

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

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF SEARS CANADA INC., 9370-2751 QUEBEC INC.,
191020 CANADA INC., THE CUT INC., SEARS CONTACT
SERVICES INC., INITIUM LOGISTICS SERVICES INC., INITIUM
COMMERCE LABS INC., INITIUM TRADING AND SOURCING
CORP., SEARS FLOOR COVERING CENTRES INC., 173470 CANADA
INC., 2497089 ONTARIO INC., 6988741 CANADA INC., 10011711
CANADA INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA LTD.,
4201531 CANADA INC., 168886 CANADA INC., and 3339611 CANADA INC.

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

MOTION RECORD

(Motion by Retirees re: Deemed Trust and distribution to the pension plan)

July 20, 2018

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Sears Canada

TABLE OF CONTENTS

| TAB | DESCRIPTION | PAGE NOS. |
|-----|--|-----------|
| 1. | Notice of Motion dated July 20, 2018 | 1-12 |
| 2. | Affidavit of William B. Turner (to be sworn) | 13-27 |
| | <p>Exhibit "A": Media Articles describing involvement of Lampert and ESL and Sears Canada:</p> <p>"Sears Canada Announces Change in Ownership of Controlling Shareholder", Form 51-102F3 Material Change Report Sears Canada Inc. dated March 24, 2005;</p> <p>Constance L. Hays, "Kmart Takeover of Sears Is Set; \$11 Billion Deal, <i>The New York Times</i> (18 November 2004); and,</p> <p>Yuval Rosenberg, "The man behind the deal", <i>CNN Money</i> (17 November 2004)</p> | 28-38 |
| | Exhibit "B": Sears Holdings' Pre-Recorded Conference Call Transcripts, dated February 27, 2014 | 39-59 |
| | Exhibit "C": Sears Holdings' Pre-Recorded Conference Call Transcripts, dated May 22, 2014 | 60-75 |
| | Exhibit "D": Sears Holdings' Pre-Recorded Conference Call Transcripts, dated August 21, 2014 | 76-94 |
| | Exhibit "E": "SCC.CA Dividend History & Description – Sears Canada" Dividend Channel online:< http://www.dividendchannel.com/symbol/scc.ca/ | 95-98 |
| | Exhibit "F": Sears Canada Director/Dividend Timeline | 99-100 |
| | Exhibit "G": Sears Canada Inc. Registered Retirement Plan | 101-335 |
| | Exhibit "H": SRPP Actuarial Valuation Report as at December 31, 2015 | 336-404 |
| | Exhibit "I": Proof of Claim of Pension Representatives for Wind-up Deficit | 405-411 |

| TAB | DESCRIPTION | PAGE NOS. |
|-----|---|-----------|
| | Exhibit "J" : The Steps Taken by SCRG to Protect Sears Retirees Pension and Benefits | 412-415 |
| | Exhibit "K" : SISP Approval Order dated July 13, 2017 | 416-430 |
| | Exhibit "L" : First Liquidation Process Order dated July 18, 2017 | 431-462 |
| | Exhibit "M" : Superintendent's Notice of Intended Decision to Wind-up the SRRP | 463-468 |
| | Exhibit "N" : Superintendent's Order to Wind-up the SRRP, dated March 29, 2018 | 469-474 |
| | Exhibit "O" : Letter from Koskie Minsky to the Service List, dated October 26, 2017 | 475-477 |
| | Exhibit "P" : Letter from Morneau Shepell to Non-Ontario Members of SRRP, dated June 1, 2018 | 478-481 |
| | Exhibit "Q" : Letter from Morneau Shepell to Ontario Members of SRRP, dated June 1, 2018 | 482-486 |
| | Exhibit "R" : 2015 Annual Information Return for SRRP | 487-492 |
| | Exhibit "S" : Sears Supplemental Retirement Plan | 493-538 |
| 3. | Affidavit of William Turner, sworn on August 11, 2017 | 539-549 |
| | Exhibit "A" : Timeline setting out steps taken by SCRG to protect the pension and benefits of Sears retirees | 550-553 |
| | Exhibit "B" : Letter from SCRG to Sears Canada Inc. dated January 30, 2013 | 554-559 |
| | Exhibit "C" : Letter from Koskie Minsky to Torys LLP dated January 20, 2014 | 560-583 |
| | Exhibit "D" : Letter from Koskie Minsky to Torys LLP dated November 6, 2014 | 584-586 |
| | Exhibit "E" : Letter from Torys LLP to Koskie Minsky dated November 21, 2014 | 587-586 |

| TAB | DESCRIPTION | PAGE NOS. |
|-----|--|-----------|
| | Exhibit "F" : Letter from Koskie Minsky to FSCO dated February 27, 2015 | 589-593 |
| | Exhibit "G" : Letter from Koskie Minsky to FSCO dated May 4, 2015 | 594-597 |
| | Exhibit "H" : Letter from Koskie Minsky to FSCO dated June 5, 2015 | 598-605 |
| | Exhibit "I" : Letter from FSCO to Torys LLP dated June 11, 2015 | 606-607 |
| | Exhibit "J" : Letter from FSCO to Koskie Minsky dated June 11, 2015 | 608-609 |
| | Exhibit "K" : Letter from Torys LLP to FSCO dated June 22, 2015 | 610-613 |
| | Exhibit "L" : Letter from FSCO to Koskie Minsky dated June 23, 2015 | 614-615 |
| | Exhibit "M" : Letter from Koskie Minsky to FSCO dated July 7, 2015 | 616-630 |
| | Exhibit "N" : Letter from FSCO to Koskie Minsky dated July 30, 2015 | 631-632 |
| | Exhibit "O" : Letter from Koskie Minsky to FSCO dated November 3, 2015 | 633-634 |
| | Exhibit "P" : Letter from FSCO to Torys LLP dated November 6, 2015 | 635-640 |
| | Exhibit "Q" : Letter from Torys LLP to FSCO dated December 9, 2015 | 641-644 |
| | Exhibit "R" : Letter from FSCO to Torys LLP dated January 15, 2016 | 645-647 |
| | Exhibit "S" : Letter from Torys LLP to FSCO dated February 16, 2016 | 648-653 |
| | Exhibit "T" : Letter from Koskie Minsky to FSCO dated March 1, 2016 | 654-660 |

| TAB | DESCRIPTION | PAGE NOS. |
|------------|--|------------------|
| | Exhibit "U": Email from Koskie Minsky to FSCO dated March 10, 2016 | 661-662 |
| | Exhibit "V": Letter from Koskie Minsky to FSCO dated September 12, 2016 | 663-665 |
| | Exhibit "W": Letter from Koskie Minsky to FSCO dated October 20, 2016 | 667-668 |
| | Exhibit "X": Letter from Koskie Minsky to Osler LLP dated May 19, 2017 | 669-671 |
| | Exhibit "Y": Letter from Osler LLP to Koskie Minsky dated June 5, 2017 | 672-674 |

TAB 1

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

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

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

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

**NOTICE OF MOTION
(Motion by Retirees re: Deemed Trust and distribution to the pension plan)**

Representative Counsel to the court-appointed Representatives of employees and retirees with respect to pensions and post-retirement benefits of the Applicants (collectively, the "**Retirees**") will make a motion to a Judge presiding over the Commercial List on a date to be established by the Commercial List Office at 330 University Avenue, Toronto, Ontario.

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

THE MOTION IS FOR:

1. A **DECLARATION** that the amount of the pension plan wind up deficit (the "**Wind Up Deficit**") as determined in the actuarial wind up report, that is owing by Sears

Canada to the *Sears Canada Inc. Registered Retirement Plan*, Registration No. 0360065; the "**Sears Canada Plan**") is deemed to be held in trust (the "**Deemed Trust**") for the beneficiaries of the Sears Canada Plan among the assets in the estate of Sears Canada, in accordance with section 57(4) of the *Pension Benefits Act* R.S.O. c. P. 8 ("**PBA**");

2. **A DECLARATION** that the amount subject to the Deemed Trust has priority ahead of the claims of all other creditors of Sears Canada, and that such amount is not distributable to such other creditors (other than the CCAA court-ordered charges described at paragraphs 47 and 50 of the Amended and Restated Initial Order, dated June 22, 2017 (the "**CCAA Charges**"));

3. **AN ORDER** directing the Monitor (or any subsequent trustee in bankruptcy or receiver) to pay the amount of Wind Up Deficit from the assets in the estate of Sears Canada into the fund of the Sears Canada Plan, after reasonable reserves in respect of the CCAA Charges;

4. **A DECLARATION** that the plan administrator that was appointed by the Ontario Superintendent of Financial Services for the Sears Canada Plan, Morneau Shepell, ("**Morneau**" or the "**Administrator**"), has a lien and charge under section 57(5) of the PBA for the same amount of the Wind Up Deficit (the "**Administrator's Lien and Charge**");

5. **A DECLARATION** that the above declarations and orders survive any future bankruptcy or receivership of the Applicants; and,

6. Such further and other relief as counsel may request and this Honourable Court permit.

THE GROUNDS FOR THE MOTION ARE:

Background of the Sears Canada CCAA proceeding

1. In 2005, Sears Canada came under the control of Edward Lampert ("**Lampert**") and his firm, ESL Investments ("**ESL**"), a hedge fund, both based in the United States. Lampert is the Chief Executive Officer of ESL. The path to control of Sears Canada commenced on or about January 22, 2002 when Kmart Corporation filed for Chapter 11 bankruptcy protection. It emerged from Chapter 11 as a subsidiary of the newly formed Kmart Holding Corporation ("**Kmart**"), which began trading on the NASDAQ stock exchange on June 10, 2003. Through debt purchases made by ESL during the Kmart Chapter 11 proceedings, ESL became the majority shareholder of Kmart, controlling 53% of the stock of the new company.

2. On March 24, 2005, Kmart acquired Sears, Roebuck and Co. to form Sears Holdings Corporation ("**Sears Holdings**"). Sears Roebuck and Co. owned approximately 54.3% of the shares of Sears Canada. Thus, through the acquisition by Kmart of Sears Roebuck, Sears Holdings became the majority shareholder of Sears Canada. Since Lampert and ESL were the controlling shareholders of the newly-formed Sears Holdings, this corporate structure also gave them effective control of Sears Canada.

3. Under the control of Lampert and ESL, the Sears Canada retail business deteriorated and had continual financial losses. Nevertheless, substantial cash was being extracted from Sears Canada. On May 22, 2014, for example, it was announced at a Sears Holdings shareholders meeting call that Sears Holdings was exploring ways to "monetize" Sears Canada.

4. Commencing in 2005, Sears Canada declared five dividends, ultimately totalling approximately \$3 billion in dividend payouts from Sears Canada:

| | Dividend Amount |
|--------------------|------------------------|
| December 9, 2005 | \$1,557,000,000 |
| May 11, 2006 | \$13,000,000 |
| September 20, 2010 | \$753,000,000 |
| December 20, 2012 | \$102,000,000 |
| December 9, 2013 | \$509,000,000 |
| Total | \$2,934,000,000 |

The Sears Canada Plan

5. There are approximately 18,000 retirees of Sears Canada, who through their employment service earned an entitlement to be paid pension benefits for their lifetimes. Their pension benefits are payable to them from the Sears Canada Plan. The pension benefits are the employees' deferred wages for work they performed for the company. As former retail employees, the majority of pension benefits paid to Retirees are modest. The Retirees rely on their pension benefits for their daily livelihood.

6. Since 2007, the Sears Canada Plan had a funding deficit, meaning that there are insufficient assets in the fund of the plan to pay the monthly pension benefits in the full

amounts earned by each employee. Over the subsequent years, the pension funding deficit worsened, ultimately reaching the current wind up deficit of approximately \$267 million:

| | Pension Plan Wind-up Deficit |
|-------------------|---|
| December 31, 2007 | \$36 million |
| December 31, 2010 | \$307 million |
| December 31, 2013 | \$133 million |
| December 31, 2015 | \$267 million |

7. In 1996, a group of Sears Canada retirees organized the Sears Retail Group. This group merged with another retiree group ASCR to form the Store Catalog and Retail Group ("**SCRG**")¹. The mandate of SCRG and its predecessor organizations is to protect Sears Canada's retirees' pensions and benefits. There are approximately 6,000 Sears Canada retirees who are members of SCRG.

8. Starting in 2013, SCRG wrote to Sears Canada on several occasions expressing concerns over the underfunding in the Sears Canada Plan and the company's financial losses and deteriorating retail business.

9. Under current Ontario law, pension plan members have no ability to wind up their own pension plan.

10. On November 6, 2014 and February 27, 2015, given the continued deterioration of Sears Canada's business and the wind up deficit, SCRG wrote to Sears Canada and the

¹ Sears Canada refused to allow the retirees to use the "Sears" name in their organization

Superintendent, respectively, requesting that the Sears Canada Plan be wound up. The wind up would require Sears Canada to pay the wind up deficit (amortized over five years). The wind up at that time would also have ensured that the Deemed Trust over the pension deficit was crystallized before any insolvency filing.

11. Despite the requests by SCRG, neither FSCO nor the company wound up the pension plan.

12. On June 22, 2017, Sears Canada applied to court and obtained protection from its creditors under the CCAA. On the same date, the court also appointed the firm of Koskie Minsky LLP as Representative Counsel to the Retirees.

13. Certain senior management attempted to continue the operation of certain Sears Canada stores on a going concern basis but was unsuccessful. Sears Canada proceeded to liquidate its store inventory and sell its real estate and other assets.

14. The main issue in the CCAA proceedings is the sale of remaining real estate assets and the distribution of the sale proceeds to creditors. The Monitor has reported in its Eighteenth Report dated May 7, 2018 that the cash balance of the estate as of April 28, 2018 is \$126.2 million, excluding any potential realizations from the sale of the remaining real estate assets.

The pension plan beneficiaries are the priority creditors

15. At the time of obtaining CCAA protection, Sears Canada had loans from two secured lenders: Wells Fargo and GACP Finance Co., LLC. After obtaining CCAA
[KM-3365103v8](#)

protection, these secured loans were "rolled up" into a DIP Loan with a CCAA court-ordered priority. Sears Canada has paid off these two loans. There are no secured creditors. The Retirees are the priority creditors of the estate of Sears Canada.

16. As of the date of Sears Canada obtaining CCAA protection, neither the company nor Superintendent had wound up the Sears Canada Plan.

17. On August 11, 2017, Representative Counsel filed a motion before the CCAA Court for an order requiring the company or in the alternative, the Superintendent, to wind up the Sears Canada Plan.

18. On October 26, 2017, Representative Counsel sent a letter to the Monitor, copying the Service List, providing notice that the Retirees intend to rely on and assert the Deemed Trust to recover the amounts owing by Sears Canada to the Sears Canada Plan. For over the past nine months in the CCAA proceeding, all creditors and stakeholders of Sears Canada have been on notice that the Retirees assert the PBA deemed trust in the amount of the Wind Up Deficit as a priority payment to the Sears Canada Plan.

19. On November 10, 2017, the Superintendent issued a Notice of Intended Decision ("**NOID**"), proposing to order that the Sears Canada Plan be wound up as of October 1, 2017. A creditor with a contingent claim for a pending class action objected to the NOID and requested a hearing before the Financial Services Tribunal ("**FST**"). The objection was ultimately withdrawn.

20. On March 29, 2018, the Superintendent issued its wind up order for the Sears Canada Plan effective as of October 1, 2017. Morneau is currently preparing the actuarial wind up report. The Wind-Up Deficit as of the wind up date is expected to be in the range of \$260 million.

Retiree losses in the CCAA proceeding

21. Effective as of October 1, 2017, Sears Canada terminated paying for health, life insurance, and certain other retiree benefits (the "OPEBs").

22. Effective as of August 1, 2018, due to the underfunding in the Sears Canada Plan, Morneau reduced monthly pension benefits by 30%.

23. The total claims of the Retirees are as follows:

| Claim Type | # of Retirees | Amount | Status | Priority |
|-------------------------------------|----------------------|-----------------------------|------------------------------------|---|
| Pension Plan Wind-up Deficit | 17,600 | \$260,200,000 | Accepted | a) deemed trust priority for plan members b) administrator's lien and charge (secured claim) |
| OPEBs | 6,300 | \$421,000,000 | Accepted | Unsecured claim |
| Lifetime Merchandise Discount Claim | 16,400 | \$13,770,000 | Accepted | Unsecured claim |
| Supplemental Pension Benefits | 106 | \$34,585,600 | Under discussions with the Monitor | Unsecured claim |
| Total | | <u>\$729,555,600</u> | | |

The Pension Claims Process

24. Subsequent to the effective wind-up date, on February 22, 2018, the CCAA Court issued a Claims Procedure Order with respect to employees and Retirees' claims with a claims bar date of May 7, 2018 (the "**Claims Procedure Order**").

25. In accordance with the Claims Procedure Order, the Retirees (as well as Morneau) filed a claim for the Wind Up Deficit. The Retirees asserted priorities based on the Deemed Trust.² Morneau also filed a claim for the Wind Up Deficit asserting the Administrator's Lien and Charge in accordance with section 57(5) of the PBA.

26. The exact quantum of the Wind-Up Deficit will not be known until the final deficit calculations are completed by Morneau.

27. The Claims Procedure Order contemplates that the Monitor will provide written notice of any determination it makes, including as to quantum and/or priority, of any pension claim.

28. The Claims Procedure Order does not specify a time within which disallowances must be given regarding pension claims, nor to whom appeals from disallowances are to be taken.

29. To date, the Monitor has not issued a disallowance in respect of the Retirees' claim for the Wind Up Deficit.

² The Retirees also filed claims for the terminated OPEBs, Lifetime Merchandise Discount Claim, and terminated Supplemental Pension Benefits.

Mediation

30. On May 9, 2018, the CCAA Judge directed a Mediation among the Retirees and major creditor and stakeholder groups to try and reach a resolution of the estate. A two-day mediation occurred on June 13 and 14, 2018 with Regional Senior Justice Morawetz assisting as Mediator. The Mediation did not result in a settlement at that time.

The PBA/PPSA Deemed Trust regime creates a priority for pension plan beneficiaries

31. The Retirees are the priority creditors of the estate. Section 57(4) of the PBA states that the amount that an employer owes to a pension plan on its wind up is deemed to be held in trust by the employer for the pension plan beneficiaries. The amount subject to the trust is not the property of the debtor and cannot be distributed to creditors of the debtor. The deemed trust operates as a priority claim and the amount subject to the trust – the Wind Up Deficit – is to be paid to the fund of the Sears Canada Plan ahead of the claims of all other creditors.

32. Section 30(7) of the *Personal Property Security Act*, R.S.O. 1990, c P.10, (the "PPSA") expressly recognizes the PBA deemed trusts and states that they have priority over secured creditors with respect to an "account or inventory and its proceeds" of the debtor.

33. In addition to the deemed trusts, section 57(5) of the PBA grants the pension plan administrator with a Lien and Charge over the same amounts owing by the employer to

the pension plan that are subject to the deemed trust, (i.e., in this case, the Wind Up Deficit).

34. The Administrator's Lien and Charge is operative as a back-up priority in case the Deemed Trusts are not.

35. Rules 2.03, 3.02 and 37 of the *Rules of Civil Procedure*.

36. Sections 57(4), 57(5), and 75, as well as sections 57, 68, 69, and 83 of the PBA.

37. Section 30(7) of the PPSA.

38. Sections 11 and 2(1) of the CCAA (definition of "secured creditor").

39. Such further and other grounds that counsel may advise.

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

- (a) The Affidavit of William Turner, to be sworn;
- (b) The Affidavit of William Turner, sworn on August 11, 2017; and,
- (c) Such further and other material as counsel may advise and this Honourable Court permits.

July 20, 2018

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Representative Counsel to the Retirees of
Sears Canada

TO: SERVICE LIST

TAB 2

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

ONTARIO
SUPERIOR COURT OF JUSTICE - COMMERCIAL LIST

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF SEARS CANADA INC., 9370-2751 QUEBEC INC.,
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4201531 CANADA INC., 168886 CANADA INC., and 3339611 CANADA INC.

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

AFFIDAVIT OF WILLIAM TURNER
(Sworn July 23, 2018)

I, **WILLIAM TURNER**, of the City of Toronto, in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am a retiree of Sears Canada, the current president of the Store and Catalogue Retiree Group ("**SCRG**"), and one of the three Pension Representatives appointed by the Court in this proceeding to represent approximately 18,000 retirees and beneficiaries across Canada (collectively, the "**Retirees**"). As such, I have personal knowledge of the matters stated in this affidavit, except where I have acquired such information from others or from documents attached hereto, in which case I believe such information to be true.
2. This affidavit is sworn in support of a motion by the Retirees for a declaration that the amount of the pension plan wind up deficit (the "**Wind Up Deficit**") that is owing by Sears

Canada to the Sears Canada Inc. Registered Retirement Plan, Registration No. 0360065 (the "**Sears Canada Plan**") is deemed to be held in trust for the beneficiaries of the Sears Canada Plan and entitled to priority recoveries from the assets of the Applicants based on the deemed trust pursuant (the "**Deemed Trust**") under section 57(4) of the Ontario *Pension Benefits Act* R.S.O. c. P. 8 ("**PBA**").

Overview

3. There are approximately 18,000 retirees of Sears Canada across Canada.
4. In August 2018, Retirees outside of Ontario will have their monthly pension benefits reduced by 30% as a result of the underfunding in the Sears Canada Plan. The pending reduction of our monthly pension benefits, coupled with the loss of our OPEBs, as described below, will continue to cause significant financial hardships for the retirees of Sears Canada and have caused stress and worry among the many retirees I regularly hear from all across Canada. Many of these individuals are elderly and highly dependent on their full pension benefits, which for most of them, are modest amounts.

My Background

5. I am a retiree of Sears Canada. I started working at Simpsons-Sears Limited, the predecessor company of Sears Canada, in May 1966 as a Trainee in the Ottawa Carlingwood store and was transferred shortly thereafter to the company headquarters in Toronto, where I spent the balance of my 36 year career in merchandising. From 1992 to 1997, I served on the Board of Director of Sears Canada. I retired from Sears Canada in 2002 as the President of Merchandising, Marketing, and Logistics.

6. After 36 years of service with Sears Canada, I am very familiar with the business of Sears Canada and the retail industry in general.

Background of the Sears Canada CCAA proceeding

7. Simpsons-Sears Limited, the predecessor company of Sears Canada, was formed in 1953 as a partnership between Sears, Roebuck and Co. of Chicago and The Robert Simpson Company of Toronto. Historically, Sears Canada had a culture that not only brought the company success but enriched the lives of its employees. Its philosophy was also "to care about and take care of your employees and they will care about the company and take excellent care of your customers".

8. This dramatically changed in 2005 when Edward Lampert ("**Lampert**") and his firm, ESL Investments ("**ESL**"), a U.S. hedge fund, became the majority shareholder of Sears Canada. This was done through control of Kmart Holding Corporation ("**Kmart**") in 2003 and Kmart's acquisition of Sears, Roebuck and Co. in 2005 to form Sears Holding Corporation ("**Sears Holdings**"). This corporate structure gave Lampert and ESL effective control of Sears Canada. Lampert eventually became the Chief Executive Officer of Sears Holdings. Attached hereto as **Exhibit "A"** are copies of media articles describing the involvement of Lampert and ESL and Sears Canada.

9. Since 2005, Sears Canada's retail business steadily deteriorated. In the ensuing years, it sold off significant assets without making necessary investments to improve and grow the retail business. It was announced at several Sears Holdings shareholders meetings that Sears Holdings was exploring ways to "monetize" Sears Canada for its own financial benefit. Attached hereto as **Exhibits "B", "C", and "D"**, are copies of the transcripts of shareholders meeting calls dated

February 27, 2014, May 22, 2014, and August 21, 2014, respectively, referring to Sears Holdings and its management's intention to "monetize" Sears Canada.

10. In addition, and despite the company's financial deterioration, the Sears Canada board of directors approved the payment of a series of dividends to its shareholders, ultimately totalling approximately \$3 billion. Attached hereto as **Exhibit "E"** is a summary of Sears Canada dividends:

| | |
|--------------------|------------------------|
| December 9, 2005 | \$1,557,000,000 |
| May 11, 2006 | \$13,000,000 |
| September 20, 2010 | \$753,000,000 |
| December 20, 2012 | \$102,000,000 |
| December 9, 2013 | \$509,000,000 |
| Total | \$2,934,000,000 |

11. Attached hereto as **Exhibit "F"** is a timeline chart depicting the payments of dividends, the funded status of the Sears Canada Plan, and the directors in place at the various times.

The pensions and benefits are the deferred wages of Sears employees

12. As noted above, there are approximately 18,000 retirees of Sears Canada, who through their employment service earned an entitlement to be paid pension benefits for their lifetimes from the Sears Canada Plan. The pension benefits are the employees' deferred wages for the work they performed for the company. Attached hereto as **Exhibit "G"** is a copy of the Sears Canada Plan.

13. The Sears Canada Plan was commenced in January 1976 for the purpose of providing defined benefit pensions to employees on their retirement (the "**DB Component**"). The DB Component operates by establishing a formula pursuant to which a monthly pension benefit is

calculated at the time of the retirement of an employee. During the operation of the plan, an actuary is required to perform regular valuations and to advise the company on the amount that it must contribute to the plan so that the plan can pay the monthly benefits. In addition, employees were also required to regularly contribute a portion of their pay to the Sears Canada Plan. This requirement had the effect of reducing the RRSP contribution room of employees, leaving us highly dependent on the Sears Canada Plan to provide our retirement income.

14. Since 2007, the DB Component of the Sears Canada Plan had a funding deficit, meaning that there are insufficient assets in the pension fund to pay all monthly pension benefits in the full amounts earned by each employee when they retired. Over the subsequent years, the wind up deficit in the Sears Canada Plan worsened:

| | WIND UP DEFICIT |
|-------------------|----------------------------|
| December 31, 2007 | \$36 million |
| December 31, 2010 | \$307 million |
| December 31, 2013 | \$133 million |
| December 31, 2015 | \$267 million |

15. In June 2008, Sears Canada amended the Sears Canada Plan to add a defined contribution component (the "**DC Component**"). The DC Component operates akin to a collection of RRSP-type accounts for the employees, with the company making fixed contributions as a percentage of employees' pay to a DC account for each employee. The employees in turn invest their funds in investment vehicles in an effort to grow a lump sum to be used on retirement. The company's contributions are fixed and no actuarial valuation reports are required for the funding of the DC Component.

16. As of June 30, 2008, pension benefit accruals for employees who had been accruing a benefit under the DB Component were frozen. These employees retained their defined benefit pension that they earned up to June 30, 2008, which would be paid to them as a monthly defined benefit pension when they retired from Sears Canada (in addition to any amount they earned under the DC Component, if also applicable to them). After June 30, 2008, all Sears Canada employees could only accrue future benefits under the DC Component.

The Pension Claims Process

17. According to the last filed actuarial valuation report, the Sears Canada Plan is underfunded on a wind-up basis by approximately \$266.8 million as at December 31, 2015. Attached hereto as **Exhibit "H"** is the Sears Canada Plan Actuarial Valuation Report as at December 31, 2015.

18. The exact quantum of the Wind Up Deficit will not be known until final deficit calculations are completed by Morneau. However, I am advised by Morneau and verily believe that the quantum of the Wind Up Deficit is expected to be in the range of \$260 million.

19. On February 22, 2018, the CCAA Court issued a Claims Procedure Order with respect to employees and Retirees' claims with a claims bar date of May 7, 2018 (the "**Claims Procedure Order**"). In accordance with the Claims Procedure Order, we filed a claim in respect of the Wind Up Deficit in the Sears Canada Plan in the estimated amount of approximately \$260 million, in respect of which we asserted a Deemed Trust priority (the "**Sears Pension Claim**"). A copy of the Proof of Claim form filed by the Pension Representatives in respect of the Sears Pension Claim is attached hereto as **Exhibit "I"**.

20. The Claims Procedure Order contemplates that the Monitor will give written notice of any determination it makes, including as to quantum and/or priority, of the Sears Pension Claim.

21. The Claims Procedure Order does not specify a time within which disallowances in respect of the Sears Pension Claim must be given, or to whom appeals from disallowances are to be taken.

22. To date, I am advised by our counsel, Andrew Hatnay of Koskie Minsky LLP ("KM"), and verily believe that the Monitor has not issued a disallowance in respect of the Sears Pension Claim.

The Wind up of the Sears Canada Plan

23. In 1996, a group of Sears Canada retirees organized the Sears Retiree Group. This group later merged with another retiree group ASCR to form the Store and Catalog Retiree Group ("SCRG")¹. SCRG has over 6,000 Sears retirees as members. I am the current President of SCRG. SCRG was formed to protect the pension benefits and health benefits of retired employees of Sears Canada. Attached hereto as **Exhibit "J"** is a timeline setting out the efforts that SCRG has taken to protect the pension and benefits of Sears retirees over the past several years.

24. SCRG engaged in extensive discussions and correspondences with the Federal and Ontario governments, the Financial Services Commission of Ontario ("FSCO"), and with Sears Canada, to raise serious concerns regarding the underfunding of the Sears Canada Plan, the

¹ Sears refused to let us use the name "Sears" in our organization's name.

continuing decline in the company's retail business, and the looming financial collapse of Sears Canada.

25. As early as November 2014, SCRG, requested both the company and the Superintendent of Financial Services to wind up the Sears Canada Plan given the continued deterioration of Sears Canada's business and the wind-up deficit. For the next three years, we were in discussions with the company and FSCO on many occasions requesting the wind up of the plan. Copies of the correspondences between KM, Sears Canada's counsel and FSCO requesting a wind up of the Sears Canada Plan were appended as exhibits "F" to "W" to my affidavit sworn August 11, 2017 and filed in these proceedings.

26. Despite the repeated requests by SCRG, neither FSCO nor the company wound up the Sears Canada Plan.

27. On June 22, 2017, Sears Canada applied for and obtained protection from its creditors under the CCAA. At the same court attendance, KM was appointed Representative Counsel to the Retirees. I, together with retirees and SCRG members Ken Eady and Larry Moore, were subsequently appointed as the representatives of all Sears Canada retirees and former employees in respect of pension matters and OPEBs.

28. Certain senior managers attempted a transaction that would see the continued operation of a reduced number of Sears Canada stores on a going concern basis, but was unsuccessful. On July 13, 2017, Sears Canada obtained an order allowing it to conduct a sales process to sell all its assets (the "SISP"). Concurrent to the SISP, Sears Canada also sought an Order to approve the liquidation sales process for inventory in several of its stores (the "**First Liquidation Process**").

Attached hereto as **Exhibits "K" and "L"** is a copy of the July 13 and 18, 2017 Orders of the CCAA Judge for the SISP, and the First Liquidation Process, respectively.

29. On October 13, 2017, the CCAA Court issued a Second Liquidation Process Order approving an agreement and process for the liquidation of the inventory and FF&E² at all remaining Sears Canada retail locations.

30. The claims process order for general creditor claims was issued by the Court on December 8, 2017. The claims bar date was March 2, 2018. As discussed above, on February 22, 2018, the CCAA Court issued the Employee and Retiree Claims Procedure Order approving a claims process for the employee and retiree claims (the aforementioned "**Claims Procedure Order**"). The claims bar date was May 7, 2018.

31. The liquidation of assets at Sears Canada's retail locations is now mostly complete. The vast majority of the employees have been terminated and the retail business has shut down. The next major steps in the CCAA proceeding is the sale of remaining real estate assets and the distribution of the sale proceeds to creditors. The Monitor in its Eighteenth Report has reported the cash balance of the estate as of April 28, 2018 as \$126.2 million.

32. On August 11, 2017, the Retirees filed a motion before the CCAA Court for an order requiring Sears Canada or in the alternative, the Superintendent of Financial Services ("**Superintendent**"), to wind up the Sears Canada Plan effective October 1, 2017.

² FF&E are movable furniture, fixtures, or other equipment that have no permanent connection to the structure of a building or utilities.

33. On or around November 10, 2017, the Superintendent issued a Notice of Intended Decision ("NOID") indicating that the Pension Plan was to be wound up effective October 1, 2017, with such wind-up including all Sears Canada Plan members whose employment was terminated on or after June 13, 2017. A creditor with a contingent claim for a pending class action objected to the NOID and requested a hearing before the Financial Services Tribunal. After several months, the objection was withdrawn. Attached hereto as **Exhibit "M"** is a copy of the NOID.

34. On or around March 29, 2018, the Superintendent issued its order winding up the Sears Canada Plan effective as of October 1, 2017. Attached hereto as **Exhibit "N"** is a copy of the Superintendent's wind-up order dated March 29, 2018.

The pension plan beneficiaries are the priority creditors

35. At the time of obtaining CCAA protection, Sears Canada had loans from two secured lenders: Wells Fargo Capital Finance Corporation Canada and GACP Finance Co., LLC. After obtaining CCAA protection, these secured loans were "rolled up" into a DIP Loan with a CCAA court-ordered priority. Sears Canada has paid off these two loans. I have been advised by our counsel Andrew Hatnay and verily believe that there are no secured creditors in these Proceedings, other than the statutory lien and charge held by Morneau Shepell ("**Morneau**"), as the replacement plan administrator of the Sears Canada Plan, pursuant to section 57(5) of the PBA, which is over the same amount - the Wind Up Deficit – that is subject to the Deemed Trust Priority. Accordingly, the Retirees are the priority creditors of the estate of Sears Canada.

36. On October 26, 2017, Representative Counsel sent a letter to the Monitor, copying the Service List, providing notice that the Retirees intend to rely on and assert the Deemed Trust to

recover the amounts owing by Sears Canada to the Sears Canada Plan. For over the past nine months in the CCAA proceeding, all creditors and stakeholders have known that the Retirees intend to assert the PBA deemed trust as a priority payment to the Sears Canada Plan. Attached hereto as **Exhibit "O"** is a copy of the letter dated October 26, 2017.

Mediation

37. On May 9, 2018, the CCAA Judge directed a Mediation among the Retirees and major creditor and stakeholder groups to try and reach a resolution of the estate. A two-day mediation was held on June 13 and 14, 2018 with Regional Senior Justice Morawetz assisting as Mediator. I together with the other Pension Representatives and Representative Counsel attended the Mediation. The Mediation did not result in a settlement at that time.

Retiree Losses in the CCAA proceedings

a) Pension Benefits

38. The Retirees have significant reductions to their monthly pension benefits as a result of the underfunding starting with their pension payment in August, 2018. In particular, retirees outside of Ontario will have a 30% loss to their monthly pension benefits. Attached hereto as **Exhibit "P"** is a copy of the letter sent to members outside Ontario by Morneau, dated June 1, 2018.

39. Due to the wind up of the Sears Canada Plan in an underfunded state, the PBA mandates that a payment to the plan for the benefit of the Ontario members is to be made from the Ontario Pension Benefits Guarantee Fund ("**PBGF**"). The Ontario government recently increased the PBGF coverage in Ontario to a maximum of \$1,500/month per Ontario pension plan member, from the previous guarantee of \$1,000/month. The Ontario government announced in its 2018

Budget that the increase in PBGF will be retroactive to cover eligible pension plans with a wind-up date after May 19, 2017, and specifically apply to the benefits provided to Ontario members in the Sears Canada Plan.

40. In a letter dated June 1, 2018, Morneau advised that it has filed an application with the Superintendent requesting a declaration that the PBGF applies to the Sears Canada Plan. As a result, for Ontario members, Morneau has agreed to continue to make monthly pension payments up to the amounts guaranteed by the PBGF for Ontario retirees. Attached hereto as **Exhibit "Q"** is a copy of the letter sent to Ontario members by Morneau dated June 1, 2018. However, all other retirees across Canada will suffer from the 30% reduction to their monthly benefits.

41. To date, the PBGF payment has not yet been made to the Sears Canada Plan.

42. Over half of the Retirees are from outside of Ontario and are not eligible to benefit from the PBGF payment. Attached hereto as **Exhibit "R"** is a copy of the 2015 Annual Information Return for the Sears Canada Plan filed with FSCO.

b) OPEBs

43. In addition to pension benefits, I, along with other Sears Canada retirees also earned entitlements to be paid "other post-employment benefits" such as health benefits and life insurance benefits ("**OPEBs**") on our retirements. As of October 1, 2017, Sears Canada terminated all OPEBs.

44. The estimated liability for OPEBs, calculated pursuant to the Retiree Benefits Claim Methodology described in the Claims Procedure Order, is approximately \$421 million. I am advised by Andrew Hatnay and verily believe that the quantum of this claim has been accepted

by the Monitor as part of the claims process. I further understand that the claim for OPEBs is an unsecured claim against Sears Canada.

45. Combined with the pension Wind Up Deficit by Sears Canada, this makes the Retirees one of, if not, the largest creditor of Sears Canada, both in terms of number of creditors and the amount of debt owing.

c) Supplemental pension benefits

46. I, along with certain eligible Retirees also have entitlements under the SRP, which is a supplemental pension plan that provides pension benefits in addition to pension benefits provided under the Sears Canada Plan. Attached hereto as **Exhibit "S"** is a copy of the SRP.

