

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

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

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

Applicants

**AFFIDAVIT OF MARIE PACHECO  
(Sworn October 3, 2017)**

**I, MARIE PACHECO, of the City of Toronto, in the Province of Ontario, MAKE  
OATH AND SAY AS FOLLOWS:**

1. I am a practice assistant at the Toronto offices of Borden Ladner Gervais LLP (“BLG”), counsel to Sears Holdings Corporation, Sears Holdings Management Corporation, Sears, Roebuck and Co., Sears Holdings Global Sourcing Ltd., Kmart Corporation, Kmart Overseas Corporation, International Sourcing & Logistics Ltd., and Innoval Solutions (collectively, the “SHC Entities”). As such, I have knowledge of the matters to which I hereinafter depose. Where I do not have personal knowledge, I have stated the source of my information and believe it to be true.

2. Attached hereto as **Exhibit "A"** and originally filed as Exhibit "A" to the affidavit of Billy Wong sworn June 22, 2017 is the Organizational Structure of the Sears Canada Group.
3. In response to motion materials served on September 29 and October 1, 2017 for the Sears Canada Inc. ("**SCI**") motion, returnable October 4, 2017, counsel to the SHC Entities wrote a letter on October 2, 2017 to counsel to SCI and the Monitor. Attached hereto as **Exhibit "B"** is a copy of the October 2<sup>nd</sup> letter.
4. SCI counsel provided a response the same evening of October 2, 2017 by way of two emails. Copies of these emails are attached hereto as **Exhibit "C"**.
5. By way of response, counsel to the SHC Entities delivered an email on October 3, 2017 with certain suggested amendments to proposed Approval and Vesting Orders. A copy of this email is attached hereto as Exhibit "**D**".
6. On January 16, 1987 Sears Canada Inc. ("**SCI**") and Sears, Roebuck and Co. ("**Sears**") entered into a Trademark License Agreement. A copy of this agreement, as amended, is attached hereto as Exhibit "**E**".
7. On January 1, 1995, SCI and Sears entered into an Information Technology Agreement. A copy of this agreement, as amended, is attached hereto as Exhibit "**F**".
8. I am informed by Mr. Alex MacFarlane, and verily believe, that the SHC Entities are contesting certain relief sought by SCI on the October 4, 2017 motion, namely the granting of Approval and Vesting Orders with respect to the Corbeil Electric Inc. and S.L.H. Transport

Inc. Asset Purchase Agreements. I swear this affidavit in response to the SCI motion, returnable October 4, 2017, and for no improper purpose.

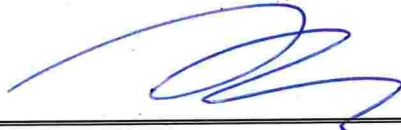
SWORN BEFORE ME at the City )  
of Toronto, in the Province of Ontario, )  
this 3<sup>rd</sup> day of October, 2017 )  
\_\_\_\_\_)  
A Notary Public/Commissioner )



A Notary Public/Commissioner

  
\_\_\_\_\_  
**MARIE PACHECO**

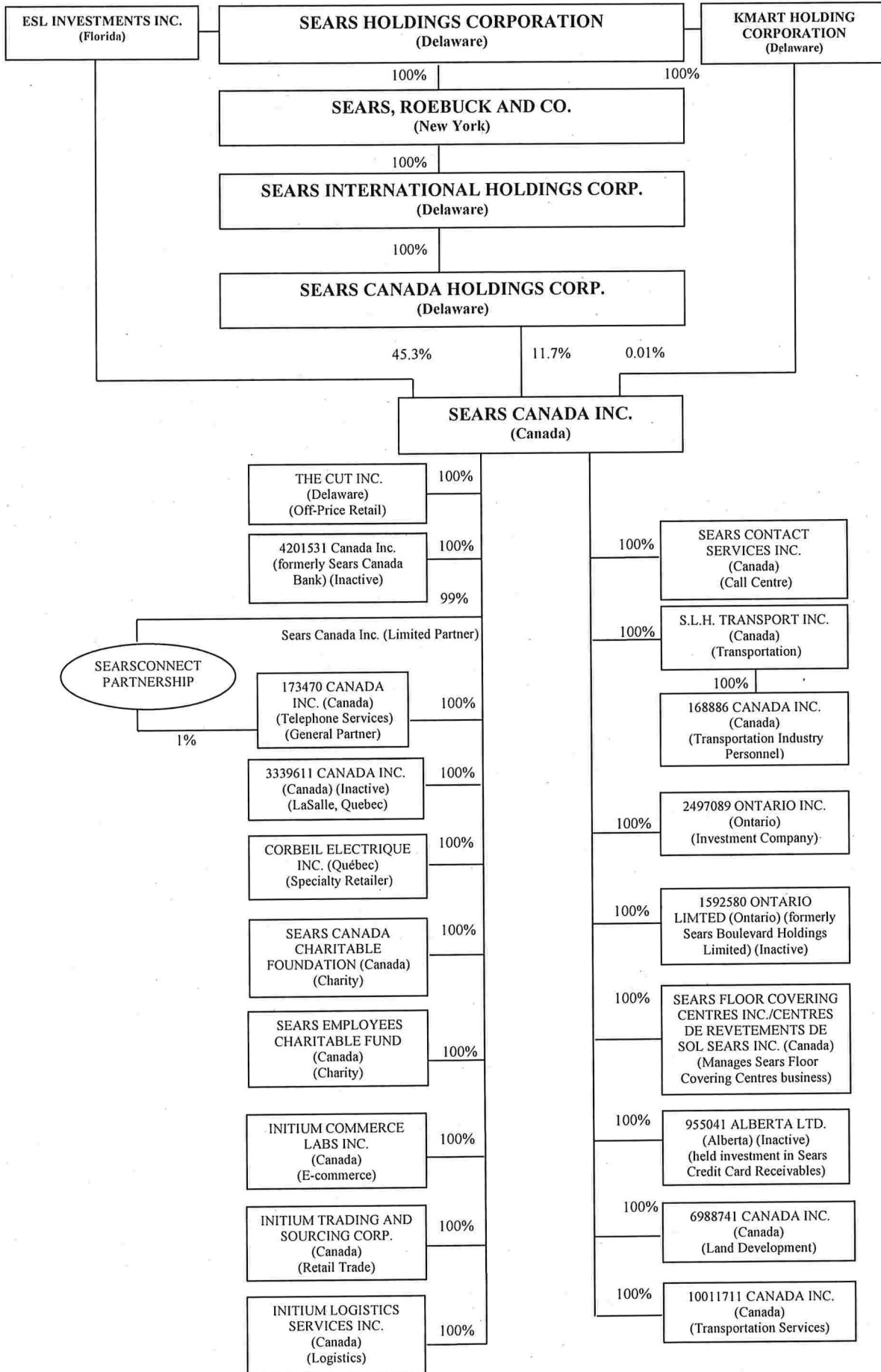
This is Exhibit "A" referred to in  
the Affidavit of Marie Pacheco  
sworn before me this 3<sup>rd</sup> day  
of October, 2017.



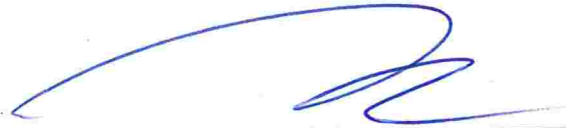
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A Commissioner for Taking Affidavits

**SEARS CANADA INC.  
ORGANIZATIONAL CHART**



This is Exhibit "B" referred to in  
the Affidavit of Marie Pacheco  
sworn before me this 3<sup>rd</sup> day  
of October, 2017.

A handwritten signature in blue ink, consisting of a large, sweeping initial letter followed by several smaller, connected loops.

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A Commissioner for Taking Affidavits

Alex MacFarlane  
T (416) 367-6305  
F (416) 367-6749  
AMacFarlane@blg.com

Borden Ladner Gervais LLP  
Bay Adelaide Centre, East Tower  
22 Adelaide Street West  
Toronto, ON, Canada M5H 4E3  
T 416.367.6000  
F 416.367.6749  
blg.com



October 2, 2017

**Delivered by Email**

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

Attention: Marc Wasserman

Dear Mr. Wasserman,

**Re: *In re Sears Canada Inc. et al. (CV-17-11846-00CL)***

We are counsel to Sears Holdings Corporation, Sears Holdings Management Corporation, Sears, Roebuck and Co., Sears Holdings Global Sourcing Ltd., Kmart Corporation, Kmart Overseas Corporation, International Sourcing & Logistics Ltd., and Innoval Solutions (collectively, the “SHC Entities”).

We are in receipt of the multiple Motion Records of the Applicants, delivered late on the evening of September 29 and October 1, 2017, to seek Court approval of a total of 15 asset purchase and lease transfer/surrender agreements, returnable October 4, 2017 (the “**Approvals Motion**”). As a preliminary point, we object to the late notice and question the fairness of providing stakeholders a heavily circumscribed time in which to evaluate the transactions that may bear on their respective rights and interests, contrary to the objectives of the *Companies’ Creditors Arrangement Act* (“**CCAA**”).

Moreover, the SHC Entities possess serious concerns regarding the treatment of the intellectual property rights of Sears, Roebuck and Co. (“**Sears**”) under two proposed transactions, namely

- (i) the Approval and Vesting Order (the “**SLH Approval Order**”) with respect to the S.L.H. Transport Inc. (“**SLH**”) September 29, 2017 Asset Purchase Agreement (the “**SLH APA**”), and
- (ii) the Approval and Vesting Order (the “**Corbeil Approval Order**”) with respect to the Corbeil Electrique Inc. (“**Corbeil**”) October 1, 2017 Asset Purchase Agreement (the “**Corbeil APA**”).

As described in the June 22, 2017 affidavit of Mr. Wong, Sears Canada Inc. (“**SCI**”) is a party to a Trademark License Agreement, as amended, with Sears (the “**License Agreement**”). Among other things, the License Agreement provides a royalty-free license to SCI to make use of certain marks and brand names. Importantly, Article 10 strictly prohibits the unauthorized use of Sears marks by third parties:

## Use by Others

10. The present license is personal to SEARS CANADA and shall not be assigned, transferred, conveyed or pledged by it, and any attempt by SEARS CANADA to do so shall be void and of no force or effect. SEARS CANADA shall not sub-license the use of the licensed trade-marks to others, but may arrange for person, firms, or corporations manufacturing any of the goods on behalf of SEARS CANADA, to apply the licensed trade-marks to good manufactured for SEARS CANADA provided that such application complies in all respects with the conditions of this agreement. In addition SEARS CANADA may enter into individual concession agreements under which the concessionaire shall be permitted to use the trade-mark "Sears" or other licensed trade-marks in connection with a merchandising goods or services business to be carried on by such concessionaire, provided that i) each such concession agreement conforms to a general format previously approved by SEARS, and ii) the concessionaire enters into a registered user agreement with SEARS which shall require the concessionaire to maintain the same standards and specifications in respect of its business as if the same were carried on directly by SEARS CANADA. SEARS CANADA is to be the agent of SEARS for the purpose of exercising control over the use of the licensed trade-marks by the concessionaire.

As set out below, it remains unclear on the face of the materials for the Approvals Motion whether, and to what extent, the above rights of Sears are impacted by the proposed transactions.

### i) The SLH APA

The SLH APA, and proposed Approval Order, appears to pose the risk of impacting the rights of Sears under the License Agreement. In particular, section 2.1(i) of the APA states that Purchased Assets include Intellectual Property, as the rights "used or held by the Seller for use in or relating to the Acquired Business" including all trademarks, trade names, service marks (and all goodwill associated with any of the foregoing) and those business names listed and described in Schedule "K". However, the latter schedule is not included in the record, and no further information is provided with respect to what marks SLH uses or holds in relation to its business. Consequently, it is not possible to determine the extent, if at all, the APA impacts the License Agreement and the Sears intellectual property.

In addition, the corporate and trade name "SLH" is an acronym for "Sears Line Haul". The SLH APA purports to assign the Intellectual Property, including trademarks used in the Acquired Business. However, the rights in the SEARS mark and related trademarks cannot be assigned as they are under license to SCI. Furthermore, under trademark law, any use of the SLH acronym that is not under license would depreciate the value and distinctiveness of the SEARS marks, and would also result in the depreciation and loss of goodwill in such marks.

