exhibit “G”**.

16. On July 30, 2018, the Monitor issued a Notice of Disallowance. A copy of the Notice of Disallowance is attached hereto as **Exhibit “H”**.

17. On August 29, 2018, Employee Representative Counsel filed a Notice of Dispute. A copy of the Notice of Dispute is attached hereto as **Exhibit “I”**.

18. The Sears Canada Entities and the Monitor take the position the Surplus does not belong to the Employees, including because an employee who participates in a group insurance policy and pays a premium is entitled only to protection against the insured risk and not a return of premium and because the FLA is an agreement between Sun Life and Sears Canada and the Surplus arose as a result of a formula set out in the FLA.

19. Employee Representative Counsel maintains that the Surplus Claim ought to be allowed as a restructuring period claim and distributed to participating Employees on a *pro rata* basis.

20. The Surplus Claim remains an Unresolved Claim as defined in the proposed joint plan of compromise and arrangement (the “**Plan**”) filed with the Court on February 6, 2019. A copy of the Twenty-Ninth Report of the Monitor including the proposed Plan attached at Appendix “A” is attached hereto as **Exhibit “J”**.

21. Employee Representative Counsel consulted with the Monitor on how best to resolve the Surplus Claim. Given both the prior discussions between the parties regarding the Surplus Claim and the scheduled motion to be brought by Employee Representative Counsel regarding an

amendment to the Employee Hardship Fund Order, the parties agreed to schedule the two matters together in order ensure the efficient use of estate resources.

***Sears Canada was agent of the Employees when acting as conduit for premiums paid to Sun Life***

22. Employees had the choice to select Optional Insurance coverage through Sears Canada's Sun Life insurance policy. These Optional Insurance policies were funded solely by the Employees who opted to purchase this additional insurance coverage directly from their own wages, salaries, or other available income.

23. Sears Canada was the Employees' agent by acting as a conduit to provide the Optional Insurance premiums to Sun Life. Employees entrusted their money, which could have otherwise been spent on separate life insurance coverage, to Sears Canada and authorized Sears Canada to act on their behalf.

24. The return of this money to the Sears Canada Entities' estate would violate the agent-principal relationship.

***The FLA does not override principles of equity and Sears Canada's fiduciary duty to its employees***

25. Under the FLA, the benefits are insured on a refund accounting basis. The refund financial accounting is a surplus/deficit calculation: premiums paid less any incurred claims less retention charges less commissions plus net interest (which equals the surplus or deficit).

26. The relevant portions of the FLA are as follows:



## **7.1 Allocation of Surpluses**

### **Basic Life – Policy 83160**

Any Financial Accounting period Surplus (plus the premium tax credit, as defined in section 7.5) is first used to reduce any deficits carried forward from the prior Financial Accounting period (Accumulated Deficit), plus interest and premium tax charge. Any remaining Surplus is transferred to the [Claims Fluctuation Reserve, “CFR”] in accordance with section 7.3. The portion of the Surplus (plus the premium tax credit) not required to bring the CFR to its target level is transferred to the Deposit Fund in accordance with section 7.4.

### **7.3 Claims Fluctuation Reserve – Policy 83160**

Sun Life requires that the Contract Holder fund a CFR. The portion of the Surplus (plus the premium tax credit) not required to reduce an Accumulated Deficit (plus interest and the premium tax charge) is transferred to the CFR until the CFR balance attains the target level of 25% of annualized Premium.

### **7.4 Deposit Fund**

Sun Life maintains a Deposit Fund that is funded by the portion of the Surplus (plus the premium tax credit) not required to bring the CFR to its target level. The Deposit Fund is owned by the Contract Holder who has sole authorization to request that a portion or the entire balance in the Deposit Fund be withdrawn.

## **8.2 Allocation of Surpluses and Recovery of Deficits at Termination**

Any Terminal Accounting period Surplus (plus the premium tax credit) is first used to reduce the Accumulated Deficit (plus interest and premium tax charge). Any remaining Surplus, plus the amount in the CFR, is transferred to the Deposit Fund.

The Terminal Accounting period Deficit added to the Accumulated Deficit (plus interest and premium tax charge) is first reduced by any amounts available in the CFR. Transfers from the CFR to offset a deficit will include a premium tax charge. The remaining amount in the CFR, if any, is transferred to the Deposit Fund. The remaining Deficit, if any, constitutes the Accumulated Deficit at termination.

The Contract Holder is required to pay to Sun Life the Accumulated Deficit at termination (plus interest and applicable taxes) within 30 days of the Contract Holder having received the Terminal Accounting. Interest is charged on the Accumulated Deficit at termination at the Deficit interest rate from the Termination Date to the date that payment is received by Sun Life.

The entire balance in the Deposit Fund must be withdrawn within 120 days of the Contract Holder having received the Terminal Accounting failing which Sun Life will issue a cheque payable to the Contract Holder.

27. Although the FLA states that Sears Canada owns the Deposit Fund, that does not negate the fact that Sears Canada has a fiduciary duty to act in the best interests of Employees who participated in the policy. A constructive trust is imposed on the portion of the Optional Insurance paid for by the participating Employees.

***The Surplus Claim is a restructuring period claim***

28. The termination of the insurance coverage arose after the filing date in these proceedings, June 22, 2017 (the “**Filing Date**”). Therefore a claim only arose after the Filing Date and the Surplus Claim ought to be treated as a restructuring period claim.

29. In addition, any Employee participating in the Sun Life basic or optional life insurance policy had to find alternative coverage after the termination of the policy through Sears Canada, the Surplus Claim ought to be characterized as a restructuring period claim.


***Conclusion***

30. Employee Representative Counsel is requesting the assistance of the Court to provide directions regarding how to determine and dispose of the Surplus Claim.

31. I affirm this affidavit in support of Employee Representative Counsel’s motion for directions regarding the Surplus Claim and for no other or improper purpose.

AFFIRMED BEFORE ME at the City of  
Toronto, on March 12, 2019

 68844K  
A Commissioner for taking Affidavits (or as may  
be)

  
Kathryn O'Rourke

**Tab A**

Exhibit "A" to the  
Affidavit of Kathryn O'Rourke  
sworn March 12, 2019

A handwritten signature in black ink, appearing to read "Alay O'Rourke", with the number "688441K" written to the right of the signature.

---

*A commissioner of oaths, etc.*

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

THE HONOURABLE MR. ) THURSDAY, THE 22<sup>ND</sup>  
 )  
JUSTICE HAINEY ) DAY OF JUNE, 2017  
 )



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

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

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

**INITIAL ORDER**

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

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

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

#### **SERVICE**

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

#### **APPLICATION**

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

#### **PLAN OF ARRANGEMENT**

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

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

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

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

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

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

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



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

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

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

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

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

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

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

#### **RESTRUCTURING**

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

- (a) permanently or temporarily cease, downsize or shut down any of their Business or operations, and to dispose of redundant or non-material assets not exceeding \$2 million in any one transaction or \$5 million in the aggregate in any series of related transactions, provided that, with respect to leased premises, the Sears Canada Entities may, subject to the requirements of the CCAA and paragraphs 11 to 13 herein, vacate, abandon or quit the whole (but not part of) and may permanently (but not temporarily) cease, downsize or shut down any of their Business or operations in respect of any leased premises;
- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as the relevant Sears Canada Entity deems appropriate; and
- (c) pursue all avenues of refinancing, restructuring, selling and reorganizing the Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing, restructuring, sale or reorganization,

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

#### **REAL PROPERTY LEASES**

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

12. **THIS COURT ORDERS** that the Sears Canada Entities shall provide each of the relevant landlords with notice of the relevant Sears Canada Entity's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the entitlement of a Sears Canada Entity to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the relevant Sears Canada Entity, or by further Order of this Court upon application by the Sears Canada Entities on at least two (2) days' notice to such landlord and any such secured creditors. If any of the Sears Canada Entities disclaims or resiliates the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer or resiliation of the lease shall be without prejudice to the relevant Sears Canada Entity's claim to the fixtures in dispute.

13. **THIS COURT ORDERS** that if a notice of disclaimer or resiliation is delivered pursuant to Section 32 of the CCAA by any of the Sears Canada Entities, then: (a) during the notice period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the relevant Sears Canada Entity and the Monitor 24 hours' prior written notice; and (b) at the effective time of the disclaimer or resiliation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the relevant Sears Canada Entity in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

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

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

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

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

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

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

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

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

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

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

#### **CONTINUATION OF SERVICES**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

#### **APPOINTMENT OF MONITOR**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **DIP FINANCING**

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

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

39. **THIS COURT ORDERS** that the DIP Facilities shall be on the terms and subject to the conditions set forth in the DIP ABL Credit Agreement, the DIP Term Credit Agreement and the other Definitive Documents.

40. **THIS COURT ORDERS** that the Sears Canada Entities are hereby authorized and empowered to execute and deliver the DIP ABL Credit Agreement, the DIP Term Credit Agreement and such mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, and including any schedules (as amended and updated from time to time) thereto, the “**Definitive Documents**”), as are contemplated by the DIP ABL Credit Agreement and the DIP Term Credit Agreement or as may be reasonably required by the DIP ABL Agent on behalf of the DIP ABL Lenders and the DIP Term Agent on behalf of the DIP Term Lenders pursuant to the terms thereof, as applicable, and the Sears Canada Entities are hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP ABL Agent, the DIP ABL Lenders, the DIP Term Agent and the DIP Term Lenders under and pursuant to the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

41. **THIS COURT ORDERS** that the DIP ABL Agent and the DIP ABL Lenders shall be entitled to the benefit of and are hereby granted a charge (the “**DIP ABL Lenders’ Charge**”) on the Property as security for any and all Obligations (as defined in the DIP ABL Credit Agreement) other than the Prepetition Obligations (as defined in the DIP ABL Credit Agreement) (including on account of principal, interest, fees, expenses and other liabilities, and the aggregate of all such obligations, the “**DIP ABL Obligations**”), which DIP ABL Lenders’ Charge shall be in the aggregate amount of the DIP ABL Obligations outstanding at any given time under the DIP ABL Credit Agreement. The DIP ABL Lenders’ Charge shall not secure an obligation that exists before this Order is made. The DIP ABL Lenders’ Charge shall have the priority set out in paragraphs 46, 47 and 49 hereof.

42. **THIS COURT ORDERS** that the DIP Term Agent and the DIP Term Lenders shall be entitled to the benefit of and are hereby granted a charge (the “**DIP Term Lenders’ Charge**”) on the Property as security for any and all Obligations (as defined in DIP Term Credit Agreement) (including on account of principal, interest, fees, expenses and other liabilities, and the aggregate of all such obligations, the “**DIP Term Obligations**”), which DIP Term Lenders’ Charge shall

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

48. **THIS COURT ORDERS** that the filing, registration or perfection of the Charges shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

49. **THIS COURT ORDERS** that each of the Charges shall constitute a charge on the Property, and such Charges shall rank in priority to all other security interests, trusts (including constructive trusts), liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (including without limitation any deemed trust that may be created under the Ontario *Pension Benefits Act*) (collectively, “**Encumbrances**”) other than (a) any Person with a properly perfected purchase money security interest under the *Personal Property Security Act* (Ontario) or such other applicable provincial legislation that has not been served with notice of this Order; and (b) statutory super-priority deemed trusts and liens for unpaid employee source deductions.

50. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Sears Canada Entities shall not grant any Encumbrances over any of the Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Sears Canada Entities also obtain the prior written consent of the Monitor, the DIP ABL Agent on behalf of the DIP ABL Lenders, the DIP Term Agent on behalf of the DIP Term Lenders and the other beneficiaries of affected Charges, or further Order of this Court.

51. **THIS COURT ORDERS** that the Charges, the DIP ABL Credit Agreement, the DIP Term Credit Agreement, and the other Definitive Documents shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the “**Chargees**”) thereunder shall not otherwise be limited or impaired in any way by: (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an “**Agreement**”) that binds the Sears Canada Entities, and notwithstanding any provision to the contrary in any Agreement:

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

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

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

#### **CORPORATE MATTERS**

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

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

#### **SERVICE AND NOTICE**

56. **THIS COURT ORDERS** that the Monitor shall: (a) without delay, publish in The Globe and Mail (National Edition) and La Presse a notice containing the information prescribed under the CCAA; and (b) within five days after the date of this Order, (i) make this Order publicly available in the manner prescribed under the CCAA, (ii) send or cause to be sent, in the prescribed manner, a notice to every known creditor who has a claim against the Sears Canada Entities of more than \$1,000 (excluding individual employees, former employees with pension and/or retirement savings plan entitlements, and retirees and other beneficiaries who have entitlements under any pension or retirement savings plans), and (iii) prepare a list showing the

names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder, provided that the Monitor shall not make the claims, names and addresses of the individuals who are creditors publicly available.

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

58. **THIS COURT ORDERS** that any employee of any of the Sears Canada Entities that receives a notice of termination from any of the Sears Canada Entities shall be deemed to have received such notice of termination by no more than the seventh day following the date such notice of termination is delivered, if such notice of termination is sent by ordinary mail, courier or registered mail.

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

60. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Sears Canada Entities and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the Sears Canada Entities’ creditors or other

interested parties at their respective addresses as last shown on the records of the Sears Canada Entities and that any such service or distribution by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

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

#### **COMEBACK MOTION**

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

#### **GENERAL**

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

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

65. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Sears Canada Entities, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to

the Sears Canada Entities and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Sears Canada Entities and the Monitor and their respective agents in carrying out the terms of this Order.

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

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

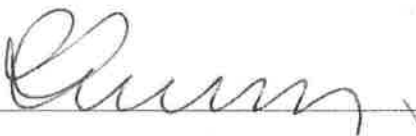
68. **THIS COURT ORDERS** that Confidential Appendix B and Confidential Appendix C to the Pre-Filing Report shall be and are hereby sealed, kept confidential and shall not form part of the public record pending further Order of this Court.

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

ENTERED AT / INSCRIT À TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO:

JUN 22 2017

PER / PAR: 



C. Irwin  
Registrar

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. (collectively, the "Applicants")

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

Proceeding commenced at Toronto

**INITIAL ORDER**

**OSLER, HOSKIN & HARCOURT LLP**  
Box 50, 1 First Canadian Place  
Toronto, Canada M5X 1B8

Marc Wasserman (LSUC #: 44066M)  
Tel: 416.862.4908

Jeremy Dacks (LSUC #: 41851R)  
Tel: 416.862.4923


Michael De Lellis (LSUC #: 48038U)  
Tel: 416.862.5997

Lawyers for the Applicants



**Tab B**

Exhibit "B" to the  
Affidavit of Kathryn O'Rourke  
sworn March 12, 2019

A handwritten signature in black ink, appearing to read "Alcy" followed by the number "68844K". The signature is written over a horizontal line.

*A commissioner of oaths, etc.*

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



THE HONOURABLE MR.  
JUSTICE HAINEY

)  
)  
)

THURSDAY, THE 13<sup>TH</sup>  
DAY OF JULY, 2017

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

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

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

**EMPLOYEE REPRESENTATIVE COUNSEL ORDER**

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

**ON READING** the affidavit of Billy Wong sworn June 22, 2017, and the Exhibits  
attached thereto (collectively, the "**Wong Affidavit**"), the pre-filing report dated June 22, 2017  
of FTI Consulting Canada Inc., in its capacity as the proposed Monitor of the Applicants, and the  
affidavit of Ashley Schuitema sworn July 12, 2017, and on hearing the submissions of counsel  
for the Applicants and SearsConnect (the "**Partnership**", and collectively with the Applicants,

the “**Sears Canada Entities**”), counsel to the Board of Directors of Sears Canada Inc. (“**SCI**”) and the Special Committee of the Board of Directors of SCI, counsel to the proposed Monitor, and on hearing from Employee Representative Counsel (as defined below), and those other parties present:

#### **APPOINTMENT OF REPRESENTATIVE COUNSEL**

1. **THIS COURT ORDERS** that Ursel Phillips Fellows Hopkinson LLP (the “**Employee Representative Counsel**”) is hereby appointed as employee representative counsel to represent the interests of the non-unionized Active Employees and Former Employees (each as defined below) of the Sears Canada Entities (collectively, the “**Employees**”) in these CCAA proceedings, other than with respect to (a) entitlements of Employees under the Sears Pension Plan and the Supplemental Plan (each as defined in the Wong Affidavit), and any other pension or retirement plan of the Sears Canada Entities; and (b) Employees’ other post-employment benefits entitlements (the “**Purpose**”). As used herein, “**Active Employees**” means all non-union employees of the Sears Canada Entities employed as of June 22, 2017, including such employees on authorized leaves of absence; “**Former Employees**” means all non-union employees of the Sears Canada Entities who (i) received notice of termination of employment dated June 22, 2017; or (ii) received notice of cessation of severance payments dated June 22, 2017; and “**Employees**” shall (x) exclude the senior management of the Sears Canada Entities; and (y) include any person claiming an interest under or on behalf of an Employee.

2. **THIS COURT ORDERS** that Paul Webber, Nancy Demeter, Sheena Wrigglesworth, Sara Sawyer and Barb Wilser (collectively, the “**Employee Representatives**”) are hereby appointed as representatives of all Employees (excluding the Opt-Out Individuals (as defined below), if any) in these CCAA proceedings, to act in the overall best interests of the Employees,

and to advise and where appropriate instruct the Employee Representative Counsel, in every case, solely for the Purpose. The Employee Representative Counsel may rely upon the advice, information and instructions received from the Employee Representatives in carrying out the mandate of the Employee Representative Counsel without further communications with or instructions from the Employees, except as may be recommended by the Employee Representative Counsel or ordered by this Court.

3. **THIS COURT ORDERS** that, with the exception of Opt-Out Individuals, (a) the Employee Representatives and the Employee Representative Counsel shall represent all Employees in these CCAA proceedings; (b) the Employees shall be bound by the actions of the Employee Representatives and the Employee Representative Counsel in these CCAA proceedings; and (c) the Employee Representatives shall be entitled, on the advice of counsel, to reach any settlement agreements, advocate on behalf of the Employees for the Purpose and compromise any rights, entitlements or claims of the Employees, subject to approval of this Court.

4. **THIS COURT ORDERS** that the Sears Canada Entities shall provide to the Employee Representative Counsel, subject to confidentiality arrangements satisfactory to the Sears Canada Entities and the Monitor, without charge, the following information, documents and data (the “**Information**”) to only be used for the Purpose in the context of these CCAA proceedings,

- (a) the names, last known addresses and last known telephone numbers and e-mail addresses (if any) of the Employees (excluding Opt-Out Individuals, if any, who have opted out prior to delivery of the Information); and
- (b) upon request of the Employee Representative Counsel, such documents and data as may be reasonably relevant to matters relating to the issues affecting the

Employees in these CCAA proceedings provided that such Information is to be only used for the Purpose;

and that, in so doing, the Sears Canada Entities are not required to obtain express consent from such Employees authorizing disclosure of the Information to the Employee Representative Counsel for the Purpose and, further, in accordance with section 7(3) of the *Personal Information Protection and Electronic Documents Act*, this Order shall be sufficient to authorize the disclosure of the Information for the Purpose, without the knowledge or consent of the individual Employees.

5. **THIS COURT ORDERS** that notice of the granting of this Order shall be provided by:
- (a) the Sears Canada Entities, with the assistance of the Monitor, delivering a letter from the Employee Representative Counsel explaining the terms of this Order, which shall include the Monitor's website address where a full copy of this Order can be reviewed, to be delivered forthwith to the Employees by ordinary mail to the physical address of each Employee as last shown in the books and records of the Sears Canada Entities, or by such other electronic means as is maintained by the Sears Canada Entities for the purposes of communicating directly with its non-unionized active and former employees, and further that a copy of this Order be posted on the Monitor's website; and
  - (b) the Sears Canada Entities, with the assistance of the Monitor, publishing (i) in *The Globe & Mail* (National Edition), an English notice substantially in the form attached as Schedule "A" hereto (the "**English Notice**") within 14 days of the date of this Order; and (ii) in *La Presse*, the English Notice and a French notice

substantially in the form attached as Schedule "B" hereto within 14 days of the date of this Order.

6. **THIS COURT ORDERS** that any individual Employee who does not wish to be represented by the Employee Representatives and the Employee Representative Council in these CCAA proceedings shall, within 30 days of the date of the letter pursuant to paragraph 5 above, notify the Monitor, in writing, that he or she is opting out of representation by the Employee Representatives and the Employee Representative Council by delivering to the Monitor an English or French opt-out notice in the form attached as Schedule "C" hereto (each an "**Opt-Out Notice**"), and shall thereafter not be bound by the actions of the Employee Representatives or the Employee Representative Council and shall represent himself or herself or be represented by any counsel that he or she may retain exclusively at his or her own expense in these CCAA proceedings (any such persons who deliver an Opt-Out Notice in compliance with the terms of this paragraph, "**Opt-Out Individuals**"). The Monitor shall deliver copies of all Opt-Out Notices received to the Sears Canada Entities and the Employee Representative Council as soon as reasonably practicable.

7. **THIS COURT ORDERS** that the Employee Representative Council shall be given notice of all motions to which the Employees are entitled to receive notice in these CCAA proceedings and that it shall be entitled to represent those on whose behalf it is hereby appointed in all such proceedings.

8. **THIS COURT ORDERS** that Employee Representative Council may retain such actuarial, financial and other advisors and assistants (collectively, the "**Advisors**") as may be reasonably necessary in connection with its duties as Employee Representative Council in relation to the Purpose.

9. **THIS COURT ORDERS** that, subject to the terms of the letter agreement between SCI and the Employee Representative Counsel dated as of June 22, 2017 (the “**Employee Representative Counsel Letter**”), which Employee Representative Counsel Letter has been approved by the Monitor, the Employee Representative Counsel shall be paid its reasonable fees and disbursements (including disbursements relating to Advisors retained by the Employee Representative Counsel) by the Sears Canada Entities on a monthly basis, forthwith upon rendering its accounts to the Sears Canada Entities for fulfilling its mandate in accordance with this Order, and subject to such redactions to the invoices as are necessary to maintain solicitor-client privilege between the Employee Representative Counsel and the Employees. In the event of any disagreement with respect to such fees and disbursements, such disagreement may be remitted to this Court for determination.

10. **THIS COURT ORDERS** that the Employee Representative Counsel shall be entitled to benefit of the Administration Charge (as defined in the Initial Order in these CCAA proceedings issued by the Court on June 22, 2017, as amended), as security for its professional fees and disbursements incurred at its standard rates and charges, up to an aggregate maximum amount of \$75,000.

11. **THIS COURT ORDERS** that the payments made by the Sears Canada Entities pursuant to this Order do not and will not constitute preferences, fraudulent conveyances, transfers of undervalue, oppressive conduct or other challengeable or voidable transactions under any applicable laws.

12. **THIS COURT ORDERS** that the Employee Representative Counsel is hereby authorized to take all steps and do all acts necessary or desirable to carry out the terms of this Order.



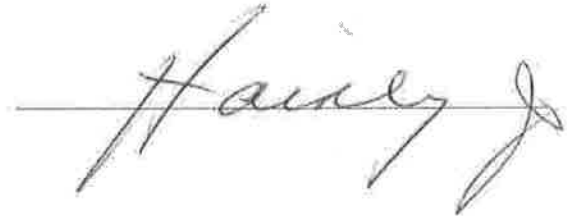
13. **THIS COURT ORDERS** that the Employee Representative Counsel shall be at liberty, and is hereby authorized, at any time, to apply to this Court for advice and directions in respect of its appointment or the fulfillment of its duties in carrying out the provisions of this Order or any variation of the powers and duties of the Employee Representative Counsel, which shall be brought on notice to the Sears Canada Entities, the Monitor, Wells Fargo Capital Finance Corporation Canada as administrative agent under the DIP Revolving Credit Agreement (as defined in the Wong Affidavit), GACP Finance Co., LLC as administrative agent under the DIP Term Credit Agreement (as defined in the Wong Affidavit), and other interested parties, unless this Court orders otherwise.

14. **THIS COURT ORDERS** that the Employee Representative Counsel and the Employee Representatives shall have no personal liability or obligations as a result of the performance of their duties in carrying out the provisions of this Order or any subsequent Orders in these CCAA proceedings, save and except for liability arising out of gross negligence or wilful misconduct.

15. **THIS COURT ORDERS** that no action or other proceeding may be commenced against the Employee Representative Counsel or the Employee Representatives in respect of the performance of their duties under this Order without leave of this Court on seven (7) days' notice to the Employee Representative Counsel or the Employee Representatives, as the case may be.

16. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the 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 and in case, any which motion to be served within three (3) weeks of the date of this order.

A handwritten signature in cursive script, appearing to read "Hainey J.", written over a horizontal line.

ENTERED AT / INSCRIT À TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO:

JUL 13 2017

PER / PAR:

Handwritten initials "PL" in cursive script.

## SCHEDULE "A"

### ENGLISH NEWSPAPER NOTICE

SEARS CANADA INC., CORBEIL ÉLECTRIQUE INC., S.L.H. TRANSPORT INC., THE CUT INC., SEARS CONTACT SERVICES INC., INITIUM LOGISTICS SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM TRADING AND SOURCING CORP., SEARS FLOOR COVERING CENTRES INC., 173470 CANADA INC., 2497089 ONTARIO INC., 6988741 CANADA INC., 10011711 CANADA INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA LTD., 4201531 CANADA INC., 168886 CANADA INC., AND 3339611 CANADA INC. (collectively referred to as the "Sears Canada Entities")

#### NOTICE TO CERTAIN NON-UNIONIZED ACTIVE AND FORMER EMPLOYEES

On June 22, 2017, the Sears Canada Entities commenced court-supervised restructuring proceedings under the Companies' Creditors Arrangement Act ("CCAA") pursuant to an Order (the "Initial Order") of the Ontario Superior Court of Justice (Commercial List) (the "Court"). FTI Consulting Canada Inc. has been appointed by the Court as monitor in the Applicants' CCAA proceedings (the "Monitor").

TAKE NOTICE THAT pursuant to an Order of the Court:

1. Ursel Phillips Fellows Hopkinson LLP ("Employee Representative Counsel") was appointed as employee representative counsel for the purpose of representing the interests of the non-unionized employees of the Sears Canada Entities who were employed as of June 22, 2017 (including those on authorized leaves of absence) and non-unionized former employees of the Sears Canada Entities who received notice of termination of employment dated June 22, 2017 or received notice of cessation of severance payments dated June 22, 2017 and of any person claiming an interest under or on behalf of such persons (collectively, the "Employees"), in relation to the CCAA proceedings or any other forum related to this purpose. Employee Representative Counsel represents the interests of the Employees other than with respect to their entitlements under the Sears Canada Inc. Registered Retirement Plan or any other pension or retirement plan provided by the Sears Canada Entities and of any individual with an entitlement to other post-employment benefits (including retiree health and dental benefits and retiree life insurance benefits). Employee Representative Counsel will also advise the representatives appointed by the Court (collectively, the "Employee Representatives") as representatives of all Employees.

For active employees, all regular inquiries about your ongoing employment should continue to be directed to you appropriate human resources representative.

2. For more information, visit the Employee Representative Counsel's website at [<http://www.upfhlaw.ca/areas-of-practice/sears-canada-employees-and-former-employees>]

IF YOU DO NOT WISH TO BE REPRESENTED by the Employee Representatives and the Employee Representative Counsel, you must, before ●, 2017, provide an Opt-Out Notice (a copy of which can be obtained from the Employee Representative Counsel's website) indicating that you wish to opt-out of such representation and send the completed Opt-Out Notice to:

FTI Consulting Canada Inc., in its capacity as Court-appointed Monitor of the Sears Canada Entities

TD Waterhouse Tower  
79 Wellington Street West  
Suite 2010, P.O. Box 104  
Toronto, ON, M4K 1G8  
Fax: 416-649-8101

Attention: Jim Robinson

Persons requiring further information should review the website established by the Monitor <http://cfcanda.fticonsulting.com/searscanada> or call the Monitor's Hotline at 1-855-649-8113.

## SCHEDULE "B"

### AVIS DANS LES JOURNAUX FRANÇAIS

SEARS CANADA INC., CORBEIL ÉLECTRIQUE INC., TRANSPORTS S.L.H. INC., THE CUT INC., SERVICES CLIENTÈLE SEARS INC., INITIUM LOGISTICS SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM TRADING AND SOURCING CORP., CENTRE DE REVÊTEMENTS DE SOL SEARS 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. ET 3339611 CANADA INC. (collectivement appelées les « entités Sears Canada »)

### AVIS À CERTAINS ANCIENS EMPLOYÉS ET EMPLOYÉS ACTIFS NON SYNDIQUÉS

Le 22 juin 2017, les entités Sears Canada ont amorcé un processus de restructuration supervisé par un tribunal en vertu de la *Loi sur les arrangements avec les créanciers des compagnies* (la « LACC ») aux termes d'une ordonnance (l'« ordonnance initiale ») de la Cour supérieure de justice de l'Ontario (rôle commercial) (la « Cour »). La Cour a nommé FTI Consulting Canada Inc. à titre de contrôleur aux fins de l'instance en vertu de la LACC intentée par les requérants (le « contrôleur »).

AVIS EST PAR LES PRÉSENTES DONNÉ qu'aux termes d'une ordonnance de la Cour :

1. Le cabinet Ursel Phillips Fellows Hopkinson LLP (les « conseillers juridiques des représentants des employés ») a été nommé à titre de conseiller juridique des employés dans le but de défendre les intérêts des employés non syndiqués des entités Sears Canada qui était à l'emploi de celles-ci en date du 22 juin 2017 (dont les employés en congé autorisé) et des anciens employés non syndiqués des entités Sears Canada qui ont reçu un avis de cessation d'emploi daté du 22 juin 2017 ou un avis de cessation lié à leur indemnité de départ daté du 22 juin 2017, ainsi que des personnes revendiquant un droit par l'intermédiaire de ces personnes ou pour celles-ci (collectivement, les « employés ») en lien avec l'instance en vertu de la LACC ou toute autre procédure portant sur cette question. Les conseillers juridiques des représentants des employés représentent les intérêts des employés, sauf en ce qui a trait à leurs droits aux termes du régime de retraite agréé de Sears Canada Inc. ou des autres régimes de retraite offerts par les entités Sears Canada, et des personnes physiques qui ont droit à d'autres avantages postérieurs à la retraite (dont l'assurance santé et dentaire et l'assurance-vie pour les retraités). Les conseillers juridiques des représentants des employés conseilleront aussi les représentants que la Cour a nommés (collectivement, les « représentants des employés ») en qualité de représentants de tous les employés.

Les employés actifs qui ont des questions courantes concernant leur emploi peuvent continuer à les adresser à leur représentant des ressources humaines.

2. Pour de plus amples renseignements, veuillez consulter le site Web des conseillers juridiques des représentants des employés à <http://www.upfhlaw.ca/areas-of-practice/sears-canada-employees-and-former-employees>.

SI VOUS NE SOUHAITEZ PAS ÊTRE REPRÉSENTÉ par les représentants des employés et les conseillers juridiques des représentants des employés, vous devez, avant le ● 2017, remettre un Avis de retrait (dont vous trouverez copie sur le site Web des conseillers juridiques des représentants des employés) sur lequel vous aurez indiqué que vous ne souhaitez pas être représenté, et faire parvenir cet Avis de retrait rempli à :

FTI Consulting Canada Inc., en sa qualité de contrôleur des entités Sears Canada nommé par la Cour  
TD Waterhouse Tower  
79 Wellington Street West  
Suite 2010, P.O. Box 104  
Toronto (Ontario) M4K 1G8  
Télec. : 416 649-8101

À l'attention de Jim Robinson

Les personnes qui souhaitent obtenir de plus amples renseignements devraient consulter le site Web que le contrôleur a créé à <http://cfcanada.fticonsulting.com/searscanada>, ou composer le 1 855 649-8113 pour obtenir la ligne d'aide du contrôleur.

**SCHEDULE "C"**

**FORM OF OPT-OUT NOTICE**

To: **FTI CONSULTING CANADA INC.**, in its capacity as Court-appointed Monitor of the Sears Canada Entities  
TD Waterhouse Tower  
79 Wellington Street West  
Suite 2010, P.O. Box 104  
Toronto, ON, M4K 1G8  
Fax: 416-649-8101

Attention: Jim Robinson

I hereby provide written notice that I do not wish to be represented by Ursel Phillips Fellows Hopkinson LLP, employee representative counsel (the "Employee Representative Counsel") for the Active Employees and the Former Employees of Sears Canada Inc. and certain of its subsidiaries (collectively, the "Sears Canada Entities") in their proceedings under the *Companies' Creditors Arrangement Act* (Court File No. CV-17-11846-00CL) (the "CCAA Proceedings"). I understand that by opting out of representation if I wish to take part in the CCAA Proceedings I would need to do so as an independent party. I am responsible for retaining my own legal counsel should I choose to do so, and that I would be personally liable for the costs of my own legal representation.

I understand that a copy of this Opt-Out Form will be provided to the Employee Representative Counsel and to the Sears Canada Entities.

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Signature

Name [please print]: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Telephone: \_\_\_\_\_

**Note: To opt out, this form must be completed and received at the above address on or before \_\_\_\_\_, 2017.**

ANNEXE "C"

AVIS DE RETRAIT

À : FTI CONSULTING CANADA INC., en sa qualité de contrôleur des entités  
Sears Canada nommé par la Cour  
TD Waterhouse Tower  
79 Wellington Street West  
Suite 2010, P.O. Box 104  
Toronto (Ontario) M4K 1G8  
Télec. : 416 649-8101

À l'attention de Jim Robinson

Par les présentes, je vous avise que je ne souhaite pas être représenté par le cabinet Ursel Phillips Fellows Hopkinson LLP, conseillers juridiques des représentants des employés (les « conseillers juridiques des représentants des employés ») qui représentent les employés actifs et les anciens employés de Sears Canada Inc. et de certaines de ses filiales (collectivement, les « entités Sears Canada ») dans le cadre l'instance intentée en vertu de la *Loi sur les arrangements avec les créanciers des compagnies* (n° de dossier de la Cour : CV-17-11846-00CL) (l'« instance en vertu de la LACC »). Je comprends que si je refuse d'être ainsi représenté et que je souhaite prendre part à l'instance en vertu de la LACC, je devrai le faire à titre indépendant. Je devrai alors, le cas échéant, retenir les services de mes propres conseillers juridiques, et je serai personnellement responsable des frais de ma propre représentation juridique.

Je comprends qu'une copie du présent avis de retrait sera remise aux conseillers juridiques des représentants des employés et aux entités Sears Canada.

Témoin

Signature

Nom [en caractères d'imprimerie] : \_\_\_\_\_

Adresse : \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Téléphone : \_\_\_\_\_

**Note : Pour refuser les services de représentation, le présent formulaire doit être rempli et reçu à l'adresse qui précède au plus tard le \_\_\_\_\_ 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. (collectively, the "Applicants")

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(Commercial List)

Proceeding commenced at Toronto

EMPLOYEE REPRESENTATIVE COUNSEL ORDER

OSLER, HOSKIN & HARCOURT LLP  
Box 50, 1 First Canadian Place  
Toronto, Canada M5X 1B8

Marc Wasserman (LSUC #: 44066M)  
Tel: 416.862.4908

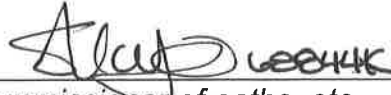
Jeremy Dacks (LSUC #: 41851R)  
Tel: 416.862.4923

Michael De Lellis (LSUC #: 48038U)  
Tel: 416.862.5997

Lawyers for the Applicants

# TAB C

Exhibit "C" to the  
Affidavit of Kathryn O'Rourke  
sworn March 12, 2019

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

*A commissioner of oaths, etc.*

# Amendment Agreement No. 13

Amendment to Group Policy **83160-Life**

Issued To

**Sears Canada Inc.**

This amendment is effective January 16, 2017.

We made the changes on the request for amendment.

Please file the attached replacing pages in the "Contract-Current" section.

Please file the History Summary and your copy of this agreement with the replaced pages in the "Contract-History" section.

Signed at our Head Office, Toronto, Ontario.



**President & Chief Executive Officer**



**Secretary**

# Table of Contents

**Overview..... 1**

**Agreement ..... A-1**

**Summary of Insurance.....B-1**

**Definitions ..... C-1**

**Policy..... D-1**

**Eligibility .....E-1**

**Commencement and Termination of Insurance .....F-1**

**Basic and Optional Member Life Insurance Provision ..... G-1**

**Basic and Optional Dependant Life Insurance Provision ..... H-1**

# Overview

## PLAN 83160 (Life) SEARS CANADA INC.

<b>Division</b>	<b>Class</b>	<b>Description</b>
005	1	All Associates disabled prior to January 1, 1993
006	2	All Members of the Board of Directors
008	4	All Active Associates on or after January 1, 2010 – Basic Life
009	4	All Active Associates on or after January 1, 2010 – Optional Life

Other Plan Numbers: 25455, 83160 Flex, 50844

# Agreement

Policyholder	Sears Canada Inc.
Group Policy Number	83160-Life
Effective Date	December 22, 2004
Participating Affiliates	SLH Transport Inc., Sears Contact Services Inc.

We, Sun Life Assurance Company of Canada, agree with you, Sears Canada Inc., to insure certain persons according to the provisions of this policy. Premiums (as determined in the policy) are payable by you at our Head Office.

The policy and the application form the entire contract of insurance between Sun Life Assurance Company of Canada and Sears Canada Inc.

Signed at our Head Office, Toronto, Ontario.



**President & Chief Executive Officer**



**Secretary**

# Summary of Insurance

## Life Insurance

Class of Members	Benefit Formula	Maximum Benefit	
		Non-Evidence Maximum	Evidence Maximum
1. All Associates disabled prior to January 1, 1993	2x earnings	\$300,000	--
2. All Members of the Board of Directors	--	\$12,500	--
4. All Active Associates on or after January 1, 2010	--	\$10,000	--

### Termination of Insurance:

- Classes 1 and 2 – first of the month coincident with or following the member's date of retirement
- Class 4 – last day of the month in which the member reaches age 65 or retirement, if earlier

### Dependant Life Insurance (Class 1 part-time associates only)

Spouse: \$2,000

Each Child: \$1,000

Termination of Insurance: first of the month coincident with or following the member's date of retirement

### Dependant Life Insurance (Class 2)

Spouse: \$4,000\*

Each Child: \$2,000\*

\*Benefit Reduction: reduces by 50% on member's 65<sup>th</sup> birthday

Termination of Insurance: first of the month coincident with or following the member's date of retirement

### Optional Member Life Insurance (Class 4)

Class of Members	Benefit Formula	Maximum Benefit
4. All Active Associates on or after January 1, 2010	units of \$10,000	\$500,000

**Evidence of Insurability:** required on all amounts of Optional Member Life Insurance, except for the first \$30,000 if the request for insurance is made within 31 days of the eligibility date.

**Termination of Insurance:** last day of the month in which the member reaches age 65 or retirement, if earlier



### Optional Dependant Life Insurance (Class 4)

Class of Dependants	Benefit Formula	Maximum Benefit
Spouse	units of \$10,000	\$500,000
Each Child	units of \$5,000	\$25,000

**Termination of Insurance:**

- **For Spouse:** last day of the month in which the member reaches age 65 or retirement, or the last day of the month in which the spouse reaches age 65, if earlier
- **Child:** last day of the month in which the member reaches age 65 or retirement, if earlier

## Definitions

<b>Actively working and active work</b>	mean the performance for you of all of the regular duties of the person's own occupation for one full working day or shift.
<b>Approved Leave</b>	means maternity/paternity leaves.
<b>Associate</b>	means a person who is employed by Sears Canada Inc. or one of its Participating Affiliates on an hourly, salaried, full time, or part-time basis.
<b>Calendar year</b>	means January 1 to December 31.
<b>Dependant</b>	means a member's spouse or a dependent child of a member or his spouse.
<b>Dependent child</b>	means a natural, legally adopted, step-child, or child for whom legal guardianship has been granted, and who is not married or in any other formal union recognized by law, who is entirely dependent on the member for maintenance and support and who is <ol style="list-style-type: none"><li>1. under 21 years of age,</li><li>2. under 25 years of age (26 years of age for Quebec residents only) and attending a college or university full-time,</li><li>3. physically or mentally incapable of self-support and became incapable to that extent while entirely dependent on the member for maintenance and support and while eligible under 1) or 2) above, or</li><li>4. a dependant child who is residing with a former spouse, but is designated as a dependant child of the member in the divorce or separation agreement while eligible under 1), 2) or 3) above.</li></ol>
<b>Evidence of insurability</b>	means written proof that a person meets our medical underwriting requirements.
<b>Family unit</b>	means a member and his insured dependants.
<b>He, his and him</b>	refer to both genders.
<b>Insured Dependant</b>	means a dependant for whom the member is insured. If we do not approve evidence of insurability required for a dependant, he will not be an insured dependant.
<b>Life Event</b>	means: <ul style="list-style-type: none"><li>• Marriage</li><li>• 1 year common-law relationship</li><li>• End of a common-law relationship/legal separation</li><li>• Divorce</li><li>• Birth of a child</li><li>• Legal Adoption</li><li>• Change in custody arrangement</li><li>• A dependent child reaching the age of 21</li><li>• A dependent child who is a full-time student reaching age 25 (26 in Québec)</li><li>• Death of a spouse or dependent child</li><li>• Involuntary loss or attainment of benefits coverage through another employer's plan</li><li>• Change in Employment Classification</li></ul>
<b>Member</b>	means a person who is insured, but does not include a dependant.
<b>Month</b>	means the period of time from a date in one calendar month to the same date in the following calendar month.

<b>Period of grace</b>	for the payment of premiums, is 60 days.
<b>Physician</b>	means a doctor of medicine (M.D.) legally licensed to practice medicine.
<b>Premium due date</b>	means the 1st day of each month.
<b>Policy anniversary</b>	means January 1 and an anniversary of that date.
<b>Policy year</b>	means the period between the effective date and the first policy anniversary or a period of 12 months beginning on a policy anniversary.
<b>Rate of earned income</b>	on a given date, means the regular remuneration received by the member in the previous calendar year, as indicated on the member's T4.
<b>Spouse</b>	means the person of the same or opposite sex who is living in the same household and <ol style="list-style-type: none"> <li>1. is legally married to the member, or</li> <li>2. who has lived with the member continuously for at least one year and is publicly represented as the member's husband or wife or partner</li> </ol> <p>Only one spouse can be covered under the plan, on a given date.</p>
<b>We, us and our</b>	refer to Sun Life Assurance Company of Canada.
<b>You and your</b>	refer to the Policyholder.

# Policy

## The Contract

This policy may not be amended nor provisions waived without written notification by our officials authorized to sign policies.

This policy is not eligible to participate in any surplus earnings distributed by us.

The currency of this policy is Canadian.

No rights or interests of a member may be assigned.

Your statements in the application, other than fraudulent statements, are incontestable after this policy has been in force continuously for 2 years.

## Agent

You will act as agent for the Participating Affiliates in all matters regarding this policy, and any thing done by you in these matters will be considered to be done on behalf of you and the Participating Affiliates.

## Administration

You are responsible for the administration of the policy according to the instructions we provide.

We may have access to your payroll records and other records relevant to this policy at any time to verify amounts of insurance, the premiums charged and other matters relating to this policy.

## Premiums

The first premium is due on the effective date. After that, premiums are due monthly in advance.

The amount of the premium payable on a premium due date is determined by applying the monthly premium rates in force to the total units of insurance in force on that premium due date.

The initial monthly premium rates are in force on the effective date. We may change premium rates on the effective date of an amendment or on a policy anniversary. We will give you 90 days written notice of a premium rate change unless it is due to an amendment.

## Period of Grace

The policy continues in force during the period of grace. Premiums must be paid for a period during which the policy remains in force, including the period of grace. The period of grace is allowed for the payment of each premium except the first.

## Termination of Policy

This policy or any billing division terminates when a premium has not been paid before the end of the period of grace provided you have received written notice prior to the termination.

This policy terminates automatically upon your receivership or bankruptcy. Upon the receivership or bankruptcy of a Participating Affiliate, the insurance of all members of that Participating Affiliate terminates automatically.

You may terminate this policy by giving us written notice. The date of termination is the date we receive the notice or the termination date specified in the notice, if later. If the date of termination is not a premium due date, a partial premium is payable for the period from the last premium due date to the date of termination.

We may terminate this policy on the first policy anniversary or on a premium due date after that by giving you 90 days written notice.

The insurance of all members stops on the termination date of this policy and claims incurred after that are not eligible for payment.

# Eligibility

## Eligibility to be a Member for Life Insurance

A person is eligible, and continues to be eligible, to be a member if he meets all the following conditions:

1. He is actively working or is on an approved leave of absence.
2. He has been continuously employed by you or one of your participating affiliates at least as long as the waiting period.
3. He is a full-time associate, (hourly & salaried), or a part-time hourly associate who has accumulated a minimum of 1250 hours (780 hours in Saskatchewan) of active work in the prior year qualifying period (October to September). Part-time hourly associates who have not accumulated 1250 hours or more (780 hours in Saskatchewan) of active work are eligible to join, but the participation is optional.
4. He is a resident of Canada.

A person is eligible and continues to be eligible to be a member if he is a Member of the Board of Directors.

Participation is compulsory for Basic Member Life Insurance for all members, except for Part Time Associates who worked less than 1250 hours (780 hours in Saskatchewan) within the qualifying period.

An employee who is classified as an independent, owner-operator, consultant, contract employee or is self-employed will not be eligible to be a member.

## Waiting Period

- Full time Associates (Hourly & Salaried) – 3 months of continuous service
- Part time Associates (Hourly)– 6 months of continuous service (3 months in Québec)

## Eligibility for Dependant Insurance

A person is eligible, and continues to be eligible, for dependant insurance while he meets all of the following conditions:

1. He is a member.
2. He has at least one dependant.
3. His dependants are residents of Canada. However, dependent children studying at a university or college outside of Canada who are covered for provincial health care insurance will be eligible.

# **Commencement and Termination of Insurance**

## **Enrolment for Insurance (Classes 1 and 2)**

An eligible person enrolls for insurance by submitting a completed enrolment form. A member requests dependant insurance by submitting a completed enrolment form, however, a member may only enrol an eligible spouse if the spouse is under age 65.

If an eligible person enrolls more than 31 days after the date he became eligible, he is considered a late entrant and he must submit evidence of insurability to us. If he requests dependant insurance, he must submit evidence of insurability for each dependant to us.

A member of the Board of Directors is automatically enrolled for Life Insurance.

For late entrants, evidence of insurability submitted to us is at the person's expense.

## **Enrolment for Insurance (Class 4)**

An eligible part-time associate, who has not accumulated the minimum hours of active work as indicated under Eligibility, enrolls for Basic Member Life, Optional Member Life and Optional Dependant Life insurance by submitting a completed enrolment form.

All other eligible part-time associates enrol for Optional Member Life and Optional Dependant Life insurance by submitting a completed enrolment form. They are automatically enrolled for Basic Member Life insurance.

A member may only enrol an eligible spouse if the spouse is under age 65.

To elect Optional Member Life and Optional Dependant insurance, an eligible part-time associate, who has not accumulated the minimum hours of active work as indicated under Eligibility, must first elect Basic Member Life insurance.

If an eligible person enrolls for an amount of Optional Life Insurance in excess of \$30,000 more than 31 days after the date he became eligible, he must submit evidence of insurability to us. If he requests Optional Dependant Life Insurance, he must submit a completed enrolment form and evidence of insurability for his spouse to us.

## **Effective Date of Insurance of a Member (Classes 1 and 2)**

A person becomes a member on the latest of

1. the date that he becomes eligible,
2. the date that he enrolls for insurance, or
3. the date that we approve any evidence of insurability,

unless he is not actively working on that day.

If an eligible person is not actively working on the date the insurance would be effective, he becomes a member on the date he returns to active work. We may require evidence of insurability to establish the date that he is physically and mentally fit to return to active work. If so, he becomes a member on the date we establish.

A member becomes insured for dependant insurance on the latest of

1. the date that he becomes eligible for dependant insurance,
2. the date that he requests dependant insurance, or
3. the date that we determine the insurability of all of his dependants, and approve at least one dependant,

unless he is not actively working on that day.

If a member is not actively working on the date the insurance would be effective, he becomes insured for dependant insurance on the date he returns to active work. We may require evidence of insurability to establish the date that he is physically and mentally fit to return to active work. If so, he becomes insured for dependant insurance on the date we establish.

### **Effective Date of Insurance of a Member (Class 4)**

A person becomes a member for Optional Life Insurance on the later of the date that he becomes eligible or the date that we approve the evidence of insurability, unless he is not actively working on that day.

A person becomes a member for all other insurance on the date he becomes eligible, unless he is not actively working on that day.

If an eligible person is not actively working on the date the insurance would be effective, he becomes a member on the date he returns to active work. We may require evidence of insurability to establish the date that he is physically and mentally fit to return to active work. If so, he becomes a member on the date we establish.

A member becomes insured for dependant insurance on the latest of

1. the date that he becomes eligible for dependant insurance,
2. the date that he requests dependant insurance, or
3. the date that we determine the insurability of all of his dependants, and approve at least one dependant,

unless he is not actively working on that day.

If a member is not actively working on the date the insurance would be effective, he becomes insured for dependant insurance on the date he returns to active work. We may require evidence of insurability to establish the date that he is physically and mentally fit to return to active work. If so, he becomes insured for dependant insurance on the date we establish.