47. The SRP includes both a funded trust arrangement (a Retirement Compensation Arrangement) and an unfunded arrangement. The actuaries retained by Representative Counsel calculated that the claim for terminated benefits under the SRP is approximately \$34,585,600, which has not yet been accepted. The claim for the SRP members is an unsecured claim, and the claim amount for the affected Retirees is under discussions with the Monitor.

d) Merchandise Discount Claim

48. The Retirees also have an accepted claim based on the terminated merchandise discount in the amount of \$13,770,000.

49. The claims of the Retirees are summarized as follows:

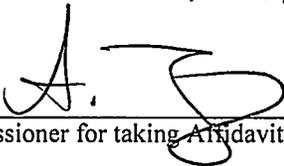
| Claim Type | # of Retirees | Amount | Status | Priority |
|------------------------------|---------------|---------------|----------|---|
| Pension Plan Wind-up Deficit | 17,600 | \$260,200,000 | Accepted | a) deemed trust priority for plan members b) administrator's lien and charge (secured claim) |

| | | | | |
|-------------------------------------|--------|----------------------|------------------------------------|-----------------|
| OPEBs | 6,300 | \$421,000,000 | Accepted | Unsecured claim |
| Lifetime Merchandise Discount Claim | 16,400 | \$13,770,000 | Accepted | Unsecured claim |
| Supplemental Pension Benefits | 106 | \$34,585,600 | Under discussions with the Monitor | Unsecured claim |
| Total | | \$729,555,600 | | |

50. I am advised and have spoken with the other court-appointed Pension Representatives that they are in agreement with the statements contained in this affidavit.

51. I swear this affidavit in support of the motion by Representative Counsel for a declaration that the pension plan wind up deficit that is owing by Sears Canada to the Sears Canada Plan is deemed to be held in trust for the beneficiaries of the Sears Canada Plan and entitled to priority recoveries against all assets of the Applicants.

SWORN BEFORE ME at the City of Toronto, in the Province of Ontario, this 23 day of July, 2018.



A Commissioner for taking Affidavits (or as may be)

LSO# 70104K



WILLIAM TURNER

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

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SEARS CANADA INC., 9370-2751 QUEBEC INC., 191020 CANADA INC., THE CUT INC., SEARS CONTACT SERVICES INC., INITIUM LOGISTICS SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM TRADING AND SOURCING CORP., SEARS FLOOR COVERING CENTRES INC., 173470 CANADA INC., 2497089 ONTARIO INC., 6988741 CANADA INC., 10011711 CANADA INC., 1592380 ONTARIO LIMITED, 955041 ALBERTA LTD., 4201531 CANADA INC., 168886 CANADA INC., AND 3339611 CANADA INC.

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

ONTARIO
SUPERIOR COURT OF JUSTICE -
COMMERCIAL LIST

Proceeding commenced at TORONTO

AFFIDAVIT OF WILLIAM TURNER
(Sworn July 23, 2018)

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Representative Counsel to the Retirees of
Sears Canada

This is **Exhibit "A"**

referred to in the Affidavit of William Turner
sworn before me this 23rd day of July, 2018.

A handwritten signature in black ink, appearing to be 'A. J. P.', written over a horizontal line.

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

LSD #70164K

**FORM 51-102F3
MATERIAL CHANGE REPORT**

1. Name and Address of Company

Sears Canada Inc.
222 Jarvis Street, 9th Floor
Toronto, Ontario
M5B 2B8

2. Date of Material Change

March 24, 2005

3. News Release

A news release was issued by Sears Canada Inc. on March 31, 2005.

4. Summary of Material Change

On March 31, 2005, Sears Canada Inc. announced a change in ownership of its controlling shareholder resulting from the recent merger transactions involving Sears, Roebuck and Co. and Kmart Holding Corporation, which formed Sears Holdings Corporation. Sears, Roebuck and Co., the owner of approximately 54.3% of the issued and outstanding shares of Sears Canada Inc., is now a wholly-owned subsidiary of Sears Holdings Corporation.

5. Full Description of Material Change

See the news release attached as Schedule A.

6. Reliance on Subsection 7.1(2) or (3) of National Instrument 51-102

Not applicable.

7. Omitted Information

Not applicable.

.../2

8. Executive Officer

The executive officer of Sears Canada Inc. who is knowledgeable about this material change is:

Rudolph R. Vezér
Senior Vice-President and Chief Legal Officer
Telephone: (416) 941-4417

DATED at Toronto, Ontario, this 1st day of April, 2005.

SEARS CANADA INC.

“Rudolph R. Vezér”
Rudolph R. Vezér
Secretary

SCHEDULE A**Sears Canada Announces Change in Ownership of Controlling Shareholder**

Sears, Roebuck and Co. and Kmart Holding Corporation complete merger

TORONTO – March 31, 2005 – Sears Canada Inc. (TSX: SCC) today announced a change in ownership of its controlling shareholder resulting from the recent merger transactions involving Sears, Roebuck and Co. and Kmart Holding Corporation which formed Sears Holdings Corporation (Nasdaq: SHLD). Sears, Roebuck, the owner of approximately 54.3% of the issued and outstanding shares of Sears Canada, is now a wholly-owned subsidiary of Sears Holdings.

The merger transactions were completed on March 24, 2005. Sears Holdings is now the third largest retailer in the United States, with approximately U.S. \$55 billion in annual revenues and nearly 3,500 retail stores, including 2,350 full-line and off-mall stores, and 1,100 specialty retail stores.

Sears Canada is a multi-channel retailer with a network of 122 full-line department stores, 218 off-mall stores, 64 home improvement showrooms, over 2,200 catalogue merchandise pick-up locations, 113 Sears Travel offices and a nationwide home maintenance, repair, and installation network. The Company also publishes Canada's most extensive general merchandise catalogue and offers shopping online at www.sears.ca.

BUSINESS DAY | CREATING A GIANT: THE OVERVIEW

Kmart Takeover of Sears Is Set; \$11 Billion Deal

By CONSTANCE L. HAYS NOV. 18, 2004

Kmart will buy Sears, Roebuck for \$11 billion, the companies announced yesterday, a deal that unites two struggling merchants in an effort to survive against rivals like Wal-Mart, which passed both in the 1990's on its way to becoming the nation's largest retailer.

The companies plan to maintain largely separate identities, at least at first. But shoppers can expect to find Sears moving beyond its base in suburban malls as hundreds of freestanding Kmart stores are eventually transformed into Sears stores.

The deal will create the nation's third-largest retailer, behind Wal-Mart and Home Depot, with annual revenue of about \$55 billion from nearly 3,500 stores.

Once the transaction is completed, most likely by March, Kmart products like Martha Stewart Everyday housewares should soon start appearing in Sears stores. Kmart stores are expected to begin selling Sears exclusives like Craftsman tools, Kenmore appliances and Lands' End apparel.

The takeover is a triumph for Kmart's largest shareholder, Edward S. Lampert, a billionaire investor who pushed the company to emerge from bankruptcy barely 18 months ago, shut many stores and sold dozens of others to Sears as he presided over a run-up in Kmart's value on Wall Street. [Page C1.]

4

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American lexicon -- with Sears, a middlebrow department store that blazed a mercantile trail across the country starting in the 19th century but has been on the wane for the last 40 years.

Whether the two retailers can be winningly put together is uncertain, and the ultimate strategy has not been fully spelled out. The goal is less to compete with Wal-Mart directly and more to focus on profitable opportunities in selected markets.

Its success, analysts said, will largely depend on whether the new company can achieve cost savings through economies of scale, and whether it can bring itself up to speed with technology that has been so beneficial to Wal-Mart and Target.

It also hinges on the new company's finding a strong identity -- one that will persuade shoppers to come to its stores. Customer traffic and sales have been sluggish at both Kmart and Sears.

"This is going to be an enormous undertaking," said Mr. Lampert, who is Kmart's chairman and will become chairman of the new company, to be called Sears Holdings. "We're really not looking to have two separate cultures. We're hoping to blend these into one great culture."

Whenever the deal receives regulatory approval, Mr. Lampert is sure to dominate the new company, with Kmart having seven board seats and Kmart's newly minted chief executive, Aylwin B. Lewis, running both retailers. Sears will name three directors, including its current chief executive, Alan J. Lacy.

Though Kmart's team will control the finances, the Sears name is expected to be front and center for consumers.

Expressing faith in Mr. Lambert's track record of squeezing profit from poorly managed companies, Wall Street cheered the news yesterday. The share price of Kmart rose nearly \$8, to close at \$109. Sears, Roebuck jumped \$7.79, or more than 17 percent, to \$52.99.

Under the deal's terms, Kmart shareholders will receive one share of Sears

4

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Sears employees learned of the announcement through an e-mail message sent early yesterday, and many watched a Webcast featuring Mr. Lacy, Mr. Lambert and Mr. Lewis addressing a Midtown Manhattan news conference.

Mr. Lacy, the chief executive of Sears who will become vice chairman of the new company, said the deal would add impetus to his existing strategy of opening more Sears stores outside shopping malls, where nearly all Sears's 870 stores are situated.

A number of stores are likely to be sold, Mr. Lacy said.

While insiders said discussions between the companies had been under way for months, the deal was put together in a rush over the last couple of weeks.

Mr. Lampert said his goal was to make all the stores in the combined empire profitable. "I don't think any retailer should aspire to have its real estate be worth more than its operating business," he said.

Sears achieved higher sales in its stores compared with Kmart, calling this a reason to switch hundreds of Kmart stores to the Sears name.

"If we ever achieve that level of productivity in Kmart stores, whether as Kmart or as Sears, you're talking about an \$8 billion opportunity," Mr. Lampert said.

Others saw the deal as having far less to do with what is sold in the stores than with the ground beneath them. "This appears to be a heavily real estate-oriented deal, not a merchandise-oriented one," said Eugene Fram, a marketing professor at the Rochester Institute of Technology. "You really need star power in this case. Both of these companies are faltering, and if you take a look at the size of the new company, it's still only 20 percent of Wal-Mart in terms of sales."

The sale of Sears also appears to spell opportunity for Martha Stewart's company, Martha Stewart Living Omnimedia, which sells a line of products exclusively through Kmart in the United States. In a statement, its new chief executive, Susan Lyne, said the merger "will create for us a broader retail presence that reaches millions of new consumers." Its stock rose \$1.00 to \$18.40.

4

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Mr. Lampert, an often maverick investor from Greenwich, Conn., bought up chunks of Kmart debt while it was operating under bankruptcy protection two years ago. With an investment estimated at \$700 million to \$1 billion, he won control of the emerging company, and pushed it to close stores and make other strategic changes during and after its reorganization.

All the while, he has remained a large stakeholder in Sears, which has been struggling to reinvent itself while larger and more nimble chains, including Wal-Mart, Target, Home Depot and Lowe's, spirited away once-loyal Sears customers with better merchandise, better prices or both.

Sears began in 1886 as a watch dealer, progressed to mail-order merchant and by 1925 opened its first stores, becoming the nation's dominant retailer before World War II.

But by the 1970's its retail fortunes were in decline, and with the hope of diversifying, it adopted a "socks and stocks" strategy, entering the financial services business in 1981 with its purchases of Dean Witter and Coldwell Banker. Twelve years later, it sold or spun them both off, along with a mortgage division.

Sears sought more buyers for its refrigerators, stoves and other appliances with the help of its credit division, which was started at the depths of the Depression. But after higher-than-expected defaults by cardholders in recent years hurt earnings, it sold the unit to Citigroup last year.

Sears is seeking to attract a fresh clientele to its stores by designing new formats and adding to its selling floors brands like Lands' End, the mail-order clothing company it bought in 2002 for \$1.9 billion.

It is not clear whether Mr. Lampert lost patience with Mr. Lacy's efforts to turn around Sears and decided to force a strategy of his own on the company. But it is clear that as Sears ploddingly created its freestanding "Sears Grand" prototype stores, opening the first outside Salt Lake City a year ago and since adding three more, competitors like Wal-Mart, Target and Lowe's were opening stores far faster.

4

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Kmart and its predecessors also have a long history, starting in 1899 as the five-and-dime S.S. Kresge. It took an early lead in discount retailing after it opened the first Kmart stores in 1962. But by the 1980's, the renamed Kmart had lost ground to Wal-Mart, which emerged from small-town roots to consistently offer lower prices, more products in stock and a more efficient supply network.

Kmart fell from its perch as the biggest discounter and became better known for corporate bumbling than for anything it sold; by the 1990s, customers who found its ad circulars in their Sunday papers often expected not to find the featured items in the stores.

In autumn 2001, Kmart's chief executive embarked on a plan to sell thousands of products at prices that undercut Wal-Mart's. The strategy was widely seen as worsening Kmart's financial woes, and by January 2002, it had filed for bankruptcy protection, the biggest retail bankruptcy in American history.

Combined, the two companies are expected to save money on back-office operations and purchasing, experts said. Executives forecast \$200 million in savings from cross-selling merchandise and converting some Kmart stores to Sears stores, along with \$300 million in savings from tighter purchasing and a streamlined supply chain. But to survive as retailers over the long haul, they will need to find a successful sales formula.

Peter J. Solomon, an investment banker who advised Lands' End during its sale to Sears and owns a minority stake in Mr. Lampert's company, ESL Partners, said: "If you eliminate \$500 million of overhead, you can create very valuable earnings and cash flow without ever changing the merchandising. I would say that Eddie has done that to a great extent at Kmart."

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4

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The man behind the deal

Eddie Lampert has built a reputation as one of the investing world's savviest money managers.

November 17, 2004: 6:33 PM EST

By Yuval Rosenberg, CNN/Money contributing writer

NEW YORK (CNN/Money) - Edward S. Lampert is frequently described as being reclusive, but the multimillionaire investor was front and center Wednesday as Kmart and Sears announced their \$11 billion merger.

The 42-year-old Lampert, who is set to become chairman of the combined companies, was clearly the driving force behind the deal.

As Kmart's chairman, he owns nearly 53 percent of its stock through his ESL Investments hedge fund. He is also the largest shareholder in Sears. ESL holds a 15 percent stake in the retailer.

Lampert started his fund in 1988 after earning an economics degree at Yale University and then cutting his teeth under Robert Rubin at the risk arbitrage department at Goldman Sachs.

With his savvy bets on distressed or underperforming assets, he has built a reputation as a one of Wall Street's most successful and renowned hedge fund managers.

ESL Investments has returned an average of 29 percent a year since its inception, according to a *BusinessWeek* report, generally by building substantial positions in a few highly researched holdings.

Besides stakes in Kmart and Sears, Lampert's fund also owns large positions in car dealer AutoNation and auto-parts retailer AutoZone.

That concentrated approach has paid off handsomely for Lampert, who last year took home a \$420 million pay package, the fourth-biggest in the hedge fund industry, according to Reuters.

And though he's known to be media shy, Lampert is no stranger to headlines.

Early last year he was kidnapped at gunpoint from a parking garage at ESL's Greenwich, Conn., offices. Four captors held him for ransom, keeping him bound and blindfolded for some 30 hours before he negotiated his own release.

The kidnappers were caught after Lampert's credit card was used to order pizza. The mastermind of the plot was sentenced to 15 years in prison earlier this year.

He's gotten plenty of coverage for more positive reasons as well. Lampert made himself available to *BusinessWeek* for a flattering cover story currently on newsstands. That's Lampert flashing a Livestrong wristband on the cover -- the popular yellow bands are sold by a Lance Armstrong foundation to support cancer research -- next to the headline: "The Next Warren Buffett?"

Those comparisons to the Oracle of Omaha have been tossed around over the years, but it is Lampert's Kmart turnaround that has particularly impressed investors.

"I think he's a genius," said veteran value manager Marty Whitman of Third Avenue Management, which helped fund Kmart's bankruptcy reorganization and now holds some 5 percent of outstanding shares in the retailer.

"Had he not been the leader who got this thing out of (Chapter) 11 in May 2003, there would have been nothing left for us pre-petition creditors," Whitman added. "I'm firmly convinced that's the case."

Lampert built his position in Kmart by buying up the discount retailer's debt during its bankruptcy. He helped steer Kmart through bankruptcy reorganization and became chairman when the company emerged from Chapter 11.

Since then, Lampert has held down costs and inventories, and generated cash by selling off some real estate. Kmart earlier this year sold 50 stores to Sears for \$576 million and sold another 18 stores to Home Depot for \$271 million.

Those deals left many on Wall Street wondering if Lampert was positioning Kmart to stay in the retail business long-term or simply using it as a vehicle to generate cash for investments.

"The retail performance has not been stellar up to this point," said Gary Giumetti, president of consulting firm McTevia & Associates in Eastpointe, Mich., which specializes in restructurings.

Still, under Lampert's guidance, Kmart has recently posted four consecutive quarterly profits and generated heaps of cash, even as sales have continued to slide. Kmart on Wednesday announced a 13.7 percent drop in third-quarter sales.

Since it emerged from bankruptcy in May 2003, Kmart stock has climbed from \$15 to \$109. Of course, as the share price has soared, the value of Lampert's stake has as well.

Lampert has rung up similar gains with another big investment, AutoZone. He bought into the Memphis-based auto-parts retailer in the late 1990s, and eventually took a seat on the board.

With a growing piece of the company, Lampert pushed for changes. In the end, he brought in a new chief executive who cut costs and poured more money into buying back shares, helping boost per-share earnings. AutoZone stock shot up from the mid \$20s and peaked above \$100 late last year. It closed Wednesday at \$87.21. ■

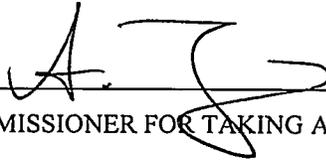
Find this article at:

<https://money.cnn.com/2004/11/17/news/newsmakers/lampert>

Check the box to include the list of links referenced in the article.

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This is **Exhibit "B"**
referred to in the Affidavit of William Turner
sworn before me this 23rd day of July, 2018.



A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

LSO# 70164K

SEARS HOLDINGS

**Sears Holdings' Fourth Quarter and Full Year 2013 Results
Pre-Recorded Conference Call Transcript
February 27, 2014**

Operator: Good day, ladies and gentlemen, and welcome to the Sears Holdings Corporation Fiscal 2013 Fourth Quarter and Full-Year Webcast.

At this time, all participants are in a listen-only mode. If anyone should require any assistance during the call, please press star, then zero on your touchtone telephone. As a reminder, today's call is being recorded.

I would now like to turn the call over to Executive Vice President and Chief Financial Officer, Rob Schriesheim. Sir, you may begin.

Rob Schriesheim: Thank you, operator. Please note that this morning we released our fourth quarter and full-year earnings results, which are now available on our Web site. Also, note that our results are in line with our earnings outlook released on January 9th.

Joining me today is Eddie Lampert, our Chairman and Chief Executive Officer. For our call today, you may access the accompanying slide presentation, which is available on the investor section of our Web site under events and presentations.

Before we begin on slide 1, I'd like to remind you that today's discussion will contain forward-looking statements related to future events and expectations. These statements are based on current expectations and the current economic environment and actual results may differ materially from those expressed or implied in the forward-looking statements.

You can find factors that could cause the company's actual results to differ materially listed in today's press release and the presentation for today's call that is posted at the investor information section of SearsHoldings.com and in our most recent SEC filings.

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In addition, on slide 2 our discussion will include certain non-GAAP financial measures. Reconciliations to the most directly comparable GAAP financial measures can be found in the presentation in today's press release.

Any reference in our discussion today to EBITDA means adjusted EBITDA as defined in the press release and presentation. Finally, we assume no obligation to update the information presented on this call except as required by law.

I would now like to turn to slide 3 and turn the call over to Eddie Lampert.

Eddie Lampert: Thanks, Rob. I would also like to thank all of you for joining us today. I'm proud of what Sears Holdings has accomplished in the last quarter and over the past fiscal year. We've made significant progress in important areas of our transportation since we last spoke and have a clear plan to position the company in long-term growth and profitability.

I will take this opportunity to provide you with a more detailed discussion of our strategy and what we believe are early signs of success that give us further confidence in our plan. We will then spend some time to update you on our fourth quarter and full-year results; followed by a discussion of how we are leveraging our risk portfolio of assets and redeploying capital to support our plan.

I want to start off by level-setting where we are. The size and scope of the transformation we are pursuing is substantial. We're in the midst of transforming Sears Holdings into a member-centric business that provides and delivers value by serving its members in the manner most convenient for them, whether in-store, in-home or on the go.

Transforming a business is always challenging. Add to it a highly promotional and fast-changing retail landscape and a consumer that has drastically changed the way they shop, and you have a significant task in trying to adapt a retailer the size of Sears Holdings.

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At the same time, we are managing legacy pension obligations while freeing up the resources to invest in technology platforms. Unlike many other retailers though, we're taking a proactive approach and we are altering our business model to create a long-term sustainable advantage.

This is not something that will happen overnight and not something you measure in small increments of time. As CEO, Chairman of Sears Holdings' largest individual shareholder, I'm 100 percent committed to the success of this transformation and have confidence in our associates in the path we are taking.

We hope to accelerate the pace of change to become the leading retailer positioned for continued growth. On slide 5, we listed our 5 strategic pillars. In my annual letter to shareholders released this morning, I noted that in January the Wall Street Journal ran a prominently placed story suggesting that beyond all of the retailers reporting for a profit, there is a, quote, "deeper malaise at work."

A long-term change in shopper habits has reduced our traffic perhaps permanently, and shifted pricing power away from malls and big box retailers. Instead, shoppers seem to be figuring out what they want online than making targeted trips to pick it up from retailers that offer the best price.

While shoppers visited an average 5 stores per mall trip in 2007, today, they only visit 3. Meanwhile, online stores have further sharpened purchased decisions and prices leading some shoppers to come into the stores only when they can cherry-pick discounted items.

All of these dynamics are ones for which Sears Holdings has been preparing for years. As I – as I have described before, the five key pillars of our strategy are, one, creating lasting relationships with members by empowering them to manage their life; two, attaining best-in-class productivity and efficiency; three, building our brands; four, reinventing the company continuously through technology and innovation; and five, reinforcing the SHC way by living our values every day.

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Our two key platforms: Shop Your Way and integrated retail, continue to become more prominent both in how we run the company and in how we serve our members. Slide 6 outlines how we are accelerating our pace of change to position ourselves in the changing environment.

We are proactively learning more and more each day about how our members want to shop and what resonates with them. We're utilizing this feedback as we continue our transition and invest in two primary areas: Our member based platform, Shop Your Way, and integrated retail.

These two key elements represent a different way of doing business at Sears Holdings, and are the foundations of our other programs and initiatives. Within these two key areas, we're making substantial investments in engaging members with personalized, relevant content, offering more capabilities to our members, continually enhancing member engagement, and building out our platform technology.

To enable this change, we have been strategically realigning our portfolio businesses to focus on our core strengths, simplify Sears Holdings and become a more focused company that is more efficient to manage and easier to understand, all while enabling us to better optimize our allocation to capital and attract the best talent.

We are also enhancing our financial flexibility by reconfiguring our asset base to redeploy capital while we meet all of our financial obligations. Finally, we are providing opportunities for our shareholders to participate in what we believe are value accretive activities.

As indicated on slide 7, we believe that we are proactively transforming our business to benefit from the changing retail landscape. We believe we're ahead of the game by transitioning to a member-centric integrated retailer leveraging our Shop Your Way platform.

Shop Your Way is unique in that it is a program that rewards members, enhances interaction with members and delivers useful information to them.

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As a result, we're able to be more strategic in how we, one, invest in capabilities to enable our members to access the widest possible assortment of products and services; two, use data and analytics on member trends to make targeted offers and decisions delivered in realtime.

We're becoming a more fact-based company and are making decisions based on analytical data as opposed to gut feelings, and our members will expect us to provide them with offers that are relevant to them as individuals.

Three, expand our rates through Sears marketplace, our innovative community that allows third-party merchants to advertise or sell their products on the Sears Holdings family of Web sites where we now offer over 100 million items and multiple delivery options.

Four, enhancing our Shop Your Way membership benefits. Membership is free and we want everyone to know the significant benefits of membership as our members always get more. And finally, developing digital and social relationships with our members as we aspire to do more than simply transact.

We are working to build value-trusted relationships with our members by providing differentiated products and services that will be difficult for others to replicate. At a high level, we are seeing increases in key member engagement metrics giving us confidence in our strategy and demonstrating tangible progress.

As indicated in our release, 72 percent of sales are now made to Shop Your Way members up from 58 percent during the fourth quarter last year, and we experienced year-over-year growth of 10 percent in online and multi-channel sales showing steady growth in both channels since 2006.

And on slide 8, you can see our framework for investing in integrated retail capabilities. Integrated retail is a business model where members can shop our entire portfolio of offerings any time and from anywhere.

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We believe that retail in the future will be about transacting with customers on their own terms whether it is in stores, in-home or on the go. And we believe that we are the best company to serve members across all of these channels.

We have a physical presence in many communities, something which the pure play online retailers do not. We're the undisputed leader through our home services business, which is nearly 8,000 service associates making approximately 14 million calls into the home each year providing us with another way we can interact and service our members, and we have a robust online platform that is demonstrating consistent growth.

We believe Sears Holdings is uniquely positioned to win in the world of integrated retail. Integrated retail combines the best of the various channels, broad product selection, ability to touch and feel the product and access from anywhere through mobile applications.

And all of these capabilities are accentuated through our Shop Your Way platform. With Shop Your Way, we can pride our members with a differentiated and more convenient shopping experience.

As our members tell us more about their preferences and unique needs, we can better target these preferences and anticipate and meet these needs. As shown on slide 9, we are investing heavily in our strategy across an array of fronts in specific applications and offerings.

In particular, through ShopYourWay.com, members can share information on products they like with their friends, post a review of any product, research products from other member reviews, win prizes and execute transactions.

Our celebrity partners such as Nicki Minaj and Adam Levine also provide content and interact with our members there.

As you can see on slide 10, we are showing consistent annual growth in our online channels. Approximately half of the business is cross channel, buy online, pick-up in store or order in-store, ship to home.

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We realize higher growth in the cross channel online sales in recent years, which we consider to be a prove point for integrated retail strategy. We have invested heavily in integrated retail including initiatives such as our Shop Sears mobile app for associates, as shown on slide 11.

Shop Sears was launched in early 2012 and over 300 stores, and as of the end of fiscal 2013, we're in more than 400 stores. This solution is currently accessed by our consultant of associates in departments like home appliances, consumer electronics, tools, lawn and garden, to name a few, via their assigned iPads and iPods.

This capability now provides our associates the opportunity to have a more engaging conversation with our members on the sales floor. This also enables our associates to have all the information they need to assist members in making decisions on the products to purchase based on the member's needs.

In 2014, we will continue building and investing further on this solution to provide our associates more tools that enable them to assist our members. Shop Sears is an application that focuses on addressing an important element of integrated retail which is bringing the digital into the physical world.

I am proud of the progress we have made in this area, which provides a better experience for our members.

On slide 12, you can see another example of how we are marrying the digital and physical world through our investments and integrated retail. In-vehicle pick-up is a new service that we have launched powered by the Shop Your Way mobile app, which enables our members to pick up their online purchases at any Sears store within five minutes of arrival without ever leaving their car.

To do this, members can simply choose the in-vehicle pick-up option at check-out on Sears.com, then upon arrival at the store, they can use the shopping feature on the Shop Your Way app to initiate the in-vehicle pick-up

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process and an associate will deliver the product to their car within five minutes.

On slide 13, you can see that we are also investing in capabilities, which we believe will help us build digital relationships with our members. Two concrete examples of these applications are e-Receipts and Shopper Recap.

E-Receipts is a program that provides our members with the option to have a digital version of their sales receipt e-mailed to them instead of a paper receipt or if the member prefers in addition to a paper receipt.

We believe that this provides our members with a more convenient way to receive and archive their sales receipts. Shopper Recap is an integrated retail capability powered by the Shop Sears' app that allows us to continue the conversation with our members even after they leave our stores.

Through Shopper Recap, we can send our members a follow-up e-mail with information on the specific items they looked at in-store, providing them with the information they need to make an informed purchase decision in the future.

These functions are supported by our investment and technology platforms, as well as, our investment in wireless networks and devices at our stores.

Moving to slide 14, one of the primary ways that we engage our Shop Your Way members is through ShopYourWay.com and the Shop Your Way mobile application.

Through our investment in these digital platforms, we're helping making our members' lives easier by offering them personalized deals, fun experiences, advice from associates, and the ability to connect with other members.

Throughout the last year, we continue to see significant increases in the number of members utilizing these platforms to save money, seek information on products and brands, and participate in rewarding sweepstakes.

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Turning to slide 15, one of the exciting ways that we attract members to our digital platform is by offering exclusive products and content that reflect current social trends and pop culture.

In 2013, we expanded our celebrity relationships with Adam Levine and Nicki Minaj to engage their fans on social media and through all of our channels using Shop Your Way as the platform to bring the social experience and commerce together.

Both of these celebrity partners offer a line of exclusive clothing and products to Shop Your Way members. In addition, Adam and Nicki offer exclusive content and allow members to follow their activity.

In turning to slide 16, you can see the traction we believe we are gaining in our member program. While we use many metrics to shut – track our Shop Your Way program and member engagement, one important metric of note is member penetration where the percent of total sales that are derived for – from our members in Sears full-line and Kmart stores.

Our member penetration has increased for the full year from 59 percent in 2012 to 69 percent in 2013. And for the fourth quarter, from 58 percent in Q4 2012 to 72 percent in Q4 2013. Additionally, we're seeing increased engagement from our members on our ShopYourWay.com platform as well as through increases in the redemption of the points our members are earning every day on every transaction.

As we set ourselves up for success in 2014, we continued our efforts in 2013 to simplify our company and to focus it while simultaneously creating long-term value for our shareholders. As Rob will detail, we met or exceeded our key objectives related to expense reduction and inventory management, while also generating \$2 billion of liquidity.

Also, we have announced we're evaluating the separation of our Lands' End business, do a spinoff to shareholders, and have made filings with the SEC to

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accomplish this through a pro ratta distribution to Sears Holdings shareholders.

We're also considering strategic alternatives for our Sears Auto Centers business subject to board approval and other conditions. We expect that through these actions and through working with the Sears Canada board and management, with a goal of increasing and realizing the value of our investment in Sears Canada, we will raise in excess of \$1 billion in proceeds to Sears Holdings in 2014 creating value and helping to fund our transformation.

In short, we believe that we're entering 2014 well positioned in what we believe is a clear plan for success. I will now hand the call off to Rob.

Rob Schriesheim: Thanks, Eddie. On slide 18, we review our performance against the three financial actions laid out at the beginning of the year. First, we plan to reduce our fixed expenses by 200 million. We believe we achieved that objective with total selling and administrative expenses being down 431 million on an adjusted basis, which excludes significant items and by about 200 million when excluding the impact of buying related expenses.

Second, we exceeded our objective of reducing our domestic inventory balance by 500 million at peak, achieving a reduction of about 620 million at the end of the third quarter. Third, we generated 2 billion of liquidity through real estate transactions and our term loan financing against their liquidity objective of 500 million.

Slide 19 is a summary of our fourth quarter and full-year consolidated results, which are consistent with our release of January 9th. As we continue to invest in Shop Your Way as part of our business model transformation, we are seeking to improve member engagement and enhance margins as we transition to a more variable base promotional cost model.

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In the near-term, we incur the cost of two promotional programs impacting rates. Long-term, if successful, we will expect our fixed promotional cost and SG&A to decline, and our variable promotional costs result in higher margins.

We have significant revenue scale, which provides us with substantial operating leverage from small improvements.

For each 100 basis point improvement in margin, we would see a \$364 million improvement in EBITDA. For each 100 basis point improvement in SG&A expense, we would see a \$100 million improvement in EBITDA.

Let me now take you through some of the year-over-year changes underlying our results. Slide 20 is a waterfall chart providing components of the decline revenues from 12.3 billion in the fourth quarter of last year to 10.6 billion in the current year quarter.

As shown in the slide, the primary drivers of the year-over-year revenue change include closed stores for 317 million, 53rd week for 465 million, 598 million for domestic comparable store sales and Sears Canada, which represents 213 million of which 35 million was related to the 53rd week, 85 million was due to unfavorable exchange rate impact, and 60 million due to comp store sales declines.

As you can note in the box on the upper right-hand corner of the slide, about 64 percent of the 1.7 billion year-over-year decline is due to factors other than domestic com store sales performance. As indicated on slide 21, for the quarter, our comp store sales declined by 6.4 percent as Kmart experienced the 5.1 percent decline and Sears a 7.8 percent decline.

We had reported on January 9th in our release that quarter-to-date comps were down 7.4 percent. So we did see an improvement in our comp sales through the month of January. While still early in the quarter, we are seeing positive domestic comparable store sales for the month of February for Sears' full-line and Kmart formats combined.

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For the quarter, Kmart experienced declines across most categories. The most significant decline was in consumer electronics where we experienced a significant improvement in year-over-year profit largely driven by a change in promotional strategy.

Sears experienced declines in most categories including consumer electronics, tools and home appliances partially offset by an increase in the lawn and garden category. Slide 22 shows that for the quarter, our gross margin decreased about 681 million to 2.5 billion in 2013.

As shown in the table on the upper right-hand side, about 38 percent of the year-over-year decline was due to a combination of comp store sales and rate with remaining change of 62 percent due to other factors.

The year-over-year impact of closed stores accounted for approximately 71 million or about 10 percent of the change. The impact of the 53rd week represents about 161 million or about 24 percent of the change.

The setup bars labeled, “Domestic operating performance” is a net amount of 261 million or about 38 percent of the total margin decline. The first bar in this set represents the margin impact of 116 million related to our comp store sales decline.

The next bar in the set represents the impact of margin rate, accounting for 145 million of the margin decline, which was driven by higher promotional markdowns most notably in home appliances, and increase clearance markdowns in apparel due to lower end-of-season sellthroughs than planned.

Next, as indicated, we increased our year-over-year investment in Shop Your Way points by 108 million. The higher cost of points demonstrates increased member engagement and is an indicator of the progress that we are making in our transformation to be a member-centric integrated retailer.

Furthermore, it is important to understand that we recognize the points expense when points are issued to our members. Since the majority of these

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points are valid for 12 months, we expect to see additional revenue and margin benefits from the points that were issued in Q4 within our 2014 results as the points will continue to be redeemed in the future.

Also, as previously noted, we have continued with our traditional promotional programs at historical levels as we are intending to move through the transformation in a thoughtful and deliberate manner.

As a result, we are carrying the cost of two promotional programs. Finally, Sears Canada's gross margin declined by 80 million for the fourth quarter accounting for approximately 12 percent of the total year-over-year margin decline due to a \$23 million effect from foreign exchange rates and reduced margins in home furnishings, fitness, home décor, electronics, footwear and children's wear.

An analysis of our full-year revenue and margin results similar to the previous three slides is covered on slides 43 to 45 in the appendix. While I will not speak to the full-year results for the sake of time, note that the analysis are largely consistent with our fourth quarter analysis with the one notable exception being the impact of Sears' hometown and outlet stores, which were separated in the third quarter of 2012.

Slide 23 summarizes some of what we believe are our substantial financial resources. We had \$1 billion of cash at year-end. In addition, we also had immediate availability to borrow 885 million on our credit facilities, which reflects the effect of both the springing fixed charge covenant ratio and the borrowing base requirement, which reflects the effect of both the spring fixed charge coverage ratio covenant and borrowing base requirement.

We also had \$4.5 billion of equity in inventory. Inventory is a current asset which should be converted to cash very quickly or on average in 90 days in the normal course. Taken together, we had about 6.5 billion of liquidity or assets, which could be converted into cash in the near-term.

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In addition, we have up to \$500 million in an uncommitted commercial paper program, as well as, having potentially available \$760 million of secondly deck capacity subject to borrowing base requirements.

Slide 24 presents our inventory payable and net inventory balances for the past 3 years. We have had success reducing the capital required to run our business as we have reduced our net inventory investment by about \$1 billion over the past 2 years.

By reducing our net inventory investment and our payables, we have decreased the level of vendor support needed to run our business, derisking our business model in a way that benefits both us and our vendor partners.

Slide 25 itemizes our debt balances as of the end of the year and after making some adjustments provides our adjusted consolidated net debt positions. Let me offer a few comments.

First, as the call box on the upper right notes, while our consolidated short-term borrowings are up by about 238 million, our consolidated cash is up by 419 million, meaning that our net short-term borrowings are down by 181 million.

We continue to have 500 million in an uncommitted commercial paper program, which we manage on an as-needed basis. Second, note that despite the added term loan debt of 1 billion, our adjusted net debt position when including the affect of our unfunded pension obligation, which has improved by about 600 million, is about flat year-over-year as we continue to fund the legacy pension obligation.

Note that the company's legacy pension obligation essentially a form of debt has influenced revolver usage. The contributions in 2012 of 516 million and in 2013 of 360 million have been funded by revolver borrowings.

On a pro forma basis, the revolver balance would be 447 million absent these contributions. We have used one form of debt, being the revolver, to fund

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another form of debt, the pension. Of the fiscal year 2013 revolver balance of 1.3 billion, about 876 million was driven over the past 2 years by pension contributions, which should be distinguished from funding operating expenses.

In the box on the upper left-hand side of slide 26, we show our domestic net short-term debt position of 755 million. We had 1.3 billion in borrowings under our domestic credit facility versus 750 million last year; however, we have less commercial paper at 9 million this year versus 345 million last year, which impacts the level of credit facility borrowings.

We ended 2013 with cash of 577 million up nearly 200 million from last year. By taking these changes into account, net short-term debt is up about 40 million versus last year. Next, we show year-end availability on our committed domestic credit facility in the box on the lower left-hand side of the slide.

I'd like to make two points about the year-over-year change, both of which are primarily driven by our more efficient management of inventory. First, our capacity at year-end 2013 was \$2.5 billion.