We requested a copy of Schedule "K" on October 1, 2017, and have yet to receive a response. Without being provided the full APA, inclusive of schedules, as well as particulars of any Sears marks used or held by SLH, the ability of Sears to formulate a position on the Approvals Motion is prejudiced.



ii) **The Corbeil APA**

In addition, while the Corbeil APA specifically identifies "SCI Assets" as being Excluded Assets for the purpose of the agreement, it includes as Purchased Assets the Intellectual Property of Corbeil which is defined to mean all intellectual property "used, or held by the Seller for use, in or relating to the Acquired Business." This could conceivably be broader than those marks specifically identified in Schedule "D", and include intellectual property assets of an SHC entity licensed to SCI.

We accordingly require the particulars of any usage made of Sears marks and intellectual property subject to the License Agreement.

Lastly, both APAs potentially impact an Information Technology Agreement between SCI and Sears. Paragraph 13 of the Affidavit of Billy Wong sworn September 29, 2017 indicates in para. 13 that SCI provides SLH with certain procurement, legal services, payroll services and funding. To the extent any of such services are provided pursuant to the Information Technology Agreement or other shared services agreements involving assets or services of the SHC Entities, such agreements cannot be extended to SLH without the approval of the SHC Entities.

Similarly, the Corbeil APA purports to assign all IT Assets owned by or licensed by SCI and used, or held for use, in the Acquired Business, including the SCI IT Assets. However, in contradiction, section 8.3 indicates that SCI will license those SCI IT Assets not exclusively used to support the Acquired Business. To the extent any such IT Assets used by SCI to provide services are provided pursuant to the Information Technology Agreement or other shared services agreements involving assets or services of the SHC Entities, such assets and services cannot be transferred without the approval of the SHC Entities.

In light of the pending Approvals Motion date, the SHC Entities require immediate full disclosure of the intellectual property subject to the two APAs noted above, and suggest that a call be scheduled on an expedited basis to discuss same.

Yours truly,

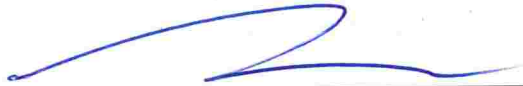
**BORDEN LADNER GERVAIS LLP**



Alex MacFarlane

Cc: Eric Boehm, Bevan Brooksbank, *BLG*  
Evan Cobb, *Norton Rose Fulbright LLP*

This is Exhibit "C" referred to in  
the Affidavit of Marie Pacheco  
sworn before me this 3<sup>rd</sup> day  
of October, 2017.



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A Commissioner for Taking Affidavits

## Pacheco, Marie

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**Subject:** Re: Sears  
**Attachments:** pdf.pdf  
**Expires:** April-01-18 12:00 AM

**From:** Moffatt, Kelly [<mailto:KMoffatt@osler.com>]  
**Sent:** October-02-17 9:31 PM  
**To:** Sandler, Tracy; MacFarlane, Alex  
**Cc:** Abitan, Sandra; Me Virginie Gauthier; Dacks, Jeremy; Abbott, Mary; Wasserman, Marc; Themelis, Lucinda  
**Subject:** RE: Sears

Alex,

Further to Tracy's email below, attached please find a copy of the registration particulars for the SLH TRANSPORT INC. & Design trade-mark (reg. no. TMA486,374) owned by S.L.H. Transport Inc. Please let me know if you would like to discuss further.

Best,

Kelly

---

**From:** Sandler, Tracy  
**Sent:** Monday, October 02, 2017 9:20 PM  
**To:** Mr. Alex L. MacFarlane <[amacfarlane@blg.com](mailto:amacfarlane@blg.com)>  
**Cc:** Moffatt, Kelly <[KMoffatt@osler.com](mailto:KMoffatt@osler.com)>; Abitan, Sandra <[SAbitan@osler.com](mailto:SAbitan@osler.com)>; Me Virginie Gauthier <[virginie.gauthier@nortonrosefulbright.com](mailto:virginie.gauthier@nortonrosefulbright.com)>; Dacks, Jeremy <[JDacks@osler.com](mailto:JDacks@osler.com)>; Abbott, Mary <[MAbbott@osler.com](mailto:MAbbott@osler.com)>; Wasserman, Marc <[MWasserman@osler.com](mailto:MWasserman@osler.com)>; Themelis, Lucinda <[LThemelis@osler.com](mailto:LThemelis@osler.com)>  
**Subject:** Sears

Hello. Thank you for your letter. We note as follows:

1. SLH

We attach confidential schedule K to the SLH APA. The two names listed thereon are owned by SLH. We will, this evening, send you the registration particulars. SLH does not use the name Sears in its business operations.

We trust this addresses your concerns. If you have any questions kindly call Kelly Moffatt of our office. 416.862.5933

2. Corbeil

As you noted in your letter, SCI Assets are explicitly excluded from the Corbeil transaction, save and except for the SCI IT Assets which are exclusively used in the Corbeil business and properly belong to Corbeil. These will be transferred by SCI to Corbeil prior to closing. The SCI Assets are not owned by SHC Entities, and are not subject to the Information Technology Agreement or other shared services agreements.

If you have any questions with respect to this transaction please feel free to call Sandra Abitan 514.917.7429 or Kelly at the above noted number.

Best regards, Tracy

Tracy C. Sandler  
Partner  
Insolvency & Restructuring

Phone: 416.862.5890  
Cell: 416.560.6523  
Assistant: 416.862.4742

Sent from my iPhone

Begin forwarded message:

**From:** "Sheffield, Kai D." <[KSheffield@osler.com](mailto:KSheffield@osler.com)>  
**Date:** October 2, 2017 at 9:04:40 PM EDT  
**To:** "Sandler, Tracy" <[TSandler@osler.com](mailto:TSandler@osler.com)>  
**Subject:** SLH APA - Schedule K

**SCHEDULE "K"**  
**LIST OF BUSINESS NAMES**

1. S.L.H. Transport Inc.
2. Transports S.L.H. Inc.

**Canadian Trademarks Details**

**Third-party information liability disclaimer**

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0811755 - SLH TRANSPORT INC & DESIGN



**Application/Registration numbers**

Application number 0811755  
 Registration number TMA486374

**Status**

CIPO status REGISTERED

**Key Dates**

Filed 1996-05-03  
 Registered 1997-11-27

**Interested Parties**

Registrant S.L.H TRANSPORT INC./TRANSPORTS S.  
 L.H. INC R.R. #3 KINGSTON K7L 4V2  
 ONTARIO  
 Representative for service GOWLING WLG (CANADA) LLP SUITE  
 1600 1 FIRST CANADIAN PLACE 100  
 KING STREET WEST TORONTO  
 ONTARIO M5X 1G5

**Descriptive Reference**

Name SLH TRANSPORT INC & DESIGN  
 Type Design Mark  
 Category Trade-mark

**Index headings**

SLH TRANSPORT INC.

**Vienna information**

Code	Description
5.3.4	Vine leaves (except 5.3.19), plane leaves, maple leaves
5.3.14	One leaf
5.3.50	11-pointed Canadian maple leaf (leaves)
27.5.1	Letters presenting a special form of writing
27.5.19	Letters overlapping
27.5.11	Letters underlined, overlined, framed or barred by one or more strokes

**Services**

(1) Truck transportation services.

**Classification data**

**Disclaimer**

The classification data is provided for information and searching purposes only. CIPO does not warrant the accuracy of the classes assigned to the trademark. This data has no legal value of any kind.

39 - Transportation and storage

**Claims**

Used in CANADA since at least as early as September 1986.

### Actions

Action	Action date	Response date	Comments
Filed	1996-05-03		
Created	1996-05-09		
Formalized	1996-05-16		
Search Recorded	1996-09-13		
Examiner's First Report	1996-10-02		
Correspondence Created	1996-10-02	1997-03-02	
Correspondence Created	1997-01-21	1997-05-21	
Approved	1997-05-12		
Advertised	1997-06-18		Vol.44 Issue 2225
Allowed	1997-09-12		
Allowance Notice Sent	1997-09-12	1998-03-12	
Registered	1997-11-27		
Rep for Service Changed	2007-08-17		From: 2502 To: 616 / Voir Preuve au dossier/See evidence on File No. 811755
Rep for Service Changed	2012-01-19		From: 616 To: 32
Renewed	2012-11-27		DP:2012/04/19 RD:2012/04/17 RR:(8390) GOWLING LAFLEUR HENDERSON LLP
Rep for Service Name Change	2016-02-25		

**Date modified:**

2017-06-22

**SCHEDULE "K"**  
**LIST OF BUSINESS NAMES**

1. S.L.H. Transport Inc.
2. Transports S.L.H. Inc.

This is Exhibit "D" referred to in  
the Affidavit of Marie Pacheco  
sworn before me this 3<sup>rd</sup> day  
of October, 2017.



---

A Commissioner for Taking Affidavits



**Pacheco, Marie**

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**Expires:** April-01-18 12:00 AM

**From:** Brooksbank, Bevan

**Sent:** October-03-17 2:24 PM

**To:** Sandler, Tracy; Abitan, Sandra; [virginie.gauthier@nortonrosefulbright.com](mailto:virginie.gauthier@nortonrosefulbright.com); [JDacks@osler.com](mailto:JDacks@osler.com); [MAbbott@osler.com](mailto:MAbbott@osler.com); [MWasserman@osler.com](mailto:MWasserman@osler.com); [LThemelis@osler.com](mailto:LThemelis@osler.com); [KMoffatt@osler.com](mailto:KMoffatt@osler.com); Cobb, Evan

**Cc:** MacFarlane, Alex; Boehm, Eric

**Subject:** Sears Canada

Kelly, Tracy

Thank you for your emails received last night, in response to our letter addressing the Sears concerns with respect to the SLH Approval and Vesting Order (the "**SLH AVO**") and the Corbeil Approval and Vesting Order (the "**Corbeil AVO**"). While the assurances received do provide some comfort, the breadth of the various definitions in the respective APAs has prompted us to seek some minor amendments to the proposed AVOs. We have set out our proposed language below:

#### **SLH AVO**

Section 4: THIS COURT ORDERS AND DECLARES that upon the delivery of a Monitor's certificate to the Purchaser substantially in the form attached as Schedule "A" hereto (the "Monitor's Certificate"), all of the Seller's right, title and interest in and to the Purchased Assets, excluding any Intellectual Property subject to the Trademark License Agreement, as amended, with Sears Roebuck and Co., and shall vest absolutely in the Purchaser, free and clear of (...)

Alternatively, we would be open to discussing inserting a similar proviso at Section 12 of the SLH AVO.

#### **Corbeil AVO**

Section 6: THIS COURT ORDERS AND DECLARES that upon the delivery of a Monitor's certificate to the Buyer substantially in the form attached as Schedule "A" hereto (the "Monitor's Certificate"), all of the Seller's right, title and interest in and to the Purchased Assets, excluding any SCI IT Assets subject to the Information Technology Agreement, as amended, with Sears Roebuck and Co., shall vest absolutely in the Buyer, free and clear of (...)

Section 7: THIS COURT ORDERS that upon the registration in the Canadian Intellectual Property Office of a certified copy of this Order, the applicable Registrar is hereby directed to transfer all of the Seller's right, title and interest in and to the Purchased Assets that consist of the Intellectual Property, excluding as SCI Assets the intellectual property subject to the Trademark License Agreement, as amended, with Sears Roebuck and Co., and applications and registration listed in Schedule "D" hereto, to the Buyer as described in the APA, free and clear of and from any and all Claims.

In light of the hearing tomorrow, please advise as soon as possible if the above is acceptable, or if alternative wording would be preferred. We could also convene a quick call this afternoon to discuss.

Best,  
Bevan



**Bevan Brooksbank**

**Senior Associate Commercial Litigation Group**

T 416.367.6604 | F 416.367.6749 | [BBrooksbank@blg.com](mailto:BBrooksbank@blg.com)

Bay Adelaide Centre, East Tower, 22 Adelaide St W, Toronto, ON, Canada M5H 4E3

**Borden Ladner Gervais LLP |**

Calgary | Montréal | Ottawa | Toronto | Vancouver

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This is Exhibit "E" referred to in  
the Affidavit of Marie Pacheco  
sworn before me this 3<sup>rd</sup> day  
of October, 2017.



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A Commissioner for Taking Affidavits

AGREEMENT

THIS AGREEMENT made this 26th day of January, 1987

B E T W E E N:

SEARS CANADA INC.  
(hereinafter called SEARS CANADA)

OF THE FIRST PART,

-and-

SEARS, ROEBUCK AND CO.  
(hereinafter called SEARS)

OF THE SECOND PART.