### **Changes in Insurance**

A member requesting an increase in the amount of Optional Life Insurance must submit evidence of insurability to us. A member requesting an increase in the amount of Optional Dependant Life Insurance must submit evidence of insurability for his spouse to us. The increase in the amount of insurance will be effective on the date that we approve the evidence of insurability.

An increase in the provision benefits, the amount of insurance of a member or the amount of dependant insurance of a member due to a policy amendment or change in classification becomes effective on the date of the policy amendment or change in classification, unless the member is not actively working on that day. A member may change the option elected during annual re-enrolment period or within 31 days after a qualifying life event change, or employment classification. If we don't approve evidence of insurability required, the increase will not be effective.

If we don't approve an increase in the amount of insurance of a member or the amount of dependant insurance of a member, any future increase in the non-evidence or evidence maximum benefit amount will not be effective unless evidence of insurability is approved. An increase in the non-evidence or evidence maximum benefit amount will be effective on the date we approve the evidence of insurability.



If a member is not actively working on the date an increase in the provision benefits, the amount of insurance of a member or the amount of dependant insurance of a member would be effective, the increase becomes effective on the date he returns to active work. We may require evidence of insurability to establish the date that he is physically and mentally fit to return to active work. If so, the increase becomes effective on the date we establish.

A decrease in the provision benefits, the amount of insurance of a member or the amount of dependant insurance of a member due to a policy amendment or change in classification, becomes effective on the date of the policy amendment or change in classification, unless the member is totally disabled on that day.

If the member is totally disabled, a decrease in the amount of insurance for all provision benefits, due to a policy amendment or change in classification, becomes effective on the date the member returns to active work.

## **Termination of Insurance of a Member**

Unless specified otherwise in this policy, the insurance of a member terminates on the date that he no longer meets all of the conditions for Eligibility to be a Member. The dependant insurance of a member terminates on the date he no longer meets all of the conditions for Eligibility for Dependant Insurance.

The insurance of a member terminates on the date that he fails to pay any required premium.

The insurance of a member terminates on the date that he enters the Armed Services of any nation or country on a full time basis.

If a member fails to tell us every fact material to his insurance or misrepresents those facts, that insurance is voidable.

Statements made in a member's enrolment card or in an evidence of insurability form which are

1. fraudulent,
2. a misstatement of age, or
3. about a disability which existed prior to the effective date of his insurance,

may be contested at any time.

Other statements are incontestable 2 years after the statements are made.

## **Continuation of Insurance of a Member**

When the insurance of a member would terminate because employment ends or the member is no longer actively working, you are entitled to continue insurance for a period of 12 months in the following circumstances, as long as your decision is applied equally to all members within the same classification as outlined in the Summary of Insurance:

1. if the member is absent from work due to disease or injury, the insurance may be continued during the period of absence.
2. also, the insurance under this contract may be continued:
  - a. during maternity/parental leave, but not more than the period required under the relevant legislation.
  - b. during the notice period for termination of employment as required by relevant legislation, or with prior authorization from Sun Life for periods beyond the legislated notice period for termination.
  - c. for a pre-determined period during which the member is temporarily laid off or is granted a leave of absence, but not more than 12 months. The leave of absence cannot be because of disease or injury, paid vacation or maternity/parental leave.

# **Basic and Optional Member Life Insurance Provision**

## **Amount of Benefit – Class 1**

The amount of benefit is calculated by applying the benefit formula to the member's rate of earned income. This amount is rounded to the next highest \$1,000. It may not exceed the maximum benefit.

## **Amount of Benefit – Classes 2 and 4**

The amount of benefit is equal to the maximum benefit.

## **Amount of Benefit – Optional Life Insurance (Class 4)**

The member determines the amount of benefit by applying the benefit formula. The amount of benefit may not exceed the maximum benefit.

## **Amount of Benefit of a Reinstated Member**

If any employee becomes a member of this plan subsequent to a termination of active work for you, any amounts of benefit which he becomes eligible for, will be reduced by any Individual Life Insurance which he obtained through the Conversion Privilege of your policy which was in force on the date of his termination. If the member submits evidence of insurability, which is approved by us, or surrenders such Individual Life Insurance policy, he becomes eligible for the full amount of benefit for which he is eligible as a member of this plan.

## **Death Benefit - Claims**

The member appoints the beneficiary when enrolling for insurance. The beneficiary designation may be changed, if permitted by law. The member must submit written notice of the change.

When a member dies, Sun Life will pay the beneficiary the amount of benefit in force on the date of death.

If no beneficiary has been appointed or if the beneficiary has predeceased the member, payment will be made to the member's estate.

A minor cannot personally receive a death benefit under the plan until reaching the age of majority. If the member resides outside Québec and is designating a minor as the beneficiary, the member may wish to designate someone to receive the death benefits during the time the beneficiary is a minor. If the member resides outside Québec and has not designated a trustee, current legislation may require us to pay the death benefit to the court or to a guardian or public trustee. If the member resides in Québec, the death benefit will be paid to the parent(s)/legal guardian of the minor on the minor's behalf. Alternatively, the member may wish to designate the estate as beneficiary and provide a trustee with directions in the member's will.

A claim must be received by Sun Life within 6 years of the date of death.

The claimant must submit proof of the claim and the right to receive the benefit to us. Proof of claim is at the claimant's expense. We may require other information we consider necessary for the assessment of a claim.

Benefits may be paid in cash, left on deposit at interest or used to provide an income in the form of an annuity. The choice of settlement may be made by the member or by the beneficiary if the member did not make a choice.

Limitation period for Ontario:

Every action or proceeding against an insurer for the recovery of insurance money payable under the policy is absolutely barred unless commenced within the time set out in the *Limitations Act, 2002*.

Limitation period for any other province:

Every action or proceeding against an insurer for the recovery of insurance money payable under the policy is absolutely barred unless commenced within the time set out in the Insurance Act or other applicable

Death Benefit – Exclusion (Class 4)

No benefit is payable for any amount of Optional Life Insurance that has been in force for less than 2 years if death is due to suicide while sane or insane.

### **Disability Benefit – Definitions (Class 1)**

"Totally disabled" means that the member has a medically determinable physical or mental impairment due to injury or disease which prevents him from performing the duties of any occupation for remuneration or profit within the range of his education, training or experience.

"Qualifying period" means 15 weeks.

The qualifying period begins on the date the member becomes totally disabled. The availability of work for the member does not affect the determination of "totally disabled".

### **Disability Benefit – Claims (Class 1)**

A member must submit a claim to us after he has been totally disabled continuously for 6 months but not beyond 12 months after the date he became totally disabled.

We may require

1. proof that the member continues to be totally disabled,
2. a medical examination by a physician appointed by us,
3. proof of the member's age, and
4. other information we consider necessary for the assessment of a claim.

Proof of claim is at the claimant's expense.

From time to time we may request additional information to support a proof of claim. If the information is not provided within 90 days of the request, the claimant may not be entitled to some or all benefit payments.

There is a time limit for appealing our decision to decline or terminate a claim. An appeal must be made within 3 months of such a decision and must be accompanied by new objective medical evidence.

Limitation period for Ontario:

Every action or proceeding against an insurer for the recovery of insurance money payable under the policy is absolutely barred unless commenced within the time set out in the *Limitations Act, 2002*.

Limitation period for any other province:

Every action or proceeding against an insurer for the recovery of insurance money payable under the policy is absolutely barred unless commenced within the time set out in the Insurance Act or other applicable

## **Disability Benefit - Continuation of Insurance (Class 1)**

If a member becomes totally disabled before he reaches 65 years of age, his life insurance continues provided we receive proof that he has been totally disabled from the same or related causes for the qualifying period. The amount of insurance continued will be the lesser of

1. the amount for which the member would have been insured if he had continued to be an active member, according to the Summary of Insurance in force on the date he became totally disabled, or
2. the amount in force on the date he became totally disabled.

We will waive premiums for the continued insurance following the qualifying period.

If a member dies before he submits proof to us that he is totally disabled, his insurance is considered to be in force, provided

1. he is under 65 years of age on the date he became totally disabled,
2. death occurs within 12 months of the date he became totally disabled, and
3. we receive proof that he was totally disabled continuously from the date he became totally disabled to the date of death.

The Disability Benefit terminates on the date that

1. the member is no longer totally disabled,
2. the member fails to submit proof to us that he continues to be totally disabled,
3. the member fails to submit to a medical examination at our request, by a physician we appoint, or
4. the member retires.

whichever is earliest.

When the Disability Benefit terminates, the member's life insurance terminates. When he returns to active work, that insurance will be reinstated upon request.

## **Disability Benefit - Consecutive Periods of Disability (Class 1)**

If a member stops being totally disabled while satisfying a qualifying period and, within 30 days, becomes totally disabled again from the same or related causes, the disability is considered to be a continuation of the previous disability.

If a member stops being totally disabled following a disability for which premiums are waived and, within 6 months, becomes totally disabled again from the same or related causes, the disability is considered to be a continuation of the previous disability.

The amount of insurance continued for consecutive periods of disability is determined from the Member Life Insurance Provision in force on the date the previous disability began.

## **Disability Benefit – Definitions (Class 4 – Optional Life only)**

If a member is insured under a group Long Term Disability Insurance Provision issued by us, “totally disabled”, “total disability” and “qualifying period” are determined under that provision.

If a member is not insured under a group Long Term Disability Insurance Provision issued by us

1. "totally disabled" and "total disability" mean that, during and after the qualifying period, the member has a medical impairment due to injury or disease which prevents him from performing, in any setting, the essential duties of any occupation for which he has at least the minimum qualifications.

The medical impairment must be supported by objective medical evidence. The availability of work for the member does not affect the determination of totally disabled or total disability.

2. "qualifying period" means 6 months and begins on the date the member becomes totally disabled.

### **Disability Benefit – Claims (Class 4 – Optional Life only)**

If the member is insured under a group Long Term Disability Insurance Provision issued by us, he must submit a claim to us along with proof of claim under the group Long Term Disability Insurance Provision.

If the member is not insured under a group Long Term Disability Insurance Provision issued by us, he must submit a claim to us after he has been totally disabled continuously for 6 months but not beyond 12 months after the date he became totally disabled.

We may require

1. proof that the member continues to be totally disabled,
2. an examination by an independent physician or a registered psychologist appointed by us,
3. proof of the member's age,
4. a vocational or functional capacities assessment, and
5. other information we consider necessary for the assessment of a claim.

Proof of claim is at the claimant's expense, unless prohibited by law.

From time to time we may request additional information to support a proof of claim. If the information is not provided within 90 days of the request, the claimant may not be entitled to some or all benefit payments.

There is a time limit for appealing our decision to decline or terminate a claim. An appeal must be made within 3 months of such a decision and must be accompanied by new objective medical evidence.

Limitation period for Ontario:

Every action or proceeding against an insurer for the recovery of insurance money payable under the policy is absolutely barred unless commenced within the time set out in the *Limitations Act, 2002*.

Limitation period for any other province:

Every action or proceeding against an insurer for the recovery of insurance money payable under the policy is absolutely barred unless commenced within the time set out in the Insurance Act or other applicable

## **Disability Benefit - Continuation of Insurance (Class 4 – Optional Life Insurance only)**

If a member becomes totally disabled before he reaches 65 years of age, his life insurance continues provided we receive proof that he has been totally disabled from the same or related causes for the qualifying period. The amount of insurance continued will be the lesser of

1. the amount for which the member would have been insured if he had continued to be an active member, according to the Summary of Insurance in force on the date he became totally disabled, or
2. the amount in force on the date he became totally disabled.

We will waive premiums for the continued insurance following the qualifying period.

If a member dies before he submits proof to us that he is totally disabled, his insurance is considered to be in force, provided

1. he is under 65 years of age on the date he became totally disabled,
2. death occurs within 12 months of the date he became totally disabled, and
3. we receive proof that he was totally disabled continuously from the date he became totally disabled to the date of death.

The Disability Benefit terminates on the date that

1. the member is no longer totally disabled,
2. the member fails to submit proof to us that he continues to be totally disabled,
3. the member fails to submit to a medical examination at our request, by a physician we appoint, or
4. the member reaches the age at which insurance terminates.

whichever is earliest.

When the Disability Benefit terminates, the member's life insurance terminates. When he returns to active work, that insurance will be reinstated upon request.

## **Disability Benefit - Consecutive Periods of Disability (Class 4 – Optional Life Insurance only)**

If a member stops being totally disabled while satisfying a qualifying period and, within 30 days, becomes totally disabled again from the same or related causes, the disability is considered to be a continuation of the previous disability.

If a member stops being totally disabled following a disability for which premiums are waived and, within 6 months, becomes totally disabled again from the same or related causes, the disability is considered to be a continuation of the previous disability.

The amount of insurance continued for consecutive periods of disability is determined from the Member Life Insurance Provision in force on the date the previous disability began.

## **Conversion Privilege - Policy Available**

If the member's insurance terminates for any reason other than at his request, he may convert it to an individual policy on his life without submitting evidence of insurability.

The application and premium must be received by us within 31 days after termination of insurance. The premium for the individual policy will be determined by the current scale of premiums for the class of risk to which the applicant belongs.

The individual policy may be a term insurance policy for a period of one year, a term insurance policy to the age of 65 years or a permanent insurance policy under a regular plan being issued by us. The term insurance policies are not available to a person who has reached the age of 65 years.

The individual policy will be in exchange for all benefits terminated under this provision. It will contain the same provisions as are regularly included by us in new individual policies but will exclude disability insurance and accidental death insurance.

### **Conversion Privilege - Amount and Effective Date**

The amount of the individual policy will not exceed the lesser of

1. the amount of the insurance terminated,
2. the maximum amount of insurance for which the person has been insured under this provision less the total amount of individual insurance still in force on the person's life which was previously obtained through the Conversion Privilege of this provision, or
3. \$300,000, or the amount stipulated in any applicable legislation, if greater.

The individual policy will be effective 31 days after the insurance is terminated.

The amount of the individual policy will not exceed the amount of the insurance terminated less the amount of insurance in force under a new group policy that replaces this policy.

### **Conversion Privilege - Right to Disability Benefit**

When proof is submitted to us that the group insurance replaced by the individual policy would have been in force under the Disability Benefit, the rights to that insurance will be restored if all of the following conditions are met

1. the proof is received by us within 12 months of the individual policy's effective date,
2. the individual policy is surrendered without claim except for the return of premiums paid on the individual policy, and
3. the insurance under that individual policy is void.

### **Conversion Privilege - Continuation of Benefit After Termination**

If the member's insurance terminates while this provision continues in force and the member dies within 31 days after termination of insurance, we will pay the beneficiary the amount of insurance which the member could have converted to an individual policy on his life through the Conversion Privilege of this provision, or the amount stipulated in any applicable legislation, if greater.

### **Disability Benefit (Class 4)**

We will waive premiums for the member's Optional Life Insurance for the period during which the member is totally disabled.

# **Basic and Optional Dependant Life Insurance Provision**

## **Amount of Benefit - Basic Life Insurance**

The amount of benefit for the member's spouse or dependent child is equal to the maximum benefit.

## **Amount of Benefit - Optional Life Insurance**

The member determines the amount of benefit for his spouse or dependant child by applying the benefit formula as shown in the Summary of Insurance. The amount of benefit may not exceed the maximum benefit.

## **Claims**

A claim must be received by Sun Life within 6 years of the date of death.

The claimant must submit proof of the claim and the right to receive the benefit to us. Proof of claim is at the claimant's expense. We may require other information we consider necessary for the assessment of a claim.

Limitation period for Ontario:

Every action or proceeding against an insurer for the recovery of insurance money payable under the policy is absolutely barred unless commenced within the time set out in the *Limitations Act, 2002*.

Limitation period for any other province:

Every action or proceeding against an insurer for the recovery of insurance money payable under the policy is absolutely barred unless commenced within the time set out in the *Insurance Act* or other applicable legislation of the member's province or territory.

## **Payment of Benefit - Basic and Optional Dependant Life Insurance**

When an insured dependant dies, we will pay the member the amount of benefit in force on the date of death.

## **Death Benefit - Exclusions**

No benefit is payable for any amount of Optional Dependant Life Insurance that has been in force for less than 2 years if death is due to suicide, while sane or insane.

## **Conversion Privilege - Spouse**

If the dependant insurance for the spouse terminates due to the termination of the member's insurance, the spouse may convert the amount of the dependant insurance terminated to an individual policy on his life without submitting evidence of insurability.

The conditions that apply to the Conversion Privilege for the member's insurance will apply to the Conversion Privilege for the dependant insurance.



## **Conversion Privilege - Child**

Where necessary in order to comply with applicable legislation: If the dependant insurance for a child terminates due to the termination of the member's insurance, the member may convert the amount of the dependant insurance terminated to an individual policy on the child's life without submitting evidence of insurability.

The conditions that apply to the Conversion Privilege for the member's insurance will apply to the Conversion Privilege for the dependant insurance.

## **Continuation of Benefit After Termination –Dependent**

If the dependant insurance terminates and the dependant dies within 31 days after termination of insurance, we will pay the member the amount of insurance which could have been converted to an individual policy on the dependant life's through the Conversion Privilege of this provision, or the amount stipulated in any applicable legislation, if greater.

## **Disability Benefit (Class 4)**

We will waive premiums for the member's dependant life insurance for a period during which the member's life insurance premiums are waived due to the member's disability.

# TAB D

Exhibit "D" to the  
Affidavit of Kathryn O'Rourke  
sworn March 12, 2019

A handwritten signature in black ink, appearing to be "A. Kelly" followed by the number "68844K".

---

*A commissioner of oaths, etc.*

# Amendment Agreement No. 9

Amendment to Group Policy **83160-Flex**

Issued To

**Sears Canada Inc.**

This amendment is effective January 16, 2017.

We made the changes on the request for amendment.

Please file the attached replacing pages in the "Contract-Current" section.

Please file the History Summary and your copy of this agreement with the replaced pages in the "Contract-History" section.

Signed at our Head Office, Toronto, Ontario.



**President & Chief Executive Officer**



**Secretary**

# Table of Contents

Overview .....	1
Agreement .....	A-1
Summary of Insurance.....	B-1
Definitions .....	C-1
Policy .....	D-1
Eligibility .....	E-1
Commencement and Termination of Insurance – Option Core .....	F-1
Commencement and Termination of Insurance – Options Good, Better, Best.....	F1-1
Basic and Optional Member Life Insurance Provision .....	G-1
Optional Spousal Life Insurance Provision.....	G1-1
Dependant Child Life Insurance Provision .....	H-1
Disability Benefit Insurance Provision - Waiver of Premiums.....	I-1

# Overview

## PLAN 83160 SEARS CANADA INC.

<b>Division</b>	<b>Class</b>	<b>Description</b>
001	1	Executives disabled prior to January 1, 2017 and All Associates disabled prior to January 1, 2010 – Option Best
002	1A	Executives disabled prior to January 1, 2017 and All Associates disabled prior to January 1, 2010 – Option Better
003	1B	Executives disabled prior to January 1, 2017 and All Associates disabled prior to January 1, 2010 – Option Good
007	1D	Executives disabled prior to January 1, 2017 and All Associates disabled prior to January 1, 2010 – Option Core
010	5	Active Executives

Other Plan Numbers: 25455, 83160 Life, 50844

# Agreement

Policyholder	Sears Canada Inc.
Group Policy Number	83160-Flex
Effective Date	September 1, 2005
Participating Affiliates	SLH Transport Inc., Sears Contact Services Inc.

We, Sun Life Assurance Company of Canada, agree with you, Sears Canada Inc., to insure certain persons according to the provisions of this policy. Premiums (as determined in the policy) are payable by you at our Head Office.

The policy and the application form the entire contract of insurance between Sun Life Assurance Company of Canada and Sears Canada Inc.

Signed at our Head Office, Toronto, Ontario.



**President & Chief Executive Officer**



**Secretary**

# Summary of Insurance

## Basic Member Life Insurance

Class of Members	Benefit Formula	Maximum Benefit
1D All Employees • Core	--	\$10,000
5. Active Executives • Core	--	\$10,000

**Termination of Insurance:** the last day of the month in which the member reaches age 65, or retirement if earlier

## Optional Member Life Insurance

Class of Members	Benefit Formula	Maximum Benefit	
		Non-Evidence Maximum	Evidence Maximum
All Employees other than Active Executives • 1B - Option Good • 1A - Option Better • 1 - Option Best	1x annual earnings 2x annual earnings 4x annual earnings	* * *	\$1,500,000 \$1,500,000 \$1,500,000
5. Active Executives	Units of \$10,000	**	\$1,500,000

**\*Evidence of Insurability:** required on all amounts of Optional Member Life Insurance, except for an amount of 1x annual earnings up to a maximum of \$50,000

**\*\*Evidence of Insurability:** required on all amounts of Optional Member Life Insurance, except for the first \$30,000 when the member is first eligible.

**Termination of Insurance:** the last day of the month in which the member reaches age 65, or retirement if earlier

## Optional Spousal Life Insurance

Class of Dependants	Benefit Formula	Maximum Benefit
Spouse • 1D - Option Core • 1B - Option Good • 1A - Option Better • 1 - Option Best	-- -- -- --	-- \$5,000 \$25,000 \$50,000
5. Spouse	Units of \$10,000	\$500,000*

**\*Evidence of Insurability:** required on all amounts of Optional Spouse Life Insurance,

**Termination of Insurance :** the last day of the month in which the member reaches age 65, retirement, or the last day of the month in which the spouse reaches age 65, whichever is earlier



## Optional Dependent Child Life Insurance

Class of Dependants	Benefit Formula	Maximum Benefit
Each Child		
• 1D - Option Core	--	--
• 1B - Option Good	--	\$5,000
• 1A - Option Better	--	\$10,000
• 1 - Option Best	--	\$15,000
5. Each Child	Units of \$5,000	\$25,000

**Termination of Insurance :** the last day of the month in which the member reaches age 65, or retirement if earlier.

## Definitions

<b>Actively working and active work</b>	mean the performance for you of all of the regular duties of the person's own occupation for one full working day or shift.
<b>Approved Leave</b>	means maternity/parental leaves.
<b>Benefit Earnings</b>	<p>at the time of enrolment or re-enrolment, means the member's Annual Benefit Base Rate (ABBR), of the regular remuneration received by the member on that date for his regular employment. Regular remuneration excludes additional income that is earned on a regular basis such as overtime, bonuses, shift differentials and special allowances.</p> <p>Commission Associates – average commissions or sales incentive for the previous October to September period, plus base earnings, if applicable. Average commissions are based on the average hourly rate annualized. For Commission Associates who have worked less than the full calendar year, the expected average commissions or sales incentives are used to determine earnings.</p>
<b>Calendar year</b>	means January 1 to December 31.
<b>Dependant</b>	means a member's <ol style="list-style-type: none"><li>1. spouse,</li><li>2. dependent child of a member or his spouse.</li></ol>
<b>Dependent child</b>	<p>means a natural, legally adopted, step-child , or child for whom legal guardianship has been granted, and who is not married or in any other formal union recognized by law, who is entirely dependent on the member for maintenance and support and who is</p> <ol style="list-style-type: none"><li>1. under 21 years of age,</li><li>2. under 25 years of age (26 years of age for Quebec residents only) and attending a college or university full-time,</li><li>3. physically or mentally incapable of self-support and became incapable to that extent while entirely dependent on the member for maintenance and support and while eligible under 1) or 2) above, or</li><li>4. a dependant child who is residing with a former spouse, but is designated as a dependant child of the member in the divorce or separation agreement while eligible under 1), 2) or 3) above.</li></ol>
<b>Evidence of insurability</b>	means written proof that a person meets our medical underwriting requirements.
<b>Family unit</b>	means a member and his covered dependants.
<b>He, his and him</b>	refer to both genders.
<b>Insured dependant</b>	means a dependant for whom the member is insured. If we do not approve evidence of insurability required for a dependant, he will not be an insured dependant.

<b>Life Event</b>	means: <ul style="list-style-type: none"> <li>• Marriage</li> <li>• 1 year common-law relationship</li> <li>• End of a common-law relationship/legal separation</li> <li>• Divorce</li> <li>• Birth of a child</li> <li>• Legal Adoption</li> <li>• Change in custody arrangement</li> <li>• A dependent child reaching the age of 21</li> <li>• A dependent child who is a full-time student reaching age 25 (26 in Québec)</li> <li>• Death of a spouse or dependent child</li> <li>• Involuntary loss or attainment of benefits coverage through another employer's plan</li> <li>• Change in Employment Classification</li> </ul>
<b>Member</b>	means a person who is insured, but does not include a dependant.
<b>Month</b>	means the period of time from a date in one calendar month to the same date in the following calendar month.
<b>Period of grace</b>	for the payment of premiums, is 60 days.
<b>Physician</b>	means a doctor of medicine (M.D.) legally licensed to practice medicine.
<b>Policy anniversary</b>	means January 1 and an anniversary of that date.
<b>Policy year</b>	means the period between the effective date and the first policy anniversary or a period of 12 months beginning on a policy anniversary.
<b>Premium due date</b>	means the 1st day of each month.
<b>Spouse</b>	means the person of the same or opposite sex who is living in the same household and <ol style="list-style-type: none"> <li>1. is legally married to the member, or</li> <li>2. who has lived with the member continuously for at least one year and is publicly represented as the member's husband or wife or partner</li> </ol> <p>Only one spouse can be covered under the plan, on a given date.</p>
<b>We, us and our</b>	refer to Sun Life Assurance Company of Canada.
<b>You and your</b>	refer to the Policyholder.

# Policy

## The Contract

This policy may not be amended nor provisions waived without written notification by our officials authorized to sign policies.

This policy is not eligible to participate in any surplus earnings distributed by us.

The currency of this policy is Canadian.

No rights or interests of a member may be assigned.

Your statements in the application, other than fraudulent statements, are incontestable after this policy has been in force continuously for 2 years.

## Agent

You will act as agent for the subsidiary companies designated by you in all matters regarding this policy, and any thing done by you in these matters will be considered to be done on behalf of you and the subsidiary companies.

## Administration

You are responsible for the administration of the policy according to the instructions provided.

If earnings are required to calculate benefit amounts, you are responsible for reporting changes in earnings when they occur.

We may inspect your payroll records and other records relevant to this policy at any time to verify amounts of insurance, the premiums charged and other matters relating to this policy.

## Premiums

The first premium is due on the effective date. After that, premiums are due monthly in advance.

The amount of the premium payable on a premium due date is determined by applying the monthly premium rates in force to the total units of insurance in force on that premium due date.

The initial monthly premium rates as determined in the Financial Arrangements section, are in force on the effective date. We may change premium rates on the effective date of an amendment or on a premium due date. We will give you 90 days written notice of a premium rate change unless it is due to an amendment. The premium rates will not change before the first policy anniversary because of experience-rating. The premium rates calculated at the policy anniversary will be effective on July 1, 1994 or an anniversary of that date.

## Period of Grace

The policy continues in force during the period of grace. Premiums must be paid for a period during which the policy remains in force, including the period of grace. The period of grace is allowed for the payment of each premium except the first.

## **Termination of Policy**

This policy or any billing division terminates when a premium has not been paid before the end of the period of grace provided you have received written notice prior to the termination.

This policy terminates automatically upon your receivership or bankruptcy. Upon the receivership or bankruptcy of a Participating Affiliate, the insurance of all members of that Participating Affiliate terminates automatically.

You may terminate this policy by giving us written notice. The date of termination is the date we receive the notice or the termination date specified in the notice, if later. If the date of termination is not a premium due date, a partial premium is payable for the period from the last premium due date to the date of termination.

We may terminate this policy on the first policy anniversary or on a premium due date after that by giving you 90 days written notice.

The insurance of all members stops on the termination date of this policy and claims incurred after that are not eligible for payment.

# **Eligibility**

## **Eligibility to be a Member**

A person is eligible, and continues to be eligible, to be a member while he meets all of the following conditions:

1. He is actively working, or is on an approved leave of absence.
2. He has been continuously employed by you or one of your participating affiliates at least as long as the waiting period.
3. He is a full-time associate (minimum of 40 hours per week).
4. He is a resident of Canada.

Participation is compulsory for Basic Member Life Insurance Option Core.

An employee who is classified as an independent, owner-operator, consultant, contract employee or is self-employed will not be eligible to be a member.

## **Waiting Period**

the first of the month following or coincident with date of hire

## **Eligibility for Dependant Insurance**

A member is eligible, and continues to be eligible, for dependant insurance while he meets all of the following conditions:

1. He is a member.
2. He has at least one dependant.
3. His dependants are residents of Canada. However, dependent children studying at a university or college outside of Canada who are covered for provincial health care insurance will be eligible.

# **Commencement and Termination of Insurance (Class ID)**

## **Enrolment for Insurance**

An eligible person is automatically enrolled for Basic Member Life Insurance.

## **Effective Date of Insurance of a Member**

A person becomes a member on the date he becomes eligible unless he is not actively working on that day.

If an eligible person is not actively working on the date the insurance would be effective, he becomes a member on the date he returns to active work. We may require evidence of insurability to establish the date that he is physically and mentally fit to return to active work. If so, he becomes a member on the date we establish.

## **Changes in Insurance**

An increase in the provision benefits or the amount of insurance of a member due to a policy amendment or change in classification becomes effective on the date of the policy amendment or change in classification, unless the member is not actively working on that day. A member may change the option elected during annual re-enrolment period or within 31 days after a qualifying life event change, or employment classification.

If a member is not actively working on the date an increase in the provision benefits or the amount of insurance of a member would be effective, the increase becomes effective on the date he returns to active work. We may require evidence of insurability to establish the date that he is physically and mentally fit to return to active work. If so, the increase becomes effective on the date we establish. If we don't approve evidence of insurability required, the increase will not be effective.

A decrease in the provision benefits or the amount of insurance of a member due to a policy amendment or change in classification, becomes effective on the date of the policy amendment or change in classification, unless the member is totally disabled on that day.

If the member is totally disabled, a decrease in the amount of insurance for all provision benefits, due to a policy amendment or change in classification, becomes effective on the date the member returns to active work.

## **Termination of Insurance of a Member**

Unless specified otherwise in this policy, the insurance of a member terminates on the date that he no longer meets all of the conditions for Eligibility to be a Member.

If a member fails to tell us every fact material to his insurance or misrepresents those facts, that insurance is voidable.

Statements made on a member's enrolment form or on an evidence of insurability form that are fraudulent or a misstatement of age may be contested at any time.

Other statements are incontestable 2 years after the statements are made.

## **Continuation of Insurance of a Member**

When the insurance of a member would terminate because employment ends or the member is no longer actively working, you are entitled to continue insurance for a period of 12 months in the following circumstances, as long as your decision is applied equally to all members within the same classification as outlined in the Summary of Insurance:

1. if the member is absent from work due to disease or injury, the insurance may be continued during the period of absence.
2. also, the insurance under this contract may be continued:
  - a. during maternity/parental leave, but not more than the period required under the relevant legislation.
  - b. during the notice period for termination of employment as required by relevant legislation, or with prior authorization from Sun Life for periods beyond the legislated notice period for termination.
  - c. for a pre-determined period during which the member is temporarily laid off or is granted a leave of absence, but not more than 12 months. The leave of absence cannot be because of disease or injury, paid vacation or maternity/parental leave.



# **Commencement and Termination of Insurance (Options Good, Better, Best and Class 5)**

## **Enrolment for Insurance (Options Good, Better and Best)**

An eligible person enrolls for Optional Insurance by submitting a completed enrolment form. Evidence of insurability is required, except for the first \$30,000 if enrolment is received within 31 days of eligibility.

A member requests Optional dependant insurance by submitting a completed enrolment form and evidence of insurability for the member's spouse to us.

## **Enrolment for Insurance (Class 5)**

An eligible person is automatically enrolled for Basic Member Life Insurance.

An eligible person enrolls for Optional Insurance by submitting a completed enrolment form. Evidence of insurability is required, except for the first \$30,000 if enrolment is received within 31 days of eligibility.

A member requests Optional dependant insurance by submitting a completed enrolment form and evidence of insurability for the member's spouse to us.

## **Effective Date of Insurance of a Member**

The insurance for all members becomes effective on the latest of

1. the date that he becomes eligible, or
2. the date that we approve any evidence of insurability,

unless he is not actively working on that day.

If an eligible person is not actively working on the date the insurance would be effective, he becomes a member on the date he returns to active work. We may require evidence of insurability to establish the date that he is physically and mentally fit to return to active work. If so, he becomes a member on the date we establish.

A member becomes insured for dependant insurance on the latest of

1. the date that he becomes eligible for dependant insurance,
2. the date that he requests dependant insurance, or
3. the date that we determine the insurability of all of his dependants, and approve at least one dependant,

unless he is not actively working on that day.

If a member is not actively working on the date the insurance would be effective, he becomes insured for dependant insurance on the date he returns to active work. We may require evidence of insurability to establish the date that he is physically and mentally fit to return to active work. If so, he becomes insured for dependant insurance on the date we establish.

## **Changes in Insurance**

A member may request a change the option elected under the Optional Member Life Insurance, Optional Spousal Life Insurance and Optional Dependent Child Insurance Provision. Evidence of Insurability must be submitted for Optional Member Life Insurance and Optional Spousal Life Insurance.

An increase in the amount of insurance of a member becomes effective on the latest of

1. the date that he becomes eligible,

**Commencement and Termination of Insurance (Options Good, Better, Best and Class 5)**  
**January 1, 2017 (83160-Flex)**

**F1-1**

2. the date that he requests the increase, or
3. the date that we approve any evidence of insurability.

An increase in the provision benefits, the amount of insurance of a member or the amount of dependant insurance of a member due to a policy amendment or change in classification becomes effective on the date of the policy amendment or change in classification, unless the member is not actively working on that day. If we don't approve evidence of insurability required, the increase will not be effective

If we don't approve an increase in the amount of insurance of a member or the amount of dependant insurance of a member, any future increase in the maximum benefit amount will not be effective unless evidence of insurability is approved. An increase in the maximum benefit amount will be effective on the date we approve the evidence of insurability.

If a member is not actively working on the date an increase in the provision benefits, the amount of insurance of a member or the amount of dependant insurance of a member would be effective, the increase becomes effective on the date he returns to active work. We may require evidence of insurability to establish the date that he is physically and mentally fit to return to active work. If so, the increase becomes effective on the date we establish. If we don't approve evidence of insurability required, the increase will not be effective.

A decrease in the provision benefits, the amount of insurance of a member or the amount of dependant insurance of a member due to a policy amendment or change in classification, becomes effective on the date of the policy amendment or change in classification, unless the member is totally disabled on that day.

If the member is totally disabled, a decrease in the amount of insurance for all provision benefits, due to a policy amendment or change in classification, becomes effective on the date the member returns to active work.

## **Termination of Insurance of a Member**

Unless specified otherwise in this policy, the insurance of a member terminates on the date that he no longer meets all of the conditions for Eligibility to be a Member. The dependant insurance of a member terminates on the date he no longer meets all of the conditions for Eligibility for Dependant Insurance. If a dependant child is insured when he reaches age 21 or 25 (26 in Quebec), if he is a student, his benefits will terminate at the end of the calendar year in which the dependant child reaches age 21 or 25 (26 in Quebec), if applicable.

If a member fails to tell us every fact material to his insurance or misrepresents those facts, that insurance is voidable.

Statements made on a member's enrolment form or on an evidence of insurability form that are fraudulent or a misstatement of age may be contested at any time.

Other statements are incontestable 2 years after the statements are made.

## **Continuation of Insurance of a Member**

When the insurance of a member would terminate because employment ends or the member is no longer actively working, you are entitled to continue insurance for a period of 12 months in the following circumstances, as long as your decision is applied equally to all members within the same classification as outlined in the Summary of Insurance:

1. if the member is absent from work due to disease or injury, the insurance may be continued during the period of absence.
2. also, the insurance under this contract may be continued:
  - a. during maternity/parental leave, but not more than the period required under the relevant legislation.

- b. during the notice period for termination of employment as required by relevant legislation, or with prior authorization from Sun Life for periods beyond the legislated notice period for termination.
- c. for a pre-determined period during which the member is temporarily laid off or is granted a leave of absence, but not more than 12 months. The leave of absence cannot be because of disease or injury, paid vacation or maternity/parental leave.

# **Basic and Optional Member Life Insurance Provision**

## **Amount of Benefit – Basic Life Insurance (Classes ID and 5)**

The amount of benefit is equal to the maximum benefit.

## **Amount of Benefit – Optional Life Insurance (Options Good, Better, Best and Class 5)**

The member determines the amount of benefit by applying the benefit formula. The amount of benefit may not exceed the maximum benefit.

## **Death Benefit - Claims**

The member appoints the beneficiary when enrolling for insurance. The beneficiary designation may be changed, if permitted by law. The member must submit written notice of the change.

When a member dies, we will pay the beneficiary the amount of benefit in force on the date of death.

If no beneficiary has been appointed or if the beneficiary has predeceased the member, payment will be made to the member's estate.

A minor cannot personally receive a death benefit under the plan until reaching the age of majority. If the member resides outside Québec and is designating a minor as the beneficiary, the member may wish to designate someone to receive the death benefits during the time the beneficiary is a minor. If the member resides outside Québec and has not designated a trustee, current legislation may require us to pay the death benefit to the court or to a guardian or public trustee. If the member resides in Québec, the death benefit will be paid to the parent(s)/legal guardian of the minor on the minor's behalf. Alternatively, the member may wish to designate the estate as beneficiary and provide a trustee with directions in the member's will.

A claim must be received by us within 6 years of the date of death.

The claimant must submit proof of the claim and the right to receive the benefit to us. Proof of claim is at the claimant's expense. We may require other information we consider necessary for the assessment of a claim.

Benefits may be paid in cash, left on deposit at interest or used to provide an income in the form of an annuity. The choice of settlement may be made by the member or by the beneficiary if the member did not make a choice.

Limitation period for Ontario:

Every action or proceeding against an insurer for the recovery of insurance money payable under the policy is absolutely barred unless commenced within the time set out in the *Limitations Act, 2002*.

Limitation period for any other province:

Every action or proceeding against an insurer for the recovery of insurance money payable under the policy is absolutely barred unless commenced within the time set out in the Insurance Act or other applicable

## **Death Benefit - Exclusion**

No benefit is payable for any amounts of Life Insurance that have been in force for less than 2 years, if death is due to suicide, while sane or insane.

## **Conversion Privilege - Policy Available**

If the member's insurance terminates for any reason other than at his request, he may convert it to an individual policy on his life without submitting evidence of insurability.

The application and premium must be received by us within 31 days after termination of insurance. The premium for the individual policy will be determined by the current scale of premiums for the class of risk to which the applicant belongs.

The individual policy may be a term insurance policy for a period of one year, a term insurance policy to the age of 65 years or a permanent insurance policy under a regular plan being issued by us. The term insurance policies are not available to a person who has reached the age of 65 years.

The individual policy will be in exchange for all benefits terminated under this provision. It will contain the same provisions as are regularly included by us in new individual policies but will exclude disability insurance and accidental death insurance.

## **Conversion Privilege - Amount and Effective Date**

The amount of the individual policy will not exceed the lesser of

1. the amount of the insurance terminated,
2. the maximum amount of insurance for which the person has been insured under this provision less the total amount of individual insurance still in force on the person's life which was previously obtained through the Conversion Privilege of this provision, or
3. \$300,000, or the amount stipulated in any applicable legislation, if greater.

The individual policy will be effective 31 days after the insurance is terminated.

The amount of the individual policy will not exceed the amount of the insurance terminated less the amount of insurance in force under a new group policy that replaces this policy.

## **Conversion Privilege - Right to Disability Benefit**

When proof is submitted to us that the group insurance replaced by the individual policy would have been in force under the Disability Benefit, the rights to that insurance will be restored if all of the following conditions are met

1. the proof is received by us within 12 months of the individual policy's effective date,
2. the individual policy is surrendered without claim except for the return of premiums paid on the individual policy, and
3. the insurance under that individual policy is void.

## **Conversion Privilege - Continuation of Benefit After Termination**

If the member's insurance terminates while this provision continues in force and the member dies within 31 days after termination of insurance, we will pay the beneficiary the amount of insurance which the member could have converted to an individual policy on his life through the Conversion Privilege of this provision, or the amount stipulated in any applicable legislation, if greater.

## **Disability Benefit (Waiver of Premiums)**

We will waive premiums for the Member Life Insurance as defined in the Disability Benefit Insurance Provision.



# Optional Spousal Life Insurance Provision

## Amount of Benefit

The amount of benefit is equal to the maximum benefit.

## Claims

A claim must be received by us within 6 years of the date of death.

The claimant must submit proof of the claim and the right to receive the benefit to us. Proof of claim is at the claimant's expense. We may require other information we consider necessary for the assessment of a claim.

Limitation period for Ontario:

Every action or proceeding against an insurer for the recovery of insurance money payable under the policy is absolutely barred unless commenced within the time set out in the *Limitations Act, 2002*.

Limitation period for any other province:

Every action or proceeding against an insurer for the recovery of insurance money payable under the policy is absolutely barred unless commenced within the time set out in the *Insurance Act* or other applicable legislation of the member's province or territory.

## Payment of Benefit

When an insured dependant dies, we will pay the member the amount of benefit in force on the date of death.

## Conversion Privilege - Spouse

If the dependant insurance for the spouse terminates due to the termination of the member's insurance, the spouse may convert the amount of the dependant insurance terminated to an individual policy on his life without submitting evidence of insurability.

The conditions that apply to the Conversion Privilege for the member's insurance will apply to the Conversion Privilege for the dependant insurance.

## Continuation of Benefit After Termination –Dependent

If the dependant insurance terminates and the dependant dies within 31 days after termination of insurance, we will pay the member the amount of insurance which could have been converted to an individual policy on the dependant life's through the Conversion Privilege of this provision, or the amount stipulated in any applicable legislation, if greater.

## Disability Benefit

We will waive premiums for the member's dependant life insurance for a period during which the member's life insurance premiums are waived due to the member's disability.

# **Optional Dependant Child Life Insurance Provision**

## **Amount of Benefit**

The amount of benefit is equal to the maximum benefit.

## **Claims**

A claim must be received by us within 6 years of the date of death.

The claimant must submit proof of the claim and the right to receive the benefit to us. Proof of claim is at the claimant's expense. We may require other information we consider necessary for the assessment of a claim.

Limitation period for Ontario:

Every action or proceeding against an insurer for the recovery of insurance money payable under the policy is absolutely barred unless commenced within the time set out in the *Limitations Act, 2002*.

Limitation period for any other province:

Every action or proceeding against an insurer for the recovery of insurance money payable under the policy is absolutely barred unless commenced within the time set out in the *Insurance Act* or other applicable legislation of the member's province or territory.

## **Payment of Benefit**

When an insured dependant dies, we will pay the member the amount of benefit in force on the date of death.

## **Conversion Privilege - Child**

Where necessary in order to comply with applicable legislation: If the dependant insurance for a child terminates due to the termination of the member's insurance, the member may convert the amount of the dependant insurance terminated to an individual policy on the child's life without submitting evidence of insurability.

The conditions that apply to the Conversion Privilege for the member's insurance will apply to the Conversion Privilege for the dependant insurance.

## **Continuation of Benefit After Termination –Dependent**

If the dependant insurance terminates and the dependant dies within 31 days after termination of insurance, we will pay the member the amount of insurance which could have been converted to an individual policy on the dependant life's through the Conversion Privilege of this provision, or the amount stipulated in any applicable legislation, if greater.



## **Disability Benefit**

We will waive premiums for the member's dependant life insurance for a period during which the member's life insurance premiums are waived due to the member's disability.

# **Disability Benefit Insurance Provision - Waiver of Premiums**

If a member is insured under the Member's Life Insurance Provision, the Spousal Life Insurance Provision, the Dependent Child Life Insurance Provision, he is insured under this provision.

## **Definitions**

If a member is insured under a group Long Term Disability Insurance Provision, "totally disabled" and "qualifying period" are determined under that provision.

If a member is not insured under a group Long Term Disability Insurance Provision, "totally disabled" and "qualifying period" are determined as follows.

### **Option Core and Basic Life Insurance**

"Totally disabled" means that the member has a medically determinable physical or mental impairment due to injury or disease which prevents him from performing the regular duties of any occupation:

1. for which he has at least the minimum qualifications, and
2. that provides an income that is equal to or greater than the amount of monthly disability benefit payable under this provision, adjusted annually by the Consumer Price Index.

"Qualifying period" means 30 weeks.

The qualifying period begins on the date the member becomes totally disabled. The availability of work for the member does not affect the determination of "totally disabled".

### **Options Good, Better, Best and Optional Life Insurance**

During the qualifying period and the 24 month period immediately following it, "totally disabled" means that the member has a medically determinable physical or mental impairment due to injury or disease which prevents him from performing the regular duties of the occupation in which he participated just before the disability started.

After the 24 month period, "totally disabled" means that the member has a medically determinable physical or mental impairment due to injury or disease which prevents him from performing the duties of any occupation:

1. for which he has at least the minimum qualifications, and
2. that provides an income that is equal to or greater than the amount of monthly disability benefit payable under this provision, adjusted annually by the Consumer Price Index.

"Qualifying period" means 30 weeks.

The qualifying period begins on the date the member becomes totally disabled. The availability of work for the member does not affect the determination of "totally disabled".

## **Disability Benefit - Claims**

If the member is insured under a group Long Term Disability Insurance Provision issued by us, he must submit a claim to us along with proof of claim under the group Long Term Disability Insurance Provision.

If the member is not insured under a group Long Term Disability Insurance Provision issued by us, he must submit a claim to us after he has been totally disabled continuously for 6 months but not beyond 12 months after the date he became totally disabled.

We may require

1. proof that the member continues to be totally disabled,
2. an examination by an independent physician or a registered psychologist appointed by us,
3. proof of the member's age,
4. a vocational or functional capacities assessment, and
5. other information we consider necessary for the assessment of a claim.

Proof of claim is at the claimant's expense.

From time to time we may request additional information to support a proof of claim. If the information is not provided within 90 days of the request, the claimant may not be entitled to some or all benefit payments.

There is a time limit for appealing our decision to decline or terminate a claim. An appeal must be made within 3 months of such a decision and must be accompanied by new objective medical evidence.

Limitation period for Ontario:

Every action or proceeding against an insurer for the recovery of insurance money payable under the policy is absolutely barred unless commenced within the time set out in the *Limitations Act, 2002*.

Limitation period for any other province:

Every action or proceeding against an insurer for the recovery of insurance money payable under the policy is absolutely barred unless commenced within the time set out in the *Insurance Act* or other applicable legislation of the member's province or territory.

## **Continuation of Insurance**

If a member becomes totally disabled before he reaches 65 years of age, his life insurance continues provided we receive proof that he has been totally disabled from the same or related causes for the qualifying period. The amount of insurance continued will be the lesser of

1. the amount for which the member would have been insured if he had continued to be an active member, according to the Summary of Insurance in force on the date he became totally disabled, or
2. the amount in force on the date he became totally disabled.

We will waive premiums for the continued insurance following the qualifying period.

If a member dies before he submits proof to us that he is totally disabled, his insurance is considered to be in force, provided

1. he is under 65 years of age on the date he became totally disabled,
2. death occurs within 12 months of the date he became totally disabled, and
3. we receive proof that he was totally disabled continuously from the date he became totally disabled to the date of death.

The Disability Benefit terminates on the date that

1. the member is no longer totally disabled,
  2. the member fails to submit proof to us that he continues to be totally disabled,
  3. the member fails to submit to a medical examination at our request, by an independent physician or a registered psychologist we appoint, or
  4. the member reaches the age at which insurance terminates,
- whichever is earliest.

When the Disability Benefit terminates, the member's life insurance terminates. When he returns to active work, that insurance will be reinstated upon request.

## **Consecutive Periods of Disability**

If a member stops being totally disabled while satisfying a qualifying period and, within 30 days, becomes totally disabled again from the same or related causes, the disability is considered to be a continuation of the previous disability.

If a member stops being totally disabled following a disability for which premiums are waived and, within 6 months, becomes totally disabled again from the same or related causes, the disability is considered to be a continuation of the previous disability.

The amount of insurance continued for consecutive periods of disability is determined from the Member Life Insurance Provision in force on the date the previous disability began.

# TAB E

Exhibit "E" to the  
Affidavit of Kathryn O'Rourke  
sworn March 12, 2019

A handwritten signature in black ink, appearing to read "Kathryn O'Rourke". The signature is written in a cursive style with some stylized flourishes.

---

*A commissioner of oaths, etc.*



# Your Guide to the Sears Benefits Program

The Sears Benefits Program offers healthcare coverage, life insurance, accidental death & dismemberment (AD&D) insurance, plus disability benefits to eligible full-time hourly and salaried associates.

Using this guide and your enrollment form, you'll be able to select the coverage that meets your needs. Your enrollment form includes the defaults that will apply if you do not submit or complete a section of the enrollment form.

A Sears Benefits Program booklet is available with all the specific, detailed information on each component of the Sears Benefits Program on Searsnet. If you do not have access to Searsnet and would like a copy of the booklet, please request a copy through your HR Representative.

July 2014

## About the Sears Benefits Program

### Who is eligible for the Sears Benefits Program?

- Full-time associates with 3 months of continuous full-time service.
- Part-time associates with 6 months of continuous part-time service (3 months in Quebec).
- Associates who are actively at work (or on an approved leave of absence).
- Associates must also be residents of Canada and under the age of 65.