Although the credit facility provides for up to 3.275 billion of revolver commitments, our ability to use the entire facility was limited at year-end by our borrowing base, which is determined relative to the value of eligible inventory and other collateral.

Also, just as last year, we did not have access to about 10 percent of the total commitments because we would've not have met the springing fixed charge coverage ratio covenant. Second, the end of the year marks our seasonal low point of inventory levels, meaning that resulting potential reduction of our borrowing capacity occurs at a time of year when we don't need full access to the credit facility.

As we have managed our inventory more efficiently, we have less need to borrow and our resulting borrowing capacity is about \$350 million lower than

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this time last year. At seasonal highs during the 2014 holiday season, we currently anticipate that our domestic inventory will be at a level that the bond base will not limit access to the credit facility.

After deducting year-end borrowings and outstanding letters of credit and factoring in the impact of the springing fixed charge coverage ratio covenant and borrowing base requirement, availability to borrow was 549 million at the end of 2013 down from 1.4 billion at the end of last year; however, as with net short-term debt, that doesn't tell the whole story.

Cash was nearly 200 million greater than last year reducing the difference versus last year to about 700 million. When we add back incremental capacity under our 500 million, uncommitted commercial paper program, we had 1.6 billion of potential liquidity compared with 2 billion last year.

Again, the 400 million difference from last year is mostly due to our more efficient management of inventory and its impact on our borrowing base at a time of year when we employ less capital in the business.

Note, that we also are permitted to raise up to 760 million in additional second lien debt subject to borrowing base requirements.

I'd also note that we would substantially delever our balance sheet and increase our availability to the extent we are successful in generating in excess of 1 billion of liquidity from the combination of the \$500 million exit dividend in connection with the contemplated Lands' End separation, our continuing work with the board and management of Sears Canada to increase and realize the value of our current \$620 million stake and our consideration of strategic alternatives for the Sears Auto Centers' business.

As we have commented, we believe that we have ample liquidity to run the business and also have the benefit of access to a rich portfolio of assets. On slide 27, we show that over the past 5 years as part of our transformation, we have honored all of our legacy pension obligations contributing about 1.7 billion.

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While the pension plan remains unfunded by about 1.5 billion at year-end, it is down by about 600 million from the prior year and based on current assumptions and estimates as indicated on the slide, we currently expect the unfunded obligation to decline to about 980 million in 2014.

The pension funding is highly sensitive to both the regulatory environment and interest rates. Note, that a 100-basis point increase in the discount rate would reduce the pension liability by approximately \$460 million.

On slide 28, note that we have continued to manage down our retail store footprint and the associated present value of lease obligations. Over the last 3 years, we have reduced our lease obligation by about \$1 billion as we have adjusted our store base.

As we continue to manage our store footprint, we expect to reduce these obligations in the coming years. Reducing our net minimum leased payments decreases corporate obligations and further derisks our business model.

As shown on slide 29, our debt structure is in place for the next few years as our domestic revolver extends into 2016 and we have negligible term debt maturities over the next several years.

Next, as shown on slide 31, we are reconfiguring our asset base as we accelerate our transformation. In 2012, we separated our Sears hometown and outlet stores business through a rights offering transaction. We consider the transaction to be successful.

It generated 450 million of gross proceeds for Sears Holdings, did not reduce our overall scale as our products and services are sold to their locations, and allowed existing shareholders the right to participate in value creation generated by Sears hometown and outlet stores, which we refer to as show.

We recently announced that we intend to separate Lands' End and are exploring strategic alternatives for our Sears Auto Centers business. We believe these strategic actions are beneficial for a number of reasons.

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First, Sears Holdings becomes a more focused company that is more efficient to manage and easier to understand. Second, the management of these separated businesses are better able to pursue their own strategic opportunities, optimize their capital structures, attract talent and allocate capital on a more focused manner.

Third, they provide multiple opportunities for our shareholders to participate in the value creation generated by these businesses. Finally, they potentially enhance Sears Holdings and the separated entity's financial flexibility.

As we have demonstrated on slide 32, we believe Sears Holdings is asset rich. We believe we can readily generate liquidity from this asset base. In fact, this year we generated 2 billion of liquidity consisting of 1 billion through real estate transactions, the United States and Canada, and another 1 billion as we executed a 5-year secure term loan in October.

On slide 33 – on slide 33, we provide an update on our asset reconfiguration activities. We believe that we are executing on a clear plan to increase financial flexibility, further derisk our balance sheet and create shareholder value.

We expect to continue with these types of activities during 2014. We currently anticipate generating about 500 million from an exit dividend in connection with the previously announced separation of Lands' End through a pro ratta distribution to our shareholders with the separation being subject to board approval and other conditions.

We currently expect that the combination of, one, the Lands' End transaction; two, our continuing to work with the board and management of Sears Canada to increase the value of our investment, which has a market value of about 620 million and realize significant cash proceeds; and three, our valuation of opportunities with respect to a potential separation of our Sears Auto Centers, when taken together, will result in cash proceeds to the company in excess of \$1 billion in 2014 to help fund our transformation and create value.

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In addition, we are capitalizing on our flexibility in our real estate portfolio to reduce unprofitable stores as leases expire and in some cases accelerate closings when circumstances dictate, as well as, continuing to benefit from the value of our real estate in both United States and Canada.

Finally, managing our store base and inventory more efficiently. Also, on a separate, but related note, please see the N.R. earnings release this morning. We provided a preliminary, and unaudited summary outlook, which is subject to change, of the Lands' End fourth quarter and full-year showing EBITDA improvement, about \$31 million and \$42 million respectively as shown on slide 46.

Slide 34 substantiates our belief that we are an asset-rich enterprise with multiple levers at our disposal to generate what we believe to be ample financial flexibility to both meet all of our financial obligations, as well as, fund our transformation.

We are focused on investing on those initiatives that we believe will create long-term sustainable shareholder value. We have demonstrated our ability and willingness to monetize assets as we redeploy capital in support of our transformation to a member-centric model leveraging Shop Your Way and integrated retail.

More specifically, in the past 2 years, we have generated about \$4 billion from a range of actions including inventory, fixed expense reductions, real estate, asset reconfigurations, and a continuing adjustment of our store base.

We have executed these transactions in a way that we believe has been value accretive to our shareholders as we fund our investments and honor our financial obligations.

Now, let me turn the call back over to Eddie.

Eddie Lampert: Thanks, Rob. As I mentioned earlier, as the largest individual shareholder and the CEO, I am personally committed to investing in and driving Sears Holdings' transformation, improving the profit performance of the company

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and creating shareholder value, all while continuing to meet all of our financial obligations.

While I am not pleased with our profit performance, I am pleased with the progress we have shown in our transformation by continuing to improve our member engagement by leveraging Shop Your Way and integrated retail.

We are working in a very focused and diligent manner to drive this transformation to a member-centric model and achieve improved levels of profit performance. Thank you for joining us this morning.

Operator: Ladies and gentlemen, this concludes today's conference. Thank you for your participation and have a wonderful day.

This is **Exhibit "C"**

referred to in the Affidavit of William Turner
sworn before me this 23rd day of July, 2018.



A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

LSD # 70164K

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**Sears Holdings' First Quarter 2014 Results
Pre-Recorded Conference Call Transcript
May 22, 2014**

Operator:

Good day, ladies and gentlemen, and welcome to the Sears Holdings Q1 2014 earnings conference call. At this time, all participants are in a listen-only mode. [Operator Instructions] As a reminder, this conference call is being recorded.

I would now like to introduce your host for today's conference, Mr. Rob Schriesheim. Sir, you may begin.

Rob Schriesheim:

Thank you, Operator.

Ladies and gentlemen, welcome to Sears Holdings' earnings call. I am Rob Schriesheim, EVP and CFO. Please note that this morning we released our first quarter earnings results, which are now available on our website.

Joining me today is Eddie Lampert, our Chairman and Chief Executive Officer. For our call today, you may access the accompanying slide presentation which is available on the investors section of our website under events and presentations.

Before we begin, on slide one, I would like to remind you that today's discussion will contain forward-looking statements relating to future events and expectations. These statements are based on current expectations and the current economic environment, and actual results may differ materially from those expressed or implied in the forward-looking statements.

You can find factors that could cause the company's actual results to differ materially listed in today's press release, in the presentation for today's call that is posted at the Investor Information section of searsholdings.com, and in our most recent SEC filings.

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Finally, we assume no obligation to update the information presented on this call, except as required by law.

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I would now like to turn to slide three and turn the call over to Eddie Lampert.

Eddie Lampert:

Thanks Rob. I also would like to thank all of you for joining us today.

Beginning on slide three, I will provide an update on the progress we are making in our transformation, review some highlights from the past quarter, and briefly review some of the actions we are continuing to take to simplify and focus our company, while creating long-term value for our shareholders. Rob will then review our financial results for the quarter and update you on our asset redeployment efforts in more detail.

Following Rob's remarks, I will outline a framework we have been working on with the intent to restore profitability to our company.

Over the past year, we have successfully educated our various constituents on the strong asset base of Sears Holdings and the significant financial flexibility we have to fund our business operations and transformation. Today we will share a framework which we have developed outlining our intent to restore our company to profitability. We've already executed on certain aspects of that framework, but it is not meant to or designed to give guidance as to our future results, but rather to highlight some of the different levers we have at our disposal to restore profitability to a company of our size and scope.

Slide five depicts our transformation from a traditional retail business model to our member-centric business, leveraging Shop Your Way and Integrated Retail. Our traditional business focused almost exclusively on managing an asset-intensive store-based network, selling products through that network, and employing mass marketing and promotional programs with a high fixed-cost component. In our transformation, we are moving towards a model that is focused on providing benefits to our members by forming individual relationships using our technology and platforms. Our new business model is less asset-intensive and variable in nature.

On slide six, we outline the strategic pillars of our transformation. Our two key platforms -- Shop Your Way and Integrated Retail -- continue to become more prominent both in how we run the company and in how we serve our members.

In reviewing the first quarter, let's move to slide seven, where we provide an update on our transformation progress. As you can see in the charts at the top, we generated a significant change in our same-store sales trends.

Sears Domestic experienced positive comparable store sales growth of 0.2% as compared to a 2.4% decline last year, despite the continuing impact of consumer electronics industry trends. We regained sales momentum in our appliances business, but overall profitability still remains challenged, highlighting a few of the issues that are inevitable in a transformation of this scale.

The biggest negative contributor to sales has been from our consumer electronics business at both Sears and Kmart. To address this decline, we are moving this business from a focus on selling

SEARS HOLDINGS

televisions to a company empowering Connected Living, which will bring together our capabilities in fitness equipment, electronics, appliances, home services, and auto services.

Specifically, our Sears Domestic comparable store sales would have been roughly 60 basis points higher if it were not for the poor performance of the consumer electronics business.

Another business that struggled in the first quarter was our Sears fitness equipment business. Sears is the leader in fitness equipment in the United States, and we intend to leverage and network this business also as part of Connected Living to develop capabilities that go beyond just selling treadmills, ellipticals, and other fitness equipment.

As one step, in the first quarter, we rolled out the integration of Shop Your Way, with several third-party fitness activity tracking clouds, permitting us to reward members for activities monitored via Fitbit, Jawbone Up, iFit-enabled cardio equipment, and a host of smartphone apps.

Kmart's comparable store sales were down 2.2%, as compared to a 4.6% decline last year, also despite the continuing impact of consumer electronics industry trends. In fact, the poor consumer electronics sales contributed to over a 1% drop in comparable store sales. Our grocery and household business also continued its poor performance, which has persisted for over a year and which we intend to address going forward. Excluding the impact of these two categories, the comparable store sales performance at Kmart would have declined 0.4%.

As you can see in the chart on the lower left, our online and multi-channel sales grew 26% over the prior year first quarter. We continue to make our online capabilities more robust and appealing for our members. We are also expanding our marketplace assortment and increasing the number of stores with tablet capabilities.

Finally, as shown on the chart on the lower right, we continue to invest heavily in driving our Shop Your Way platform. Member sales for the first quarter represented their highest level ever, reaching over 74% of eligible sales, up from 68% in the first quarter of 2013. Points redeemed increased by over 30%, demonstrating that our members are becoming even more engaged with the program and taking advantage of the points that they are earning and the points that they are being awarded.

Moving to slide eight, during the first quarter, we completed the spin-off of Lands' End, from which we received gross proceeds of \$500 million, while also creating an opportunity for all of our shareholders to participate equally, based on their pro rata ownership, in any value created by a standalone Lands' End.

Most recently, we announced we are exploring strategic alternatives for Sears Canada, including a potential sale of our interest, currently valued at \$730 million, or Sears Canada as a whole. We believe that the monetization of our stake in Sears Canada will improve our financial position and our ability to execute on our strategic transformation.

As we have previously disclosed, we are continuing to evaluate strategic alternatives for our Sears Auto Center business. We have had discussions with third parties regarding a variety of opportunities, including partnerships. We are focused on either receiving adequate value from a

SEARS HOLDINGS

third party or otherwise positioning the business to allow Sears Holdings shareholders to participate in an improvement in the performance of this business.

We are continuing these transformation efforts across our enterprise. We have closed, or are in the process of closing, 80 stores and may close additional stores over the course of this year. As of the end of the first quarter, we had about 1,900 Sears and Kmart big box stores, representing about 200 million square feet throughout the United States to serve our members. Few companies have this scale and reach.

Also, please note that, as we continue to grow our online business, we intend to continue to increase the services and products provided to our members through our online channels. As an example, we now have data and experience in retaining our actively engaged members following store closings since June of last year.

Given this experience, we believe that we can partially offset the impact of store closures, and, if successful with our integrated retail initiatives, grow our overall ecosystem in line with changes in consumer behavior and technology.

The store actions, together with our expected reduction in inventory needs during the regular selling seasons and the holiday peak season, will further de-risk our business model and that of the vendors who sell to us. We also expect that these actions should decrease our working capital needs and mitigate our losses going forward from these stores.

With regards to our inventory, we have focused on improving productivity, and this has resulted in our domestic net inventory being down \$511 million year over year, excluding the impact of Lands' End.

To this end, we have been reducing slower selling inventory and focusing on keeping our overall inventory position fresh and relevant. This initiative has hurt our overall gross margin in the near term, but we believe that a fresher and more productive inventory assortment should drive better sales, profit, and inventory productivity going forward. This is a reflection of our business model transformation, which leverages integrated retail capabilities to move more of our sales online, requiring us to employ less inventory in the stores. We intend to remain vigilant on our overall inventory management going forward.

While Rob will cover our financial position and results in more detail, I want to highlight the fact that our net debt year over year is down substantially, when including our unfunded pension obligation, as is our net domestic short-term debt.

In addition, we have increased our cash on hand, which when combined with our revolver availability and our net domestic inventory, provides with \$5 billion of domestic liquid assets and net inventory, affording us strong financial flexibility, especially when considering our asset-rich portfolio and all the levers at our disposal to create further financial flexibility.

I also want to discuss our pension funding obligations, which we always have met. The pension obligations have been a constraint on our transformation. This year should mark the peak of our pension needs, with approximately \$500 million of funding required, and over the next five years, we expect funding requirements to be materially lower. We anticipate that our pension will be

SEARS HOLDINGS

fully funded by 2019, based on current interest rates and regulations, and potentially sooner, if interest rates increase.

We will continue to take actions that create value and flexibility to invest in the strategic priorities of our company. After Rob covers our Q1 results and financial position in more detail, I will talk about a framework that outlines for illustrative purposes the levers that we believe we have to restore our company to profitability.

Due in part to our historical performance challenges, we have taken various actions to re-deploy our capital both to invest in our Shop Your Way and Integrated Retail platforms, as well as to meet our financial obligations, including our legacy pension obligations.

As legacy obligations decline, we expect to have more freedom to invest in and accelerate our transformation. As changes occur in and around retail, we intend to be in the mix, focused on investments and acquisitions that accelerate and improve our transformation. The framework we have laid out focuses on the levers we have in light of our scale to drive profitability, and I'll review that with you following Rob's presentation.

Rob?

Rob Schriesheim:

Thanks, Eddie.

Slide 10 is a summary of our first quarter consolidated results. As we continue to invest in Shop Your Way and Integrated Retail as part of our business model transformation, we are seeking to improve member engagement and enhance margins as we transition to a more variable-based promotional cost model.

In the near term, we incur the cost of two promotional programs while also reducing our slow-moving, unproductive inventory levels, both of which impact our gross margins. Longer term, if successful, we would expect our fixed promotional costs and selling and administrative expenses to decline and our variable promotional costs to result in higher margins, which we will discuss in more detail later in this presentation.

We have significant revenue scale, which provides us with substantial operating leverage such that small improvements in margin can lead to substantial improvements in EBITDA. Let me now take you through some of the year-over-year changes underlying our results.

Slide 11 is a "waterfall" chart providing components of the decline in revenues from \$8.5 billion in the first quarter of last year to \$7.9 billion in the current year quarter. As you can note in the box on the upper-right-hand corner of Slide 11, about 90% of the \$573 million year-over-year decline was due to factors other than domestic comp store sales performance.

The primary drivers of the year-over-year revenue decline include closed stores, which account for about 32% of the decline, or \$185 million. As Eddie indicated earlier, we have announced that we will be closing 80 stores and may consider closing additional stores in 2014. As we have

SEARS HOLDINGS

invested heavily in our Shop Your Way program and Integrated Retail capabilities, we now have the ability to retain a portion of members who shopped the closed stores, thereby reducing the revenue impact of store closures.

Next, the separation of Lands' End, accounting for 16% of the decline, or \$91 million; \$58 million for domestic comparable store sales, about 10% of the decline; and, finally, Sears Canada for 25%, or \$145 million of the decline, which consisted of \$45 million due to a decline in comparable store sales, \$25 million due to having fewer stores in operations, and \$59 million due to unfavorable foreign currency exchange rates.

As indicated on slide 12, for the quarter, our domestic comparable store sales declined by 1.0%, as Kmart experienced a 2.2% decline, which was partially offset by an increase in the Sears Domestic format of 0.2%.

The decline at Kmart was driven primarily by declines in the consumer electronics and grocery and household categories. Excluding the impact of these two categories, Kmart would have experienced a same-store decline of about 0.4%.

The comp store sales increase at Sears was driven primarily by increases in the appliances and home categories, partially offset by declines in the consumer electronics, lawn and garden, and fitness categories. Had it not been for the poor performance of consumer electronics, the Sears domestic comparable store sales would have been approximately 60 basis points higher.

Slide 13 shows that for the quarter, our gross margin decreased about \$328 million to \$1.8 billion in 2014. As shown in the table on the upper-right-hand side, about 40% of the year-over-year decline was due to a combination of comparable store sales and rate, with the remaining change of 60% due to other factors.

More specifically, the year-over-year impact of closed stores accounted for approximately \$37 million, or about 11% of the change. The impact of the Lands' End separation represents about \$45 million, or about 14% of the change.

The set of bars labeled "Domestic Operating Performance" is a net amount of \$135 million, or about 40% of the total margin decline. The first bar in this set represents the margin impact of \$17 million related to our comp store sales decline. The next bar in the set represents the impact of margin rate, accounting for \$118 million of the margin decline, which was driven by higher promotional markdowns, most notably in home appliances, as well as in apparel.

Next, as indicated, we increased our year-over-year investment in Shop Your Way points by \$38 million. The higher cost of points demonstrates increased member engagement and is an indicator of the progress that we are making in our transformation to be a member-centric integrated retailer.

Furthermore, it is important to understand that we recognize the points expense when points are issued to our members. We expect to see additional revenue and margin benefit from the points that were issued in the first quarter throughout the remainder of 2014, as the points will continue to be redeemed in the future.

SEARS HOLDINGS

Also, as previously noted, we have continued with our traditional promotional programs at historical levels, as we are intending to move through the transformation in a thoughtful and deliberate manner. As a result, we are carrying the costs of two promotional programs.

Finally, Sears Canada's gross margin declined by \$73 million in the first quarter, accounting for approximately 22% of the total year-over-year margin decline.

While not shown on the slides, we were also negatively impacted by significantly higher utilities expenses. For the full year, these expenses could run \$30 million to \$50 million or more higher than last year as electricity rates have increased by over 10%.

Slide 14 summarizes some of what we believe are our substantial financial resources. We had \$842 million of cash at quarter end on a consolidated basis. In addition, we had immediate availability to borrow about \$1.2 billion on our credit facilities, which reflects the effect of both the springing fixed charge coverage ratio covenant and borrowing base requirement of our domestic credit facility.

We also had \$4.1 billion of equity in inventory. Inventory is a current asset which can be converted to cash very quickly, or on average in 90 days in the normal course. Taken together, we had about \$6.1 billion of liquidity or assets on a consolidated basis which could be converted into cash in the near term.

In addition, we have up to \$500 million in an uncommitted commercial paper program, \$159 million of which was outstanding at the end of the first quarter. In addition, we potentially have \$760 million of second lien debt capacity available, subject to borrowing base requirements.

Also note that, should we be successful in monetizing our 51% stake in Sears Canada, this would result in cash proceeds of approximately \$730 million at current market values. As indicated on the slide, this affords us the option, should we decide to do so, to apply those proceeds to our domestic revolver. I would note that under the terms of our domestic revolver agreement, we have flexibility in how we use those proceeds. We are not required to apply these proceeds to the outstanding revolver balance. If we have received these proceeds and decided to apply them to the domestic revolver outstanding balance, then availability under our domestic revolver would have been \$1.5 billion had the transaction taken place as of the end of our fiscal first quarter.

Slide 15 presents our inventory, payable and net inventory balances for the past three years on a consolidated basis. We have had success reducing the capital required to run our business, as we have reduced our net inventory investments by about \$1.4 billion over the past three years. By reducing our net inventory investment and our payables, we have decreased the level of vendor support needed to run our business, de-risking our business model in a way that benefits both us and our vendor partners.

On Slide 16, we show that over the past five years, as part of our transformation, we have honored all of our legacy pension obligations. While the pension plan remained unfunded by about \$1.5 billion at fiscal year end 2013, it was down by about \$600 million from the prior year, and based on current assumptions and estimates, as indicated on the slide, we currently expect the unfunded obligation to decline to about \$900 million at fiscal year end 2014.

SEARS HOLDINGS

The pension funding is highly sensitive to both the regulatory environment and interest rates. Note that a 100 basis point increase in the discount rate would reduce the pension liability by about \$460 million.

On slide 17, you can see that our domestic pension contributions over the past nine years, including 2014, will have totaled \$2.9 billion. This year should mark the peak of our pension funding needs going forward with about \$485 million of funding required. Our pension funding should decline to around \$300 million or less beginning in 2015 and decline to \$75 million in 2019.

As you can see, our aggregate pension funding requirements over the five-year period ending 2019 are expected to be about \$1.2 billion, at which point we expect our pension to be fully funded based on current interest rates and regulations, and possibly sooner, should interest rates increase.

As Eddie indicated, this should provide relief to the funding pressure we have felt as we have honored our legacy pension obligations and allow us to devote funding into our transformation.

Slide 18 itemizes our debt balances as of the end of the year, and after making some adjustments, provides our adjusted consolidated net debt position. Let me offer a few comments.

First, as the call-out box on the upper right notes, our revolver borrowings are down by about \$306 million, our commercial paper outstanding is down by about \$218 million, with our short-term borrowings down by \$524 million. Our domestic cash is up by \$218 million, meaning that our net short-term borrowings are down by \$742 million on a year-over-year basis.

Second, note that while our total debt has increased by about \$426 million, our adjusted net debt position, when including the effect of our unfunded pension obligation, is down almost \$400 million year over year. Note that the company's legacy pension obligation is essentially a form of debt and has influenced revolver usage.

The contributions of \$516 million in 2012, \$360 million in 2013, and \$98 million in the first quarter of 2014 have been funded by revolver borrowings. On a pro forma basis, the revolver balance would be \$97 million absent these contributions. In essence, we have used one form of debt -- namely, our revolver -- to fund another form of debt, the pension. Since 2012, almost \$975 million of the first quarter revolver balance of \$1.1 billion was driven by pension contributions which should be distinguished from funding operating expenses.

Once again, note that should we be successful in monetizing our 51% stake in Sears Canada, this would result in cash proceeds of \$730 million at current market values. As indicated on the slide, this affords us the option, should we decide to do so, to apply those proceeds to our domestic revolver.

I would note that under the terms of our domestic revolver agreement, we have flexibility in how we use those proceeds. Again, we are not required to apply such proceeds to the outstanding revolver balance. If we had received those proceeds and decided to apply them to the domestic revolver outstanding balance, this would have resulted both in usage of our revolver and our adjusted net debt being lower by \$730 million.

SEARS HOLDINGS

In the box on the upper-left-hand side of slide 19, we show our domestic net short term debt position of \$634 million. We had \$1.1 billion in borrowings under our domestic credit facility, versus \$1.4 billion last year. We had less commercial paper at \$159 million this year versus \$377 million last year, which impacts the level of credit facility borrowings. We ended the quarter with cash of \$596 million, up about \$218 million from last year. By taking these changes into account, net short term debt is down about \$740 million versus last year, or 54%.

Next, we show availability on our committed domestic credit facility in the box on the lower-left-hand side of the slide. I'd like to make two points about the year-over-year change, both of which are primarily driven by our more efficient management of inventory.

First, our capacity at the end of the first quarter was \$2.5 billion. Although the credit facility provides for up to \$3.275 billion of revolver commitments, our ability to use the entire facility was limited at quarter's end by our borrowing base, which is determined relative to the value of eligible inventory and other collateral. Also, just as last year, we did not have access to about 10% of the total commitments because we would not have met the springing fixed charge coverage ratio covenant.

Second, as we have managed our inventory more efficiently, we have less need to borrow, and our resulting borrowing capacity is about \$470 million lower than this time last year. At seasonal highs during the 2014 holiday season, we currently anticipate that our domestic inventory will be at a level that the borrowing base will not limit access to the credit facility.

After deducting quarter end borrowings and outstanding letters of credit, and factoring in the impact of the springing fixed charge coverage ratio covenant and borrowing base requirement, availability to borrow at the end of the first quarter was \$752 million, down from \$823 million at the end of the first quarter last year.

However, as with net short term debt, that does not tell the whole story. Cash was about \$218 million greater than last year, and incremental capacity under our \$500 million uncommitted commercial paper program was also \$218 million greater than last year. After including the impact of cash and incremental commercial paper capacity, we had nearly \$1.7 billion of potential liquidity compared with \$1.3 billion last year.

Note that we also are permitted to raise up to \$760 million in second lien debt, subject to borrowing base requirements.

I would also note that we would continue to de-lever our balance sheet and increase our availability to the extent we are successful in monetizing our 51% stake in Sears Canada, which currently has a market value of about \$730 million. As indicated on the slide, this affords us the option, should we decide to do so, to apply those proceeds to our domestic revolver. Had such a transaction taken place as of the end of our first fiscal quarter, and had we applied those proceeds to the outstanding domestic revolver balance, we would have had no net short-term debt. Actually, we would have been net cash positive.

I would also note that we currently have \$500 million of authorization remaining for share repurchases, as well as \$275 million of authorization remaining for repurchases of our debt. As

SEARS HOLDINGS

we have commented, we believe that we have ample liquidity to run the business and also have the benefit of access to a rich portfolio of assets.

On slide 20, note that we have continued to manage down our retail store footprint and the associated present value of lease obligations. Over the last three years, we have reduced our lease obligation by about \$1 billion, as we have adjusted our store base. As we continue to manage our store footprint, we expect to reduce these obligations in the coming years. Reducing our net minimum lease payments decreases corporate obligations and further de-risks our business model.

While we are reducing our lease obligations by adjusting our square footage and store base, on slide 21, we show that we continue to operate stores in some of the best malls in America. There were two reports that had been done over the past six years -- one by Goldman Sachs and one by Morgan Stanley.

The Goldman Sachs report listed the top 100 malls in America. The Morgan Stanley report listed the top 100 fashion malls in America. In 2007, we had Sears stores in 42 of the top 100 malls in America, and as of 2014, we have 41 stores in these malls.

When looking at the top fashion malls, we were at 41 in 2009 and 39 in 2014. When you view these two lists collectively, because there was overlap between the two lists, there were 149 malls. In 2007, we were in 63 of the malls, and we are now in 61. As you can clearly see from the data, we are retaining stores in some of the best locations as we close stores to optimize our store footprint and reduce lease obligations.

As shown on slide 22, our debt structure is in place for the next few years, as our domestic revolver extends into 2016, and we have negligible term debt maturities over the next several years.

I would now like to shift gears and spend a few minutes to discuss how we are reconfiguring and redeploying our rich portfolio of assets to accelerate and fund our transformation.

On slide 24, we show the framework we use to evaluate potential strategic transactions. We believe that these transactions will enable us to accelerate and fund our transformation when they allow Sears Holdings, the separated entity, or both entities, to, one, become a more focused company that is more efficient to manage and easier to understand; two, pursue their own strategic opportunities and attract talent; three, optimize their capital structures and allocate capital in a more focused manner; four, enhance their financial flexibility; and, five, provide opportunities for our shareholders to continue to participate in the value creation generated by these businesses after separation.

We believe that we are executing on a clear plan to increase financial flexibility, further de-risk our balance sheet, and create shareholder value. We expect to continue with these types of activities during 2014.

On slide 25, we provide an update on our asset configuration activities. On our last earnings call, we disclosed that, at the time, we expected that the combination of, one, the Lands' End transaction, two, our continuing to work with the board and management of Sears Canada to

SEARS HOLDINGS

increase the value of our investment, and, three, our evaluation of opportunities with respect to a potential separation of our Sears Auto Centers when taken together would result in cash proceeds to the company in excess of \$1 billion in 2014 to help fund our transformation and create value. We believe that we are on track to deliver against this commitment.

On April 4th, we completed the separation of Lands' End through a pro rata distribution to our shareholders and received an exit dividend from Lands' End in the amount of \$500 million as anticipated.

On May 14th, we announced that we intended to hire an investment banking firm to explore strategic alternatives for our 51% equity stake in Sears Canada, including a potential sale of our 51% interest or of Sears Canada as a whole. Sears Canada's board of directors has advised us that they intend to cooperate fully with Sears Holdings in this process to achieve value for all shareholders. The market value for our 51% interest was \$730 million as of May 20, 2014.

We also continue to evaluate options to separate our Sears Auto Center business. In addition, we are capitalizing on our flexibility in our real estate portfolio to reduce unprofitable stores as leases expire and in some cases accelerate closings when circumstances dictate, as well as continuing to benefit from the value of our real estate in both the U.S. and Canada.

In the first quarter, we received \$79 million in proceeds from real estate transactions. In addition, we continue to manage our store base, square footage, and inventory more efficiently.

Slide 26 substantiates our belief that we are an asset-rich enterprise with multiple levers at our disposal to generate what we believe to be ample financial flexibility to both meet all of our financial obligations, as well as fund our transformation. We are focused on investing in those initiatives that we believe will create long-term, sustainable shareholder value. We have demonstrated our ability and willingness to monetize assets as we redeploy capital in support of our transformation to a member-centric model, leveraging Shop Your Way and Integrated Retail.

More specifically, since the beginning of 2012, we have generated about \$5 billion from a range of actions, including inventory, fixed expense reductions, asset reconfigurations, real estate, the execution of a term loan through our ABL accordion feature, and a continuing adjustment of our store base. We have executed these transactions in a way that we believe has been value accretive to our shareholders as we fund our investments and honor our financial obligations.

Moving to slide 27, I will now turn the call back over to Eddie, who will cover our plan for restoring our company to profitability.

Eddie Lampert:

Thanks, Rob.

Transitioning to this section on slide 27, I mentioned that I want to use this opportunity to share a framework that outlines the levers to restore profitability to Sears Holdings. Over the course of the next few slides, I will explain this framework.

SEARS HOLDINGS

As I said before, the framework is not intended to provide guidance or predict results. Rather, it is intended to provide some dimensional context for the potential opportunities for increasing profitability, if we are successful in executing on the initiatives outlined.

For some of these initiatives, which we are in the process of implementing, we are developing our plans to implement them for additional product categories. Consistent with the strategic pillars of our transformation, the framework heavily leverages our two key platforms, Shop Your Way and Integrated Retail. These platforms enable us to better engage with and serve our members.

Additionally, it includes potentially transforming select product businesses, such as apparel and consumer electronics, and further expanding product categories like mattresses, where we've seen success.

Finally, the framework illustrates potential significant reductions in both our cost of goods and SG&A structure through strategic sourcing, substituting Shop Your Way points for promotional markdowns, reductions in our square footage, process improvement, and the use of technology.

On slide 28, we show that we are committed to serving our members better, driving sustainable and profitable growth, and maintaining disciplined stewardship of capital, which when taken together will create value for our shareholders. A transformation of this size and scale is difficult, but our entire management team is committed to the transformation.

On slide 29, we show the overview of our framework. I reviewed this slide earlier on the call, but it is a very important slide to understand the model we have been operating for many years and the model we are moving towards. It is a different mindset from selling products and running a store network to being a member-focused company. We are putting our members at the center of our model. Building relationships through personalization is the foundation, and we believe that our Shop Your Way and Integrated Retail capabilities will enable us to better serve our members.

On slide 30, we show the summary of this framework. This framework for profitability is centered on accelerating our new business model, which we believe will better serve our members. We are building on and expanding our Shop Your Way and Integrated Retail capabilities every day, and our members are becoming more and more engaged as our metrics for the first quarter indicate.

We are putting our members at the center of our model. Building relationships through personalization is the foundation, and we believe that our Shop Your Way and Integrated Retail capabilities will enable us to better serve our members.

We also need to address specific product businesses. Consumer electronics, for example, is one of our largest revenue businesses. However, we need to transform this business from one that focuses on selling televisions to a fully integrated Connected Life experience. I will share some specifics on what that means on a subsequent slide.

The framework for profit depicts leveraging our scale, and includes optimizing our store network and square footage; accelerating Shop Your Way and Integrated Retail as the foundation of our business model; transforming select business models; and reducing selling and administrative expenses.

SEARS HOLDINGS

We also believe we can significantly reduce our overall cost structure by, one, shifting our marketing spend from mass to digital campaigns in a more accelerated way; two, leveraging technologies that create labor and other cost efficiencies; and, three, re-engineering core processes throughout our network.

On slide 31, we show how there's an opportunity to optimize our store network. Stores will continue to play a very important role in serving our members, but we believe we can continue to engage and serve our members through our Shop Your Way and Integrated Retail platforms and our remaining vast store network.

Based on experience to date in those stores we have closed over the last year, we believe there is an opportunity to optimize our store network while still maintaining a relationship with the members in those communities through our Shop Your Way and Integrated Retail platforms. The potential benefit of this both could reduce our overall cost structure and working capital needs, while maintaining a substantial portion of the current sales and gross margin derived from members in communities where we may potentially reduce the store footprint.

We believe that the combination of the positive margin impact of continuing to serve our members through Shop Your Way, together with the elimination of fixed expenses and inventory reductions associated with closed stores, could result in a positive \$300 million to \$400 million of incremental annual EBITDA.

On slide 32, we have made substantial investments in Integrated Retail, and where we have, we are seeing very good results. We will continue to roll these capabilities out to more of our stores.

Three specific capabilities we will continue to expand are, one, our Shop Sears tablets that we currently have in over 571 stores and are currently rolling out to an additional 100 locations; two, digital signs, which we piloted in 60 stores in 2013 and expanded to over 250 locations in the first quarter of this year; three, RFID technology, which we piloted in 12 stores in 2013 and are expanding to over 200 locations this year.

In the case of both RFID and digital signs, we've seen a benefit in sales and margin in the stores where we've enabled these capabilities. In extrapolating from this experience, we believe there is the potential to generate about \$500 million in incremental annual revenue and between \$150 million and \$200 million of incremental annual EBITDA for these two initiatives alone.

The Shop Sears application provides the foundation for integrated retail capabilities. Of course, any investment required to execute on these initiatives would be rigorously evaluated to ensure there is an appropriate return on capital employed.

On slide 33, we show the difference in annual spend between an average engaged Shop Your Way member and a very engaged Shop Your Way member. The spend difference is significant, with our most actively engaged members spending 75% more than our average member. We are focused on targeted actions that will convert more of our average active members to more engaged members. The EBITDA potential is substantial. As an example, moving 1 million members from average to most engaged status represents \$50 million in EBITDA.

SEARS HOLDINGS

On slide 34, we show that cost of goods annual spend is \$23.6 billion. We are focused on reducing our overall cost of goods through a number of initiatives. We have invested substantially in our pricing capabilities, both in people and technology, which will enable us to be more targeted and real-time, responding to our members' needs and the competitive environment.

We're also focused on shifting our promotional design to be less dependent on promotional markdowns and replacing them with Shop Your Way points, where it makes sense. There will always be a level of promotional markdowns as part of our go-to-market promotional design, but our intent is to replace a portion of our existing promotional markdowns with points.

Also, we are focused on optimizing our supply chain to right-size our network, and leveraging our real estate portfolio, by partnering with other retailers, to lease out valuable, but underproductive space. Through these actions, as outlined on slide 34, you can see that each 1% reduction in our cost of goods, which would include the impact of sub-lease income, would generate an incremental \$230 million of annual EBITDA.

On slide 35, selling and administrative expenses is also an area of focus. As we've discussed in the past, we have reduced our fixed expense structure by about \$800 million annually over the past three years, though this is a mix of costs included in both cost of goods and selling and administrative expenses.