WHEREAS by agreement dated 18th September, 1952 among Simpsons, Limited ("Simpsons"), SEARS and SEARS CANADA, under its then name of Simpsons-Sears Limited, provision was made, among other things, for the purchase by SEARS CANADA of the mail order business of Simpsons and for the terms of the continuing relationship between the parties; and

WHEREAS in such agreement both SEARS and Simpsons agreed to assist SEARS CANADA in developing merchandising methods and administrative procedures in connection with a mail order and department store business and granted to SEARS CANADA the right to use, in Canada but not elsewhere during the term of such agreement, their respective trade marks and trade names; and

WHEREAS to carry out the provisions of such agreement relating to trade marks and trade names and subject to the terms thereof, SEARS assigned to SEARS CANADA the legal title to certain trade marks in Canada, being the only means which was thought to exist at that time legally to permit SEARS CANADA to use such trade marks, and consented to the registration in Canada by SEARS CANADA of certain other SEARS marks; and

WHEREAS by agreement dated 11th December, 1978 among Simpsons, SEARS and SEARS CANADA the said agreement was amended to reflect the intended distribution by way of dividend by Simpsons to its shareholders of its holdings of shares of SEARS CANADA; and

WHEREAS pursuant to the terms of the said agreement as amended, the said agreement was terminated by SEARS CANADA with respect to all matters contained therein pertaining to arrangements or understandings between SEARS CANADA and Simpsons; and

WHEREAS the said agreement as amended will continue to be binding upon SEARS and SEARS CANADA until the expiration

of a period of three (3) years after SEARS shall have ceased to hold, directly or indirectly, at least 25% of the voting shares of SEARS CANADA; and

WHEREAS the parties are desirous of further amending and restating the provisions of the said agreement to reflect more adequately the status of their present arrangements; and

WHEREAS under such present arrangements and reflecting the intention of the parties under the said agreement SEARS CANADA and SEARS will, contemporaneously with the execution of this agreement, reassign to SEARS the said trade marks and trade name and apply to make SEARS CANADA a registered user with respect to the said Sears trade marks pursuant to the provisions of this agreement;

WHEREAS SEARS and SEARS CANADA have each determined that it is in its best interest and for their mutual benefit to enter into this agreement;

NOW THEREFORE IT IS HEREBY AGREED by and between the parties as follows:

Definitions

1. In this agreement:

- a) "licenced trade marks" means those identified in Schedule A hereto, together with those further merchandising trade marks adopted or developed by SEARS, which are added to this agreement at the option of SEARS CANADA, and any further merchandising trade marks confusingly similar to the foregoing trade marks that SEARS and SEARS CANADA may together from time to time add to this agreement;
- b) "merchandising" means activities of the type presently carried on by SEARS CANADA and other activities of the type carried out from time to time by the Sears Merchandise Group in the United States of America during the term of this agreement, and reasonable extensions of such activities as agreed to by SEARS from time to time;
- c) "operational links" shall have the meaning given in paragraph 14 below;
- d) "territory" means the country of Canada.

Licenced Grant

2. SEARS hereby grants to SEARS CANADA, subject to the terms of this agreement, the exclusive royalty free right to use the licenced trade marks in the territory in relation to goods and services in the field of merchandising.

3. Any trade marks first adopted or developed by SEARS CANADA may be used in the United States by SEARS or one of its subsidiaries at the option of SEARS, pursuant to a licence from SEARS CANADA on the same terms as the licence herein which SEARS CANADA will grant to SEARS at SEARS request.

Quality Controls

4. SEARS CANADA undertakes to use the licenced trade marks in connection with goods and services in accordance with reasonable quality standards, specifications and/or instructions supplied by SEARS from time to time and which are consistent with the use of such trade marks by Sears Merchandise Group. SEARS confirms that the present standards of quality of goods and services of SEARS CANADA meet SEARS standards.

5. SEARS CANADA shall permit SEARS, or its authorized representatives, to inspect, at all reasonable times, any goods and services which are located in the premises of SEARS CANADA or which are located in the premises of any other person, firm, or corporation manufacturing or supplying merchandising goods or services for SEARS CANADA which utilize the licenced trade marks.

6. SEARS CANADA shall submit samples of the goods sold in association with the licenced trade marks to SEARS from time to time at SEARS request.



7. SEARS CANADA specifically recognizes, now and for the future, SEARS rights and title in and to the licenced trade marks and the trade name "Sears" and shall not at any time do or omit, or suffer to be done or omitted, any act or thing which may impair the trade mark and the trade name rights of SEARS. In the event that SEARS CANADA abandons or does not make bona fide use of any licenced trade mark, SEARS may terminate this licence with respect to said licenced trade mark.

8. The licence herein granted is not intended to be and shall not be construed as an assignment, in part or in whole, of any trade mark or trade name rights of SEARS.

Special Provisions Relating to the Trade Mark and Trade name "Sears"

9. SEARS CANADA acknowledges that SEARS is permitted to use the word "Sears" in the territory as a trade mark or a trade name in connection with any business or activity other than merchandising. To the extent that SEARS is using or is proposing to use "Sears" in the territory as a trade mark or as a trade name it shall consult with SEARS CANADA in respect of such use.

In respect of the name "Sears", SEARS CANADA shall be permitted to use such name to identify generally the business

which it carries on from time to time and in particular to use such name to identify its department stores and other freehold and leasehold premises and the premises of its catalogue agents and licensees and to identify its catalogue, provided that if and to the extent that SEARS CANADA carries on or permits to be carried on in such premises or advertises in such catalogue any business or activity which is not merchandising, such business or activity shall be carried on under a distinctive name not including the name "Sears" or any other of the licenced trade marks or any other word or symbol confusingly similar thereto. Any such business or activity, if owned, directly or indirectly, by SEARS CANADA, may, however, be designated in a factual manner only as being so owned. In respect of the use of such name as contemplated by this paragraph 9, SEARS CANADA'S merchandising business shall conform generally to the quality standards of the merchandising business carried on by Sears Merchandise Group.

Use by Others

10. The present licence is personal to SEARS CANADA and shall not be assigned, transferred, conveyed or pledged by it, and any attempt by SEARS CANADA to do so shall be void and of no force or effect. SEARS CANADA shall not sub-licence the use

of the licenced trade marks to others, but may arrange for persons, firms, or corporations manufacturing any of the goods on behalf of SEARS CANADA, to apply the licenced trade marks to goods manufactured for SEARS CANADA provided that such application complies in all respects with the conditions of this agreement. In addition SEARS CANADA may enter into individual concession agreements under which the concessionaire shall be permitted to use the trade mark "Sears" or other licensed trade marks in connection with a merchandising goods or services business to be carried on by such concessionaire, provided that i) each such concession agreement conforms to a general format previously approved by SEARS, and ii) the concessionaire enters into a registered user agreement with SEARS which shall require the concessionaire to maintain the same standards and specifications in respect of its business as if the same were carried on directly by SEARS CANADA. SEARS CANADA is to be the agent of SEARS for the purpose of exercising control over the use of the licenced trade marks by the concessionaire.

Registered User

11. SEARS CANADA shall execute appropriate registered user applications or agreements from time to time, for the purpose

of registering SEARS CANADA as a registered user under the Trade Marks Act, or any other such document as may be necessary to deem use by SEARS CANADA to be use by SEARS in connection with all licenced trade marks. A registered user application shall be filed for the licenced trade marks covered in Schedule A upon SEARS becoming recorded as the registered owner of the said trade marks. For future trade marks to be covered by this agreement, until the Canadian Trade Marks Office records SEARS CANADA as a registered user of the licenced trade marks, SEARS CANADA shall use the licenced trade marks with the prior approval of SEARS.

Marking and Advertising

12. SEARS CANADA in order to protect the licenced trade marks and the good will associated therewith agrees:

- a) to use only the licenced trade marks in the form as registered and as set forth in Schedule A hereto, without any accompanying words, hyphenated or otherwise, or symbols of any nature unless first approved in writing by SEARS.
- b) SEARS CANADA shall at the request of SEARS submit to SEARS representative samples of packaging, advertising and other material on which the licenced trade marks appear.

Operational Links

13. SEARS shall, without charge, disclose to and assist SEARS CANADA in developing and installing merchandising methods and administrative procedures which have proven successful in SEARS merchandising business in the United States in a substantially similar manner as has occurred since the creation of SEARS CANADA. SEARS shall have the right to adopt in its business, without charge, the merchandising methods and administrative procedures adopted by SEARS CANADA. All other services rendered or supplied to SEARS CANADA by SEARS or to SEARS by SEARS CANADA shall be paid for by the party receiving the services on the basis of the actual determinable cost thereof without profit or override.

14. For the purposes of Section 13 merchandising methods and administrative procedures shall include, without limitation, field operating bulletins; arrangements to permit both SEARS and SEARS CANADA so far as reasonably possible to purchase merchandise of the same quality and specifications and on the same terms and conditions as is from time to time purchased by the other; access to overseas buying offices and "store of the future" concepts; and any similar materials, information and access developed in future during the term hereof, all of which collectively are hereinafter referred to as operational links.

15. SEARS and SEARS CANADA acknowledge that arrangements exist between them in respect of information technology and computer and other automated systems related to their merchandising business based on the following general principles:

- a) common systems have been introduced by the parties based principally on the systems developed by SEARS;
- b) maintenance, improvement and development work related to such systems is to be shared by the parties pursuant to programs agreed upon from time to time;
- c) each party is to co-operate with the other to assist the other in making the most efficient and beneficial use of such systems.

The parties acknowledge the foregoing principles and agree that they shall enter into a separate written agreement in respect of their ownership and use of such systems.

#### Infringements

16. SEARS CANADA shall promptly notify SEARS of any attempt by any third person or legal entity to use the licenced trade marks, or any variation or imitation thereof and of any litigation involving the licenced trade marks that is instituted by any third person or legal entity. In the event SEARS, in its own discretion, undertakes the defence or prosecution of any

litigation relating to the licenced trade marks, SEARS CANADA shall execute any and all documents and do such acts and things as may, in the reasonable opinion of SEARS, be necessary to carry out such defence or prosecution. SEARS CANADA shall be entitled to enforce the licensed trade marks against third parties in the event SEARS fails to do so. In the event of any action taken by SEARS or SEARS CANADA, the other party may be represented by its own advisory counsel in such action.

Term, Transition and Termination

17.

- a) This agreement subject to paragraph 18 shall continue until the expiration of a period of three years after SEARS has ceased to hold directly or indirectly at least 25% of the voting shares of SEARS CANADA, provided that during such three year period, SEARS CANADA shall not have the option to add to this agreement any further SEARS merchandising trade marks or to require SEARS to disclose to or assist SEARS CANADA in developing any new merchandising methods or administrative procedures.
  
- b) If prior to the completion of the three (3) year period provided for in Subparagraph 17(a) it is reasonably

determined by SEARS CANADA that a longer transition period is necessary or desirable in order to permit SEARS CANADA to phase in a new trade name or new trade marks, operational links and procedures or to phase out the trade name of any particular trade mark or marks or any particular operational link or links, without undue inconvenience or interruption or financial hardship, SEARS shall extend the license granted hereunder in respect of the trade name or relevant trade mark or marks and/or continue to provide the relevant operational link or links for a further extended transition period not to exceed four years on and subject to the terms of this agreement. If any such extended period is reasonably found to be necessary or desirable by SEARS CANADA, SEARS CANADA shall reimburse SEARS for all reasonable costs and expenses which may be incurred by SEARS in continuing to provide such operational links, together with a royalty with respect to any licensed trade mark or marks the licence for which is so extended at a royalty rate to be agreed which shall be equal to the lesser of a fair market rate based on the value of such mark or the lowest rate which will provide a reasonable incentive to induce SEARS CANADA to phase out the use of such mark during such extended period.



- c) SEARS CANADA shall be deemed to be in default under this agreement and all rights granted herein shall automatically terminate without notice to SEARS CANADA, upon SEARS CANADA acknowledging its insolvency, or making a general assignment for the benefit of creditors, or if a petition of bankruptcy is filed or consented to by SEARS CANADA or if SEARS CANADA is adjudicated bankrupt, or if a receiver, trustee or other custodian of SEARS CANADA's assets or property, or any substantial part thereof, is appointed pursuant to any applicable law, provided that, SEARS CANADA shall not be in default for a period of 60 days from any such filing, adjudication or appointment if it is contesting such filing, adjudication or appointment or such longer period thereafter in respect of which a stay in the relevant proceedings is in effect.