### The benefits available to you

#### Full-Time Associates:

- All full-time associates receive single healthcare benefits, basic life insurance in the amount of \$10,000 and short-term disability coverage paid by Sears.
- In addition to Company-paid single benefits, you can purchase healthcare benefits and optional life insurance coverage for your spouse and your dependents through monthly payroll deductions. You can also purchase additional optional associate life and AD&D coverage for yourself through monthly payroll deductions.
- Long-term disability coverage (associate-paid).

#### Part-Time Associates:

- All part-time associates can purchase healthcare benefits, basic and optional life insurance for themselves and their eligible dependents. Associates can also purchase optional AD&D insurance for themselves. Premiums for coverage are deducted from an associate's pay on a monthly basis.
- Part-time associates qualify for Company-paid benefits, which includes single healthcare and basic life insurance of \$10,000, by working at least 1,250 hours (780 hours for associates in Saskatchewan) in the October-to-September qualifying period. Part-time associates who become eligible for Company-paid benefits mid-year will receive this coverage at the next annual re-enrollment period, effective January 1.

### Couple and Family coverage is available for spouses and dependent children

- Couple coverage is available for you and one dependent (spouse or dependent child).
- Family coverage is available for yourself and at least two dependents (spouse and/or dependent children).

A spouse is a person of the same or opposite sex who is living in the same household and is legally married to you, or who has lived with you continuously for at least one year and is publicly represented as your husband, wife or partner. Your spouse must be a Canadian resident and under the age of 65.

A dependent child is your or your spouse's unmarried, natural, or legally adopted child, or a child for whom you and your spouse have been granted legal guardianship, who is financially dependent on you or your spouse for support and who is:

- Under the age of 21 as of January 1 of the plan year.
- Age 21 or over, but under age 25 (under age 26 in Quebec), and enrolled full-time in a recognized university or college as of January 1 of the plan year. Proof of student status must be submitted on an annual basis during the Open Enrollment period.
- Age 21 or over and is physically or mentally incapable of self-support, having become so at a time when he or she was eligible under 1 or 2 above and is approved by Sun Life.
- Residing with your former spouse, but designated as your dependent child in a divorce or separation agreement while eligible under 1, 2, or 3 above.



### **Making changes to your coverage**

Each year, you will have an opportunity to review your healthcare selection. In addition, you may have the opportunity to re-select your healthcare coverage throughout the year if you experience an eligible life event or change in your employment classification. See page 5 for more information.

You can make changes to your optional life and AD&D coverage at any time throughout the year.

### **Termination of coverage**

Your benefit coverage for you and your covered spouse and/or dependents will terminate on your last day of employment, or at the end of the month of your 65<sup>th</sup> birthday or retirement, if earlier. If you die, your covered spouse and/or dependents' health benefits will continue for 24 months.

Spousal benefit coverage will terminate at the end of the month of the spouse's 65<sup>th</sup> birthday.

Dependent child coverage will terminate at the end of the plan year in which the dependent reaches age 21, unless they are a full-time student. For full-time students, age 21-25, coverage terminates at the end of the plan year in which the dependent reaches age 25, or is no longer a full-time student, whichever occurs first. Coverage for students in Quebec will terminate at the end of the month of the student's 26<sup>th</sup> birthday. Please note, appropriate proof of student status is required on an annual basis during the Open Enrollment period.

You have 90 days after termination of coverage to submit claims for expenses incurred while covered.

Associates age 65 and under, may choose to convert their life insurance within 31 days of leaving the Sears Benefit program. Associates between the ages of 18-74 may choose to continue their health and dental coverage within 60 days of leaving the program. The associate must contact Sun Life directly for their conversion options.

## Your Healthcare Options

The Sears Benefits Program includes two options. The Basic Health Plan provides essential single coverage for you and the Enhanced Plan offers greater coverage and coverage for eligible family members.

Provision	Basic Health Plan	Enhanced Plan
Coverage Level	Single	Single, Couple, Family
Deductible	\$1,500 per year	None
Prescription Drugs	75% upon satisfaction of deductible	75% with a drug card
Dispensing Fee	100%, maximum \$7 upon satisfaction of deductible	100%, maximum \$7
Vision Care	Not included	100%, \$200 per 24 month period (includes one eye examination, eyeglasses and contact lenses)
Medical Supplies and Services	75% upon satisfaction of deductible	75%
Hearing Aids	75%, \$500 per 5 consecutive years upon satisfaction of deductible	75%, \$500 per 5 consecutive years
Out-of-Province	100%, 60-day trip limit, \$1,000,000 lifetime maximum	100%, 60-day trip limit, \$1,000,000 lifetime maximum
Dental	Not included	50% to 75%, annual / lifetime maximums for eligible services apply
Paramedical Practitioners	Not included	75%, \$500 per year (maximum applies to all eligible practitioners combined)
Health Spending Account (HSA)	\$500 per year (monthly installments of \$41.66)	Not included

**Please note, part-time associates who do not qualify for Company-paid coverage are only able to purchase the Enhanced Plan.**

### What is a deductible?

The deductible in the Basic Health Plan is the amount you must pay out-of-pocket for eligible expenses through the plan before they become payable under the Sears Benefits Program.

### Prescription drug cards

If you enroll in the Enhanced Plan, you will receive a prescription drug card for you and your eligible dependents, if applicable.

### Print your coverage card

Log onto the Sun Life website to print your coverage card for medical, dental and travel benefits. Carry the card with you so that you have contract and policy numbers, as well as contact information.

### For associates who live in Quebec

The Regie de l'assurance maladie Quebec (RAMQ) stipulates minimum coverage requirements that must be offered by employers who sponsor group benefits programs. The Basic Health Plan does not meet the RAMQ minimum requirements and therefore can only be selected if you are covered under another benefits plan that meets the RAMQ minimum requirements. Complete form is required annually.

Quebec associates can select the Enhanced Plan, which meets RAMQ minimum requirements or the BasicQue Plan (a RAMQ equivalent program).

For those associates enrolled in an alternative health benefit insurance program, you must submit a completed Quebec Health Benefit Exemption Request form on an annual basis during the Open Enrollment period. The form is available on the Sears Benefits page on Searsnet or through your HRL.

If you enroll in the Basic Health Plan, you will not receive a prescription drug card.

- When you incur an expense, submit the claim to Sun Life Financial. Your claims will be tracked by Sun Life Financial until you have satisfied the \$1,500 deductible (the out-of-pocket expenses that you must pay before you start receiving reimbursement for your health claims).
- Once you reach the \$1,500 deductible, any eligible future prescription drug or medical services and supplies claims for the benefit year will be reimbursed at a coinsurance level of 75%.

### **Which paramedical practitioners and medical services and equipment are covered?**

The Basic Health and Enhanced Plans cover the following medically required services and equipment (maximums may apply):

- Artificial limbs or prosthetic appliances
- Orthotics and Orthopedic shoes
- Oxygen
- Rental or purchase of durable equipment such as wheelchairs, walkers, hospital beds, crutches and braces

The Enhanced Plan covers services performed by the following paramedical practitioners (combined annual maximum reimbursement of \$500):

- Acupuncturist
- Physiotherapist
- Psychologist or registered social worker
- Registered massage therapist
- Speech language pathologist
- Chiropractor
- Osteopath
- Naturopath
- Chiropract/podiatrist
- Audiologist
- Registered dietitian

### **Which dental services are covered in the Enhanced Plan?**

The Enhanced Plan covers a wide range of dental services, paid according to the current year's fee guide for general practitioners approved by the provincial dental association in your province. You may claim dental expenses up to an annual maximum of \$1,500, per associate or dependent. The maximum applies to your basic/preventative (including periodontics & endodontics) and major restorative services combined.

Here is a snapshot of some of the dental services eligible for reimbursement:

#### **Basic/Preventative Services**

Your basic/preventative services, reimbursed at 75% of eligible expenses, include:

- Oral examinations
- Cleaning and scaling of teeth
- Fillings
- Extractions
- Bite-wing x-rays
- Recall examinations (dental check-ups) once every nine months

#### **Major Restorative**

Your major restorative coverage, reimbursed at 50% of eligible expenses, include:

- Partial or complete dentures
- Crowns, inlays, onlays

#### **Periodontics & Endodontics**

Your periodontic and endodontic services are reimbursed at 75% of eligible expenses:

- Root canals
- Root canal therapy
- Gum treatment
- Emergency services

#### **Orthodontics**

Your orthodontic services cover eligible dependent children under the age of 19 and are reimbursed at 50%, to a lifetime maximum of \$2,500 per eligible dependent child. Eligible expenses include:

- Diagnostic Cast
- Observation and adjustment
- Appliances for tooth guidance or uncomplicated tooth removal

### Submitting claims

Claims can be submitted in one of the following ways:

1. **Electronic Claims Submission** (for associates in the Enhanced Plan): use your prescription drug card for real-time adjudication of your claim and you will only pay your coinsurance amount. If your dental office or paramedical practitioner is set up for electronic data exchange, they may submit your claim to Sun Life Financial on your behalf for reimbursement.
2. **Online or Mobile**: visit [www.sunlife.ca/member](http://www.sunlife.ca/member) and log onto the Plan Member website or download the Sun Life Mobile web app. The expense must be listed on the drop-down list. If you don't see the expense on the list, you will need to submit a paper claim form.
3. **Mail**: complete a paper claim form. Claim forms are located on Sun Life Financial's plan member website, on Searsnet (see Human Resources > Benefits > Sears Benefits) or with your HR representative.

**Note:** A claim must be received by Sun Life within 90 days following the end of the plan year.

### Coordinating benefits with your spouse's plan

If you and your spouse have benefits coverage from employer-sponsored plans, you can submit your claim under both plans for a maximum reimbursement amount. To submit a claim under both plans, you must be enrolled and covered under your spouse's plan, and vice versa.

1. When you have a claim, you always submit your expense to the Sears Benefits Program first. Your spouse submits his or her claim to their benefits plan first.
2. After you receive payment, you re-submit your claim to your spouse's benefits plan with a copy of the explanation of benefits, as well as receipt of payment. You will then receive reimbursement for eligible expenses covered under your spouse's plan.

### When submitting claims for your dependents

If you have dependent children covered under the Sears Benefits Program as well as a spouse's plan, you would submit claims to the benefits program of the parent whose birthday is first during the year. For example, if your birthday is in June and your spouse's birthday is in August, you would submit your dependent's claims to the Sears Benefits Program first, then to your spouse's plan for reimbursement.

If you and your spouse have the same birthday, you would submit your dependent child's claims to the parent's plan whose first name begins with the earlier letter in the alphabet.

### Eligible healthcare changes

At any time within the benefit year, you can make a change to your healthcare benefits coverage within 31 days of an eligible Life Event Change or change in employment classification. After the 31-day period, changes will not be made.

Below is a list of eligible Life Event Changes and the documentation to include when changing your healthcare benefits coverage.

Life Event	Proof Required
Marriage	Marriage certificate
1 year common-law relationship	Bills addressed to you and your spouse with the same address indicating a minimum of 1 year co-habitation
Legal separation or end of common-law relationship	A letter signed by both parties that they are no longer in a common-law relationship, or a letter from you with the signature of a witness
Divorce	Letter from divorce lawyer or front page of divorce proceeding documentation

Birth of a child	Hospital documentation given at birth
Legal adoption	Adoption papers
Change of custody arrangements	Legal paperwork, if available. If no legal paperwork is available, a signed letter from both parents is acceptable
A dependent child reaching age 21	Proof of full-time student status must meet the following 3 criteria to be considered valid: - Indicate that it is from an accredited college or university - Indicate that it is an enrollment for the current plan year - Indicate that it is for full-time studies
Death of a spouse or dependent child	Death certificate
Involuntary loss or attainment of spousal benefits coverage through their employer's plan	Letter from spouse's company indicating date when benefits begin or cease

To change your coverage, complete a copy of the Life Event Change form.

- You can print the form from [Searsnet > Human Resources > Benefits > Sears Benefits](#).
- Your HR representative can also print one for you.
- Send your completed form to the HR Service Centre along with proof of your Life Event Change.

## Prescription Drugs - Prior Authorization

### What you need to know before you fill your next prescription

Prior Authorization encourages communication between you, your doctor and your pharmacist about your prescription drug treatment before you fill your prescriptions. It's about using the right prescription drug at the right time. At the same time, it helps Sears manage prescription drug costs.

With Prior Authorization, you will need pre-approval before certain prescription drugs are covered under your plan, by meeting medical criteria.

You won't need pre-approval for all of your prescriptions. Pre-approval is required for a limited number of prescription drugs taken for certain non-life threatening conditions.

### Prior Authorization drug list

You can access the most current list on Searsnet or Sun Life's Plan Members' website. You will need to enter the contract number **25455**.

If you are prescribed one of the prescription drugs on the list:

1. You and your doctor need to complete a Prior Authorization form. You complete part of the form, and your doctor fills in details about your medical condition.
2. Fax or mail the form to Sun Life; the fax number and address are listed on the form.
3. Sun Life will notify you by mail to confirm whether or not your request is approved. Requests are processed within five business days from the time the completed form is received.
  - When your request is approved, the prescription drug will be paid for under the Sears Benefits Program as per plan provisions. You won't have to re-apply if you are prescribed the same drug again in future.
  - If your request is denied, the prescription drug won't be paid for under the Sears Benefits Program. You can choose to pay for the prescription yourself.

If you have coverage through a spouse's plan, or through a Health Spending Account, you can make a claim from those plans. If you don't have coverage elsewhere, you may want to ask your doctor about other prescription drug treatments.

If you submit a claim for one of the drugs on the Prior Authorization list without following the pre-approval process, you will be advised that Prior Authorization is required (and your claim will be declined). In that case, you can choose to pay for your prescription yourself and then submit a Prior Authorization form for approval. If approved, you can then submit a paper claim for reimbursement for that prescription.

### What about generic prescription drugs?

The Sears Benefits Program covers prescription drugs up to the lowest-cost generic equivalent, if one exists. This also applies to prescription drugs on the Prior Authorization list. If your claim for a prescription drug on the list is approved and a generic equivalent is available, you will be reimbursed up to the lowest-cost generic equivalent.

### What do I need to do?

1. Familiarize yourself with this process.
2. Talk to your doctor about this process at your next visit.
3. Use your drug card, if you are in the Enhanced Plan when you fill your prescriptions.
4. If you have any questions, contact the HR Service Centre by phone at 1-888-444-9444 or by e-mail at [HRSC@sears.ca](mailto:HRSC@sears.ca).

**I'm a resident of Quebec. What if I'm prescribed a drug on the RAMQ formulary?**

Drugs requiring Prior Authorization that are also in the RAMQ formulary will be reimbursed at the RAMQ minimum, with no pre-approval required. If you want to claim the difference between the RAMQ minimum and what the Sears Benefit Program covers, you can submit a Prior Authorization form for approval.

**Will the drugs on the Prior Authorization list ever change?**

Yes, drugs requiring Prior Authorization may change from time to time. Sun Life Financial regularly reviews the drug list to see if new drugs should be added or some drugs should be removed. As changes occur, the process and documentation will be updated.

**Where can I find the Prior Authorization forms?**

- On Searsnet, go to Human Resources > Benefits > Sears Benefits > Pre-Approving Drug Claims > Prior Authorization Forms > Link to Sun Life site.
- Go to Sun Life Financial's Plan Member Services website at [www.sunlife.ca/member](http://www.sunlife.ca/member). Select 'Group Benefits' from the navigation bar, then 'Prior Authorization Drug List and Forms'. Have the Sears contract number handy: 25455. You'll be asked to enter it for verification.
- Call Sun Life Financial's Customer Care Centre toll-free at 1-888-206-4570.

**What if my doctor charges a fee to complete the form?**

You are responsible for the cost of completing the form. Then you may choose to submit your doctor's fees for reimbursement under a Health Spending Account or through a spouse's plan, if that plan covers doctor's fees.

## Life and Accidental Death & Dismemberment

The Sears Benefits Program provides you with an affordable opportunity to purchase optional life insurance for yourself, your spouse and eligible dependents. You also have the opportunity to purchase optional accidental death & dismemberment (AD&D) insurance for yourself.

Benefit	Coverage	Options	Other Information
Life Insurance	Associate	Units of \$10,000 up to a maximum of \$500,000	Associate and spousal optional life insurance coverage is subject to medical approval from Sun Life Financial.
	Spouse	Units of \$10,000 up to a maximum of \$250,000	
	Dependent Children	Units of \$5,000 up to a maximum of \$25,000	
AD&D Insurance	Associate	Units of \$10,000 up to a maximum of \$500,000	

### What should you consider when purchasing optional life and/or AD&D insurance?

There are a number of different considerations to review when deciding on the amount of coverage you need. However this is a question only you can answer as everyone's needs are different. Here are some items to consider:

- Your short-term needs: the estimated cost of funeral expenses and current loans and debts, such as a mortgage, credit cards, car loan, etc.
- Your long-term needs: the amount of income your family will require to maintain their current lifestyle, how long will your family need to rely on this income and if applicable, how much will be required for your children's education.
- Your family's assets: what is the total value of your savings (RRSPs, pension plans, other investments, etc.), including any other life insurance coverage you have.

### Changing your optional life and/or AD&D insurance coverage

You can increase or decrease your optional life insurance or AD&D insurance coverage at any time throughout the benefits year by completing the Life and/or AD&D Change Form.

- You can print the form from Searsnet > Human Resources > Benefits > Sears Benefits.
- Your HR representative can also print one for you.

If you are purchasing optional life insurance coverage for yourself or your spouse, you must submit a Statement of Health Form to Sun Life Financial for approval of coverage. A Statement of Health form can be requested through your HR representative or Searsnet (Human Resources > Benefits > Sears Benefits), or by calling Sun Life Financial's Customer Care Centre at 1-888-206-4570.



## Short-Term Disability

Sears pays short-term disability (STD) income replacement to eligible full-time associates when absent from a scheduled work shift, resulting from a medically substantiated non-occupational illness or injury. All full-time associates who have completed 3 months of continuous service are eligible for STD benefits. Part-time associates are not eligible for STD benefits.

In the event of a personal illness or injury absence, you are required to report your absence by calling 1-877-511-SICK (7425) at least one hour before your scheduled start time. If you do not call the 1-877-511-SICK number, full-time associates will not be paid for their absence. While part-time associates are not eligible for STD income replacement benefits, you are expected to call 1-877-511-SICK (7425) to report your absence.

Absences that extend beyond 2 consecutive working days must be substantiated by a doctor's note in order to be paid. Short-term disability payments are paid by Sears and will be medically managed by a third-party vendor, in the event an illness exceeds 5 consecutive working days.

### Qualifying for short-term disability

To qualify for STD benefits, full-time associates must be unable to perform any and all work (including modified work) offered by Sears.

All STD absences that exceed 5 consecutive days are subject to medical approval. Expenses incurred by an associate in connection with substantiating a claim for STD benefits (for example, a doctor's charge for completing forms) are the responsibility of the associate unless otherwise legislated.

Sears reserves the right to require the necessary medical evidence from either the associate's own medical specialist, or a third-party specialist, to substantiate an associate's inability to work, and to withhold payment until entitlement to the payment of STD is satisfied.

### Schedule of payments (full-time associates only)

Full-time associates will receive the following income replacement for medically approved illnesses:

- 5 sick days per calendar year\*, paid at 100% of your base earnings
- 14 weeks of STD payments, paid at 67% of your base earnings, after a 5-day waiting period

\* PRS Service Technicians and SLH employees receive 10 days per calendar year

#### Example

**\*Assumption is that STD claim is approved by 3<sup>rd</sup> party vendor**

Jacob is away 12 days total in 2014: 3 days in February, 1 day in April and 8 consecutive days in June. Jacob will receive:

- 100% of base earnings for his 3 days sick in February
- 100% of base earnings for his 1 sick day in April
- 100% of base earnings for his first sick day in June, 0% of base earnings for the next 4 sick days, and 67% of earnings for the remaining 3 sick days

Jacob receives 0% of his base earnings for 4 days while sick in June during the 5-day STD waiting period because all of his sick days have been used.

If Jacob had been sick for 12 consecutive days in June only, he would have received:

- 100% of base earnings for his first 5 days of illness, 67% of base earnings for the remaining 7 days of illness

### Payment of STD income replacement benefits

As STD income replacement is paid through the Sears Canada Health & Welfare Trust, two distinct elements will be noticed:

1. Associates receiving sick and/or STD income replacement benefits receive two separate pay statements in the same pay period: one with regular wages and one with sick pay.
2. Employment Insurance (EI) and Canada Pension Plan (CPP) or Quebec Pension Plan (QPP) deductions are not taken from your STD income replacement.

Associates will not receive STD benefit payments beyond 5 consecutive days until the third party vendor has assessed and substantiated the medical absence. Once your claim has been approved, your STD benefit payments will be processed in the next available pay period.

**For part-time associates**

As part-time associates are not eligible for STD benefits, they will be placed on a medical leave of absence after 7 days of continuous medical absence and receive a Record of Employment to apply for Employment Insurance (EI) benefits for which they may be entitled.

Sears reserves the right to require the necessary medical evidence from either the associate's own medical specialist, or a third-party specialist, to substantiate an associate's inability to work.

**Long-Term Disability**

Long-term disability (LTD) provides income replacement benefits to full-time associates in the event of an approved illness or injury. Full-time associates cannot opt out of this coverage; it is a mandatory benefit for all full-time associates with associate-paid premiums.

During the first year of coverage there is a pre-existing conditions clause that states that LTD benefits will not be paid for a disability that arises from a disease or injury that you obtained medical care for before you became insured, This clause would not apply if you had not had medical care for the disease or injury for a continuous period of 13 weeks starting on or after the date the insurance took effect.

If you are approved for LTD benefits, your health, life and AD&D insurance coverage will be continued without payment of premiums during your approved disability.

Provision	Benefit
Income Replacement	40% of earnings
Medical Approval	Great-West Life
Waiting Period	15 week elimination period
Duration	Where medically substantiated, up to the age of 65
Definition of Disability	Unable to perform the duties of your occupation for 24 months, any occupation thereafter

**Your maximum monthly benefit**

Your total monthly income on disability cannot exceed 85% of your net pre-disability earnings. If your total income exceeds 85%, your LTD benefit will be reduced accordingly.

**Your monthly cost**

You will pay the premium for your LTD coverage on a monthly basis, based on the premium rate established for each benefit year. Premium rates are reviewed each year and are subject to change over time. Because you pay the premium cost for coverage, any payment made to you in the event of disability will be tax free.

**Calculating your LTD premium**

To calculate your monthly premium, take your annualized earnings and divide by 12 (the number of payroll deductions you will have in a year). Then multiply your monthly earnings by the premium rate. The result is your monthly premium deduction. The premium rate as of July 2014 is 1.41% of eligible earnings.

**Example**

Vicky is a full-time hourly associate making \$15.39 an hour, working a standard workweek of 37.5 hours, or 1,950 hours per year. When annualized (hourly rate multiplied by hours per year), Vicky makes \$30,000 a year.

$$(\$30,000/12) \times 0.0141 = \$35.25$$

Each month, Vicky will have a payroll deduction of \$35.25 for LTD coverage.

## Question and Answers

### Who do I call if I have questions?

For questions related to the Sears Benefits Program, contact the HR Service Centre at 1-888-444-9444 (416-572-7300 locally in Toronto) Monday to Friday from 9:30 a.m. to 5:00 p.m. ET. or send an e-mail to hrsc@sears.ca.

If you have claims and Health and Dental coverage related questions, contact Sun Life Financial's Customer Care Centre at 1-888-206-4570, or send an e-mail to askus@sunlife.ca.

### Do I need to submit an enrollment form?

All associates who receive Company-paid coverage must submit an enrollment form. Associates who do not qualify for Company-paid coverage should submit an enrollment form only if they would like to purchase coverage. \*Quebec default applies.

You will not be able to make changes to your healthcare benefits until the next annual re-enrollment period (unless you experience an eligible life event or change in employment classification throughout the year).

### If I select the Enhanced Plan, when will I receive my prescription drug card?

Once your enrollment elections have been captured in the system, you will receive a prescription drug card for you and your eligible dependents (if applicable). Typically, this takes approximately three weeks.

### What hours are used when determining a part-time associate's eligibility for Company-paid benefits?

Part-time associates qualify for Company-paid benefits on an annual basis by working 1,250 hours (780 in Saskatchewan) in the October-to-September qualifying period. The following paid hours are used in determining eligibility for part-time associates:

- Regular Pay
- Overtime Pay
- Statutory Pay
- Vacation Taken (hours only – lumpsum payments are not included)
- Draw for commission associates
- Business Absences
- Job related training

### Are there lock-in periods for healthcare benefits?

Your healthcare elections are locked in for the calendar year, until the next annual re-enrollment period, unless you experience a life event or change in employment classification.

Optional life (with the submission of a Statement of Health Form to Sun Life Financial for increases) and/or AD&D coverage can be changed anytime throughout the year.

Beneficiary change can also be at any time.

### Will I receive a statement from Sears confirming my elections?

A confirmation statement will be sent to your home address after your elections have been entered into the system.

### If there is an error on my Confirmation Statement, who do I contact?

If you notice upon review of your Confirmation Statement that your enrollment election(s) have been captured incorrectly, please contact your HR representative.

**In the Basic Health Plan, how do I manage my HSA with the deductible when I submit claims?**

You should submit healthcare claims to the Basic Health Plan before you submit your claim to your HSA for reimbursement. This will give you a higher level of reimbursement.

**Example**

Claudia has eligible prescription drug claims of \$2,500 throughout the year, and submits her claims through the prescription drug plan before using her HSA.

- After reaching the \$1,500 deductible amount, she is reimbursed for the remaining \$1,000 at 75% through the prescription drug plan. Claudia receives \$750 from the prescription drug plan.
- Claudia then submits her claims through her HSA for an additional \$500 in reimbursement. In total, she receives \$1,250 in reimbursements for her expenses.

If Claudia had applied her expenses to her HSA before submitting them to the prescription drug plan, she would have received a lesser reimbursement amount.

- Her \$2,500 worth of claims minus her \$500 HSA equals \$2,000. After the \$1,500 deductible, she would have paid \$500 that can be reimbursed at 75%, which equals \$375.
- The \$375 reimbursement Claudia receives from the prescription drug plan, plus the \$500 she received in reimbursements from her HSA totals \$875. This is less than the \$1,250 in reimbursements she would have received if she had submitted her claims through her prescription drug plan first.

**I am applying for optional life insurance coverage for myself and my spouse. Can I submit my Statement of Health Form to the HR Service Centre with my enrollment form?**

Your Statement of Health Form must be submitted directly to Sun Life Financial for review and approval.

**Is there a possibility that my optional life insurance elections will not be captured on my Confirmation Statement?**

Yes, there are three possible reasons why your life insurance may not be captured on your confirmation statement:

- Sun Life Financial has approved your request for life insurance, but there is a processing delay before the life coverage is effective. An updated confirmation statement will be sent to your home address once your approved life insurance coverage is entered into the system.
- Sun Life Financial has declined your request for life insurance, based on the information provided on your Statement of Health Form. You will receive notification from Sun Life Financial if your request has been declined.
- Sun Life Financial has not received your Statement of Health Form.

If there are any discrepancies between the information in this booklet and Sears Canada's Benefits Program, the actual plan documentation will, in all cases, govern the details of the benefits coverage and the plan administration. Sears reserves the right to change or discontinue the plan and/or program described in this booklet at any time, and without prior notice to or consent from associates.

**TAB F**

Exhibit "F" to the  
Affidavit of Kathryn O'Rourke  
sworn March 12, 2019

A handwritten signature in black ink, appearing to be "D. C. O'Rourke", written over a horizontal line. To the right of the signature, the alphanumeric string "60344K" is handwritten.

*A commissioner of oaths, etc.*

**FINANCIAL LETTER OF AGREEMENT  
(the Letter)**

**Between**

**SEARS CANADA INC.  
( the Contract Holder)**

**And**

**SUN LIFE ASSURANCE COMPANY OF CANADA  
(Sun Life)**

**COVERING GROUP CONTRACT NUMBER(S) 83160, 83161**

Effective Date of the Financial Letter : January 1, 2016  
Issued by Sun Life Assurance Company of Canada on October 13, 2016



TABLE OF CONTENTS

1.0	GENERAL PROVISIONS .....	4
1.1	PURPOSE .....	4
1.2	ORIGINAL EFFECTIVE DATE OF THE REFUND ACCOUNTING BASIS .....	4
1.3	EFFECTIVE DATE OF THE LETTER .....	4
1.4	ANNIVERSARY DATE AND FINANCIAL ACCOUNTING PERIODS .....	4
1.5	BENEFITS INSURED ON A REFUND ACCOUNTING BASIS .....	4
1.6	COMBINING SURPLUSES AND DEFICITS .....	5
1.7	AMENDMENTS .....	5
1.8	TERMINATION .....	5
h2.0	FINANCIAL ACCOUNTING .....	6
2.1	SURPLUS/DEFICIT CALCULATION .....	6
2.1.1	PREMIUM .....	6
2.1.2	INCURRED CLAIMS .....	6
2.1.3	RETENTION CHARGES .....	7
2.1.4	COMMISSIONS .....	7
2.1.5	NET INTEREST .....	7
3.0	REFUND PAID CLAIMS .....	7
4.0	CLAIM RESERVES .....	7
4.1	INCURRED BUT NOT REPORTED (IBNR) RESERVES .....	7
	Basic Employee Life: .....	7
4.2	LIFE WAIVER OF PREMIUM (WOP) RESERVE .....	8
5.0	CONVERSION CHARGES FOR INDIVIDUAL LIFE CONVERSION PRODUCTS .....	8
6.0	INTEREST .....	8
6.1	CALCULATION OF INTEREST .....	8
6.1.1	Interest on Elements of Cash Flow .....	8
6.1.2	Interest on IBNR and WOP Reserves for the Life benefit .....	9
6.1.3	Interest on Deficit .....	10
6.1.4	Interest on Claims Fluctuation Reserve (CFR) .....	10
6.1.5	Interest on Deposit Fund .....	10
6.2	PRO-RATING OF INTEREST .....	10
6.3	INTEREST RATE INDEX .....	11
6.3.1	90-Day Treasury Bill rate .....	11
6.3.2	Prime rate .....	11
6.3.3	1-Year Guaranteed Investment Certificate (GIC) rate .....	11
7.0	SURPLUS/DEFICIT ACCOUNTING AND DISTRIBUTION .....	11
7.1	ALLOCATION OF SURPLUSES .....	11
7.2	ALLOCATION OF DEFICITS .....	11
7.3	CLAIMS FLUCTUATION RESERVE – POLICY 83160 .....	12

7.4	DEPOSIT FUND .....	12
7.5	PREMIUM TAX CHARGE/CREDIT .....	12
8.0	TERMINAL ACCOUNTING .....	12
8.1	TERMINAL ACCOUNTING .....	12
8.2	ALLOCATION OF SURPLUSES AND RECOVERY OF DEFICITS AT TERMINATION .....	12
9.0	GENERAL TERMS .....	13
9.1	GOVERNING LAW .....	13
9.2	NOTICES .....	13
9.3	CURRENCY .....	13
9.4	WAIVER .....	13
9.5	ENUREMENT .....	13
10.0	SIGNATURES .....	14
APPENDICES		
	APPENDIX A – RETENTION CHARGES .....	A-1

## 1.0 GENERAL PROVISIONS

### 1.1 PURPOSE

The provisions under this Letter describe:

- the benefits insured on a refund accounting basis
- how the value of each component of the financial accounting is calculated
- how surpluses and deficits are calculated, combined and allocated
- the financial accounting process, terms and conditions upon termination

### 1.2 ORIGINAL EFFECTIVE DATE OF THE REFUND ACCOUNTING BASIS

The original effective date of the refund accounting basis is illustrated below (the **Original Effective Date**):

Benefit	Original Effective Date
Basic Employee Life 83161 - All Eligible Retirees	January 1, 2003
Basic Employee Life 83160 - All Employees	July 1, 2003

### 1.3 EFFECTIVE DATE OF THE LETTER

This Letter is effective January 1, 2016 and will remain in effect until amended in accordance with Section 1.7 or terminated in accordance with Section 1.8 (the **Effective Date**).

### 1.4 ANNIVERSARY DATE AND FINANCIAL ACCOUNTING PERIODS

The anniversary date is January 1 of each year (the **Anniversary Date**). Financial accounting periods are the twelve month periods beginning each year on the Anniversary Date (**Financial Accounting period**). Sun Life calculates the surplus or deficit, as of the last day of each Financial Accounting period.

### 1.5 BENEFITS INSURED ON A REFUND ACCOUNTING BASIS

Refund Accounting Basis with Annual Deficit Hold Harmless  
Basic Employee Life  
83161 – All Eligible Retirees

Refund Accounting Basis with Terminal Deficit Hold Harmless  
Basic Employee Life  
83160 – All Employees

The risk charge and the profit charge illustrated in Appendix A have been decreased by a credit for reduced capital requirements and are valid provided this Letter is signed by the Contract Holder and returned to Sun Life within 60 days of the later of its effective date or the date of its delivery to the Contract Holder or its representative by Sun Life. Otherwise, the full risk and profit charge, as illustrated in Appendix A, will apply until the 1st of the month after the Agreement is signed by the Contract Holder and returned to Sun Life.

Effective Date of the Financial Letter : January 1, 2016  
Issued by Sun Life Assurance Company of Canada on October 13, 2016

## 1.6 COMBINING SURPLUSES AND DEFICITS

A separate Financial Accounting, illustrating the surplus (the **Surplus**) or deficit (the **Deficit**) will be presented for each of the following:

Basic Employee Life  
83161 - All Eligible Retirees

Basic Employee Life  
83160 - All Employees

The results from the Financial Accounting for the contracts, divisions and benefits within a refund accounting grouping are combined to determine an overall Surplus or Deficit for the refund accounting grouping. The refund accounting groupings are as defined below (Refund Accounting Grouping):

Refund Accounting Grouping #1  
Basic Employee Life  
83161 - All Eligible Retirees

Refund Accounting Grouping #2  
Basic Employee Life  
83160 - All Employees

The results from the Financial Accounting will not be combined between Refund Accounting Groupings.

## 1.7 AMENDMENTS

Sun Life may amend this Letter and/or its Appendices on any Anniversary Date by notifying the Contract Holder in writing at least 180 days in advance.

Notwithstanding the above, Sun Life may amend this Letter and/or its Appendices at any time if this Letter is affected by:

- (a) any change requested by the Contract Holder to the underlying Group Insurance Contract(s) and/or this Letter, which would materially alter the risk and/or impact the cost of the Group Insurance Contract(s);
- (b) any legislative change and/or change to government-sponsored programs which would materially alter the risk and/or impact the cost of the Group Insurance Contract(s);
- (c) a cumulative decrease of greater than or equal to 15% in the number of insured participants and/or in the Premium for the benefits insured on a Refund Accounting basis. The cumulative decrease is measured from the effective date of Appendix A attached to this Letter.

## 1.8 TERMINATION

**Termination by notice:** Sun Life may terminate this Letter on or after January 1, 2017 by notifying the Contract Holder in writing at least 90 days in advance.

The Contract Holder may terminate this Letter at any time by notifying Sun Life in writing at least 31 days in advance.

Furthermore, if Sun Life exercises the amendment right defined in section 1.7 (a), (b) and/or (c), the Contract Holder may, within 31 days of receiving notice of Sun Life's amendment, terminate this Letter by submitting written notice to Sun Life. The termination will take effect on the later of the following dates:

- the date specified in the notice submitted by the Contract Holder to Sun Life
- the date Sun Life receives the notice

**Automatic termination:** This Letter automatically terminates when all benefits and/or Group Insurance Contract(s) subject to this Letter terminate.

## 2.0 FINANCIAL ACCOUNTING

### 2.1 SURPLUS/DEFICIT CALCULATION

	Premium
Less	Incurred Claims
Less	Retention Charges
Less	Commissions
Plus	Net Interest
Equals	Surplus or (Deficit)

Where each of the above components is defined below:

#### 2.1.1 PREMIUM

The premium is the total sum of the premiums due and paid relating to the Financial Accounting period.

#### 2.1.2 INCURRED CLAIMS

Incurred Claims is calculated separately for each benefit.

	Refund Paid Claims
<b>Plus</b>	Incurred But Not Reported (IBNR) Reserves at the end of the Financial Accounting period
<b>Less</b>	IBNR Reserves at the beginning of the Financial Accounting period
<b>Plus</b>	Waiver of Premium (WOP) Reserves at the end of the Financial Accounting period
<b>Less</b>	WOP Reserves at the beginning of the Financial Accounting period

**Plus** Conversion Charges

**Equals** Incurred Claims

The Refund Paid Claims component is defined in section 3; the IBNR and, WOP components are defined in section 4; and the Conversion Charges are defined in section 5.

### 2.1.3 RETENTION CHARGES

The Retention Charges cover the cost of plan administration, profit, risk and applicable premium taxes. The Retention Charges are defined in Appendix A attached to this Letter. Premium based Retention Charges (General Administration, Risk and Profit charges) will be credited on any Financial Accounting period Surplus transferred to the Claims Fluctuation Reserve and/or the Deposit Fund. Premium based Retention Charges will be charged on Claims Fluctuation Reserve or Deposit Fund transfers used to reduce an Accumulated Deficit plus interest. Premium Tax Charge/Credit is defined in section 7.5. Premium based Retention Charges will not be applied to any Claims Fluctuation Reserve amounts that existed prior to January 1, 2016 that are used to reduce an Accumulated Deficit plus interest.

### 2.1.4 COMMISSIONS

The Contract Holder may request that Commissions be built into the Premium by Sun Life. Accordingly, the amount of Commission due to the Contract Holder's agent of record is charged to the Financial Accounting.

### 2.1.5 NET INTEREST

The Net Interest is equal to the sum of the interest earned or charged on each component in the Financial Accounting. The formula and interest rate indexes are defined in Section. 6.

## 3.0 REFUND PAID CLAIMS

**Life:** means all Life claims (including Living Benefits claims) of which Sun Life was notified during the Financial Accounting period which were incurred on or after the Original Effective Date of the Refund Accounting basis.

## 4.0 CLAIM RESERVES

### 4.1 INCURRED BUT NOT REPORTED (IBNR) RESERVES

The IBNR reserve is the value attributed to the liability for the Refund Paid Claims incurred and still unreported as of the end of the Financial Accounting period.

The IBNR reserve by benefit is calculated according to the formulas defined below:

#### Basic Employee Life:

Policy 83160  
20% of the Annualized Premium

Policy 83161  
8% of the Annualized Premium

#### 4.2 LIFE WAIVER OF PREMIUM (WOP) RESERVE

The WOP Reserve represents the present value of the life insurance to be kept in force for disabled employees.

The reserve is calculated as at the last day of the Financial Accounting period for each disability claim incurred on or after the Original Effective Date of the Refund Accounting basis and approved, pending or in litigation on the last day of the Financial Accounting period including claims that are still in the elimination period of the Long-Term Disability benefit.

The value of the reserve is calculated on the basis of the group valuation table and interest rate assumptions being used by Sun Life on the reserve valuation date. The reserve value for a pending claim is equal to the value which would have been calculated had the disability claim status been approved multiplied by a pending reserve adjustment factor. Reserves for claims in litigation are calculated according to whether their status was approved or pending at the point litigation began.

#### 5.0 CONVERSION CHARGES FOR INDIVIDUAL LIFE CONVERSION PRODUCTS

The terms and conditions applicable to the conversion of group Life coverage to an Individual Life insurance policy are as defined in the underlying Group Insurance Contract(s).

The Conversion Charge is intended to cover the excess mortality costs incurred by Sun Life in respect of its block of converted Life policies. The Conversion Charge on an individual's converted amount of Life coverage, is included in the Financial Accounting.

If satisfactory evidence of insurability is provided, the Conversion Charge is waived.

For each conversion to an Individual Life conversion product processed during the Financial Accounting period, the Conversion Charge is determined in accordance with the following table:

Conversion Charges per \$1,000 of converted Life coverage		
Age at Conversion	Regular Policy	1-Year Preliminary Term
Under 25	\$16	\$27
25-29	18	31
30-34	21	36
35-39	27	44
40-44	38	60
45-49	49	77
50-54	62	98
55-59	103	154
60-64	155	223
65-69	200	314
70-74	275	n/a
75-79	350	n/a

#### 6.0 INTEREST

##### 6.1 CALCULATION OF INTEREST

###### 6.1.1 Interest on Elements of Cash Flow

The Elements of Cash Flow include the following:

Effective Date of the Financial Letter : January 1, 2016  
 Issued by Sun Life Assurance Company of Canada on October 13, 2016

- Premium
- Refund Paid Claims
- Retention Charges
- Conversion Charge(s)
- Commissions

For each of the elements of Cash Flow, the interest earned or charged is calculated by multiplying the Cash Flow amount by the interest rate and by the Interest Weighting Factor.

The interest rate applicable to each of the Elements of Cash Flow is the average during the Financial Accounting period of the monthly 90-day Treasury Bill rates, less 0.50%. The interest rate is subject to a minimum of 0%.

The Interest Weighting Factor is meant to represent the proportion of the Financial Accounting period for which interest is earned or charged for each of the elements of Cash Flow based on their specific timing over the Financial Accounting period as defined below:

Element of Cash Flow	Time period used to calculate the Interest Weighting Factor
Premium	From the date of receipt to the last day of the Financial Accounting period for each premium payment due.
Refund Paid Claims - Life	From the date of death to the last day of the Financial Accounting period for each Death claim. From the date of payment to the last day of the Financial Accounting period for each Living Benefit claim.
General Administration, Claims Administration, Risk and Profit Charges	From the middle to the last day of the Financial Accounting period on the total amount charged.
Premium Tax	From the last day of each month to the last day of the Financial Accounting period on the total Premium Tax charge for the Financial Accounting period.
Other Retention Charges	From the date of payment to the last day of the Financial Accounting period on the amount of each charge.
Conversion Charges	From the middle to the last day of the Financial Accounting period on the total amount of each of these charges.
Commission	From the date of payment to the last day of the Financial Accounting period on the amount of each commission payment.

#### 6.1.2 Interest on IBNR and WOP Reserves for the Life benefit

IBNR and WOP Reserves are invested in a series of investment cells with terms of up to 10 years. Each cell's interest rate is determined in advance and remains fixed for the lifetime of



the cell. The rate is determined by the weighted average yield on Canada Bonds with terms of 1 to 10 years less 0.50%.

The weightings used to determine the average are the rollover percentages presented below. Bond yields are based on those reported by a commonly referenced external source, used by Sun Life's Investment area, as the closing prices on the last day of the month, interpolated for intermediate terms and averaged over the Financial Accounting period.

At the end of each Financial Accounting period, a new cell is created equal to the change in WOP and IBNR Reserves since the end of the previous Financial Accounting period (whether positive or negative), plus amounts rolling over from expiring cells, if any. The interest attributable to a Financial Accounting period is equal to the aggregate of the amounts earned in respect of the cells invested at the beginning of the Financial Accounting period.

Each cell will roll over in stages according to the following formula:

- 20% of the initial balance will roll over at the end of year 1
- 15% of the initial balance will roll over at the end of year 2
- 10% of the initial balance will roll over at the end of year 3
- 5% of the initial balance will roll over at the end of years 4 through 9
- the remaining 25% of the initial balance will roll over at the end of year 10

#### **6.1.3 Interest on Deficit**

Interest is charged on the amount of the Deficit outstanding at the beginning of the Financial Accounting period. The interest is calculated by multiplying the Deficit by the average Prime rate during the Financial Accounting period, plus 2.0%. If the amount of the Deficit outstanding at the beginning of the Financial Accounting period is recovered, in whole or in part, from a lump sum premium payment, interest is calculated for the number of days in the Financial Accounting period during which the Deficit remained outstanding.

#### **6.1.4 Interest on Claims Fluctuation Reserve (CFR)**

Interest is earned on the amount of the CFR at the beginning of the Financial Accounting period. The interest is calculated by multiplying the CFR by the one-year GIC rate.

#### **6.1.5 Interest on Deposit Fund**

During the Financial Accounting period, interest is calculated on the daily principal balance in the Deposit Fund at the 90-day Treasury Bill rate less 0.50% divided by 365 or 366 for leap years. The interest rate is subject to a minimum of 0%. The sum of the interest is added to the principal balance in the Deposit Fund at the end of the Financial Accounting period.

### **6.2 PRO-RATING OF INTEREST**

If the Financial Accounting period is not comprised of twelve months, interest amounts are pro-rated based on the number of days in the Financial Accounting period divided by 365 or 366 for leap years.

### 6.3 INTEREST RATE INDEX

#### 6.3.1 90-Day Treasury Bill rate

The 90-day Treasury Bill rate for each month is the rate as published in the Bank of Canada Weekly Financial Statistics Report during the last week of the previous month.

#### 6.3.2 Prime rate

The prime lending rate for each month during the Financial Accounting period as published on the last Wednesday of the preceding month, in the Bank of Canada Weekly Financial Statistics Report.

#### 6.3.3 1-Year Guaranteed Investment Certificate (GIC) rate

The average, rounded to the nearest 0.05%, of the three middle 1-year GIC rates issued by the five largest Canadian chartered banks for the first month of the Financial Accounting period.

## 7.0 SURPLUS/DEFICIT ACCOUNTING AND DISTRIBUTION

### 7.1 ALLOCATION OF SURPLUSES

Basic Life – Policy 83160

Any Financial Accounting period Surplus (plus the premium tax credit, as defined in section 7.5) is first used to reduce any deficits carried forward from the prior Financial Accounting period (**Accumulated Deficit**), plus interest and premium tax charge. Any remaining Surplus is transferred to the CFR in accordance with section 7.3. The portion of the Surplus (plus the premium tax credit) not required to bring the CFR to its target level is transferred to the Deposit Fund in accordance with section 7.4.

Basic Life – Policy 83161

Any Financial Accounting period Surplus (plus the premium tax credit, as defined in section 7.5) is transferred to the Deposit Fund in accordance with section 7.3.

### 7.2 ALLOCATION OF DEFICITS

Basic Life – Policy 83160

The Financial Accounting period Deficit added to the Accumulated Deficit (plus interest and the premium tax charge) is first reduced by any amounts available in the CFR. The remaining Deficit, if any, constitutes the Accumulated Deficit at the end of period. The Accumulated Deficit is carried forward to be recovered in whole or in part from a lump-sum premium payment or from future Financial Accounting period Surpluses. All transfers to the CFR include a premium tax credit therefore all transfers from the CFR to offset a deficit will include a premium tax charge.

Basic Life – Policy 83161

The Financial Accounting period Deficit, plus the premium tax charge, is payable by the Contract Holder to Sun Life within 30 days of the Contract Holder having received the Financial Accounting. Interest is charged from the end of the Financial Accounting period to the date that payment is received by Sun Life at the Deficit interest rate defined in section 6.1.3.

### **7.3 CLAIMS FLUCTUATION RESERVE – POLICY 83160**

Sun Life requires that the Contract Holder fund a CFR. The portion of the Surplus (plus the premium tax credit) not required to reduce an Accumulated Deficit (plus interest and the premium tax charge) is transferred to the CFR until the CFR balance attains the target level of 25% of annualized Premium.

### **7.4 DEPOSIT FUND**

Sun Life maintains a Deposit Fund that is funded by the portion of the Surplus (plus the premium tax credit) not required to bring the CFR to its target level. The Deposit Fund is owned by the Contract Holder who has sole authorization to request that a portion or the entire balance in the Deposit Fund be withdrawn.

### **7.5 PREMIUM TAX CHARGE/CREDIT**

The amount of the premium tax charge on Deficits and the premium tax credit on Surpluses is calculated according to the following formula:

$$\text{Premium tax charge/credit} = a \times t/(1-t)$$

Where  $a$  is the amount of the Deficit or Surplus and  $t$  is the premium tax rate.

## **8.0 TERMINAL ACCOUNTING**

### **8.1 TERMINAL ACCOUNTING**

If this Letter terminates, a Terminal Accounting is prepared. The Terminal Accounting covers the period commencing on the last Anniversary Date as of which a Financial Accounting was prepared and ending on the Termination Date. The calculation is done as if this Letter is still in force.

### **8.2 ALLOCATION OF SURPLUSES AND RECOVERY OF DEFICITS AT TERMINATION**

Any Terminal Accounting period Surplus (plus the premium tax credit) is first used to reduce the Accumulated Deficit (plus interest and premium tax charge). Any remaining Surplus, plus the amount in the CFR, is transferred to the Deposit Fund.

The Terminal Accounting period Deficit added to the Accumulated Deficit (plus interest and premium tax charge) is first reduced by any amounts available in the CFR. Transfers from the CFR to offset a deficit will include a premium tax charge. The remaining amount in the CFR, if any, is transferred to the Deposit Fund. The remaining Deficit, if any, constitutes the Accumulated Deficit at termination.

The Contract Holder is required to pay to Sun Life the Accumulated Deficit at termination (plus interest and applicable taxes) within 30 days of the Contract Holder having received the Terminal Accounting. Interest is charged on the Accumulated Deficit at termination at the Deficit interest rate from the Termination Date to the date that payment is received by Sun Life.

The entire balance in the Deposit Fund must be withdrawn within 120 days of the Contract Holder having received the Terminal Accounting failing which Sun Life will issue a cheque payable to the Contract Holder.