We believe there's still more opportunity. Our areas of focus are re-engineering processes, leveraging technology, and shifting our marketing mix. I mentioned earlier the benefits we are seeing in revenue and margin related to digital signs. There is also a significant cost benefit as digital signs replace the need for manual labor and paper signs. Each 2% reduction in selling and administrative expenses is \$150 million of incremental EBITDA.

On slide 36, we show that we need to provide our members with the products and services they are looking for. We are transforming our apparel business with a focus on refreshed brands and product assortments and are reducing lead times to better meet our members' needs. Our revenue per square foot in our apparel business is about one-third of the industry average. Each \$10 improvement in our sales productivity per square foot represents \$100 million in incremental annual EBITDA.

On slide 37, we depict our Connected Life business initiative. As an example, in the first quarter, we rolled out the integration of Shop Your Way, with several third-party fitness activity tracking clouds, permitting us to reward members for activities monitored via Fitbit, Jawbone Up, iFit-enabled cardio equipment, and a host of smartphone apps.

We're also going to transform our consumer electronics business from a business that was focused primarily on selling televisions to a business focused on providing Connected Life solutions. We are currently rolling out the concept to select stores and are very excited about its potential to leverage many of Sears Holdings' strengths.

Connected Life is about providing our members with connected products, data and experiences to help them manage their lives. As shown in the picture on slide 37, our capabilities and breadth can provide Shop Your Way members seamless experiences across connected home, car and fitness.

SEARS HOLDINGS

On slide 38, I do want to touch briefly on working capital. It has and will continue to be a big area of focus. As we have discussed before, we have reduced our net domestic inventory levels by over \$1 billion over the past three years. We believe there is still substantial opportunity to further improve our inventory productivity. We are focused on a number of initiatives centered on reducing the levels of slow-moving, unproductive inventory; thinking differently about how we buy and flow our merchandise given our Shop Your Way program and integrated retail platform; and buying smaller quantities of merchandise and turning it more frequently.

As you can see on the slide, if we can turn our inventory one more time per year, we can reduce our net working capital requirements by about \$400 million, enhancing liquidity, and freeing up capital that could be further used to further invest in our transformation.

On slide 39, we provide a summary of the initiatives laid out in the previous slides. As you can see, these opportunities have the potential to generate incremental annual EBITDA of between \$1 billion and \$2.5 billion if we successfully execute on these initiatives under the assumptions as indicated.

We believe we have a substantial opportunity to compete successfully in the changing retail landscape by proactively transforming our business to meet the realities of the retail industry. As I have said in the past, transformations of this size and scale are challenging, and we may continue to experience challenges in our financial performance over the next several quarters.

However, we have made progress across a wide spectrum of initiatives, such as leveraging our Shop Your Way and Integrated Retail platforms, reducing our legacy pension obligation, managing our expenses, de-risking our balance sheet, and enhancing our financial flexibility to position ourselves to meet all of our financial obligations.

These initiatives, when coupled with executing on the profitability framework I just described, will position us to play offense, enable us to continue to seek opportunities to grow, and invest in our business through acquisitions and other strategic relationships.

As I indicated earlier, as changes occur in and around retail, we intend to be in the mix focused on investments and acquisitions that accelerate and improve our transformation. Again, we are focused on making a profit, and we expect to continue to focus on our strengths, including increased focused on our best members, best stores, and best categories.

As the CEO and largest individual shareholder of Sears Holdings, I am personally committed to investing in and driving our transformation, improving the profit performance of the company and creating shareholder value. We will do this all while continuing to meet our financial obligations. Our team is committed and is actively engaged in the daily work to make this transformation work.

Operator:

Thank you for participating in today's call. You may now disconnect.

This is **Exhibit "D"**

referred to in the Affidavit of William Turner

sworn before me this 23rd day of July, 2018.



A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

LSO#70164K

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**Sears Holdings' Second Quarter 2014 Results
Pre-Recorded Conference Call Transcript
August 21, 2014**

Operator:

Good day, ladies and gentlemen, and welcome to the Sears Holdings Corp. Q2 2014 earnings conference call. At this time, all participants are in a listen-only mode. [Operator instructions] As a reminder, this conference call is being recorded.

I would now like to introduce your host for today's conference call, Rob Schriesheim, Executive Vice President and Chief Financial Officer for Sears Holdings. Sir, you may begin.

Rob Schriesheim:

Thank you, Operator.

Ladies and gentlemen, welcome to the Sears Holdings earnings call. I am Rob Schriesheim, Executive Vice President and Chief Financial Officer. Please note that this morning we released our second quarter earnings results which are now available on our website.

Joining me today is Eddie Lampert, our Chairman and Chief Executive Officer. For our call today, you may access the accompanying slide presentation which is available on the investors section of our website under events and presentations.

Before we begin, on Slide 2, I would like to remind you that today's discussion will contain forward-looking statements related to future events and expectations. These statements are based on current expectations and the current economic environment or are based on potential opportunities and actual results may differ materially from those expressed or implied in the forward-looking statements. You can find factors that could cause the Company's actual results to differ materially listed in today's press release, in the presentation for today's call that is posted at the Investor Information section of searsholdings.com, and in our most recent SEC filings.

In addition, on Slide 3, our discussion will include certain non-GAAP financial measures. Reconciliations to the most directly comparable GAAP financial measures can be found in the presentation and today's earnings release. Any reference in our discussion today to EBITDA means Adjusted EBITDA, as defined in the earnings release and presentation.

SEARS HOLDINGS

Finally, we assume no obligation to update the information presented on this call, except as required by law.

I would now like to turn to Slide 4 and turn the call over to Eddie Lampert.

Eddie Lampert:

Thanks Rob. I also would like to thank all of you for joining us today.

Beginning on Slide 4, I will provide an update on the progress we are making in our transformation, review key highlights from the second quarter and briefly review some of the actions we are taking to simplify and focus our company while creating long term value for our shareholders. Rob will then review our financial results for the quarter and update you on our asset redeployment efforts in more detail. Following Rob's remarks, I will provide an update on the framework for profit that I introduced on our last earnings call outlining our efforts to restore Sears Holdings to profitability. This framework is not meant to give guidance as to our future results or to predict that we will be successful in executing every aspect of this framework, but rather to highlight some of the different levers we have at our disposal that could restore profitability.

As the CEO and the largest individual shareholder of Sears Holdings, I am personally committed to investing in and driving our transformation, improving the profit performance of the company, ensuring our financial flexibility all while creating shareholder value.

Slide 6 illustrates the transformation to move from a traditional retail operating model to a member-centric operating model. While retailers continue to be impacted by the same external factors, we are moving aggressively to address what we can control. We have a number of different levers at our disposal that will enable us to return a company of our size and scope to profitability and deliver value to our many stakeholders.

A key component of transforming our business is to move towards a structure that focuses on providing benefits to our members by using technology and platforms to form individual relationships with them. Our new business model is intended to be less asset-intensive and our new cost structure is intended to be more variable in nature.

Moving now to Slide 7.

I will direct my opening summary comments on 5 key areas of focus:

First, while we have continued to show progress in our transformation, as demonstrated by growth in our Shop Your Way penetration rates and our on-Line sales growth, our second quarter earnings are unacceptable. We are taking steps to address our

SEARS HOLDINGS

performance on several levels including reducing costs, investing in the acceleration of our transformation, rationalizing our physical footprint to focus on our better performing stores and markets, and improving our pricing and promotional design to yield higher gross margins.

Given our scale, small changes can have a big impact on our results. For example, a 100 basis point increase in margin rate in the second quarter would increase EBITDA by approximately \$80 million for the quarter and over \$300 million on an annualized basis.

Second, our transformation continues through Shop Your Way and Integrated Retail. We continue to see increasing engagement from our Shop Your Way members who drove 73% of eligible sales in the quarter. In addition, our integrated retail initiatives drove our online and multi-channel sales up 18% in the quarter and 22% in the first half. The success of these two platforms is allowing us to maintain relationships with our members as we rationalize our store footprint and place an increased focus on supporting our better performing stores. Despite the fact that adjusting our footprint has resulted in store closures, we continue to have a substantial nationwide footprint with a presence in many of the top malls in the country similar to what we had in 2007.

Third, we plan to take short and long term actions to enhance our financial flexibility. We have reduced our inventory by \$1.7B over the past 3 years as we closed stores and improved productivity. As a result, in the future we will be less reliant on inventory as the primary form of collateral in our financing arrangements.

In the next 6-12 months, we intend to work with our lenders and others to evaluate our capital structure with a goal of achieving more long term flexibility.

Fourth, we have a proven record of funding our transformation and our business model. We have a large, valuable, diverse and unencumbered set of assets and businesses. In the first half of 2014, we generated \$665 million in proceeds towards our initial stated goal of \$1 billion for the year.

We also continue to reduce our liabilities by:

1. Decreasing lease obligations by over \$1 billion over the past 3 years;
2. Reducing our underfunded pension status by over \$600 million in the past year, and
3. Reducing our overall pension liability, including making \$1.5 billion in lump sum payments in 2012 to our pension plan participants, which reduced our exposure to the market risk associated with managing pension plan assets.

SEARS HOLDINGS

Fifth, we continue to add to the talent pool of the company. We have brought in new leaders, and elevated others within the company, as we change our culture to be more accountable and focused on driving performance. We currently expect the combination of these actions to improve operating results.

We will continue to take actions that we believe will create value and provide us with the financial flexibility to invest in the strategic priorities of the company. As changes occur in and around retail, we intend to be actively involved, focused on investments and acquisitions that we believe will accelerate and enhance our transformation.

I will now hand the call over to Rob who will take you through our second quarter results and financial position followed by a more detailed update of our asset redeployment and reconfiguration activities.

Rob Schriesheim:

Thanks, Eddie.

Slide 9 is a summary of our second quarter and year-to-date consolidated results. As we continue to invest in Shop Your Way and Integrated Retail, as part of our business model transformation, we seek to improve member engagement and enhance margins as we transition to a more variable-based promotional cost model. In the near term, we are incurring the cost of two promotional programs while also reducing our inventory levels, both of which impact our gross margins. Longer term, we expect our fixed promotional costs and selling and administrative expenses to decline and our variable promotional costs to result in higher margins. While our area of greatest leverage is margins and promotional costs, we have continued to reduce fixed expenses. Since 2012 our annual fixed expenses have declined by about \$800 million. Our significant revenue scale provides us with substantial operating leverage such that small improvements in margin rate and selling and administrative expense can lead to substantial improvements in EBITDA.

Let me now take you through some of the year-over-year changes underlying our results.

Slide 10 is a “waterfall” chart providing components of the decline in revenues year over year. As you see in the box on the upper, about 95% of the \$858 million year-over-year decline was due to factors other than domestic comparable store sales performance.

The primary drivers of the decline include:

- Domestic closed stores, which account for about 30% of the decline or \$256 million. As we have invested heavily in Shop Your Way and Integrated Retail capabilities, we believe we have the ability to retain a portion of members who shopped the closed stores.

SEARS HOLDINGS

- The separation of Lands' End accounting for 39% of the decline or \$330 million,
- \$47 million for domestic comparable store sales, about 6% of the decline, and
- Sears Canada accounted for 16%, or \$140 million of the decline.
- Finally, we also experienced a revenue decline in our Home Services business during the quarter, as well as a decline in delivery revenues which combined, accounted for the majority of the other revenue decline of \$85 million.

Moving to Slide 11, as shown in the top box, the increase in our comparable store sales trends demonstrates a marked improvement in the performance of both Sears and Kmart store sales.

The steady growth we are seeing in Shop Your Way Members sales penetration and Online and Multichannel Sales is indicative of the success of the transformation. While we are moving in the right direction, there is more work to be done to get results where we expect them to be and to put other parts of the business on the right path forward.

As you can see in the chart on the lower left, our online and Multichannel Sales grew 18% in the quarter and I note our first half was up 22%. We continue to make our online capabilities more robust and appealing for our members. We are also expanding our marketplace assortment and increasing the number of locations with in-store tablet capabilities.

Finally, we continue to invest heavily in our Shop Your Way platform. As a result, we continue to see higher levels of member engagement, demonstrating that our members are becoming even more engaged.

As indicated on Slide 11, for the quarter, our domestic comparable store sales declined by 0.8%, as Kmart experienced a 1.7% decline which was partially offset by an increase in the Sears Domestic format of 0.1%.

Sears Domestic experienced continued momentum in our appliances and mattresses categories in Q2 leading to a positive comparable store sales growth of 0.1% as compared to a 0.8% decline last year, despite the continuing impact of negative consumer electronics industry trends. Our electronics business has been a drag on the Sears format for some time. We are addressing this decline by shifting the focus of our electronics business away from simply selling TVs. By transforming the business into one that focuses on empowering Connected Living, we expect that the new electronics business

SEARS HOLDINGS

will bring together our capabilities in fitness, electronics, appliances, home services and auto. Adjusting for the negative impact of the consumer electronics business, Sears Domestic comparable store sales would have been about 150 basis points higher. Our auto business, despite its efforts to focus on services, experienced a comparable store sales decline in the low double digits in the second quarter.

Kmart's comparable store sales were down 1.7% as compared to a 2.1% decline last year. Our grocery and household business continued its poor performance which has persisted for more than a year and which we intend to address going forward with assortment updates, private label growth, and pricing promotional effectiveness initiatives. If we exclude the impact of the grocery and household and electronics categories, the comparable store sales performance at Kmart would have declined 1.0%.

Note further, that had it not been for the consumer electronics and grocery and household categories, Total SHC Domestic would have had a comparable store sales increase of 0.4%.

Slide 13 shows that for the quarter, our gross margin decreased about \$444 million to \$1.7 billion in 2014. About 37% of the year-over-year decline was due to margin rate deterioration, with the remaining change of 63% due to other factors. More specifically,

- The year-over-year impact of domestic closed stores accounted for approximately \$54 million, or about 12% of the change.
- The impact of the Lands' End separation represents about \$126 million, or about 28% of the change.
- The set of bars labeled "Domestic Operating Performance," is a net amount of \$167 million or about 38% of the total margin decline. With the margin rate impact accounting for nearly all of decline. As compared to the prior year, Kmart's gross margin rate declined 250 basis points, with decreases experienced in a majority of categories, particularly apparel, home and grocery & household. Sears Domestic's gross margin rate declined 330 basis points for the quarter with decreases experienced in a majority of categories, most notably apparel, home appliances (partially due to free delivery), tools and footwear.
- Next, as indicated, we increased our year-over-year investment in Shop Your Way points by \$43 million. The higher cost of points demonstrates increased member engagement and is an indicator of the progress that we are making in our transformation to be a member centric integrated retailer. Furthermore, it is important to understand that we recognize the points expense when points are issued to our members. We expect to see additional revenue and margin benefit from the points that were issued in the first quarter throughout the

SEARS HOLDINGS

remainder of 2014 and into 2015 as the points will continue to be redeemed in the future. Also, as previously noted, we have continued with our traditional promotional programs at historical levels as we plan to move through the transformation in a thoughtful and deliberate manner.

- Finally, Sears Canada's gross margin declined by \$54 million in the second quarter, accounting for approximately 12% of the total year-over-year margin decline.

Slide 14 summarizes some of what we believe are our substantial financial resources. We had \$839 million dollars of cash at quarter-end on a consolidated basis.

In addition, we had immediate availability to borrow about \$486 million on our credit facilities, which reflects the effect of both the springing fixed charge coverage ratio covenant and borrowing base requirement of our domestic credit facility.

We also had \$3.9 billion of equity in inventory. Note that inventory is a current asset which can be converted to cash very quickly, or on average in 90 days in the normal course.

Taken together, we had about \$5.2 billion of liquidity or liquid assets on a consolidated basis which could be converted into cash in the near term. While I will provide more detail on our resources later, year to date, we have generated approximately \$664 million of proceeds from non-core asset dispositions including \$500 million from a dividend associated with the distribution of Lands' End and approximately \$164 million derived from the sale of real estate.

We continue to have multiple options to generate additional liquidity given our ability to access diverse funding sources as well as the asset rich nature of our portfolio. More specifically:

- We have a \$500 million uncommitted commercial paper line of which we had \$493 million available as of the end of the second quarter.
- We have a 51% equity stake in Sears Canada with a current market value of about \$765 million as of August 19th.
- We have continued to demonstrate our ability to monetize our substantial unencumbered real estate assets and there are numerous other forms of transactions that we could pursue to provide additional liquidity expeditiously using our real estate.
- We are permitted to raise up to a maximum of \$760 million of second lien debt, subject to borrowing base requirements.

SEARS HOLDINGS

- I would also point out that we have no term debt maturities until June of 2018 and our revolver is in place until April of 2016.
- We also, as previously disclosed, continue to explore strategic alternatives for Sears Auto Centers

Slide 15 presents our inventory, payables and net inventory balances for the past three years on a consolidated basis. We have had success reducing the capital required to run our business, as we have reduced our net inventory investment by about \$1.7 billion over the past three years. By reducing our net inventory investment and our payables, we have decreased the level of vendor support needed to run our business, improving our business model in a way that benefits both us and our vendor-partners.

Inventory productivity has been a key priority this quarter and our efforts have resulted in a decrease of our domestic net inventory of \$510 million year-over-year, excluding the impact of Lands' End. To this end, we have been reducing slower selling inventory and focusing on keeping our overall inventory position fresh and relevant. This initiative has hurt our overall gross margin in the near term, but we believe that our efforts now to build a fresher and more productive inventory assortment are important and necessary steps to drive better sales, profit and inventory productivity going forward.

On Slide 16 you can see that our Domestic Pension Contributions over the past 9 years, including 2014, have totaled \$2.9 billion. We expect this year to mark the peak of our pension funding needs going forward with our pension funding declining through 2019, at which point we expect our pension to be fully funded. As you can see, prior to taking into account new legislation, our aggregate pension funding requirements over the 5 year period ending 2019 are expected to be about \$1.1 billion based on current interest rates and regulations – and possibly sooner should interest rates increase. This should provide relief from the funding pressure we have felt as we have honored our legacy pension obligations.

On August 8th, new legislation was enacted that amends existing pension funding requirements. We expect the new legislation to increase the discount rate we use to determine our pension liability, resulting in lower liabilities and lower funding obligations as shown in the yellow highlighted box.

Slide 17 itemizes our debt balance as of the end of the second quarter, and after making some adjustments, provides our “Adjusted” Domestic Net Debt Position. Let me offer a few comments.

First, as the box on the upper right notes, our revolver borrowings and our commercial paper outstanding are down with our short term borrowings down by \$352 million. Our

SEARS HOLDINGS

domestic cash is up by \$213 million, meaning that our “Net” short term borrowings are down by \$565 million on a year-over-year basis.

Second, while our Total Domestic Debt has increased by about \$592 million, our “Adjusted” Domestic Net Debt Position, when including cash and our unfunded pension obligation, is down about \$220 million year-over-year. Note that the company’s legacy pension obligation is essentially a form of debt and has influenced revolver usage. The \$1.1 billion of contributions made in the last 10 quarters have been funded by revolver borrowings. On a pro forma basis, the revolver balance would be \$339 million absent these contributions. We have used one form of debt, being the revolver, to fund another form of debt, the pension. Since 2012, about \$1.1 billion of the second quarter revolver balance of \$1.4 billion was driven by pension contributions which should be distinguished from funding operating expenses.

If we are successful in monetizing our 51% stake in Sears Canada at current market values, this would result in cash proceeds of about \$765 million. This would afford us the option to apply those proceeds to our domestic revolver, which would have the impact of reducing the domestic revolver and Adjusted Domestic Net Debt balances, should we decide to do so.

On Slide 18 we show our domestic Net Short Term Debt position was down vs. last year by \$565 million to \$808 million primarily due to lower borrowings under our revolver, lower levels of commercial paper and higher levels of cash.

Next, we show availability on our committed domestic credit facility. I want to make two points about the year-over-year change in the availability on our committed domestic credit facility, both of which are primarily driven by our more efficient management of inventory.

1. First, our capacity at the end of the second quarter was about \$2.3 billion. Although the credit facility provides for up to \$3.275 billion of revolver commitments, our ability to use the entire facility was limited at quarter’s end by our borrowing base, which is determined based on the value of eligible inventory and other collateral. Also, just as last year, we did not have access to about 10% of the total commitments because we would not have met the springing fixed charge coverage ratio covenant.
2. Second, as we have managed our inventory more efficiently, we have less need to borrow, and our resulting borrowing capacity is about \$665 million lower than this time last year. At seasonal highs, during the 2014 Holiday Season, we currently anticipate that our domestic inventory will be at a level that the borrowing base will not limit access to the credit facility.

SEARS HOLDINGS

After deducting quarter end borrowings and outstanding letters of credit and factoring in the impact of the springing fixed charge coverage ratio covenant and borrowing base requirement, "Availability to Borrow" at the end of the second quarter was \$240 million versus \$759 million at the end of the second quarter last year. However, as with net short term debt, that doesn't tell the whole story. Cash was greater than last year and incremental capacity under our uncommitted commercial paper program was also greater than last year. After including the impact of cash and incremental commercial paper capacity, we had \$1.3 billion of potential liquidity compared with \$1.4 billion last year. Note that we also are permitted to raise up to \$760 million in additional 2nd lien debt, subject to borrowing base requirements.

I would also note that we would continue to de-lever our balance sheet and increase our availability to the extent we are successful in monetizing our 51% stake in Sears Canada. I would also note that we currently have \$500 million of authorization remaining for share re-purchases as well as \$275 million of authorization remaining for re-purchases of our debt.

As we have commented, we believe that we have sufficient liquidity to run the business and also have the benefit of access to a rich portfolio of assets.

Moving to Slide 19, you will see that we have continued to manage down our retail store footprint and the associated present value of lease obligations. As we continue to manage our store footprint, we expect to further reduce these obligations in the coming years. Reducing our Net Minimum Lease Payments decreases corporate obligations and further de-risks our business model.

As shown on Slide 20, our debt structure is in place for the next few years, as our domestic revolver extends into 2016, we have negligible term debt maturities over the next several years and we have multiple options available to us for any refinancing we may want to consider.

As indicated earlier we have reduced our inventory by \$1.7 billion over past 3 years via store closings and productivity – and as Eddie commented this will alter our reliance on inventory as the primary form of collateral in our capital structure. Over the next 6 to 12 months, we intend to work with our lenders and others to evaluate our capital structure with a goal of achieving more long term flexibility, and may take action sooner.

I would now like to shift gears and spend a few minutes discussing how we are redeploying our portfolio of assets which we believe will accelerate and fund our transformation.

SEARS HOLDINGS

On Slide 22, we show the framework we use to evaluate potential strategic transactions. We believe that these transactions will enable us to accelerate and fund our transformation when they allow Sears Holdings, the separated entity, or both entities to:

1. Become a more focused company that is more efficient to manage and easier to understand,
2. Pursue its own strategic opportunities, and attract talent,
3. Optimize its capital structures, and allocate capital in a more focused manner,
4. Enhance its financial flexibility, and
5. Provide opportunities for our shareholders to continue to participate in the value creation generated by these businesses after separation.

We believe that we are executing on a plan to increase financial flexibility, further de-risk our balance sheet and create shareholder value. We expect to continue with these types of activities during the remainder of 2014.

On Slide 23, we provide an update on our asset reconfiguration activities.

On our Q4 and Full Year 2013 Earnings call in February of this year, we disclosed that at the time, we expected that the combination of (1) the Lands' End transaction, (2) our continuing to work with the board and management of Sears Canada to increase the value of our investment, and (3) our evaluation of strategic alternatives with respect to our Sears Auto Centers when taken together would result in cash proceeds to the company in excess of \$1 billion in 2014 to help fund our transformation and create value. We believe that we are on track to deliver cash proceeds of \$1 billion, having raised \$664 million through the first half of the year.

- On April 4th, we completed the separation of Lands' End through a pro rata distribution to our shareholders and received an exit dividend from Lands' End in the amount of \$500 million as anticipated.
- On May 14th, we announced that we intended to hire an investment banking firm to explore strategic alternatives for our 51% equity stake in Sears Canada, including a potential sale of our 51% interest or of Sears Canada as a whole. We subsequently engaged BofA Merrill Lynch to assist us in connection with these efforts. Sears Canada's board of directors has advised us that they intend to support Sears Holdings in this process to achieve value for all shareholders. The market value of our 51% interest was about \$765 million as of August 19, 2014.

SEARS HOLDINGS

- As we have previously disclosed, we are continuing to evaluate strategic alternatives for our Sears Auto Centers business. We have had discussions with third parties regarding a variety of opportunities, including partnerships. We can't give you any assurance that we will be successful in this effort or with Sears Canada.

In addition we are:

- Capitalizing on the flexibility in our real estate portfolio to reduce unprofitable stores as leases expire and in some cases accelerate closings when economically prudent – as well as continuing to benefit from the value of our real estate in both the US and Canada. Through the first half of the year, we have received \$164 million in proceeds from Real Estate transactions.
- We have announced that we expect to close about 130 stores in 2014, which includes a combination of leased and owned locations. We have closed about 95 to date. To put this into perspective, following these closures, we will still have about 1,900 Sears and Kmart big box stores in operation, representing about 200 million square feet throughout the United States to serve our members. Few companies have this scale and reach.
- I would also point out that we believe that our investments in Shop Your Way and Integrated Retail will enable us to migrate the shopping activity of highly engaged members who previously shopped these closed stores to alternative channels. As a result, we would expect to retain a portion of the sales previously associated with these 130 stores by nurturing and maintaining our relationships with the members that shopped these locations.
- We expect that the store actions, together with our expected reduction in inventory needs during the regular selling seasons and the holiday peak season, will further de-risk our business model and that of the vendors who sell to us. We also expect that these actions should decrease our working capital needs and improve our profitability going forward.
- I would also point out, that while we are adjusting our store base, we continue to operate stores in some of the best malls in America. Two reports have been done over the past six years, one by Goldman Sachs listing the top 100 malls in America, and the other by Morgan Stanley listing the top 100 fashion malls in America. Combining the two lists, in 2007, we were in 63 of the malls and we are now in 61. We are retaining stores in some of the best locations even as we close stores to optimize our store footprint and reduce lease obligations.

SEARS HOLDINGS

Moving to Slide 24, I will now turn the call back over to Eddie who will provide an update on the framework for profit that he outlined on our previous earnings call.

Eddie Lampert:

Thanks, Rob.

Transitioning to this section on Slide 24, I mentioned that I want to use this opportunity to provide an update on the levers we are using to restore profitability to Sears Holdings. As I have said before, the framework I am outlining is not intended to provide guidance as to our future results or predict that we will be successful in executing any aspect of this framework. It is intended to describe the opportunities we are focused on to increase profitability.

On Slide 25, we show that we believe that fostering deep and lasting relationships with our members will drive sustainable and profitable growth. As we pursue this fundamental objective, we will remain disciplined stewards of capital, with an overriding focus on creating value for our shareholders. A transformation of this size and scale is difficult, but our entire management team is committed to its execution.

On Slide 26 we outline the framework of our new model, which leverages our scale and the investments that we continue to make in the Shop Your Way program and Integrated Retail capabilities. These include:

- Optimizing store network and square footage
- Accelerating Shop Your Way & Integrated Retail as the foundation of our business model
- Transforming select business models
- Reducing selling and administrative expenses

Turning to Slide 27, as we've discussed, there is a great opportunity to optimize our store network.

I mentioned earlier, we have announced plans to close about 130 stores in 2014, having closed about 95 to date. In fiscal 2013, these stores generated almost \$1B in sales; however, they generated an EBITDA loss of about \$26 million. Due to the flexibility in our real estate portfolio we believe we will be able to close these underperforming locations efficiently. So, by closing these locations, we would expect to generate

SEARS HOLDINGS

approximately \$26 million of incremental EBITDA on an annualized basis by avoiding the losses they currently produce. Furthermore, closing these locations is expected to reduce our working capital requirements by about \$160 million in 2014.

Additionally, we believe that there is opportunity to retain a portion of the sales associated with the closed locations by maintaining a relationship with the members who shopped those stores. This belief is based on experience we have had to date in stores that we have closed over the last year. As is shown on the slide, we believe that the annualized EBITDA value of retaining these members could be about \$50 million, resulting in a total annualized EBITDA benefit of about \$73M. As our ability to retain members improves, we believe that the potential annualized impact of optimizing our store network could be about \$300 million to \$400 million.

On Slide 28, we show that we have made substantial investments in Integrated Retail capabilities in our stores. We are seeing these investments drive very good results, and we will continue to roll out these capabilities to additional stores throughout the remainder of the year. For example, these capabilities include more flexible technology, like the ShopSears app utilized by associates in stores, digital signs, which enable dynamic pricing and marketing, and RFID technology, which enables our associates to do inventory counts in a fraction of the time giving them more time to focus on serving our members. This has resulted in improved sales and margins in the stores where we have enabled this technology. Based upon this experience, which we have introduced at hundreds of locations, we believe there is the potential to generate about \$500 million in incremental annual revenues and between \$150 million to \$200 million of incremental annual EBITDA for these initiatives alone.

On Slide 29 we wanted to highlight that our In Vehicle Pickup has received very positive feedback from our members. We launched this member benefit in the first half of the year at our Sears Full-Line Stores to make pickup of online orders easier. This is one of the many ways we demonstrate our industry leadership in leveraging online channel and physical stores to enhance the integrated shopping experience. Based on that positive feedback we are looking to expand this capability to Kmart and are piloting it in 115 Kmart stores.

On the bottom half of this slide, we show that during the second quarter we announced new functionality that allows our members and customers to order from sears.com and kmart.com and pick up in each other's stores – all over the U.S. This will allow Members and customers to shop their favorite brands and pickup at the location most convenient to them, with no charge for shipping.

On Slide 30, we show that the difference in annual spend between an average engaged Shop Your Way member and a very engaged Shop Your Way member continues to be significant, with our most actively engaged members spending 75% more than our average active member. We are focused on targeted actions that will convert more of our

SEARS HOLDINGS

average active members to more engaged members and we continue to see positive signs that these actions are working. Both the number of members that have redeemed points in the last 12 months and the number of emailable members have increased meaningfully. To put this in perspective, moving 1 million members from average to most engaged status represents \$50M in EBITDA.

We are focused on enhancing margins and reducing our overall cost of goods through a number of initiatives. On Slide 31 we show that cost of goods annual spend is \$23.6B. We have invested in our pricing capabilities, both in people and technology, which will enable us to be more targeted and real-time, responding to our members' needs and the competitive environment. We are also focused on shifting our promotional design to be less dependent on promotional markdowns and replacing them with Shop Your Way points, where it makes sense. There will always be a level of promotional markdowns as part of our go to market promotional design, but our intent is to replace a portion of our existing promotional markdowns with Shop Your Way points.

Also, we are focused on optimizing our supply chain to right-size our network, and leveraging our real estate portfolio by partnering with other retailers to lease out valuable but unproductive space.

Strategic sourcing is one specific area I would like to call out where we have made some progress since our last call. In the first half of the year, we have executed a number of strategic sourcing initiatives that we expect will improve profitability for the company in the future by \$80 million on an annualized basis. We will continue to utilize the strategic sourcing framework to continue to identify and go after additional savings across both merchandise and non-merchandise sourcing.

Through these actions, you can see that with revenue held constant, each 1% reduction in our cost of goods, which would include the impact of sub-lease income, would generate an incremental \$230 million of annual EBITDA.

On Slide 32, selling and administrative expense is also an area of focus. As we have discussed in the past, we have reduced our fixed expense structure by about \$800 million annually over the past three years – though this is a mix of costs included in both Cost of Goods Sold and Selling and Administrative expense. Through the first half of the year, we have reduced our fixed expenses by \$30M, and we believe there is still significantly more opportunity. Our areas of focus are re-engineering processes, leveraging technology and shifting our marketing mix. In the first half of the year, we shifted more of our marketing dollar spend from fixed marketing assets to more variable-based, targeted digital assets, reducing our marketing expenses by \$42 million while maintaining similar levels of marketing productivity. Again, I would point out that the impact of these initiatives can be substantial. With revenue held constant, each 2% reduction in selling and administrative expenses translates into \$150 million of incremental EBITDA.

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On Slide 33 we aim to clearly show both the challenge and the opportunity represented by Apparel. Our revenue per square foot in our apparel business is about one third of the industry average. Each \$10 improvement in our sales productivity per square foot represents \$100 million in incremental annual EBITDA. To that end, we are aggressively transforming our apparel business with a focus on refreshed brands and product assortments and are reducing lead times to better meet our members' needs.

We are excited about our brand introductions, including the launch of Impact by Jillian Michaels, a performance activewear collection for women, which further strengthens our fitness offerings.

We recognize the need to continue to innovate in our fabrics and unique styles and designs. We plan to launch new technology in fabrics and design in our Everlast women and men's lines.

We have also been working to improve our ability to react faster to member needs and changing trends. We will reduce risk by making smaller and more seasonal buys, and reducing lead times to better meet our members' needs. We successfully reduced lead times by over 30% in more than 25 brands, and reduced SKUs by about 30%. These shorter lead times and focused assortments will permit greater flexibility, speed and accuracy going forward.

Turning to Slide 34, we depict our connected solutions business initiative. Connected Solutions are focused on providing our members with products that can be monitored and managed from their smart device anywhere in the world, helping our members better manage their lives.

We've brought together one of the most authoritative assortments of smart, connected home and personal automation products from both well-known national brands as well as innovative start-ups – across diverse categories such as:

- Home automation products such as thermostats, smart locks, lighting, switches and sensors
- Mobile phones and tablets as well as service plans from AT&T and Verizon
- Smart Watches
- Fitness products such as treadmills, fitness bands and heart rate monitors
- Connected garage door openers, including Craftsman Assurelink
- Connected baby monitors

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Slide 35 shows our phased approach to growing the Connected Solutions platform. In phase 1, we piloted three 2,000 square foot shops in the Chicagoland area. In phase 2, we plan on opening an additional 7 locations with a focus on optimizing the experience and testing a smaller 500 square foot format. In phase 3, we plan to leverage the learnings from phases 1 and 2 as we scale the concept and roll-it out to additional stores.

On Slide 36, I do want to touch briefly on working capital, which has and will continue to be a big area of focus. As we have discussed before, we have reduced our net domestic inventory levels by over \$1 billion over the past 3 years. We believe there is still substantial opportunity to further improve our inventory productivity. We are focused on a number of initiatives centered on:

1. Reducing the levels of slow moving and unproductive inventory
2. Buying and flowing our merchandise differently given our Shop Your Way program and Integrated Retail platform, and
3. Buying smaller quantities of merchandise and turning it more frequently

As you can see on the slide, if we can turn our inventory 1 more time per year, we can reduce our net working capital requirements by about \$400 million, enhancing liquidity and freeing up capital that could be used to further invest in our transformation.

On Slide 37, we provide a summary of the initiatives laid out on the previous slides. As you can see, if we successfully execute on these opportunities, they have the potential to generate incremental annual EBITDA of between \$1 and \$2.4 billion under the assumptions as indicated.

We believe we have a substantial opportunity to compete successfully in the changing retail landscape by proactively transforming our business to meet the new realities of the industry. As I have said in the past, transformations of this size and scale are not easy, and we may continue to experience challenges in our financial performance over the next several quarters. However, we have made progress across a wide spectrum of initiatives, such as leveraging our Shop Your Way and Integrated Retail platforms, reducing our legacy pension obligation, managing our expenses, de-risking our balance sheet, and enhancing our financial flexibility to position ourselves to meet all of our financial obligations. We believe these initiatives, when coupled with executing on the profitability framework I just described, will position us to play offense and enable us to continue to seek opportunities to grow and invest in our business through acquisitions and other strategic relationships.

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As I indicated earlier, as changes occur in and around retail, we intend to be in the mix focused on investments and acquisitions that accelerate and improve our transformation. We are committed to driving profitability, and we expect to focus on our strengths, including our best members, best stores and best categories.

As the CEO and the largest individual shareholder of Sears Holdings, I am personally committed to driving our transformation, improving the profit performance of the company and creating shareholder value. Our team is committed and is actively engaged in the daily work to make this transformation work.

Operator:

Ladies and gentlemen, thank you for participating in today's conference. This concludes today's program. You may now disconnect. Everyone, have a great day.

This is **Exhibit "E"**
referred to in the Affidavit of William Turner
sworn before me this 23rd day of July, 2018.



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LSD#70164K



Cheap Junk Removal



Cheap Junk Removal. Free Quote & Fast Same Day Service. Twice the Space For Half The Price



Dividend Channel

Enter Symbol

Get Quote & Dividend History



If You Like Dividends



- HOME
- BDCS
- ARTICLES
- DECLARATIONS
- CALENDAR
- CALCULATOR
- SCREENER
- ETFs
- FORUMS
- Contrarian Outlook

SCC.CA Dividend History & Description — Sears Canada Inc

Sears Canada is a multi-channel retailer, publishes general merchandise catalog and offers shopping online at www.sears.ca. Co. reports its operations in two business segments: merchandising and real estate joint venture operations. The merchandising segment includes the sale of goods and services through Co.'s retail and direct channels, product repair, home improvement, travel and logistics services, and performance payments received pursuant to the long-term credit card marketing and servicing alliance with JPMorgan Chase Bank. The real estate joint venture segment includes income from Co.'s joint venture interests in shopping centers across Canada.