The Corporate Name of SEARS CANADA

18. SEARS hereby confirms that it has consented to the use by SEARS CANADA of SEARS as part of its corporate name Sears Canada Inc. Notwithstanding sub-paragraph 17(a) but subject as hereinafter provided, the right of SEARS CANADA to use SEARS as part of its corporate name shall exist only so long as:

- a) SEARS holds directly or indirectly at least 25% of the voting shares of SEARS CANADA, and
- b) SEARS CANADA is not in default as referred to in paragraph 17(c) hereof.

If this licence agreement is terminated for any reason, or if SEARS CANADA is no longer related to SEARS in accordance with sub-paragraph 18(a) above, SEARS CANADA will immediately cease using the corporate name Sears Canada Inc. except to the extent such use is required by law and will initiate all steps necessary to change its corporate name to one not including SEARS or any of the other licensed trade marks or any confusingly similar term, such steps to include the use of its best efforts to cause its directors and shareholders to authorize such change. In the event that SEARS shall have entered into an agreement for the sale of its shares in SEARS CANADA so that SEARS CANADA will no longer be related to SEARS in accordance with sub-paragraph 18(a) above, SEARS CANADA will, at the request of SEARS, seek the necessary authorization of its directors and shareholders prior to such sale taking place conditional on such sale being completed. If SEARS CANADA has not changed its corporate name within 6 months of the termination of its right to use "Sears" as part of its corporate name, this agreement shall terminate.

Nothing in this section of this agreement affects the rights of SEARS CANADA to use the word "Sears" as provided herein as it applies to merchandising, including the right to display "Sears" on the front of a department store or other premises or on its catalogue.

19. SEARS hereby confirms that it has consented to the use of the name SEARS as part of the corporate name of Sears Acceptance Company Inc. and Sears Properties Inc. and consents to its continued use provided that i) each such corporation, at the request of SEARS, becomes a registered user of the trade mark SEARS and/or a trade mark consisting of the corporate name of such corporation; ii) such use shall cease and SEARS CANADA shall cause such corporation to immediately change its corporate name to one not including SEARS or any confusingly similar term in the event that such corporation ceases to be wholly owned by SEARS CANADA or in the event that SEARS CANADA is obliged to change its corporate name pursuant to paragraph 18. SEARS CANADA shall not permit the use of SEARS as part of the corporate name of any other subsidiary or related company without the prior written consent of SEARS.

#### Post-Term Obligations

20. Upon the termination or expiration of this agreement, or

upon expiry of the extended transition period provided for in paragraph 17, if applicable, SEARS CANADA shall cease to be a licensee of SEARS and SEARS CANADA shall immediately cease to use, directly or indirectly, in advertising or in any other manner whatever, the licenced trade marks and the trade name "Sears" and SEARS CANADA shall forthwith remove from its place of business, and change any and all signs, fixtures, furnishings, equipment, advertising material, invoices, supplies, forms or other products which display the licenced trade marks.

#### Independent Contractor

21. This agreement does not create a fiduciary relationship between the parties. SEARS CANADA shall be an independent contractor and so hold itself out to the public and nothing in this agreement is intended to make any party an agent, legal representative, joint venturer, partner, employee or servant of the other for any purpose.

#### Written Approvals and Waivers

22. Neither SEARS nor SEARS CANADA shall be deemed to have waived or impaired any right, power or option reserved by this

agreement by virtue of any failure by the other party to demand strict compliance with this agreement; or by virtue of any waiver, forbearance, delay, failure or omission by SEARS or SEARS CANADA to exercise any right, power, or option, whether of the same, similar or different nature, against the other party; absent notice to the contrary in writing. Any and all notices required to be given hereunder shall be in writing sent by registered mail, telex, courier or facsimile transmission

to SEARS:

Sears Roebuck and Co.,  
Sears Tower,  
Chicago Ill. 60684  
Attention: General Counsel.

and to SEARS CANADA:

Sears Canada Inc.,  
222 Jarvis Street,  
Toronto, Ontario.  
Attention: Secretary.

Default

23. SEARS CANADA shall not be deemed to be in breach of any of its obligations hereunder, except as provided in sub-paragraph 17(c), unless SEARS shall have given written notice to SEARS CANADA specifying in reasonable detail the particulars of such breach and SEARS CANADA shall have failed to remedy such breach within a period of 30 days or such longer period as shall be reasonably required to remedy such breach.

Co-operation

24. SEARS and SEARS CANADA shall each co-operate with the other in order to maintain, preserve and enhance the good will associated with the trade marks licenced hereunder and to achieve the maximum benefit from the use of the said trade marks in their respective businesses. Each party shall take such action as shall reasonably be requested by the other in order to give effect to the intent of this paragraph. The parties shall meet together on a regular basis, and at least once in each year, to discuss, review and co-ordinate their activities pursuant to this agreement and to establish efficient procedures in respect of registrations, agreements and other steps to be taken by the parties hereunder.

Restatement

25. This agreement is intended to restate and amend the provisions of the said agreement dated 18th September, 1952 between the parties, as heretofore amended, and thus shall supercede the provisions of the said agreement.

Severability

26.

- a) Except as expressly provided to the contrary herein, each section, part, term and provision of this agreement, or any portion thereof, shall be considered severable and if for any reason any such portion of this agreement is invalid, illegal or incapable of being enforced by reason of any rule of law or public policy, all other portions of this agreement shall, nevertheless, remain in full force and effect and no portion of this agreement shall be deemed dependent upon any other portion unless so expressed herein.
  
- b) All headings and captions in this agreement are intended solely for the convenience of the parties, and none shall

be deemed to affect the meaning or construction of any provision hereof.

c) Time is of the essence of this agreement.


Applicable Law

27. This agreement shall be interpreted and construed under the laws of the Province of Ontario.

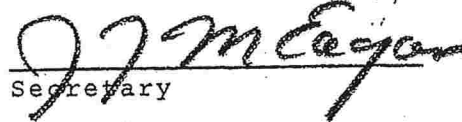
IN WITNESS WHEREOF, the parties hereto have duly executed, sealed and delivered this agreement in duplicate on the day and year first above written.

SEARS CANADA INC

by:



Chairman of the Board



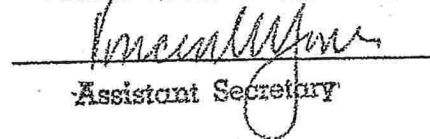
Secretary

SEARS, ROEBUCK AND CO.

by:



Chairman and CEO  
SEARS MERCHANDISE GROUP



Assistant Secretary



SCHEDULE "A"

REGISTERED TRADE MARKS

<u>Name</u>	<u>Reg. No.</u>
ADAGIOS	115,196
AH-H BRA	249,225
ALLSTATE	27,886
ALLSTATE GUARDSMAN 44	142,857
AUTOCRUISE	300,518
BATHSHOP COLORMATES & DESIGN	235,816
BENCHMADE	236,367
BONNET	280,203
BRADLEY	29,122
CARRIAGE COURT	302,634
CARRIAGE COURT...ITALIA & DESIGN	318,957
CLING-ALON	134,776
COLDSPOT	27,902
COLDSPOT	313,292
COLORMATES	253,558
COUNTRY INN	45,377
COUNTRY INN & DESIGN	229,253
CRAFTSMAN	27,901
CRAFTSMAN CUSTOM	252,054
CRUISAIRE	43,031
DASHMATE	218,897
DYNABOND	228,823
EAGER 1	188,712
EASY LIVING PAINT	220,376
ELASTO-FIT	147,595
ENDURABLES	248,623
FABRIC MASTER	182,308
FASHIONLITE	180,939
FIRM LINE	119,556
FORECAST	124,224
FREEDOMFLOR	228,737
FREE SPIRIT	198,026
FREEZER-MATE	106,315

GAMEFISHER	181,680
GOLD COAT	242,892
GREEN KARPET	102,948
GUARDSMAN	109,125
HAPPI-TIME	27,897
HARMONY HOUSE	106,021
HILLARY	254,014
HOMART	27,884
HOMESTEAD	220,909
HONEYSUCKLE	27,895
HOSTESS SHOP & DESIGN	230,728
INCREDICELL	306,220
JEANS FOR MEN & DESIGN	279,477
JEEPERS	142,999
JEUNE BOUTIQUE & DESIGN	187,350
JEUNE BOUTIQUE & DESIGN	187,335
JUNIOR BAZAAR	154,290
JUNIOR BAZAAR	203,294
KENMORE	27,933
KENMORE CONCEPT SUPRA	285,993
KENMORE DELUXE	147,486
KENMORE SILHOUETTE	146,109
KENMORE TRUE SIMMER	169,885
KENMORE UP AND OVER	285,906
KERRYBROOKE	30,953
KINGS CROWN	159,993
LADY KENMORE	266,135
LADY KENMORE CLASSIC	146,111
LADY KENMORE SILHOUETTE	146,110
LA RESISTANTE	273,377
LAURENTIAN	101,174
LEAPIN' JEEPERS	142,997
LETRICITY	210,264
LI'L JEEPERS	142,998
LOCATION DE VOITURES SEARS	282,491
LXI SERIES	259,394
MASTERPIECE	154,632
MATCHMATES	254,732
MEDLEY	250,840
MIRA-COLD	122,168
MUZZLER	297,723

NOTHING ELSE	223,700
PANTS THAT FIT & DESIGN	195,752
PERMA-SMOOTH	122,460
PILLOW SOFT	218,930
PLACE DE LA MODE & DESIGN	255,124
POWERMATE	251,850
POWER-MATE	274,802
PUTTER SUIT	210,032
ROADHANDLER	215,679
ROADMATES	262,256
ROADMATES & DESIGN	262,791
ROCK BOTTOMS	265,952
ROUGH HOUSERS	250,307
ROUGHSHOD	117,218
SANI-GARD	136,039
SEAROFIL	300,525
SEARS	39,780
SEARS	304,115
SEARS (new application)	476,403
SEARS DIVISION	304,882
SEARS ELECTRONICS DESIGN	237,390
SEARS ELECTRONICS & DESIGN	275,769
SEARS-O-PEDIC	120,321
SEARS OPTICAL CENTRE & DESIGN	235,392
SEARS SET & DESIGN	230,055
SEARS SHAPE SHOP & DESIGN	239,637
SENSOR TOUCH	227,608
SEROFOAM	119,412
SERVISTWIST	104,528
SILVERGUARD	246,310
SILVERTONE	31,615
SIMPLE & FACILE	252,029
SIMPSONS-SEARS DESIGN	45,597
SIMPSONS-SEARS TEX	193,078
SLUMBER SHOP & DESIGN	231,092
SOFT HEAT	183,377
SPACEMASTER	44,617
SPECTRUM	190,703
SPECTRUM PLUS	279,327
SPECTRUM PLUS MILEAGE	274,780
SPORTSMAN	246,786
STEADYRIDER RT	268,026
STELLARIS	199,104
STEP LIVELY DESIGN	227,625
SUIT-YOUR-SIZE	193,962
SUPER ROTOSWIRL AGITATOR	183,652

SUPRAMATIC	44,753
SUPERPLUSH II & DESIGN	254,189
SURVIVOR	272,937
SUTEKI	297,389
TED WILLIAMS DESIGN	133,754
THE BIG TOY CHEST	241,764
THE DOESN'T PANTY	260,663
THE FASHION PLACE	232,713)
THE FASHION PLACE & DESIGN	245,070)
THE GATHERING	210,657
THE LABEL OF CONFIDENCE	229,082
THE LITTLE SEARS & DESIGN	228,009
THE SHOE PLACE	213,593
THE WINNER	202,104
TOUGHMATES	253,658
TOUGHSKINS	195,729
TOUGHSKINS	223,698
TOUGH JEANS TERRITORY	216,974
TRADITION	27,862
TREE & TENT DESIGN	258,020
TRIM TO FIT & DESIGN	215,600
TRIPLE DUTY	267,417
TRIPLE EMPLOI	267,418
TWIN SKINS	248,650
UNE PLUIE	250,858
UN SERVICE DE CONFIANCE	292,305
UN SERVICE DE CONFIANCE & DESIGN	289,016
VIDEO ARCADE	218,787
VISI BAKE	45,195
WEARMASTER	27,861
WEARMASTER DESIGN (WM)	254,269
WEATHER BEATER	202,425
WEATHERBEATER	274,233
WEATHER-MATIC	126,588
WE INSTALL CONFIDENCE	288,260
WE INSTALL CONFIDENCE & DESIGN	290,434
WHITE SHIELD	115,723
WINTERSKINS	236,392
WORKMASTER	27,955
WRINKLE GUARD	182,309
X-CARGO & DESIGN	288,251