## 9.0 GENERAL TERMS

### 9.1 GOVERNING LAW

This Letter is governed by the laws of the province of Ontario.

### 9.2 NOTICES

Any notice to be given to either party to this Letter will be deemed to be fully given if delivered personally or sent by post office mail, fax, courier or email to the addresses shown below, unless the party giving notice has been asked in writing to send such notice to another person or address.

**In the case of Sun Life, such notice will be addressed to:**

Account Executive  
Business Development (Central Region)  
225 King Street West  
Toronto, Ontario  
M5V 3C5

**In the case of the Contract Holder, such notice will be addressed to:**

Director, Total Rewards Ben/AM  
Sears Canada Inc.  
290 Yonge Street, 7<sup>th</sup> Floor  
Toronto, Ontario  
M5B 2C3

### 9.3 CURRENCY

All payments under this Letter will be made in Canadian dollars.

### 9.4 WAIVER

Failure by the Contract Holder or Sun Life to enforce at any time or for any period any one or more of the terms of this Letter will not constitute waiver of those terms and such failure will not prejudice the right of the Contract Holder or Sun Life to enforce all of the terms of this Letter.

### 9.5 ENUREMENT

This Letter will benefit and be binding upon the successors and assigns of the Contract Holder and Sun Life.

10.0 SIGNATURES

IN WITNESS WHEREOF Sun Life Assurance Company of Canada has caused this Letter to be executed by properly authorized officials signing below.

SUN LIFE ASSURANCE COMPANY OF CANADA

By: Andrea Warkli

Printed name: Andrea Warkli

Title: Director, National Accounts Underwriting Central Region

Date: The 20<sup>th</sup> day of June, 2017 20

By: Nancy Burda

Printed name: Nancy Burda

Title: Director, Business Development

Date: The 20<sup>th</sup> day of June 20 17

IN WITNESS WHEREOF SEARS CANADA INC. has caused this Financial Letter to be executed by properly authorized officials at 290 Yonge Street in the Province of Ontario the 30<sup>th</sup> day of 20 June 2017

SEARS CANADA INC.

By: Lindsay Naylor  
Authorized Signing Officer

Printed name: Lindsay Naylor

By: Billy Wong  
Authorized Signing Officer (if necessary)

Printed name: Billy Wong (CFO)

## APPENDICES

## Appendix A – Retention Charges

Effective date of Appendix A: January 1, 2016

Appendix A is guaranteed up to and including: December 31, 2016

<b>General Administration Charge</b>		
Employee Life	0.90	% of premium
<b>Claims Handling Charges</b>		
Employee Life	\$220	per notified Basic Employee death claim
<b>Risk Charge</b>		
Employee Life	0.00	% of premium
<b>Profit Charge</b>		
Employee Life	0.40	% of premium
Special Printing Charges	as incurred	
Other Charges	as incurred	
Commissions		amount of commissions due by Sun Life Financial
Applicable Taxes		as required by legislation

Table of full (unreduced) risk charge and profit charge if the Letter is not signed, refer to Section 1.5:

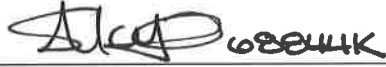
<b>Risk Charge</b>		
Employee Life – Policy 83160	0.32	% of premium
Employee Life – Policy 83161	1.08	% of premium

<b>Profit Charge</b>		
Employee Life – Policy 83160	3.00	% of premium
Employee Life – Policy 83161	3.00	% of premium

Effective Date of the Financial Letter : January 1, 2016  
 Issued by Sun Life Assurance Company of Canada on October 13, 2016

# TAB G

Exhibit "G" to the  
Affidavit of Kathryn O'Rourke  
sworn March 12, 2019

A handwritten signature in black ink, appearing to read "ALAN O'BRIEN", written over a horizontal line.

*A commissioner of oaths, etc.*



**PROOF OF CLAIM FORM  
FOR CERTAIN EMPLOYEE AND RETIREE CLAIMS AGAINST THE SEARS  
CANADA ENTITIES**

**1 NAME OF SEARS CANADA ENTITY OR ENTITIES (THE “DEBTOR(S)”)<sup>1</sup>  
AGAINST WHICH THE CLAIM IS BEING MADE:**

Debtor(s): Sears Canada Inc., 191020 Canada Inc. (formerly S.L.H. Transport Inc.), and  
Sears Contact Services Inc.

**2 (A) PARTICULARS OF CLAIMANT**

Full Legal Name of Claimant: Ursel Phillips Fellows Hopkinson LLP on behalf of  
ERC Employees\*

Full Mailing Address of Claimant: 555 Richmond Street W.  
Suite 1200  
Toronto, ON M5V 3B1

Telephone Number of Claimant: 416-968-3333

Facsimile Number of Claimant: 416-968-0325

E-mail Address of Claimant: searscanadaemployees@upfhlaw.ca

Attention (Contact Person): Susan Ursel

**(B) PARTICULARS OF ORIGINAL CLAIMANT FROM WHOM YOU  
ACQUIRED CLAIM, IF APPLICABLE**

- (i) Has the Claimant acquired this Claim by assignment? Yes  No  X
- (ii) If yes, attach documents evidencing assignment and provide full particulars of the original Claimant from whom the Claim was acquired from:

\*the meaning of ERC Employees is as defined in the February 22, 2018 Employee and Retiree Claims Procedure Order in these proceedings.

<sup>1</sup> The “Sears Canada Entities” are Sears Canada Inc., 9370-2751 Quebec Inc. (formerly Corbeil Electrique Inc.), 191020 Canada Inc. (formerly S.L.H. Transport Inc.), The Cut Inc., Sears Contact Services Inc., Initium Logistics Services Inc., Initium Commerce Labs 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., 3339611 Canada Inc., and SearsConnect.

Full Legal Name of original Claimant:

---

Full Mailing Address of original Claimant:

---

---

---

---

Telephone Number of original Claimant:

---

Facsimile Number of original Claimant:

---

E-mail Address of original Claimant:

---

Attention (Contact Person):

---

**3 AMOUNT AND TYPE OF CLAIM**

The Debtor is indebted to the Claimant as follows:

Currency:	Amount of <u>Pre-Filing</u> Claim (including interest up to and including June 22, 2017) <sup>2</sup> :	Whether Claim is Secured:	Value of Security Held, if any <sup>3</sup> :
		Yes <input type="checkbox"/> No <input type="checkbox"/>	
		Yes <input type="checkbox"/> No <input type="checkbox"/>	
		Yes <input type="checkbox"/> No <input type="checkbox"/>	

<sup>2</sup> Interest accruing from the Filing Date (June 22, 2017) shall not be included in any Claim.

<sup>3</sup> If the Claim is secured, provide full particulars of the security, including the date on which the security was given, the value for which you ascribe to the assets charged by your security, the basis for such valuation and attach a copy of the security documents evidencing the security. This information may be provided in a separate schedule, if necessary.

Currency:	Amount of Restructuring Period Claim:	Whether Claim is Secured:	Value of Security Held, if any:
CAD	\$750,000 (approximately)	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
		Yes <input type="checkbox"/> No <input type="checkbox"/>	
		Yes <input type="checkbox"/> No <input type="checkbox"/>	

**4 DOCUMENTATION**

Provide all particulars of the Claim and supporting documentation, including amount, and description of transaction(s) or agreement(s), or legal breach(es) giving rise to the Claim, including any claims assignment/transfer agreement or similar document, if applicable, and amount of invoices, particulars of all credits, discounts, etc. claimed, description of the security, if any, granted by the affected Debtor to the Claimant and estimated value of such security.

Please see Schedule "A" attached.

**5 CERTIFICATION**

I hereby certify that:

- (a) I am the Claimant or authorized representative of the Claimant.
- (b) I have knowledge of all the circumstances connected with this Claim.
- (c) The Claimant asserts this Claim against the Debtor(s) as set out above.
- (d) All available documentation in support of this Claim is attached.

Signature: K. O'Rourke

Witness: (signature) [Signature]

Name: Katy O'Rourke

(print)

Title: Associate, Ursel Phillips Fellows Hopkinson LLP

Dated at Toronto, ON this 9<sup>th</sup> day of April, 2018.

**6 FILING OF CLAIM AND APPLICABLE DEADLINE**

This Proof of Claim form must be returned to and received by the Monitor by 5:00 p.m. (Toronto time) on April 9, 2018 (the "Proof of Claim Bar Date").

Completed forms must be delivered to the Monitor by prepaid ordinary mail, registered mail, courier, personal delivery, facsimile transmission or email at the following address:

FTI Consulting Canada Inc., Sears Canada  
Monitor TD Waterhouse Tower  
79 Wellington Street  
West Suite 2010, P.O.  
Box 101 Toronto,  
Ontario M5K 1G8

Attention: Sears Canada Employee and Retiree Claims Process  
Fax No.: 416-649-8101  
Email for Employee Claims: [SearsEmployeeClaimSite@fticonsulting.com](mailto:SearsEmployeeClaimSite@fticonsulting.com)  
Email for Retiree Claims: [SearsRetireeClaimSite@fticonsulting.com](mailto:SearsRetireeClaimSite@fticonsulting.com)

**FAILURE TO FILE YOUR PROOF OF CLAIM SO THAT IT IS ACTUALLY RECEIVED BY THE MONITOR ON OR BEFORE 5:00 P.M. (TORONTO TIME) ON THE PROOF OF CLAIM BAR DATE WILL RESULT IN YOUR CLAIM BEING FOREVER BARRED AND YOU WILL BE PREVENTED FROM MAKING OR ENFORCING YOUR CLAIM AGAINST THE SEARS CANADA ENTITIES. IN ADDITION, YOU SHALL NOT BE ENTITLED TO FURTHER NOTICE OF AND SHALL NOT BE ENTITLED TO PARTICIPATE AS A CREDITOR IN THE SEARS CANADA ENTITIES' CCAA PROCEEDINGS.**

## Schedule "A"

### 4. Particulars of Claim

1. On September 12, 2017, counsel to Sears Canada Inc. ("**Sears Canada**"), Mr. Sven Poysa, wrote to Employee Representative Counsel ("**ERC**") advising by email and through accompanying documents that employees of Sears Canada Inc. and certain of its subsidiaries (specifically S.L.H. Transport Inc., now 191020 Canada Inc., and Sears Contact Services Inc.) had available to them life insurance coverage provided through Sun Life Assurance Company of Canada ("**Sun Life**"). The available life insurance policy had a "basic" life insurance component for which, in general, Sears Canada paid the premiums and an "optional" life insurance component for which the employees pay the premiums. Mr. Poysa advised that of the annual life insurance premiums paid to Sun Life under the optional policy, up to eighty percent (80%) are paid by the employees.
2. We were also advised by Mr. Poysa that Sears Canada and Sun Life entered into a Financial Letter of Agreement, which allows for, *inter alia*, a "Deposit Fund" available for refund to Sears Canada at any time and also upon termination of the policy. We were further advised that as of December 1, 2016, there was a surplus of approximately seven-hundred and fifty thousand dollars (\$750,000) in the Deposit Fund (the "**Surplus**").
3. Mr. Poysa invited us to provide our view of the employees' entitlement to the Surplus, which we did in a letter dated September 21, 2017. ERC's position is that Sears Canada ought to surrender that percentage of the Surplus that corresponds to the percentage of premiums paid by employees and that portion of the Surplus ought to be distributed to employees on a *pro rata* basis.
4. We followed up on September 29, 2017; by phone call in October 2017; on January 5, 2018; and again on January 19, 2018. To date, we have not received a response to the grounds set out in our September 21, 2017 letter. ERC's position remains the same. In addition, given that it is our understanding the policy was terminated in September 2017, we are filing this claim as a restructuring period claim.
5. We have attached hereto the September 21, 2017 letter that outlines the legal basis for ERC's position. It is our understanding that Sears Canada has all relevant documentation relating to this claim.



Ursel  
Phillips  
Fellows  
Hopkinson LLP

JUSTICE AT WORK

Susan Ursel  
Direct Dial: (416) 969-3515  
E-mail: [sursel@upfhlaw.ca](mailto:sursel@upfhlaw.ca)

September 21, 2017

**WITHOUT PREJUDICE**

**Sent via E-mail (spoysa@osler.com)**

Mr. Sven Poysa

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

Dear Mr. Poysa:

**Re: Sears Canada Inc. and Sun Life Assurance Company of Canada – Life Insurance Policy Surplus**  
**Our File: 2175001**

Further to your email correspondence dated September 12, 2017, we are writing to provide our initial response to the issue of employee entitlement to life insurance premium surplus. Please note that this response is provided without prejudice to any other or further grounds on which we may make a claim of entitlement to any premium surplus amounts.

You advised in your September 12 email and through accompanying documents that employees of Sears Canada Inc. and certain of its subsidiaries (hereinafter referred to collectively as "Sears") have available to them life insurance coverage provided through Sun Life Assurance Company of Canada ("Sun Life"). The available life insurance policy has a "basic" life insurance component for which, in general, Sears pays the premiums and an "optional" life insurance component for which the employee pays the premiums. You have also advised that of the annual life insurance premiums paid to Sun Life under this policy, up to eighty percent (80%) are paid by the employees.

We understand that Sears and Sun Life entered into a Financial Letter of Agreement ("FLA"), which we have had an opportunity to review, that allows for, *inter alia*, a "Deposit Fund" available for refund to Sears at any time and also upon termination of the policy. We also understand that as of December 1, 2016, there was approximately seven-hundred and fifty thousand dollars (\$750,000.00) in the Deposit Fund.

As Sears intends to terminate the life insurance policy, you have invited us to provide our view of Sears' employees' entitlement to the surplus in the Deposit Fund and we

provide so herein. In brief, we advise that it is our position that Sears ought to surrender that percentage of the surplus that corresponds to the percentage of premiums paid by employees and that portion of the surplus ought to be distributed to employees on a *pro rata* basis.

l) Sears was acting as agent of the employees when acting as a conduit for premiums paid to Sun Life

You have informed us that Sears' employees had the option available to them of selecting Optional Life, Optional Spousal Life and Optional Child Life insurance coverage ("Optional Insurance") through the Sun Life insurance policy. These Optional Insurance policies were funded solely by the employees who opted to purchase this additional insurance coverage directly from their own wages, salaries or other available income.

Sears has no claim to any of the funds that were provided directly by the employees to the policy and which are now being refunded as a surplus. Sears was in fact acting as the employees' agent by acting as a conduit to provide the Optional Insurance premiums to Sun Life.

Although Sears claims that the existence of the surplus payment arises only because of the FLA and the FLA provides for payment to Sears, this analysis is not adequate in determining the equitable owner of the surplus.

In *North Alberta Institute of Technology Academic Staff Association v. Northern Alberta Institute of Technology*, [2002] A.J. No. 1013 (Q.B.) ("NAIT"), which was varied but the results upheld in *N.A.I.T. Academic Staff Assn. v. N.A.I.T.* [2004] A.J. No. 124, 2004 ABCA 42, the Academic Staff Association ("NASA") claimed an entitlement to the proceeds received by the Institute from the demutualization of Mutual Life. The majority of the premiums paid to Mutual Life over the years were employer paid, as NAIT paid 100% of the long term disability premiums, and also paid for the first \$25,000 of Basic Life insurance coverage. The only premiums paid by the employees related to Basic Life Insurance coverage beyond the \$25,000 as well as dependent and optional coverage.

The Alberta Court of Queen's Bench found that insurance law or contract principles provided an insufficient basis upon which to decide the case. Though there was nothing in any statute or in the insurance policy that would have the effect of delivering part or all of the ownership interest in the proceeds to the NASA, the trial judge looked at the equitable question of fiduciary duties and agency:

59 The argument of NASA under this head is that NAIT must be considered to be in a fiduciary position to it because it was acting as an agent for NASA members in obtaining the policy. This is a major argument advanced by the

Applicant, but it relies not only on the agency relationship to establish its claim but also on the cases generally that describe fiduciary duties arising from certain relationships. It examines how the policy was obtained, how the policy premiums were paid for, and the provision and collecting and remitting of funds after the policy was in place. The rationale for this approach is that it is the way that Mutual Life and its advisors determined the entitlement to shares on demutualization.

60 The Applicant starts with the basic proposition of agency law that describes the relationship and the obligations that accompany it. The short answer made by the Respondent is that no such agency agreement can be found in contract, from which agency must spring. This ignores, of course, necessity, but that does not arise in this case. But it also does not deal with the deemed agency relationships that do not arise from contract or common law, but which have been mentioned in recent jurisprudence, of which *Soulos v. Korkontzilas* [1997] 2 S.C.R. 217 is an example.

The trial judge found that an agency relationship existed sufficient to ground the claim that there ought to be a distribution to the employees of the demutualization funds:

65. ... The determination must be, was NAIT the agent? If it was, it must not make a profit from its agency. The point in time of accepting or keeping the profits is not determinative. If agency in relation to the policy is found, the remedy simply follows, in my opinion... To say simply that NAIT is stated to be the owner in the process, such that ends the inquiry, is to make too simple a case of it, and to ignore equities long revered and enforced.

66 This answer to the matter before me depends upon a finding of agency, or a finding of a fact based fiduciary relationship, and I am prepared to find both that agency existed sufficient to ground this claim, and that the facts of the case are sufficient to do so.

72. ...As to the payment of premiums, I can see that the arrangement for payment of premiums by members, through NAIT, of their part of the premiums for insurance means that NAIT was a conduit for that money, and in the sense that premiums are paid by an insured to his agent, then NAIT was an agent for the members. I am prepared to make such a ruling and I do. Part of the premium money was paid by NAIT from its own funds, but that was to meet an obligation for payment to servants for services performed... It seems to me to be an agency relationship in that sense, in that money of the servant is left with the employer, who is charged with passing it on to the insurer to keep in place insurance that has been effected under a contractual obligation for the benefit of the servants.

The Alberta Court of Appeal upheld the decision of trial judge that the employer was obligated to distribute the demutualization funds to the employees. However, the Court



of Appeal ruled that only the employees' portions of the contributions could be said to be theirs; not the employer contributions.

Similarly in the case at hand, the portions of the premiums paid by employees of Sears ought to be returned to those employees. Employees left Sears with money and Sears was charged with passing that money on to Sun Life to keep in place insurance that has been effected under a contractual obligation for the benefit of those Sears' employees.

See also *United Nurses of Alberta, Locals 32, 33, 62, 85, 196 and 301 and Capital Health Authority*, [2004] A.G.A.A. No. 64 (Tettensor) ("*Capital Health*") where the employer obtained a group life and disability insurance policy from Sun Life and upon the demutualization of Sun Life, the employer received cash and advised its employees that 100% of the proceeds would be applied to the Life Insurance and Long Term disability deficit of the benefit plan. However, employees paid 25% of the premiums directly. The arbitrator followed *NAIT, supra*, holding the following:

88. In the end, I do not see significant factual distinctions between the circumstances here and the facts in *N.A.I.T.*, and as a result, the analysis applied by [the trial judge] should apply here. The Employer was agent of the employees in remitting 25% of the premiums to the insurer. This agency is sufficient to be the foundation of a fiduciary duty and imposition of a constructive trust. Retention of 100% of the Proceeds held by the Employer would result in its unjust enrichment. Members of UNA are entitled, in my view, to an interest in the Proceeds received by the Employer from the demutualization of Sun Life.

In *Ottawa Hospital v. Canadian Union of Public Employees Local 4000* (Demutualization Grievance), [2008] O.L.A.A. No. 315, 173 L.A.C. (4th) 1 (Goodfellow), the arbitrator also held that the employer was acting as the agent of the employees in collecting and transmitting employee premiums to the insurance company and that this agency relationship gave rise to fiduciary obligations. Employees were entitled to pro rata share of the proceeds of demutualization on the basis of their own premium contributions (see paragraph 94).

Similarly, for the portion of the premiums remitted by Sears to Sun Life on behalf of the employees, Sears is acting as the agent of the employees in that remittance.

II) Sears has a fiduciary responsibility to return the contributions made by the employees

In *NAIT* and *Capital Health*, above, fiduciary relationships were found due to the agency of the employer in remitting employee premiums to the insurer. In *Carleton Board of Education and Teachers' Federation of Carleton*, 1991 CarswellOnt 7026, 23 C.L.A.S. 285 ("*Carleton*"), a fiduciary duty was also found when a \$300,000 surplus resulting from overpayment of group life insurance premiums was returned to the school board.

Regarding whether the employer has a fiduciary obligation with respect to the premium payments (10% of which were paid directly by the employees), the arbitrator stated:

58. One can appreciate that there would be a fiduciary aspect to the Employer's obligation to pay the premiums, at least so far as the funds obtained from its employees were concerned. One would think that its fiduciary responsibility would then have been met once the funds were paid to the insurer. One can appreciate also that a further fiduciary responsibility would arise upon the Employer's receipt of surplus funds from the insurer, as they represented at least in part a return of contributions made by the employees.

The arbitrator then looked at the court's willingness to use their equitable jurisdiction to recognize the nature of trusts and to provide remedies sufficient to ensure that funds or other property are applied to their intended use. The arbitrator held that the portion of the funds paid directly by the employees was subject to a fiduciary duty by the employer:

62 In this case, when the surplus was declared and paid to the Employer it found itself with funds in its hands which represented a return of money paid on account of premiums. A portion of those funds had been provided to it by the employees, and it is reasonable to regard that portion of the funds as subject to a fiduciary duty on the part of the Employer to use the funds in the way required by the collective agreement.... Nonetheless 10% of the funds in the Employer's hands (subject to such adjustments as individual cases might require, depending upon whether a particular employee's premium had been paid in some proportion other than 90%/10%) were subject to a fiduciary duty. That portion of the funds was not the Employer's money and could not be used for the Employer's own Purposes.

Sears has a fiduciary duty to return the surplus of premiums to the employees that provided the premiums on a *pro rata* basis.

Please also see the Ontario decision *Coca-Cola Bottling Company and United Food and Commercial Workers Union, Local 175/633* (2005), 142 L.A.C. (4th) 139 (Beck) where employees were entitled to the portion of premiums they paid into their life insurance plan upon demutualization.

In *TTC v. Signorile*, 2013 ONSC 6377 (CanLII), the Court approved a settlement where a portion of the proceeds from demutualization went to the employees based on their premium contributions and a portion of the demutualization funds went to the company. Similarly, in *General Motors of Canada Limited v. General Motors Corporation*, 2007 CanLII 27336 (ON SC), the Court approved a proposal for the pro rata distribution of a surplus to each Dealer Beneficiary and Employee Beneficiary whose premiums

contributed to the development of group insurance surplus in both the Dealer Plan and the Employee Plan.

It is the position of the employees that the percentage of the surplus in the Deposit Fund that represents the portion of premiums paid by employees into the Optional Insurance component of the policy (or any other premiums paid by the employees to the policy) ought to be returned to the employees on a *pro rata* basis.

We would be happy to discuss how we might resolve this issue. Please advise a time that we may further discuss resolution of this matter.

Yours truly,

**Ursel Phillips Fellows Hopkinson LLP**



FOR:  
Susan Ursel  
SU/ko

c.c. Norton Rose Fulbright LLP, Attention: Mr. Alan Merskey

TAB H

Exhibit "H" to the  
Affidavit of Kathryn O'Rourke  
sworn March 12, 2019

A handwritten signature in black ink, appearing to be "Alfred J. ...", written over a horizontal line.

*A commissioner of oaths, etc.*

**NOTICE OF DISALLOWANCE (PROOF OF CLAIM) FORM<sup>1</sup>  
REGARDING AN EMPLOYEE OR RETIREE CLAIM AGAINST THE SEARS  
CANADA ENTITIES<sup>2</sup> OR THEIR DIRECTORS AND/OR OFFICERS**

**TO:** Ursel Phillips Fellows Hopkinson LLP on behalf of ERC Employees  
555 Richmond Street West  
Suite 1200  
Toronto, ON M5V 3B1  
Attn: Susan Ursel  
[searscanadaemployees@upfhlaw.ca](mailto:searscanadaemployees@upfhlaw.ca) (the “**Claimant**”)

**FROM:** FTI Consulting Canada Inc., in its capacity as Court-appointed Monitor of the Sears Canada Entities (the “**Monitor**”)

Pursuant to the Employee and Retiree Claims Procedure Order, the Monitor hereby gives you notice that it has reviewed your Proof of Claim or D&O Proof of Claim and has revised or disallowed all or part of your purported Claim. Subject to further dispute by you in accordance with the Employee and Retiree Claims Procedure Order, your Claim will be as follows:

Type of Claim	Amount as submitted		Amount allowed by Monitor	Amount allowed as secured	Amount allowed as unsecured
	Original Currency				
Restructuring Period Claim against any of the Sears Canada Entities	CAN	\$750,000	\$0	\$0	\$0

**Reasons for Revision or Disallowance:**

- 1 Your Restructuring Period Claim of \$750,000 (the “**Disallowed Restructuring Period Claim**”) is disallowed.
- 2 Your Disallowed Restructuring Period Claim is comprised of the amount of approximately \$750,000 which represents an amount in excess of the amount (**Surplus**) required to fund

<sup>1</sup> Capitalized terms used but not defined in this Notice of Disallowance (Proof of Claim) shall have the meanings ascribed to them in the Order of the Ontario Superior Court of Justice (Commercial List) in the CCAA proceedings of the Sears Canada Entities dated February 22, 2018 (the “**Employee and Retiree Claims Procedure Order**”). You can obtain a copy of the Employee and Retiree Claims Procedure Order on the Monitor’s website at <http://cfcanada.fticonsulting.com/searscanada/>.

<sup>2</sup> The “**Sears Canada Entities**” are Sears Canada Inc., 9370-2751 Quebec Inc. (formerly Corbeil Electrique Inc.), 191020 Canada Inc. (formerly S.L.H. Transport Inc.), The Cut Inc., Sears Contact Services Inc., Initium Logistics Services Inc., Initium Commerce Labs 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., 3339611 Canada Inc., and SearsConnect.

life insurance premiums for Employees of Sears. Your Disallowed Restructuring Claim has been disallowed for the following reasons:

- (a) The Surplus does not belong to the Employees. Although some of the Surplus may be attributable to premiums for life insurance paid by the Employees, the Surplus did not arise only (if at all) from the paid premiums.
- (b) An employee who participates in a group insurance policy and pays a premium is entitled only to have protection against the insured risk. The Employee has no entitlement to a return of premiums. Neither the Policies nor Employee booklets describing the Policies promised that the Surplus would be distributed to Employees.
- (c) The Surplus arose as a result of a formula (**Formula**) set out in the Financial Letter of Agreement (**Agreement**) between Sun Life and Sears. The Formula provided for the deduction of the amount of incurred claims, retention charges and commissions from the amount of the premiums received and further provided for the addition of net interest to that amount to determine whether a surplus or deficit existed. Any remaining Surplus was transferred to either the Claims Fluctuation Reserve (**CFR**) or a deposit fund (**Deposit Fund**), both of which were maintained by Sun Life.
- (d) Sun Life required Sears to fund the CFR.
- (e) The portion of Surplus that was not required to reduce an "Accumulated Deficit" was transferred to the CFR until the CFR balance attained the target level of 25% annualized premium.
- (f) The Deposit Fund was funded by the portion of Surplus not required to bring the CFR to target level. The Deposit Fund operated as a "float" which Sears could use to fund any deficit that had accumulated as a result of claims experience.
- (g) Although there is a current Surplus, there were several years in which Sears was required to use the amounts in the Deposit Fund to bring the CFR up to its target level.
- (h) The Surplus belongs to Sears and must be distributed rateably amongst its general creditors.

**If you intend to dispute this Notice of Disallowance (Proof of Claim),** you must, by no later than 5:00 p.m. (Toronto time) on the day that is **thirty (30) days after this Notice of Disallowance (Proof of Claim) is deemed to have been received by you** (in accordance with paragraph 79 of the Employee and Retiree Claims Procedure Order), deliver a Notice of Dispute (Proof of Claim) to the Monitor (by ordinary prepaid mail, registered mail, courier, personal delivery, facsimile transmission or email) at the address listed below.

If you do not dispute this Notice of Disallowance (Proof of Claim) in the prescribed manner and within the aforesaid time period, your Claim shall be deemed to be as set out herein.

**If you agree with this Notice of Disallowance (Proof of Claim), there is no need to file anything further with the Monitor.**

The address of the Monitor is set out below:

FTI Consulting Canada Inc., Sears Canada Monitor  
TD Waterhouse Tower  
79 Wellington Street West  
Suite 2010, P.O. Box 101  
Toronto, Ontario M5K 1G8

Attention: Sears Canada Employee and Retiree Claims Process  
Fax No.: 416-649-8101  
Email for Employee Claims: [SearsEmployeeClaimSite@fticonsulting.com](mailto:SearsEmployeeClaimSite@fticonsulting.com)  
Email for Retiree Claims: [SearsRetireeClaimSite@fticonsulting.com](mailto:SearsRetireeClaimSite@fticonsulting.com)

In accordance with the Employee and Retiree Claims Procedure Order, notices shall be deemed to be received by the Monitor upon actual receipt thereof by the Monitor during normal business hours on a Business Day, or if delivered outside of normal business hours, on the next Business Day.

The form of Notice of Dispute (Proof of Claim) is enclosed and can also be accessed on the Monitor's website at <http://cfcanada.fticonsulting.com/searscanada/> under the section entitled, "Employee and Retiree Claims Procedure Order".

**IF YOU FAIL TO FILE A NOTICE OF DISPUTE (PROOF OF CLAIM) WITHIN THE PRESCRIBED TIME PERIOD, THIS NOTICE OF DISALLOWANCE (PROOF OF CLAIM) WILL BE BINDING UPON YOU.**

DATED this 30<sup>th</sup> day of July, 2018.

FTI Consulting Canada Inc.



# Tab I

Exhibit "I" to the  
Affidavit of Kathryn O'Rourke  
sworn March 12, 2019



---

*A commissioner of oaths, etc.*

**NOTICE OF DISPUTE (PROOF OF CLAIM) FORM<sup>1</sup>  
FOR A DISPUTE OF A REVISION OR DISALLOWANCE REGARDING A CLAIM  
AGAINST THE SEARS CANADA ENTITIES OR THEIR DIRECTORS AND/OR  
OFFICERS<sup>2</sup>**

**1 PARTICULARS OF CLAIMANT**

Claim Reference Number:  
*(as indicated in Notice of Disallowance (Proof of Claim))* 037\_Ursel\_Employee\_Sunlife\_NORD\_07\_30\_18

Full Legal Name of Claimant: Ursel Phillips Fellows Hopkinson LLP on behalf of applicable ERC Employees\*

Full Mailing Address of Claimant: 555 Richmond Street W, Suite 1200  
Toronto, ON M5V 3B1

Telephone Number of Claimant: 416-968-3333

Facsimile Number of Claimant: 416-968-0325

E-mail Address of Claimant: searscanadaemployees@upfhlaw.ca

Attention (Contact Person): Susan Ursel and Katy O'Rourke

\*the meaning of ERC Employees is as defined in the February 22, 2018 Employee and Retiree Claims Procedure Order in these proceedings.

**2 PARTICULARS OF ORIGINAL CLAIMANT FROM WHOM YOU ACQUIRED THE CLAIM, IF APPLICABLE**

(i) Have you acquired this Claim by Assignment? Yes  No

*(If yes, attach documents evidencing assignment)*

(ii) Full legal name of original Claimant: N/A \_\_\_\_\_

<sup>1</sup> Capitalized terms used but not defined in this Notice of Dispute (Proof of Claim) shall have the meanings ascribed to them in the Order of the Ontario Superior Court of Justice (Commercial List) in the CCAA proceedings of the Sears Canada Entities dated February 22, 2018 (the "Employee and Retiree Claims Procedure Order"). You can obtain a copy of the Employee and Retiree Claims Procedure Order on the Monitor's website at <http://cfcanada.fticonsulting.com/searscanada/>.

<sup>2</sup> The "Sears Canada Entities" are Sears Canada Inc., 9370-2751 Quebec Inc. (formerly Corbeil Electrique Inc.), 191020 Canada Inc. (formerly S.L.H. Transport Inc.), The Cut Inc., Sears Contact Services Inc., Initium Logistics Services Inc., Initium Commerce Labs 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., 3339611 Canada Inc., and SearsConnect.

**3 DISPUTE OF REVISION OR DISALLOWANCE OF CLAIM:**

The Claimant hereby disagrees with the value of its Claim, as set out in the Notice of Disallowance (Proof of Claim) dated 07-30-18, and asserts a Claim as follows:

Type of Claim	Amount allowed by Monitor as unsecured in Notice of Disallowance (Proof of Claim)	Amount allowed by Monitor as secured in Notice of Disallowance (Proof of Claim)	Amount claimed by Claimant as unsecured	Amount claimed by Claimant as secured
A. Pre-Filing Claim against any of the Sears Canada Entities	\$	\$	\$	\$
B. Restructuring Period Claim against any of the Sears Canada Entities	\$0	\$0	\$750,000 CAN (approximately)	\$0
D. D&O Claim in respect of Pre-Filing Period	\$	\$	\$	\$
E. D&O Claim in respect of Restructuring Period	\$	\$	\$	\$
F. Total Claim	\$	\$	\$	\$

*(Insert particulars of your Claim per the Notice of Disallowance (Proof of Claim), and the value of your Claim as asserted by you).*

**4 REASONS FOR DISPUTE**

*(Provide full particulars of why you dispute the Monitor's revision or disallowance of your Claim as set out in the Notice of Disallowance (Proof of Claim), and provide all supporting documentation, including amount, description of transaction(s) or agreement(s) giving rise to the Claim, name of any guarantor(s) which has guaranteed the Claim, and amount of Claim allocated thereto, date and number of all invoices, particulars of all credits, discounts, etc. claimed. The particulars provided must support the value of the Claim as stated by you in item 3, above.)*

**See Schedule "A" attached.**

---



---

DATED this \_\_\_\_29th\_\_\_\_ day of \_\_\_\_August\_\_\_\_, 2018.

Katy O'Rourke, on behalf of Employee  
Representative Counsel

*(Print name of Claimant, or, if the Claimant is a corporation, the name of the Claimant and the name of the authorized signing officer of the corporation that is executing this Notice of Dispute (Proof of Claim).)*



*(Signature of Claimant, or, if the Claimant is a corporation, the signature of the authorized signing officer of the corporation that is executing this Notice of Dispute (Proof of Claim).)*

This Notice of Dispute (Proof of Claim) MUST be submitted to the Monitor at the below address by no later than 5:00 p.m. (Toronto time) on the day that is thirty (30) days after the Notice of Disallowance (Proof of Claim) is deemed to have been received by you (in accordance with paragraph 79 of the Employee and Retiree Claims Procedure Order, a copy of which can be found on the Monitor's website at <http://cfcanada.fticonsulting.com/searscanada/>). Delivery to the Monitor may be made by ordinary prepaid mail, registered mail, courier, personal delivery, facsimile transmission or email to the address below.

FTI Consulting Canada Inc., Sears Canada Monitor  
TD Waterhouse Tower  
79 Wellington Street West  
Suite 2010, P.O. Box 101  
Toronto, Ontario M5K 1G8

Attention: Sears Canada Employee and Retiree Claims Process  
Fax No.: 416-649-8101  
Email for Employee Claims: [SearsEmployeeClaimSite@fticonsulting.com](mailto:SearsEmployeeClaimSite@fticonsulting.com)  
Email for Retiree Claims: [SearsRetireeClaimSite@fticonsulting.com](mailto:SearsRetireeClaimSite@fticonsulting.com)

In accordance with the Employee and Retiree Claims Procedure Order, notices shall be deemed to be received by the Monitor upon actual receipt thereof by the Monitor during normal business hours on a Business Day, or if delivered outside of normal business hours, on the next Business Day.

**IF YOU FAIL TO FILE A NOTICE OF DISPUTE (PROOF OF CLAIM) WITHIN THE PRESCRIBED TIME PERIOD, YOUR CLAIM AS SET OUT IN THE NOTICE OF DISALLOWANCE (PROOF OF CLAIM) WILL BE BINDING UPON YOU.**

## SCHEDULE "A"

1. Employee Representative Counsel ("**ERC**") disputes the Monitor's disallowance of their claim to an approximately seven-hundred and fifty thousand dollar (\$750,000) surplus available for refund pursuant to the termination of insurance coverage for employees of Sears Canada Inc. and certain of its subsidiaries (specifically S.L.H. Transport Inc., now 191020 Canada Inc., and Sears Contact Services Inc.) (collectively referred to herein as "**Sears Canada**") provided by Sun Life Assurance Company of Canada ("**Sun Life**").
2. ERC was advised on September 12, 2017 by counsel to Sears Canada that one of the benefits that had been available to employees was life insurance coverage. The life insurance coverage was an insured benefit provided through Sun Life under a life insurance policy. The life insurance coverage had several components – a "basic" life insurance component for which, in general, Sears Canada paid the premiums and Optional Life, Optional Spousal Life and Optional Child Life coverage ("**Optional Insurance**"), for which the employee paid the premium. Of the annual life insurance premiums paid to Sun Life under this policy, up to 80% were paid by employees.
3. Sears Canada entered into a Financial Letter of Agreement ("**FLA**") with Sun Life under which each year a calculation was performed taking the premium payments received by Sun Life and deducting Incurred Claims, Retention Charges and Commissions and taking into account Net Interest (all capitalized words are defined in the FLA). If this calculation was a negative number then Sears was required to pay this amount to Sun Life. If the calculation produced a positive number then the amount was then transferred to a "Deposit Fund" and is available for refund. Over the last few years the calculations have produced a positive number and the resulting amount has been transferred to the Deposit Fund. As of December 31, 2016 the balance in the Deposit Fund was approximately \$750,000 (the "**Surplus**").
4. ERC's position with respect to the Surplus, as set out in our Proof of Claim Form and in correspondence to counsel to Sears Canada dated September 21, 2017, is that Sears Canada ought to surrender that percentage of the Surplus that corresponds to the percentage of premiums paid by employees and that portion of the Surplus ought to be distributed to employees on a *pro rata* basis (the "**Surplus Claim**"), consistent with the

case law in similar situations, the principles of equity, and Sears Canada's fiduciary obligations.

5. This Notice of Dispute addresses the following issues:
  - i. Sears was acting as agent of the employees when acting as a conduit for premiums paid to Sun Life;
  - ii. Sears has a fiduciary responsibility to return the contributions made by its employees;
  - iii. the Financial Letter of Agreement does not override the principles of equity and Sears' fiduciary duty to its employees; and
  - iv. the Surplus Claim is a restructuring period claim.

**I. Sears was acting as agent of the employees when acting as a conduit for premiums paid to Sun Life**

6. Sears Canada employees had the available option to select Optional Insurance coverage through Sears' Sun Life insurance policy. These Optional Insurance policies were funded solely by the employees who opted to purchase this additional insurance coverage directly from their own wages, salaries, or other available income.
7. Sears Canada was acting as the employees' agent by acting as a conduit to provide the Optional Insurance premiums to Sun Life. Employees entrusted their money, which could have otherwise been spent elsewhere including on separate coverage, to Sears Canada authorizing Sears Canada to act on their behalf. That Sears Canada now proposes to make a profit from its employees who relied on their employer to act on their behalf with respect to this additional coverage would be a violation of the agent-principal relationship.
8. In similar cases involving the payment of insurance premiums, employers have been found to be an agent for their employees when utilizing employees' own money for payment of insurance premiums. In *Northern Alberta Institute of Technology Academic Staff Association v. Northern Alberta Institute of Technology*, [2002] A.J. No. 1013



(Q.B.) (“*NAIT*”), which was varied but the results upheld at the Court of Appeal in *N.A.I.T. Academic Staff Assn. v. N.A.I.T.* [2004] A.J. No. 124, 2004 ABCA 42, the Academic Staff Association (“*NASA*”) claimed an entitlement to proceeds received by their members’ employer, the Northern Alberta Institute of Technology (“*NAIT*”), after the demutualization of their insurer, Mutual Life. The majority of the premiums paid to Mutual Life over the years were employer paid, as *NAIT* paid 100% of the long term disability premiums and also paid for the first \$25,000 of Basic Life insurance coverage. The only premiums paid by employees related to Basic Life insurance coverage beyond the \$25,000 as well as dependent and optional coverage.

9. The Alberta Court of Queen’s Bench found that insurance law or contract principles provided an insufficient basis upon which to decide the case. The trial judge looked at the equitable question of fiduciary duties and agency:

59 The argument of *NASA* under this head is that *NAIT* must be considered to be in a fiduciary position to it because it was acting as an agent for *NASA* members in obtaining the policy. This is a major argument advanced by the Applicant, but it relies not only on the agency relationship to establish its claim but also on the cases generally that describe fiduciary duties arising from certain relationships. It examines how the policy was obtained, how the policy premiums were paid for, and the provision and collecting and remitting of funds after the policy was in place. The rationale for this approach is that it is the way that Mutual Life and its advisors determined the entitlement to shares on demutualization.

60 The Applicant starts with the basic proposition of agency law that describes the relationship and the obligations that accompany it. The short answer made by the Respondent is that no such agency agreement can be found in contract, from which agency must spring. This ignores, of course, necessity, but that does not arise in this case. But it also does not deal with the deemed agency relationships that do not arise from contract or common law, but which have been mentioned in recent jurisprudence, of which *Soulos v. Korkontzilas* [1997] 2 S.C.R. 217 is an example.

10. The trial judge found that an agency relationship existed sufficient to ground the claim that there ought to be a distribution to the employees of the demutualization funds:

65. ... The determination must be, was NAIT the agent? If it was, it must not make a profit from its agency. The point in time of accepting or keeping the profits is not determinative. If agency in relation to the policy is found, the remedy simply follows, in my opinion... **To say simply that NAIT is stated to be the owner in the process, such that it ends the inquiry, is to make too simple a case of it, and to ignore equities long revered and enforced.**

66 This answer to the matter before me depends upon a finding of agency, or a finding of a fact based fiduciary relationship, and I am prepared to find both that agency existed sufficient to ground this claim, and that the facts of the case are sufficient to do so.

72. ...As to the payment of premiums, **I can see that the arrangement for payment of premiums by members, through NAIT, of their part of the premiums for insurance means that NAIT was a conduit for that money, and in the sense that premiums are paid by an insured to his agent, then NAIT was an agent for the members.** I am prepared to make such a ruling and I do....

11. The Alberta Court of Appeal upheld the decision of trial judge that the employer was obligated to distribute the demutualization funds to the employees. However, the Court of Appeal ruled that only the employees' portions of the contributions could be said to be theirs; not the employer contributions.
12. Similarly in the case at hand, Sears Canada was acting as an agent for employees, providing the portion of the premiums paid by employees to Sun Life. Employees left Sears Canada with money and Sears Canada was charged with passing that money on to Sun Life to keep in place insurance that has been effected under a contractual obligation for the benefit of those Sears Canada employees. As agent, any funds in the Surplus that can be attributed to premiums paid by employees are not available to Sears Canada and ought to be kept separate from Sears Canada's assets and held for distribution to the

participating employees. ERC maintains that the portions of the premiums paid by employees of Sears ought to be returned to those employees.

13. See also *United Nurses of Alberta, Locals 32, 33, 62, 85, 196 and 301 and Capital Health Authority*, [2004] A.G.A.A. No. 64 (Tettensor) ("*Capital Health*") where the employer obtained a group life and disability insurance policy from Sun Life and upon the demutualization of Sun Life, the employer received cash and advised its employees that 100% of the proceeds would be applied to the Life Insurance and Long Term disability deficit of the benefit plan. However, employees had paid 25% of the premiums directly. The arbitrator followed *NAIT, supra*, holding the following:

88. In the end, I do not see significant factual distinctions between the circumstances here and the facts in *N.A.I.T.*, and as a result, the analysis applied by [the trial judge] should apply here. The Employer was agent of the employees in remitting 25% of the premiums to the insurer. This agency is sufficient to be the foundation of a fiduciary duty and imposition of a constructive trust. Retention of 100% of the Proceeds held by the Employer would result in its unjust enrichment. Members of UNA are entitled, in my view, to an interest in the Proceeds received by the Employer from the demutualization of Sun Life.

14. In *Ottawa Hospital v. Canadian Union of Public Employees Local 4000* (Demutualization Grievance), [2008] O.L.A.A. No. 315, 173 L.A.C. (4th) 1 (Goodfellow), the arbitrator also held that the employer was acting as the agent of the employees in collecting and transmitting employee premiums to the insurance company and that this agency relationship gave rise to fiduciary obligations. Employees were entitled to a *pro rata* share of the proceeds of demutualization on the basis of their own premium contributions (see paragraph 94).

15. Similarly, for the portion of the premiums remitted by Sears to Sun Life on behalf of the employees, Sears is acting as the agent of the employees in that remittance.

**II. Sears has a fiduciary responsibility to return the contributions made by its employees**

16. In *NAIT* and *Capital Health*, above, fiduciary relationships were found due to the agency of the employer in remitting employee premiums to the insurer. In *Carleton Board of Education and Teachers' Federation of Carleton*, 1991 CarswellOnt 7026, 23 C.L.A.S. 285 ("*Carleton*"), a fiduciary duty was also found when a \$300,000 surplus resulting from overpayment of group life insurance premiums was returned to the school board.
17. Regarding whether the employer has a fiduciary obligation with respect to the premium payments (10% of which were paid directly by the employees), the arbitrator stated:

58. One can appreciate that there would be a fiduciary aspect to the Employer's obligation to pay the premiums, at least so far as the funds obtained from its employees were concerned. One would think that its fiduciary responsibility would then have been met once the funds were paid to the insurer. One can appreciate also that a further fiduciary responsibility would arise upon the Employer's receipt of surplus funds from the insurer, as they represented at least in part a return of contributions made by the employees.

18. The arbitrator then looked at the court's willingness to use their equitable jurisdiction to recognize the nature of trusts and to provide remedies sufficient to ensure that funds or other property are applied to their intended use. The arbitrator held that the portion of the funds paid directly by the employees was subject to a fiduciary duty by the employer:

62 In this case, when the surplus was declared and paid to the Employer it found itself with funds in its hands which represented a return of money paid on account of premiums. A portion of those funds had been provided to it by the employees, and it is reasonable to regard that portion of the funds as subject to a fiduciary duty on the part of the Employer to use the funds in the way required by the collective agreement.... Nonetheless 10% of the funds in the Employer's hands (subject to such adjustments as individual cases might require, depending upon whether a particular employee's premium had been paid in some proportion other than 90%/10%) were subject to a fiduciary duty. That portion of the funds was not the Employer's money and could not be used for the Employer's own Purposes.

19. Sears Canada has a fiduciary duty to return the surplus of premiums to the employees that provided the premiums on a *pro rata* basis.
20. Please also see the Ontario decision *Coca-Cola Bottling Company and United Food and Commercial Workers Union, Local 175/633* (2005), 142 L.A.C. (4th) 139 (Beck) where employees were entitled to the portion of premiums they paid into their life insurance plan upon demutualization.
21. In *TTC v. Signorile*, 2013 ONSC 6377 (CanLII), the Court approved a settlement where a portion of the proceeds from demutualization went to the employees based on their premium contributions and a portion of the demutualization funds went to the company. Similarly, in *General Motors of Canada Limited v. General Motors Corporation*, 2007 CanLII 27336 (ON SC), the Court approved a proposal for the *pro rata* distribution of a surplus to each Dealer Beneficiary and Employee Beneficiary whose premiums contributed to the development of group insurance surplus in both the Dealer Plan and the Employee Plan.
22. It is the position of ERC that the percentage of the surplus in the Deposit Fund that represents the portion of premiums paid by employees into the Optional Insurance component of the policy (or any other premiums paid by the employees to the policy) ought to be returned to the employees on a *pro rata* basis.

**III. The Financial Letter of Agreement does not override the principles of equity and Sears' fiduciary duty to its employees**

23. The FLA covers both the current employees and the retirees' Sun Life group contracts. The relevant contract for current employees is group contract number 83160, which includes both the Basic and Optional Life Insurance Plans for Sears' employees.
24. The benefits are insured on a refund accounting basis. The refund financial accounting is a surplus/deficit calculation: premiums paid less any incurred claims less retention charges less commissions plus net interest (which equals the surplus or deficit). The relevant portions of the FLA are as follows:

7.1 Allocation of Surpluses

#### Basic Life – Policy 83160

Any Financial Accounting period Surplus (plus the premium tax credit, as defined in section 7.5) is first used to reduce any deficits carried forward from the prior Financial Accounting period (Accumulated Deficit), plus interest and premium tax charge. Any remaining Surplus is transferred to the [Claims Fluctuation Reserve] in accordance with section 7.3. The portion of the Surplus (plus the premium tax credit) not required to bring the CFR to its target level is transferred to the Deposit Fund in accordance with section 7.4.

#### 7.3 Claims Fluctuation Reserve – Policy 83160

Sun Life requires that the Contract Holder fund a CFR. The portion of the Surplus (plus the premium tax credit) not required to reduce an Accumulated Deficit (plus interest and the premium tax charge) is transferred to the CFR until the CFR balance attains the target level of 25% of annualized Premium.

#### 7.4 Deposit Fund

Sun Life maintains a Deposit Fund that is funded by the portion of the Surplus (plus the premium tax credit) not required to bring the CFR to its target level. The Deposit Fund is owned by the Contract Holder who has sole authorization to request that a portion or the entire balance in the Deposit Fund be withdrawn.