SCC.CA — CURRENT QUOTE

| | |
|---------------|-------------|
| Symbol | SCC.CA |
| Exchange | TSE |
| Price | NA |
| Change | UNCH (0.0%) |
| Volume | NA |
| Open | NA |
| High | NA |
| Low | NA |
| Prev. Close | NA |
| Shares Out | 101.88M |
| Market Cap | 0 |
| Div/Shr | 0.00 |
| Ex-Div | NA |
| Pay Date | NA |
| Div Yield | NA |
| Div Frequency | NA |
| PE Ratio | NA |
| EPS | NA |

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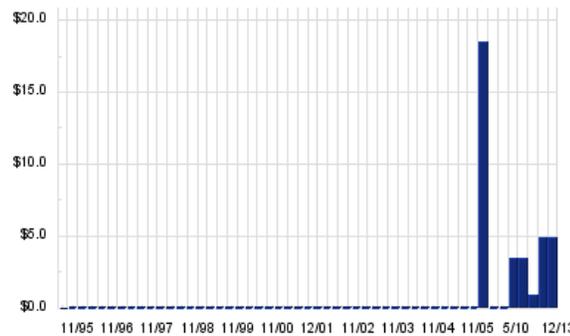
SCC.CA — PRICE CHART



SCC.CA — KEY STATS (UPDATED MONDAY, JULY 31, 10:46 AM)

Name: Sears Canada Inc
 Website: www.sears.ca
 Sector: Department Stores

DIVIDEND HISTORY CHART



DIVIDEND HISTORY

| Date | Div* |
|----------|--------|
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| 11/28/13 | 5.000 |
| 12/20/12 | 1.000 |
| 09/20/10 | 3.500 |
| 05/27/10 | 3.500 |
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| 02/13/06 | 0.060 |
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 Thu, Jul 19, 3:59 PM ET, Market News Video
 The Bank of New York Mellon Corporation authorized a quarterly common ...



Daily Dividend Report: MS, BLK, NTRS, CIT, PAG, V, SHW
 Wed, Jul 18, 3:07 PM ET, Market News Video
 Morgan Stanley declared a quarterly dividend to \$0.30 per share payable ...



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 Tue, Jul 17, 2:09 PM ET, Market News Video
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| | |
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* Data may be adjusted for splits; we are not responsible for data errors; always verify data with the company.

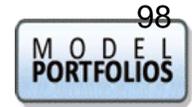
SCC.CA — PERFORMANCE

Start date: Jan 1 1995
 End date: Jul 20 2018

Compare to: None, S&P 500,
 Nasdaq 100, Dow 30,
 Other:

Chart \$10K invested in SCC.CA

ADVERTISING OPPORTUNITIES ON DIVIDEND CHANNEL



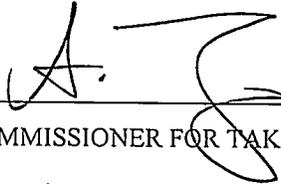
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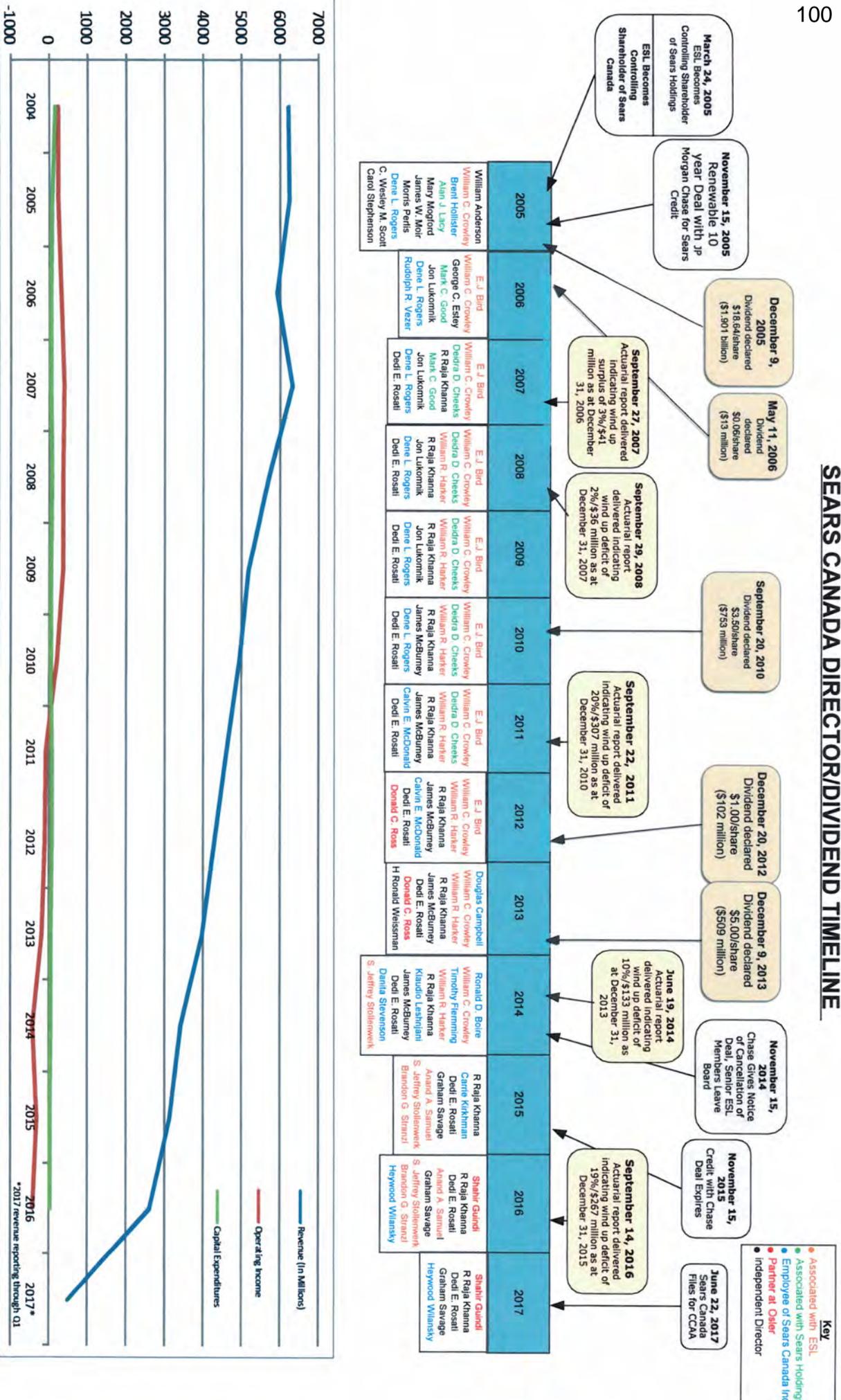
referred to in the Affidavit of William Turner
sworn before me this 23rd day of July, 2018.

A handwritten signature in black ink, consisting of a stylized 'A' followed by a large, sweeping flourish that extends to the right and loops back down.

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

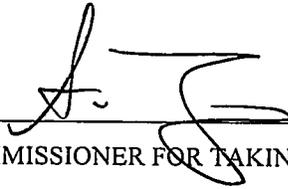
LSO# 70184K

SEARS CANADA DIRECTOR/DIVIDEND TIMELINE



This is **Exhibit "G"**

referred to in the Affidavit of William Turner
sworn before me this 23rd day of July, 2018.



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LSO# 70164K

SEARS CANADA INC.

SEARS REGISTERED RETIREMENT PLAN

(amended and restated as at July 1, 2008)

Table of Contents

- I General Provisions**

- II DB Provisions**
 - A. Basic Rules**
 - B. Amplified Rules**
 - C. GRIP**
 - D. GRIP for Saskatchewan and Manitoba**
 - E. Hudson's Bay and Simpsons**

- III DC Provisions**

SEARS CANADA INC.
SEARS REGISTERED RETIREMENT PLAN
GENERAL PROVISIONS

SEARS CANADA INC.

Sears Registered Retirement Plan

I – General Provisions

Table of Contents

I. General Provisions

| | |
|--|----|
| SECTION I.1 - RULES OF INTERPRETATION..... | 1 |
| SECTION I.2 - DEFINITIONS..... | 3 |
| SECTION I.3 - ESTABLISHMENT OF THE PLAN..... | 14 |
| SECTION I.4 - ENROLMENT..... | 16 |
| SECTION I.5 - MEMBER CONTRIBUTIONS..... | 18 |
| SECTION I.6 - EMPLOYER CONTRIBUTIONS..... | 20 |
| SECTION I.7 - DISABILITY AND OTHER LEAVES OF ABSENCES..... | 22 |
| SECTION I.8 - DESIGNATED BENEFICIARY..... | 26 |
| SECTION I.9 - TRUST FUND..... | 27 |
| SECTION I.10 - ADMINISTRATION..... | 29 |
| SECTION I.11 - GENERAL PROVISIONS..... | 30 |
| SECTION I.12 - FUTURE OF THE PLAN..... | 36 |

Section I.1 - Rules of Interpretation

I.1.1 Format of the Plan Text

The text of the Plan, as restated as at July 1, 2008, has three main sections. "I – General Provisions" contains definitions and provisions relevant to the Plan as a whole. "II – DB Provisions" contains provisions related to the determination of benefits for service accrual prior to July 1, 2008. "III – DC Provisions" contains provisions for defined contribution participation in the Plan on and after July 1, 2008.

I.1.2 Format of the DB Provisions

The portion of the Plan rules entitled "II – DB Provisions" consists of a set of basic rules entitled "A. Basic Rules" and a set of amplified rules entitled "B. Amplified Rules" plus sections entitled "C. GRIP", "D. GRIP for Saskatchewan and Manitoba" and "E. Hudson's Bay and Simpsons".

"C. GRIP" and "D. GRIP for Saskatchewan and Manitoba" set out the provisions of GRIP that are used in calculating the pension earned before January 1, 1987 by Members of the Plan who were members of GRIP at January 1, 1987 and had not yet received any payment from GRIP or related plans on account of that pre-1987 service.

"E. Hudson's Bay and Simpsons" sets out the provisions applicable to Members who were previously members of the Hudson's Bay Company Pension Plan and the Simpsons Limited Employees' Pension Plan.

The Amplified Rules elaborate the Basic Rules except where the two are incompatible, in which case the Amplified Rules expressly override the Basic Rules.

The Amplified Rules are those required for reasons such as the following:

- (a) to specify provincial variations where legislative differences cannot be accommodated in a uniform provision;

- (b) to comply with regulatory requirements that stipulate certain provisions must be expressly included in the plan document;
- (c) to describe administrative practice in implementing the Basic Rules in special circumstances, such as for a Member who is classified as other than a full-time employee; and
- (d) to describe the amendments for specific GRIP calculations in conjunction with the overall amendment and restatement of the Plan as at January 1, 1987.

I.1.3 Singular/Plural and Masculine/Feminine References

Except where the context requires otherwise, all references to the singular include the plural and all references to the masculine include the feminine and vice versa.

I.1.4 Headings

Headings for sections are included for convenience of reference and are not relevant to the interpretation of the Plan.

I.1.5 Legislative References

All references to legislation are deemed to include related regulations and interpretative guidelines, if any.

Section I.2 - Definitions

The following terms, where capitalized, have the following meanings respectively for the purposes of this Plan unless a different meaning is clearly required by the context.

- I.2.1 "**Account**" means the account established in respect of a Member to receive the contributions made on behalf of the Member and by the Member under the DC Provisions, plus Income thereon.
- I.2.2 "**Actuarial Equivalent**" means a pension or other benefit which has the same actuarial present value as another benefit, and where the actuarial present value is computed using actuarial tables and such other methods and assumptions as may be adopted by the Company on the recommendation of the Actuary for the purposes of the Plan, subject to any requirements of the Pension Benefits Act and the Income Tax Act. In no event shall the basis on which an Actuarial Equivalent is determined differentiate between male and female Members of the Plan, except as required under the applicable Pension Benefits Act.
- I.2.3 "**Actuary**" means the actuary or firm of actuaries retained by but independent of the Company, who is, or one of whose members is, a Fellow of the Canadian Institute of Actuaries.
- I.2.4 "**Beneficiary**" means the person or persons designated by a Member under Section I.8. If no designation has been made, or if the person or persons designated are not living, then Beneficiary means the Member's estate.
- I.2.5 "**Commuted Value**" means, in relation to benefits that a person has a present or future entitlement to receive, a lump sum amount which is the actuarial present value of those benefits computed at the rate of interest and using the actuarial tables adopted by the Company on the recommendation of the Actuary, subject to any requirements under the Pension Benefits Act and Income Tax Act. In no event shall the basis on which a Commuted Value is determined differentiate between male and female Members of the Plan, except as required under the applicable Pension Benefits Act.
- I.2.6 "**Company**" means Sears Canada Inc. and its successors.

- I.2.7 "**Continuous Service**" means the service of an Employee with an Employer as shown by the Employer's records calculated from the date that he was most recently hired as an Employee, such service including authorised leaves of absence, periods of Disability and at the Company's discretion, service with any affiliated company; a temporary suspension of employment shall not interrupt such Continuous Service. *Continuous Service* shall exclude any periods of employment exercised outside Canada or with an affiliated employer that does not participate in the Plan. Continuous Service is interrupted by an actual termination of employment, but in the Province of Manitoba is not interrupted by any temporary suspension of employment that lasts for less than 52 weeks and in the provinces of Alberta and British Columbia is not interrupted by any temporary suspension of employment that lasts for less than 26 weeks and in other provinces the length of temporary suspension in relation to Continuous Service will be determined by the Company.
- I.2.8 "**DB Provisions**" means the rules of the Plan that determine benefits with respect to service before July 1, 2008 as set out in "II – DB Provisions" including related rules in "I – General Provisions".
- I.2.9 "**DC Provisions**" means the rules of the Plan under which Members participate on a defined contribution basis as set out in "III – DC Provisions" including related rules in "I – General Provisions".
- I.2.10 "**Disability**" means a disability as a result of which a Member qualifies for benefits under his Employer's long term disability plan.
- I.2.11 "**Earnings**" means the total earnings in a year of an Employee from his Employer consisting of wages, salaries, payments for overtime, bonuses, overwrites, commissions, vacation pay and illness allowances excluding, however, the value of an Employee's taxable benefits and any long term incentives and other elements of compensation that the Company expressly excludes for such purposes. *Earnings* during periods of Disability or other leave of absence are determined according to the provisions of Section I.7.3. For periods of Continuous Service during which a Member does not actually receive remuneration from an Employer, any amount deemed to be received by the Member shall not exceed the amount of compensation which is prescribed for this purpose under the Income Tax Act.

- I.2.12 "**Employee**" means an employee of an Employer as shown from time to time on the Employer's records excluding any employee who is an active participant in any pension or profit sharing plan maintained by Sears Roebuck and Co. or any affiliated company located in the U.S.A. and which plans are qualified under Section 401(a) of the U.S. Internal Revenue Code.
- I.2.13 "**Employer**" means the Company and any other employer that is designated by the Company for participation in the Plan and that has agreed to be bound by the terms of the Plan: "***Employers***" other than the Company and the period during which they participate in relation to employees actively earning benefits in the Plan are: Sears Canada Merchandising Services, effective December 23, 2001 until December 31, 2006 and Sears Canada Bank effective December 15, 2003 until January 1, 2006.
- I.2.14 "**Federal Employment**" means employment defined as "included employment" in the Pension Benefits Standards Act (Canada), and "**Federal**", with reference to jurisdiction of employment, has a corresponding meaning.
- I.2.15 "**Final Average 3-Year Pensionable Earnings**" has the meaning described in Section II.A.1.2.
- I.2.16 "**Final Average 3-Year YMPE**" means one-third of the aggregate of the YMPE, in each year during the last 36 consecutive months of the Member's Continuous Service while a Member of the Plan.
- I.2.17 "**Full-Time Employee**" means an Employee who, at the date on which a determination is required, is regularly scheduled to work at least 1950 non-overtime hours in a year. An Employee who has been in Continuous Service throughout a calendar year and who is considered a Full-Time Employee at the end of the year shall be deemed to be a Full-Time Employee for the entire calendar year.
- I.2.18 "**GRIP**" means the Guaranteed Retirement Income Plan of Sears Canada Inc. including the section of that plan applicable to employees employed in Saskatchewan and Manitoba, which plan was incorporated into, and superseded by the terms of this Plan effective January 1, 1987.

I.2.19 "**Income**" means the net gain or loss on all amounts allocated to an Account, which shall be determined daily by the Trustee or its agent from the date the contributions are allocated to the Account to the date of determination at the rates attributable to those portions of the Trust Fund in which the Member's Account is invested at the relevant time, after deduction for expenses.

I.2.20 "**Income Tax Act**" means the Income Tax Act, Statutes of Canada, and the Regulations thereunder, and where applicable includes provisions of Information Circular 72-13R8 issued by Revenue Canada, as amended or replaced from time to time and any provincial legislation of comparable substance.

I.2.21 "**Licensed Annuities Provider**" means a corporation licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada an annuities business.

I.2.22 "**Locked-In Retirement Contract**" means a registered retirement savings plan or other investment vehicle which is registered under the Income Tax Act and eligible under the Pension Benefits Act for receipt of locked-in retirement funds and includes, subject to minimum age requirements, any locked-in registered retirement income fund or life income fund.

I.2.23 "**Lump Sum Payment**" means a payment from the Plan of an amount which is not locked-in under the Pension Benefits Act, including a transfer to:

- (a) a registered retirement savings plan of the payee; or
- (b) a registered pension plan of which the payee is a member, if that plan so permits,

where such transfer is permitted under the Income Tax Act. Where the amount payable is not transferred, the Lump Sum Payment shall be paid net of amounts withheld as required by law. Each Lump Sum Payment shall fully discharge the Plan's obligations in respect of the amount so paid.

I.2.24 "**Member**" means an Employee who has joined the Plan according to its eligibility requirements and who is entitled to benefits under the DB Provisions or the DC Provisions or both.

- I.2.25 "**Pension Benefits Act**" means the Pension Benefits Act, R.S.O. 1990 and the Regulations thereunder or, where the context requires, the legislation of comparable substance of another Canadian jurisdiction, as such legislation may be amended from time to time.
- I.2.26 "**Pensionable Earnings**" has the meaning described in Section II.A.1.1.
- I.2.27 "**Pensionable Service Years**" has the meaning described in Section II.A.1.5. Pensionable Service Years do not accrue on and after July 1, 2008.
- I.2.28 "**Plan**" means the Sears Canada Inc. Registered Retirement Plan which takes effect January 1, 1987 or such other date as the Company may determine, and which incorporates certain predecessor retirement plans, as described herein, and as such plan is amended from time to time. The Plan is inclusive of the DB Provisions and the DC Provisions as a single Plan that provides different types of benefits to Members according to the rules for benefit eligibility and determination specified in the Plan text as amended from time to time.
- I.2.29 "**Plan Year**" means the calendar year.
- I.2.30 "**Spouse**" means at the time a determination of marital status is required, a person of the opposite sex or of the same sex who meets one or more of the following conditions:
- a) the Member and the person are legally married and are not living separate and apart;
 - (b) the Member and the person are a party to a voidable or void marriage and are not living separate and apart;
 - (c) the Member and the person:
 - (i) have been cohabiting continuously in a conjugal relationship for the preceding year; or

- (ii) have been cohabiting in a conjugal relationship of some permanence, are cohabiting at the date on which a determination is required and are jointly the natural or adoptive parent of a child.

The expression "spousal relationship" shall have a corresponding meaning. Notwithstanding the foregoing, with respect to Section I.11.10, the expressions "spousal relationship" and "spouse" shall exclude a reference to same sex spouses, unless and until applicable legislation requires that same sex spouses be included.

I.2.31 "Spouse" shall also apply in determining death benefits payable under GRIP for service prior to January 1, 1987.

In addition, the following definitions apply at the date a determination is required according to the jurisdiction in which a Member is employed and in all cases the definitions are subject to the overriding condition that the person must also qualify as a spouse for purposes of registered pension plans under the Income Tax Act:

In the Federal jurisdiction "**Spouse**" means:

- (a) if there is no person described in (b), a person who is married to the member including a person who is a party to a void marriage with the Member; or
- (b) a person who has been living with the Member in a conjugal relationship for at least one year.

In Alberta "**Spouse**" means:

- (a) a person who is married to the Member and has not been living separate and apart from the Member for more than 3 consecutive years; or
- (b) if there is no person to whom (a) above applies, a person who lives with the Member in a marriage-like relationship and has done so for the 3 year period immediately preceding the relevant time, or in a relationship of some permanence if there is a child of the relationship by birth or adoption.

In British Columbia "**Spouse**" means a person:

- (a) who is married to the Member and has not been living separate and apart from him for more than 2 years; or
- (b) if there is no person to whom (1) above applies, who has lived with the Member in a marriage-like relationship for the immediately preceding two years, except that the person is disqualified if he has received a share of the Member's pension pursuant to Section II.11.10.

In Manitoba "**Spouse**" means:

- (a) a person who is married to the Member; or
- (b) a person who is not married to the Member but is in a common-law relationship with the Member that is registered under the applicable Manitoba legislation, and is cohabiting with the Member; or
- (c) a person who is not married to the Member but has cohabited with the Member in a conjugal relationship in the immediately preceding period,
 - (i) for a period of at least 3 years, if either of them is married; or
 - (ii) for a period of at least one year, if neither of them is married,

However, for the purpose of pre-retirement death benefits under Sections II.B.9.4. and III.3.2 and joint and survivor pension rights under Sections II.A.5.3(b) and III.4.1(3) the person is disqualified if he is eligible to receive or has received an assignment of benefits under Section I.11.10 unless in the case of joint and survivor pension rights, the person has resumed cohabitation with the Member. The person is also disqualified for the purpose of joint and survivor pension rights under Section II.A.5.3(b) and III.4.1(3) if he began living separate and apart from the Member before 1984 and has not resumed cohabitation with the Member.

In Newfoundland and Labrador "**Spouse**" means:

- (a) a person who is not married to the Member who:

- (i) is not prevented in law from marrying the Member; or
- (ii) if prevented in law from marrying the Member has cohabited continuously in a conjugal relationship with the Member for not less than 3 years

and is cohabiting with the Member or did cohabit with the Member in the preceding year; or

- (b) if there is no person described in (a) above, a person who:
 - (i) is married to the Member;
 - (ii) is married to the Member by a voidable marriage that has not been voided by judgement or nullity; or
 - (iii) has gone through a form of marriage with the Member in good faith that is void, and is cohabiting or has cohabited with the Member in the preceding year.

Under (a) above a person of the same sex as the Member is disqualified if there is a person of the opposite sex to the Member who qualifies.

In New Brunswick "**Spouse**" means a person who:

- (a) is married to the Member;
- (b) is married to the Member by a marriage that is voidable and has not been avoided by a declaration of nullity;
- (c) has gone through a form of marriage with the Member in good faith that this void, and has cohabited with the Member within the preceding year; or
- (d) is of the same sex or the opposite sex to the Member and is not married to the Member, but has cohabited with the Member:

- (i) continuously for a period of not less than one year in a conjugal relationship in which one person has been substantially dependent on the other for support; or
- (ii) in a relationship of some permanence where this is a child born of whom they are the natural parents and with whom the Member has cohabited within the preceding year.

In Nova Scotia "**Spouse**" means a person:

- (a) who is married to the Member;
- (b) who is married to the Member by a marriage that is voidable and has not been annulled by a declaration of nullity;
- (c) has gone through a form of marriage with the Member in good faith that is void, and is cohabiting with the Member or has cohabited with the Member within the preceding 12-month period;
- (d) if there is no person described in (a), (b) or (c), a person who has been cohabiting with the Member in a conjugal relationship for at least 2 years at the relevant time.

However, a person does not qualify as a Spouse for purposes of a pre-retirement death benefit under Sections II.B.9.4 or III.3.2 if a division of benefits has occurred under Section I.11.10.

In Quebec "**Spouse**" means a person who:

- (a) is legally married to the Member and not legally separated from bed and board;
- (b) if there is no person to whom (a) applies, has been living in a conjugal relationship with an unmarried Member for a period of not less than 3 years, or for a period of not less than 1 year if:
 - (i) at least one child is born, or to be born, of their union;

- (ii) they have adopted jointly at least one child while living together in a conjugal relationship; or
- (iii) one of them has adopted at least one child who is the child of the other, while living together in a conjugal relationship; or
- (c) if there is no person to whom (a) or (b) applies, a person who has entered into a civil union with an unmarried Member.

In Saskatchewan "**Spouse**" means:

- (a) a person who is married to the Member; or
- (b) if the Member is not married, a person of the opposite sex or a person of the same sex, who has cohabited with the Member for at least 1 year immediately preceding the determination of the benefit entitlement.

I.2.32 "**Student**" means an Employee who is enrolled at any accredited university or college on a substantially full time basis as shown from time to time on his Employer's records.

I.2.33 "**Trust Agreement**" means the agreement between the Company and the Trustee establishing the Trust Fund for the Plan and providing for the administration of the Trust Fund and this term is deemed to include, where appropriate, any contract of insurance arranged in furtherance of the Plan.

I.2.34 "**Trust Fund**" means the assets held by the Trustee for the Plan and this term is deemed to include, where appropriate, any contract of insurance arranged in furtherance of the Plan. "Trust Fund" is inclusive of Members' Accounts whether or not they are held in a contract of insurance.

I.2.35 "**Trustee**" means the trustee or trustees appointed in accordance with the provisions of the Plan and is deemed to include, where appropriate, a company authorized to carry on a life insurance business in Canada.

I.2.36 "YMPE" means the Year's Maximum Pensionable Earnings from time to time in effect under the Canada Pension Plan Act or the Quebec Pension Plan Act, whichever is applicable.

Section I.3 - Establishment of the Plan

I.3.1 Predecessor Plans

Sears Canada Inc., formerly Simpsons-Sears Limited, established the Supplementary Pension Plan, a registered pension plan, with effect from January 1, 1971 to provide retirement benefits for eligible employees regardless of province of residence. The Supplementary Pension Plan was incorporated into and superseded by the Guaranteed Retirement Income Plan with effect from January 1, 1976 to continue providing retirement and other benefits for eligible employees.

I.3.2 Sears Registered Retirement Plan

The Guaranteed Retirement Income Plan, as amended from time to time since 1976, was incorporated into and superseded by the Sears Canada Inc. Registered Retirement Plan with effect from January 1, 1987, to comply with major revisions to provincial and federal legislation concerning registered pension plans including the participation of part-time employees, and to continue providing retirement and other benefits for and on behalf of eligible employees.

The Sears Canada Inc. Registered Retirement Plan was amended and restated effective January 1, 1999, January 1, 2001, May 1, 2003 and May 1, 2007.

I.3.3 2008 Restatement

The Sears Canada Inc. Registered Retirement Plan is restated in its entirety as of July 1, 2008 to provide for the cessation of defined benefit service accrual and to introduce a defined contribution provision with effect on and after July 1, 2008.

I.3.4 Plan Provisions in Effect Prior to July 1, 2008

Unless otherwise provided under the terms of the Plan, benefits in payment or to be paid at a future date as a result of retirement, death and any other termination of employment occurring before July 1, 2008 are payable in accordance with the terms of the Plan as it was constituted prior to that date, except that retirement benefits and surviving Spouse or Dependent Children's pensions in payment as at that date are

subject to the terms of the Plan concerning post-retirement inflation adjustments as set out in Section II.A.6 if such benefits continue in payment when the Company declares an inflation adjustment.

Unless otherwise provided under the terms of the Plan, enrolment conditions for members who joined the Plan prior to July 1, 2008 and the determination of required contributions made to the Plan prior to July 1, 2008 shall both be governed by the relevant terms of the Plan in effect prior to July 1, 2008.

I.3.5 Incorporation of Modified GRIP Benefit Formula Provisions

The benefit formula provisions of the Plan applicable to pensionable service prior to January 1, 1987 are set out under “II - DB Provisions GRIP” or “II – DB Provisions GRIP for Saskatchewan and Manitoba” as is applicable to the Member.

I.3.6 Provisions Applicable to Former Bay and Simpsons Employees

Following the acquisition of certain Bay and Simpsons stores by the Company in 1991, the Company agreed to accept a transfer of assets and liabilities for pension benefits accrued by transferring Employees under their prior pension plan to the transfer date. “II – DB Provisions Hudson’s Bay and Simpsons” contains a detailed description of the eligibility and benefit provisions in relation to this prior period of employment for transferred Employees and Members.

Section I.4 - Enrolment

I.4.1 Members as at July 1, 2008

An Employee who is a Member of the Plan as at June 30, 2008 shall continue to be a Member of the Plan on and after July 1, 2008 in accordance with the provisions of the Plan. These Members shall make a contribution election as required by the DC Provisions.

I.4.2 Voluntary Enrolment for Part-time Employees

Any Part-time Employee to whom Section I.4.1 does not apply may enrol as a Member of the Plan as of July 1, 2008 or January 1 of any calendar year on and after January 1, 2009 after satisfying either of the voluntary enrolment conditions described in (a) or (b) as follows:

- (a) completing at least 700 hours of employment during the immediately preceding calendar year; or
- (b) earning at least 35% of the YMPE during the immediately preceding calendar year.

A Part-time Employee in Manitoba must enrol when the enrolment conditions are met.

I.4.3 Voluntary Enrolment for Full-time Employees

Any Full-time Employee to whom Section I.4.1 does not apply may enrol as a Member of the Plan at any time following the completion of 6 months of Continuous Service.

A Full-time Employee in Manitoba must enrol when this enrolment condition is met.

I.4.4 Transition Rule for Certain Quebec Members

A Member to whom Section I.4.1 applies on June 30, 2008, who makes an election to contribute 0% as of July 1, 2008 as provided in the DC Provisions, who is employed in Quebec on July 1, 2008 and who transfers their benefits from the Plan as provided in Section II.A.11 at a time when the Member has no Account under the DC Provisions and thus ceases to be a Member, may again enrol as a Member of the Plan in accordance with Section I.4.2 or I.4.3 as applicable.

I.4.5 Non-Eligible Employees

An Employee who does not satisfy the enrolment conditions described in Section I.4.2 or I.4.3 is not eligible to enrol as a Member of the Plan. However, the Company may waive eligibility requirements under Section I.4.

I.4.6 Student

Notwithstanding the foregoing provisions of Section I.4 of the Plan, a Student may voluntarily enrol as a Member of the Plan immediately after satisfying the voluntary enrolment conditions described in Section I.4.2 or I.4.3..

I.4.7 Enrolment Form

An Employee who enrolls in the Plan must complete, sign and return to the Company a form prescribed by the Company authorizing the Company to withhold contributions from the Member's remuneration.

I.4.8 Termination and Re-Employment

If a Member's Continuous Service is broken and that Member is subsequently re-employed by an Employer, he shall be regarded for the purposes of the Plan as a newly-hired employee who has not had any previous service with an Employer, except with respect to any vested benefits which he may have to his credit in the Plan in respect of his previous service.

Section I.5 - Member Contributions

I.5.1 Member Contributions

(a) *Required Contributions*

On and after July 1, 2008 Member contributions are made in accordance with the DC Provisions.

(b) *Prior Election To Cease Contributions*

Pursuant to the terms of the Plan in effect before July 1, 2008, certain Members elected to cease contributions, and had an election to resume making contributions before July 1, 2008. All of these Members, whether or not they are contributing as of June 30, 2008, are Members and must make a contribution election in accordance with Section I.4.1.

I.5.2 Payroll Deduction

Member contributions must be contributed to the Plan by means of payroll deduction administered by the Company, unless specifically provided otherwise in the Plan.

I.5.3 Interest on Required Contributions at Specified Interest Rates

A Member's required contributions made before July 1, 2008 earn interest at a rate and in a manner that is at least equal to the rate and the manner of calculation prescribed by legislation in the Member's jurisdiction of employment or if no rate or manner of calculation is prescribed, at the rate specified by the Company from time to time for that purpose, and such interest is credited annually for each year or part year during which the contributions are held by the Plan.

Subject to compliance with jurisdictional prescribed requirements for interest credited while a Member is employed in that jurisdiction, the following interest rates will be credited to a Member's required contributions that were made to the Plan before July 1, 2008:

- (a) For the period from January 1, 1987 to December 31, 1992, the rate is based on the average of the yields of 5-year trust company guaranteed investment certificates, published in the Bank of Canada Review as CANSIM Series B 14046, over the most recent period for which the rates are available.

While a Member is actively employed prior to January 1, 1993, interest is calculated on the Member's contribution balance at the end of the prior Plan Year and, at one-half the applicable rate, on the Member's contributions made during the most recent Plan Year. Upon termination prior to January 1, 1993, interest is calculated on a pro-rata basis at the applicable rate of interest on the Member's contribution balance at the end of the prior Plan Year and on one-half of the contributions made during the current Plan Year.

- (b) For the period on and after January 1, 1993, the rate is based on the average of the yields on 5-year trust company guaranteed investment certificates, published in the Bank of Canada Review as CANSIM Series B14080, over the most recent twelve month period for which rates are available.

While a Member is actively employed on and after January 1, 1993, interest is calculated at the end of each Plan Year based on the rate of interest determined above for the last month of that Plan Year, and is applied to the Member's contribution balance at the end of the prior Plan Year and at one-half of the contributions made during the current Plan Year. For new Members who start to contribute during the Plan Year, an appropriate pro-rata portion of the rate for that Plan Year is applied to one-half of the Member's contributions during that Plan Year.

Upon termination, an appropriate pro-rata portion of the rate determined as above for the month preceding the Member's termination is applied to one-half of the Member's contributions made during the last Plan Year.

- (c) Specified Interest Rate for Member Employed in Québec

For a Member employed in Québec, the rate is the most recently determined average annual rate of return obtained on the investment of the Plan assets, less investment expenses and administrative costs, over the 36 month period ending at the end of each calendar year quarter.

Section I.6 - Employer Contributions

I.6.1 Employer Contributions

Subject to the provision of Section I.12.3 (Withdrawal of Assets) an Employer shall make such contributions to the Plan as are required based on the advice of the Actuary in order

- (a) to provide for the proper amortization of any unfunded liability or solvency deficiency; and
- (b) to meet the employer contribution requirements of the DC Provisions

both (a) and (b) being determined in accordance with the Pension Benefits Act, after taking into account the assets held under the Trust Agreement for the Plan, the contributions of the Members and all other relevant factors.

If, at any time while the Plan continue, the Actuary certifies that the assets of the Trust Fund exceed the liabilities of the Plan inclusive of Members' Accounts, the funding excess or a portion of the excess may be used to reduce the contributions that would otherwise be made by the Employers, subject to any limitation prescribed under the Pension Benefits Act and provided that any funding excess allocated to Employer contributions under Section I.6.1(b) is transferred to Member Accounts in accordance with Section 147.3(4.1) of the Income Tax Act.

I.6.2 Restriction on Employer Contributions

Notwithstanding the other provisions of this Section I.6, no contribution shall be made by an Employer to the Plan under Section I.6.1(a) unless the contribution is an eligible contribution as defined under the Income Tax Act, and no contribution shall be made by an Employer to the Plan or allocated to Members' Accounts from funding excess under Section I.6.1(b) unless it is within the limits specified in the DC Provisions.

I.6.3 Timing of Payment

An Employer shall make its contributions to the Plan under I.6.1(a) in equal or proportional monthly amounts and in all other respects in compliance with the procedures prescribed by the Income Tax Act and the Pension Benefits Act.

I.6.4 Remittance of Member Contributions

An Employer shall remit to the Trustee or its designate, for deposit to the Trust Fund, all sums received by it from a Member or deducted from a Member's pay, within 30 days following the month in which such sums are received or deducted, except that this shall occur within 15 days for Members employed in New Brunswick.

Section I.7 - Disability and Other Leaves of Absences

I.7.1 Member Contributions During Leave

(a) *Temporary Absence*

During an unpaid leave of absence due to a pregnancy or parental leave, a work-related injury or illness for which a Member receives workers' compensation benefits, a compassionate care leave, other than a period described in Section I.7.1(b) or (c), a Member may continue to make contributions in accordance with the DC Provisions. Members who elect to contribute shall make contributions by post-dated cheque.

(b) *Member Required Contributions During Short Term Disability*

A Member who has a disability which renders him unable to perform the duties of the employment in which the Member was engaged before the disability, and for which the Member is in receipt of short-term disability benefits from an Employer sponsored program, is required to continue to make contributions in accordance with the DC Provisions.

(c) *Member Required Contributions During Disability Period*

A Member who has a Disability is required to continue to make contributions in accordance with the DC Provisions. Members whose Disability commences on or after July 1, 2008 shall make contributions by post-dated cheque.

I.7.2 Continuous and Pensionable Service Years During Absence

Each year, or part thereof, prior to July 1, 2008 during which contributions were continued during eligible temporary absence, short term disability or Disability under predecessor provisions to Section I.7.1 counts as a Pensionable Service Year, or part thereof.

I.7.3 Earnings During Absence

In determining the level of contributions under Section I.7.1 a Member's Earnings shall be deemed to be equal to:

- (a) for absences described in Section I.7.1(a), the rate of Earnings received by the Member immediately before the commencement of his leave of absence, subject to the prescribed compensation rules under the Income Tax Act;
- (b) for absences due to short-term disability described in Section I.7.1(b), the amount of short-term disability benefit received by the Member from an Employer sponsored program; and
- (c) for periods of Disability described in Section I.7.1(c), the rate of Earnings received by the Member immediately before the commencement of the Disability. In no event will the Member's Pensionable Earnings during periods of his Disability exceed the amount of remuneration of the Member, had his employment with an Employer continued during his period of Disability.