TRADE MARKS APPLIED FOR BUT NOT YET REGISTERED

<u>Trade Mark</u>	<u>Serial No.</u>
GAMEFISHER (ext/wares) GOOLAGONG	531,988
INTELLIGENTE (Fr. Smart)	not yet issued
OAKTON	568,640
OPEN HOME	517,211
OPEN HOME & Design	523,056
SCI	557,182
SEARS & Design	485,961
SEARS & Design	535,349
SEARS BEST	369,899
SEARS CATALOGUE CLEARANCE	409,132
SEARS CATALOGUE DE LIQUIDATION (Fr.)	409,133
SEARS COLLECTION	544,776
SEARS-RENT-A-CAR (BUDGET)	373,353
SEARS REST	553,223
SEARS REPOS (Fr.)	557,218
SMART	563,737



AMENDING AGREEMENT

THIS AMENDING AGREEMENT is made as of the 15th day of October, 2014 (this "Amending Agreement")

AMONG:

SEARS, ROEBUCK AND CO., a New York corporation having its principal place of business in Hoffman Estates, Illinois

(hereinafter referred to as "Sears")

-and-

SEARS CANADA INC., a Canadian corporation having its principal place of business in Toronto, Ontario

(hereinafter referred to as "Sears Canada")

WHEREAS Sears and Sears Canada entered into an agreement dated as of January 26, 1987, as amended, pursuant to which Sears granted to Sears Canada the exclusive right to use certain trademarks in Canada in relation to goods and services in the field of merchandising (the "License Agreement");

AND WHEREAS Sears Holdings Corporation has announced an offering to its existing shareholders of rights to acquire 40,000,000 common shares of Sears Canada owned by Sears Holdings Corporation (the "Offering");

AND WHEREAS as a result of the Offering, it is expected that Sears will cease to own, directly or indirectly, at least 25% of the voting shares of Sears Canada;

AND WHEREAS Sears and Sears Canada wish to make certain amendments to the License Agreement effective as of the date hereof;

NOW THEREFORE for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, the parties hereto hereby agree as follows:

1.1 **Amendments.** The parties hereby agree to amend the terms of the License Agreement as follows:

1.1.1 The sixth recital of the License Agreement is hereby deleted in its entirety and replaced with:

"WHEREAS the said agreement as amended will continue to be binding upon SEARS and SEARS CANADA until the expiration of a period of five (5) years after SEARS shall have ceased to hold, directly or indirectly, at least 10% of the voting shares of SEARS CANADA;"

1.1.2 Section 17(a) of the License Agreement is hereby deleted in its entirety and replaced with:

"This agreement subject to paragraph 18 shall continue until the expiration of a period of five years after SEARS has ceased to hold directly or indirectly at least 10% of the voting shares of SEARS CANADA, provided that during such five year period, SEARS CANADA shall not have the option to add to this agreement any further SEARS merchandising trade marks or to

require SEARS to disclose to or assist SEARS CANADA in developing any new merchandising methods or administrative procedures.”

1.1.3 Section 17(b) of the License Agreement is hereby amended to delete the opening phrase of “If prior to the completion of the three (3) year period” and replace it with “If prior to the completion of the five (5) year period”.

1.1.4 Section 18(a) of the License Agreement is hereby deleted in its entirety and replaced with:

“SEARS holds directly or indirectly at least 10% of the voting shares of SEARS CANADA, and”

1.1.5 The following is added as Section 28 of the License Agreement:

**“Rights of SEARS CANADA**

28. SEARS CANADA and Sears agree that the License Agreement is an integral part of a series of longstanding agreements and relationships between SEARS CANADA and Sears relating to the use of intellectual property shared by those entities, including the power of attorney, dated as of February 4, 1994, relating to this agreement and the Information Technology Agreement, dated as of January 1, 1995, as amended. It is further agreed that SEARS CANADA’S rights under the License Agreement shall survive the filing by Sears of a petition for relief under the United States Bankruptcy Code, and that SEARS CANADA shall be treated as, and is fully entitled to, the rights of a licensee of intellectual property under Section 365(n) of the Bankruptcy Code.”

- 1.2 **Effectiveness.** This Amending Agreement shall be effective as of the date hereof.
- 1.3 **Ratification.** Except as amended hereby, the License Agreement and all of its terms, conditions and obligations are ratified and confirmed.
- 1.4 **Enurement.** This Amending Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assignees.
- 1.5 **Headings.** Headings of sections hereof are inserted for convenience of reference only and shall not affect the construction and interpretation of this Amending Agreement.
- 1.6 **Governing Law.** This Amending Agreement shall be interpreted in accordance with the laws of the Province of Ontario (and the laws of Canada applicable therein) and the courts of said Province shall have jurisdiction to hear all matters arising hereunder.
- 1.7 **Counterparts.** This Amending Agreement may be executed by the parties in separate counterparts which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument. A faxed or electronic copy shall be considered an original.

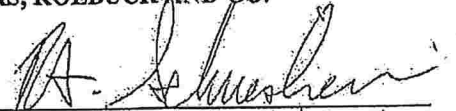
*[Signature page follows]*



IN WITNESS WHEREOF the parties hereto have duly executed this Amending Agreement as of the date first written above.

SEARS, ROEBUCK AND CO.

By:

  
Name: Robert A. Schiesheim  
Title: EVP & CFO

SEARS CANADA INC.

By: \_\_\_\_\_

Name:  
Title:

IN WITNESS WHEREOF the parties hereto have duly executed this Amending Agreement as of the date first written above.

SEARS, ROEBUCK AND CO.

By: \_\_\_\_\_  
Name:  
Title:

SEARS CANADA INC.

By: EJ Bird  
Name: E.J. Bird  
Title: CFO



AMENDING AGREEMENT

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AMONG:

SEARS, ROEBUCK AND CO., a New York corporation having its principal place of business in Hoffman Estates, Illinois

(hereinafter referred to as "Sears")

-and-

SEARS CANADA INC., a Canadian corporation having its principal place of business in Toronto, Ontario

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AND WHEREAS Sears Holdings Corporation has announced an offering to its existing shareholders of rights to acquire 40,000,000 common shares of Sears Canada owned by Sears Holdings Corporation (the "Offering");

AND WHEREAS as a result of the Offering, it is expected that Sears will cease to own, directly or indirectly, at least 25% of the voting shares of Sears Canada;

AND WHEREAS Sears and Sears Canada wish to make certain amendments to the License Agreement effective as of the date hereof;

NOW THEREFORE for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, the parties hereto hereby agree as follows:

1.1 **Amendments.** The parties hereby agree to amend the terms of the License Agreement as follows:

1.1.1 The sixth recital of the License Agreement is hereby deleted in its entirety and replaced with:

"WHEREAS the said agreement as amended will continue to be binding upon SEARS and SEARS CANADA until the expiration of a period of five (5) years after SEARS shall have ceased to hold, directly or indirectly, at least 10% of the voting shares of SEARS CANADA;"

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require SEARS to disclose to or assist SEARS CANADA in developing any new merchandising methods or administrative procedures.”

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1.1.4 Section 18(a) of the License Agreement is hereby deleted in its entirety and replaced with:

“SEARS holds directly or indirectly at least 10% of the voting shares of SEARS CANADA, and”

1.1.5 The following is added as Section 28 of the License Agreement:

**“Rights of SEARS CANADA**

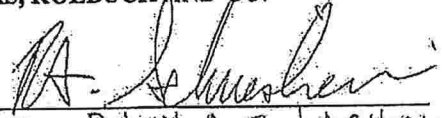
28. SEARS CANADA and Sears agree that the License Agreement is an integral part of a series of longstanding agreements and relationships between SEARS CANADA and Sears relating to the use of intellectual property shared by those entities, including the power of attorney, dated as of February 4, 1994, relating to this agreement and the Information Technology Agreement, dated as of January 1, 1995, as amended. It is further agreed that SEARS CANADA’S rights under the License Agreement shall survive the filing by Sears of a petition for relief under the United States Bankruptcy Code, and that SEARS CANADA shall be treated as, and is fully entitled to, the rights of a licensee of intellectual property under Section 365(n) of the Bankruptcy Code.”

- 1.2 **Effectiveness.** This Amending Agreement shall be effective as of the date hereof.
- 1.3 **Ratification.** Except as amended hereby, the License Agreement and all of its terms, conditions and obligations are ratified and confirmed.
- 1.4 **Enurement.** This Amending Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assignees.
- 1.5 **Headings.** Headings of sections hereof are inserted for convenience of reference only and shall not affect the construction and interpretation of this Amending Agreement.
- 1.6 **Governing Law.** This Amending Agreement shall be interpreted in accordance with the laws of the Province of Ontario (and the laws of Canada applicable therein) and the courts of said Province shall have jurisdiction to hear all matters arising hereunder.
- 1.7 **Counterparts.** This Amending Agreement may be executed by the parties in separate counterparts which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument. A faxed or electronic copy shall be considered an original.

*[Signature page follows]*

IN WITNESS WHEREOF the parties hereto have duly executed this Amending Agreement as of the date first written above.

SEARS, ROEBUCK AND CO.

By:   
Name: Robert A. Schwesheim  
Title: EVP & CFO

SEARS CANADA INC.

By: \_\_\_\_\_  
Name:  
Title:

IN WITNESS WHEREOF the parties hereto have duly executed this Amending Agreement as of the date first written above.


SEARS, ROEBUCK AND CO.

By: \_\_\_\_\_  
Name:  
Title:

SEARS CANADA INC.

By: EJ Bird  
Name: E.J. Bird  
Title: CFO

This is Exhibit "F" referred to in  
the Affidavit of Marie Pacheco  
sworn before me this 3<sup>rd</sup> day  
of October, 2017.



---

A Commissioner for Taking Affidavits



## INFORMATION TECHNOLOGY AGREEMENT

This Information Technology Agreement (the "Agreement") is entered into effective as of January 1, 1995 (the "Effective Date"), by and between SEARS CANADA INC., a Canadian corporation having its principal place of business in Toronto, Ontario ("Sears Canada") and SEARS, ROEBUCK AND CO., a New York corporation having its principal place of business in Hoffman Estates, Illinois ("Sears") (Sears Canada and Sears are referred to herein collectively as the "Parties" and each individually as a "Party"), with regard to the following facts:

WHEREAS, the Parties are members of a group of Sears Affiliates (as defined below) involved in retailing;

WHEREAS, both Parties design, develop, license, upgrade, enhance and maintain certain software and other information technology and obtain and maintain certain equipment, all for use in their internal information systems and data processing applications in support of their respective business operations;

WHEREAS, the Parties entered into an Agreement dated January 26, 1987, pursuant to which a separate written agreement was contemplated between the Parties with respect to the ownership and use of software and other information technology shared or exchanged between them;

WHEREAS, the Parties desire to allocate such ownership and usage rights as to software and information technology, support services and equipment shared or exchanged between them or jointly developed by them in accordance with the terms of this Agreement;

WHEREAS, the Parties intend that their development and sharing of software as provided in this Agreement shall comply with the applicable intercompany pricing rules set out in the tax legislation, regulations and other guidelines in each of Canada and the United States.

NOW THEREFORE, in consideration of the mutual promises made herein and other good and valuable consideration, the Parties agree as follows:

1 Defined Terms - For purposes of this Agreement, the following terms shall have the meanings ascribed to them below:

"1987 Agreement" means the agreement made the 26th day of January, 1987 between Sears Canada and Sears.

"Buy-in Payment" means any payment made under section 2.3 to acquire an ownership interest in Pre-existing Software. A Buy-in Payment may take the form of a lump sum payment, a running royalty or other consideration as agreed to by the Parties.

"Consulting Services" means any services provided by one Party at the request of the other Party involving the provision of information technology solutions including, without limitation, design and/or development of Software or Software systems and any Software updates, upgrades, modifications and/or enhancements or hardware or any other consultation but does not include Support Services.

"Costs" means both direct costs and indirect costs (including but not limited to labor and materials, overhead allocations, general and administrative allowances, goods and services taxes, sales taxes, excise taxes, duties and similar taxes and levies, to the extent they are not recoverable), as determined by the Party incurring such costs on a consistent basis in accordance with generally accepted accounting principles in effect in the country where such Party has its principal place of business. In the event of any conflict between such principles and those in effect in the country where the other Party has its principal place of business, the Parties shall agree on a mutually acceptable method for determining Costs.