#### 8.2 Allocation of Surpluses and Recovery of Deficits at Termination

Any Terminal Accounting period Surplus (plus the premium tax credit) is first used to reduce the Accumulated Deficit (plus interest and premium tax charge). Any remaining Surplus, plus the amount in the CFR, is transferred to the Deposit Fund.

The Terminal Accounting period Deficit added to the Accumulated Deficit (plus interest and premium tax charge) is first reduced by any amounts available in the CFR. Transfers from the CFR to offset a deficit will include a premium tax charge. The remaining amount in the CFR, if any, is transferred to the Deposit Fund. The remaining Deficit, if any, constitutes the Accumulated Deficit at termination.

The Contract Holder is required to pay to Sun Life the Accumulated Deficit at termination (plus interest and applicable taxes) within 30 days of the Contract Holder having received the Terminal Accounting. Interest is charged on the Accumulated Deficit at termination at the Deficit interest rate from the Termination Date to the date that payment is received by Sun Life.

The entire balance in the Deposit Fund must be withdrawn within 120 days of the Contract Holder having received the Terminal Accounting failing which Sun Life will issue a cheque payable to the Contract Holder.

25. Although the FLA states that Sears Canada owns the Deposit Fund, that does not negate the fact that Sears Canada has a fiduciary duty to act in the best interests of its employees who participate in the policy.
26. A constructive trust is a remedy that a court may impose where necessary to prevent the unjust enrichment of the defendant at the expense of the plaintiff, or to compensate the plaintiff for a wrong. A constructive trust should be imposed on the portion of the Optional Insurance paid for by the participating employees.
27. Each of the following elements must exist to warrant the imposition of a constructive trust: enrichment, corresponding deprivation, and the absence of any juristic reason for the enrichment. The premiums paid for by the employees were to secure their Optional Insurance and they overpaid for that service. Sears Canada ought not to be enriched by the money paid out of the employees' pockets that happened to be in excess to what was necessary.
28. Even where the elements of a constructive trust are not present, a court may nevertheless impose a constructive trust on the basis that it would not be in good conscience to allow the legal owner of specific assets to retain them. In *NAIT, supra*, a significant portion of the premiums had been paid by the participants. As described above, NAIT was the owner of the policy and received the demutualization proceeds. The union took the position that a fiduciary relationship existed between the employer and the employees because NAIT acted as the employees' agent in obtaining the policy and remitting the premiums. The Court found that an agency existed sufficient to be the foundation for the fiduciary duty claimed, and that NAIT had profited as a result of that relationship.

NAIT's breach of its fiduciary duties by keeping the money (even in the absence of misconduct) was remedied by imposing a constructive trust.

29. It is ERC's understanding that the Sun Life policy has been terminated. The former employees of Sears Canada, who have not received any termination or severance payments to date after losing their jobs, now have to seek alternate life insurance coverage. It would be unconscionable for Sears Canada to keep the money that these employees paid themselves over and above what was necessary for their Sun Life coverage. The situation of the former Sears Canada employees is exactly the kind of situation for which the courts intended the constructive trust to be utilized.

#### **IV. The Surplus Claim is a restructuring period claim**

30. ERC's understanding is that the termination of the insurance coverage arose after the filing date in these proceedings, June 22, 2017 (the "**Filing Date**"). As a result of the claim arising after the Filing Date, and as any employee participating in the Sun Life basic or optional life insurance policy had to find alternative coverage after the termination of the policy through Sears Canada, the Surplus Claim ought to be characterized as a restructuring period claim.

#### **V. Conclusion**

31. For all of the reasons outlined above, ERC submits that this Notice of Dispute of the Monitor's disallowance of the Surplus Claim ought to be allowed.



TAB J

Exhibit "J" to the  
Affidavit of Kathryn O'Rourke  
sworn March 12, 2019



---

*A commissioner of oaths, etc.*

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

**SEARS CANADA INC.,  
AND RELATED APPLICANTS**

**TWENTY-NINTH REPORT OF FTI CONSULTING CANADA INC., AS MONITOR**

**February 6, 2019**

Contents

Section	Page
A. INTRODUCTION AND SUMMARY OF CCAA PROCEEDINGS.....	1
B. PURPOSE .....	5
C. TERMS OF REFERENCE.....	6
D. OVERVIEW OF PLAN .....	7
E. REQUEST FOR MEETINGS ORDER .....	20
F. THE MONITOR’S COMMENTS AND RECOMMENDATIONS ON THE RELIEF SOUGHT.....	23
G. THE MONITOR’S ASSESSMENT OF THE PLAN .....	26
Appendix A - Plan	
Appendix B - Employee Representative Counsel Order	
Appendix C - Pension Representative Counsel Order	
Appendix D - Litigation Order (Monitor Claim)	
Appendix E - Litigation Order (Litigation Trustee Claim)	
Appendix F - Governance Protocol Order	

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

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

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

APPLICANTS

**TWENTY-NINTH REPORT TO THE COURT  
SUBMITTED BY FTI CONSULTING CANADA INC.,  
IN ITS CAPACITY AS MONITOR**

**A. INTRODUCTION AND SUMMARY OF CCAA PROCEEDINGS**

1. On June 22, 2017, Sears Canada Inc. (“**Sears Canada**”) and a number of its operating subsidiaries (collectively, with Sears Canada, the “**Applicants**”) sought and obtained an initial order (as amended and restated on July 13, 2017, the “**Initial Order**”), under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”). The relief granted pursuant to the Initial Order was also extended to Sears Connect, a partnership forming part of the operations of the Applicants (and together with the Applicants, the “**Sears Canada Entities**”). The proceedings commenced under the CCAA by the Applicants are referred to herein as the “**CCAA Proceedings**”.
2. The Initial Order, among other things:

- (a) appointed FTI Consulting Canada Inc. (“**FTI**”) as monitor of the Sears Canada Entities (the “**Monitor**”) in the CCAA Proceedings;
  - (b) granted an initial stay of proceedings against the Sears Canada Entities until July 22, 2017 (the “**Stay Period**”); and
  - (c) scheduled a comeback motion for July 13, 2017 (the “**Comeback Motion**”).
3. Following the Comeback Motion, the Court extended the Stay Period to October 4, 2017. In addition, the following orders, among others, were issued:
- (a) the amended and restated Initial Order;
  - (b) an order setting out the terms of the appointment of Ursel Phillips Fellows Hopkinson LLP as representative counsel for the non-unionized active and former employees of the Sears Canada Entities (“**Employee Representative Counsel**”). A copy of this order is attached hereto as **Appendix “B**”; and
  - (c) an order setting out the terms of the appointment of Koskie Minsky LLP as representative counsel to the non-unionized retirees and non-unionized active and former employees of the Sears Canada Entities with respect to pension and post-employment benefit matters (“**Pension Representative Counsel**”). A copy of this order is attached hereto as **Appendix “C**”.
4. On July 18, 2017, the Court issued an order approving an agreement and a process for the liquidation of inventory and FF&E at certain initial closing Sears Canada locations, which liquidation process was completed earlier in these proceedings.
5. On October 13, 2017, the Court issued, among other orders, an order approving an agreement and a process for the liquidation of the inventory and FF&E at all remaining Sears Canada retail locations, which liquidation commenced shortly thereafter and is now complete.

6. On December 8, 2017, the Court issued an Order (the “**General Claims Procedure Order**”) approving a claims process for the identification, determination and adjudication of claims of creditors against the Sears Canada Entities and their Officers and Directors.
7. On February 22, 2018, the Court issued an Employee and Retiree Claims Procedure Order approving a process for the identification, determination and adjudication of claims of employees and retirees of the Sears Canada Entities. This Order also expanded the mandate of Pension Representative Counsel to include the representation of all unionized Retirees who do not opt out of such representation.
8. As described in prior reports, a mediation process (the “**Mediation**”), which was approved by the Court on May 9, 2018, was initiated to facilitate a resolution of certain of the most material disputed claims in the estate. The Mediation commenced on June 13, 2018 and continued thereafter with Regional Senior Justice Morawetz acting as mediator.
9. Further to the Mediation, the Monitor reached an agreement with substantially all landlords on a formula for the valuation of claims filed by landlords, excluding post-filing claims, environmental claims and D&O Claims.
10. The Monitor also reached an agreement with Morneau Shepell Ltd., as administrator of Sears Canada’s Pension Plan (the “**Pension Plan Administrator**”), the Ontario Superintendent of Financial Services, as Administrator of the Pension Benefits Guarantee Fund, and Pension Representative Counsel (collectively, the “**Pension Parties**”) on the terms of a resolution of the priority and quantum of the claim (the “**Pension Claim**”) for the wind-up deficiency under the defined benefit component of the Pension Plan of Sears Canada (the “**Pension Resolution**”).
11. Finally, the Mediation also recently resulted in an agreement on the resolution (the “**Dealer Resolution**”) of a significant class action claim by certain of the “Sears Hometown” store dealers (collectively, the “**Dealers**”), as made by the Dealer Representative Plaintiff on their behalf.
12. The terms of each of these resolutions are to be implemented as part of the proposed joint plan of compromise and arrangement (the “**Plan**”) that is the subject of this Report.

13. On December 3, 2018, the Court granted orders (the “**Litigation Orders**”) that, among other things:
- (a) authorized and empowered the Monitor to commence and continue a claim (the “**Monitor 2013 Dividend Claim**”) against ESL Investments Inc., ESL Partners, LP, SPE I Partners, LP, SPE Master I, LP, ESL Institutional Partners, LP, Edward Lampert, William Harker and William Crowley, pursuant to Section 96 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, as incorporated into the CCAA under Section 36.1, relating to a dividend paid to shareholders of Sears Canada Inc. on December 6, 2013 in the amount of approximately \$509 million (the “**2013 Dividend**”);
  - (b) appointed the Honourable J. Douglas Cunningham, Q.C. as an officer of the Court to be the litigation trustee (the “**Litigation Trustee**”) over and in respect of certain claims of the Applicants arising from the 2013 Dividend and authorized the Litigation Trustee to commence claims, in his own name or on behalf of the Applicants, (the “**Litigation Trustee Claims**” and, together with the Monitor 2013 Dividend Claim, the “**Estate 2013 Dividend Claims**”) against ESL Investments Inc. (and certain affiliates), Edward Lampert, William Crowley, William Harker, Donald Ross, Ephraim J. Bird, Deborah Rosati, R. Raja Khanna, James McBurney and Douglas Campbell; and
  - (c) lifted the stay of proceedings provided for in the Initial Order to allow these claims, as well as a claim by the Pension Plan Administrator (the “**Pension 2013 Dividend Claim**”) and a claim by the Dealers (the “**Dealer 2013 Dividend Claim**”), each also arising from the 2013 Dividend, to be commenced or continued against the foregoing parties.

Copies of the Litigation Orders are attached hereto as **Appendices “D”** and **“E”**.

14. Statements of Claim in connection with the Estate 2013 Dividend Claims and the Pension 2013 Dividend Claim were issued on December 19, 2018. The Dealer 2013 Dividend Claim was commenced on October 21, 2015.



15. Also on December 3, 2018, the Court granted an Order extending the Stay Period to May 2, 2019 and establishing a governance protocol pursuant to which the Monitor has taken over supervision of the Sears Canada Entities' participation in the remaining matters to be completed in these proceedings (the "**Governance Protocol Order**"). A copy of the Governance Protocol Order is attached hereto as **Appendix "F"**.
16. On January 7, 2019, in accordance with an Order of the Court granted on October 16, 2018, FTI was appointed as receiver of certain specified bank accounts of the Applicants (in such capacity, the "**Receiver**"). This appointment has been granted for the limited purpose of permitting former employees of the Applicants to access the Wage Earner Protection Program.
17. The liquidation of assets at Sears Canada's retail locations is now complete, all retail locations are closed, and leases in respect of such locations have been disclaimed or surrendered back to the landlord.
18. The only remaining material asset of Sears Canada, other than possible litigation-related assets, that has not been sold or is not subject to a binding sale agreement is a real property asset located in Barrie, Ontario.
19. In connection with the CCAA Proceedings, the Monitor has provided twenty-eight reports and twenty-one supplemental reports (collectively, the "**Prior Reports**"), and prior to its appointment as Monitor, FTI also provided to this Court a pre-filing report of the proposed Monitor dated June 22, 2017 (the "**Pre-Filing Report**"). The Pre-Filing Report, the Prior Reports and other Court-filed documents and notices in these CCAA Proceedings are available on the Monitor's website at [cfcanada.fticonsulting.com/searscanada/](http://cfcanada.fticonsulting.com/searscanada/) (the "**Monitor's Website**").

**B. PURPOSE**

20. The purpose of this twenty-ninth report of the Monitor (the "**29th Report**") is to provide:

- (a) the Court with information regarding the Monitor's request for an Order (the "Meetings Order") *inter alia* accepting the filing of the Sears Canada Entities' proposed Plan; and
- (b) the Monitor's description and assessment of the Plan.

21. This 29th Report will be included in the materials to be delivered to certain creditors and posted on the Monitor's Website in accordance with the Meetings Order, if granted.

### C. TERMS OF REFERENCE

22. In preparing this 29th Report, the Monitor has relied upon audited and unaudited financial information of the Sears Canada Entities, the Sears Canada Entities' books and records, certain financial information and forecasts prepared by the Sears Canada Entities and discussions and correspondence with, among others, the senior management ("Management") of, and advisors to, the Sears Canada Entities (collectively, the "Information").

23. Except as otherwise described in this 29th Report:

- (a) the Monitor has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the *Chartered Professional Accountants of Canada Handbook*; and
- (b) the Monitor has not examined or reviewed the financial forecasts or projections referred to in this 29th Report in a manner that would comply with the procedures described in the *Chartered Professional Accountants of Canada Handbook*.

24. Future-oriented financial information reported in or relied on in preparing this 29th Report is based on Management's assumptions regarding future events. Actual results will vary from these forecasts and such variations may be material.

25. The Monitor has prepared this 29th Report in connection with the Monitor's motion for the Meetings Order and to provide general information regarding the Plan. The 29th Report should not be relied on for any other purpose.
26. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars.
27. Capitalized terms not otherwise defined herein have the meanings ascribed to them in the Plan or, where not so defined, in the following documents filed as part of the CCAA Proceedings: (a) the affidavits of Mr. Billy Wong, the former Chief Financial Officer of Sears Canada; (b) the affidavit of Ms. Becky Penrice, the former Executive Vice-President and Chief Operating Officer of Sears Canada; (c) the affidavits of Mr. Philip Mohtadi, General Counsel and Corporate Secretary of Sears Canada; and (d) the Prior Reports.

**D. OVERVIEW OF PLAN**

28. The Monitor, on behalf of the Sears Canada Entities, is seeking the granting of the Meetings Order which if granted would, *inter alia*:
- (a) accept the filing of the Plan;
  - (b) approve the partial substantive consolidation of certain estates for the limited purposes of the Plan;
  - (c) approve the classification of creditors for the purposes of voting on and receiving distributions under the Plan;
  - (d) authorize the convening of meetings of creditors to consider and vote on the Plan; and
  - (e) appoint Employee Representative Counsel and Pension Representative Counsel as deemed proxy holder for the creditors they respectively represent.
29. Capitalized terms used in this section and not otherwise defined have the meanings given to them in the Plan, a copy of which is attached hereto as **Appendix "A"**.

Purpose of the Plan

30. The Governance Protocol Order provides that all matters related to a Plan, including, without limitation, the drafting of the Plan and bringing of any motion to the Court with respect thereto will be supervised and administered by the Monitor for the benefit of all creditors whose distributions will be determined in accordance with their legal entitlements or any negotiated resolutions resulting from the Claims Resolution Process (as defined in the Governance Protocol Order).
31. The Monitor proposes the Plan on behalf of all of the Applicants jointly and for the primary purposes of:
- (a) implementing a distribution of the Applicants' remaining funds to their creditors in accordance with such creditors' legal entitlements and the settlements agreed to through the Mediation; and
  - (b) providing a mechanism for the Estate 2013 Dividend Claims to proceed for the benefit of the unsecured creditors of Sears Canada who have not opted out of sharing the costs of and the benefit of any recoveries from such claims; and
  - (c) implementing the terms of the settlements agreed to under the Mediation, including the Pension Resolution.
32. The Plan provides for interim distributions to be made from time to time on account of Proven Affected Unsecured Claims. No distributions in respect of an Affected Unsecured Claim will be made until it is a Proven Claim.

Classification of Creditors and Substantive Consolidation

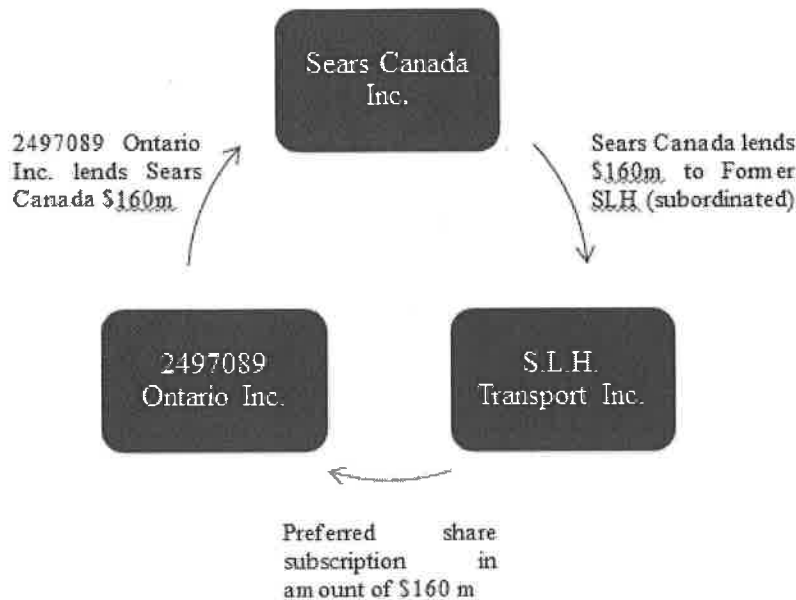
33. For the purposes of voting on the Plan and receiving distributions thereunder, the Plan provides for two classes of Affected Unsecured Creditors (each an "**Unsecured Creditor Class**" and together the "**Unsecured Creditor Classes**"), which are:
- (a) the **Sears Creditor Class**, being all Affected Unsecured Creditors of any of the Sears Canada Entities other than 9370-2751 Québec Inc. ("**Former Corbeil**"),

191020 Canada Inc. (“**Former SLH**”) and 168886 Canada Inc. (“**168886**”) (collectively, the “**Sears Parties**”); and

- (b) the **SLH Creditor Class**, being all Affected Unsecured Creditors of Former SLH and 168886 (collectively, the “**SLH Parties**”).
34. This voting structure is proposed to match the distribution structure under the Plan through which members of the Sears Creditor Class would be paid out of the assets of the Sears Parties, who would be partially substantively consolidated under the Plan, while the members of the SLH Creditor Class would be paid out of the assets of the SLH Parties, who would be similarly substantively consolidated.
35. With respect to Former Corbeil, as its creditors will be fully repaid under the Plan from its assets, they will not be entitled to vote on or approve the Plan.
36. The Monitor believes that the substantive consolidation of the Sears Parties is appropriate as each of them, other than Sears Canada, is a subsidiary of Sears Canada and has no material assets or creditors of its own other than inter-company receivables and claims. The substantive consolidation of these parties will not have any material impact on the recoveries of third party creditors of Sears Canada or any other Sears Party, relative to the recoveries that would have been obtained on a stand-alone basis for each of these entities. The Monitor notes however that such substantive consolidation will negate the pre-filing tax structuring transaction (defined in the Plan as the “**Tax Loss Utilization Structure**”) described in greater detail below.
37. The Monitor views the limited substantive consolidation of Former SLH and 168886 as similarly appropriate. Former SLH is a wholly-owned subsidiary of Sears Canada that carried on a stand-alone transportation and logistics business that was sold during these CCAA Proceedings. 168886 is a wholly-owned subsidiary of Former SLH that employed individuals to provide services to the business of Former SLH and did not have business operations independent of Former SLH. The substantive consolidation of these entities has the effect of increasing the pool of claims against the assets of Former SLH as 168886 has substantial claims against it that arise primarily from employees, but no

assets. The Monitor believes this outcome is justified in view of the fact that Former SLH had the benefit of the employees of 168886 during its operation and the two entities operated in a highly integrated manner.

38. In 2016, Sears Canada and certain of its affiliates implemented the Tax Loss Utilization Structure as follows:
- (a) Sears Canada incorporated a new subsidiary, 2497089 Ontario Inc., of which Sears Canada was the sole shareholder;
  - (b) Former SLH borrowed \$160 million from Sears Canada evidenced by a promissory note bearing interest at 10%. The payment of interest, principal and other amounts under this note are stated to be subordinated to the right of payment of all other present and future indebtedness and other obligations of Former SLH;
  - (c) Former SLH used the proceeds of this subordinated loan to subscribe for \$160 million of preferred shares in 2497089 Ontario Inc. with a stated return of 10.1% annually; and
  - (d) 2497089 Ontario Inc. then used the proceeds from the preferred share subscription to lend \$160 million on an interest-free basis back to Sears Canada (the “**249-SCI Loan**”), evidenced by a promissory note with no stated maturity and which is payable on demand.
39. A diagram illustrating the Tax Loss Utilization Structure is set out below:



40. As a result of the proposed substantive consolidation of the Sears Parties set out above and the implementation of the Plan:
- the claim of 2497089 Ontario Inc. against Sears Canada that would otherwise have arisen on the 249-SCI Loan would be effectively cancelled upon the consolidation of these entities' assets and claims;
  - no distribution would be received by Former SLH on its preferred shares of 2497089 Ontario Inc. as this is an equity claim; and
  - no distribution would be received by Sears Canada on account of its subordinated loan to Former SLH, as other non-subordinated creditors of Former SLH will not be paid in full.

The Monitor believes this is the appropriate result as it negates any substantive economic effect of a tax loss consolidation structure that was itself designed to be economically substantially neutral for all entities in a solvent going-concern scenario.

41. As indicated above, while Former Corbeil is a party to the Plan, the creditors of Former Corbeil will be fully repaid from the assets of Former Corbeil under the Plan and any

residual assets of Former Corbeil will be distributed to Sears Canada, as the sole shareholder of Former Corbeil.

42. In the Monitor’s view, the substantive consolidation as proposed under the Plan is appropriate in the circumstances. It recognizes that the Sears Parties all ultimately functioned to support the Sears Canada business and their respective creditors should share in its value to the extent there are any claims against such entities, which are minimal. Similarly, it recognizes that 168886 existed to support the business of Former SLH and its creditors should share in the value of that business.
43. Finally, the proposed structure recognizes that Former SLH and Former Corbeil carried on businesses that were independent from Sears Canada, had separate and unrelated creditor pools, and should provide recoveries to those separate creditor pools that reflect the value of the respective businesses of Former Corbeil and Former SLH, each on a stand-alone basis.
44. Under the structure of the Plan, the estimated recoveries to unsecured creditors of the SLH Parties and Former Corbeil are substantially higher than the estimated recoveries to unsecured creditors of the Sears Parties, as detailed in the table below.<sup>1</sup> If the Sears Canada Entities were all treated as one substantially consolidated debtor group, the result would be substantially lower recoveries for unsecured creditors of Former Corbeil and of the SLH Parties, with only modest increases to the estimated recoveries for unsecured creditors of Sears Canada.

Partially Consolidated Basis			Fully Consolidated Basis		
<i>Sears Parties</i>	<i>Former Corbeil</i>	<i>SLH Parties</i>	<i>Sears Parties</i>	<i>Former Corbeil</i>	<i>SLH Parties</i>
7.6%	100.0%	18.6%	7.9%	7.9%	7.9%

---

<sup>1</sup> The estimated recoveries are based on certain forward-looking assumptions relating to each debtor group’s cash realizations and claims pool, and include claims that are currently in dispute and subject to final determination. The estimated recovery figures may be subject to change.



Pension Resolution

45. As described in the Twenty-Eighth Report of the Monitor, the Monitor and the Pension Parties reached agreement on the terms of Pension Resolution settling the priority and quantum of the Pension Claim for the purposes of the Plan.
46. The terms of the Pension Resolution are reflected in the Plan. The Pension Claim will be allowed as a single general unsecured claim for voting purposes in the amount of \$260.2 million (allocated 96% against Sears Canada and 4% against Former SLH) and allowed for distribution purposes at a value at 2.5 times the value of such claim as filed, resulting in a claim for distribution purposes of approximately \$26 million against Former SLH and approximately \$624.5 million against Sears Canada. No portion of the Pension Claim will be entitled to priority recovery and there would be no joint and several liability among any of the Sears Canada Entities for the Pension Claim. Certain adjustments are made to the value of the Pension Claim and the distributions on account of such claim in circumstances where litigation commenced by the Pension Plan Administrator in connection with the 2013 Dividend is successful.

Distributions To Affected Unsecured Creditors Generally, Litigation Recoveries and Other Exceptions

47. Affected Unsecured Creditors with proven claims will receive a pro-rata share of the cash pool available to unsecured creditors in each substantively consolidated debtor group, after all costs of the CCAA Proceedings, priority payment amounts, reserves and intercompany distributions are accounted for. There are three exceptions to this *pro rata* treatment of Affected Unsecured Creditors under the Plan, which are described below.

(a) Litigation Recoveries

48. The first exception to the *pro rata* treatment of all Affected Unsecured Creditors arises in connection with the claims being pursued by the Monitor and the Litigation Trustee regarding the 2013 Dividend. These claims are pursued for the benefit of creditors of the Sears Parties (other than creditors who opt out of such participation in accordance with the TUV Proceeding Approval Order). The Estate 2013 Dividend Claims do not benefit the creditors of the SLH Parties or Former Corbeil.

49. In accordance with the Litigation Order approving the pursuit of the Monitor 2013 Dividend Claim issued December 3, 2018 (the “**TUV Proceeding Approval Order**”), Affected Unsecured Creditors of Sears Canada are entitled to opt out of bearing the costs of and sharing in any recoveries from the Estate 2013 Dividend Claims. To do so, Affected Unsecured Creditors of Sears Canada must return a completed Opt-Out Notice (as defined in the TUV Proceeding Approval Order) so that it is received by the Monitor within 60 days after delivery of such Opt-Out Notice by the Monitor to such creditor. Any creditor who does opt out will not be required to share *pro rata* in the costs of pursuing the Estate 2013 Dividend Claims, but consequently will also not be entitled to share *pro rata* in any litigation recoveries that result.
50. In order to recover the existing and potential future costs associated with such Estate 2013 Dividend Claims from those Affected Unsecured Creditors of Sears Canada who do not opt out of participation in such litigation, the Monitor will hold back an amount from each such Affected Unsecured Creditor’s distribution under the Plan. To the extent such amounts are never expended in connection with the Estate 2013 Dividend Claims, such amounts will be returned *pro rata* to the contributing Affected Unsecured Creditors. The ultimate result of this mechanism will be to ensure that each such creditor bears its *pro rata* share of the overall costs of the pursuit of the Estate 2013 Dividend Claims.
51. The Monitor cannot provide an estimate of the quantum or timing of any such litigation recoveries that may be available.

(b) Indemnity and Contribution Claims

52. The second exception to *pro rata* treatment relates to potential indemnity claims of former directors and officers against Sears Canada as well as any claims for contribution by the other defendants to the Estate 2013 Dividend Claims or Sears Holdings Corporation and its affiliates (referred to in the Plan as the “**ESL Parties**”). Under the Plan, such claims will receive their notional *pro rata* recovery to the extent they are valid. However, the mechanism of achieving this *pro rata* distribution is different than the standard mechanism used for other Affected Unsecured Creditors. The amount otherwise payable by the director, officer or ESL Party to the Monitor or the Litigation Trustee on

account of the Estate 2013 Dividend Claims shall be subject to set-off of an amount equal to the distribution that such director, officer or ESL Party would otherwise have received on account of its indemnity or contribution claim as an Affected Unsecured Claim under the Plan, such that only the net payment by the director, officer or ESL Party, as applicable, shall be made. Pursuant to the Pension Resolution and the Dealer Resolution, the Pension Plan Administrator and the Dealer Representative Plaintiff have agreed to separate mechanisms that achieve the same goal.

(c) Warranty Claims

53. Claims arising from customer warranties issued by the Sears Canada Entities are the third exception to the *pro rata* treatment of Affected Unsecured Claims. Under the Plan, potential Warranty Claims arising from Warranties purchased prior to the Filing Date would be addressed as follows:
- (a) the Monitor will establish a pool of funds (referred to in the Plan as the “**Warranty Reimbursement Pool**”) in an amount equivalent to the amounts which would otherwise be distributable under the Plan on account of all Affected Unsecured Claims arising from Warranties purchased prior to the Filing Date (“**Pre-Filing Warranty Claims**”). For this purpose, these Pre-Filing Warranty Claims would be valued at the remaining unamortized value of their purchase price;
  - (b) the Monitor will provide public notice (by way of publication in *The Globe and Mail* and *La Presse*) of the treatment of Warranty Claims and of the right of a Warranty holder to submit a Reimbursable Warranty Claim (as defined below);
  - (c) a third party administrator selected by the Monitor that specializes in claims administration, will, subject to Monitor oversight, administer the Warranty reimbursement process, including the evaluation of claims and the administration of the Warranty Reimbursement Pool itself;
  - (d) holders of such Warranties would have 180 days from the date of implementation of the Plan to submit an application for reimbursement of any expenses that

would otherwise have been covered by the Warranty they hold (referred to in the Plan as a “**Reimbursable Warranty Claim**”). Following closure of the application period, applicants would no longer be permitted to submit an application for a Reimbursable Warranty Claim;

- (e) once all Reimbursable Warranty Claims have been determined, and all costs associated with administration of the warranty reimbursement process are paid, creditors who are determined to have proven Reimbursable Warranty Claims would receive payment in an amount equal to the lesser of (i) their Reimbursable Warranty Claim; or, (ii) their *pro rata* share of the Warranty Reimbursement Pool based upon the value of their Reimbursable Warranty Claim relative to the aggregate of all Reimbursable Warranty Claims;
- (f) holders of claims arising under Warranties purchased on or after the Filing Date would, to the extent not previously refunded, receive payment equal to the remaining unamortized value (as at October 19, 2017)<sup>2</sup> of the original purchase price of the Warranty underlying their claim.

*Unaffected Claims and Payments Other Than General Unsecured Creditor Distributions*

- 54. The Plan does not affect: (a) post-filing claims; (b) secured claims; and (c) claims referred to in Sections 6(3) and 6(5) of the CCAA, if any. These amounts, if any, will be paid in full. With respect to the claims referred to in Section 6(6) of the CCAA, no such claims exist in this case.
- 55. The Plan does not affect insured claims to the extent of the Sears Canada Entities’ available insurance, which claims will be paid from such available insurance if such insurance is finally determined to cover such claims.
- 56. The Plan also provides for a payment of \$2,272.72 per leased store location to each landlord that entered into a settlement agreement with the Sears Canada Entities as soon

---

<sup>2</sup> On October 16, 2017, the Sears Canada Entities publicly announced by way of press release that from and after October 18, 2017, they would cease honouring Warranties.

as practicable after implementation of the Plan as a reimbursement of such landlords' costs incurred as part of the negotiation of the global landlord claim settlement entered into in connection with the Mediation. The landlord claim settlement was integral to ensuring the viability of this Plan as it provides certainty on landlord claim values, subject to limited exceptions.

57. The Dealer Representative Plaintiff will receive a payment of \$334,495 as soon as practicable following implementation of the Plan. The Dealer Representative Plaintiff will also share *pro rata* (based upon a claim valued at \$80,000,000) in any recoveries from the Estate 2013 Dividend Claims. The Dealer Representative Plaintiff will receive no other recoveries under the Plan. The Dealer Representative Plaintiff has also agreed to return the first \$334,495 received by the Dealer Representative Plaintiff from the Estate 2013 Dividend Claims recoveries for redistribution among the Affected Unsecured Creditors generally.

*De Minimis Claims*

58. The Monitor estimates recoveries for Affected Unsecured Creditors under the Plan to be less than 10% before any contingent litigation recoveries. In light of such estimated recoveries as well as the anticipated cost of making each individual distribution payment on Affected Unsecured Claims, it is uneconomical to make distributions on Affected Unsecured Claims of \$80 or less. For this reason, the Plan provides that no holder of Affected Unsecured Claim that is proven at \$80 or less (except Pre-Filing Warranty Claims, which are entitled solely to the recoveries described above) shall be entitled to any distributions under the Plan, and all such *de minimis* claims shall be cancelled and barred.

*Releases*

59. The Plan provides for releases in favour of (i) current and former directors, officer and employees, as well as certain counsel and advisors who have assisted in these CCAA Proceedings (the "**Sears Released Parties**"), (ii) the Monitor, FTI Consulting Canada Inc., in its capacity as Receiver (pursuant to the Order granted on October 16, 2018) and their respective current and former affiliates, directors, officers and employees and each

of their respective advisors, legal counsel and agents (the “**FTI Released Parties**”); and (iii) Employee Representative Counsel, Pension Representative Counsel, and the Court-appointed pension and employee representatives (the “**Third Party Released Parties**”), in each case from claims based in whole or in part on any act, omission, transaction, duty, responsibility, indebtedness, liability, obligation, dealing or other occurrence existing or taking place on or prior to Plan implementation that are in any way relating to, arising out of or in connection with the business and affairs of the Sears Canada Entities whenever or however conducted, the Plan, the CCAA Proceedings, Claims filed in the CCAA Proceedings, or any matter or transaction involving any of the Sears Canada Entities occurring in or in connection with the CCAA Proceedings.

60. The releases do not apply to Non-Released Claims, being claims that are finally determined to have arisen from fraud or wilful misconduct, any claims defined as Unaffected Claims under the Plan, any claims secured by the court-ordered charges granted in these proceedings, any claims arising out of or relating to the 2013 Dividend (including the Estate 2013 Dividend Claims, the Pension 2013 Dividend Claim, and the Dealer 2013 Dividend Claim), certain claims against employees of the Sears Canada Entities to the extent of available insurance, and claims against directors or former directors of the Sears Canada Entities that cannot be released pursuant to Section 5.1(2) of the CCAA.
61. The releases further do not affect, release or prejudice any of the claims currently being pursued in connection with the 2013 Dividend.
62. In addition, persons who have commenced claims against an employee personally solely as a result that employee performing their duties as an employee of a Sears Canada Entities would be entitled to continue to pursue recovery but only as against the proceeds of applicable insurance.

Undeliverable Distributions

63. Where any creditor’s distribution cheque in respect of a claim under the Plan is not cashed and becomes stale dated or is returned as undeliverable, or where a social insurance number required to deliver payments to an employee or retiree has not been

provided (each, an “**Undeliverable Distribution**”), the Monitor would hold such payment in reserve until the issues preventing payment are resolved.

64. Once the Monitor is ready to complete the final distribution under the Plan, it will serve notice on the service list and post a notice on the Monitor’s Website advising that it is ready to make such final distribution. Creditors would then have sixty (60) days from the date that such notice is posted to write to the Monitor to claim their Undeliverable Distribution, after which: (a) any claims underlying any Undeliverable Distribution will be forever barred and (b) the funds being held in reserve on account of all remaining and unclaimed Undeliverable Distributions would be returned to the applicable Cash Pools for distribution to Affected Unsecured Creditors on the final distribution.

*Conditions Precedent to Plan Implementation*

65. The implementation of the Plan, including distributions thereunder, shall be conditional upon the fulfilment or waiver, to the extent permitted by the CCAA, of the following conditions precedent by the date specified therefor:
- (a) each of the Unsecured Creditor Classes shall have approved the Plan in the Required Majority;
  - (b) each of the Meetings Order and the order of the Court approving the Plan (the “**Sanction Order**”) shall have been granted;
  - (c) each of the Meetings Order and the Sanction Order shall have become final orders;
  - (d) the Monitor shall have received such clearance certificates, or comfort letters in lieu thereof from the Canada Revenue Agency or any other applicable taxing authority, as the Monitor considers necessary or advisable, to make any Plan distributions;
  - (e) the Plan implementation shall have occurred before April 30, 2019, or such later date as agreed to by the Pension Parties and the Monitor; and

- (f) the Pension Parties shall be satisfied that:
- (i) the Plan provides no less than \$155,000,000 available for distribution to Affected Unsecured Creditors under the Plan, net of all reserves and before accounting for any costs or recoveries from the Estate 2013 Dividend Litigation; and
  - (ii) such amounts would be distributable on proven Affected Unsecured Claims (other than those of Sears Canada Entities themselves) of not more than \$1,550,000,000 excluding the Pension Claims and indemnification or contribution claims from directors, officers and the ESL Parties.

**E. REQUEST FOR MEETINGS ORDER**

66. Capitalized terms used in this section and not otherwise defined have the meanings given to them in the Plan, or where not so defined, in the draft Meetings Order, a copy of which is enclosed in the Monitor's Motion Record at Tab 3.
67. The proposed Meetings Order provides for voting on the Plan by the Unsecured Creditor Classes described above at meetings of each class to be held on March 28, 2019 (each a "Meeting") at the Metro Toronto Convention Centre in Toronto. The Meeting for the SLH Creditor Class will be held at 10:00 a.m. and the Meeting for the Sears Creditors Class will immediately follow at 10:30 a.m. Each of the two Unsecured Creditor Classes will vote separately at the meeting.
68. Notice of the Meetings and the Sanction Hearing will be given in the following ways:
- (a) to each ERC Employee by delivery by Employee Representative Counsel of the ERC Letter and the Notice of Meetings and Sanction Hearing;
  - (b) to each PRC Retiree by delivery by Pension Representative Counsel of the PRC Letter and the Notice of Meetings and Sanction Hearing;
  - (c) to each Affected Unsecured Creditor that is not an ERC Employee, a PRC Retiree, or a Creditor who holds (i) only a Warranty Claim, or (ii) an Affected



Unsecured Claim of less than \$5,000 (a “**Below Threshold Creditor**”), by delivery by the Monitor of the Notice of Meetings and Sanction Order, the Creditor Proxy, Creditor Letter, the Plan, and a copy of this 29th Report (collectively with the ERC Letter and PRC Letter, the “**Meeting Materials**”);

- (d) the Monitor will post copies of the Meeting Materials on the Monitor’s Website and will provide copies of the Meeting Materials to any Affected Unsecured Creditor that requests them within specified time limits; and
  - (e) the Monitor will cause the Notice of Meetings and Sanction Hearing to be published for a period of two days in *The Globe and Mail* (National Edition) and the electronic edition of *La Presse*, and in such other publications and with such frequency as the Monitor may deem appropriate.
69. The notice procedures described above will provide specific notice of the Meetings and of the Sanction Hearing to each Affected Unsecured Creditor, as well as public notice to all stakeholders.
70. With respect to Below Threshold Creditors, the Meetings Order does not prevent them from voting, but does not contemplate the direct mailing of Meeting Materials in light of the anticipated recoveries to such creditors and the costs of mailing these materials on an individual basis.
71. Affected Unsecured Creditors may attend the applicable Meeting in person, in the case of Affected Unsecured Creditors that are individuals, or by proxy. Affected Unsecured Creditors must file their proxy such that it is received by 5:00 p.m. (Toronto time) five Business Days before the Meetings (*i.e.* by March 21, 2019) (the “**Proxy Deadline**”).
72. The Meetings Order directs that a representative of the Monitor will preside as the Chair of the Meetings and, subject to further order of the Court, will decide all matters related to the conduct of the Meetings. The Chair and the Monitor are each entitled to adjourn a Meeting to such date, time or place as the Chair or the Monitor deems necessary or advisable.

73. Affected Unsecured Creditors holding Voting Claims or Unresolved Voting Claims (collectively, “**Eligible Voting Claims**”) (or such Affected Unsecured Creditors’ proxy holders) will be allowed to vote on the Plan. However, the votes of Affected Unsecured Creditors holding Unresolved Voting Claims will be separately tabulated and reported to the Court, provided that the vote cast in respect of any Unresolved Voting Claim shall not be considered for Plan approval purposes unless and until it is finally determined to be a Proven Claim.
74. In respect of the Eligible Voting Claims of ERC Employees and PRC Retirees:
- (a) Employee Representative Counsel shall be deemed to be a proxy holder in respect of each Eligible Voting Claim of ERC Employees in connection with their Employee Claims; and
  - (b) Pension Representative Counsel shall be deemed to be a proxy holder in respect of each Eligible Voting Claim of PRC Retirees (other than in connection with any Employee Claims or the Pension Claims filed in respect of the wind-up deficiency of the Pension Plan).
75. Only the Pension Plan Administrator or its designated proxy holder may vote the Pension Claims.
76. The Monitor will file a report to the Court by no later than two Business Days after the Meetings (i.e. by April 1, 2019) with respect to the results of the vote, including whether:
- (a) the Required Majority in each Unsecured Creditor Class has approved the Plan; and
  - (b) the votes cast in respect of Unresolved Voting Claims, if applicable, would affect the result of the vote.
77. If the Plan is accepted by the Required Majority of each Unsecured Creditor Class, the Monitor anticipates bringing a motion seeking the Sanction Order on April 3, 2019. Materials must be filed by anyone opposing the Sanction Order by no later than 5:00 p.m. (Toronto time) four Business Days before the Sanction Hearing (i.e. by March 28, 2019).

78. The Meetings Order also proposes to amend the style of cause of these CCAA Proceedings to reflect a change in the legal name of the Applicant 9845488 Canada Inc. (formerly, “Initium Commerce Labs Inc.”), which was recently effected on January 31, 2019 following a sale of the rights to its former name.

**F. THE MONITOR’S COMMENTS AND RECOMMENDATIONS ON THE RELIEF SOUGHT**

79. The Plan is a joint plan of compromise and arrangement of all of the Sears Canada Entities. Implementation of the Plan would effect a comprehensive settlement of various significant matters in the CCAA Proceedings, including the Pension Claims, and establish a mechanism for the funding of the pursuit of the Estate 2013 Dividend Claims. Effecting that settlement and these mechanisms through the Plan on a joint basis significantly simplifies matters as compared to having individual plans of arrangement for each of the Sears Canada Entities, or for the three individual debtor groups. Furthermore, in the Monitor’s view, there is no apparent material prejudice to any creditor of any of the Sears Canada Entities from the Plan being a joint plan.

80. Finally, the structure of each of the resolutions embodied by the Plan would require any separate plans to be conditional upon each other in any case.

81. The granting of the Meetings Order would provide the forum for Affected Unsecured Creditors to consider and vote on the Plan, as well as the proposed settlements that underpin it.

82. As described earlier in this 29th Report, the Meeting Order and Plan provide for substantive consolidation of the Sears Parties and the SLH Parties, respectively.

83. The Monitor is of the view that this limited substantive consolidation for the purposes of the Plan is reasonable and appropriate and that there is no apparent material prejudice arising therefrom. As noted in part above:

- (a) Former SLH and Former Corbeil operated businesses that were separate and apart from each other and from that of Sears Canada, and each of the three debtor groups have separate and unrelated creditor pools;

- (b) the Sears Parties' assets and operations were intertwined and cannot easily segregated. Moreover, each of the Sears Parties (other than Sears Canada) is a subsidiary of Sears Canada itself and all ultimately functioned to support its business;
  - (c) the consolidation of the SLH Parties recognizes that Former SLH's subsidiary 168886 existed solely to support the business of its parent and the operations of the two entities were highly integrated; and
  - (d) if the Sears Canada Entities were treated as one consolidated debtor group, estimated recoveries for unsecured creditors of the Sears Parties would increase only modestly by 0.3%, while by contrast those for the SLH Parties and Former Corbeil would decrease by more than 10.7% and 92.1%, respectively.
84. The Monitor has considered the factors set out in Section 22 of the CCAA when recommending the proposed classification of creditors under the Plan. In particular:
- (a) each of the classes is composed solely of unsecured creditors; and
  - (b) the types of remedies available to the unsecured creditors against their respective debtors are substantially the same and their rights outside of the Plan would also be substantially the same after giving effect to the substantive consolidation of these entities, being the enforcement of a claim to a *pro rata* share of each debtor group's unencumbered assets.
85. In the Monitor's view, no alternative classification method is reasonable or required in the circumstances for the unsecured creditors of each of the Sears Canada Entities. The Monitor notes that the creditors of the Sears Parties and the SLH Parties will vote in separate classes in view of the different asset pools against which they claim. In the Monitor's view, this aspect of the classification is important as it ensures the SLH Parties' votes have meaningful input into the approval of the Plan, which would be lost if the SLH Parties' creditors were consolidated with the Sears Parties' creditors.

86. The Monitor further views the proposed inclusion of the Pension Parties (via the Pension Claim) in the same Unsecured Creditor Classes as other Affected Unsecured Creditors as equitable and reasonable in the circumstances and in light of such Creditors' relative rights with respect to the Applicants. Although the Pension Claim is valued for distribution purposes under the Plan at 2.5 times its "face" value, its voting claim has not been increased. The Pension Claim, at this increased amount, remains an unsecured claim and will receive its *pro rata* unsecured distribution under the Plan. The Pension Settlement that resulted in this increase for distribution purposes reflects a commercial resolution that was negotiated at the Mediation over many months.
87. With respect to the balance of the Meetings Order, the Monitor believes that:
- (a) the Meetings Order provides for reasonable, wide and sufficient notice of the Meetings to be provided to Affected Unsecured Creditors;
  - (b) the Proxy Deadline is reasonable in the circumstances;
  - (c) it is reasonable and efficient in the circumstances that Pension Representative Counsel and Employee Representative Counsel be proxy holders for the Affected Unsecured Creditors that they represent. While such a deemed proxy may not be appropriate in every case, the circumstances of this case support the use of such a deemed proxy for efficiency. The Monitor has considered in particular: (i) the large volume of individual creditors that Pension Representative Counsel and Employee Representative Counsel represent, (ii) the potential recoveries based upon known distributable asset values at this time; (iii) the fact that the proposed Plan serves primarily to distribute the remaining assets of the Sears Canada Entities to creditors in accordance with their legal entitlements, and (iv) the reasonable assumption that, given the purpose of this Plan, individual employees and retirees are not likely to have divergent views and interests;
  - (d) it is reasonable and cost-effective in the circumstances that Below-Threshold Creditors not receive a direct mailing of the Meeting Materials in light of the costs

of mailing such materials individually as weighed against the anticipated distributions to such creditors; and

- (e) the provisions of the Meetings Order governing the conduct of the Meetings as well as the timing of the service of materials with respect to the Sanction Hearing are customary, reasonable and appropriate.

88. Accordingly, the Monitor respectfully requests that its motion on behalf of the Sears Canada Entities for the Meetings Order be granted.

**G. THE MONITOR'S ASSESSMENT OF THE PLAN**

89. Subject to the terms of the limited settlement arrangements described above, the Plan provides the Affected Unsecured Creditors with *pro rata* recoveries in accordance with their entitlements as unsecured creditors. In the Monitor's view, the Plan is fair in its treatment of creditors. Where the Plan deviates from such direct *pro rata* treatment, such deviations are justified for practical and/or commercial reasons.

90. Implementation of the Plan would effect a settlement of various significant matters in the CCAA Proceedings, and as detailed below, would provide substantial incremental benefits to Affected Unsecured Creditors in comparison to the available alternatives.

*Joint Plan and Substantive Consolidation*

91. With respect to the partial substantive consolidation and the resulting joint plan, for the purposes of the Plan, the Monitor believes that it is appropriate and reasonable in the circumstances—particularly given the independence of the three debtor groups' respective businesses and the intertwined nature of the assets and operations of the Sears Parties and SLH Parties themselves, as detailed above.

*Compliance with Statutory Requirements*

92. A plan of compromise or arrangement can only be sanctioned by the Court if, among other things, it complies with all statutory requirements.

93. Section 5.1(1) of the CCAA contemplates the compromise of claims against directors provided that such claims do not include those that relate to the contractual rights against one or more directors or that are based in allegations of misrepresentations made by directors to creditors or of wrongful or oppressive conduct by directors. By virtue of the definition of “Non-Released Claims”, section 9.1(a) of the Plan ensures the Plan releases comply with these statutory restrictions.
94. Section 6(3) of the CCAA requires that the Plan provide for the payment in full of certain Crown claims within six months of the Court’s sanctioning of the Plan, while section 6(5) of the CCAA requires that the Plan provide for the payment of certain amounts owing to employees and former employees immediately after sanction. Section 5.8 of the Plan stipulates that any Government Priority Claims and Employee Priority Claims must be paid in compliance with sections 6(3) and 6(5) of the CCAA.
95. Section 6(6) of the CCAA requires that the Plan provide for the payment of certain unpaid amounts relating to pension plans and that the Court be satisfied that such claims can and will be paid. In the present case however, no such amounts that would be payable by the Sears Canada Entities are outstanding, and so this requirement of the CCAA is not engaged.
96. Pursuant to section 6(8) of the CCAA, no plan of compromise or arrangement that provides for payment of an equity claim may be sanctioned by the Court unless all non-equity claims are paid in full. In light of the shortfall on account of the claims of Affected Unsecured Creditors of the Sears Parties and the SLH Parties, Section 5.7 of the Plan provides that no payments will be made on account of equity claims, and stipulates further that such claims will be fully, finally, irrevocably and forever compromised released cancelled are barred. The Monitor notes that in the case of Former Corbeil, amounts will be paid on account of Sears Canada’s equity claim as the shareholder of Former Corbeil as all other claims against Former Corbeil will be paid in full.
97. Pursuant to section 19(2) of the CCAA, a plan of compromise or arrangement may not deal with any claim that relates to the debts or liabilities described in section 19(2) unless the plan explicitly provides for the compromise of such claim and the creditor holding the

claim votes in favour of the plan. Section 5.13 of the Plan provides that claims listed under Section 19(2) of the CCAA shall be Affected Claims for the purposes of the Plan; provided that such claims shall be deemed to be Unaffected Claims to the extent held by any creditors who have not voted in favour of the Plan.