The Member's Earnings are deemed to be equal to 12 times the Member's Earnings as otherwise determined under the Plan for the full month immediately preceding the commencement of the period of Disability or other leave of absence.

I.7.4 "Pensionable Earnings" In Respect of Disability Period

During the period of Disability, for the purposes of determining the amount of benefit accrued with respect to Pensionable Service Years, the Member's Pensionable Earnings are calculated as follows:

- (a) in the first Plan Year of Disability, 12 times the Member's Earnings as otherwise determined under the Plan for the month before that period of Disability commenced; and
- (b) in each succeeding Plan Year of that period of Disability, the amount of the Member's Earnings determined at the end of the previous Plan Year and increased by the percentage increase in the lesser of:

- (i) the Consumer Price Index, if any, in excess of 3%, and
- (ii) the Average Industrial Wage,

since the end of the previous Plan Year. In no event will the Member's Pensionable Earnings during periods of his Disability exceed the amount that is reasonable to consider would have been the remuneration of the Member, had his employment with an Employer continued during his period of Disability.

I.7.5 Application of Disability Provisions

The application of these provisions concerning Disability is limited to those Members who are enrolled in their Employer's long term disability plan, thereby excluding any eligible Employee who does not enrol and Members who are part-time employees and who are therefore not eligible to enrol in that plan.

I.7.6 Leave of Absence or Disability Ending Before Early Retirement Date

If a Member's leave of absence ends or the Member ceases to suffer from a Disability before he is eligible for early retirement and

- (a) the Member returns to active employment with an Employer, his pension will be calculated based on the provisions of the Plan in effect as at the date of his subsequent termination or retirement; or
- (b) the Member does not return to active employment with an Employer, he will be deemed to have terminated his employment for purposes of the Plan as of the date that the leave of absence ended or the Member ceased to suffer from the Disability, and his pension will be calculated based on the provisions of the Plan in effect as at the date of his deemed termination.

I.7.7 Leave of Absence or Disability Continuing Until Early Retirement Date

A Member whose period of leave of absence or Disability continues until he is eligible for retirement may elect to retire at any time before his Normal Retirement Date and his pension will be calculated based on the provisions of the Plan in effect as at the date of his retirement. Any of the Member's pension received prior to his Normal Retirement Date will be deemed to be received on account of disability for

purposes of the Employer's long term disability plan.

I.7.8 Income Tax Act Restrictions on Pensionable Service Years and Deemed Earnings

Periods of unpaid leave of absence included in Pensionable Service Years plus periods of absence during which Earnings are deemed to be received under Section I.7.3 on and after July 1, 2008 shall not exceed the following limits:

- (a) each period of absence before January 1, 1991 for which Pensionable Service Years are granted shall be limited to a maximum full-time equivalent of 2 years; and
- (b) the aggregate of periods of absence on and after January 1, 1991 for which Pensionable Service Years are granted or Earnings are deemed to be received shall be limited to a maximum full-time equivalent of 5 years, plus an additional 3 years in respect of absences that occur within the 12 month period which commences at the time of the birth or adoption of a child of the Member.

Section I.8 - Designated Beneficiary

I.8.1 Effectiveness of Beneficiary Designation

Death benefits are paid in accordance with the beneficiary designation of a Member except if the Company has actual notice that the Member is survived by a Spouse, and the Spouse has not waived priority rights as permitted by the Pension Benefits Act, then the Spouse takes priority over the Beneficiary of the Member, in accordance with the requirements of the Pension Benefits Act.

I.8.2 Procedure for Beneficiary Designation

A Member may designate a Beneficiary or Beneficiaries to receive death benefits payable under the Plan and may, from time to time, alter or revoke the designation either in the manner and according to the forms prescribed by the Company for that purpose, or by will provided that the certified copy of probate is provided to the Company's head office before payment is made.

Section I.9 - Trust Fund

I.9.1 Trust Fund

The Company shall arrange for the funding of the Plan by establishing a Trust Fund for the purposes of the Plan, by the execution of a Trust Agreement with a Trustee which is a company resident in Canada and licensed to carry on a trust business in Canada.

I.9.2 Change of Trustee

The Company may, subject to the terms of the Trust Agreement, remove or replace the Trustee at its discretion from time to time, provided that any substitute Trustee or Trustees (other than a Company authorized to carry on a life insurance business in Canada), shall be a company resident in Canada and licensed to carry on a trust business in Canada.

I.9.3 Relationship of Plan and Trust

The Company shall deliver a copy of the Plan as it may be amended from time to time to the Trustee and the Trust Agreement thereupon forms part of the Plan as so amended, inconsistent provisions of the Plan in existence prior to any such delivery thereby being deemed to have been appropriately modified as of the effective date contemplated for such amendments.

I.9.4 Investment of the Trust Fund

The Trust Fund created by the Trust Agreement and all increments thereto will be held by the Trustee and will be invested in the securities and loans from time to time permitted under the Pension Benefits Act and the Income Tax Act, and in such manner as will qualify the trust for exemption from income tax under the Income Tax Act. Subject to the foregoing, the investment of a Member's Account will be as directed by the Member from options made available under the Trust Agreement.

I.9.5 Continuation of Predecessor Plan Trust Fund

The funding arrangement for the Plan is provided as a continuation of the funding arrangement of GRIP.

I.9.6 Discharge to Trustee

If any person entitled to receive a payment from the Plan is incapable of managing his own affairs and of giving valid receipt for such payment, the Trustee may make payment to the guardian, committee or other legal representative of the person and any such payment will be deemed a payment for the account of the person entitled to the payment and will constitute a full and complete discharge of the Trustee for liability for the payment under the Plan.

Section I.10 - Administration

I.10.1 Administration by the Company

The Company shall administer the Plan and shall, in consultation with the Actuary or Trustee if the Company deems it necessary, decide conclusively all matters relating to the operation, administration, interpretation or application of the Plan and its provisions and without limiting the generality of the foregoing, the Company may exclude from this Plan any employee who is not resident in Canada.

I.10.2 Cost of Administration

All normal and reasonable expenses incurred in the operation of the Plan whether related to the DB Provisions or the DC Provisions or both, including expenses incurred under the Trust Agreement, shall be paid from the Trust Fund, either directly or by reimbursement to the Company on a quarterly basis (or at such other intervals as the Company shall determine). The Company shall determine from time to time the administration and investment fees and expenses that will be paid directly from Members' Accounts.

I.10.3 Purchase of Annuities

The Company may in its discretion, arrange for the purchase of an annuity by the Trust Fund established according to the Trust Agreement to satisfy the benefit entitlement of or on behalf of a Member under the Plan, provided that any restrictions in the Pension Benefits Act with regard to the solvency of the Plan have been met and provided that with respect to a Member's Account, efforts to obtain the Member's election under Section III.4.1 have been made.

Section I.11 - General Provisions

I.11.1 Small Pension Amounts

If a Member's annual periodic pension payment is a small amount and is, thus, eligible for commutation according to the applicable legislative requirements summarized as follows, the Commuted Value of the Member's pension will be paid to the Member in a cash lump sum:

| <u>Amount of Benefit</u> | <u>Province</u> |
|--|--|
| Annual pension less than 2% of YMPE | Ontario P.E.I. (no legislation) |
| Annual pension less than 4% of YMPE | Manitoba Newfoundland Nova Scotia Federal |
| Annual pension equal to or less than 4% of YMPE | Alberta Saskatchewan |
| Annual pension less than 10% of YMPE | British Columbia |
| Commuted Value (excluding excess contributions) less than 4% of YMPE | Manitoba |
| Commuted value (excluding excess contributions) less than 10% YMPE | Newfoundland Nova Scotia |
| Commuted Value (including excess contributions) less than 20% of YMPE | Quebec |
| Commuted Value (excluding excess contributions) less than 20% of YMPE | British Columbia |
| Commuted Value at date of request if pension deferred (excluding excess contributions) less than or equal to 20% of YMPE | Alberta Saskatchewan |

Annual pension less than 2% of the YMPE (and Member is within 10 years of normal retirement) New Brunswick

Adjusted Commuted Value (adjusted with interest from date of termination to age 65) less than 40% of the YMPE, and the Spouse, if any, consents in the prescribed written form to the payment of the Commuted Value New Brunswick

I.11.2 Required Transfers

Subject to the transfer restrictions as described in Sections I.11.3 and I.11.4, if the amount available for transfer under Section II.B.8.3 is less than 10% of the YMPE in the year in which the Member terminates Continuous Service, the Company may require the Member to make the transfer described in Sections II.A.7.6 and II.B.8.3 if the Member was employed in the following jurisdictions: Alberta, British Columbia or New Brunswick or Federal.

Subject to the transfer restrictions as described in Sections I.11.3 and I.11.4, if the amount available for transfer under Section II.B.8.3 is less than 20% of the YMPE in the year in which the most recent determination of the Commuted Value is made, the Company may require a Member who was employed in Alberta to make the transfer described in Sections II.A.7.6 and II.B.8.3.

I.11.3 Restrictions on Transfers under the Income Tax Act

A transfer of benefits from the Plan to another alternative retirement savings arrangement shall be made directly from the Plan to the alternative retirement savings arrangement, in accordance with the requirements under the Income Tax Act. Amounts transferred in accordance with Sections II.A.7.6 and II.B.8.3 plus excess contributions transferred in accordance with Section II.B.10.2 shall not exceed the maximum amount prescribed under the Income Tax Act. Any amounts which exceed these limits shall be paid to the Member in cash.

I.11.4 Restrictions on Transfers under the Pension Benefits Act

The Company shall not permit a transfer or purchase under Sections II.A.7.6, II.B.8.3, III.4.1 and III.4.2 unless it is satisfied that:

- (a) the transfer or purchase is in accordance with the Pension Benefits Act; and

- (b) any restrictions in the Pension Benefits Act with regard to the solvency of the Plan have been met.

I.11.5 Timing of Transfers

A Member who is entitled to transfer the Commuted Value of his deferred pension under Sections II.A.7.6 and II.B.8.3 shall make the transfer within the time limits required by the Company. However, a Member whose Continuous Service ceases while employed in the province of Quebec is entitled to make the election under Section II.A.7.6 within 180 days of:

- (a) the date on which the Member's employment is terminated;
- (b) every fifth anniversary following the Member's termination of employment until the Member's attainment of age 55.

I.11.6 Non-Resident

A Member who was employed in British Columbia, Quebec, or in Federal Employment, whose Continuous Service has ceased, and who has ceased to reside in Canada for at least 2 years, and in the case of a British Columbia Member, who is a non-resident of Canada for tax purposes, is entitled to the Commuted Value of his entitlement from the Plan in a lump sum.

For a Member who was employed in New Brunswick, whose Continuous Service has ceased, if:

- (a) the Member and his Spouse, if any, have ceased to be Canadian Citizens and have become non-residents of Canada for tax purposes; and
- (b) the Spouse, if any, has signed a waiver as prescribed,

the Member is entitled to the Commuted Value of his entitlement from the Plan in a lump sum.

A Member who was employed in Alberta, whose Continuous Service has ceased and who is a non-resident of Canada for tax purposes, is entitled to the Commuted Value of his entitlement from the Plan in a lump sum.

I.11.7 Short Life Expectancy

If a Member who is retiring establishes by a statement from a qualified medical practitioner that he has only a short life expectancy, the Company may authorize the payment of the Commuted Value of all or part of the Member's life annuity including the Member's Account in a single cash amount, provided that the consent of the Member's Spouse, if any, is obtained.

For a former Member who was employed in Ontario, and who establishes pursuant to the prescribed requirements of the Pension Benefits Act that he or she has an illness or physical disability that is likely to shorten his or her life expectancy to less than two years, and when all applicable requirements of the Pension Benefits Act are satisfied, the Company shall authorize the payment of the commuted value of all or part of the former Member's life annuity including the Member's Account in a single cash amount, and for this purpose the commuted value will be determined taking into account the Member's shortened life expectancy.

If the Member is employed in New Brunswick and has a Spouse, payment in cash shall not be made without the Spouse's consent in the form prescribed by the Pension Benefits Act.

I.11.8 No Additional Rights to Employment

A Member shall not have, because of his membership in the Plan, any additional rights to employment with an Employer which he would not otherwise have.

I.11.9 Non-Alienation

Except as specified in Section I.11.6 or permitted under the Pension Benefits Act and the Income Tax Act, money payable under the Plan is subject to the following restrictions:

- (a) any transaction that purports to assign, charge, anticipate, surrender or give as security any right of a person under the Plan or money payable under the Plan shall not be enforceable against the Plan; and
- (b) money payable under the Plan is exempt from execution, seizure or attachment.

I.11.10 Assignability of Benefits On Marriage Breakdown

- (a) *Support Obligations*
Upon breakdown of a Member's spousal relationship, payments under the Plan are subject to execution, seizure or attachment in satisfaction of a written order for support or maintenance enforceable in Ontario or another relevant jurisdiction, in accordance with the Pension Benefits Act.
- (b) *Division of Property*
Upon the breakdown of a spousal relationship, a Member may assign or convey in writing all or a portion of his benefits and rights under the Plan to his Spouse or former Spouse within the limits imposed by the Pension Benefits Act.

I.11.11 Non-Commutability of Pensions

A pension or deferred pension payable under this Plan shall not be capable of being commuted, except as permitted under Sections, I.11.1 and I.11.6.

I.11.12 Proof of Age

Each Member shall, if and when required by the Company, provide proof of age for himself and any joint annuitant and comply with all reasonable requirements of the Company.

I.11.13 Disclosure to Employees and Members

The Company shall provide to each prospectively eligible Employee and to each newly-enrolled Member and his or her Spouse where required by the applicable Pension Benefits Act, a written explanation of the terms and conditions of the Plan and any amendments thereto prospectively applicable or currently applicable to him (as the case may be) together with an explanation of the rights and duties arising on Plan membership with reference to the benefits available to him under the Plan. The Company shall make available to or on behalf of the Member and his or her Spouse where required by the applicable Pension Benefits Act, the information regarding the operation and administration of the Plan as prescribed in the applicable Pension Benefits Act including prescribed Member information statements.

I.11.14 Governing Law

The provisions of the Plan shall be construed, governed and administered in accordance with the laws and regulations in effect in the Province of Ontario.

I.11.15 No Privity

The Plan shall not create any privity between an Employer and any Employee or former Employee entitled to receive any payment or benefit under the Plan, and no right or claim of any such person shall be asserted or made against an Employer, by reason of the Plan.

Section I.12 - Future of the Plan

I.12.1 Right to Amend or Terminate

While it is the intention of the Company to maintain the Plan in force indefinitely, the right to amend or terminate the Plan, either in whole or in part, is necessarily reserved by the Company in the event that future conditions, in the opinion of the Company, warrant such action, which conditions may include without limiting the generality of the foregoing, changes in pensions, profit sharing plans, retirement income benefits or similar benefits provided by the Company or by or pursuant to any law, regulations or other governmental authority.

I.12.2 No Reduction of Accrued Benefits

Notwithstanding Section I.12.1, the following restrictions apply:

- (a) an amendment to all or part of the Plan shall not operate to reduce benefits which have accrued under the Plan prior to the date of such amendment to Members of the Plan; and
- (b) where an amendment results in a certifiable past service adjustment (as defined under the Income Tax Act) in respect of a Member, the amendment shall not apply to such Member prior to the certification of the past service pension adjustment in accordance with the Income Tax Act.

I.12.3 Withdrawal of Assets

In conjunction with the amendments giving effect to the rules of the Plan, the Company expressly reserves the rights, which have been its rights since the inception of the predecessor plan as follows:

- (a) the right to withdraw assets from the Trust Fund subject to the then current restrictions concerning pension fund surpluses according to the applicable Pension Benefits Act and rulings of the regulatory authorities; and
- (b) the right to apply surplus assets towards the provision of benefits under the Plan

I.12.4 Termination

In the event that the Plan is terminated in full or in part:

- (a) the assets of the Trust Fund (or in the case of a partial termination, the pro-rata portion of the assets of the Trust Fund) shall be applied first to satisfy all pensions and other benefits in accordance with the terms of the Plan and the additional entitlements required under the Pension Benefits Act in respect of service up to the date of such termination (or partial termination) to individuals in the categories (i), (ii) and (iii) as follows who are affected by such termination (or partial termination):
 - (i) Members of the Plan;
 - (ii) pensioners; and
 - (iii) former Employees with deferred pension entitlements;
- (b) if the assets of the Trust Fund (or, in the case of a partial termination, the pro-rata portion of the assets of the Trust Fund) are insufficient to provide fully for the benefits described in Section I.12.4(a), the Accounts shall not be affected by the insufficiency and the Employer shall not be required to make any further contribution by reason of such deficiency other than payments required to be made under Section I.6 up to the date of such termination, except as otherwise required under the terms, if any, of the applicable Pension Benefits Act which provide for guaranteed benefits in the event of plan termination; and
- (c) if, after providing fully for the benefits described in Section I.12.4(a), there are assets remaining in the Trust Fund (or, in the case of a partial termination, in the pro-rata portion of the assets of the Trust Fund), such remaining assets shall revert to the benefit of the Company and, in accordance with the provisions of Section I.12.3, shall be paid to the Company or applied for such other use as the Company shall direct in accordance with the provisions of Section I.12.3 subject, in the case of a partial termination, to any requirements of the Pension Benefits Act that such remaining assets (or a portion thereof) be retained in the Plan.

SEARS CANADA INC.
SEARS REGISTERED RETIREMENT PLAN
DB PROVISIONS

SEARS CANADA INC.

Sears Registered Retirement Plan

II – DB Provisions

B. Amplified Rules

Table of Contents

II. DB Provisions

A. Basic Rules

| | |
|---|----|
| SECTION II.A.1 - FINAL AVERAGE 3-YEAR PENSIONABLE EARNINGS AND PENSIONABLE SERVICE..... | 1 |
| SECTION II.A.2 - NORMAL RETIREMENT | 4 |
| SECTION II.A.3 - EARLY RETIREMENT | 6 |
| SECTION II.A.4 - POSTPONED RETIREMENT | 8 |
| SECTION II.A.5 - FORMS AND PAYMENT OF PENSION | 9 |
| SECTION II.A.6 - POST RETIREMENT INFLATION ADJUSTMENT | 11 |
| SECTION II.A.7 - BENEFITS ON TERMINATION | 13 |
| SECTION II.A.8 - BENEFITS ON DEATH..... | 15 |
| SECTION II.A.9 - EXCESS CONTRIBUTIONS AND STATUTORY RESTRICTIONS..... | 17 |
| SECTION II.A.10 - PENSION BENEFITS OF MEMBERS TRANSFERRED TO JPMORGAN..... | 18 |
| SECTION II.A.11 - SPECIAL SETTLEMENT FOR CERTAIN QUEBEC MEMBERS..... | 21 |

Section II.A.1 - Final Average 3-Year Pensionable Earnings and Pensionable Service

II.A.1.1 Pensionable Earnings

For any year in which a Member is a Full-Time Employee, the amount of the Member's Pensionable Earnings is the amount of that Member's Earnings.

II.A.1.2 Final Average 3-Year Pensionable Earnings

Subject to Section II.A.1.3, the Final Average 3-Year Pensionable Earnings of a Member is determined as one-third of the Member's aggregate Pensionable Earnings during his 3 consecutive years of highest Pensionable Earnings within his most recent 10 years of Continuous Service while a Member of the Plan.

II.A.1.3 Inflation Adjusted Career Average Earnings

The Final Average 3-Year Pensionable Earnings of an Eligible Member as defined in Section II.A.1.2 is deemed to equal the Member's Inflation Adjusted Career Average Earnings, if greater, which is calculated by applying a formula to the Member's Pensionable Earnings for each year of Plan membership on and after January 1, 1987 with the effect of:

- (a) adjusting such Pensionable Earnings based on the cumulative change in the Consumer Price Index, measured from the year of such Pensionable Earnings with the approximate effect of excluding changes in the last calendar year of Continuous Service; and
- (b) aggregating such inflation adjusted Pensionable Earnings and dividing the aggregate by the Member's years of Plan membership on and after January 1, 1987.

The aggregate adjustment to Pensionable Earnings as described above shall not exceed the increase in the Average Industrial Wage during the same period.

II.A.1.4 Member Eligible for Inflation Adjustment to Earnings

A Member is eligible for the substitution of Inflation Adjusted Career Average Earnings as described in Section II.A.1.3 if the Member has at least 6 years of Continuous Service, if the Member retires from the Company on or before his normal retirement date, and if the Member's average annual Pensionable Earnings in any period of 3 complete calendar years measured back on a non-overlapping basis from the most recent calendar year is less than the Member's average annual Pensionable Earnings for the immediately prior period of 3 complete calendar years by a "Minimum Percentage" determined from the following table relative to the Consumer Price Index Increase During the Period ("CPII"):

| <u>CPI Increase During the Period (CPII)</u> | <u>Minimum Percentage</u> |
|--|---------------------------|
| Less than 6% | 11% less CPII |
| 6% to 15% | 5% |
| 15% to 20% | 20% less CPII |
| Greater than 20% | any drop in earnings |

For the purposes of this Section II.A.1.4, CPII is determined as the ratio of the Consumer Price Index of the middle year of the later 3-year period to the Consumer Price Index of the middle year of the prior 3-year period.

II.A.1.5 Pensionable Service Years

- (a) Subject to paragraph (b) of this Section II.A.1.5 a Member will be credited with one Pensionable Service Year for each complete calendar year of the Member's Continuous Service as a Full-Time Employee, while a Member of the Plan, since the later of his most recent date of hire and January 1, 1987 and before July 1, 2008. A Member's Pensionable Service Years shall exclude a period of unpaid leave of absence other than:
- (i) any period of Disability, as described in Section I.7.1(c);
 - (ii) any period of absence during which the Member is entitled to short-term disability benefits under an Employer sponsored program, as described in Section I.7.1(b);

- (iii) any period of absence, other than a period included in (i) or (ii) above, arising from a work-related injury or illness during which the Member is entitled to accrue pension benefits as described in Section I.7.1(a);
 - (iv) any period of absence required by law to be granted in respect of maternity, parental leave or compassionate care leave, as described in Section I.7.1(a); and
 - (v) any other unpaid leaves of absences, unless approved by the Company.
- (b) A Member who had elected under Section 5.1 of the Plan as it was in effect prior to July 1, 2008 to cease required contributions to the Plan is not credited with Pensionable Service Years for any period during which he had ceased to make required contributions to the Plan under that provision.

Section II.A.2 - Normal Retirement

II.A.2.1 Normal Retirement Date

A Member's normal retirement date is the last day of the month in which the Member attains age 65.

II.A.2.2 Normal Retirement Pension

For service with an Employer on and after January 1, 1987, the amount of the annual pension of a Member who retires on his normal retirement date is the sum of (a) and (b) calculated as follows:

(a) for Final Average 3-Year Pensionable Earnings up to the Final Average 3-Year YMPE

(i) 1%

multiplied by

(ii) the Member's Pensionable Service Years

multiplied by

(iii) the amount of the Member's Final Average 3-Year Pensionable Earnings that is less than or equal to the Final Average 3-Year YMPE but greater than 20% of the Final Average 3-Year YMPE

plus

(b) for Final Average 3-Year Pensionable Earnings above the Final Average 3-Year YMPE

(i) 1.75%

multiplied by

- (ii) the Member's Pensionable Service Years

multiplied by

- (iii) the amount of the Member's Final Average 3-Year Pensionable Earnings that exceeds the Final Average 3-Year YMPE

and in no event shall the amount of the annual pension payable at the Member's normal retirement date be less than the amount that would have been payable if the Member's Continuous Service had ceased on June 30, 2008.

In addition, the Member has entitlement to his excess contributions if any, calculated and payable in accordance with Section II.A.9.1, including accumulated interest.

Section II.A.3 - Early Retirement

II.A.3.1 Early Retirement Date

A Member may retire on the last day of any month after the Member has attained age 55 and is entitled to a pension commencing on the first of any month thereafter up to the first day of the month after he attains age 65.

II.A.3.2 Early Retirement Pension

For service with an Employer on and after January 1, 1987, the amount of the annual pension of a Member who retires before his normal retirement date is determined as follows:

- (a) the pension earned by the Member to his actual retirement date determined in accordance with the formula in Section II.A.2.2

reduced by

- (b) the early retirement reduction factor described under Section II.A.3.3

In addition, the Member is entitled to his excess contributions, if any, calculated and payable in accordance with Section II.A.9.1, including accumulated interest.

II.A.3.3 Early Retirement Reduction Factor

- (a) Members With Continuous Service Under 10 Years

1/4% per month for each full month by which the Member's actual pension commencement date precedes the last day of the month in which the Member attains his normal retirement date, plus a further 1/4% per month for each month, if any, by which the Member's actual pension commencement date precedes the month in which he attains age 60.

(b) Members With 10 or More But Less Than 25 Years of Continuous Service

1/4% per month for each full month by which the Member's actual pension commencement date precedes the last day of the month in which the Member attains age 62 plus a further 1/4% per month for each month, if any, by which the Member's actual pension commencement date precedes the last day of the month in which he attains age 60.

(c) Members With 25 or More Years But Less Than 30 Years of Continuous Service

1/2% per month for each full month, if any, by which the Member's actual pension commencement date precedes the last day of the month in which he attains age 60.

(d) Members With 30 or More Years of Continuous Service

1/4% per month for each full month, if any, by which the Member's actual pension commencement date precedes the last day of the month in which he attains age 60.

provided that, in no event, shall the reduction in the Member's pension under Section II.A.3.3, be less than the minimum early retirement reduction permitted under the *Income Tax Act* provided that for a Member in Federal Employment, sections (b), (c), and (d) apply only with the consent of the Company.

Section II.A.4 - Postponed Retirement

II.A.4.1 Postponed Retirements

If, pursuant to provincial law and the Employer's policy concerning retirement, a Member has remained in employment after his normal retirement date, the Member may retire after ceasing employment on the last day of any month after his normal retirement date but shall in any event be deemed to retire for the purposes of the Plan not later than November 30 of the year in which the Member attains age 71.

II.A.4.2 Postponed Retirement Pension

For service with an Employer on and after January 1, 1987, the amount of the annual pension upon actual retirement of a Member who retires after his normal retirement date is determined as the greater of (a) and (b) as follows:

- (a) his pension determined in accordance with the formula in Section II.A.2.2, and
- (b) his pension for service up to his normal retirement date determined in accordance with the formula in Section II.A.2.2 actuarially adjusted to the date his pension becomes payable;

and in addition, the Member is entitled upon actual retirement to his excess contributions, if any, calculated and payable in accordance with Section II.A.9.1, including accumulated interest.

Section II.A.5 - Forms and Payment of Pension

II.A.5.1 Pension Commencement and Duration

The Member's pension commences on the first of any month following termination of Continuous Service and attainment of age 55, prior to and including the Member's normal retirement date or the first of the month following the Member's postponed retirement date, as applicable, and is paid in equal monthly instalments thereafter (subject to increases pursuant to the provisions of Section II.A.6) for the Member's lifetime or such longer period as required according to the normal form of pension payable to the Member pursuant to Section II.A.5.2 or if applicable, the optional form of pension payable to the Member pursuant to Section II.A.5.3.

II.A.5.2 Normal Form of Pension

The normal form of pension is as follows depending on whether the Member has a Spouse:

- (a) for a Member who has no Spouse at his actual pension commencement date, monthly instalments continuing for the Member's lifetime, but if the Member dies before receiving 120 monthly instalments, the Commuted Value of the balance of such 120 monthly payments is paid to the Member's beneficiary; or
- (b) for a Member who has a Spouse at his actual pension commencement date, the reduced level of monthly payments which is the Actuarial Equivalent of the benefit described in Section II.A.5.2(a), which provides monthly payments continuing for the greater of the Member's lifetime and 120 months, and continuing thereafter, reduced by 33-1/3%, to his surviving Spouse-if any, for her lifetime.

If the Member dies before receiving 120 monthly instalments, and is not survived by his Spouse, the Commuted Value of the balance of such 120 monthly payments is paid to the Member's beneficiary.

II.A.5.3 Optional Forms of Pension

A Member may elect an optional form of pension, other than that which would be applicable to the Member pursuant to Section II.A.5.2, and that is payable at least for the Member's lifetime, on the conditions that:

- (a) the optional form of pension complies with the requirements of the Income Tax Act and Pension Benefits Act;
- (b) if the Member has a Spouse and is employed in a province where the Pension Benefits Act stipulates a joint form of pension with the Spouse of the Member, such Spouse consents in the prescribed written form to an optional form which provides to the Spouse no benefit or a level of benefit that is less than 66-2/3% of the benefit payable for the Member's lifetime; and
- (c) the optional form of pension is the Actuarial Equivalent of the normal form of pension described in Section II.A.5.2(a).

Section II.A.6 - Post Retirement Inflation Adjustment

II.A.6.1 Annual Review of CPI

The Company will review changes in the Consumer Price Index once a year, as of a specified anniversary date, with a view to declaring an inflation adjustment in accordance with the provisions of this Section II.A.6 to pensions in payment which are subject to such increase.

II.A.6.2 Application of Inflation Adjustment

An inflation adjustment declared pursuant to this Section II.A.6 commences on the later of the 1st day of January immediately following the Member's 65th birthday, or the 1st day of January immediately following the Member's actual retirement, and the inflation adjustment applies to each periodic pension payment which is payable:

- (a) after the date such adjustment is declared;
- (b) to any Member who retired from the service of an Employer prior to January 1, 2001 and who was eligible at the time of retirement to receive an immediate pension; and
- (c) to any Member whose employment with an Employer terminates after December 31, 2000 and the Member is eligible to receive an immediate or deferred pension; and
- (d) to the beneficiary of any Member as described in (b) and (c).

II.A.6.3 Maximum Inflation Adjustment Calculation

Subject to Section II.A.6.4, the inflation adjustment declared by the Company in any particular year is the percentage increase calculated as follows:

- (a) the excess, if any, of the percentage increase in the Consumer Price Index of the immediately preceding year over the Consumer Price Index of the second preceding year over 2%.

multiplied by

- (b) 75%

provided, however, that the inflation adjustment cannot exceed the lesser of 12% and the estimated average base pay increases provided by the Employers to active employees in the prior year. This lesser amount is the "maximum percentage increase".

II.A.6.4 Supplementary Inflation Adjustment

If the inflation adjustment according to Section II.A.6.3 has been restricted for one or more years to the "maximum percentage increase" the Company may declare a supplementary inflation adjustment in any subsequent year, if, and to the extent that the "maximum percentage increase" for that year exceeds the percentage increase calculated according to the formula in Section II.A.6.3, with the further restriction that such supplementary inflation adjustment when added together with all previous inflation adjustments, including all previous supplementary adjustments, shall not exceed the total cumulative allowable percentage increases calculated according to the formula in Section II.A.6.3.

Section II.A.7 - Benefits on Termination

II.A.7.1 Eligibility for Immediate Pension

A Member whose Continuous Service ceases for any reason after he is eligible for an early retirement pension is entitled to an immediate pension calculated according to the formula in Section II.A.3.2, and in addition, the Member has immediate entitlement to his excess contributions, if any, calculated and payable in accordance with Section II.A.9.1, including accumulated interest.

II.A.7.2 Eligibility for Termination Benefit

A Member whose Continuous Service ceases before he is eligible for an early retirement pension is entitled to receive a deferred pension commencing at age 65 in accordance with Section II.A.7.3, or at an earlier date in accordance with Section II.A.7.4.

In addition, the Member is entitled to his excess contributions, if any, calculated and payable in accordance with Section II.A.9.1, with accumulated interest.

II.A.7.3 Termination Benefit

For service with an Employer on and after January 1, 1987, a Member who is eligible for a termination benefit in accordance with Section II.A.7.2 is entitled to receive deferred pension commencing at age 65, determined in accordance with Section II.A.2.2.

II.A.7.4 Early Commencement of Termination Benefit

In lieu of a deferred pension commencing at the Normal Retirement Date as described in Section II.A.7.2, the Member may elect to commence receiving this pension on the first day of any calendar month coincident with or following his attainment of age 55 and prior to his Normal Retirement Date. The amount of this pension is calculated in accordance with Sections II.A.3.2 and II.A.3.3, provided that for the purposes of the determination of early retirement reduction factor under

Section II.A.3.3, the Member's Continuous Service is deemed to be the length of the Member's completed Continuous Service as if the Member had continued in active employment until his pension commencement date.

II.A.7.5 Provision for Spousal Entitlement in Relation to Termination Benefit

The termination benefit of a Member who is entitled to a deferred or immediate pension upon termination of employment for a reason other than retirement or death must provide a spousal pension according to the terms of Section II.A.5.2 and II.A.5.3 in the event that the Member has a Spouse within the terms of those Sections at the time that periodic pension payments commence.

II.A.7.6 Transfer of Deferred Pension Termination Benefit

A Member who is entitled to a deferred pension according to Section II.A.7.2 may elect to transfer a lump-sum amount equal to the Commuted Value of his deferred pension to an alternate retirement income funding arrangement in compliance with and subject to the requirements of the applicable Pension Benefits Act and the Income Tax Act, if any and the Member has no further claims against the Plan following such a transfer.

II.A.7.7 Minimum Transfer Value

In no event shall the sum of:

- (a) the amount available for transfer in accordance with Section II.A.7.6 and
- (b) the Member's entitlement, if any, to excess contributions determined in accordance with Section II.A.9.1, with accumulated interest

be less than 150% of the Member's required contributions made before July 1, 2008, with accumulated interest.

Section II.A.8 - Benefits on Death

II.A.8.1 Amount of Death Benefit for Active Member

For service with an Employer on and after January 1, 1987 and before July 1, 2008, the death benefit for a Member who is actively employed immediately before his death is determined as the Commuted Value of the Member's entitlement as if he had terminated Continuous Service according to Section II.A.7 (Benefits on Termination). For purposes of greater certainty, it is specified that the benefit includes the value of the Member's excess contributions, if any, calculated in accordance with Section II.A.9.1 with accumulated interest.

II.A.8.2 Amount of Death Benefit for Former Member Entitled to Deferred Pension at Death

For service with an Employer on and after January 1, 1987 and before July 1, 2008, the death benefit for a Member who had terminated Continuous Service before his death with an entitlement to a deferred pension which has not commenced and which has not been transferred out of the Plan, is determined as the Commuted Value at the date of death, of the deferred pension to which the Member is entitled under Section II.A.7. In addition, if not previously paid, the value of the Member's excess contributions, if any, calculated in accordance with Section II.A.9.1, with accumulated interest.

II.A.8.3 No Death Benefit After Transfer of Deferred Pension to Alternate Retirement Income Funding Arrangement

No benefit is paid from the Plan with respect to service before July 1, 2008 following the death of a Member who, before his death, had terminated Continuous Service and had completed the transfer of his deferred pension entitlement to an alternate retirement income funding arrangement according to Section II.A.7.6.

II.A.8.4 Death Benefit of Retired Member

The death benefit, if any, for a Member who dies after his periodic pension payments with respect to service before July 1, 2008 have commenced is the payments remaining, if any, or the Commuted Value thereof, according to the terms of payment applicable to the Member's benefit as provided in Section II.A.5 (Forms and Payment of Pension).

II.A.8.5 Death Benefit Settlement

The death benefit described in Section II.A.8.1 or II.A.8.2 is payable to the Member's Spouse, designated beneficiary or, if neither, to his estate, in accordance with the requirements of the Pension Benefits Act and the Income Tax Act and Section I.8

Section II.A.9 - Excess Contributions and Statutory Restrictions

II.A.9.1 Excess Contributions

Following the termination of Continuous Service for any reason, including retirement or death, of a Member who is entitled to an immediate or deferred pension with respect to service before July 1, 2008 upon such termination, retirement or death, the Member's excess contributions, if any, shall be equal to:

- (a) the value of the Member's required contributions made before July 1, 2008 with accumulated interest over
- (b) 50% of the Commuted Value of the Member's deferred or immediate pension with respect to service before July 1, 2008.

II.A.9.2 Income Tax Act Maximum

Notwithstanding anything to the contrary contemplated by the Plan, the annual pension payable under the Plan to any Member with respect to service before July 1, 2008 on retirement, death, termination of employment or termination of the Plan shall not exceed the maximum amount permitted to be paid under the Income Tax Act.

Section II.A.10 - Pension Benefits of Members Transferred to JPMorgan

II.A.10.1 Definitions

The following capitalized terms shall have the following meanings respectively for purposes of this Section II.A.10.

- (a) “**Average Industrial Wage**” means the average Canadian weekly wages and salaries, defined as the Industrial Aggregate, as published from time to time by Statistics Canada under the Statistics Act (Canada) as measured by CANSIM II Series VI558664;
- (b) “**Average Wage**” for a calendar year, means the Average Industrial Wage for each month over the 12-month period ending on June 30 of the immediately preceding calendar year, divided by 12;
- (c) “**Date of Determination**” means the earlier of a Transferred Member’s eventual retirement, death or termination of employment with the Purchaser
- (d) “**Increase in Average Industrial Wage**” for the calendar year, means, the percentage by which the Average Wage in the calendar year exceeds the Average Wage in the immediately preceding calendar year, calculated to the nearest decimal place, subject to a minimum of 0.00%. If the increase is to apply for only part of the calendar year, the increase shall be determined as described but prorated for that part of the calendar year, as applicable;
- (e) “**Purchaser**” means JP Morgan Chase Bank N.A. (Toronto Branch);
- (f) “**Transition Date**” means, with respect to each Transferred Member who is paid on an hourly basis, December 18, 2005, and in respect of each Transferred Member who is paid on a salaried basis, January 1, 2006;

- (g) **“Transferred Member”** means a former employee of the Corporation whose employment was seconded to the Purchaser pursuant to the terms of the Secondment Agreement, whose employment was transferred to the Purchaser on a Transition Date and who was accruing benefits under the Plan on the day immediately prior to such Transferred Member’s Transition Date; and
- (h) **“Secondment Agreement”** means the employee secondment agreement among the Corporation, Sears Canada Bank and the Purchaser dated as of November 15, 2005.