"Developer" means (a) with respect to Separately Developed Software, the Party by or on behalf of whom such Software was designed, developed and/or acquired or (b) with respect to Jointly Developed Software, both Parties.

"Development Costs" means all Costs incurred by Sears and/or Sears Canada in designing, developing and/or acquiring particular Software.

"Information Technology Equipment" means hardware and other equipment (a) used to operate one or both Parties' information systems and/or data processing applications or systems and (b) either (i) purchased or leased by one Party and transferred, licensed or subleased to the other Party for such other Party's use ("Transferred Equipment") or (ii) used and shared by both Parties contemporaneously ("Shared Equipment"). Information Technology Equipment shall include without limitation the Transferred Equipment and Shared Equipment (if any) identified in Exhibit A appended to this Agreement, as such Exhibit may be amended from time to time by written agreement of the Parties.

"Jointly Developed Software" means Software (including any modification, enhancement, or upgrade to any Software) that is the product of a joint design and/or development effort or that is jointly acquired by the Parties and to which each of the Parties has made a significant contribution, whether technical, financial or otherwise, or Pre-Existing Software for which a Buy-in Payment has been made, but excluding Software developed in connection with or as a result of any Consulting Services and other Software that the parties agree shall not be treated as Jointly Developed Software. For purposes of this Agreement, a Party will be deemed to have made a significant contribution if such significant contribution was made by (a) an officer, director, or employee of such Party; (b) an officer, director, or employee of any Sears Affiliate (other than the other Party) who such Party assigns to participate in such development task; and/or (c) an independent contractor (other than the other Party) engaged by such Party under terms whereby the contractor's work is defined as "work made for hire" within the meaning of the U.S. *Copyright Act* or "work made in the course of

employment" within the meaning of the *Copyright Act* (Canada) or otherwise where copyright is transferred to such Party.

"Liabilities" has the meaning attributed to that term in Section 9.1.

"License Fees" has the meaning attributed to that term in Section 2.5.

"Licensed Software" means Separately Developed Software, other than Mandated Software, which the Developer agrees to license certain rights therein to the other Party (the Licensee). In addition, "Licensed Software" shall include the Software (if any) listed in Exhibit B to this Agreement, as such Exhibit may be amended from time to time by written agreement of the Parties.

"Licensee" means the Party to whom any Licensed Software or Third Party Licensed Software is made available by the other Party.

"Licensor" means (a) with respect to any Licensed Software, the Developer thereof and (b) with respect to any Third Party Licensed Software, the Party who obtained the license for such Software from the third party licensor thereof.

"Mandated Software" has the meaning attributed to that term in Section 2.1.

"Pre-existing Software" means Separately Developed Software, other than Mandated Software, which the Parties have agreed to treat as Jointly Developed Software notwithstanding the absence of any prior agreement by the non-Developer to share in its acquisition costs, if any, and the Development Costs necessary to prepare the Software for use by the Developer.

"Reasonably anticipated benefits" shall be determined by the Parties on a case by case basis taking into account, among other things, the income to be earned or the costs or expenses to be saved through the use of the Software over a reasonable period by each user of the Software and the factors described in Appendix 1.

"Sears Affiliate" means any person, corporation, partnership or other legal entity of which more than fifty per cent (50%) of the votes that may be cast to elect directors are held, directly or indirectly, other than by way of security only, by or for the benefit of Sears and the votes attached to those securities are sufficient if exercised to elect a majority of the directors of such entity.

"Separately Developed Software" means any Software that is designed, developed and/or acquired in whole or in part by or on behalf of a Party, either individually or jointly with a third party, without significant technical, financial or other contribution from the other Party, excluding Pre-Existing Software for which a Buy-in Payment has been made.

"Software" means any application or systems software, including any program or module and/or any update, upgrade, modification and/or enhancement to any such application, program, or module, whether provided to a Party in source code and/or executable code form, and which is used by one or both Parties for its internal information systems and/or data processing applications or systems.

"Sublicense Fees" has the meaning attributed to that term in Section 2.6.

"Support Services" means any services provided by one Party to the other Party to maintain or correct errors in any Software and/or Information Technology Equipment used by such other Party, and any charges associated therewith, including the services and charges (if any) identified in Exhibit C appended to this Agreement, as such Exhibit may be amended from time to time by written agreement of the Parties.

"Third Party Licensed Software" means Software for which a Party obtains a license from a third party licensor (which is not a Sears Affiliate or otherwise affiliated with a Party) pursuant to which such Party (the Licensor) is authorized to sublicense rights or otherwise extend rights in such Software to the other Party (the Licensee).

2 Software Exchange: Cost Allocations and License Fees - From time to time as mutually agreed between the Parties, the Parties may share or jointly develop Software, to which the following provisions shall apply:

2.1 Mandated Software - Any Separately Developed Software or Third Party Licensed Software that is a substitute for, or replacement of, Software used by Sears Canada and that Sears requires or has required Sears Canada to use for the integration of operations between the Parties ("Mandated Software") may be used by Sears Canada under a royalty-free license. The terms and conditions of any such license shall be specified in a written addendum hereto executed by both Parties and no license rights in any Mandated Software are granted in this Agreement. Nothing herein shall be construed to require Sears Canada to bear any Development Costs incurred by Sears in connection with the acquisition, design and/or development of any Mandated Software, excluding all modifications, upgrades, enhancements, support systems or programs and consulting services related thereto requested by Sears Canada. To be considered Mandated Software, the substitute must be substantially similar in functionality to and replace the Software that was being used by Sears Canada.

2.2 Jointly Developed Software - The Development Costs of any Jointly Developed Software shall be allocated to each Party on a case-by-case basis based upon the relative reasonably anticipated benefits to be received by each Party from such Jointly Developed Software. Jointly Developed Software designed, developed and/or acquired by the Parties after the Effective Date and the agreed upon cost allocations (if any) for such Jointly Developed Software are set out in Exhibit D, as such Exhibit may be amended from time to time by written agreement of the Parties.

- 2.3 Pre-existing Software - The non-Developer of Pre-existing Software shall pay to the Developer of that Software a Buy-in Payment. The Buy-in Payment shall be determined by the Parties on a case-by-case basis and shall reflect the arm's length value of the Pre-existing Software at the time it becomes Jointly Developed Software or, with respect to partially completed Pre-Existing Software for which it is not possible to determine arm's length value, the Buy-in Payment shall reflect the portion of the Development Costs incurred to date and the relative reasonably anticipated benefits to be realized by each Party from the use of such Software. Development Costs incurred after the Buy-in Payment is made shall be shared by the Parties based upon the relative reasonably anticipated benefits to be realized by each of the Parties from use of the completed Software.
- 2.4 Software Addenda - The Parties shall prepare for each Jointly Developed Software, Licensed Software, Mandated Software and Third Party Licensed Software a mutually agreed addendum to this Agreement which shall describe to the extent applicable:
- (a) the date on which the arrangement commences and, when applicable, the date on which any Pre-existing Software becomes Jointly Developed Software;
  - (b) the Software to be developed or licensed;
  - (c) the responsibilities of each Party with respect to the design and/or development of the Software;
  - (d) the method to be used to calculate each Party's share of the Costs of designing and/or developing the Software;
  - (e) the method for adjusting each Party's share of Costs for the ongoing development of the Software to account for changes in economic circumstances, business operations and practices of a Party;
  - (f) the License Fees or Sublicense Fees;
  - (g) the financial or other contribution, if any, made by each Party with respect to Software and the Buy-in Payment or other fee, if any, for Pre-Existing Software;
  - (h) the method to be used to calculate any buy-out payment on termination of the cost-sharing arrangement with respect to the Software (which method shall take into account the fair market value of the Software at the time of such buy-out payment);
  - (i) any representations and warranties to be given by a Party;
  - (j) such other matters as may be required to be dealt with under the intercompany pricing rules of Canadian and U.S. tax legislation, as amended from time to time; and
  - (k) such other matters as the Parties may consider advisable to address.

The Parties acknowledge that this Agreement sets out the general principles relating to the development and sharing of Software and other information technology matters, and that the addenda shall set out the specific terms for arrangements under

this Agreement. In the event of any inconsistency between the provisions of an addendum and the provisions of this Agreement, the provisions of the addendum shall govern.

- 2.5 Licensed Software - The Development Costs of any Licensed Software shall be borne solely by the Licensor thereof. Any license fees, royalties and other amounts to be charged to the Licensee for license rights in such Licensed Software (collectively, "License Fees") shall be determined by mutual agreement of the Parties and shall be in an amount comparable to license fees charged by third party licensors in the country of the receiving Party for licenses of Software having similar functionality and licensed on similar terms and conditions. The scope and terms of any license for any Licensed Software granted by one Party to the other Party, including the applicable License Fees, will be specified in a written addendum hereto executed by both Parties, and no license rights in any Licensed Software are granted in this Agreement. The Developer shall notify the Licensee of all material terms under which such Software will be licensed within ninety (90) days after a copy of such Software (including any beta test or other preliminary version of such Software) is first provided to the Licensee. Unless otherwise expressly agreed in a written agreement signed by both Parties, any and all rights of the Licensee in and to such Licensed Software, including but not limited to the rights to use, distribute, display and/or reproduce such Licensed Software, are hereby made expressly conditional on the Licensee's timely payment of all applicable License Fees and taxes.
- 2.6 Third Party Licensed Software - If the Licensor elects to sublicense or otherwise extend to the other Party any rights in any Third Party Licensed Software, any amount including any license fees, royalties, consent fees or upgrade fees (collectively, "Sublicense Fees") to be charged to the Licensee by the Licensor for such rights shall be agreed upon by the Parties based upon (i) the value of the Third Party Licensed Software as at the effective date on which the Licensor elects to sublicense or otherwise extend to the other Party rights therein; (ii) the amount, if any, payable by the Licensor to its third party licensor for such sublicense or additional license; (iii) any fees previously paid or to be paid by the Licensor to its third party licensor to the extent they can reasonably be considered to relate to the period of sublicense; and (iv) any Development Costs incurred by one or both of the Parties with respect to the development of the Third Party Licensed Software. The scope and terms of any such sublicense, including the payment of any Sublicense Fees, will be specified in a written addendum hereto executed on behalf of both Parties. Any and all rights of the Licensee in and to such Third Party Licensed Software, including but not limited to the rights to use, distribute, display and/or reproduce such Third Party Licensed Software, are hereby made expressly conditional on the Licensee's timely payment of all Sublicense Fees and the Licensee's compliance with all terms of the written addendum hereto as well as the license agreement between the Licensor and its third party licensor, to the extent such terms would be applicable to a sublicensee. Each Party shall indemnify, defend and

hold harmless the other Party from and against any Liabilities incurred in connection with or as a result of the breach by the first Party of any written addendum hereto and any licence agreement for any Third Party Licensed Software (assuming the Licensor was the licensee under that agreement, and to the extent obligations under that agreement would be applicable to a sublicensee).

- 3 Support Services - From time to time during the term of this Agreement, as mutually agreed between the Parties, a Party may, upon request from the other Party, provide Support Services to the other Party, in exchange for which such other Party shall pay a fee equal to the Costs incurred by the providing Party in connection with providing such Support Services. Neither Party makes any representation, warranty or condition to the other Party with respect to the nature or quality of any Support Services that a Party may provide whether express or implied.
- 4 Consulting Services - From time to time during the term of this Agreement, as mutually agreed between the Parties, a Party may, upon request from the other Party, provide Consulting Services to the other Party. The Parties shall develop a mutually agreed written statement of work with respect to the Consulting Services requested and shall agree upon the fee to be paid for such Consulting Services. Unless otherwise agreed, all work product created in connection with or as a result of any Consulting Services shall be deemed to be Separately Developed Software and the Party receiving the Consulting Services shall be deemed to be the Developer of such Separately Developed Software and the Party providing the Consulting Services shall (at the Developer's sole expense) execute such documents as the Developer may determine to be necessary to give all intellectual property rights in such Separately Developed Software to the Developer.
- 5 Equipment - From time to time as mutually agreed between the Parties, a Party may provide Information Technology Equipment to the other Party in accordance with the following:
  - (a) Transferred Equipment - A Party which receives Transferred Equipment shall pay the other Party a price or license fee mutually agreed upon by the Parties, which shall reflect the fair market value of such Transferred Equipment at the time of transfer or license (as the case may be), plus applicable taxes.
  - (b) Shared Equipment - The Costs of obtaining, operating and maintaining Shared Equipment (including any third party maintenance fees and depreciation costs) shall be allocated to each Party with respect to each system utilizing Shared Equipment based upon the relative reasonably anticipated benefit that each Party may derive from the use of such Shared Equipment.
- 6 Invoicing and Payment - All charges, fees and royalties under Sections 2, 3, 4 and 5 shall be made and invoiced within thirty (30) days after the end of each quarter of the fiscal year in which the transactions occurred. All charges, fees and royalties to a Party shall be paid

within sixty (60) days after such charges, fees, royalties are invoiced by the providing Party in the currency of the Party to whom such charges are payable.