98. Based on the foregoing, the Monitor is not aware of any aspect of the Plan that is not in compliance with the statutory requirements of the CCAA.

Treatment of Pre-Filing Warranty Claims

99. As indicated above, the Plan provides that the holders of Pre-Filing Warranty Claims will not receive payment on account of the allowed value of their claims, but rather (a) establishes the Warranty Reimbursement Pool in an amount equal to the notional distributions that Pre-Filing Warranty Claims would have otherwise received based on the remaining unamortized value of the original purchase price of the Warranties at issue, up to an aggregate amount of \$8,000,000; and (b) grants to any holders of Warranties purchased prior to the Filing Date 180 days from the Plan Implementation Date to establish that they have incurred expenses that would otherwise be reimbursable under the terms of such Warranty, and assert a claim for this expense against the Warranty Reimbursement Pool.
100. In the Monitor's view this approach is reasonable and appropriate in the circumstances as:
- (a) It avoids making large numbers of very small distributions: There are approximately 800,000 Pre-Filing Warranty claim holders. Given the relatively low remaining unamortized value of individual Warranty claims (estimated to be approximately \$125 per claim on average), if the Monitor were to apply the De Minimis Claim Amount threshold, only 32%, or approximately 256,000 claimants, would receive a distribution and each of those distributions, aside from exceptional circumstances, would be very low in value;
  - (b) It addresses a practical difficulty with the reliability of creditor contact details: Although the Sears Canada Entities have records with respect to most of the key



details of the Warranties, such as date of purchase, purchase price, and product covered, given the amount of time that has passed since most of these Warranties were sold, they cannot ensure they have accurate contact details for most Warranty holders. As such, the Monitor expects that if cheques were delivered based upon such records, a high number of those cheques would be returned; and

- (c) *It addresses the damages actually suffered:* Making distributions against expenses actually incurred and reimbursable under the terms of a Warranty compensates those claimants for the actual damage that they have suffered as a result of losing the benefit of that Warranty.

*Releases*

101. As outlined above, the Plan provides for full and final releases of the Sears Released Parties, the FTI Released Parties, and the Third Party Released Parties, subject to certain exceptions, including that (a) the Plan does not release any of the Non-Released Claims identified above, and (b) does not affect, release or prejudice any of the claims currently being pursued or that may arise in connection with the 2013 Dividend, including the Estate 2013 Dividend Claims, the Pension 2013 Dividend Claim, and the Dealer 2013 Dividend Claim.
102. The releases contained in the Plan are important components of the Plan and rationally connected to it. Among other things:
- (a) pursuant to the Claims Procedure Orders, the Applicants have already granted persons ample opportunity to make claims against the current and former officers and directors. Many of the officers and directors who held those positions at the commencement of these CCAA Proceedings have contributed materially to the resolution of these CCAA Proceedings;
- (b) the Sears Canada Entities' advisors have assisted with and provided guidance through the restructuring and ultimate liquidation process and these CCAA Proceedings generally;

- (c) the Monitor has overseen every aspect of these CCAA Proceedings from the outset, and together with its legal counsel and the other FTI Released Parties, has developed and would implement the Plan, if approved; and
- (d) each of Employee Representative Counsel and Pension Representative Counsel, as well as the individual employee and pension representatives, were appointed in their roles by this Court, and have contributed throughout these CCAA Proceedings, including towards the achievement of the Pension Resolution and the development and implementation of the Employee and Retiree Claims Procedure.

103. As such, the Monitor views the releases provided for under the Plan as reasonable and justified in the circumstances.

Estimated Recoveries for Affected Unsecured Creditors under the Plan

104. The amounts available for payment to Affected Unsecured Creditors under the Plan remains uncertain because of a variety of unresolved matters in the CCAA Proceedings, including the resolution of remaining unresolved claims, potential realizations of the Sears Canada Entities' remaining real estate property and other minor assets and potential litigation costs and recoveries.

105. The Monitor has estimated the range of the potential amount to be distributed to Affected Unsecured Creditors (calculated as a potential recovery percentage), leaving aside any potential litigation recoveries, as follows:<sup>3</sup>

<b>Sears Parties</b>	<b>Former Corbeil</b>	<b>SLH Parties</b>
6 - 8%	100%	15 - 20%

---

<sup>3</sup> The estimated recoveries are based on certain forward-looking assumptions relating to each debtor group's cash realizations and claims pool, and include claims that are currently in dispute and subject to final determination. The estimated recovery figures may be subject to change.

Alternatives to the Plan and Estimated Recoveries

106. If the Plan is not implemented and the settlement of the Pension Claims not effected thereby, the Pension Plan Administrator and other Pension Parties would most likely resume their motions asserting, among other things, that:
- (a) the wind-up deficiency under the Pension Plan has a deemed trust priority over the claims of unsecured creditors (the “**Deemed Trust Motion**”);
  - (b) the Pension Plan Administrator has a statutory lien and charge for the amount of the wind-up deficiency in connection with the Pension Plan (the “**Lien Motion**”); and
  - (c) the Sears Canada Entities have joint and several liability for the wind-up deficiency (the “**Joint and Several Motion**”, and together with the Deemed Trust Motion and Lien Motion, the “**Pension Motions**”).
107. Given that the quantum of the wind-up deficiency of the Pension Plan (estimated at approximately \$250 million) is likely to significantly exceed the aggregate of realizations available to creditors (leaving aside any potential litigation recoveries in connection with the 2013 Dividend), if the Deemed Trust Motion or Lien Motion were successful, the Pension Claims would have priority for the full quantum of the wind-up deficiency and unsecured creditors of the Sears Parties would receive no distributions at all.
108. If the Joint and Several Motion were also to succeed along with the Deemed Trust Motion and/or Lien Motion, creditors of each of Former Corbeil and the SLH Parties would similarly receive no distributions. If only the Joint and Several Motion succeeded, and the Deemed Trust Motion and Lien Motion did not, distributions for the creditors of Former Corbeil and the SLH Parties would not be reduced to zero, but would nevertheless still be significantly reduced.
109. Given the impact of the Pension Motion on potential estimated recoveries therefore, no distributions could be made to unsecured creditors generally until such issues were resolved.

110. The impact on estimated distributions to the three different unsecured creditor groups under the different scenarios presented by the potential recommencement of the Pension Motions is summarized in the table below,<sup>4</sup> in which:

- (a) Scenario 1 contemplates the failure of the Deemed Trust Motion and Lien Motion and the Joint and Several Motion;
- (b) Scenario 2 contemplates the failure of the Deemed Trust Motion and Lien Motion but the success of the Joint and Several Motion;
- (c) Scenario 3 contemplates the success of the Deemed Trust Motion and/or Lien Motion but the failure of the Joint and Several Motion; and
- (d) Scenario 4 contemplates the success of the Deemed Trust Motion and/or the Lien Motion and the success of the Joint and Several Motion.

		<b>Sears Parties</b>	<b>Former Corbeil</b>	<b>SLH Parties</b>	<b>Total</b>
<b>Scenario 1</b>	Pension Parties	23,000,000	-	2,900,000	25,900,000
	Other 3rd Party Creditors	138,200,000	500,000	6,000,000	144,700,000
		<u>161,200,000</u>	<u>500,000</u>	<u>8,900,000</u>	<u>170,600,000</u>
<b>Scenario 2</b>	Pension Parties	19,700,000	28,400,000	8,100,000	56,200,000
	Other 3rd Party Creditors	113,700,000	100,000	600,000	114,400,000
		<u>133,400,000</u>	<u>28,500,000</u>	<u>8,700,000</u>	<u>170,600,000</u>
<b>Scenario 3</b>	Pension Parties	162,100,000	-	8,000,000	170,100,000
	Other 3rd Party Creditors	-	500,000	-	500,000
		<u>162,100,000</u>	<u>500,000</u>	<u>8,000,000</u>	<u>170,600,000</u>
<b>Scenario 4</b>	Pension Parties	132,400,000	30,200,000	8,000,000	170,600,000
	Other 3rd Party Creditors	-	-	-	-
		<u>132,400,000</u>	<u>30,200,000</u>	<u>8,000,000</u>	<u>170,600,000</u>

111. While the Monitor, together with Employee Representative Counsel, opposed the Pension Motions and believes that the merits of such opposition remains strong, particularly considering the impact of a possible intervening bankruptcy, the uncertainty as to the

<sup>4</sup> The estimated distributions under each scenario are based on the same set of underlying assumptions relating to realizations and claims except for the treatment of the Pension Claim, as described in each scenario. The figures presented are for illustrative purposes only and are subject to change.

outcome of this issue and related delay justifies the resolution proposed in the Plan. Given the potential impact of the outcome of the Pension Motions on the recoveries of both the Pension Plan and other unsecured creditors, it can be expected that these motions would be both pursued and opposed vigorously, and accordingly there would be significant risk, time and expense associated with litigating such motions. Of further significance would be the time associated with pursuing all potential appeals in connection with the Pension Motions, which could delay distributions for potentially years.

112. Employee Representative Counsel previously brought a motion in connection with the Pension Motions (and currently adjourned *sine die* with those motions in light of the Pension Resolution) to lift the stay of proceedings to commence a bankruptcy application for the Sears Canada Entities. However what effect any bankruptcy of the Sears Canada Entities might have on the Deemed Trust Motion and Lien Motions is a matter that one would expect to be similarly vigorously contested by the Pension Parties. A bankruptcy would also not eliminate the Joint and Several Motion. As such, even in a bankruptcy context distributions to unsecured creditors would need to be delayed until these issues were resolved.

*The Monitor's Recommendation*

113. In the Monitor's view the Plan is a compromise that is reasonable and appropriate and is the best available alternative in the circumstances. Among other things, it:
- (a) resolves the Pension Motions without the significant time and expense that would otherwise be incurred to litigate such motions;
  - (b) resolves significant further claims against the Sears Canada Entities, including that of the Dealer Representative Plaintiff, without the significant time and expense that would otherwise be incurred to further investigate and adjudicate such claims;
  - (c) enables Affected Unsecured Creditors to opt-in or opt-out of participating in the sharing of the costs and benefits of the Estate 2013 Dividend Claims, which in the

Monitor's view is unlikely to be possible to implement in a bankruptcy context without significant legal and administrative complexity and expense;

- (d) permits post-filing and Pre-Filing Warranty Claims to be addressed in an efficient manner;
- (e) respects the relative rights, priorities and entitlements of creditors of the Sears Canada Entities generally; and
- (f) avoids unnecessary intercompany allocation disputes.

114. Accordingly, the Monitor is of the view that the Plan is fair, equitable and reasonable to affected parties, and recommends that Affected Unsecured Creditors vote in favour of the Plan.

The Monitor respectfully submits to the Court this, its 29th Report.

Dated this 6th day of February, 2019.

FTI Consulting Canada Inc.  
in its capacity as Monitor of  
the Sears Canada Entities



Paul Bishop  
Senior Managing Director



Greg Watson  
Senior Managing Director

Appendix A  
Plan

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF SEARS CANADA INC., 9370-2751 QUÉBEC INC.,  
191020 CANADA INC., THE CUT INC., SEARS CONTACT SERVICES  
INC., INITIUM LOGISTICS SERVICES INC., 9845488 CANADA 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**

---

**JOINT PLAN OF COMPROMISE AND ARRANGEMENT  
PURSUANT TO THE *COMPANIES' CREDITORS ARRANGEMENT ACT***

---

**FEBRUARY 12, 2019**



## TABLE OF CONTENTS

<b>ARTICLE 1 INTERPRETATION</b> .....	<b>2</b>
1.1 Definitions.....	2
1.2 Certain Rules of Interpretation.....	2
1.3 Time.....	3
1.4 Date and Time for any Action.....	3
1.5 Successors and Assigns.....	3
1.6 Governing Law.....	3
1.7 Currency.....	3
1.8 Actions of the Sears Canada Entities.....	3
1.9 Schedules.....	4
<b>ARTICLE 2 PURPOSE AND EFFECT OF THE PLAN</b> .....	<b>4</b>
2.1 Purpose of Plan.....	4
2.2 Persons Affected.....	4
2.3 Persons Not Affected.....	5
2.4 Claims Against the Sears Canada Entities.....	5
<b>ARTICLE 3 SUBSTANTIVE CONSOLIDATION AND CLAIMS VALUATION</b> .....	<b>5</b>
3.1 Substantive Consolidation.....	5
3.2 Claims Procedure and Adjustment of Pension Claims.....	5
<b>ARTICLE 4 CLASSIFICATION OF CREDITORS, VOTING CLAIMS AND RELATED MATTERS</b> .....	<b>6</b>
4.1 Classification.....	6
4.2 Voting.....	6
4.3 Unaffected Claims.....	7
4.4 Meetings.....	7
4.5 No Double Proof or Recovery.....	7
<b>ARTICLE 5 TREATMENT OF CLAIMS</b> .....	<b>8</b>
5.1 Treatment of Pre-Filing Interco Claims and Tax Loss Utilization Structure.....	8
5.2 Treatment of Affected Third Party Unsecured Claims, Pension Litigation Recovery Adjustment and Dealer Matters.....	8
5.3 Treatment of Warranty Claims.....	9
5.4 Treatment of De Minimis Claims.....	10
5.5 Unresolved Claims.....	11
5.6 D&O Claims, Directors' Indemnities, and Claims for Contribution from ESL Parties.....	11
5.7 Equity Claims.....	12
5.8 Employee Priority Claims and Government Priority Claims.....	12
5.9 WEPP.....	12
5.10 Landlord Cost Payments.....	12
5.11 Duplicate Claims.....	12
5.12 Extinguishment of Affected Claims.....	13
5.13 Section 19(2) Claims.....	13
<b>ARTICLE 6 ESTABLISHMENT AND MAINTENANCE OF RESERVES, CASH POOLS AND LITIGATION COSTS RECOVERY FUND</b> .....	<b>13</b>
6.1 Establishment and Maintenance on Accounting Basis.....	13
6.2 Administrative Reserve.....	14
6.3 Litigation Costs Recovery Fund.....	14
6.4 Unresolved Claims Reserves.....	14
6.5 Creation of the Debtor Cash Pools and Litigation Recoveries Pool.....	15
<b>ARTICLE 7 PROVISIONS REGARDING DISTRIBUTIONS, PAYMENTS, DISBURSEMENTS AND CONTRIBUTIONS</b> .....	<b>16</b>
7.1 Distributions, Payments and Disbursements Generally; Order and Sequencing of Distributions and Payments.....	16

7.2	Tax Matters .....	17
7.3	Priority of Payments .....	18
7.4	Method of Payment .....	18
7.5	Treatment of Uncashed Distributions or Payments .....	19
7.6	Payment and Treatment of Certain Unaffected Claims, Including Litigation Costs .....	20
7.7	Timing of Distributions .....	20
7.8	Remaining Cash .....	21
<b>ARTICLE 8 PLAN IMPLEMENTATION .....</b>		<b>21</b>
8.1	Corporate Authorizations .....	21
<b>ARTICLE 9 RELEASES .....</b>		<b>21</b>
9.1	Plan Releases .....	21
<b>ARTICLE 10 COURT SANCTION, CONDITIONS PRECEDENT AND PLAN IMPLEMENTATION .....</b>		<b>23</b>
10.1	Application for Sanction Order .....	23
10.2	Sanction Order .....	23
10.3	Conditions Precedent to Implementation of the Plan .....	24
10.4	Plan Implementation Date Certificate .....	25
<b>ARTICLE 11 GENERAL .....</b>		<b>25</b>
11.1	General .....	25
11.2	Claims Bar Dates .....	26
11.3	Deeming Provisions .....	26
11.4	Non-Consummation .....	26
11.5	Modifications of the Plan .....	26
11.6	Paramountcy .....	26
11.7	Responsibilities of the Monitor .....	27
11.8	Notices .....	27
11.9	Further Assurances .....	28
<b>SCHEDULE A DEFINITIONS .....</b>		<b>29</b>
<b>SCHEDULE B PRE-FILING INTERCO CLAIMS .....</b>		<b>48</b>
<b>SCHEDULE C PENSION CLAIMS .....</b>		<b>49</b>
<b>SCHEDULE D LITIGATION COST RECOVERY AMOUNT ILLUSTRATION .....</b>		<b>50</b>

## JOINT PLAN OF COMPROMISE AND ARRANGEMENT

## WHEREAS:

- (A) On June 22, 2017, the Court issued an Order (as amended and restated on July 13, 2017, and as further amended, restated or supplemented from time to time, the "**Initial Order**") commencing proceedings (the "**CCAA Proceedings**") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") in respect of the applicants (collectively, the "**Applicants**"), being Sears Canada Inc. ("**Sears Canada**"), The Cut Inc, Sears Contact Services Inc., Initium Logistics Services Inc., 9845488 Canada Inc. (formerly "Initium Commerce Labs Inc."), Initium Trading and Sourcing Corp., Sears Floor Covering Centres Inc., 173470 Canada Inc., 2497089 Ontario Inc., ("**2497089**") 6988741 Canada Inc., 10011711 Canada Inc., 1592580 Ontario Limited, 955041 Alberta Ltd., 4201531 Canada Inc., 3339611 Canada Inc., 9370-2571 Québec Inc. ("**Former Corbeil**"), 191020 Canada Inc. ("**Former SLH**"), and 168886 Canada Inc. ("**168886**");
- (B) The Initial Order declared that, although not an Applicant, the general partnership SearsConnect shall enjoy the protections and authorizations provided by the Initial Order (together with the Applicants, the "**Sears Canada Entities**");
- (C) Pursuant to the Initial Order, FTI Consulting Canada Inc. was appointed Monitor (in such capacity and not in its personal or corporate capacity, the "**Monitor**") in the CCAA Proceedings;
- (D) As of the date hereof, substantially all material assets of the Sears Canada Entities have been realized upon. With the exception of certain sale proceeds distributed to parties with Proven Secured Claims or other Proven Priority Claims, amounts expended on operating costs and the fees and expenses incurred by the Sears Canada Entities in connection with the CCAA Proceedings, the Monitor and Sears Canada together currently hold the net sale proceeds from these transactions and other amounts received in these CCAA Proceedings, together with any cash on hand at the commencement of these CCAA Proceedings that has not been expended during the CCAA Proceedings and all interest on the foregoing;
- (E) There are certain material outstanding matters that remain to be completed in the CCAA Proceedings, including implementation of the settlement of the Pension Claims that are the subject of the Deemed Trust Motions, as well as the pursuit of the LT Claims by the Litigation Trustee and the pursuit of the TUV Claim by the Monitor;
- (F) Certain Creditors of Sears Canada have opted not to have their recoveries, if any, as unsecured creditors of Sears Canada reduced by their pro rata share of the costs of pursuing the LT Claims and the TUV Claim, and as a consequence will not receive a distribution of any portion of any recoveries of the LT Claims or the TUV Claim;
- (G) Further to a mediation process commenced before Regional Senior Justice Morawetz, the Sears Canada Entities have obtained the support of and have reached settlements with various Affected Unsecured Creditors with respect to their Claims, including the Pension Parties pursuant to the Pension Support Agreement, as well as the Dealer Representative Plaintiff, and a substantial majority of Landlords, the terms and conditions of which settlement are reflected in this Plan; and
- (H) To implement the Pension Claim Settlement and other settlements of material Claims noted above (collectively, and including the Pension Claim Settlement, the "**Mediated Claim Settlements**"), and to provide (a) a method of distribution of their available cash to Affected Unsecured Creditors with Proven Affected Unsecured Claims, (b) a mechanism by which Sears

Opt-In Creditors may benefit from any contingent value that may be derived from the pursuit of the LT Claims and the TUV Claim, and (c) a framework for the completion of the orderly wind-down of the Sears Canada Entities, the Applicants, at the direction of the Monitor, hereby propose this Plan to the Affected Creditors under and pursuant to the CCAA.

## **Article 1 Interpretation**

### **1.1 Definitions**

In the Plan, including the Recitals herein, unless otherwise stated or unless the subject matter otherwise requires, all capitalized terms used shall have the meanings ascribed thereto in **Schedule A**.

### **1.2 Certain Rules of Interpretation**

For the purposes of the Plan:

- (a) any reference in the Plan to a contract, instrument, release, indenture, or other agreement or document being in a particular form or on particular terms and conditions means that such document shall be substantially in such form or substantially on such terms and conditions;
- (b) any reference in the Plan to an Order of the Court or an existing document or exhibit filed or to be filed means such Order of the Court, document or exhibit as it may have been or may be amended, restated or varied from time to time;
- (c) unless otherwise specified, all references to currency and to "\$" or "Cdn\$" are to Canadian dollars and references to "US\$" are to United States dollars;
- (d) the division of the Plan into "Articles" and "Sections" and the insertion of a Table of Contents are for convenience of reference only and do not affect the construction or interpretation of the Plan, nor are the descriptive headings of "Articles" and "Sections" otherwise intended as complete or accurate descriptions of the content thereof;
- (e) references in the Plan to "Articles", "Sections", "Subsections" and "Schedules" are references to Articles, Sections, Subsections and Schedules of or to the Plan;
- (f) the use of words in the singular or plural, or with a particular gender, including a definition, shall not limit the scope or exclude the application of any provision of the Plan or a Schedule hereto to such Person (or Persons) or circumstances as the context otherwise permits;
- (g) the words "includes" and "including" and similar terms of inclusion shall not, unless expressly modified by the words "only" or "solely", be construed as terms of limitation, but rather shall mean "includes but is not limited to" and "including but not limited to", so that references to included matters shall be regarded as illustrative without being either characterizing or exhaustive;
- (h) unless otherwise provided, any reference to a statute or other enactment of parliament or a legislature includes all regulations made thereunder, all amendments to or re-enactments of such statute or regulations in force from time to time, and, if applicable, any statute or regulation that supplements or supersedes such statute or regulation;
- (i) the terms "the Plan", "hereof", "herein", "hereto", "hereunder" and similar expressions shall be deemed to refer generally to this Plan and the Schedules hereto and not to any

particular "Article", "Section" or other portion of the Plan and include any documents supplemental hereto; and

- (j) the word "or" is not exclusive.

### **1.3 Time**

For purposes of the Plan, unless otherwise specified, all references to time herein and in any document issued pursuant hereto mean prevailing local time in Toronto, Ontario, Canada.

### **1.4 Date and Time for any Action**

For purposes of the Plan:

- (a) in the event that any date on which any action is required to be taken under the Plan by any Person is not a Business Day, that action shall be required to be taken on the next succeeding day which is a Business Day, and any reference to an event occurring on a Business Day shall mean prior to 5:00 p.m. on such Business Day; and
- (b) unless otherwise specified, time periods within or following which any payment is to be made or act is to be done shall be calculated by excluding the day on which the period commences and including the day on which the period ends and by extending the period to the next succeeding Business Day if the last day of the period is not a Business Day.

### **1.5 Successors and Assigns**

The Plan shall be binding upon and shall enure to the benefit of the heirs, administrators, executors, legal personal representatives, liquidators, receivers, trustees in bankruptcy, and successors and assigns of any Person or party named or referred to in the Plan.

### **1.6 Governing Law**

The Plan shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein. All questions as to the interpretation of or application of the Plan and all proceedings taken in connection with the Plan and its provisions shall be subject to the exclusive jurisdiction of the Court.

### **1.7 Currency**

Unless specifically provided for in the Plan or the Sanction Order, for the purposes of voting or distribution under the Plan, a Claim shall be denominated in Canadian dollars and all payments and distributions to Affected Unsecured Creditors on account of their Proven Claims shall be made in Canadian dollars. In accordance with paragraph 6 of the Claims Procedure Order (General) and paragraph 7 of the Claims Procedure Order (E&R), any Claim in a currency other than Canadian dollars is to be converted to Canadian dollars, and any such amount shall be regarded as having been converted at the noon spot rate of exchange quoted by the Bank of Canada for exchanging such currency to Canadian dollars as at the Filing Date, which rate in the case of United States dollars is US\$1:Cdn\$1.3241.

### **1.8 Actions of the Sears Canada Entities**

For greater certainty, any reference to an action of any one or more of the Sears Canada Entities in this Plan or any document contemplated hereunder shall be subject to, and read together with, the Governance Protocol Order, which provides among other things that the Monitor will: (a) cause the Sears Canada Entities to perform such functions as the Monitor considers necessary or desirable in order to facilitate or assist the Sears Canada Entities in dealing with their operations, winding down their estates

or performing other activities; and (b) cause the Sears Canada Entities to administer their remaining property for the purposes of facilitating distributions to creditors of the Sears Canada Entities, including by way of a Plan. Accordingly, any steps to be performed hereunder by any one or more of the Sears Canada Entities may be performed by the Monitor, on behalf of the Sears Canada Entities, subject to the terms of and the protections provided under the Governance Protocol Order.

### **1.9 Schedules**

The following are the Schedules to the Plan, which are incorporated by reference into the Plan and form a part of it:

Schedule A – Definitions

Schedule B – Pre-Filing Interco Claims

Schedule C – Pension Claims

Schedule D – Litigation Cost Recovery Amount Illustration

## **Article 2 Purpose and Effect of the Plan**

### **2.1 Purpose of Plan**

The purpose of the Plan is to:

- (a) effect a compromise and settlement of all Affected Claims, in exchange for the distributions to Affected Unsecured Creditors with Proven Affected Unsecured Claims as contemplated by the Plan; provided, however, and for greater certainty that none of the compromises, settlements, releases and discharges contemplated herein shall release, affect or prejudice Non-Released Claims, including any claims that arise out of or relate to the dividend paid to shareholders of Sears Canada on or around December 3, 2013 in the amount of approximately \$509 million, the LT/TUV Litigation or Pension/Dealer Litigation or provide any defence to any party to such litigation;
- (b) facilitate the distribution of the consideration provided for herein in respect of Proven Affected Unsecured Claims, Proven Priority Claims and Proven Secured Claims, if any;
- (c) implement the Pension Claim Settlement and other Mediated Claim Settlements; and
- (d) allow Sears Opt-In Creditors to benefit from any contingent value that may be derived from the pursuit of the LT Claims by the Litigation Trustee and the TUV Claim by the Monitor,

all in the expectation that Persons with an economic interest in the Property will, collectively, derive a greater benefit from the implementation of the Plan than would result from any alternative distribution and claims resolution processes for the Sears Canada Entities, including bankruptcy.

### **2.2 Persons Affected**

The Plan provides for a compromise and/or settlement of the Affected Claims. The Plan will become effective at the Effective Time on the Plan Implementation Date. The Plan shall be binding on and shall enure to the benefit of the Sears Canada Entities, the Affected Creditors, the Released Parties and all other Persons named or referred to herein, receiving the benefit of, or subject to, the Plan. On, from and after the Plan Implementation Date, all Affected Claims will be fully and finally compromised and settled

(and in the case of the Released Parties, De Minimis Claims and Equity Claims, released and discharged) to the extent provided for under the Plan.

### 2.3 Persons Not Affected

The Plan does not affect Unaffected Creditors with respect to and to the extent of their Unaffected Claims. Nothing in the Plan shall affect any of the Sears Canada Entities' rights and defenses, both legal and equitable, with respect to any Unaffected Claims, including all rights with respect to entitlements to set-offs or recoupment against any and all such Unaffected Claims.

### 2.4 Claims Against the Sears Canada Entities

Without limiting the effect of the releases, discharges, compromises and settlements herein in favour of the Released Parties:

- (a) any Affected Claim against the Sears Canada Entities that is not, or does not become, a Proven Claim, including Affected Claims that have not been filed by the claims bar date provided under the Claims Procedure Orders, shall be deemed fully and finally released, discharged, barred and extinguished; and
- (b) any Affected Claim against the Sears Canada Entities that is a Proven Claim shall not be released but shall be entitled to recoveries against the assets of the Sears Canada Entities solely in accordance with distributions provided by this Plan and any further rights in respect of such Affected Claims against the Sears Canada Entities or their assets are compromised and settled in accordance with this Plan.

## Article 3 Substantive Consolidation and Claims Valuation

### 3.1 Substantive Consolidation

The Sears Canada Entities, except for Former Corbeil, shall be partially substantively consolidated, into two Debtor Group estates, in the manner set out herein as follows:

- (a) Sears Canada, The Cut Inc., Sears Contact Services Inc., Initium Logistics Services Inc., 9845488 Canada Inc., Initium Trading and Sourcing Corp., Sears Floor Covering Centres Inc., 173470 Canada Inc., 2497089, 6988741 Canada Inc., 10011711 Canada Inc., 1592580 Ontario Limited, 955041 Alberta Ltd., 4201531 Canada Inc., 3339611 Canada Inc. and SearsConnect (collectively, the "**Sears Parties**"); and
- (b) Former SLH and 168886 (together, the "**SLH Parties**"),

such that the Affected Unsecured Creditors of each set of consolidated Sears Canada Entities shall (i) as provided in Article 4 below, be members of the same Unsecured Creditor Class for purposes of voting on the Plan, and (ii) as provided in Sections 5.2 and 7.1 below, receive Plan Distributions as if each of the individual members of such set of consolidated Sears Canada Entities comprised one Sears Canada Entity.

### 3.2 Claims Procedure and Adjustment of Pension Claims

- (a) The procedure for determining the validity and quantum of Affected Unsecured Claims for voting and distribution purposes under the Plan shall be governed by the Claims Procedure Orders, subject to the following:

- (i) Pre-Filing Interco Claims shall, subject to Section 4.2(b), be allowed for voting and distribution purposes in the amounts set out on **Schedule B** hereto and shall be treated as Proven Affected Unsecured Claims for the purposes of the Plan;
  - (ii) solely for the purpose of determining the quantum of the Warranty Reimbursement Pool pursuant to Section 5.3(a)(ii), each Pre-Filing Warranty Claim shall be allowed in the amount of the remaining unamortized value (as at October 19, 2017) of the underlying Warranty Payment Amount, as calculated by the Monitor based upon the records of Sears Canada; and
  - (iii) subject to Section 3.2(b) below and solely for the purposes of the Plan, the Pension Claims shall be allowed for voting and distribution purposes in the amounts and as against the applicable Sears Canada Entities as set out on **Schedule C** hereto and shall be treated as Proven Affected Unsecured Claims for the purposes of the Plan.
- (b) The Pension Claims for distribution purposes shall be subject to reduction immediately prior to each distribution by Cdn\$2.50 for every Cdn\$1 of recovery (if any) that any Pension Party has received at the time of such distribution (such reductions to be allocated between the Sears Parties and the SLH Parties in the proportions set out on **Schedule C** hereto) directly as a result of any litigation commenced by any of the Pension Parties against any Directors and/or Officers or any third party for Pension Claims, net of all fees, costs and disbursements incurred by the Pension Parties further to such litigation, and not recovered by them (the "**Pension Litigation Recovery Adjustment**"). For greater certainty, nothing in this Section 3.2(b) shall require any retroactive adjustment to the Pension Claim amount for past distributions and any adjustment in respect of past distributions shall solely be effected pursuant to the reimbursement obligation provided under Section 5.2(b) herein.

## Article 4

### Classification of Creditors, Voting Claims and Related Matters

#### 4.1 Classification

For the purposes of considering, voting on and receiving distributions under the Plan, the Affected Unsecured Creditors shall be grouped into the following classes (each an "**Unsecured Creditor Class**", and collectively, the "**Unsecured Creditor Classes**"):

- (a) **Sears Creditor Class:** Affected Unsecured Creditors of any of the Sears Parties; and
- (b) **SLH Creditor Class:** Affected Unsecured Creditors of any of the SLH Parties.

As the Proven Affected Unsecured Claims of Creditors of Former Corbeil are to be paid in full under the Plan, no holder of an Affected Unsecured Claim against Former Corbeil shall be a member of either Unsecured Creditor Class, be entitled to vote on or approve the Plan or attend at any Meeting in respect of such Affected Unsecured Claim.

#### 4.2 Voting

- (a) Except as otherwise provided in the Meetings Order, and subject to the provisions of the Plan, Affected Unsecured Creditors shall be entitled to vote their Eligible Voting Claims at the applicable Meeting in respect of the Plan.



- (b) In accordance with the CCAA, the Sears Canada Entities (through the Monitor), as related parties, will only be permitted to vote their Eligible Voting Claims, if any, against, but not for, the Plan.
- (c) Employee Representative Counsel shall be deemed to be a proxy holder in respect of each Eligible Voting Claim of an ERC Employee that is an Employee Claim and shall vote such Claims at the applicable Meeting on all ERC Employees' behalf, without the requirement for any ERC Employee to submit a proxy form to the Monitor or any other Person.
- (d) Pension Representative Counsel shall be deemed to be a proxy holder in respect of each Eligible Voting Claim of a PRC Retiree (other than relating to the Pension Claims or Employee Claims) and shall vote such Claims at the applicable Meeting on such PRC Retirees' behalf, without the requirement for any PRC Retiree to submit a proxy form to the Monitor or any other Person.
- (e) For greater certainty, only the Pension Plan Administrator or its designated proxy may vote the Pension Claims.

#### 4.3 Unaffected Claims

Unaffected Claims shall not be compromised under the Plan. No holder of an Unaffected Claim shall be:

- (a) entitled to vote on or approve the Plan or attend at any Meeting in respect of such Unaffected Claim; or
- (b) entitled to or receive any distributions pursuant to the Plan in respect of such Unaffected Claim, unless specifically provided for under and pursuant to the Plan.

#### 4.4 Meetings

- (a) The Meetings shall be held in accordance with the Plan, the Meetings Order and any further Order of the Court. The only Persons entitled to notice of, to attend or to speak at the Meetings are the Eligible Voting Creditors (or their respective duly-appointed proxyholders), representatives of the Monitor, the Sears Canada Entities, Employee Representative Counsel, the Pension Parties, all such parties' financial and legal advisors, the chair, and secretary and scrutineers thereof. Any other Person may be admitted to the Meetings only by invitation of the Monitor or as permitted under the Meetings Order or any further Order of the Court.
- (b) If the Plan is approved by the Required Majority in each Unsecured Creditor Class, then the Plan shall be deemed to have been agreed to, accepted and approved by the Affected Unsecured Creditors and, if sanctioned by the Court, shall be binding upon all Affected Creditors immediately upon the delivery of the Plan Implementation Date Certificate in accordance with Section 10.4.

#### 4.5 No Double Proof or Recovery

In respect of any Claim which is compromised under the Plan (a) which is subject to a Guarantee or (b) in respect of which a Person has any right to or claim over in respect of or to be subrogated to the rights of any Person (such compromised Claim being the "**Principal Claim**"), no Person shall:

- (a) be entitled to any greater rights against the Sears Canada Entity in respect of which the Principal Claim relates than the Person holding the Principal Claim;

- (b) be entitled to vote on the Plan to the extent that the Person holding the Principal Claim votes on the Plan; or
- (c) be entitled to receive any distribution under the Plan to the extent that the Person holding the Principal Claim is receiving a distribution.

## **Article 5 Treatment of Claims**

### **5.1 Treatment of Pre-Filing Interco Claims and Tax Loss Utilization Structure**

- (a) In accordance with Section 7.1(a), each Debtor Group holding a Pre-Filing Interco Claim against:
  - (i) another Debtor Group (other than Former Corbeil) shall be entitled to receive an amount equal to its Pre-Filing Interco Pro Rata Share of the Debtor Cash Pool for the Debtor Group against which such Pre-Filing Interco Claim is made; and
  - (ii) Former Corbeil shall be entitled to receive an amount equal to its Pre-Filing Interco Claim.
- (b) For greater certainty with respect to the Tax Loss Utilization Structure and as a result of the substantive consolidation effected pursuant to Section 3.1 above:
  - (i) the Pre-Filing Interco Claim of 2497089 resulting from the 249 SCI Loan made by 2497089 to Sears Canada as part of the Sears Canada Entities' Tax Loss Utilization Structure shall receive no distribution under the Plan;
  - (ii) no value shall be distributable under the Plan from 2497089 to Former SLH in respect of its preferred equity interest in 2497089 as such interest only gives rise to an Equity Claim; and
  - (iii) no value shall be distributable under the Plan from Former SLH to Sears Canada on account of the Pre-Filing Interco Claim that arises as a result of its Sears Canada Subordinated Transport Loan from Sears Canada, which loan was agreed to be treated as subordinated to all other indebtedness of Former SLH, which will not be paid in full.

### **5.2 Treatment of Affected Third Party Unsecured Claims, Pension Litigation Recovery Adjustment and Dealer Matters**

- (a) In accordance with Section 7.1(c), each:
  - (i) Affected Third Party Unsecured Creditor with a Proven Affected Unsecured Claim against Former Corbeil shall be entitled to receive a distribution from the Corbeil Cash Pool in an amount equal to its Proven Affected Unsecured Claim;
  - (ii) Affected Third Party Unsecured Creditor with a Proven Affected Unsecured Claim against an SLH Party shall be entitled to receive a distribution in an amount equal to its Third Party Pro Rata Share of the SLH Cash Pool, as adjusted by the applicable Cash Pool/Holdback Adjustments;
  - (iii) Affected Third Party Unsecured Creditor with a Proven Affected Unsecured Claim against a Sears Party shall be entitled to receive a distribution in an

amount equal to its Third Party Pro Rata Share of the Sears Cash Pool, as adjusted by the applicable Cash Pool/Holdback Adjustments; and

- (iv) Sears Opt-In Creditor with a Proven Affected Unsecured Claim shall be further entitled to receive a distribution in an amount equal to its Third Party Pro Rata Share of the Litigation Recoveries Pool, subject to adjustment under any applicable Cash Pool/Holdback Adjustments.
- (b) The Pension Parties shall reimburse the Monitor, in trust for Affected Unsecured Creditors other than the Pension Parties, in the amount by which any Plan Distributions the Pension Parties have received in respect of the Pension Claims as determined pursuant to Section 3.2(a)(iii) exceed the Plan Distributions that would have been received if, at the time of such distribution, the Pension Claims for distribution purposes were equal to: (X) the value of the Pension Claims pursuant to Section 3.2(a)(iii); less (Y) the Pension Litigation Recovery Adjustment described in Section 3.2(b).
- (c) Notwithstanding any other provisions of this Plan, the treatment of all Dealer Claims shall be as follows:
  - (i) as soon as practicable following the Plan Implementation Date, the Monitor, on behalf of Sears Canada, will pay to the Dealer Representative Plaintiff, on behalf of all Dealers, out of the Sears Cash Pool, \$334,495 (the "**Upfront Dealer Payment**");
  - (ii) the Dealers will not be entitled to receive any other amounts from any Debtor Cash Pool on account of or in respect of any Dealer Claims;
  - (iii) the Dealer Representative Plaintiff shall be further entitled to receive, on behalf of all Dealers, a distribution in an amount equal to its Third Party Pro Rata Share (based upon a Proven Affected Unsecured Claim against Sears Canada valued solely for the purposes of the Plan at \$80,000,000) of any amount in the Litigation Recoveries Pool in excess of \$10,000,000, subject to adjustment under any applicable Cash Pool/Holdback Adjustments; and
  - (iv) the first \$334,495 of distributions that may be received by the Dealer Representative Plaintiff, on behalf of the Dealers, pursuant to Section 5.2(c)(iii) shall be deemed re-contributed by the Dealer Representative Plaintiff, on behalf of the Dealers, to the Sears Cash Pool for distribution in accordance with this Plan.

Except as set out above, no Dealer shall have an entitlement to any distributions under the Plan.

### 5.3 Treatment of Warranty Claims

- (a) Notwithstanding any other provisions of this Plan, the treatment of all Pre-Filing Warranty Claims shall be solely as follows:
  - (i) forthwith following the Plan Implementation Date, the Monitor shall publish for two days in *The Globe and Mail* (National Edition) and the electronic edition of *La Presse* (and in such other publications and with such frequency as the Monitor may deem appropriate) notice of the establishment of the Warranty Reimbursement Pool and the opportunity to submit an application for recovery on a Reimbursable Warranty Claim from the Warranty Reimbursement Pool;

- (ii) on the Initial Distribution Date, the Warranty Claims Administrator shall establish and maintain, on behalf of the Sears Parties, a Warranty Reimbursement Pool in an amount equal to the funds that would otherwise be distributable under the Plan on account of all Pre-Filing Warranty Claims (as valued for such purpose in accordance with Section 3.2(a)(ii)) if such Pre-Filing Warranty Claims were treated as Proven Affected Unsecured Claims and received distributions pursuant to Section 7.1(c)(ii), without accounting for Litigation Recoveries; provided however that the amount of the Warranty Reimbursement Pool shall in no event exceed \$8,000,000;
- (iii) in order to receive a distribution from the Warranty Reimbursement Pool, a holder's Pre-Filing Warranty Claim must be a Reimbursable Warranty Claim and such holder must submit, on or before 5:00 p.m. (Eastern Standard Time) on the date that is 180 days following the Plan Implementation Date (the "**Warranty Claims Bar Date**") and in the manner and using the documentation contemplated by the Warranty Claims Protocol, an application establishing to the satisfaction of the Warranty Claims Administrator that they have a valid Reimbursable Warranty Claim;
- (iv) any Pre-Filing Warranty Claim for which a claimant has not submitted the application required by the Warranty Claims Protocol on or before the Warranty Claims Bar Date or that has been Finally Determined not to be a Reimbursable Warranty Claim shall be forever barred as against the Sears Canada Entities without any compensation therefor; and
- (v) on or following the Initial Distribution Date, and once (i) all Reimbursable Warranty Claims have been Finally Determined to be or not to be Proven Claims in accordance with the Warranty Claims Protocol, and (ii) all Warranty Administration Costs have been paid from the Warranty Reimbursement Pool, the Monitor, on behalf of the Sears Parties, shall forthwith distribute from the Warranty Reimbursement Pool to each holder of a Proven Reimbursable Warranty Claim an amount equal to the lesser of such holder's (A) Third Party Pro Rata Share of the Warranty Reimbursement Pool; and (B) Proven Reimbursable Warranty Claim. If Proven Reimbursable Warranty Claims have been paid in full, the Monitor shall transfer the remaining balance in the Warranty Reimbursement Pool, if any, to the Sears Cash Pool for further distribution to Affected Unsecured Creditors of the Sears Parties.

Except as set out above, no Person holding a Pre-Filing Warranty Claim shall have an entitlement to any distributions under the Plan with respect to such Pre-Filing Warranty Claim.

- (b) For greater certainty, any Warranty Claim that arises under a Warranty purchased from a Sears Canada Entity on or after the Filing Date shall constitute a Post-Filing Claim. Creditors holding such Warranty Claims shall be unaffected by the Plan and to the extent not previously paid, shall receive payment out of the Administrative Reserve as soon as reasonably practicable after the Plan Implementation Date on account of such Warranty Claims, such payment to be at the remaining unamortized value (as at October 19, 2017) of the underlying Warranty Payment Amount as determined by the Sears Canada Entities, in consultation with Monitor.

#### 5.4 Treatment of De Minimis Claims

Notwithstanding any other provision of this Plan, no holder of an Affected Unsecured Claim (other than a Pre-Filing Warranty Claim, which shall be entitled solely to the recoveries expressly provided for Pre-Filing Warranty Claims pursuant to Section 5.3(a)) that has been Finally Determined to be less than \$80

(a "De Minimis Claim") shall be entitled to or receive any distributions pursuant to the Plan in respect of such De Minimis Claim, and all such De Minimis Claims shall be fully, finally, irrevocably and forever compromised, released, discharged, cancelled and barred, and shall be treated as such in the calculation of any Third Party Pro Rata Share under this Plan.

#### 5.5 Unresolved Claims

- (a) No Affected Unsecured Creditors or holders of Priority Claims shall be entitled to receive any distributions or any payments under or pursuant to the Plan with respect to an Affected Unsecured Claim, or Priority Claim, or in each case, any portion thereof, unless and until, and then only to the extent that (i) such Claim is Finally Determined to be a Proven Claim, or (ii) is treated as a Proven Claim in accordance with the terms of the Plan, such that, in each case, the Claim is a Proven Affected Unsecured Claim or Proven Priority Claim and is entitled to the treatment described in the Plan. Except with respect to Reimbursable Warranty Claims, potential maximum distributions in respect of Unresolved Affected Unsecured Claims or potential maximum payments to Unresolved Priority Claims for each Debtor Group will be maintained by the Monitor in the Unresolved Claims Reserve for such Debtor Group until such Claims are Finally Determined.
- (b) An Unresolved Claims Reserve may be reduced by the Monitor from time to time to the extent the amount of such Unresolved Claims Reserve exceeds the maximum amounts distributable or payable for remaining Unresolved Affected Unsecured Claims, or Unresolved Priority Claims in respect of the applicable Debtor Group.

#### 5.6 D&O Claims, Directors' Indemnities, and Claims for Contribution from ESL Parties

- (a) Any Claim of a Director, Officer or ESL Party for indemnification or contribution and indemnity from a Sears Canada Entity arising out of or resulting from any such Director, Officer or ESL Party personally paying awards or settlement amounts in connection with the LT/TUV Litigation shall receive no distribution from the applicable Debtor Cash Pool or Litigation Recoveries Pool. To the extent any Director, Officer or ESL Party is determined to have a Proven Affected Unsecured Claim in respect of such indemnification or contribution and indemnity from a Sears Canada Entity, such distributions shall be satisfied through set off by such Directors, Officers and/or ESL Parties against the award or settlement amounts otherwise payable by those Directors, Officers and/or ESL Parties in an amount equal to the distributions such Director, Officer and/or ESL Party would have received under the Plan as a result of such Claim.
- (b) With respect to an award or settlement amount in connection with the Dealer 2013 Dividend Claim that (i) is to be personally paid by a Director, Officer or ESL Party to or on behalf of the Dealer Representative Plaintiff in such litigation, and (ii) is subject to a Claim by such Director, Officer or ESL Party for indemnification or contribution and indemnity from a Sears Canada Entity, the Dealer Representative Plaintiff shall direct that such Director, Officer or ESL Party shall pay the portion of such award or settlement amount equal to the distribution that would be payable to such Director, Officer or ESL Party under the Plan on account of the Proven Affected Unsecured Claim that such Director, Officer, or ESL Party has, if any, for indemnification or contribution and indemnity in connection with the Dealer 2013 Dividend Claim (as calculated by the Monitor) to the Monitor for distribution under the Plan to such Director, Officer or ESL Party.
- (c) With respect to an award or settlement amount in connection with a Non-Released Claim (other than a Non-Released Claim asserted by a Pension Party) that: (i) is to be personally paid by a Director, Officer or ESL Party to or on behalf of the holder of such Non-Released Claim (excluding, for greater certainty, any Pension Party), and (ii) is subject to a Claim by such Director, Officer or ESL Party for indemnification or contribution and indemnity from a Sears Canada Entity, the holder of such Non-Released

Claim (excluding, for greater certainty, any Pension Party) shall direct that such Director, Officer or ESL Party shall pay the portion of such award or settlement amount equal to the distribution that would be payable to such Director, Officer or ESL Party under the Plan on account of the Proven Affected Unsecured Claim that such Director, Officer, or ESL Party has, if any, for indemnification or contribution and indemnity in connection with the Non-Released Claim (as calculated by the Monitor) to the Monitor for distribution under the Plan to such Director, Officer or ESL Party.

- (d) To the extent any Claim of a Director, Officer or ESL Party for indemnification or contribution and indemnity from a Sears Canada Entity arises from a Claim that is itself in respect of an Equity Claim, such claim for indemnification or contribution and indemnity shall be treated for all purposes under the Plan as an Equity Claim.
- (e) No D&O Insurer shall have any Claim against a Sears Canada Entity arising out of any amounts paid by such D&O Insurer on behalf of any Director or Officer in connection with the LT/TUV Litigation or Pension/Dealer Litigation, including any Claim arising by subrogation.

### 5.7 Equity Claims

On the Plan Implementation Date, all Equity Claims (other than those in respect of Former Corbeil), if any, shall be fully, finally, irrevocably and forever compromised, released, discharged, cancelled and barred. Holders of Equity Claims shall not be entitled to vote on the Plan at the Meetings.

### 5.8 Employee Priority Claims and Government Priority Claims

- (a) All Employee Priority Claims and Government Priority Claims which are Proven Claims, if any, to the extent unpaid prior to the Plan Implementation Date, shall be paid in accordance with Sections 6(3) and 6(5) of the CCAA from the applicable Debtor Cash Pool for the Debtor Group(s) such Proven Claims are made against.
- (b) There are no amounts payable pursuant to Section 6(6) of the CCAA.

### 5.9 WEPP

Without limiting the subrogation rights available to the Government of Canada, any Employee who receives a payment from the Wage Earner Protection Program shall not receive a distribution under the Plan in respect of the portion of such Employee's Affected Unsecured Claim satisfied by such payment

### 5.10 Landlord Cost Payments

Every Landlord whose Affected Unsecured Claim was settled pursuant to a Landlord Settlement Agreement shall be paid the amount of \$2,272.72 (each, a "**Landlord Cost Payment**") per location that such Landlord leased as of the Filing Date to the Sears Canada Entities as soon as reasonably practicable after the Plan Implementation Date, such amounts to be paid (a) from the Debtor Cash Pool for the applicable Sears Canada Entity that was tenant under the lease arrangements for such location; and (b) on account of the legal costs of such Landlords incurred in connection with their negotiation of, and entrance into, the Landlord Settlement Agreements.