II.A.10.2 Determination of Benefits of Transferred Members under the Plan

On and after a Transferred Member’s Transition Date, such Transferred Member ceased to contribute to, and to accumulate service accruals under the Plan. The benefits accrued by the Transferred Member are retained in the Plan and are payable on such Transferred Member’s Date of Determination, in accordance with the terms of the Plan at the Transition Date, subject to the following conditions:

- (a) each of the lifetime benefit and the bridge benefit under the Plan, if applicable, shall be determined based on the Transferred Member’s Pensionable Service Years, Final Average 3-Year Pensionable Earnings, and Final Average 3-Year YMPE and, for Transferred Members with an entitlement under Appendix B, Pensionable Service, Contributory Service and Final Average Earnings, as at such Member’s Transition Date, save and except that such benefits shall be increased to reflect Increases in Average Industrial Wage for each year (or pro rated portion thereof) from the Transferred Member’s Transition Date to the Transferred Member’s Date of Determination; and

- (b) the Continuous Service of each Transferred Member shall include the period of employment with the Purchaser from the Member's Transition Date to the Member's Date of Determination except for the purpose of determining Pensionable Service Years, Final Average 3-Year Pensionable Earnings, and Final Average 3-Year YMPE and, for Transferred Members with an entitlement under Appendix B, Pensionable Service, Contributory Service and Final Average Earnings, which are governed by (a) above.

Section II.A.11 - Special Settlement for Certain Quebec Members

II.A.11.1 Special Settlement

A Member to whom Section I.4.1 applies on June 30, 2008, who makes an election to contribute 0% as of July 1, 2008 as provided in the DC Provisions and who is employed in Quebec when the 0% election becomes effective as of July 1, 2008 is entitled to but not required to elect:

- (a) if the Member is under age 55 on July 1, 2008,
 - (i) to transfer the Member's entitlement under the DB Provisions out of the Plan or to the Member's Account under the DC Provisions while still an Employee, determined and payable as if the Member's Continuous Service ceases on July 1, 2008 subject to the modification specified in Section II.A.11.3; or
 - (ii) to receive a deferred pension under the DB Provisions that will commence at any time after age 55 is attained and before age 65 is attained while still an Employee, determined and payable as if the Member's Continuous Service ceases immediately before the date of pension commencement.
- (b) if the Member has attained age 55 on July 1, 2008,
 - (i) to receive an immediate pension under the DB Provisions while still an Employee determined and payable as if the Member's Continuous Service ceases on July 1, 2008; or
 - (ii) to receive a deferred pension under the DB Provisions that will commence at any time before age 65 is attained while still an Employee, determined and payable as if the Member's Continuous Service ceases immediately before the date of pension commencement.

II.A.11.2 Consequences of Election

- (a) If a Member's pension under the DB Provisions commences pursuant to an election made under Section II.A.11.1, then for all purposes of the DB Provisions, including recognition of Earnings, the Member's Continuous Service is deemed to have ceased immediately before the date of pension commencement.
- (b) If a Member transfers all of his or her entitlement under the DB Provisions out of the Plan pursuant to Section II.A.11.1(a)(i) and the Member has no Account under the DC Provisions at the time of the transfer, then Membership ceases but Continuous Service is not affected or interrupted for purposes of eligibility to join the Plan.
- (c) An election under Section II.A.11.1 does not affect or interrupt a Member's Continuous Service for purposes of the DC Provisions.

II.A.11.3 Modified Commuted Value Calculation

The calculation of the Commuted Value of an entitlement under the DB Provisions for purposes of Section II.A.11.1(a)(i) shall include an earnings projection.

Table of Contents

II. DB PROVISIONS

B. Amplified Rules

| | | |
|-----------------|--|----|
| SECTION II.B.1 | DEFINITIONS | 1 |
| SECTION II.B.2 | FINAL AVERAGE 3-YEAR PENSIONABLE EARNINGS AND PENSIONABLE SERVICE..... | 2 |
| SECTION II.B.3 | NORMAL RETIREMENT | 5 |
| SECTION II.B.4 | EARLY RETIREMENT | 8 |
| SECTION II.B.5 | POSTPONED RETIREMENT | 14 |
| SECTION II.B.6 | FORMS AND PAYMENT OF PENSIONS..... | 17 |
| SECTION II.B.7 | POST-RETIREMENT INFLATION ADJUSTMENTS | 21 |
| SECTION II.B.8 | BENEFITS ON TERMINATION | 22 |
| SECTION II.B.9 | BENEFITS ON DEATH..... | 28 |
| SECTION II.B.10 | EXCESS CONTRIBUTIONS AND STATUTORY RESTRICTIONS..... | 31 |

Section II.B.1 - Definitions

- II.B.1.1.** *Average Industrial Wage* means the Average Weekly Earnings Industrial Aggregate published by Statistics Canada for the month of July of each calendar year.
- II.B.1.2** *Consumer Price Index* means the Consumer Price Index for Canada for All Items (Not Seasonally Adjusted) provided by Statistics Canada, or such other official measure of price movement as may be substituted therefor, for the month of July of each calendar year.
- II.B.1.3.** *Final Average 3-Year YMPE* is determined as one third of the following amount, as applicable:
- (a) for the Member who terminates on the last working day of a calendar year, the aggregate of the YMPE for the 3 full calendar years, comprised by the final 36 months of the Member's Continuous Service; or
 - (b) for the Member whose final 36 months of Continuous Service encompass 4 calendar years, the aggregate of the YMPE in the 2 full calendar years plus a pro rated portion of the YMPE for each part year contained in such period.
- II.B.1.4** *Pensionable Earnings* during periods of Disability and other leaves of absence are determined as described in Section I.7.3 rather than Section II.A.1.1.

Section II.B.2 - Final Average 3-Year Pensionable Earnings and Pensionable Service

II.B.2.1 Part-Year Pensionable Earnings

For any Plan Year during which the Member is not a Full-Time Employee and works less than 1,950 non-overtime hours, the amount of the Member's Pensionable Earnings is determined by multiplying the Member's Earnings by a part-year adjustment factor equal to 1,950 divided by the number of actual non-overtime hours worked during that Plan Year.

II.B.2.2 Period of 3 Consecutive Years

For the purposes of Section II.A.1.2, a Member's 3 consecutive years of highest Pensionable Earnings shall be comprised of:

- (a) any 3 consecutive full calendar years of highest Pensionable Earnings within the Member's last 10 years of Continuous Service while a Member of the Plan; or
- (b) if the Final Average 3-Year Pensionable Earnings is higher for this period, the 36 consecutive months that end with the Member's date of retirement, death or termination of employment, and for this purpose, the Member's Pensionable Earnings for the initial part-calendar-year period and the final part-calendar-year period are determined on a pro-rata basis,

but if the Member's period of Continuous Service while a Member of the Plan is less than 36 months, his Final Average 3-Year Pensionable Earnings is determined as 12 times the average of his monthly Pensionable Earnings while a Member of the Plan.

II.B.2.3 Inflation Adjustment on Pre-1987 Earnings for Post-86 Benefit

In calculating the pension earned by a Member for service on and after January 1, 1987, the Inflation Adjusted Career Average Earnings of an Eligible Member as defined in Section II.A.1.4 who was a Member of the Plan before January 1, 1987 is calculated as described in Section II.A.1.3 except that the

calculation includes in addition both the years of Plan membership commencing January 1, 1971 and ending December 31, 1986, as well as the "Earnings" as defined in GRIP in those years commencing January 1, 1971 and ending December 31, 1986 that are recognized as "Pensionable Service" as defined in GRIP.

II.B.2.4 Inflation Adjustment on Pre-1987 Benefit

In calculating the pension earned by an Eligible Member as defined in Section II.A.1.4 for service before January 1, 1987, the Member's Final Average Earnings as defined in GRIP, is replaced by the Member's Inflation Adjusted Career Average Earnings, if greater, which is calculated as provided in Section II.A.1.3, subject to the modifications described in Section II.B.2.3 and further modified so that the formula has the approximate effect of excluding changes in the Consumer Price Index within the last two calendar years of Continuous Service.

II.B.2.5 Part-Year Pensionable Service Years

- (a) The Pensionable Service Years before July 1, 2008 for a Member who was not deemed to be a Full-Time Employee throughout a Plan Year are determined as follows:
 - (i) if a Member who is a Full-Time Employee at the end of a Plan Year or as of June 30, 2008 was enrolled as a Member during the Plan Year or half Plan Year ending June 30, 2008, the Member is credited with the appropriate fraction of a Pensionable Service Year, based on the number of days in the year or half year following the Member's enrolment in the Plan;
 - (ii) if a Member who is a Full-Time Employee terminates Continuous Service, the Member is credited with the appropriate fraction of a Pensionable Service Year, based on the number of days in the year prior to his termination date;
 - (iii) if a Member is not a Full-Time Employee at the date of a determination, the Member's Pensionable Service Years in each Plan Year of the half Plan Year ending June 30, 2008 is calculated as the ratio of the actual non-overtime hours worked in the year or

half year while a Member of the Plan, divided by 1,950 hours or 975 hours, respectively; and

- (iv) notwithstanding Section II.B.2.5 (iii) above, if a Member is not a Full-Time Employee at the date of a determination, the Member's Pensionable Service Years for any year in which the Member is on a leave of absence as described in Section I.7.1 is based on the Member's Pensionable Service Years for the immediately preceding Plan Year.

- (b) The Pensionable Service Years before July 1, 2008 for a Member who elected in accordance with Section 5.1 of the Plan as in effect before July 1, 2008 are determined in accordance with paragraph (a) of this Section II.B.2.5, but excluding the period the Member ceased to make required contribution to the Plan.

Section II.B.3 - Normal Retirement

II.B.3.1 Total Normal Retirement Benefit

The benefits described in Section II.B.3.1 are in addition to the benefits that a Member earns according to Section II.A.2.2. Together, the amount of the annual pension payable at the Member's normal retirement date shall not be less than the amount that would have been payable if the Member's Continuous Service had ceased on June 30, 2008. The benefits described in Sections II.B.3.4 or II.B.3.5, if either is applicable, are in lieu of the benefits that a Member earns according to Sections II.B.3.2 and II.A.2.2.

II.B.3.2 Pension For Service Before January 1, 1987

For service with an Employer before January 1, 1987, the amount of the annual pension at normal retirement date of a Member is determined according to the applicable normal retirement provisions of GRIP subject to the following specific modifications:

- (a) *Inflation Adjusted Career Average Earnings*
For the purpose of calculating pension amounts, the "Final Average Earnings" as defined in GRIP of an Eligible Member as defined in Section II.A.1.4 is replaced by the Member's Inflation Adjusted Career Average Earnings, if greater, as described in Section II.B.2.4;
- (b) *Modified "Pensionable Service"*
For the purpose of multiplying the percentage of the Member's Final Average Earnings in the GRIP pension formula, "Pensionable Service" as defined in GRIP is modified to include only those years prior to January 1, 1987;
- (c) *Modified Calculation of the Reduction for Benefits from the Canada/Quebec Pension Plan Act and, if Applicable, Old Age Security Act.*

The calculation of the pension reduction on account of estimated benefits under the Canada Pension Plan Act or Quebec Pension Plan Act and

where applicable, the Old Age Security Act, is modified in the following respects:

- (i) if the Member has a total of not more than 40 years when his "Pensionable Service" as otherwise defined in GRIP but prior to January 1, 1987 is added to his Pensionable Service Years, the denominator of the fraction is 40, and the numerator is determined as his years of "Pensionable Service" as otherwise defined in GRIP but prior to January 1, 1987;
- (ii) if the Member has a total of more than 40 years when his "Pensionable Service" as otherwise defined in GRIP but prior to January 1, 1987 is added to his Pensionable Service Years, the denominator of the fraction is increased to that total of more than 40, and the numerator is determined as his years of "Pensionable Service" as otherwise defined in GRIP but prior to January 1, 1987;
- (d) *Reduction On Account of the Member's Profit Sharing Annuity.* The pension reduction, if any, on account of the Member's "Profit Sharing Annuity", as defined in GRIP is applied against the sum of the pension earned by the Member on account of Continuous Service before January 1, 1987 plus the pension earned on account of Pensionable Service Years and Pensionable Service on and after that date.

II.B.3.3 Part-Year Calculation for Final Average Checklist Earnings of Pre-1972 Checklist Employee

For a Pre-1972 Checklist Employee who is not a Full-Time Employee in at least one Plan Year prior to retirement, "Final Average Checklist Earnings" are determined as:

- (a) one-third of the aggregate of the Member's Earnings in the 3 full Plan Years immediately preceding the first year in which he is not considered a Full-Time Employee; and

- (b) adjusted by the lesser of the cumulative increase in the Consumer Price Index and the Average Industrial Wage during the period beginning with the year preceding the first year which he is not considered a Full-Time Employee and ending in the year prior to pension commencement

II.B.3.4 "Grandfathered" GRIP Normal Retirement Benefit For Service Before and After January 1, 1987

For service before and after January 1, 1987 but before July 1, 2008 for a Member who was enrolled in GRIP before January 1, 1987, the normal retirement benefit is calculated according to the applicable normal retirement provisions of GRIP, without the modifications described in Section II.B.3.2, and the benefit so calculated, if greater, replaces the total benefit that a Member would earn according to Sections II.B.3.2 and II.A.2.2.

II.B.3.5 Benefit for Service Before and After January 1, 1987 for "Pre-1972 Checklist Employee"

The benefit to which a Pre-1972 Checklist Employee is entitled on his normal retirement date under the Plan shall be equal to the greater of:

- (a) the benefit determined in accordance with either Sections II.A.2.2 and II.B.3.2 or Section II.B.3.4, as applicable, based on all of the Member's Pensionable Service Years and Pensionable Service; and
- (b) the benefit determined in accordance with Sections II.C.6.3, II.D.6.3 and II.B.3.2, accrued prior to January 1, 1990 based on Continuous Service prior to that date.

Section II.B.4 - Early Retirement

II.B.4.1 Total Early Retirement Benefit

The early retirement benefits described in Sections II.B.4.3 and II.B.4.10 as applicable, are in addition to the benefits the Member earns under Section II.A.3.2, provided that the amount is at least equal to the minimum early retirement benefit as determined under Section II.B.4.4.

II.B.4.2 Total Early Retirement Benefit for "Pre-1972 Checklist Employee"

The early retirement benefit that a Pre-1972 Checklist Employee is entitled to under DB Provisions shall be equal to the greater of:

- (a) the benefit determined in accordance with Section II.B.4.1; and
- (b) the benefit determined in accordance with Sections II.C.6.4 or II.D.6.4 and II.B.3.2, accrued by the Pre-1972 Checklist Employee prior to January 1, 1990 based on his Continuous Service prior to that date.

II.B.4.3 Pension For Service Before January 1, 1987

For service with an Employer before January 1, 1987, the amount of the annual pension for a Member who retires before his normal retirement date is determined as the amount of pension determined according to the applicable early retirement provisions of GRIP modified in accordance with Section II.B.3.2.

II.B.4.4 Minimum Early Retirement Benefit

The minimum early retirement benefits are equal to the early retirement pension determined in accordance with the provisions of the Plan as in effect on December 31, 1998, as follows:

- (a) for service with an Employer before January 1, 1987, the Member's benefits are determined as provided under Section II.B.4.5

- (b) for service with an Employer on and after January 1, 1987 and before July 1, 2008, the Member's benefits are determined as described under Sections II.B.4.6, II.B.4.9, II.B.4.10

II.B.4.5 Pension For Service Before January 1, 1987 as in Effect on and Prior to December 31, 1998

For service with an Employer before January 1, 1987, the amount of the annual pension for a Member who retires before his normal retirement date is determined as the amount of pension determined according to the applicable early retirement provisions of GRIP, modified in accordance with Section II.B.3.2., except that the early retirement reduction factor as described in Sections II.C.3.1(c), II.D.3.1(b) and II.D.3.2(a) is replaced by the following early retirement reduction factor:

- (a) the early starting pension amount multiplied by the following early retirement reduction factor:
- (i) 1% for each year by which the total of the Member's years of attained age at the time of his actual retirement from the service of an Employer and his years of Pensionable Service is less than 95 years; plus
 - (ii) an additional 1% for each year by which the total of the Member's years of attained age at the time of his actual retirement from the service of an Employer and his years of Pensionable Service is less than 85 years.

II.B.4.6 Pension For Service on and after January 1, 1987 as in effect on and after December 31, 1998

For service with an Employer on and after January 1, 1987 and before July 1, 2008, the amount of the annual pension for a Member who retires before his normal retirement date is determined as the amount of pension determined according to Sections II.A.3.2 and II.A.3.3 except that the early retirement reduction factor as described under II.A.3.3 is replaced by the following early retirement factor:

- (a) 1/4% per month for each full month by which the Member's actual pension commencement date precedes his normal retirement date; plus
- (b) a further 1/4% per month for each month, if any, by which the Member's actual pension commencement date precedes the month in which he attains age 60.

In no event shall the reduction in the Member's pension under this Section II.B.4.5, be less than the minimum early retirement reduction permitted under the Income Tax Act.

II.B.4.7 "Points at January 1, 1987"

For the purpose of this Section II.B.4, a Member's "points at January 1, 1987" is determined as the total of a Member's years of attained age at January 1, 1987 plus his years of "Pensionable Service" as otherwise defined in GRIP, but prior to January 1, 1987.

II.B.4.8 Eligibility for Enhanced Early Retirement Reduction

For the purpose of determination of minimum early retirement Benefit, if the total "points at January 1, 1987" of a Member who retires before his normal retirement date is more than 55, the early retirement reduction factor under Section II.B.4.6 is modified according to Section II.B.4.9 for such Member if the modification decreases the early retirement reduction factor for the Member and thereby increases the amount of pension payable to the Member.

II.B.4.9 Enhanced Early Retirement Reduction Factor Calculation

For the purpose of determination of minimum early retirement Benefit, if the conditions of Section II.B.4.8 are satisfied, the early retirement reduction factor determined according to Section II.B.4.6 is decreased by an amount determined as the excess of (a) over (b) multiplied by (c) as follows:

- (a) the amount of the early retirement reduction factor determined according to Section II.B.4.6;

minus

- (b) the amount of the early retirement reduction factor determined according to Section II.B.4.5;

multiplied by

- (c) the transitional adjustment factor equal to 5% for each point by which the total of the Member's "points at January 1, 1987" exceeds 55, to a maximum of 20.

In no event shall the reduction in the Member's pension under this Section II.B.4.9, be less than the minimum early retirement reduction permitted under the Income Tax Act.

II.B.4.10 Enhanced GRIP Bridge Benefit

If the total "points at January 1, 1987" of a Member who retires before his normal retirement date is more than 55, the Member is also entitled to an annual enhanced GRIP bridge benefit, payable in equal monthly instalments, equal to the amount of bridge pension determined according to the applicable provision of GRIP, modified according to Section II.B.3:2, multiplied the "adjusted lifetime service factor" determined as follows:

- (a) the Pensionable Service Years of the Member after January 1, 1987 while a Member of the Plan

divided by

- (b) the number of years of "Pensionable Service" of the Member under GRIP before 1987

multiplied by

- (c) the transitional adjustment factor equal to 5% for each point by which the total of the Member's "points at January 1, 1987" exceeds 55, to a maximum of 20,

For purposes of greater certainty, this enhancement does not apply in calculating

the minimum early retirement benefits of a "Pre-1972 Checklist Employee" as described under Section II.B.4.2(b).

II.B.4.11 Québec Provision – Partial Retirement Benefit

A Québec Member who has attained at least age 55 and whose employment with the Company has been reduced pursuant to a written agreement with his Employer, shall be entitled, to elect to replace a portion of his pension under the DB Provisions by an annual lump-sum, as specified in a written agreement with the Company, equal to the lesser of the following amounts:

- (a) 70% of any reduction in the Québec Member's Earnings experienced as a result of his reduction of employment;
- (b) 40% of the YMPE for the applicable calendar year;
- (c) the Commuted Value of the benefit to which the Québec Member would be entitled to receive under Sections I.A.2 and II.B.3 determined as if the Member has terminated employment on the date that the Québec Member requests such partial retirement payment;

The lifetime pension under the DB Provisions of the Québec Member who has elected a lump sum partial retirement benefit under this Section II.B.4.11 will be reduced on an Actuarial Equivalent basis to take into account the aggregate of the lump sum partial retirement benefits paid.

In no event will the lump sum payment provided to the Québec Member under this Section II.B.4.11 be less than the Actuarial Equivalent of the reduction in the Québec Member's pension, determined as of the date of replacement of the early retirement amount described in this Section II.B.4.11.

Notwithstanding the foregoing provisions of this Section II.B.4.11, the Québec Member shall not be entitled to receive a payment under this Section II.B.4.11 if the Québec Member is entitled to receive a temporary pension under Section I.11.5 or a reduced compensation benefit under Section II.B.5.5.

Subject to Income Tax Act requirements, lump sum payments made under this Section II.B.4.11 may be transferred by the Québec Member to his registered retirement savings plan.

Section II.B.5 - Postponed Retirement

II.B.5.1 Total Postponed Retirement Benefit

The benefits described in Section II.B.5.2 are in addition to the benefits that a Member earns according to Section II.A.4.2. The benefits described in Section II.B.5.3 or II.B.5.4, if either is applicable, are in lieu of the benefits that a Member earns according to Sections II.B.5.2 and II.A.4.2.

II.B.5.2 Pension for Service Before January 1, 1987

For service with an Employer before January 1, 1987, the amount of annual pension for a Member at postponed retirement is the greater of (a) and (b) as follows:

- (a) his pension determined according to the applicable normal retirement provisions of GRIP modified in accordance with Section II.B.3.2(a), (b), and (d) and further modified such that the reduction for benefits from the Canada or Québec Pension Plan Act and, if applicable, the Old Age Security Act, is calculated as:

"That portion which his years of Pensionable Service up to a maximum of 40, are of 40 of the total annual pension, calculated as of his actual retirement date on the basis of legislation, regulations and rules then in effect which the Member is eligible to receive at age 65 under the Canada or Quebec Pension Plan, and if applicable, under the Old Age Security Act, assuming that he was qualified to receive the amount of that entitlement without increase for any cause whatsoever and assuming that he had continued to contribute to the Canada or Quebec Pension Plan until his actual retirement date at the rate then applicable to his level of annual earnings at the time of his actual retirement from Continuous Service; and

- (b) his pension determined as his pension for service up to his normal retirement date determined in the manner described in the preceding Section II.B.5.2(a), actuarially adjusted to the date of his actual retirement.

II.B.5.3 "Grandfathered" GRIP Benefit on Postponed Retirement For Service Before and After January 1, 1987

For service before and after January 1, 1987 for a Member who was enrolled in GRIP before January 1, 1987, the postponed retirement benefit is calculated as of the Member's normal retirement date according to the applicable normal retirement provisions of GRIP without the modifications described in Section II.B.3.2, and is calculated as of actual retirement according to Section II.A.4.2 and the total benefit so calculated, if greater, replaces the benefit that a Member would earn according to Sections II.B.5.2 and II.A.4.2.

II.B.5.4 Benefit for Service Before and After January 1, 1987 For "Pre-1972 Checklist Employee"

The benefit to which a Pre-1972 Checklist Employee is entitled on his postponed retirement date under the Plan shall be equal to the greater of:

- (a) the benefit determined in accordance with the Sections II.A.4.2 and II.B.5.2 or II.B.5.3, as applicable, based on all of the Member's Pensionable Service Years and Pensionable Service; and
- (b) the benefit determined in accordance with Sections II.C.6.5, II.D.6.5 and II.B.3.2, accrued prior to January 1, 1990 based on Continuous Service prior to that date.

II.B.5.5 Reduced Compensation in Quebec

If the earnings of a Member employed in Quebec at his normal retirement date are reduced in the period following his normal retirement date, the Member may require the payment of his pension under the DB Provisions, in whole or in part, to the extent necessary to compensate for the reduction in his Earnings during the period. A Member may not apply under this Section II.B.5.5 more often than once within any 12-month period, except with the consent of the Company.

If a Member receives only part of his pension as a result of such an application, there must be corresponding reduction in the amount of retirement income which is subject to actuarial adjustment for the period after the commencement of that particular partial payment.

For the purposes of this Section II.B.5.5 "Earnings" shall take into account all items which may be prescribed in the Pension Benefits Act.

Section II.B.6 - Forms and Payment of Pensions

II.B.6.1 Total Pension Benefit

The pension payment rules described in this Section II.B.6 apply to the total benefits to which a Member is entitled under the DB Benefit Provisions .

II.B.6.2 Procedure for Electing Optional Form of Pension

In order to receive an optional form of pension, a Member must make a written election in a form prescribed by the Company which form is returned to the Company before the third calendar month preceding the Member's actual retirement date.

II.B.6.3 Optional Forms

The following optional forms of pension payment are available:

- (a) *Joint and Survivor with 10 Year Guarantee*
Under this option, pension payments are payable for the Member's lifetime. Payments may be made following the Member's death as follows:
 - (i) If the Member dies before receiving 120 monthly instalments, and is survived by his Spouse, monthly instalments will continue to be paid in the same amount to his Spouse until a total of 120 payments have been made to the Member and his Spouse. Once 120 monthly payments have been made, payments to the Spouse will be reduced to either 50%, 60%, 66-2/3% or 100%, as elected by the Member, of the amount payable to the Member.
 - (ii) If the Member dies after receiving 120 monthly instalments, and is survived by his Spouse, monthly instalments will continue to be paid to the Spouse at the reduced rate of either 50%, 60%, 66-2/3% or 100%, as elected by the Member, of the amount payable to the Member.

- (iii) If the Member dies before receiving 120 monthly instalments, and is not survived by his Spouse, the Commuted Value of the balance of such 120 monthly payments will be paid to the Member's beneficiary.
 - (iv) If the Member dies after receiving 120 monthly instalments, and is not survived by his Spouse, no further amounts will be payable.
- (b) *Life - Ceasing at Death*
Under this option, pension payments are payable for the Member's lifetime, but cease with the payment immediately preceding the Member's death, regardless of the number of payments the Member has received.
- (c) *Life With A Guaranteed Period*
Under this option, pension payments are payable for the Member's lifetime with a guarantee of either 60, 120 or 180 months, as elected by the Member, and, in the event of the Member's death prior to the expiration of the guaranteed period, the Member's Beneficiary will receive:
- (i) if the Member's beneficiary is also the Member's Spouse, the monthly payments of the remaining guaranteed period; or
 - (ii) if the Member's beneficiary is not the Member's Spouse, a lump sum payment equal to the Commuted Value of the remaining guaranteed payments.
- (d) A Member may select another payment option not described in this Section II.B.6.3, provided that the Company permits the option and the option complies with the requirements under the Income Tax Act.

II.B.6.4 Revocation or Change of Option

An election to receive an optional form of pension may be revoked or changed, provided that written notification of such revocation or change is received by the Company from the Member prior to his pension commencement date.

II.B.6.5 Normal Form of Enhanced GRIP Bridge Benefit

The normal form of Enhanced GRIP Bridge Benefit described in Section II.B.4.10 for a Member whose pension is either in payment as at January 1, 2001 or which commences to be paid on or after January 1, 2001, is as follows depending on whether the Member has a Spouse:

- (a) for a Member who has no Spouse at his actual pension commencement date, monthly instalments continue until the end of the month in which he attains 65 year of age and if the Member dies before age 65 the monthly instalments cease at the end of the month in which he dies; or
- (b) for a Member who has a Spouse at his actual pension commencement date, the monthly payments continue until the end of the month in which he attains 65 year of age and if the Member dies before age 65, the surviving Spouse, if any, is eligible to receive 66-2/3% of the bridge monthly instalments until the earlier of the end of the month in which the Member would have attained 65 years of age and the end of the month in which the Spouse dies. For greater certainty, there is no reduction in the initial amount for the joint and survivor bridge benefit.

II.B.6.6 Termination of Quebec Spouse's Entitlement

- (a) The Spouse of a Member who was employed in Quebec who is the Member's joint annuitant ceases to be the joint annuitant upon separation from bed and board, divorce, annulment of marriage or cessation of conjugal relationship unless the Member notifies the Company in writing to pay the benefits to the Spouse notwithstanding the separation from bed and board, divorce, annulment of marriage or cessation of the conjugal relationship.
- (b) Where entitlement of his Spouse to a survivor pension is terminated pursuant to Section II.B.6.6(a), the Member may request a redetermination of his pension. The redetermined pension shall be in the same amount and have the same characteristics as the pension that would be payable to the Member at the date of redetermination had the Member not had a Spouse on the pension commencement date.

- (c) Unless the Company has received the notice referred to in Section II.B.6.6(b), the Company shall redetermine the Member's pension if, after the pension commencement date, there has been a division of the Member's pension pursuant to Section I.11.10.
- (d) The redetermination of a pension under this Section cannot alone operate to reduce the amount of the pension paid to the Member.

Section II.B.7 - Post-Retirement Inflation Adjustments

II.B.7.1 Base Amount Determination

The inflation adjustment amount for each eligible Member takes into account indexing on his pension under the terms of the Plan including the entitlements arising from the Retirement Security Plan and Profit Sharing Retirement Fund as incorporated in the Plan through GRIP, and including additional entitlements arising by virtue of Section II.B.10.3 in respect of contributions made before 1987 with accumulated interest (with modified dates for Manitoba as specified in that Section).

II.B.7.2 Initial Part-Year of Retirement

The inflation adjustment in the initial Plan Year of retirement for a Member who retires on a date other than December 31st (or, if later, the year in which the Member attains age 65 other than on December 31st) is calculated as the product of (a) and (b) as follows:

- (a) 1/12th of the annual adjustment declared in respect of the initial Plan Year of retirement (or attainment of age 65)

multiplied by

- (b) the number of full calendar months during which the Member was retired (or had attained age 65) in the initial Plan Year.

Section II.B.8 - Benefits on Termination

II.B.8.1 Total Termination Benefit

The termination benefits described in Section II.B.8.5 are in addition to the benefits the Member earns under Section II.A.7.3, commencing at age 65, or at an earlier date in accordance with Section II.B.8.2.

II.B.8.2 Early Commencement of Total Termination Benefit

In lieu of a deferred pension commencing at the Member's Normal Retirement Date as described under Section II.B.8.1, the Member may elect to commence receiving this pension on the first day of any calendar month coincident with or following his attainment of age 55 and prior to his Normal Retirement Date. In such event the amount of the Member's pension is calculated in accordance with Section II.B.4.1, provided that for the purposes of determining the early retirement reduction, the Member's Continuous Service is deemed to be the length of the Member's completed Continuous Service as if the Member had continued in active employment with an Employer until his pension commencement date, provided that in no event shall the reduction in the Member's pension be less than the minimum early retirement reduction permitted under the Income Tax Act.

II.B.8.3 Transfer of Total Termination Benefit

Subject to Section II.B.8.4, a Member may elect to transfer a lump-sum amount equal to the Commuted Value of his total termination benefit to an alternate retirement income funding arrangement in compliance with and subject to the requirements of the applicable Pension Benefits Act and the Income Tax Act, if any, and the Member has no further claims against the Plan following such a transfer.

II.B.8.4 Minimum Total Transfer Value

In no event shall the sum of:

- (a) the amount available for transfer in accordance with Section II.B.8.3 and

- (b) the Member's entitlement, if any, to excess contributions determined in accordance with Section II.A.9.1

be less than 150% of the Member's total required contributions made before July 1, 2008, with accumulated interest.

II.B.8.5 Termination Benefit for Service Before January 1, 1987

For service with an Employer before January 1, 1987, a Member who is eligible for the termination benefit under Section II.A.7.2 is entitled to receive a deferred pension commencing at age 65, in accordance with the formula for the Member's normal retirement pension in the applicable normal retirement provisions of GRIP as modified in this Plan.

The amount of this benefit will not be less than the minimum described in Section II.B.10.3.

II.B.8.6 Restrictions on Plan Transfers

The alternate retirement income funding arrangements for the purpose of receiving the transfer of a Member's termination benefit according to Section II.A.7.6 are as follows:

- (a) another pension plan which has been accepted for registration under the Income Tax Act, if the administrator of that plan agrees to accept the transfer;
- (b) an insurance company licensed to transact business in Canada, to purchase an annuity, provided the annuity meets the requirements of the Pension Benefits Act and the Income Tax Act;
- (c) the Member's personal registered retirement savings plan or locked-in retirement account, provided the recipient agrees to administer the amount received in accordance with the provisions of the applicable Pension Benefits Act;
- (d) the Member's life income fund, as prescribed under the applicable Pension Benefits Act; or

- (e) such other vehicle as is permissible under the applicable Pension Benefits Act,

provided that (b) and (d) above are not available to a Member employed in Alberta who is age 50 or more at the time his or her Continuous Service ceases.

II.B.8.7 Québec Provisions

(A) Temporary Pension

- (i) A Québec Member whose Continuous Service terminates while employed in the province of Québec (hereinafter referred to as a "Québec Member") and who has attained age 55 but not yet 65 or the Spouse of the Québec Member who has become entitled to a pension, and who has attained age 55 but not age 65, is entitled, under conditions prescribed by the Québec Supplemental Pension Plans Act, to replace his pension under the DB Provisions, in whole or in part, before payment begins, by a temporary pension, the amount and duration of which are fixed by him and which meets the following requirements:
 - (a) the annual amount of pension does not exceed 40% of the YMPE for the year in which payment of the pension begins, that limit being reduced, where applicable, by the annual amount of any other temporary benefit to which the Québec Member or the Spouse is entitled under the Plan;
 - (b) payment of the temporary pension ceases at the latest with the payment immediately preceding or coincident with the Québec Member's normal retirement date or the date of the Spouse's attainment of age 65;
 - (c) the temporary pension is the Actuarial Equivalent of the pension or of the part of the pension it replaces, determined on the date of the replacement.
- (ii) The Spouse of a Québec Member who elected to replace his pension by a temporary pension is entitled to a pension, payable from the death of the Québec Member to the end of the period of replacement, in monthly

instalments equal to 60% of the amount of temporary pension the Québec Member was receiving immediately before his death. The Spouse may waive the right to such pension, according to the same conditions as those applicable under Section II.A.5.3(b).

- (iii) The normal form of pension provided under Section II.A.5.2 shall not apply in respect of any part of the Québec Member's pension that is replaced by a temporary pension.
- (iv) The lifetime pension of the Québec Member or of the Spouse of the Québec Member who has elected a temporary pension under this Section II.B.8.7(A) will be reduced on an Actuarial Equivalent basis to take into account the aggregate of the temporary pension benefits paid to the Québec Member.

(B) Replacement of Pension By a Lump Sum

- (i) A Québec Member whose Continuous Service terminates and who has attained age 55 but not age 65, or the Spouse of a Québec Member who has become entitled to a pension, and who has attained age 55 but not age 65, is entitled, under conditions prescribed by the Québec Supplemental Pension Plans Act, to partially replace his pension under the DB Provisions before payment begins, by a lump sum payment, the amount of which is fixed by him and which meets the following requirements:
 - (a) the amount does not exceed 40% of the YMPE for the year in which the application is made:
 - (b) the limit in subparagraph (A) above must be reduced by the total temporary income that the Québec Member or the Spouse of the Québec Member has received or must receive during the year from any of the following sources:
 - (1) a supplemental pension plan;
 - (2) a life income fund; or
 - (3) an annuity contract which is funded by supplemental

pension plan assets;

- (c) the application can only be made once per calendar year
- (ii) The lifetime pension of the Québec Member or of the Spouse of the Québec Member who has elected a lump sum replacement benefit under this Section II.B.8.7(B) will be reduced on an Actuarial Equivalent basis to take into account the aggregate of the lump sum replacement benefits paid to the Québec Member.
- (iii) Subject to Income Tax Act requirements, lump sum payments made under this Section II.B.8.7 may be transferred by the Québec Member to his registered retirement savings plan.

II.B.8.8 Quebec Additional Benefit

A Member who is employed in Québec and whose Continuous Service ceases before he has attained age 55 is entitled to an additional benefit the value of which is equal to the difference between variables A and B, if greater than nil, where:

A is the sum of the following amounts:

- (i) the Commuted Value of the pension accrued to the Member pursuant to Section II.A.2.2 for service before January 1, 2001;
- (ii) the Commuted Value of the pension accrued to the Member pursuant to Section II.A.2.2 for service after December 31, 2000 payable at normal retirement date, with "indexation" between the date the Member's Continuous Service terminates and the date he attains age 55; and
- (iii) any excess contributions calculated pursuant to Section II.A.9.1 after applying (ii) above.

B is the Commuted Value of the pension accrued to the Member pursuant to Section II.A.2.2 for all periods of service, increased by any excess

contributions calculated pursuant to Section II.A.9.1.

“indexation”

is 50% of the change in the seasonally unadjusted All-Items Consumer Price Index for Canada published by Statistics Canada between the month the Member’s Continuous Service ceases and the month the Member attains age 55, but not less than nil and not greater than 2%.