On any payments made by one Party to the other, appropriate withholding as required under the tax laws of Canada or the United States will be made, subject to the provisions of the Canada-United States Income Tax Convention, 1980. The withholding Party will provide the withheld Party with timely documentation of the withholding so the withheld Party can claim a credit or deduction for that tax. Each Party or its affiliates will self-assess with respect to applicable taxes due.

7 Ownership

- 7.1 Jointly Developed Software - Unless otherwise expressly agreed, all Jointly Developed Software and all patents, copyrights and other intellectual property rights expressed or embodied therein (other than trade-marks, service marks and/or trade names of a Party) (the "Intellectual Property Rights") are and shall be owned as follows: Sears Canada shall be the sole and exclusive owner of the Intellectual Property Rights in Canada and Sears shall be the sole and exclusive owner of the Intellectual Property Rights in the United States and the Parties shall be the joint owners of the Intellectual Property Rights in the rest of the world in the same proportions that the Development Costs for such Jointly Developed Software were allocated. Each Party may practice, use, copy, translate, modify and/or license the Jointly Developed Software and related Intellectual Property Rights in its respective country without consent of the other Party and without accounting to the other Party for any royalties or profits derived thereby, provided that each Party has borne its share of the Development Costs allocated in accordance with Section 2 of this Agreement. Notwithstanding the foregoing, such royalties or profits may be taken into account in determining each Party's share of the Development Costs.

The Parties shall agree on a marketing plan for exploitation of Jointly Developed Software prior to entering into any license arrangements for such Software outside of Canada and the United States. Either Party may license Jointly Developed Software outside of Canada and the United States to any third party if it obtains the prior consent of the other Party, which consent shall not be unreasonably withheld or delayed, provided that affiliates of the Parties may use such Jointly Developed Software. Any royalties or other revenues derived from a license or sale of Jointly Developed Software in a jurisdiction other than Canada and the United States shall be shared by the Parties proportionately, on the same basis that the Development Costs for such Jointly Developed Software were allocated.

- 7.2 Licensed Software and Separately Developed Software - All Licensed Software and other Separately Developed Software and all patent, copyrights and other intellectual property rights expressed or embodied in any such Software (other than trade-marks,



service marks and/or trade names of a Party) are and shall be owned solely by the Developer of such Software.

7.3 Third Party Licensed Software - All Third Party Licensed Software and all patents, copyrights and other intellectual property rights expressed or embodied in any such Software (other than trade-marks, service marks and/or trade names of a Party) are and shall be owned solely by the third party licensor thereof, unless otherwise expressly provided in the license agreement entered into with such third party licensor.

7.4 Survival - The provisions of this Section 7 shall survive any termination of this Agreement.

8 Termination - This Agreement shall become effective on the Effective Date and shall remain in full force and effect until terminated by either Party on ninety (90) days written notice to the other Party; provided, however, that notwithstanding the provisions of the 1987 Agreement, this Agreement shall automatically terminate if Sears Canada ceases to be a Sears Affiliate. Upon any termination of this Agreement:

- (a) provided that payment has been made in accordance with section 2, the rights of a Party in Jointly Developed Software shall be retained by that Party in accordance with Section 7.1 and used, copied, translated, modified and/or licensed in accordance with Section 7.1;
- (b) unless otherwise agreed, all copies of all Licensed Software and Third Party Licensed Software shall be returned to the Licensor thereof and all copies of any Mandated Software shall be returned to Sears, in each case within twelve (12) months after such termination date, and the Licensee thereof shall thereafter have no further rights in or to any of such Software;
- (c) each Party shall cease all use of, and shall have no further right to use, any Shared Equipment owned by the other Party following the expiration of twelve (12) months after the date of termination; and
- (d) each Party shall provide to the other Party such assistance and co-operation during the twelve (12) month transition period after the date of termination as the other Party may reasonably require.

9 Indemnification for Infringement Claims

9.1 Jointly Developed Software - Unless otherwise agreed in writing signed by both Parties, each Party shall bear its own costs, damages, liabilities and obligations (collectively "Liabilities") incurred in connection with any claim alleging infringement of any patent, copyright, moral right, mask work protection right, trade-

mark, service mark, or other intellectual property right of any third party (each, an "Infringement Claim") arising out of the design, development, production, distribution, licensing, reproduction, or use of any Jointly Developed Software, and neither Party shall seek any indemnification or contribution from the other Party on any such Infringement Claim. The Parties agree to provide reasonable assistance to each other in defending such claim.

- 9.2 Licensed Software - Notwithstanding Section 9.1, the Developer of any Licensed Software shall indemnify, defend and hold harmless the Licensee from and against any Liabilities incurred in connection with an Infringement Claim arising out of the design, development, production, distribution, licensing, reproduction, or use of such Licensed Software, provided that (i) the Licensee gives the Developer prompt written notice of such Infringement Claim and the Developer is given sole control over the defense and/or settlement of such claim and (ii) the Licensee's use, display, distribution and/or reproduction of such Licensed Software is and has been in compliance with the license terms mutually agreed to by the Licensee and Licensor.
- 9.3 Mandated Software - Notwithstanding Section 9.1, Sears shall indemnify, defend and hold harmless Sears Canada from and against any Liabilities incurred in connection with an Infringement Claim arising out of the design, development, production, distribution, licensing, reproduction, or use of any Mandated Software, provided that (i) Sears Canada gives Sears prompt written notice of such Infringement Claim and Sears is given sole control over the defense and/or settlement of such claim and (ii) Sears Canada's use, display, distribution and/or reproduction of such Mandated Software is and has been in compliance with the license terms mutually agreed to by Sears and Sears Canada.
- 9.4 Third Party Licensed Software - If a Licensee incurs any Liabilities in connection with an Infringement Claim arising out of such Licensee's use, display, distribution and/or reproduction of any Third Party Licensed Software, the Licensor thereof shall use reasonable efforts to seek indemnification and/or contribution for such Liabilities from the third party licensor of such Software, provided that (i) the Licensee gives the Licensor prompt written notice of such Infringement Claim and (ii) the Licensee's use, display, distribution and/or reproduction of such Third Party Licensed Software is and has been in compliance with the license terms mutually agreed to by the Licensee and Licensor and with the terms of the license agreement between the Licensor and its third party licensor.
- 9.5 Shared Equipment - If a Party incurs any Liabilities in connection with an Infringement Claim arising out of such Party's use of any Shared Equipment originally acquired by the other Party (the "Purchaser"), the Purchaser thereof shall use reasonable efforts to seek indemnification and/or contribution for such Liabilities from the manufacturer and/or supplier of such Shared Equipment, provided that (i) the affected Party gives the Purchaser prompt written notice of such Infringement

Claim and the Purchaser is given sole control over the defense and/or settlement of such claim and (ii) the affected Party's use of such Shared Equipment is and has been in compliance with the terms of this Agreement.

- 9.6 Unauthorized Modifications- In the event that (i) any modifications or other alterations to the Licensed Software, Third Party Licensed Software and/or Shared Equipment are made by or on behalf of the Licensee neither at the direction of nor by the Licensor; or (ii) the Licensee uses the Licensed Software, Third Party Licensed Software and/or Shared Equipment in a manner other than as expressly permitted pursuant to this Agreement and under any license or sublicense, the obligations of the Licensor as set out in sections 9.2, 9.3, 9.4 and 9.5 with respect to indemnification shall be of no force or effect.
- 9.7 Survival - Except as expressly provided in this Agreement, the provisions of this Section 9 shall survive any termination of this Agreement.

10 Miscellaneous

- 10.1 Assignment - Except as expressly permitted in this Agreement, neither Party may assign or sublicense any of its rights or delegate any of its obligations under this Agreement or any addendum without the prior written consent of the other Party (such consent not to be unreasonably withheld), except that either Party may assign or sublicense any rights or delegate any obligations hereunder to any Sears Affiliate.
- 10.2 Entire Agreement - This Agreement, together with the relevant provisions of the 1987 Agreement, constitutes the entire agreement between the Parties regarding the subject matter hereof and supersedes all prior agreements, negotiations and understandings between the Parties with respect thereto. To the extent that there are any inconsistencies between the provisions of this Agreement and the 1987 Agreement, the provisions of this Agreement shall govern.
- 10.3 Governing Law - This Agreement shall be governed by the laws of the Province of Ontario and the laws of Canada applicable therein, without regard to its conflict of laws principles.
- 10.4 Severability - If any provision of this Agreement is determined to be illegal, invalid, or unenforceable by any court of competent jurisdiction, such provision shall be deemed deleted from this Agreement, and the remaining provisions of this Agreement shall remain in full force and effect; provided, however, that if the deleted provision materially affects the benefits accruing to either Party under this Agreement, the Parties shall negotiate promptly in good faith a suitable replacement provision.

- 10.5 Further Assurances - The Parties agree to do or cause to be done all acts or things reasonably necessary to implement and carry into effect this Agreement to its full extent.
- 10.6 Survival - All obligations of the Parties which expressly or by their nature survive termination, expiration or transfer of this Agreement shall continue in full force and effect subsequent to and notwithstanding such termination, expiration or transfer and until they are satisfied or by their nature expire.
- 10.7 Limitation of Liability - The total liability of either Party to the other Party arising in any manner under or in connection with this Agreement, including but not limited to liability arising out of breach of contract (even if based upon a claim of fundamental breach or a breach of a fundamental term), negligence, strict liability, product liability, warranty or infringement of any third party right, shall not exceed the aggregate amount paid to the breaching Party by the other Party for costs, development, equipment, royalties, Buy-in Payments, license fees or services under this Agreement during the twelve month period immediately prior to the date on which the claim arose. Neither Party shall have any liability of any kind for any indirect, incidental, special or consequential damages, however caused, even if it has been advised of the possibility of such damages.

Neither Party makes any representation, warranty or condition to the other Party with respect to the nature or quality of any Information Technology Equipment that it may provide to the other Party hereunder, except to the extent that any warranties from the manufacturer or other supplier of such Information Technology Equipment are permitted to be passed through to the other Party. Each Party hereby disclaims any and all express and implied warranties and conditions with respect to all Information Technology Equipment and Software provided to the other Party hereunder, including but not limited to the implied warranties and conditions of merchantability, fitness for particular purpose and against claims by way of infringement or the like.

IN WITNESS WHEREOF, the Parties have caused their authorize representatives to execute this Agreement as of the Effective Date.

SEARS CANADA INC.

By: *[Signature]*  
Title: SVP, CIO

SEARS, ROEBUCK AND CO.

By: *[Signature]*  
Title: SVP, CIO

APPROVED: *[Signature]*  
5/13/98

## APPENDIX 1

### Methodology

For the purposes of this Agreement, the methodology to reflect the relative reasonably anticipated benefits shall be based upon the factors set out for cost sharing arrangements in paragraphs 29-32 of Canadian Interpretation Bulletin IT-303 "Know-how and similar payments to non-residents", dated April 8, 1976 (as amended September 19, 1985) and the rules governing cost sharing arrangements made pursuant to section 482 of the United States Internal Revenue Code of 1986. In the event that either country changes its criteria for qualification as a cost sharing arrangement in the future, the Parties agree to make necessary amendments at that time to the arrangements contemplated by this Agreement to meet such new criteria.



**SECOND AMENDING AGREEMENT**

**THIS SECOND AMENDING AGREEMENT**, dated as of March 6, 2017 and effective as of the Effective Date (as defined below), is entered into by and between Sears, Roebuck and Co., a New York corporation ("Sears") and Sears Canada Inc., a Canadian corporation ("Sears Canada"). Reference is made to that certain license agreement, dated as of January 26, 1987 (as amended, the "Agreement"), by and between Sears and Sears Canada, as further amended by the amending agreement, dated as of October 15, 2014 (the "Amending Agreement" and, together with the Agreement, the "License Agreement"), by and between Sears and Sears Canada. Sears and Sears Canada are hereinafter referred to individually as a "party" and collectively as the "parties."