### 5.11 Duplicate Claims

Where (a) an Affected Unsecured Creditor has or would have had a Duplicate Claim, arising from a Guarantee, where the principal debtor is a Sears Canada Entity and the guarantor is a Sears Canada Entity in a different Debtor Group, or (b) there is joint and several liability of two or more Sears Canada Entities in different Debtor Groups in respect of an Affected Unsecured Claim or portion thereof, such

Affected Unsecured Creditor (to the extent its Affected Unsecured Claim is found to be a Proven Claim against each applicable Sears Canada Entity) shall be entitled to receive distributions under and vote on the Plan on account of its Proven Affected Unsecured Claims in each such Sears Canada Entity's Unsecured Creditor Class, provided that such Affected Unsecured Creditor shall not receive Plan Distributions in an aggregate amount more than the total amount of its Proven Affected Unsecured Claim.

#### 5.12 Extinguishment of Affected Claims

On the Plan Implementation Date, in accordance with the provisions of the Plan and Sanction Order, the treatment of Affected Claims (including Proven Claims and Unresolved Affected Unsecured Claims) and all Released Claims, in each case as set forth herein, shall be final and binding on all Sears Canada Entities, all Affected Creditors (and their respective heirs, executors, administrators, legal personal representatives, successors and assigns) and any Person holding a Released Claim. All Affected Claims shall be compromised, settled, barred and shall be entitled to no further recovery from the assets of the Sears Canada Entities other than as set out herein, and all Released Claims shall be fully, finally, irrevocably and forever released, discharged, cancelled, and barred, and the Released Parties and the Sears Canada Entities shall thereupon have no further obligations whatsoever in respect of the Affected Claims and the Released Claims, as applicable; provided that:

- (a) nothing herein releases any of the Sears Canada Entities (including through the Monitor) or any other Person from their obligations to make distributions in the manner and to the extent provided for in the Plan;
- (b) such compromise, settlement and bar in favour of the Sears Canada Entities shall be without prejudice to the right of an Affected Creditor in respect of an Unresolved Affected Unsecured Claim to prove such Unresolved Affected Unsecured Claim in accordance with the applicable Claims Procedure Order so that such Unresolved Affected Unsecured Claim may become a Proven Claim entitled to receive consideration under Section 5.2 of the Plan; and
- (c) for greater certainty, the compromises, settlements, releases and discharges contemplated herein shall not release, affect or prejudice the LT/TUV Litigation or Pension/Dealer Litigation or provide any defence to any party to such litigation, and shall be limited accordingly.

#### 5.13 Section 19(2) Claims

Claims listed under Section 19(2) of the CCAA ("**Section 19(2) Claims**") shall be Affected Claims for the purposes of this Plan; provided, however, that Section 19(2) Claims shall be deemed Unaffected Claims to the extent held by any Creditors who have not voted in favour of the Plan.

### Article 6

#### Establishment and Maintenance of Reserves, Cash Pools and Litigation Costs Recovery Fund

##### 6.1 Establishment and Maintenance on Accounting Basis

The Monitor shall establish and maintain each of the Reserves and Cash Pools required under the Plan as well as the Litigation Costs Recovery Fund, and may do so in each case on an accounting basis only. The Monitor, may, but is not required, to establish separate bank accounts for any of the Reserves, or in connection with any of the Cash Pools, the Litigation Costs Recovery Fund or the Warranty Reimbursement Pool. The Monitor is authorized to delegate authority to the Warranty Claims Administrator to administer any separate bank account established for the Warranty Reimbursement Pool.

## 6.2 Administrative Reserve

- (a) An Administrative Reserve shall be established by the Monitor, on behalf of the Sears Canada Entities, from the SLH Cash, the Corbeil Cash, and the Sears Cash in an aggregate amount sufficient to fund the Administrative Reserve Amounts, from time to time, all as allocated among the Debtor Groups in accordance with the Cost Allocation Methodology.
- (b) The Monitor shall hold and maintain the Administrative Reserve for the purposes of paying the Administrative Reserve Amounts, from time to time, in accordance with the Plan and in accordance with the Cost Allocation Methodology. The Monitor shall be entitled from time to time to transfer amounts held in the Administrative Reserve that the Monitor in its sole discretion determines are no longer needed to fund Administrative Reserve Amounts to the Debtor Cash Pools for further distribution to Affected Unsecured Creditors. After the Final Distribution and all remaining Administrative Reserve Amounts have been paid, the Monitor shall distribute the remaining balance in the Administrative Reserve, if any, in accordance with Section 7.8 of the Plan.

## 6.3 Litigation Costs Recovery Fund

- (a) A Litigation Costs Recovery Fund shall be established by the Monitor, on behalf of the Sears Parties and for the Sears Opt-In Creditors, in the amount of the aggregate of the Litigation Cost Recovery Amounts.
- (b) The Litigation Costs Recovery Fund is established to reimburse Litigation Costs incurred as of the Plan Implementation Date and to pay Litigation Costs going forward from time to time in accordance with the Plan. The Monitor, in its discretion, following consultation with the Litigation Trustee, shall be entitled to transfer amounts held in the Litigation Costs Recovery Fund that are no longer needed to fund Litigation Costs as a result of the resolution, settlement or other termination of the TUV Claim and LT Claims to the Litigation Recoveries Pool for further distribution to Sears Opt-In Creditors (a) if so ordered by the Court; or (b) as a part of the Final Distribution. Subject to Section 7.1 below, after the Final Distribution and once all remaining Administrative Reserve Amounts have been paid, the Monitor shall distribute the remaining balance in the Litigation Costs Recovery Fund, if any, in accordance with Section 7.8 of the Plan.

## 6.4 Unresolved Claims Reserves

- (a) **General:** The Monitor shall establish a separate Unresolved Claims Reserve for and on behalf of each Debtor Group from the applicable Available Cash for such Debtor Group, in an aggregate amount sufficient to fund, without duplication:
  - (i) Plan Distributions of such Debtor Group should all Unresolved Affected Unsecured Claims in respect of such Debtor Group be Finally Determined to be Proven Affected Unsecured Claims; and
  - (ii) payments on account of Unresolved Priority Claims in respect of such Debtor Group should all such Unresolved Claims be Finally Determined to be Proven Priority Claims,

and the Monitor shall hold and maintain each Unresolved Claims Reserve for the purposes of paying all such aforesaid claims if such claims are Finally Determined to be Proven Claims in accordance with Section 6.4(b).



- (b) **Unresolved Claims:** As Unresolved Affected Unsecured Claims and Unresolved Priority Claims are Finally Determined, the Monitor shall:
- (i) if an Unresolved Affected Unsecured Claim is Finally Determined to be :
    - (A) a Proven Affected Unsecured Claim against a Sears Party or SLH Party, distribute to the Affected Unsecured Creditor holding such Claim, an amount equal to its Third Party Pro Rata Share of the applicable Cash Pool plus or minus, if such Affected Unsecured Creditor is a Sears Opt-In Creditor, such further amounts which it is entitled to receive and/or required to contribute pursuant to Sections 7.1(d) and (e); or
    - (B) a Proven Affected Unsecured Claim against Former Corbeil, distribute to the Affected Unsecured Creditor holding such Claim, an amount equal to such Proven Affected Unsecured Claim;
  - (ii) if the Unresolved Priority Claim is Finally Determined to be a Proven Priority Claim, pay the holder of such Proven Priority Claim in accordance with Section 5.8; or
  - (iii) if the Unresolved Claim is Finally Determined not to be a Proven Claim, transfer cash, on an accounting basis, from the applicable Unresolved Claim Reserve to the applicable Cash Pool for distribution to Affected Unsecured Creditors thereof with Proven Affected Unsecured Claims, including Pre-Filing Interco Claims.

#### 6.5 Creation of the Debtor Cash Pools and Litigation Recoveries Pool

- (a) On the Plan Implementation Date, the Monitor shall establish and maintain:
  - (i) the SLH Cash Pool from the SLH Cash, after first deducting or adding, as applicable, the Landlord Cost Payments, the Cost Allocation Amount and Ordinary Course Post-Filing Intercompany Position for the SLH Parties, and reserving for the SLH Reserves;
  - (ii) the Corbeil Cash Pool from the Corbeil Cash, after first deducting or adding, as applicable, the Landlord Cost Payments, the Cost Allocation Amount and Ordinary Course Post-Filing Intercompany Position for Former Corbeil and reserving for the Corbeil Reserves; and
  - (iii) the Sears Cash Pool from the Sears Cash, after first deducting or adding, as applicable, the Landlord Cost Payments, the Upfront Dealer Payment, the Cost Allocation Amount and Ordinary Course Post-Filing Intercompany Position for the Sears Parties, and reserving for the Sears Reserves.
- (b) From and after the Plan Implementation Date, the Monitor shall further establish and maintain a Litigation Recoveries Pool from any Litigation Recoveries, if any, and all such Litigation Recoveries received from time to time by or on behalf of Sears Canada shall be transferred by the Monitor to the Litigation Recoveries Pool.
- (c) The Monitor, on behalf of the Sears Canada Entities, shall distribute the cash in the Cash Pools and make the Cash Pool/Holdback Adjustments, in each case in accordance with Section 7.1 of the Plan, and shall distribute any remaining balance in the Sears Cash Pool or SLH Cash Pool after the Final Distribution in accordance with Section 7.8 of the Plan. When all Proven Claims existing from time to time against Former Corbeil have been paid any remaining balance in the Corbeil Cash Pool, net of the Unresolved Claims

Reserve for Former Corbeil shall be distributed by the Monitor in accordance with Section 7.1(b) of the Plan.

## Article 7

### Provisions Regarding Distributions, Payments, Disbursements and Contributions

#### 7.1 Distributions, Payments and Disbursements Generally; Order and Sequencing of Distributions and Payments

Each and every Plan Distribution, payment and disbursement by or on behalf of the Sears Canada Entities, made on or after the Plan Implementation Date pursuant to or in accordance with the Plan shall, in each case, be made (A) in the manner, order and sequencing set out in Sections 7.1(a) to (e) below, (B) subject to and in accordance with Sections 7.2, 7.3, 7.4, and 7.7, and (C) shall be reflected by accounting entries and adjustments in the applicable Cash Pools and Litigation Costs Recovery Fund:

- (a) the Monitor, on behalf of the Sears Canada Entities, shall distribute from the applicable Debtor Cash Pool to each holder of a Pre-Filing Interco Claim an amount equal to (X) their Pre-Filing Interco Pro Rata Share, or (Y) in the case of a Pre-Filing Interco Claim against Former Corbeil, an amount equal to such holder's Pre-Filing Interco Claim, as set out below:
  - (i) **Corbeil Cash Pool:** each holder of a Pre-Filing Interco Claim against Former Corbeil shall receive from the Corbeil Cash Pool an amount equal to such holder's Pre-Filing Interco Claim; and
  - (ii) **Sears Cash Pool:** each holder of a Pre-Filing Interco Claim against the Sears Parties shall receive an amount equal to such holder's Pre-Filing Interco Pro Rata Share of the Sears Cash Pool;
- (b) the Monitor, on behalf of Former Corbeil, shall distribute from the Corbeil Cash Pool to each Affected Third Party Unsecured Creditor with a Proven Affected Unsecured Claim against Former Corbeil, an amount equal to such Proven Affected Unsecured Claim, and upon the payment in full of all Proven Affected Unsecured Claims against Former Corbeil, shall transfer on behalf of Former Corbeil any balance in the Corbeil Cash Pool remaining from time to time over to the Sears Cash Pool as a corporate dividend paid to Sears Canada, which dividend shall first be subject to distribution in accordance with Section 7.1(a)(ii) above before any further distribution of the remaining portion of such dividend to Affected Third Party Unsecured Creditors in accordance with Section 7.1(c) below;
- (c) the Monitor, on behalf of the Sears Canada Entities, shall distribute to each Affected Third Party Unsecured Creditor with a Proven Affected Unsecured Claim its Third Party Pro Rata Share of the applicable Debtor Cash Pools, after adjustments for the distributions described in Sections 7.1(a) and 7.1(b) above, as set out below:
  - (i) **SLH Cash Pool:** Each Affected Third Party Unsecured Creditor of the SLH Parties with a Proven Affected Unsecured Claim against the SLH Parties shall receive an amount equal to its Third Party Pro Rata Share of the SLH Cash Pool. In the case of an Unresolved Affected Unsecured Claim that has become a Proven Affected Unsecured Claim, this distribution will include any amounts that would have been distributed on account of such Affected Unsecured Claim on prior distributions had it been a Proven Affected Unsecured Claim at the Initial Distribution Date; and
  - (ii) **Sears Cash Pool:** Each Affected Third Party Unsecured Creditor of the Sears Parties with a Proven Affected Unsecured Claim against the Sears Parties shall

receive an amount equal to its Third Party Pro Rata Share of the Sears Cash Pool, subject to Sections 7.1(d) and (e). In the case of an Unresolved Affected Unsecured Claim that has become a Proven Affected Unsecured Claim, this distribution will include any amounts that would have been distributed on account of such Affected Unsecured Claim on prior distributions had it been a Proven Affected Unsecured Claim at the Initial Distribution Date in addition, each Affected Third Party Unsecured Creditor of the Sears Parties who is not a Sears Opt-In Creditor shall receive its pro rata share of any Litigation Reimbursement Amount;

- (d) as illustrated in the example set out at **Schedule D** hereto the Monitor shall hold back the Litigation Cost Recovery Amount from the first Plan Distribution made on account of each Proven Affected Unsecured Claim (including any Unresolved Affected Unsecured Claim that becomes a Proven Claim) of a Sears Opt-In Creditor; such Litigation Cost Recovery Amount to be deducted in equal proportion from the first Plan Distribution made to each Sears Opt-In Creditor on account of its Proven Affected Unsecured Claim. The Monitor shall also be permitted to increase the Litigation Cost Recovery Amount from time to time as deemed necessary to satisfy any Monitor's Cost Indemnity Claim or the Litigation Trustee's Indemnity, provided that any such increase shall be funded pro rata from amounts otherwise distributable hereunder to all Sears Opt-In Creditors;
- (e) once (i) the LT Claims and TUV Claim have been Finally Determined, (ii) all applicable Litigation Recoveries, if any, from such Final Determination have been received by or on behalf of Sears Canada Entities, (iii) all Litigation Costs have been paid, and (iv) all Unresolved Affected Unsecured Claims have been Finally Determined to be or not be Proven Claims, the Monitor, on behalf of the Sears Parties, shall distribute to each Sears Opt-In Creditor with a Proven Affected Third Party Unsecured Claim:
  - (A) its Third Party Pro Rata Share of the Litigation Recoveries Pool; and
  - (B) such share of the remaining balance of Litigation Costs Recovery Fund as determined by the Monitor in its sole discretion that is necessary to ensure that:
    - (I) all remaining Cash in the Litigation Costs Recovery Fund is returned to the Sears Opt-In Creditors; and
    - (II) each Sears Opt-In Creditor with a Proven Affected Unsecured Claim has contributed its pro rata share of the aggregate amount of the Litigation Costs,

and notwithstanding the foregoing, interim distributions from the Litigation Recoveries Pool and Litigation Costs Recovery Fund shall be permitted as the Monitor deems appropriate or as approved by the Court.

## 7.2 Tax Matters

- (a) Subject to Section 7.2(b), notwithstanding any provisions of the Plan, each Person that receives a distribution, disbursement or other payment pursuant to the Plan shall have sole and exclusive responsibility for the satisfaction and payment of any Tax obligations imposed on such Person by any Taxing Authority on account of such distribution, disbursement or payment.
- (b) Any payor shall be entitled to deduct and withhold and remit from any distribution, payment or consideration otherwise payable to any Person pursuant to the Plan such

amounts as are required to be deducted and withheld with respect to such payment under the *Income Tax Act* (Canada), or any provision of federal, provincial, territorial, state, local or foreign tax law, in each case, as amended or restated (a "**Withholding Obligation**"). For greater certainty, no distribution, payment or other consideration shall be made to or on behalf of a Person until such Person has delivered to the Monitor such documentation prescribed by Applicable Law or otherwise reasonably required by the Monitor as will enable it to determine whether or not, and to what extent, such distribution, payment or consideration to such Person is subject to any Withholding Obligation imposed by any Taxing Authority.

- (c) To the extent that amounts are withheld or deducted from an amount payable to any Person and paid over to the applicable Taxing Authority, such withheld or deducted amounts shall be treated for all purposes of the Plan as having been paid to such Person, together with the remainder of the payment in respect of which such withholding and deduction were made.
- (d) For the avoidance of doubt, it is expressly acknowledged and agreed that all distributions, payments and disbursements made hereunder shall be made by, or on behalf of, the Sears Canada Entities, and no provision hereof shall be construed to have effect to the contrary.

### 7.3 Priority of Payments

The aggregate amount payable (the "**Payment Amount**") under this Plan to a particular Creditor (the "**Payee Party**") in respect of a particular Plan Distribution from a particular Sears Canada Entity (the "**Payor Party**") shall be applied as follows in respect of the particular Claims giving rise to the applicable distribution or payment:

- (a) first, to the repayment of the principal amount of any loans or cash advances made by the Payee Party to the Payor Party up to the total principal amount;
- (b) second, to the extent that the applicable Payment Amount exceeds the aggregate of the amounts described in paragraph (a), to interest payable on any such loans or cash advances;
- (c) third, to the extent that the applicable Payment Amount exceeds the aggregate of the amounts described in paragraphs (a) and (b), to unpaid fees in respect of services provided by or on behalf of the Payee Party to the Payor Party, other than any such unpaid fees in respect of services rendered in Canada; and
- (d) finally, to the extent that the applicable Payment Amount exceeds the aggregate of the amounts described in paragraphs (a) through (c), to any remaining Claims not described in such paragraphs.

For greater certainty, any terms or conditions of any Affected Claim that purport to deal with the ordering or grant of priority of payment of principal, interest, payments or other amounts shall be deemed void and ineffective to the extent inconsistent with the ordering provided for in this Section 7.3.

### 7.4 Method of Payment

All Plan Distributions to Affected Unsecured Creditors with Proven Affected Unsecured Claims (other than to Sears Canada Entities, which shall be made as set out in Sections 5.1 and 7.1, and other than Plan Distributions effected by set-off) to be made by the Monitor, on the Sears Canada Entities' behalf, under the Plan shall be made:

- (a) in the case of an Affected Unsecured Creditor that has not assigned its Affected Unsecured Claim:
  - (i) subject to subsection (ii) below, if the Affected Unsecured Creditor duly filed a Proof of Claim that set out an address for such Creditor or its agent, to the address set out in such Proof of Claim;
  - (ii) if any address was subsequently provided to the Monitor in accordance with the applicable Claims Procedure Order, to such address;
  - (iii) if no address was provided to the Monitor under subsections (i) and (ii) above, and the Affected Unsecured Creditor is an Employee in respect of whom Employee Representative Counsel has provided an address, to such address;
  - (iv) if no address was provided to the Monitor under subsections (i) and (ii) above, and the Affected Unsecured Creditor is a Retiree in respect of whom Pension Representative Counsel has provided an address, to such address; and
  - (v) in all other cases, to the address on file in the books and records of the Sears Canada Entities; and
- (b) in the case of an Affected Unsecured Creditor that is a Valid Transferee, to the address set out in such Valid Transferee's Notice of Transfer or Assignment.

#### 7.5 Treatment of Uncashed Distributions or Payments

- (a) If any Creditor's distribution in respect of its Affected Unsecured Claim, Priority Claim or Secured Claim is not cashed and becomes stale-dated or is returned as undeliverable or a social insurance number, which is required to deliver distributions to an Employee or Retiree, is not provided by or on behalf of such Employee or Retiree to the Monitor in accordance with the terms of any Order of the Court (an "**Undeliverable Distribution**"), no distributions shall be made to such Creditor unless and until the Monitor is notified in writing by such Creditor of such Creditor's current address and (if applicable) social insurance number, at which time all such distributions shall be made to such Creditor. The Monitor (or the Warranty Claims Administrator, as applicable) shall reserve from the applicable Cash Pool (or the Warranty Reimbursement Pool, if applicable) the amount of cash equal to the Undeliverable Distribution.
- (b) All notices from Creditors seeking to recover an Undeliverable Distribution existing prior to the Final Distribution must be made in writing to the Monitor (in the manner contemplated by Section 11.8 hereof) on or before the date that is sixty (60) days following the date on which the Monitor serves on the Service List and posts a copy of the Final Distribution Certificate on the Website (the "**Final Distribution Bar Date**"), after which date any Affected Unsecured Claims, Priority Claims or Secured Claims underlying any Undeliverable Distributions shall be forever barred as against the Sears Canada Entities without any compensation therefor, notwithstanding any Applicable Law to the contrary.
- (c) The amount of any Undeliverable Distributions that remain unclaimed, undeliverable or uncashed and stale-dated sixty (60) days following the Final Distribution Bar Date shall be returned to the applicable Cash Pools for distribution to Affected Unsecured Creditors on the Final Distribution. Any Undeliverable Distributions that may arise from the Final Distribution shall be delivered to the Pension Plan Administrator for distribution to the Pension Plan.

- (d) Nothing in the Plan or Sanction Order shall (i) require the Monitor or the Sears Canada Entities to attempt to locate any Affected Unsecured Creditor, Employee, Retiree, Governmental Authority or Secured Creditor with respect to an Undeliverable Distribution, nor (ii) require the Monitor or the Sears Canada Entities to make any further distribution to any Creditor while a prior distribution in respect of such Creditor's Affected Unsecured Claim, Priority Claim or Secured Claim constitutes an Undeliverable Distribution. No interest shall be payable in respect of an Undeliverable Distribution.

#### **7.6 Payment and Treatment of Certain Unaffected Claims, Including Litigation Costs**

- (a) The following Unaffected Claims shall be paid from the Administrative Reserve, and allocated in each case to such Debtor Group's share of the Administrative Reserve in accordance with the Cost Allocation Methodology, all in accordance with this Article 7 and pursuant to the Sanction Order and the CCAA:
- (i) all fees and disbursements of counsel to the Sears Canada Entities, the Monitor and counsel to the Monitor, Employee Representative Counsel, and Pension Representative Counsel (x) accrued but not yet paid prior to the Plan Implementation Date, and (y) accruing after the Plan Implementation Date; and
  - (ii) ordinary course expenses of the Sears Canada Entities.
- (b) All Litigation Costs shall be paid from or credited against the Litigation Costs Recovery Fund.
- (c) From and after the Plan Implementation Date, the Administration Charge and Litigation Trustee's Charge shall continue against the Cash Pools, the Reserves, the Litigation Costs Recovery Fund, all remaining Property of the Sears Canada Entities and any additional proceeds realized by the Sears Canada Entities (including Tax Refunds and Litigation Recoveries) until such monies are disbursed or distributed by the Monitor, on behalf of the applicable Sears Canada Entity. The Administration Charge shall be in the same amounts and priority as set out in the Initial Order (as amended by the Litigation Approval Orders) pursuant to and in accordance with the Sanction Order, as such amounts may be reduced from time to time in the determination of the Monitor or by further Order of the Court.
- (d) On the Plan Implementation Date, the CCAA Charges (other than the Administration Charge and the Litigation Trustee's Charge) shall be terminated in accordance with the Sanction Order.
- (e) Notwithstanding anything to the contrary herein, Insured Claims shall not be compromised, released, discharged, cancelled and barred by this Plan, provided that from and after the Plan Implementation Date, any Person having an Insured Claim shall be irrevocably limited to recovery in respect of such Insured Claim solely from the applicable Insurance Policies. This Section 7.6(e) may be relied upon and raised or pleaded by the Sears Canada Entities in defence or estoppel of or to enjoin any claim, action or proceeding brought in contravention of this Section. Nothing in this Plan shall prejudice, compromise, release or otherwise affect any right or defence of any insured or insurer in respect of an Insured Claim.

#### **7.7 Timing of Distributions**

The Monitor may from time to time make Plan Distributions on account of Proven Affected Unsecured Claims and will make no distribution in respect of a Claim until it is a Proven Claim.

## 7.8 Remaining Cash

If the final amount in the applicable Cash Pool is an amount for which the Monitor determines the cost of such distribution relative to the amount to be distributed is not justified, no Plan Distribution of such final amount shall occur and instead such amount shall be paid to the Pension Plan Administrator for distribution to the Pension Plan.

## Article 8 Plan Implementation

### 8.1 Corporate Authorizations

The adoption, execution, delivery, implementation and consummation of all matters contemplated under the Plan involving any corporate or other action of any of the Sears Canada Entities will occur and be effective as of the Effective Time, and will be authorized and approved under the Plan and by the Court, where appropriate, as part of the Sanction Order, in all respects and for all purposes without any requirement of further action by shareholders, partners, Directors or Officers of such Sears Canada Entity. All necessary approvals to take actions shall be deemed to have been obtained from the Directors or shareholders or partners of the Sears Canada Entities, as applicable.

## Article 9 Releases

### 9.1 Plan Releases

- (a) As at the Effective Time, each of the Directors, Officers and Employees, as well as the Specified Advisors (being referred to individually as a "**Sears Released Party**") shall be released and discharged from any and all demands, claims, actions, applications, causes of action, counterclaims, suits, debts, sums of money, accounts, covenants, damages, judgments, orders (including for priority, injunctive relief or specific performance and compliance orders), expenses, executions, encumbrances and other recoveries on account of any Liability, obligation, demand or cause of action of whatever nature, which any Affected Creditor, Unaffected Creditor (except to the extent of its Unaffected Claim) or other Person may be entitled to assert, whether known or unknown, matured or unmatured, foreseen or unforeseen, existing or hereafter arising, based in whole or in part on any act, omission, transaction, duty, responsibility, indebtedness, Liability, obligation, dealing or other occurrence existing or taking place on or prior to the Plan Implementation Date that are in any way relating to, arising out of or in connection with the Claims, the Business and affairs of the Sears Canada Entities whenever or however conducted, the Plan, the CCAA Proceedings or any matter or transaction involving any of the Sears Canada Entities occurring in or in connection with the CCAA Proceedings (including the Plan or the development thereof, the Deemed Trust Motions, any Claim that has been barred or extinguished by the Claims Procedure Orders, or any distributions, payments, disbursements, actions, steps or transactions, taken to implement the Plan), and in each case all claims arising out of such aforesaid matters shall be forever waived and released all to the full extent permitted by Applicable Law; with the following exceptions:
- (i) nothing herein shall release, affect, prejudice or discharge Non-Released Claims or shall release, affect prejudice or discharge the LT/TUV Litigation or Pension/Dealer Litigation or provide any defence to any party to such litigation or to any future litigation in respect of any Non-Released Claims; and
  - (ii) any claim (excluding, for greater certainty, the LT/TUV Litigation, the Pension/Dealer Litigation or any future litigation in respect of any Non-Released

Claim) that has been commenced as of the Plan Implementation Date against an Employee personally solely as a result of performing their duties as an Employee of a Sears Canada Entity shall not be released but shall be limited to recovery from any insurance proceeds payable in respect of such claim under any Insurance Policy, and any Persons with any such claim shall have no right to, and shall not, make any claim or seek any recoveries from any Person (including any such Employee) other than enforcing such Person's rights to be paid from such insurance proceeds by the applicable insurer(s); provided further that nothing in this Plan shall prejudice, compromise, release or otherwise affect any right or defence of any insured or insurer in respect of any such claim.

- (b) As at the Effective Time, the Monitor, FTI (including in its capacity as receiver further to the Receivership Order) and their respective current and former affiliates, directors, officers and employees and all of their respective advisors, legal counsel and agents, as well as Employee Representative Counsel, Pension Representative Counsel, the Employee Representatives, and the Pension Representatives (being referred to individually as a "Third Party Released Party") shall be released and discharged from any and all demands, claims, actions, applications, causes of action, counterclaims, suits, debts, sums of money, accounts, covenants, damages, judgments, orders (including for priority, injunctive relief or specific performance and compliance orders), expenses, executions, encumbrances and other recoveries on account of any Liability, obligation, demand or cause of action of whatever nature, which any Affected Creditor, Unaffected Creditor or other Person may be entitled to assert, whether known or unknown, matured or unmatured, foreseen or unforeseen, existing or hereafter arising, based in whole or in part on any act, omission, transaction, duty, responsibility, indebtedness, Liability, obligation, dealing or other occurrence existing or taking place on or prior to the Plan Implementation Date that are in any way relating to, arising out of or in connection with the Claims, the Business and affairs of the Sears Canada Entities whenever or however conducted, the Plan, the CCAA Proceedings or any matter or transaction involving any of the Sears Canada Entities occurring in or in connection with the CCAA Proceedings (including the Plan or the development thereof, the Deemed Trust Motions, any Claim that has been barred or extinguished by the Claims Procedure Orders, or any distributions, payments, disbursements, actions, steps or transactions, taken to implement the Plan), and in each case all claims arising out of such aforesaid matters shall be forever waived and released all to the full extent permitted by Applicable Law, provided that nothing herein shall release or discharge any Non-Released Claims.
- (c) Without limiting the foregoing releases and discharges in favour of the Released Parties, as against any Sears Canada Entity, any
- (i) De Minimis Claim,
  - (ii) Equity Claim; and
  - (iii) other Affected Claim against the Sears Canada Entities that is not, or does not become, a Proven Claim, including Affected Claims that have not been filed by the claims bar date provided under the Claims Procedure Orders,
- shall be deemed fully and finally released, discharged, barred and extinguished.
- (d) Any Affected Claim against the Sears Canada Entities that is a Proven Claim shall not be released but shall be entitled to recoveries against the assets of the Sears Canada Entities solely in accordance with distributions provided by this Plan and any further rights in respect of such Affected Claims against the Sears Canada Entities or their assets are compromised and settled in accordance with this Plan.



## Article 10 Court Sanction, Conditions Precedent and Plan Implementation

### 10.1 Application for Sanction Order

If the Plan is approved by the Required Majority in each Unsecured Creditor Class at the Meetings, the Monitor shall file a motion seeking the Sanction Order to be heard on or before April 3, 2019 or such later date as the Court may order.

### 10.2 Sanction Order

The Sanction Order shall, among other things:

- (a) declare that (i) the Plan has been approved by the Required Majority in each Unsecured Creditor Class voting in conformity with the CCAA and the Meetings Order; (ii) the Sears Canada Entities (directly or through the Monitor) have complied with the provisions of the CCAA and the Orders of the Court; (iii) the Court is satisfied that the Sears Canada Entities (directly or through the Monitor) have not done or purported to do anything that is not authorized by the CCAA; (iv) the Sears Canada Entities (directly or through the Monitor) have each acted in good faith and with due diligence; and (v) the Plan and the implementation steps contemplated thereby are fair and reasonable;
- (b) authorize the Monitor to perform its functions under the Plan, including the establishment of the Reserves and Litigation Costs Recovery Fund, and cause the Sears Canada Entities to perform their obligations and functions under the Plan and to perform all such other acts and execute such documents as may be required in connection with the foregoing;
- (c) declare that the Plan and all associated steps, compromises, transactions and arrangements effected thereby are approved, binding and effective on the Sears Canada Entities, all Affected Creditors, the Released Parties and all Persons named or referred to in, affected by, or subject to the Plan as of the Effective Time;
- (d) order that, upon delivery to the Monitor of the Condition Certificate as to the fulfillment or waiver of the condition precedent to implementation of the Plan set out in Section 10.3(f) and satisfaction of the Monitor as to the fulfillment or waiver of all other conditions precedent to implementation of the Plan as set out in Sections 10.3(a) through (e) below, the Monitor shall issue forthwith the Plan Implementation Date Certificate, and file with the Court the Plan Implementation Date Certificate as soon as reasonably practicable after issuance thereof;
- (e) order that, upon issuance of the Plan Implementation Date Certificate, the Deemed Trust Motions and the motion of Employee Representative Counsel to lift the stay of proceedings to file bankruptcy applications against Sears Canada Entities shall be deemed to be withdrawn and discontinued without costs;
- (f) as of the Plan Implementation Date, declare that the ability of any Person to proceed against any one or more of the Sears Canada Entities in respect of or relating to any Affected Claims shall be forever discharged and restrained, and all proceedings with respect to, in connection with or relating to such Affected Claims be permanently stayed, subject only to the right of Affected Creditors to receive distributions pursuant to the Plan in respect of their Affected Claims (to the extent they are or become Proven Affected Unsecured Claims); provided, however, and for greater certainty that none of the compromises, settlements, releases and discharges contemplated herein shall release, affect or prejudice Non-Released Claims, including any claims that arise out of or relate

to the dividend paid to shareholders of Sears Canada on or around December 3, 2013 in the amount of approximately \$509 million, including but not limited to the LT/TUV Litigation or Pension/Dealer Litigation or provide any defence to any party to such litigation;

- (g) as of the Plan Implementation Date, approve the releases set forth in Article 9 hereof and enjoin the prosecution, whether directly, derivatively or otherwise, of any Claim, obligation, suit, judgment, damage, demand, debt, right, cause of action, Liability or interest released, discharged, compromised or terminated pursuant to the Plan;
- (h) provide for discharge of the CCAA Charges (other than the Administration Charge and the Litigation Trustee's Charge) and the continuation of the Administration Charge and Litigation Trustee's Charge, which shall survive the Plan Implementation Date and attach to the Property, the Reserves and the Litigation Costs Recovery Fund, all in accordance with the Plan;
- (i) provide for the termination of the Hardship Process and that all remaining amounts shall become Sears Cash on the Plan Implementation Date; and
- (j) declare that, in carrying out the terms of the Sanction Order and the Plan, (i) the Monitor shall benefit from all the protections given to it by the CCAA, the Initial Order and any other Order in the CCAA Proceedings, and as an officer of the Court, including the stay of proceedings in its favour; (ii) the Monitor shall incur no liability or obligation as a result of carrying out the provisions of the Sanction Order and/or the Plan; and (iii) the Monitor and any Authorized Representative (as defined in the Governance Protocol Order) shall be entitled to rely on the books and records of the Sears Canada Entities and any information provided by any of the Sears Canada Entities without independent investigation and shall not be liable for any claims or damages resulting from any errors or omissions in such books, records or information.

### 10.3 Conditions Precedent to Implementation of the Plan

The implementation of the Plan, including distributions thereunder, shall be conditional upon the fulfilment or waiver, to the extent permitted by the CCAA, of the following conditions precedent by the date specified therefor:

- (a) each Unsecured Creditor Class shall have approved the Plan in the Required Majority;
- (b) each of the Meetings Order and the Sanction Order shall have been granted;
- (c) each of the Meetings Order and the Sanction Order shall have become Final Orders;
- (d) the Monitor shall have received such clearance certificates, or comfort letters in lieu thereof from the Canada Revenue Agency or any other applicable Taxing Authority, as the Monitor considers necessary or advisable, to make any Plan Distributions;
- (e) the Plan Implementation Date shall have occurred before April 30, 2019, or such later date as agreed to by the Pension Parties and Monitor; and
- (f) the Pension Parties shall be satisfied that:
  - (i) the Plan provides no less than \$155,000,000 available for distribution to Affected Unsecured Creditors, net of all Reserves and without accounting for any Litigation Recoveries or the contribution of amounts to the Litigation Cost Recovery Fund; and

- (ii) Proven Affected Third Party Unsecured Claims shall be no more than \$1,550,000,000, excluding the Pension Claims, and any claims of Directors, Officers and ESL Parties for indemnification or contribution from the Sears Canada Entities, whether liquidated or unliquidated.

The Monitor may at any time and from time to time waive the fulfillment or satisfaction, in whole or in part, of the conditions set out herein, provided however, that (i) the conditions set out in (a) and (b) above cannot be waived; and (ii) the conditions set out in (e) and (f) above may be waived by the Monitor only with the consent or agreement of the Pension Parties.

At or prior to the time of the Meetings, the Pension Parties shall deliver to the Monitor written notice confirming, as applicable, the fulfilment or waiver, to the extent available, of the condition precedent to implementation of the Plan as set out in Section 10.3(f) above (the "**Condition Certificate**").

#### **10.4 Plan Implementation Date Certificate**

Upon receipt by the Monitor of the Condition Certificate from the Pension Parties, and upon satisfaction of the Monitor as to the fulfillment or waiver, to the extent permitted herein, of the conditions described in Sections 10.3(a) through (e), the Monitor shall (a) issue forthwith the Monitor's Plan Implementation Date Certificate to the Sears Canada Entities and serve a copy of such Plan Implementation Date Certificate on the Service List, and (b) file as soon as reasonably practicable a copy of the Monitor's Plan Implementation Date Certificate with the Court. With respect to the condition set out at Section 10.3(f), the Monitor will be relying exclusively on the Condition Certificate, without any obligation whatsoever to verify the satisfaction or waiver of such condition. Following the filing of the Monitor's Plan Implementation Date Certificate with the Court, the Monitor shall post a copy of same on the Website.

### **Article 11 General**

#### **11.1 General**

On the Plan Implementation Date, or at such other times as provided in the Plan:

- (a) the Plan will become effective at the Effective Time;
- (b) the steps set out in Article 7 will commence;
- (c) the treatment of Claims under the Plan shall be final and binding for all purposes and enure to the benefit of the Sears Canada Entities, all Affected Creditors, the Released Parties and all other Persons and parties named or referred to in, or subject to, the Plan and their respective heirs, executors, trustees in bankruptcy, administrators and other legal representatives, successors and assigns;
- (d) all releases, compromises and settlements contained in Section 9.1 of the Plan shall become effective;
- (e) each Person named or referred to in, or subject to, the Plan shall be deemed to have consented and agreed to all of the provisions of the Plan, in its entirety; and
- (f) each Person named or referred to in, or subject to, the Plan shall be deemed to have executed and delivered to the Sears Canada Entities and/or Monitor all consents, releases, directions, assignments and waivers, statutory or otherwise, required to implement and carry out the Plan in its entirety.

## 11.2 Claims Bar Dates

Nothing in this Plan extends or shall be interpreted as extending or amending any deadline or claims bar date provided for under either Claims Procedure Order, or gives or shall be interpreted as giving any rights to any Person in respect of Claims that have been barred or extinguished pursuant to the Claims Procedure Orders.

## 11.3 Deeming Provisions

In the Plan, the deeming provisions are not rebuttable and are conclusive and irrevocable.

## 11.4 Non-Consummation

The Monitor reserves the right to revoke or withdraw the Plan at any time prior to the Plan Implementation Date with approval of the Court. If: (i) the Monitor revokes or withdraws the Plan in accordance with the foregoing, or (ii) the Plan Implementation Date does not occur before April 30, 2019 or such later date as agreed to by the Monitor and the Pension Parties, then: (a) the Plan (including all steps taken thereunder) shall be null and void in all respects, (b) any settlement or compromise embodied in the Plan, or any document or agreement executed pursuant to or in connection with the Plan shall be deemed to be null and void; and (c) nothing contained in the Plan, and no acts taken in preparation for consummation of the Plan, shall:

- (a) constitute or be deemed to constitute a waiver or release of any Claims by or against any of the Sears Canada Entities, the Pension Parties or any other Person;
- (b) prejudice in any manner the rights of the Sears Canada Entities, the Pension Parties or any other Person in any further proceedings involving any of the Sears Canada Entities; or
- (c) constitute an admission of any sort by any of the Sears Canada Entities or any other Person.

## 11.5 Modifications of the Plan

The Monitor may at any time prior to and after the Meetings (and both prior to and subsequent to the obtaining of the Sanction Order), file a Plan Modification (a) pursuant to an Order of the Court, or (b) without further Court or Creditor approval, where such Plan Modification concerns (i) a matter which is of an administrative nature required to better give effect to the implementation of the Plan and the Sanction Order, or (ii) cure any errors, omissions or ambiguities, and in either case of foregoing clause (i) and (ii), is not materially adverse to the financial or economic interests of the Affected Creditors.

## 11.6 Paramountcy

From and after the Effective Time, any conflict between:

- (a) the Plan; and
- (b) the covenants, warranties, representations, terms, conditions, provisions or obligations, expressed or implied, of any contract, mortgage, security agreement, indenture, trust indenture, loan agreement, commitment letter, agreement for sale, lease or other agreement (including the Pension Support Agreement), written or oral and any and all amendments or supplements thereto existing between any Person and the Sears Canada Entities as at the Plan Implementation Date and the articles and by-laws or other constating documents of the Sears Canada Entities

will be deemed to be governed by the terms, conditions and provisions of the Plan and the Sanction Order, which shall take precedence and priority.

#### 11.7 Responsibilities of the Monitor

FTI is acting and will continue to act in all respects in its capacity as Monitor in the CCAA Proceedings with respect to the Sears Canada Entities and not in its personal or corporate capacity. The Monitor will not be responsible or liable in its personal or corporate capacity for carrying out its obligations under the Plan or the Sanction Order nor will the Monitor be responsible for any obligations of the Sears Canada Entities whatsoever. The Monitor will have the powers and protections granted to it by the Plan, the CCAA, the Initial Order, the Sanction Order and any other Order of the Court made in the CCAA Proceedings.

#### 11.8 Notices

Any notice or other communication to be delivered hereunder must be in writing and reference the Plan and may, subject as hereinafter provided, be made or given by personal delivery, or by email addressed to the respective parties as follows:

(a) If to the Sears Canada Entities:

Sears Canada Inc.  
c/o FTI Consulting Canada Inc.  
79 Wellington Street West  
TD South Tower, Suite 2010  
PO Box 104  
Toronto, ON M5K 1G8

Attention: Steve Bissell  
Email: [searscanada@fticonsulting.com](mailto:searscanada@fticonsulting.com)

with a copy to:  
Norton Rose Fulbright Canada LLP  
Royal Bank Plaza, South Tower, Suite 3800  
200 Bay Street  
Toronto, ON M5J 2Z4

Attention: Orestes Pasparakis & Virginie Gauthier  
Email: [orestes.pasparakis@nortonrosefulbright.com](mailto:orestes.pasparakis@nortonrosefulbright.com) /  
[virginie.gauthier@nortonrosefulbright.com](mailto:virginie.gauthier@nortonrosefulbright.com)

(b) If to the Monitor:

FTI Consulting Canada Inc.  
79 Wellington Street West  
TD South Tower, Suite 2010  
PO Box 104  
Toronto, ON M5K 1G8

Attention: Steve Bissell  
Email: [searscanada@fticonsulting.com](mailto:searscanada@fticonsulting.com)

with a copy to:

Norton Rose Fulbright Canada LLP  
Royal Bank Plaza, South Tower, Suite 3800

200 Bay Street  
Toronto, ON M5J 2Z4

Attention: Orestes Pasparakis & Virginie Gauthier  
Email: [orestes.pasparakis@nortonrosefulbright.com](mailto:orestes.pasparakis@nortonrosefulbright.com) /  
[virginie.gauthier@nortonrosefulbright.com](mailto:virginie.gauthier@nortonrosefulbright.com)

or to such other address as any party may from time to time notify the others in accordance with this Section. Any such communication so given or made shall be deemed to have been given or made and to have been received on the day of delivery if delivered, or on the day of sending by means of recorded electronic communication, provided that such day in either event is a Business Day and the communication is so delivered or sent before 5:00 p.m. on such day. Otherwise, such communication shall be deemed to have been given and made and to have been received on the next following Business Day.

**11.9 Further Assurances**

Each of the Persons named or referred to in, or subject to, the Plan will execute and deliver all such documents and instruments and do all such acts and things as may be necessary or desirable to carry out the full intent and meaning of the Plan and to give effect to the transactions contemplated herein.

DATED as of the 12th day of February, 2019.