**WHEREAS**, pursuant to the License Agreement, Sears granted to Sears Canada an exclusive right to use the licensed trade marks (as defined in the License Agreement) in Canada in relation to goods and services in the field of merchandising;

**WHEREAS**, Sears Canada and Stanley Black & Decker Inc. ("SBD") will execute a trademark license agreement in respect of the Craftsman Marks (as defined below) (the "Trademark License Agreement"); and

**WHEREAS**, Sears and Sears Canada wish to amend the License Agreement as set forth herein.

**NOW, THEREFORE**, in consideration of the foregoing and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and intending to be legally bound, the parties hereby agree as follows:

- 1.1 Amendments.** The parties hereby agree to amend the terms of the License Agreement as follows:
  - 1.1.1** Schedule A to the License Agreement is hereby amended by deleting therefrom each and every mark that includes the word "Craftsman" and any similar names or marks or any derivatives thereof, and the marks listed on Exhibit A hereto (collectively, the "Craftsman Marks").
  - 1.1.2** The definition of "licenced trade marks," which refers to "those further merchandising trade marks adopted or developed by SEARS, which are added to this agreement at the option of SEARS CANADA, and any further merchandising trade marks confusingly similar to the foregoing trade marks that SEARS and SEARS CANADA may together from time to time add to this agreement," is hereby amended to exclude any past, current or future Craftsman Marks, whether adopted or developed from time to time by Sears or its affiliates or otherwise.
- 1.2 Effectiveness.** This Second Amending Agreement shall be subject to Sears Canada and SBD executing the Trademark License Agreement and effective as of the Closing Date (as defined in the Purchase and Sale Agreement, dated as of January 5, 2017, by and



between Sears Holdings Corporation and Stanley Black & Decker, Inc.) (the "Effective Date"). Sears Canada shall notify Sears of the execution of the Trademark License Agreement. Sears shall notify Sears Canada of the Effective Date on or promptly following such date.

### **1.3 Good Faith Negotiation.**

**1.3.1** In consideration of Sears Canada entering into the Second Amending Agreement, Sears agrees that until the conclusion of the Negotiation Period (as defined below), Sears will, and will cause its subsidiaries to, (i) negotiate in good faith with respect to further mutually agreeable amendments to the License Agreement and/or a sale of any trademarks and trade names including the word "Sears" for use in Canada (provided, that neither party shall have any obligation to enter into any additional agreement) and (ii) not take any action that would cause Sears to hold directly or indirectly less than 10% of the voting shares of Sears Canada.

**1.3.2** For purposes of this Second Amending Agreement, the term "Negotiation Period" shall mean the period commencing on the Effective Date and ending on the earliest of (i) 60 days from the date of the Effective Date (provided that such 60-day period shall be automatically extended an additional 30 days if, in the reasonable discretion of the parties, good faith negotiations are ongoing at the expiration of the 60-day period), (ii) the date Sears Canada informs Sears that it no longer wishes to continue negotiations, (iii) the date Sears Canada enters into a definitive agreement with respect to, or publicly announces that it plans to enter into, a transaction involving all or a controlling portion of Sears Canada's equity securities or all or substantially all of the Sears Canada's assets (whether by merger, consolidation, business combination, tender or exchange offer, recapitalization, restructuring, sale, equity issuance or otherwise) and (iv) the date a third party commences a tender offer or exchange offer for all or a controlling portion of Sears Canada's equity securities.

### **1.4 Miscellaneous.**

**1.4.1 Headings.** The section headings contained in this Second Amending Agreement are inserted for convenience of reference only and shall not be deemed to affect the meaning or interpretation of this Second Amending Agreement.


**1.4.2 Entire Agreement.** The License Agreement and this Second Amending Agreement constitutes the entire agreement between the parties with respect to the Craftsman Marks and supersede and replace any prior discussions, correspondence, negotiations, term sheets, understandings, arrangements or agreements between the parties with respect thereto, and each such prior agreement is hereby terminated with respect to the Craftsman Marks. In the event of any conflict between this Second Amending Agreement and any other agreement between the parties with respect to the Craftsman Marks, this Second Amending Agreement shall control.

- 1.4.3 Ratification.** Except as amended by this Second Amending Agreement, the License Agreement remains unmodified and in full force and effect in accordance with its terms.
- 1.4.4 Inurement.** This Second Amending Agreement shall inure to the benefit of, and be binding upon, the parties hereto and their respective successors and permitted assignees.
- 1.4.5 Governing Law.** This Second Amending Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario (and the laws of Canada applicable therein). The courts of the Province of Ontario shall have jurisdiction to hear all matters arising hereunder.
- 1.4.6 Counterparts.** This Second Amending Agreement may be executed in two or more counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument, and shall become effective when one or more counterparts have been signed by each party and delivered (by telecopy, electronic delivery or otherwise) to the other party. Signatures to this Second Amending Agreement transmitted by facsimile transmission, by electronic mail in “portable document format” (“.pdf”) form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, will have the same effect as physical delivery of the paper document bearing the original signature.

*[Remainder of page left intentionally blank]*

**IN WITNESS WHEREOF**, the parties have duly executed this Second Amending Agreement as of the date first written above.

SEARS, ROEBUCK AND CO.

By:   
Name: Robert A. Riecker  
Title: Controller and Head of Capital  
Market Activities

SEARS CANADA INC.

By: \_\_\_\_\_  
Name:  
Title:

IN WITNESS WHEREOF, the parties have duly executed this Second Amending Agreement as of the date first written above.

SEARS, ROEBUCK AND CO.

By: \_\_\_\_\_  
Name:  
Title:

SEARS CANADA INC.


By:  \_\_\_\_\_  
Name: Billy Wong  
Title: CFO

Exhibit A

Brushwhacker

Drillzall

Evolv

Nextec

Speed Start

Steerable Trac

Turn Tight Technology

Weedwhacker



AMENDING AGREEMENT

**THIS AMENDING AGREEMENT** is made as of the 7th day of October, 2014 (this "Amending Agreement")

**A M O N G:**

**SEARS CANADA INC.**, a Canadian corporation having its principal place of business in Toronto, Ontario

(hereinafter referred to as "Sears Canada")

-and-

**SEARS, ROEBUCK AND CO.**, a New York corporation having its principal place of business in Hoffman Estates, Illinois

(hereinafter referred to as "Sears")

**WHEREAS** Sears Canada and Sears entered into an information technology agreement dated as of January 1, 1995, as amended (the "**Information Technology Agreement**");

**AND WHEREAS** Sears Holdings Corporation has announced an offering to its existing shareholders of rights to acquire 40,000,000 common shares of Sears Canada owned by Sears Holdings Corporation (the "**Offering**");

**AND WHEREAS** as a result of the Offering, it is expected that Sears Canada will cease to be a "Sears Affiliate" within the meaning of the Information Technology Agreement;

**AND WHEREAS** Sears Canada and Sears wish to make certain amendments to the Information Technology Agreement effective as of the date hereof;

**NOW THEREFORE** for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, the parties hereto hereby agree as follows:

**1.1 Amendments.** The parties hereby agree to amend the terms of the Information Technology Agreement as follows:

1.1.1 Section 2.5 of the Information Technology Agreement is hereby amended to delete "The scope and terms of any license for any Licensed Software granted by one Party to the other Party, including the applicable License Fees, will be specified in a written addendum hereto executed by both Parties, and no license rights in any Licensed Software are granted in this Agreement.", and replace it with "The scope and terms of any license for any Licensed Software granted by one Party to the other Party, including the applicable License Fees, will be specified in a written addendum hereto executed by both Parties, and no license rights in any Licensed Software are granted in this Agreement except in the event of termination of the Agreement, where rights will be granted pursuant to Section 8(b)."

1.1.2 Section 8(b) of the Information Technology Agreement is hereby deleted in its entirety and replaced with:

“unless otherwise agreed, to the extent any Licensed Software, Third Party Licensed Software and Mandated Software were used by Sears Canada immediately prior to such termination, the license to such Licensed Software, Third Party Licensed Software and Mandated Software will continue for a three (3) year period after such termination date; provided that if a third party consent is required for such continued use in respect of any piece of third party Software, Sears will use commercially reasonable efforts to seek such consent, at Sears Canada sole cost and expense; provided, further, that if such consent is not obtained, then the term of continued use in respect of such third party Software will be reduced or eliminated accordingly. In addition, all copies of all Licensed Software and Third Party Licensed Software shall be returned to the Licensor thereof and all copies of any Mandated Software shall be returned to Sears, in each case within three (3) years after such termination date, and the Licensee thereof shall thereafter have no further rights or to any such Software.”

1.1.3 Section 8(c) of the Information Technology Agreement is hereby amended to delete “twelve (12) months after the date of termination” and replace it with “three (3) years after the date of termination”.

1.1.4 Section 8(d) of the Information Technology Agreement is hereby amended to delete “the twelve (12) month transition period” and replace it with “the three (3) year transition period” and to insert “, and such other Party shall be solely responsible for the cost of any such assistance and co-operation” at the end of such section.

1.1.5 The following is added as Section 10.2.1 of the Information Technology Agreement:

“10.2.1 Rights of Sears Canada - Notwithstanding Section 10.2, Sears Canada and Sears agree that the Information Technology Agreement is an integral part of a series of longstanding agreements and relationships between Sears Canada and Sears relating to the use of intellectual property shared by those entities, including the merchandising agreement (also referred to by the parties as the trademark license agreement), dated as of January 26, 1987, as amended, and the related power of attorney, dated as of February 4, 1994. It is further agreed that Sears Canada’s rights under the Information Technology Agreement shall survive the filing by Sears of a petition for relief under the United States Bankruptcy Code, and that Sears Canada shall be treated as, and is fully entitled to, the rights of a licensee of intellectual property under Section 365(n) of the Bankruptcy Code.”

1.2 **Addenda.** Sears Canada and Sears shall, as promptly as practicable after the date hereof and in any event no later than 60 days from the date hereof, mutually cooperate in good faith to identify all addenda and statements of work executed prior to the date hereof pursuant to the IT License Agreement and, no later than 60 days from the date hereof, amend and restate all addenda and statements of work that have been so identified in a single document that reflects the Jointly Developed Software, Licensed Software,



Mandated Software, Third Party Licensed Software, Support Services, Consulting Services, Transferred Equipment and Shared Equipment as of the date hereof.

- 1.3 **Effectiveness.** This Amending Agreement shall be effective as of the date hereof.
- 1.4 **Ratification.** Except as amended hereby, the Information Technology Agreement and all of its terms, conditions and obligations are ratified and confirmed.
- 1.5 **Enurement.** This Amending Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assignees.
- 1.6 **Headings.** Headings of sections hereof are inserted for convenience of reference only and shall not affect the construction and interpretation of this Amending Agreement.
- 1.7 **Governing Law.** This Amending Agreement shall be interpreted in accordance with the laws of the Province of Ontario (and the laws of Canada applicable therein) and the courts of said Province shall have jurisdiction to hear all matters arising hereunder.
- 1.8 **Counterparts.** This Amending Agreement may be executed by the parties in separate counterparts which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument. A faxed or electronic copy shall be considered an original.

*[Signature page follows]*

IN WITNESS WHEREOF the parties hereto have duly executed this Amending Agreement as of the date first written above.

**SEARS CANADA INC.**

By:           EJ Bird            
Name: E.J. Bird  
Title: Chief Financial Officer

**SEARS, ROEBUCK AND CO.**


By: \_\_\_\_\_  
Name:  
Title:

IN WITNESS WHEREOF the parties hereto have duly executed this Amending Agreement as of the date first written above.

**SEARS CANADA INC.**

By: \_\_\_\_\_  
Name:  
Title:

**SEARS, ROEBUCK AND CO.**

By:   
Name: Robert A. Schresheim  
Title: EVP/CFO

**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.**

**ONTARIO**

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

*In the Matter of the Companies' Creditors Arrangement Act*

**AFFIDAVIT OF MARIE PACHECO**

(Sworn October 3, 2017)

*(Re SCI Motion, returnable October 4, 2017)*

**BORDEN LADNER GERVAIS LLP**

Barristers and Solicitors

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22 Adelaide Street West

Toronto, Ontario M5H 4E3

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Lawyers for the Sears Holdings Corporation and  
Sears Roebuck and Co.