## Schedule A Definitions

"**168886**" has the meaning ascribed thereto in the Recitals;

"**2497089**" has the meaning ascribed thereto in the Recitals;

"**249 SCI Loan**" means the \$160 million loan made by 2497089 to Sears Canada under the Tax Loss Utilization Structure;

"**Administration Charge**" has the meaning given to such term in the Initial Order;

"**Administrative Reserve**" means a Cash reserve from the SLH Cash, Corbeil Cash and Sears Cash, as applicable in accordance with the Cost Allocation Methodology, in an amount to be adjusted from time to time as determined by the Monitor, and to be reserved by the Monitor on an accounting basis, for the purpose of paying the Administrative Reserve Amounts, from time to time;

"**Administrative Reserve Amounts**" means:

- (a) costs incurred and in respect of: (i) the Monitor's fees and disbursements (including of its legal counsel and other consultants and advisors) in connection with the performance of its duties under the Plan and in the CCAA Proceedings, including all costs associated with resolving Unresolved Claims; (ii) any third party fees in connection with the administration of distributions, disbursements and payments under the Plan; (iii) fees and disbursements of the Sears Canada Entities' legal counsel, consultants and other advisors; (iv) the fees and disbursements of Employee Representative Counsel and Pension Representative Counsel; (v) the fees and disbursements of any Claims Officer appointed under the Claims Procedure Orders; (vi) ordinary course costs (including operating costs such as wages and rent) expected to be incurred following the previous Distribution Date; and (vii) any other reasonable amounts in respect of any determinable contingency as the Monitor may determine in its sole discretion, but excluding any and all Litigation Costs; and
- (b) Post-Filing Claims and Unaffected Claims, to the extent not already resolved and paid;

"**Affected Claim**" means any Claim other than an Unaffected Claim;

"**Affected Creditor**" means any Creditor holding an Affected Claim, including a Sears Canada Entity holding an Affected Claim;

"**Affected Third Party Unsecured Claim**" means an Affected Unsecured Claim of an Affected Third Party Unsecured Creditor;

"**Affected Third Party Unsecured Creditor**" means the Pension Plan Administrator in respect of the Pension Claims or an Affected Unsecured Creditor, other than a Sears Canada Entity;

"**Affected Unsecured Claim**" means an Unsecured Claim that is an Affected Claim, which for greater certainty includes the Pension Claims;

"**Affected Unsecured Creditor**" means a Creditor who has an Affected Unsecured Claim;

"**Affiliate**" means, with respect to any Person, any other Person who directly or indirectly controls, is controlled by, or is under direct control or indirect common control with, such Person, and includes any Person in like relation to an Affiliate. A Person shall be deemed to "**control**" another Person if such Person possesses, directly or indirectly, the power to direct or cause the direction of the management and

policies of such other Person, whether through ownership of voting securities, by contract or otherwise, and the term “**controlled**” shall have a similar meaning;

“**Applicants**” has the meaning ascribed thereto in the Recitals;

“**Applicable Law**” means any law (including any principle of civil law, common law or equity), statute, order, decree, judgment, rule, regulation, ordinance, by-law or other pronouncement having the effect of law, whether in Canada or any other country or any domestic or foreign province, state, city, county or other political subdivision;

“**Assessments**” means Claims of Her Majesty the Queen in Right of Canada or of any province or territory or municipality or any other Taxing Authority in any Canadian or foreign jurisdiction, including amounts which may arise or have arisen under any notice of assessment, notice of objection, notice of reassessment, notice of appeal, audit, investigation, demand or similar request from any Taxing Authority;

“**Available Cash**” means, in respect of a Debtor Group, either the SLH Cash, the Corbeil Cash, or the Sears Cash, as applicable, for such Debtor Group;

“**BIA**” means the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended;

“**Business**” means the direct and indirect business operations, activities and affairs carried on, or formerly carried on, by Sears Canada Entities both before and on and after the Filing Date;

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

“**Cash**” means cash, certificates of deposit, bank deposits, commercial paper, treasury bills and other cash equivalents;

“**Cash Pools**” means, together, the Debtor Cash Pools and the Litigation Recoveries Pool;

“**Cash Pool/Holdback Adjustments**” means, with respect to a Cash Pool or the Litigation Cost Recovery Fund, the adjustments to such Cash Pool or the Litigation Cost Recovery Fund, as applicable, as applied in the order set out in Sections 7.1(a) to (e);

“**CCAA**” has the meaning ascribed thereto in the Recitals;

“**CCAA Charges**” means the Administration Charge, the Litigation Trustee’s 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, the FA Charge, and any other charges granted by the Court in the CCAA Proceedings;

“**CCAA Proceedings**” has the meaning ascribed thereto in the Recitals;

“**Claim**” means a Pre-Filing Claim, a Restructuring Period Claim, a Post-Filing Claim, and a D&O Claim, and for greater certainty shall include a Construction Claim, a Warranty Claim, an Employee Claim and a Retiree Claim, as well as any Claim arising through subrogation or assignment against any Sears Canada Entity or Director or Officer;

“**Claims Officer**” means any individual or individuals appointed by the Court pursuant to a Claims Procedure Order;

“**Claims Procedure Order (E&R)**” means the Employee and Retiree Claims Procedure Order of the Court dated February 22, 2018 (as such order may be amended, supplemented or restated from time to time), approving and implementing the claims procedure for the Claims of Employees and Retirees made



in respect of the Sears Canada Entities and the Directors and Officers (including all schedules and appendices thereof);

**"Claims Procedure Order (General)"** means the Claims Procedure Order of the Court dated December 8, 2017 (as such order may be amended, supplemented or restated from time to time), approving and implementing the claims procedure in respect of the Sears Canada Entities and the Directors and Officers (including all schedules and appendices thereof);

**"Claims Procedure Orders"** means together the Claims Procedure Order (General) and the Claims Procedures Order (E&R);

**"Condition Certificate"** has the meaning ascribed thereto in Section 10.3;

**"Construction Claim"** has the meaning ascribed thereto in the Claims Procedure Order (General);

**"Corbeil Cash"** means all Cash on hand of Former Corbeil as at the Filing Date, plus the proceeds of sale of the Corbeil Transaction, and all Cash that is received by Former Corbeil following the Filing Date, whether from the sale, disposition or monetization of any remaining assets, receipt of any Tax Refund or any other Cash received by Former Corbeil from time to time, less:

- (a) Cash actually spent or distributed by Former Corbeil since the Filing Date but prior to the Plan Implementation Date,
  - (b) the amount of the Corbeil Reserves,
  - (c) the amount of any Plan Distributions, payments on account of Proven Unaffected Claims, or payments made pursuant to or as contemplated by the Plan, attributable to or on behalf of Former Corbeil,
- plus or minus, as applicable,
- (d) Former Corbeil's Cost Allocation Amount and Ordinary Course Post-Filing Intercompany Position;

**"Corbeil Cash Pool"** means the Corbeil Cash available for distribution to (a) the Affected Unsecured Creditors of Former Corbeil with Proven Affected Unsecured Claims under the Plan, or (b) Sears Canada as the shareholder of Former Corbeil, calculated on each Distribution Date, immediately prior to any Cash Pool/Holdback Adjustment;

**"Corbeil Reserves"** means, collectively, the Unresolved Claims Reserve for Former Corbeil, that portion of the Administrative Reserve allocated in accordance with the Cost Allocation Methodology to Former Corbeil, and any other reserve the Monitor considers necessary or appropriate, as each of them may be adjusted from time to time in accordance with the Plan;

**"Corbeil Transaction"** means the sale transaction contemplated by the asset purchase agreement between Former Corbeil, as seller, and Am-Cam Electroménagers Inc. as buyer, Distinctive Appliances Inc., as guarantor, and Sears Canada, as intervenor, dated October 1, 2017 and approved by the Court on October 4, 2017;

**"Cost Allocation Amount"** means, in respect of a Debtor Group, an amount equal to the difference between:

- (a) the actual amounts paid out of such Debtor Group's Available Cash on account of (i) post-filing professional fees incurred up to and including the relevant Distribution Date, (ii)

amounts repaid on account of principal, interest and fees under the DIP Loan Agreements, and (iii) any shared services overhead; and

- (b) such Debtor Group's share as determined by the Cost Allocation Methodology of all of the foregoing amounts paid by the Sears Canada Entities as a whole;

**"Cost Allocation Methodology"** means the methodology for the allocation of the costs of the CCAA Proceedings amongst the Sears Canada Entities as set out at paragraph 84 of the Sixteenth Report of the Monitor dated April 2, 2018;

**"Court"** means the Ontario Superior Court of Justice (Commercial List) or any appellate court seized with jurisdiction in the CCAA Proceedings, as the case may be;

**"Creditor"** means any Person having a Claim, but only with respect to and to the extent of such Claim, including the transferee or assignee of a transferred Claim that is recognized as a Creditor in accordance with the Claims Procedure Orders, the Plan and the Meetings Order, or a trustee, executor, liquidator, receiver, receiver and manager of, or other Person acting on behalf of or through, such Person;

**"D&O Claim"** means any right or claim of any Person against one or more of the Directors and/or Officers howsoever arising, whether or not such right or claim is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, perfected, unperfected, present, future, known, or unknown, by guarantee, surety or otherwise, and whether or not such right is executory or anticipatory in nature, including any Assessments and any right or ability of any Person to advance a claim for contribution, indemnity or otherwise against any of the Directors and/or Officers with respect to any matter, action, cause or chose in action, however arising, for which any Director or Officer is alleged to be, by statute or otherwise by law or equity, liable to pay in his or her capacity as a Director or Officer;

**"D&O Insurer"** means any insurer under a directors' and officers' insurance policy pursuant to which any Director and/or Officer is insured;

**"Dealer"** means any Person carrying on business as "Sears Hometown" stores any time after July 5, 2011 pursuant to a dealer agreement with Sears Canada;

**"Dealer 2013 Dividend Claim"** means the claim bearing court file number 4114/15 CP, against Sears Canada, Sears Holdings Corporation, ESL Investments and certain Directors and Officers commenced on or about October 21, 2015, for, among other things, oppression under the *Canada Business Corporations Act* (Canada);

**"Dealer Claim"** means any Claim of a Dealer;

**"Dealer Representative Plaintiff"** means 1291079 Ontario Inc., in its capacity as class representative for the following claims:

- (a) claim bearing court file number 3769/13 CP against Sears Canada and Sears Roebuck and Co. commenced on or about July 5, 2013 for, among other things, breaches under the *Arthur Wishart Act (Franchise Disclosure), 2000* (Ontario); and
- (b) claim bearing court file number 4114/15 CP, against Sears Canada, Sears Holdings Corporation, ESL Investments and certain Directors and Officers commenced on or about October 21, 2015, for, among other things, oppression under the *Canada Business Corporations Act* (Canada);

**"Debtor Cash Pools"** means, collectively, the SLH Cash Pool, the Corbeil Cash Pool and the Sears Cash Pool;

**"Debtor Groups"** means, collectively, Former Corbeil, the Sears Parties and the SLH Parties, and **"Debtor Group"** means any one of Former Corbeil, the Sears Parties (collectively), or the SLH Parties (collectively);

**"Deemed Trust Motions"** means the motions in the CCAA Proceedings brought variously by Pension Representative Counsel, the Superintendent and the Pension Plan Administrator for orders, among other things,

- (c) that the amount of the wind-up deficit in connection with the Pension Plan is deemed to be held in trust for the beneficiaries of the Pension Plan pursuant to Section 57(4) of the *Pension Benefits Act* (Ontario) ("**PBA**") with priority ahead of the claims of all other creditors of Sears Canada other than amounts secured by the CCAA Charges;
- (d) that the Plan Administrator, has a lien and charge under Section 57(5) of the PBA for the amount of the wind-up deficit in connection with the Pension Plan;
- (e) that the foregoing orders survive any future bankruptcy or receivership of the Applicants; and
- (f) that Former Corbeil and the SLH Parties are jointly and severally liable with Sears Canada for the obligations under the Pension Plan and that the assets of Former Corbeil and the SLH Parties may also be subject to the deemed trust and lien under the PBA as described above,

but excluding the motion for directions with respect to spousal waivers provided in connection with the Pension Plan;

**"De Minimis Claim"** has the meaning ascribed thereto in Section 5.4;

**"DIP ABL Agent"** means Wells Fargo Capital Finance Corporation Canada as administrative agent under the DIP ABL Credit Agreement;

**"DIP ABL Credit Agreement"** the Senior Secured Superpriority Debtor-in-Possession Credit Agreement dated as of June 22, 2017 among the Sears Canada Entities, the DIP ABL Agent and the lenders from time to time party thereto;

**"DIP ABL Lenders' Charge"** has the meaning given to such term in the Initial Order;

**"DIP Lenders"** means the DIP ABL Agent and the DIP Term Agent and those lenders party from time to time to the DIP Loan Agreements;

**"DIP Loan Agreements"** means, collectively, the DIP ABL Credit Agreement and the DIP Term Credit Agreement;

**"DIP Term Agent"** means GACP Financing Co., LLC, as administrative agent under the DIP Term Credit Agreement;

**"DIP Term Credit Agreement"** the Senior Secured Superpriority Credit Agreement dated as of June 22, 2017 among the Sears Canada Entities, the DIP Term Agent and the lenders from time to time party thereto;

**"DIP Term Lenders' Charge"** has the meaning given to such term in the Initial Order;

**"Director"** means anyone who is or was or may be deemed to be or have been, whether by statute, operation of law or otherwise, a director or *de facto* director of any of the Sears Canada Entities, in such capacity;

**"Directors' Priority Charge"** has the meaning given to such term in the Initial Order;

**"Directors' Subordinated Charge"** has the meaning given to such term in the Initial Order;

**"Distribution Date"** means the date of any Plan Distribution;

**"Duplicate Claim"** means a Proven Affected Unsecured Claim against more than one of the Sears Canada Entities based on the same underlying obligation;

**"Effective Time"** means 12:01 a.m. on the Plan Implementation Date or such other time on the Plan Implementation Date as the Monitor shall determine or as otherwise ordered by the Court;

**"Eligible Voting Claims"** means a Voting Claim or an Unresolved Voting Claim;

**"Eligible Voting Creditors"** means, subject to Section 4.2(b), Affected Unsecured Creditors holding Voting Claims or Unresolved Voting Claims;

**"Employee"** means any (i) active or inactive union or non-union employee of any one or more of the Sears Canada Entities on or after the Filing Date, including an employee of any one or more of the Sears Canada Entities who received notice of termination of employment dated on or after the Filing Date or who resigned or otherwise ceased employment on or after the Filing Date; and (ii) former employee of any one of the Sears Canada Entities, including without limitation any former employee whose employment terminated with or without cause at any time, any former employee who received notice, on or after the Filing Date, of the cessation of his or her termination or severance payments, and any former employee who had an outstanding active action, claim or complaint as of the Filing Date;

**"Employee Claim"** means an "Employee Claim" as defined in the Claims Procedure Order (E&R);

**"Employee Priority Claims"** means, in respect of a Sears Canada Entity, the following claims of Employees of such Sears Canada Entity:

- (a) claims equal to the amounts that such Employees would have been qualified to receive under paragraph 136(1)(d) of the BIA if the Sears Canada Entity had become bankrupt on the Filing Date, which for greater certainty, excludes any OPEB, pension contribution, and termination and severance entitlements; and
- (b) claims for wages, salaries, commissions or compensation for services rendered by such Employees after the Filing Date and on or before the Plan Implementation Date together with, in the case of travelling salespersons, disbursements properly incurred by them in connection with the Business during the same period, which for greater certainty, excludes any OPEB, pension contribution, and termination and severance entitlements;

**"Employee Representative Counsel"** means Ursel, Phillips, Fellows, Hopkinson LLP as appointed pursuant to the Employee Representative Counsel Order made July 13, 2017, as amended;

**"Employee Representatives"** means Paul Webber, Nancy Demeter, Sheena Wrigglesworth, Barb Wilser, and Darrin Whitney, or such other representatives as may be duly appointed by Employee Representative Counsel;

**"Equity Claim"** has the meaning ascribed thereto in section 2 of the CCAA;

**"ERC Employee"** means any Employee other than a Non-ERC Employee;

**"ESL Parties"** means Sears Holdings Corporation and its affiliates, ESL Investments Inc., ESL Partners, LP, SPE I Partners, LP, SPE Master I, LP, ESL Institutional Partners, LP, Edward S. Lampert and any other Person (other than a Director or Officer) against whom a claim is made under the LT/TUV Litigation, the Dealer 2013 Dividend Claim, or by or on behalf of the Pension Plan Administrator or the beneficiaries of the Pension Plan under the Pension 2013 Dividend Claim, and **"ESL Party"** means any one of them;

**"FA Charge"** has the meaning given to such term in the Initial Order;

**"Former Corbeil"** has the meaning ascribed thereto in the Recitals;

**"Former SLH"** has the meaning ascribed thereto in the Recitals;

**"Filing Date"** means June 22, 2017;

**"Final Determination"** and **"Finally Determined"** as pertains to a Claim, matter or issue, means either:

- (a) in respect of a Claim, such Claim has been finally determined for distribution purposes in accordance with the applicable Claims Procedure Order (or Warranty Claims Protocol, if such Claim is a Reimbursable Warranty Claim) and the Plan;
- (b) there has been a Final Order in respect of the matter or issue; or
- (c) there has been an agreed and binding settlement of the issue or matter by the relevant parties;

**"Final Distribution"** means the final Plan Distribution made under the Plan by the Monitor, on behalf of the Sears Canada Entities;

**"Final Distribution Bar Date"** has the meaning ascribed to such term in Section 7.5;

**"Final Distribution Certificate"** means a certificate of the Monitor to be posted by the Monitor on the Website indicating that the Monitor intends to make a Final Distribution on a specified date not less than ninety (90) days following the date of the certificate, and a copy of which certificate shall be served on the Service List in the CCAA Proceedings and filed with the Court;

**"Final Order"** means an Order of the Court, which has not been reversed, modified or vacated, and is not subject to any stay or appeal, and for which any and all applicable appeal periods have expired;

**"FTI"** means FTI Consulting Canada Inc.;

**"Governance Protocol Order"** means the Governance Protocol and Stay Extension Order of the Court made December 3, 2018 (as such order may be amended, supplemented or restated from time to time) establishing a governance protocol for the Sears Canada Entities;

**"Governmental Authority"** means any government, including any federal, provincial, territorial or municipal government, and any government department, body, ministry, agency, tribunal, commission, board, court, bureau or other authority exercising or purporting to exercise executive, legislative, judicial, regulatory or administrative functions of, or pertaining to, government including without limitation any Taxing Authority;

**"Government Priority Claims"** means all claims of Governmental Authorities that are described in section 6(3) of the CCAA;

**"Guarantee"** means any guarantee, indemnity, surety or similar agreement granted by a Person to guarantee, indemnify or otherwise hold harmless any other Person from or against any losses, liabilities or damages of that other Person;

**"Hardship Process"** means the former employee hardship application process that was established pursuant to Order of the Court dated August 18, 2017, as same has been amended and extended from time to time as approved by the Court;

**"Initial Order"** has the meaning given to it in the Recitals;

**"Initial Distribution Date"** means the first date on which Plan Distributions are made under the Plan;

**"Insurance Policy"** means any insurance policy pursuant to which any Sears Canada Entity is insured, and for greater certainty excludes any insurance policy pursuant to which any Director, Officer or third party is insured;

**"Insured Claim"** means all or that portion of a Claim against a Sears Canada Entity that is insured under an Insurance Policy, but solely to the extent that such Claim, or portion thereof, is so insured, and only as against such insurance;

**"KERP Priority Charge"** has the meaning given to such term in the Initial Order;

**"KERP Subordinated Charge"** has the meaning given to such term in the Initial Order;

**"Landlord"** means a landlord under any real property lease or occupancy agreement for any of the Applicants' premises;

**"Landlord Cost Payment"** has the meaning ascribed thereto in Section 5.10;

**"Landlord Settlement Agreement"** means, in respect of a Landlord, either (i) the Landlord Claim Formula Term Sheet dated July 26, 2018 entered into among such Landlord and the Monitor, (ii) any joinder agreement entered into among such Landlord and the Monitor with respect to the same, or (iii) the settlement agreement dated November 30, 2018 entered into between the Monitor and Blaney McMurtry LLP on behalf of such Landlord;

**"Liability"** means any indebtedness, obligations and other liabilities of a Person whether absolute, accrued, contingent, fixed or otherwise, or whether due or to become due;

**"Lien"** means any lien, mortgage, charge, security interest, hypothec or deemed trust, arising pursuant to contract, statute or Applicable Law;

**"Litigation Approval Orders"** means the TUV Proceedings Approval Order and the Litigation Trustee Appointment Order;

**"Litigation Costs"** means costs incurred from and after December 3, 2018 in respect of: (a) the Monitor's fees and disbursements (including of its legal counsel and other consultants and advisors) in connection with the pursuit of the TUV Claim; (b) the Litigation Trustee's fees and disbursements (including of its legal counsel and other consultants and advisors) in connection with the pursuit of the LT Claims; (c) any third party fees in connection with the pursuit of the TUV Claim and LT Claims; (d) any adverse cost awards against Sears Canada, the Monitor or the Litigation Trustee in connection with the pursuit of the TUV Claim and LT Claims; and (e) any other reasonable amounts in respect of any contingency desirable or necessary for the pursuit of the TUV Claim and LT Claims, as the Monitor may determine, in consultation with the Litigation Trustee and Creditors' Committee (as continued in the Litigation Trustee Appointment Order);

**"Litigation Costs Recovery Fund"** means a cash fund to be established from the aggregate of the Litigation Cost Recovery Amounts in an amount to be adjusted from time to time as determined by the Monitor, to be reserved by the Monitor on an accounting basis, for the purpose of paying or recovering the Litigation Costs, from time to time, which amount may be increased by the Monitor from time to time as deemed necessary to satisfy any Monitor's Cost Indemnity Claim or the Litigation Trustee's Indemnity, provided that any such increase shall be funded pro rata from distributions otherwise payable to all Sears Opt-In Creditors. The Monitor will consult with the Litigation Trustee and the Creditors' Committee prior to any increase in the Litigation Cost Recovery Fund to an amount in excess of the Litigation Cost Recovery Amount, except in the case of any increases determined by the Monitor to be necessary to satisfy any potential Monitor's Cost Indemnity Claim or Litigation Trustee's Indemnity;

**"Litigation Cost Recovery Amount"** means, in respect of the first Plan Distribution to be made to each Sears Opt-In Creditor with a Proven Affected Unsecured Claim, whether at the Initial Distribution Date or otherwise, an amount equal to the product of (a) such first Plan Distribution; and (b) a fraction, the numerator of which is \$12 million, and the denominator of which is the aggregate the amount of all Plan Distributions to be made to Sears Opt-In Creditors with Proven Affected Unsecured Creditors on the Initial Distribution Date, without considering any deduction of Litigation Cost Recovery Amounts;

**"Litigation Recoveries"** means any net recoveries received by or on behalf of any of the Sears Canada Entities from time to time on account of the LT Claims and TUV Claim;

**"Litigation Recoveries Pool"** means the aggregate amount of Litigation Recoveries, determined on the Distribution Date immediately prior to any Cash Pool/Holdback Adjustment;

**"Litigation Reimbursement Amount"** means the amount of Litigation Costs paid or accrued up to the Initial Distribution Date;

**"Litigation Trustee"** means the Honourable J. Douglas Cunningham, Q.C. in his capacity as litigation trustee in respect of the LT Claims, as appointed pursuant to the Litigation Trustee Appointment Order, and any individual replacing Mr. Cunningham in such capacity pursuant to an Order of the Court;

**"Litigation Trustee Appointment Order"** means the Order of the Court dated December 3, 2018 (as such order may be amended, supplemented or restated from time to time), and which, among other things, appointed the Litigation Trustee and authorized and directed him to pursue the LT Claims;

**"Litigation Trustee's Charge"** means the charge over the Property of Sears Canada created by paragraph 12 of the Litigation Trustee Appointment Order, and which has the priority provided by such paragraph;

**"Litigation Trustee's Indemnity"** means the indemnity provided by Sears Canada in favour of the Litigation Trustee pursuant to paragraph 9 of the Litigation Trustee Appointment Order;

**"LT Claims"** means any claims pursued by the Litigation Trustee pursuant to the Litigation Trustee Appointment Order;

**"LT/TUV Litigation"** means, collectively, the TUV Claim and the LT Claims.

**"Mediated Claim Settlements"** has the meaning ascribed thereto in the Recitals;

**"Meetings"** means the meetings of Affected Unsecured Creditors in the Unsecured Creditor Classes in respect of the SLH Parties and the Sears Parties, and called for the purposes of considering and voting in respect of the Plan, which has been set by the Meetings Order to take place at the times, dates and locations as set out in the Meetings Order;

**"Meetings Order"** means the Order of the Court dated ●, 2019, among other things, setting the time, date and location of the Meetings and establishing meeting procedures for the Meetings (as such order may be amended, supplemented or restated from time to time);

**"Monitor"** has the meaning ascribed thereto in the Recitals;

**"Monitor's Cost Indemnity Claim"** means the claim provided for under paragraph 8 of the TUV Proceeding Approval Order allowing the Monitor to claim for indemnity against the Property to satisfy any legal costs associated with the TUV Claim and which may be awarded against the Monitor;

**"Non-ERC Employee"** means any of the following Employees (i) Unionized Employee; (ii) any Employee who is currently or was previously a member of senior management of any of the Sears Canada Entities and who was not eligible for representation by Employee Representative Counsel; and (iii) any Employee who was eligible for representation by Employee Representative Counsel and who opted out of such representation in accordance with the requirements contained in the Employee Representative Counsel Order made July 13, 2017, as amended;

**"Non-Released Claim"** means, collectively:

- (a) Sears Canada Entities' obligations under the Plan (including the right of Affected Unsecured Creditors to receive distributions pursuant to the Plan);
- (b) any claim against a Released Party that is determined by a Final Order of a court of competent jurisdiction to have arisen from such Released Party's fraud or wilful misconduct;
- (c) any claim that arises out of or relates to the dividend paid to shareholders of Sears Canada on December 6, 2013 in the amount of approximately \$509 million, including, but not limited to, claims asserted in the LT/TUV Litigation or the Pension/Dealer Litigation;
- (d) any Unaffected Claims as against the Sears Released Parties;
- (e) any D&O Claim that is not permitted to be released pursuant to section 5.1 (2) of the CCAA;
- (f) any obligation secured by any of the CCAA Charges; and
- (g) claims against Employees to the extent described in Section 9.1(a)(ii);

**"Notice of Transfer or Assignment"** means a written notice of transfer or assignment of a Claim, together with satisfactory evidence of such transfer or assignment in accordance with the applicable Claims Procedure Order and the Meetings Order;

**"Officer"** means any Person who is or was, or may be deemed to be or have been, whether by statute, operation of law or otherwise, an officer or *de facto* officer of any of the Sears Canada Entities;

**"OPEB"** means health and dental post-employment benefits and/or life insurance benefits, each as provided by any of the Sears Canada Entities as a post-employment benefit;

**"Ordinary Course Post-Filing Intercompany Position"** means, in respect of a Debtor Group, the net aggregate of all amounts payable by and receivable of such Debtor Group to or from the other Debtor Groups on account of transactions (which for greater certainty shall exclude all (a) post-filing professional fees, (b) amounts repaid on account of principal, interest and fees under the DIP Loan Agreements, and (c) shared services overhead) between such Debtor Groups after the Filing Date;



**"Payee Party"** has the meaning ascribed thereto in Section 7.3;

**"Payment Amount"** has the meaning ascribed thereto in Section 7.3;

**"Payor Party"** has the meaning ascribed thereto in Section 7.3;

**"Pension 2013 Dividend Claim"** means the claim bearing court file number CV-18-00611217-00CL commenced by the Pension Plan Administrator against ESL Investments Inc., certain Affiliates of ESL Investments Inc., Edward S. Lampert, and certain former directors and officers of Sears Canada Inc.;

**"Pension Claim Settlement"** means the settlement between the Sears Canada Entities, Monitor and the Pension Parties as made further to the Pension Support Agreement, and pursuant to which (a) the Pension Claims will be allowed as Proven Affected Unsecured Claims by the Monitor for the purposes of the Plan in the amounts and subject to the exceptions as agreed to by the parties, (b) the Pension Parties will discontinue the Deemed Trust Motions upon implementation of the Plan; and (c) the Pension Parties have agreed to adjust the value of the Pension Claims for distribution purposes, and reimburse the Sears Canada Parties, as applicable, in accordance with Sections 3.2(b) and 5.2(b) of the Plan;

**"Pension Claims"** means Claims with respect to the administration, funding or termination of the Pension Plan, including any Claim for unpaid normal cost payments, or special/amortization payments or any wind up deficiency, and further including any subrogated claim, and **"Pension Claim"** means any one of them;

**"Pension/Dealer Litigation"** means together the Dealer 2013 Dividend Claim and the Pension 2013 Dividend Claim;

**"Pension Litigation Recovery Adjustment"** has the meaning ascribed thereto in Section 3.2(b);

**"Pension Parties"** means the Pension Plan Administrator, the Superintendent and Pension Representative Counsel on behalf of the Retirees, and **"Pension Party"** means any one of them;

**"Pension Plan"** means the Registered Retirement Plan (Reg. #0360065), a pension plan registered under the Ontario *Pension Benefits Act*, R.S.O. 1990, c. P.8 and *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.);

**"Pension Plan Administrator"** means Morneau Shepell Ltd. in its capacity as administrator of the Sears Pension Plan;

**"Pension Representative Counsel"** means Koskie Minsky LLP, as appointed by the Court pursuant to the Representative Counsel Order for Pensions and Post-Retirement Benefits made July 13, 2017 (as amended);

**"Pension Representatives"** means Bill Turner, Ken Eady and Larry Moore;

**"Pension Support Agreement"** means the Pension Support Agreement dated October 18, 2018 among the Pension Plan Administrator, the Superintendent and Pension Representative Counsel, and the Sears Canada Entities by and through the Monitor;

**"Person"** means any individual, firm, corporation, limited or unlimited liability company, general or limited partnership, association, trust (including a real estate investment trust), unincorporated organization, joint venture, government or any agency or instrumentality thereof or any other entity;

**"Plan"** means this joint plan of compromise and arrangement under the CCAA, including the Schedules hereto, as amended, supplemented or replaced from time to time;

**"Plan Distributions"** means, from time to time, distributions made under this Plan to Affected Unsecured Creditors in accordance with Article 7 and Sections 5.2(c), 5.3(a), and 5.10;

**"Plan Implementation Date"** means the Business Day on which all of the conditions precedent to the implementation of the Plan have been fulfilled, or, to the extent permitted pursuant to the terms and conditions of the Plan, waived, as evidenced by filing of the Monitor's Plan Implementation Date Certificate with the Court;

**"Plan Implementation Date Certificate"** means the certificate substantially in the form to be attached to the Sanction Order to be filed by the Monitor with the Court, declaring that all of the conditions precedent to implementation of the Plan have been satisfied or waived;

**"Plan Modification"** has the meaning ascribed thereto in the Meetings Order;

**"Post-Filing Claim"** means (i) any right or claim of any Sears Supplier against any of the Sears Canada Entities in connection with any non-payment by any such Sears Canada Entity to such Sears Supplier for goods or services supplied to such Sears Canada Entity on or after the Filing Date to the extent such right or claim is a Proven Claim; (ii) a Warranty Claim that arises under a Warranty purchased on or after the Filing Date, as valued in accordance with Section 5.3(b); and (iii) any Claim against any of the Sears Canada Entities that is not included in (i) or (ii) above and is based in whole on facts arising after the Filing Date (which shall exclude, for greater certainty, any Restructuring Period Claim).

**"PRC Retiree"** means any Retiree who is represented by Pension Representative Counsel and has primary coverage entitlements with respect to any entitlements to health and dental post-employment benefits and/or life insurance benefits provided by any Sears Canada Entity as a post-employment benefit and ;

**"Pre-Filing Claim"** means any right or claim of any Person against any of the Sears Canada Entities, whether or not asserted, including in connection with any indebtedness, liability or obligation of any kind whatsoever of any such Sears Canada Entity to such Person, in existence on the Filing Date, whether or not such right or claim is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, perfected, unperfected, present, future, known, or unknown, by guarantee, surety or otherwise, and whether or not such right is executory or anticipatory in nature, including rights or claims with respect to any Assessment, Construction Claim, Warranty, any claim brought by any representative plaintiff on behalf of a class in a class action, or contract, or by reason of any equity interest, right of ownership of or title to property or assets or right to a trust or deemed trust (statutory, express, implied, resulting, constructive or otherwise), and any right or ability of any Person to advance a claim for contribution or indemnity or otherwise against any of the Sears Canada Entities with respect to any matter, action, cause or chose in action, whether existing at present or commenced in the future, which right or claim, including in connection with indebtedness, liability or obligation, is based in whole or in part on facts that existed prior to the Filing Date, including for greater certainty any claim against any of the Sears Canada Entities for indemnification by any Director or Officer in respect of a D&O Claim;

**"Pre-Filing Interco Claims"** means the Pre-Filing Claims of the Sears Canada Entities in one Debtor Group against the Sears Canada Entities in any other Debtor Group, as set out in Schedule B to the Plan;

**"Pre-Filing Interco Pro Rata Share"** means, in respect of Debtor Group holding a Pre-Filing Interco Claim against another Debtor Group (after accounting for all applicable set-off amounts), the fraction that is equal to (a) such Pre-Filing Interco Claim, divided by (b) the aggregate of all Affected Unsecured Claims, including all Pre-Filing Interco Claims held by all Sears Canada Entities against such Debtor Group;

**"Pre-Filing Warranty Claim"** means a Warranty Claim in which the underlying Warranty was purchased from a Sears Canada Entity prior to the Filing Date;

**"Principal Claim"** has the meaning ascribed thereto in Section 4.5;

**"Priority Claims"** means, collectively, the (a) Employee Priority Claims; and (b) Government Priority Claims;

**"Proof of Claim"** means the applicable proof of claim form that was required to be completed by a Creditor setting forth its applicable Claim and filed with the Monitor (including via the Website), pursuant to the applicable Claims Procedure Order;

**"Property"** means all current and future assets, rights, undertakings and properties of the Sears Canada Entities, of every nature and kind whatsoever, and wherever situate, including all Cash or other proceeds thereof;

**"Proven Affected Third Party Unsecured Claim"** means an Affected Third Party Unsecured Claim that is a Proven Claim;

**"Proven Affected Unsecured Claim"** means an Affected Unsecured Claim that is a Proven Claim;

**"Proven Claim"** means (a) a Claim as Finally Determined for voting, distribution and payment purposes in accordance with the applicable Claims Procedure Order and the Plan, (b) in the case of a Pre-Filing Interco Claim, as such Claim is valued for the purposes of the Plan pursuant to Section 3.2(a)(i) of the Plan, (c) in the case of the Pension Claims, as such Claims are valued for the purposes of the Plan pursuant to Section 3.2 of the Plan, and (d) in the case of a Reimbursable Warranty Claim, as Finally Determined for distribution and payment purposes in accordance with the Warranty Claims Protocol;

**"Proven Priority Claim"** means a Priority Claim that is a Proven Claim;

**"Proven Reimbursable Warranty Claim"** means a Reimbursable Warranty Claim that is a Proven Claim;

**"Proven Secured Claim"** means a Secured Claim that is a Proven Claim;

**"Receivership Order"** means the Amended and Restated Receivership Order dated October 16, 2018 (as such order may be amended, supplemented or restated from time to time, and including all schedules and appendices thereof);

**"Reimbursable Warranty Claim"** means the Pre-Filing Warranty Claim of a Creditor that has incurred costs that would be reimbursable under the terms of the underlying Warranty;

**"Released Claim"** means the matters that are subject to release and discharge pursuant to Article 9 hereof;

**"Released Party"** means any Person who is the beneficiary of a release under the Plan, including the Sears Released Parties and the Third Party Released Parties;

**"Required Majority"** means, with respect to each Unsecured Creditor Class, a majority in number of Affected Unsecured Creditors who represent at least two-thirds in value of the Voting Claims of such Affected Unsecured Creditors in each case who actually vote on the Plan (in person, by proxy or by ballot) at the applicable Meeting or who were deemed to vote on the Plan in accordance with the Plan and the Meeting Order;

**"Reserves"** means, collectively, the Administrative Reserve, the Unresolved Claims Reserve for Former Corbeil, the Unresolved Claims Reserve for the Sears Parties, the Unresolved Claims Reserve for the SLH Parties, and any other reserve the Monitor, considers necessary or appropriate, as each of them may be adjusted from time to time in accordance with the Plan;

**"Restructuring Period Claim"** means any right or claim of any Person against any of the Sears Canada Entities, including in connection with any indebtedness, liability or obligation of any kind whatsoever of any such Sears Canada Entity to such Person, arising on or after the Filing Date, including without limitation rights or claims arising with respect to the restructuring, disclaimer, resiliation, termination or breach by such Sears Canada Entity on or after the Filing Date of any contract, lease or other agreement whether written or oral; but excluding any Post-Filing Claim;

**"Retiree"** means any Person with any (i) entitlements under the Sears Pension Plan; (ii) entitlements under the Supplemental Plan; (iii) primary coverage entitlements with respect to any entitlements to health and dental post-employment benefits and/or life insurance benefits provided by any Sears Canada Entity as a post-employment benefit; (iv) entitlements to the lifetime associate discount provided as a post-employment benefit (including, for greater certainty, current and former Employees who qualify for this discount by virtue of satisfying applicable age and service eligibility criteria); or (v) entitlements under any other pension or retirement plan of the Sears Canada Entities;

**"Retiree Claim"** means a "Retiree Claim" as defined in the Claims Procedure Order (E&R);

**"Sanction Order"** means the Order of the Court to be sought by the Monitor from the Court as contemplated under the Plan which, *inter alia*, approves and sanctions the Plan and the transactions contemplated thereunder, pursuant to section 6(1) of the CCAA;

**"Sears Canada"** has the meaning ascribed thereto in Recital A;

**"Sears Canada Subordinated Transport Loan"** means the loan entered into on January 29, 2016 under which Former SLH borrowed \$160 million from Sears Canada further to the Tax Loss Utilization Structure, and further to which repayment of principal, interest, and other amounts is subordinated in right of payment to the prior payment of all other present and future indebtedness and other obligations of Former SLH;

**"Sears Canada Entities"** has the meaning ascribed thereto in the Recitals, and **"Sears Canada Entity"** means any one of them;

**"Sears Cash"** means all Cash of the Sears Parties as at the Filing Date, including but not limited to the Sears Parties' Cash on hand, and all Cash that is received by any of the Sears Parties following Filing Date, whether from the sale, disposition or monetization of any remaining assets, receipt of any Tax Refund or any other Cash received by the Sears Parties from time to time, less:

- (a) Cash actually spent or distributed by the Sears Parties since the Filing Date but prior to the Plan Implementation Date,
- (b) the amount of the Sears Reserves, and
- (c) the amount of any Plan Distributions, payments on account of Proven Unaffected Claims, or payments made pursuant to or as contemplated by the Plan, attributable to or on behalf of the Sears Parties

plus or minus, as applicable,

- (d) the Sears Parties' Cost Allocation Amount and Ordinary Course Post-Filing Intercompany Position, all as attributable to or on behalf of the Sears Parties,

but excluding any Litigation Recoveries;

**"Sears Cash Pool"** means the Sears Cash available for distribution to the Affected Unsecured Creditors of the Sears Parties with Proven Affected Unsecured Claims under the Plan, calculated on each

Distribution Date, immediately prior to any Cash Pool/Holdback Adjustment, and including any amounts re-contributed by the Dealer Representative Plaintiff, on behalf of the Dealers, to the Sears Cash Pool in accordance with Section 5.2(c)(iv).

**"Sears Opt-In Creditor"** means a Creditor of the Sears Parties, other than a Sears Opt-Out Creditor;

**"Sears Opt-Out Creditor"** means any Creditor of the Sears Parties who provides an opt-out notice to the Monitor in accordance with, and at the times required by, the TUV Proceeding Approval Order;

**"Sears Parties"** has the meaning ascribed thereto in Section 3.1(a), and **"Sears Party"** means any one of them;

**"Sears Released Parties"** has the meaning ascribed thereto in Section 9.1(a), and **"Sears Released Party"** means any one of them;

**"Sears Reserves"** means, collectively, the Unresolved Claims Reserve for the Sears Parties, that portion of the Administrative Reserve allocated in accordance with the Cost Allocation Methodology to the Sears Parties, and any other reserve the Monitor considers necessary or appropriate, as each of them may be adjusted from time to time in accordance with the Plan;

**"Sears Supplier"** means any Person who has supplied goods or services, including by way of their employment, to any Sears Canada Entity;

**"Section 19(2) Claims"** has the meaning ascribed thereto in Section 5.13;

**"Secured Claims"** means a Claim that is secured by a Lien;

**"Secured Creditors"** means Creditors holding Secured Claims;

**"Service List"** means the service list maintained by the Monitor in the CCAA Proceedings, as updated from time to time and posted on the Website;

**"SLH Cash"** means all Cash on hand of the SLH Parties as at the Filing Date, plus the proceeds of sale of the SLH Transaction, and all Cash that is received by any of the SLH Parties following the Filing Date, whether from the sale, disposition or monetization of any remaining assets, receipt of any Tax Refund or any other Cash received by the SLH Parties from time to time, less:

- (a) Cash actually spent or distributed by the SLH Parties since the Filing Date but prior to the Plan Implementation Date,
- (b) the amount of the SLH Reserves, and
- (c) the amount of any Plan Distributions, payments on account of Proven Unaffected Claims, or payments made pursuant to or as contemplated by the Plan, attributable to or on behalf of the SLH Parties,

plus or minus, as applicable,

- (d) the SLH Parties' Cost Allocation Amount and Ordinary Course Post-Filing Intercompany Position;

**"SLH Cash Pool"** means the SLH Cash available for distribution to the Affected Unsecured Creditors of the SLH Parties with Proven Affected Unsecured Claims under the Plan, calculated on the Plan Implementation Date and each Distribution Date, immediately prior to any Cash Pool/Holdback Adjustment;

"**SLH Parties**" has the meaning ascribed thereto in Section 3.1(b), and "**SLH Party**" means any one of them;

"**SLH Reserves**" means, collectively, the Unresolved Claims Reserve for the SLH Parties, that portion of the Administrative Reserve as allocated in accordance with the Cost Allocation Methodology to the SLH Parties, and any other reserve the Monitor considers necessary or appropriate, as each of them may be adjusted from time to time in accordance with the Plan;

"**SLH Transaction**" means the sale transaction contemplated by the asset purchase agreement between Former SLH, Sears Canada, and 168886, as sellers, and 8507597 Canada Inc., as purchaser, dated September 29, 2017 and approved by the Court on October 4, 2017;

"**Specified Advisors**" means, collectively, Osler, Hoskin & Harcourt LLP, BMO Nesbitt Burns Inc., and CBRE Limited;

"**Specified Payee Party**" has the meaning ascribed thereto in Section 7.3(b);

"**Superintendent**" means the Ontario Superintendent of Financial Services in his capacity as administrator of the Pension Benefit Guarantee Fund;

"**Supplemental Plan**" means the Sears Canada Inc. Supplementary Retirement Plan, a non-registered supplemental pension plan maintained to provide enhanced pension benefits to eligible members of the defined benefit component of the Sears Pension Plan that are not provided under the Sears Pension Plan;

"**Tax**" and "**Taxes**" means any and all taxes including all income, sales, use, goods and services, harmonized sales, value added, capital gains, alternative, net worth, transfer, profits, withholding, payroll, employer health, excise, franchise, real property, and personal property taxes and other taxes, customs, duties, fees, levies, imposts and other Assessments or similar charges in the nature of a tax, including Canada Pension Plan and provincial pension plan contributions, employment insurance and unemployment insurance payments and workers' compensation premiums, together with any instalments with respect thereto, and any interest, penalties, fines, fees, other charges and additions with respect thereto;

"**Taxing Authorities**" means Her Majesty the Queen in right of Canada, Her Majesty the Queen in right of any province or territory of Canada, any municipality of Canada, the Canada Revenue Agency, the Canada Border Services Agency, any similar revenue or taxing authority of Canada and each and every province or territory of Canada (including Revenu Québec) and any political subdivision thereof and any Canadian or foreign government, regulatory authority, government department, agency, commission, bureau, minister, court, tribunal or body or regulation making entity exercising taxing authority or power, and "**Taxing Authority**" means any one of the Taxing Authorities;

"**Tax Loss Utilization Structure**" means the existing tax loss utilization structure of the Sears Canada Entities identified at paragraphs 79 to 82 of the Monitor's Sixteenth Report made April 2, 2018;

"**Tax Refunds**" means refunds of any amounts paid by the Sears Canada Entities on account of Taxes, refunded to such Sears Canada Entities from time to time by the applicable Taxing Authorities;

"**Third Party Pro Rata Share**" means:

- (a) in respect of a distribution (other than in respect of a distribution of Litigation Recoveries or in respect of a Reimbursable Warranty Claim) to an Affected Third Party Unsecured Creditor with Proven Affected Third Party Unsecured Claims in respect of a Debtor Group other than Former Corbeil, the fraction that is equal to (i) the amount of the Proven Affected Unsecured Claim of such Affected Third Party Unsecured Creditor, divided by

- (ii) the aggregate of all Proven Affected Unsecured Claims held by Affected Third Party Unsecured Creditors, in each case in respect of such Debtor Group;
- (b) in respect of a distribution of Litigation Recoveries to a Sears Opt-In Creditor with Proven Affected Unsecured Claims, the fraction that is equal to (i) the amount of the Proven Affected Unsecured Claim(s) of such Sears Opt-In Creditor against the Sears Parties, divided by (ii) the aggregate of all Proven Affected Unsecured Claims held by Sears Opt-In Creditors against the Sears Parties; and
- (c) in respect of a distribution to an Affected Third Party Unsecured Creditor with Proven Reimbursable Warranty Claims, the fraction that is equal to (i) the amount of the Reimbursable Warranty Claim of such Affected Third Party Unsecured Creditor, divided by (ii) the aggregate of all Proven Reimbursable Warranty Claims held by Affected Third Party Unsecured Creditors;

**"Third Party Released Party"** has the meaning ascribed thereto in Section 9.1(b);

**"TUV Claim"** means the claim commenced by the Monitor pursuant to the TUV Proceeding Approval Order;

**"TUV Proceeding Approval Order"** means the Transfer at Undervalue Proceeding Approval Order issued by the Court on December 3, 2018 (as such order may be amended, supplemented or restated from time to time), approving, among other things, the pursuit of the TUV Claim by the Monitor;

**"Unaffected Claims"** means:

- (a) Post-Filing Claims;
- (b) Insured Claims;
- (c) Secured Claims, including any claim secured by any CCAA Charge;
- (d) Landlord Cost Payments;
- (e) amounts payable under sections 6(3), 6(5) and 6(6) of the CCAA; and
- (f) Priority Claims;

**"Unaffected Creditors"** means Creditors holding Unaffected Claims;

**"Undeliverable Distribution"** has the meaning ascribed thereto in Section 7.5(a);

**"Unionized Employee"** means any Employee represented by a union pursuant to a collective agreement in connection with such Employee's employment with any of the Sears Canada Entities;

**"Unresolved Affected Unsecured Claim"** means an Affected Unsecured Claim that is an Unresolved Claim;

**"Unresolved Claim"** means a Claim, which at the relevant time, in whole or in part: (a) has not been Finally Determined to be a Proven Claim in accordance with the applicable Claims Procedure Order and this Plan; or (b) is validly disputed and/or remains subject to review in accordance with the applicable Claims Procedure Order, including as to validity and/or quantum;

**"Unresolved Claims Reserve"** means, in respect of a Debtor Group, the aggregate of the reserves of the applicable Available Cash for such Debtor Group, to be held in respect of each Debtor Group on an

accounting basis, in an aggregate amount to be calculated by the Monitor on the Initial Distribution Date, and recalculated as at any subsequent Distribution Date, equal to the amount that would have been paid if the full amount of all Unresolved Claims in respect of such Debtor Group are Proven Claims as at such later date, or such lesser amount as may be ordered by the Court;

**"Unresolved Priority Claim"** means a Government Priority Claim or Employee Priority Claim that is an Unresolved Claim;

**"Unresolved Voting Claim"** means the amount of the Unresolved Affected Unsecured Claim of an Affected Unsecured Creditor as determined in accordance with the terms of the applicable Claims Procedure Order entitling such Affected Unsecured Creditor to vote at the applicable Meeting in accordance with and subject to the limitations of the provisions of the Meetings Order, the Plan and the CCAA;

**"Unsecured Claim"** means a Claim that is not secured by any Lien;

**"Unsecured Creditor Class"** has the meaning ascribed thereto in Section 4.1;

**"Upfront Dealer Payment"** has the meaning ascribed thereto in Section 5.2(c);

**"Valid Transferee"** means the transferee or assignee of a Claim that has provided the Monitor with a Notice of Transfer or Assignment by no later than seven (7) days' prior to the Initial Distribution Date and has had such Claim transferred or assigned to it in accordance with the applicable Claims Procedure Order and the Meetings Order;

**"Voting Claim"** means the amount of the Affected Unsecured Claim of an Affected Unsecured Creditor as Finally Determined in the manner set out in the applicable Claims Procedure Order or as provided pursuant to Section 3.2 of the Plan, entitling such Affected Unsecured Creditor to vote at the applicable Meeting in accordance with the provisions of the Meetings Order, the Plan and the CCAA;

**"Warranty"** means a customer warranty offered pursuant to a valid and unexpired protection agreement issued by Sears Canada to its customer, and for greater certainty Warranty does not include any manufacturer's warranty;

**"Warranty Administration Costs"** means all costs incurred in connection with the administration of the Warranty Claims Protocol and of all distributions, disbursements, and payments under the Plan in respect of Reimbursable Warranty Claims;

**"Warranty Claim"** means a Claim in respect of a Warranty;

**"Warranty Claims Administrator"** means the claims administration firm selected by the Monitor for the purpose of administering the Warranty Claims Protocol ;

**"Warranty Claims Bar Date"** has the meaning ascribed thereto in Section 5.3(a)(iii);

**"Warranty Claims Protocol"** means a protocol to be developed and established by the Monitor, in consultation with the Warranty Claims Administrator, and pursuant to which the validity and quantum of Reimbursable Warranty Claims is to be determined;

**"Warranty Payment Amount"** means, in respect of a Warranty, the original cash purchase price paid for such Warranty;

**"Warranty Reimbursement Pool"** means that portion of the Sears Cash as calculated pursuant to Section 5.3(a)(ii) and available firstly for the payment of all Warranty Administration Costs, and thereafter



for distribution to Affected Unsecured Creditors with Proven Reimbursable Warranty Claims pursuant to Section 5.3(a)(v) of the Plan;

"**Website**" means [www.cfcanada.fticonsulting.com/searscanada](http://www.cfcanada.fticonsulting.com/searscanada); and

"**Withholding Obligation**" has the meaning ascribed thereto in Section 7.2(b).

**Schedule B  
Pre-Filing Interco Claims**

	Claimant(s)	Debtor(s)	Amount (Cdn\$)
Sum of Claims "Pre-1" and "Pre-8", as detailed in the 16 <sup>th</sup> Report	Sears Parties	Former Corbeil	\$16,158,037
Sum of Claims "Pre-2", "Pre-9", "Pre-10" and Pre-13", as detailed in the 16 <sup>th</sup> Report	SLH Parties	Sears Parties	\$10,654,979

**Schedule C  
Pension Claims**

The Pension Claims of the Pension Parties shall be deemed to be comprised of the following:

- (a) a single Voting Claim against Sears Canada in the amount of Cdn\$249,792,000;
- (b) a single Voting Claim against the SLH Parties in the amount of Cdn\$10,408,000;
- (c) a single Proven Affected Unsecured Claim against Sears Canada solely for distribution purposes in the amount of Cdn\$624,480,000; and
- (d) a single Proven Affected Unsecured Claim against the SLH Parties solely for distribution purposes in the amount of Cdn\$26,020,000.

**Schedule D**  
**Litigation Cost Recovery Amount Illustration**

For illustrative purposes:

If:

- (a) the Monitor requires a Litigation Costs Recovery Fund of not less than \$12 million;
- (b) as of the Initial Distribution Date, there are 2,000 Sears Opt-In Creditors each with Proven Affected Unsecured Claims against Sears Canada that would receive distributions under the Plan (before the Litigation Cost Recovery Amount) of \$50,000 each (or \$100 million in aggregate); and
- (c) as of the Initial Distribution Date, there are 1,000 Creditors holding Unresolved Affected Unsecured Claims against Sears Canada who would also be Sears Opt-In Creditors if such Claims were Finally Determined to be Proven Claims, and if so Finally Determined, each would receive distributions under the Plan (before the Litigation Cost Recovery Amount) of \$25,000 (or \$25 million in aggregate),

Then the Monitor would deduct a Litigation Cost Recovery Amount of \$6,000 (being 12% of \$50,000, and calculated as the fraction equal to the \$12 million required for the Litigation Costs Recovery Fund divided by \$100 million available for Plan Distributions at the Initial Distribution Date (before the deduction of Litigation Cost Recovery Amounts)) from the first Plan Distribution made to each Sears Opt-In Creditor referred to in subparagraph (B) above for a total of \$12 million. Having thereby already contributed their share to the Litigation Costs Recovery Fund, such Sears Opt-In Creditors would not have any further Litigation Cost Recovery Amounts deducted from any of their future Plan Distributions.

The Monitor would also deduct \$3,000 (being 12% of \$25,000) from the Plan Distribution of \$25,000 made in respect of each Proven Claim of the Creditors referred to in subparagraph (C) above for the Litigation Costs Recovery Fund, and in such circumstance more than \$12 million would be collected.

**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., ET AL.**

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

Proceeding commenced at TORONTO

**AFFIDAVIT OF KATHRYN O'ROURKE**

**Ursel Phillips Fellows Hopkinson LLP**  
555 Richmond St. W., Suite 1200  
Toronto, Ontario M5V 3B1

**Susan Ursel (LSO# 26024G)**  
Tel: (416) 969-3515  
Fax: (416) 968-0325  
sursel@upflaw.ca

**Kathryn O'Rourke (LSO# 66420K)**  
Tel: (416) 969-3507  
Fax: (416) 968-0325  
korourke@upflaw.ca

Employee Representative Counsel

**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., ET AL.**

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

Proceeding commenced at TORONTO

**MOTION RECORD**

**Ursel Phillips Fellows Hopkinson LLP**  
555 Richmond St. W., Suite 1200  
Toronto, Ontario M5V 3B1

**Susan Ursel (LSO# 26024G)**  
Tel: (416) 969-3515  
Fax: (416) 968-0325  
sursel@upflaw.ca

**Kathryn O'Rourke (LSO# 66420K)**  
Tel: (416) 969-3507  
Fax: (416) 968-0325  
korourke@upflaw.ca

Employee Representative Counsel