The additional benefit is payable to the Member in a lump sum cash payment when his Continuous Service ceases, provided that if the Member elects to transfer his entitlement under Section II.A.7.6, the additional benefit will be available in cash or may be included as part of the transfer.

Section II.B.9 - Benefits on Death

II.B.9.1 Total Death Benefit

In the event of the death of a Member who is actively employed by an Employer at the date of his death, the death benefit under the DB Provisions is the Commuted Value of the Member's total entitlement determined in accordance with Section II.B.4 or II.B.8 as if the Member had terminated employment with an Employer on the date of his death.

II.B.9.2 Total Death Benefit for Former Member Entitled to Deferred Pension at Death

The death benefit of a Member who had terminated Continuous Service prior to his death with an entitlement to a deferred pension under the DB Provisions which has not commenced and which has not been transferred out of the Plan, is determined as the Commuted Value of the deferred pension to which the Member is entitled under Section II.B.8 as at the Member's date of death.

II.B.9.3 No Death Benefit After Transfer of Deferred Pension to Alternate Retirement Income Funding Arrangement

No benefit is paid under the DB Provisions following the death of a Member who, before his death, had terminated Continuous Service and had completed the transfer of his deferred pension entitlement under the DB Provisions to an alternate retirement income funding arrangement.

II.B.9.4 Death Benefits Payable to Spouse

The Pension Benefits Acts referred to in Section I.8 that give priority to the Spouse as the Member's beneficiary are identified as follows, along with the effective date of the requirements, the portion of the death benefit affected, determined under both the Plan and GRIP, and whether the spousal benefits must be treated as locked-in on payment out of the Plan:

| <u>Province</u> | <u>Effective Date</u> | <u>Application</u> | <u>Locked-In</u> |
|------------------|-----------------------|--------------------|------------------|
| Alberta | January 1, 1987 | all service | yes |
| British Columbia | January 1, 1993 | all service | yes |
| Manitoba | January 1, 1985 | post-1984 service | yes |
| New Brunswick | January 1, 1992 | all service | no |
| Newfoundland | January 1, 1997 | all service | yes |
| Nova Scotia | January 1, 1988 | post-1987 service | no |
| Ontario | January 1, 1990 | post-1986 service | no |
| Quebec | January 1, 1990 | all service | no |
| Saskatchewan | January 1, 1994 | all service | no |

II.B.9.5 Form of Payment of Death Benefit to Spouse

A Spouse who is entitled to a death benefit under the DB Provisions may elect either of the following forms of payment:

- (a) cash lump sum, except as locked-in as specified in Section II.B.9.4;
- (b) transfer directly to the spouse's registered retirement savings plan or to such other plan as is acceptable under the Income Tax Act; or
- (c) an annuity payable for the spouse's lifetime in such amount as may be provided by (a) above, commencing at any time prior to the end of the calendar year in which the Spouse attains age 69 (or, if the Spouse has already attained age 69, within one year after the death of the Member) and ending with the payment of the month in which the Spouse's death occurs.

A transfer under Section II.B.9.5(b) above will be subject to the requirements under the Income Tax Act and to the locking-in requirements of the applicable Pension Benefits Act as described in Section II.B.9.4 above.

II.B.9.6 **Death Benefits Payable to Beneficiary**

Any portion of a death benefit under the DB Provisions which is not required to be paid to the Member's Spouse under Section II.B.9.4, will be payable to the Member's designated beneficiary or, if none, to the Member's estate in a lump sum. If the Member is not survived by a Spouse, a death benefit under the Plan will be paid to the Member's designated beneficiary or, if none, to his estate in a lump sum.

Section II.B.10 - Excess Contributions and Statutory Restrictions

II.B.10.1 Excess Contributions for Manitoba and Saskatchewan Members

The calculation of excess contributions described in Section II.A.9.1 applies to contributions made and benefits earned and granted under the DB Provisions in relation to service on and after January 1, 1987 except as specified in the following list for a Member employed in one of these provinces immediately before the calculation is performed:

| <u>Province</u> | <u>Section II.A.9.1 applies to:</u> |
|-----------------|---|
| Manitoba | contributions made and benefits earned and granted under the DB Provisions on and after January 1, 1985 |
| Saskatchewan | contributions made on and after January 1, 1976 when GRIP was established and before July 1, 2008 and benefits earned in respect of all of a Member's years of Pensionable Service as defined in the relevant provisions of GRIP. |

II.B.10.2 Method of Paying Excess Contributions

A Member's excess contributions described in Section II.A.9.1 and II.B.10.1 shall be applied as follows:

- (a) excess contributions shall first be applied to offset the Member's Profit Sharing Annuity reduction as described in Section II.B.3.2(d), if any, provided that:
 - (i) offset is based on the Actuarial Equivalent of these excess contributions;
 - (ii) offset is not greater than the portion of the Member's Profit Sharing Annuity which is applied against the Member's pension for service on and after January 1, 1987 and before July 1, 2008; and
 - (iii) Member's excess contributions shall not be re-determined under Section II.A.9.1 as a result of this procedure of offsetting the Profit Sharing Annuity; and

- (b) after the application of paragraph (a), if applicable, any excess contributions remaining shall be paid to the Member in a cash lump sum or, at the discretion of the Company, may be applied to provide the Member with an additional amount of pension from the Plan

If a Member elects to transfer the Commuted Value of his deferred pension in accordance with Sections II.A.7.6 and II.B.8.8, the value of the Member's excess contributions will not be retained within the Plan but will, at the Member's election, either be paid in the same manner as elected under Section II.A.7.6 (subject to the transfer restrictions described in Section II.11.3) or paid to the Member in a cash lump sum.

Notwithstanding II.B.10.2(b), a cash refund of the excess contribution is not available to a Member who is employed in Quebec or in Federal Employment immediately before termination of employment. The excess contributions must be used to increase the Member's pension.

A Member who is employed in New Brunswick has the option of transferring the excess contributions to a registered retirement savings plan or a registered retirement income fund to the extent permitted under the Income Tax Act.

II.B.10.3 Minimum Commuted Value of Benefit In Respect of Pre-1987 Service

The Commuted Value of the termination benefit, death benefit or retirement benefit earned before January 1, 1987, as described in Section II.B.8.5 and II.B.9.2, or the applicable retirement provisions of GRIP modified in accordance with the applicable provisions of this "II.B", must be at least equal to the Member's required contributions made before January 1, 1987 together with accumulated interest, except as specified in the following list for a Member employed in one of these provinces immediately before the calculation is performed:

| <u>Province</u> | <u>Minimum Commuted Value of Termination Benefit Applies to:</u> |
|-----------------|---|
| Manitoba | service and contributions (with interest) prior to January 1, 1985 |
| Saskatchewan | no service because the 50% minimum employer cost applies fully retroactively to all service |

II.B.10.4 Excess Contributions Where Minimum Transfer Applies

Where a Member or Beneficiary is receiving a lump-sum transfer under the DB Provisions and a portion of the transfer amount is payable as a result of Sections I.11.2 and I.11.3, the allocation of the total benefit to the Commuted Value and excess contributions shall be determined as follows:

- (a) the Commuted Value shall be set equal to the greater of the Commuted Value determined without reference to Section II.B.10.3 and the Member's required contributions made before July 1, 2008 accumulated with interest, and
- (b) the excess contributions shall be the total lump-sum less the Commuted Value determined above.

II.B.10.5 Revenue Canada Maximum Detail

For purposes of this Section II.B.10.5 the maximum amount of benefit payable under the DB Provisions, including any pension payable under GRIP and the Retirement Security Plan, as prescribed by the Income Tax Act is determined as follows:

- (a) *Maximum Pension in Respect of Lifetime Pension*
The annual lifetime pension payable to a Member in the form of pension elected and paid to the Member, including any pension payable to a Member's Spouse or former Spouse pursuant to Section II.A.11.10, determined at the time of his pension commencement, shall not exceed the Member's Pensionable Service Years (and Pensionable Service under GRIP) (limited to 35 in respect of Pensionable Service Years and Pensionable Service prior to January 1, 1992), multiplied by the lesser of:
 - (i) \$1,722.22 or such greater amount permitted under the Income Tax Act; and
 - (ii) 2% of the average of the Member's highest average Earnings in any 3 non over-lapping periods of 12 consecutive months;

The maximum pension described above, payable to a Member who retires from active employment with an Employer under Section II.A.3, shall be reduced by 1/4% for each month, if any, by which the pension commencement date precedes the earliest of the day on which:

- (iii) the Member attains age 60;
- (iv) the Member's age plus years of Continuous Service (excluding periods of temporary suspension of employment and unpaid leaves of absence before July 1, 2008 that have not been approved by the Company for purposes of Section II.A.1.5) would have equalled 80, if the Member continued in employment; and
- (v) the Member would have completed 30 years of Continuous Service (excluding periods of temporary suspension of employment and unpaid leaves of absence before July 1, 2008 that have not been approved by the Company for purposes of inclusion in Pensionable Service Years), if the Member had continued in employment.

The limit described in this Section II.B.10.5(a) shall be applicable to the amount of a Member's pension determined after adjustment for an Actuarial Equivalent form of payment, as specified in Sections II.A.5.3 and II.B.6.3, subject to the following exceptions:

- (vi) if the Member's pension is payable in a joint and survivor form, in no event will the pension exceed the Actuarial Equivalent of the maximum pension described in this Section II.B.10.5(a) payable in a joint and 66-2/3% survivor form with a 5 year guarantee; or
- (vii) if the Member's pension is payable in a single life form, in no event will the pension exceed the Actuarial Equivalent of the maximum pension described in this Section II.B.10.5(a) payable in a single life form with a 15-year guarantee.

- (b) *Post-1991 Service Combined Bridge and Pension Maximum Benefit*
The annual amount of benefits that cease to be payable when a Member

reaches age 65, in combination with the annual pension payable for the Member's lifetime, both of which are provided in respect of Pensionable Service Years after December 31, 1991, and determined at the date the Member commences his pension under the Plan, shall not exceed (i) plus (ii) as follows:

- (i) \$1,722.22, or such greater amount permitted under the Income Tax Act multiplied by the Pensionable Service Years of the Member after December 3, 1991; plus
- (ii) 1/35th of 25% of the average of the YMPE for the year of retirement, termination of employment, death or termination of the Plan, and each of the two immediately preceding years, multiplied by the Pensionable Service Years of the Member after December 31, 1991, not exceeding 35 years.

(c) *Maximum Bridge Benefit*

Effective March 28, 1988, the amount of the benefit from the Plan that ceases to be payable when a Member reaches age 65 shall not exceed the sum of the maximum benefits payable to the Member under the Canada Pension Plan or Quebec Pension Plan and the maximum Old Age Security benefit payable to individuals age 65 as at the Member's pension commencement date. The proportion of a Member's bridge benefit payable in respect of Pensionable Service Years after December 31, 1991 shall be reduced as follows:

- (i) by 10% for each year by which the Member's Pensionable Service Years are less than 10; and
- (ii) by 1/4 of 1% for each month by which the Member's pension commencement date precedes his attainment of age 60.

(d) *Increases to Pensions In Payment*

Notwithstanding Sections II.A.6.3 and II.A.6.4, the annual lifetime pension payable to a Member under the DB Provisions in any Plan Year following the year in which the pension commences shall not exceed:

- (i) the maximum pension described in Section II.B.10.5(a) above,

increased by

- (ii) the percentage increase in the Consumer Price Index since the Plan year in which the pension commenced.

(e) *Postponed Retirement and Excess Contributions*

The restrictions in this Section II.B.10.5 do not apply to additional benefits payable as a result of any Actuarial Equivalent increase due to deferral of pension commencement after age 65 nor do they apply to that portion, if any, of the pension derived from a Member's excess contributions.

SEARS CANADA INC.

Sears Registered Retirement Plan

II – DB Provisions

A. Basic Rules

SEARS CANADA INC.

Sears Registered Retirement Plan

II – DB Provisions

C. GRIP

Table of Contents

II. DB PROVISIONS

C. GRIP

| | | |
|-----------------|---|----|
| SECTION I.I.C.1 | DEFINITIONS..... | 1 |
| SECTION I.I.C.2 | BENEFITS ON NORMAL RETIREMENT | 4 |
| SECTION I.I.C.3 | BENEFITS ON EARLY RETIREMENT | 5 |
| SECTION I.I.C.4 | BENEFITS ON TERMINATION | 7 |
| SECTION I.I.C.5 | BENEFITS ON DEATH | 9 |
| SECTION I.I.C.6 | ADDITIONAL TRANSITIONAL PROVISIONS..... | 11 |

Section II.C.1 - Definitions

The following words and phrases for the purposes of Section II.C. have the following meanings, unless a different meaning is clearly required by the context.

- II.C.1.1** *Balance in the Profit Sharing Retirement Fund* means the total market value of a Regular Employee's account in the Profit Sharing Retirement Fund, as of the earliest of his date of retirement, death or other termination, which shall be calculated by the Company as if the Regular Employee had participated in the Profit Sharing Retirement Fund from the later of his date of eligibility or January 3, 1946, had continued as a member of the Profit Sharing Retirement Fund until the earliest of his date of retirement, death or other termination and had made no withdrawals from his account.
- II.C.1.2** *Company* means Sears Canada Inc. (formerly Simpsons-Sears Limited) and its successors.
- II.C.1.3** *Continuous Service* means the service of a Regular Employee with an Employer as shown by an Employer's records, calculated from the date that he was last hired as a Regular Employee, such service including authorized leaves of absence, periods of disability during which the Regular Employee was in receipt of payments by reason of the disability and, at the Company's discretion, service with any affiliated company.
- II.C.1.4** *Contributory Service* means that portion of Continuous Service of a Regular Employee which follows January 1, 1976 and during which he makes contributions as required by the Plan before January 1, 1987.
- II.C.1.5** *Earnings* means the total earnings of a Regular Employee from an Employer consisting of wages, salaries, payments for overtime, bonuses, overwrite, commissions, vacation pay and illness allowances.
- II.C.1.6** *Final Average Earnings* means one-fifth of a Regular Employee's aggregate Earnings for the five calendar years of highest Earnings during his last ten years of Continuous Service, except that if the Regular Employee ceases to be a Regular Employee on any date other than the last day of any year, one of the years used for the calculation of his Final Average Earnings shall, if it is to the

benefit of the recipient, comprise a one year period made up of the service in the year during which the Regular Employee ceases to be a Regular Employee and the complementary fraction of a year of any year in his last ten years of Continuous Service not already used in the calculation.

II.C.1.7 *G.R.I.P.* means the Guaranteed Retirement Income Plan of Sears Canada Inc. (formerly the Guaranteed Retirement Income Plan of Simpsons-Sears Limited) as amended from time to time.

II.C.1.8 *Member* means a Regular Employee who has met the eligibility requirements under the Plan.

II.C.1.9 *Pensionable Service* means

- (a) in connection with each Regular Employee who was a Member of GRIP before January 1, 1976, the period of Contributory Service of the Regular Employee and any period of Continuous Service prior to January 1, 1976 to his credit for pension purposes as shown by the Company's records; and
- (b) in connection with each Regular Employee who becomes a Member of GRIP on or after January 1, 1976, the period of Contributory Service of the Regular Employee and one year of Continuous Service to his credit prior to the commencement of his period of Contributory Service.

II.C.1.10 *Plan* means this Guaranteed Retirement Income Plan of Sears Canada Inc. (formerly the Guaranteed Retirement Income Plan of Simpsons-Sears Limited), as amended from time to time, known before January 1, 1976 as the Simpsons-Sears Limited Supplementary Pension Plan.

II.C.1.11 *Profit Sharing Annuity* means

- (a) in the case of a Regular Employee who is retiring, the annual amount of pension which could be provided at actual retirement date if his Balance in the Profit Sharing Retirement Fund were applied to the purchase of a life annuity with a ten year guarantee period;

- (b) in the case of a Regular Employee whose employment is terminated other than by retirement or death, the annual amount of annuity which could be provided if his Balance in the Profit Sharing Retirement Fund were applied to the purchase of a deferred life annuity with a ten year guarantee period commencing at the date of commencement of the deferred pension.

II.C.1.12 *Profit Sharing Retirement Fund* means Sears Profit Sharing Retirement Fund as amended from time to time.

II.C.1.13 *Regular Employee* means a regular full time or a regular part time employee of an Employer as shown from time to time on the Employer's records. For purposes of eligibility and to qualify for benefits under the Plan, the employee must be performing service in a province other than Saskatchewan, or Manitoba. Furthermore, "Regular Employee" does not include any regular full-time or any regular part-time employee who is an active participant in any pension or profit sharing plan maintained by Sears, Roebuck and Co. or any affiliated company located in the U.S.A. and which plans are qualified under Section 401(a) of the U.S. Internal Revenue Code.

II.C.1.14 *Retirement Security Plan Pension* means the annual amount of life annuity with a ten year guarantee period purchased for a Regular Employee by the Company or by Simpsons, Limited under the Retirement Security Plan of Simpsons-Sears Limited and Simpsons, Limited under which benefits were accumulated until 1961, or the annual amount of life annuity which would have been purchased for a Regular Employee by the Company under the Retirement Security Plan if the Regular Employee had enrolled in that plan when eligible to do so,

- (a) commencing at actual retirement date in the case of a Regular Employee who is retiring; and
- (b) commencing at age 65 in the case of a Regular Employee whose employment is terminated other than by retirement or death.

Words importing the singular number only include the plural number and vice versa; and words importing the masculine gender extend to and include the feminine gender and vice versa, unless the context requires otherwise.

Section II.C.2 - Benefits on Normal Retirement

II.C.2.1 Each Member who retires at normal retirement date will be entitled to such annual amount of pension, payable in equal monthly instalments, as may be required when added to his "other pension benefits" (as defined in this Section II.C.2.1) to provide him with a minimum annual pension equal to 1.75% of his Final Average Earnings for each year of Pensionable Service.

For the purpose of this Section a Member's "other pension benefits" shall mean the aggregate of:

- (a) his Retirement Security Plan Pension;
- (b) his Profit Sharing Annuity; and
- (c) that proportion which his years of Pensionable Service, up to a maximum of 40, are of 40 of the total annual pension which the Member would be entitled to receive as of his normal retirement date under the Old Age Security Act and the Canada or Quebec Pension Plan.

II.C.2.2 The annual amount of Old Age Security and Canada or Quebec Pension Plan pension referred to in Section II.C.2.1 will be determined by the Company on the basis of information available from its records, assuming the Member is qualified to receive the full amount of his entitlement without reduction for any cause whatsoever or for suspension of benefits.

Section II.C.3 - Benefits on Early Retirement

II.C.3.1 A Member who retires before his normal retirement date will be entitled to receive an annual amount of pension, payable in equal monthly instalments, equal to the excess, if any, of

- (a) the product of 1.75% of his Final Average Earnings multiplied by the total number of years of his Pensionable Service (such product being hereinafter called the "early starting pension amount");

over the aggregate of the following amounts:

- (b) the amount of the Member's early starting pension amount determined in accordance with Section II.C.3.1(a) multiplied by the early retirement reduction factor described under Section II.A.3.3.
- (c) the sum of (i), (ii) and (iii) as follows:
 - (i) his Retirement Security Plan Pension;
 - (ii) his Profit Sharing Annuity; and
 - (iii) that proportion which his years of Pensionable Service, up to a maximum of 40, are of 40 of the total annual pension, calculated as of his actual retirement date on the basis of legislation, regulations and rules then in effect, which, if the Member were age 65 as of his actual retirement date, the Member would be eligible to receive under the Old Age Security Act and the Canada or Quebec Pension Plan, assuming that he was qualified to receive the full amount of his entitlement without reduction for any cause whatsoever or for suspension of benefits and assuming that he had continued to contribute to the Canada or Quebec Pension Plan until his normal retirement date at the rate then applicable to his level of annual earnings at the time of his actual retirement from the Company.

II.C.3.2 In addition to the lifetime pension under Section II.C.3.1, a Member who retires

prior to his normal retirement date will be entitled to receive an annual bridge pension, payable in equal monthly instalments, equal to the amount described in Section II.C.3.1(c)(iii).

Section II.C.4 - Benefits on Termination

II.C.4.1 A Member whose Continuous Service is terminated for any reason other than by death or retirement shall receive a deferred pension payable for the life of the Member commencing on the Member's normal retirement date, of such amount as when added to his "other pension benefits" (as defined in this Section II.C.4.1) shall provide him with an amount of pension equal to 1.75% of Final Average Earnings for each year of Pensionable Service to his date of termination.

For the purpose of this Section II.C.4.1 a Member's "other pension benefits" shall mean the aggregate of:

- (a) his Retirement Security Plan Pension;
- (b) his Profit Sharing Annuity; and
- (c) that proportion which his years of Pensionable Service, up to a maximum of 40, are of 40 of the total annual pension, calculated as of his date of termination on the basis of legislation, regulations and rules then in effect, which, if the Member were age 65 as of date of termination, the Member would be eligible to receive under the Old Age Security Act and the Canada or Quebec Pension Plan, assuming that he was qualified to receive the full amount of his entitlement without reduction for any cause whatsoever or for suspension of benefits and assuming that he had continued to contribute to the Canada or Quebec Pension Plan until his normal retirement date at the rate then applicable to his level of annual earnings at the time of the termination of his Continuous Service.

II.C.4.2 In lieu of a deferred pension provided under Section II.C.4.1 commencing at the Member's normal retirement date, the Member may elect to commence to receive this pension on the first day of any calendar month coincident with or following his attainment of age 55 and prior to his normal retirement date. The amount of this pension shall be calculated in accordance with Section II.C.3.1, provided that for the purposes of determining the early retirement reduction, the Member's Continuous Service is deemed to be the length of the Member's completed Continuous Service as if the Member had continued in active employment with an Employer until his pension commencement date. In addition, the Member shall be entitled to receive the bridge pension calculated in accordance with Section II.C.3.2.

Section II.C.5 - Benefits on Death

- II.C.5.1** The death benefit for a Member who is actively employed by an Employer immediately prior to his death shall be the Commuted Value of the Member's entitlement, determined as if the Member had terminated his Continuous Service, or retired from active service, as the case may be, as at the date of his death.
- II.C.5.2** The death benefit for a Member who had terminated Continuous Service before his death with an entitlement to a deferred pension which has not commenced and which has not been transferred out of the Plan, is determined as the Commuted Value at the date of death, of the deferred pension to which the Member is entitled under Section II.C.4.
- II.C.5.3** The death benefit described in Section II.C.5.1 or II.C.5.2 is payable to the Member's Spouse, designated beneficiary or, if neither, to his estate, in accordance with the requirements of the Pension Benefits Act and the Income Tax Act and Section I.8.1.
- II.C.5.4** No benefit is paid from the Plan following the death of a Member who, before his death, had terminated Continuous Service and had completed the transfer of his deferred pension entitlement to an alternate retirement income funding arrangement.
- II.C.5.5** The normal form of pension will be payable for life with the guarantee that if the Member dies before receiving 120 monthly payments, the outstanding payments will be made to his beneficiary. In the event that the beneficiary dies before receiving the outstanding monthly payments, the Commuted Value of any payments due under the Plan on or after the death of the beneficiary shall be payable in a single cash amount to the estate of the beneficiary. If the Member had elected an optional form of pension, the benefit on death will be calculated according to the terms of that option.
- II.C.5.6** The normal form of bridge pension for Members whose pension is either in payment as at January 1, 1999 or which commences to be paid on or after January 1, 1999 is as follows:
- (a) for a Member who does not have a Spouse at his pension commencement

date, monthly instalments continue until the earlier of the end of the month in which the Member attains age 65 and the end of the month in which he dies; or

- (b) for a Member who has a Spouse at his pension commencement date, the monthly payments continue until the end of the month in which he attains 65 years of age and, in the event that the Member dies prior to age 65, his surviving Spouse, if any, is entitled to receive monthly survivor bridge pension equal to $66\frac{2}{3}\%$ of the Member's monthly bridge pension. Such monthly survivor bridge shall be payable until the earlier of the end of the month in which the Member would have attained age 65 and the end of the month in which the surviving Spouse dies. For greater certainty, there is no reduction in the initial amount for the survivor bridge pension.

Section II.C.6 - Additional Transitional Provisions

II.C.6.1 In this Section II.C.6, the following words have the following meanings:

Pre-1972 Checklist Employee means any Member who held the rank of assistant manager, manager or higher office with the Company prior to January 1, 1972 and who at the time of his retirement has at least twenty (20) years of Continuous Service.

Final Average Checklist Earnings means one-third (1/3) of a Pre-1972 Checklist Employee's aggregate Earnings for the last thirty-six (36) months of Continuous Service which he shall have performed.

Checklist Employee means any Member as shown from time to time on the Company's records who holds the rank of assistant manager, manager or higher office with an Employer.

II.C.6.2 Only if it is to the benefit of a Pre-1972 Checklist Employee or his beneficiaries, this Section II.C.6 shall apply in lieu of any other contrary provision of the Plan except the provisions relating to the Revenue Canada maximum pension limits set out in Section II.A.9.2 of the Sears Registered Retirement Plan to which this "C. GRIP" is annexed.

II.C.6.3 A Pre-1972 Checklist Employee who retires at normal retirement date will be entitled, in lieu of his entitlement under Section II.C.2.1 to such annual amount of pension as may be required when added to his "other pension benefits" (as defined in this Section II.C.6.3) provide him with a minimum annual pension equal to fifty percent (50%) of his Final Average Checklist Earnings.

For purposes of this Section, a Pre-1972 Checklist Employee's "other pension benefits" shall mean the aggregate of:

- (a) his Retirement Security Plan Pension;
- (b) his Profit Sharing Annuity; and

- (c) the total annual pension which the Pre-1972 Checklist Employee would be entitled to receive as of his normal retirement date under the Old Age Security Act and the Canada or Quebec Pension Plan, it being understood that the annual amount of Old Age Security and Canada or Quebec Pension Plan pension will be determined by the Company on the basis of information available from its records, assuming the Pre-1972 Checklist Employee is qualified to receive the full amount of his entitlement without reduction for any cause whatsoever or for suspension of benefits.

II.C.6.4 A Pre-1972 Checklist Employee who retires before his normal retirement date will be entitled, in lieu of his entitlement under Section II.C.2.1 to such annual amount of pension equal to the excess, if any, of:

- (a) an amount (the "starting Checklist pension amount") equal to fifty percent (50%) of his Final Average Checklist Earnings;

over the aggregate of

- (b) three percent (3%) of the starting Checklist pension amount for each year by which the total of his years of attained age at the time of his actual retirement from Continuous Service is less than 65 years;
- (c) his Retirement Security Plan Pension;
- (d) his Profit Sharing Annuity; and
- (e) the total annual pension, calculated as of his actual retirement date on the basis of legislation, regulations and rules then in effect which the Pre-1972 Checklist Employee will be eligible to receive at age 65 under the Old Age Security Act and the Canada or Quebec Pension Plan, assuming that he was qualified to receive the full amount of his entitlement without reduction for any cause whatsoever or for suspension of benefits and assuming that he had continued to contribute to the Canada or Quebec Pension Plan until his normal retirement date at the rate then applicable to his level of annual earnings at the time of his actual retirement from Continuous Service.

II.C.6.5 Where a Pre-1972 Checklist Employee continues his employment with an Employer past his normal retirement date, if it is to the benefit of a Pre-1972 Checklist Employee, Section II.C.6.3 shall apply in determining the rate of accrual of his pension benefit in lieu of Section II.C.2.1.

SEARS CANADA INC.

Sears Registered Retirement Plan

II – DB Provisions

D. GRIP

For Saskatchewan and Manitoba

Table of Contents

II. DB PROVISIONS

C. GRIP – For Saskatchewan and Manitoba

| | | |
|----------------|--|----|
| SECTION II.D.1 | DEFINITIONS..... | 1 |
| SECTION II.D.2 | BENEFITS ON NORMAL RETIREMENT | 5 |
| SECTION II.D.3 | BENEFITS ON EARLY RETIREMENT | 6 |
| SECTION II.D.4 | BENEFITS ON TERMINATION..... | 8 |
| SECTION II.D.5 | BENEFITS ON DEATH..... | 10 |
| SECTION II.D.6 | ADDITIONAL TRANSITIONAL PROVISIONS | 12 |

Section II.D.1 Definitions

The following words and phrases for the purposes of Section II.D have the following meanings, unless a different meaning is clearly required by the context.

- II.D.1.1** *Balance in the Profit Sharing Retirement Fund* means the total market value of a Regular Employee's account in the Profit Sharing Retirement Fund, as of the earliest of his date of retirement, death or other termination, which shall be calculated by the Company as if the Regular Employee had participated in the Profit Sharing Retirement Fund from the later of his date of eligibility or January 3, 1946, had continued as a member of the Profit Sharing Retirement Fund until the earliest of his date of retirement, death or other termination and had made no withdrawals from his account.
- II.D.1.2** *Company* means Sears Canada Inc. (formerly Simpsons-Sears Limited) and its successors.
- II.D.1.3** *Continuous Service* for Members employed in Saskatchewan means the service of a Regular Employee with an Employer as shown by the Employer's records, calculated from the date that he was last hired as a Regular Employee, such service including authorized leaves of absence, periods of disability during which the Regular Employee was in receipt of payments by reason of the disability and, at the Company's discretion, service with any affiliated company.
- II.D.1.4** *Continuous Service* for Members employed in Manitoba has the meaning set out in Section II.D.1.3 and also includes temporary suspensions of employment of up to 52 consecutive weeks except where an actual termination of employment has
- II.D.1.5** *Contributory Service* for Members employed in Saskatchewan means that portion of Continuous Service of a Regular Employee as a Member of the Plan or as a member of G.R.I.P. prior to July 1, 1981 and during which he makes contributions as required by the Plan, or by G.R.I.P., respectively.

- II.D.1.6** *Contributory Service* for Members employed in Manitoba means that portion of Continuous Service of a Regular Employee as a Member of the Plan or as a member of G.R.I.P. prior to January 1, 1984 and during which he makes contributions as required by the Plan, or by G.R.I.P., respectively.
- II.D.1.7** *Earnings* means the total earnings of a Regular Employee from an Employer consisting of wages, salaries, payments for overtime, bonuses, overtime, commissions, vacation pay and illness allowances.
- II.D.1.8** *Final Average Earnings* means one-fifth of a Regular Employee's aggregate Earnings for the five calendar years of highest Earnings during his last ten years of Continuous Service, except that if the Regular Employee ceases to be a Regular Employee on any date other than the last day of any year, one of the years used for the calculation of his Final Average Earnings shall, if it is to the benefit of the recipient, comprise a one year period made up of the service in the year during which the Regular Employee ceases to be a Regular Employee and the complementary fraction of a year of any year in his last ten years of Continuous Service not already used in the calculation.
- II.D.1.9** *Final Average Year's Maximum Pensionable Earnings* means one-fifth of the aggregate of the Year's Maximum Pensionable Earnings for the last five calendar years of a Regular Employee's Continuous Service.
- II.D.1.10** *G.R.I.P.* means the Guaranteed Retirement Income Plan of Sears Canada Inc. (formerly the Guaranteed Retirement Income Plan of Simpsons-Sears Limited) as amended from time to time.
- II.D.1.11** *Member* means a Regular Employee (subject to the provisions of Section II.D.1.13 in respect of Manitoba employees) who has met the eligibility requirements under the Plan.
- II.D.1.12** *Pensionable Service* means
- (a) in connection with each Regular Employee who was a Member of GRIP before July 1, 1981 if employed in Saskatchewan, and before January 1, 1984 if employed in Manitoba, the period of Contributory Service of the Regular Employee, any period of Continuous Service prior to January 1, 1976, and where his Contributory Service commenced after

January 1, 1976, one year of Continuous Service prior to the commencement of his Contributory Service, to his credit for pension purposes as shown by the Company's records; and

- (b) in connection with each Regular Employee who becomes a Member of GRIP on or after January 1, 1976, the period of Contributory Service of the Regular Employee and one year of Continuous Service to his credit prior to the commencement of his period of Contributory Service.

II.D.1.13 *Plan* means this Guaranteed Retirement Income Plan of Sears Canada Inc. for Saskatchewan and Manitoba Employees (formerly the Guaranteed Retirement Income Plan of Simpsons-Sears Limited for Saskatchewan Employees).

II.D.1.14 *Profit Sharing Annuity* means

- (a) in the case of a Regular Employee who is retiring, the annual amount of pension which could be provided at actual retirement date if his Balance in the Profit Sharing Retirement Fund were applied to the purchase of a life annuity with a ten year guarantee period;
- (b) in the case of a Regular Employee whose employment is terminated other than by retirement or death, the annual amount of annuity which could be provided if his Balance in the Profit Sharing Retirement Fund were applied to the purchase of a deferred life annuity with a ten year guarantee period commencing at the date of commencement of the deferred pension.

II.D.1.15 *Profit Sharing Retirement Fund* means Sears Profit Sharing Retirement Fund as amended from time to time.

II.D.1.16 *Regular Employee* for provisions in respect of employees employed in Saskatchewan means a regular full time or a regular part time employee of an Employer as shown from time to time on the Employer's records. In respect of employees employed in Manitoba, "Regular Employee" is deemed to include any part-time, temporary or contingent employee excepting an employee who is enrolled in a full-time course of study or who is precluded by religious principles from being a member of a pension plan. For purposes of eligibility and to qualify for benefits under the Plan, the employee must be performing service in Saskatchewan or in Manitoba. However, "Regular Employee" does not include any

regular full-time or any regular part-time employee who is an active participant in any pension or profit sharing plan maintained by Sears, Roebuck and Co. or any affiliated company located in the U.S.A. and which plans are qualified under Section 401(a) of the U.S. Internal Revenue Code.

II.D.1.17 *Retirement Security Plan Pension* means the annual amount of life annuity with a ten year guarantee period purchased for a Regular Employee by the Company or by Simpsons, Limited under the Retirement Security Plan of Simpsons-Sears Limited and Simpsons, Limited under which benefits were accumulated until 1961, or the annual amount of life annuity which would have been purchased for a Regular Employee by the Company under the Retirement Security Plan if the Regular Employee had enrolled in that plan when eligible to do so,

- (a) commencing at actual retirement date in the case of a Regular Employee who is retiring; and
- (b) commencing at age 65 in the case of a Regular Employee whose employment is terminated other than by retirement or death.

Words importing the singular number only include the plural number and vice versa; and words importing the masculine gender extend to and include the feminine gender and vice versa, unless the context requires otherwise.

Section II.D.2 Benefits on Normal Retirement

II.D.2.1 Each Member who retires at normal retirement date will be entitled to such annual amount of pension as may be required when added to his "other pension benefits" (as defined in this Section II.D.2.1) to provide him with a minimum annual pension equal to the sum of (i) and (ii) as follows:

- (a) 1.25% of that portion of his Final Average Earnings which is less than or equal to the Final Average Year's Maximum Pensionable Earnings; plus
- (b) 1.75% of that portion of his Final Average Earnings which exceeds the Final Average Year's Maximum Pensionable Earnings;

multiplied by the Member's Years of Pensionable Service.

For the purpose of this Section, a Member's "other pension benefits" shall mean the aggregate of:

- (a) is Retirement Security Plan Pension;
- (b) his Profit Sharing Annuity; and
- (c) that proportion which his years of Pensionable Service, up to a maximum of 40, are of 40 of the total annual pension which the Member would be entitled to receive as of his normal retirement date under the Canada or Quebec Pension Plan.

II.D.2.2 The annual amount of Canada or Quebec Pension Plan pension referred to in Section II.D.2.1 will be determined by the Company on the basis of information available from its records, assuming the Member is qualified to receive the full amount of his entitlement without reduction for any cause whatsoever or for suspension of benefits.

Section II.D.3 Benefits on Early Retirement

II.D.3.1 A Member who retires before his normal retirement date will be entitled to receive an annual amount of pension, payable in equal monthly instalments, equal to the excess, if any, of

- (a) the sum of (i) and (ii):
 - (i) 1.25% of that portion of his Final Average Earnings which is less than or equal to the Final Average Year's Maximum Pensionable Earnings; plus
 - (ii) 1.75% of that portion of his Final Average Earnings which exceeds the Final Average Year's Maximum Pensionable Earnings;

multiplied by the Member's Years of Pensionable Service (such product being hereinafter called the "early starting pension amount");

over the aggregate of the following amounts:

- (b) the amount of the Member's early starting pension amount determined in accordance with Section II.D.3.1(a) multiplied by the early retirement reduction factor described under Section II.A.3.3.
- (c) the sum of (i), (ii) and (iii) as follows:
 - (i) his Retirement Security Plan Pension;
 - (ii) his Profit Sharing Annuity; and

- (iii) that proportion which his years of Pensionable Service, up to a maximum of 40, are of 40 of the total annual pension, calculated as of his actual retirement date on the basis of legislation, regulations and rules then in effect, which, if the Member were age 65 as of his actual retirement date, the Member would be eligible to receive under the Canada or Quebec Pension Plan, assuming that he was qualified to receive the full amount of his entitlement without reduction for any cause whatsoever or for suspension of benefits and assuming that he had continued to contribute to the Canada or Quebec Pension Plan until his normal retirement date at the rate then applicable to his level of annual earnings at the time of his actual retirement from Continuous Service.

II.D.3.2 In addition to the lifetime pension under Section II.D.3.1, a Member who retires prior to his normal retirement date will be entitled to receive an annual bridge pension, payable in equal monthly instalments, equal to the sum of (a) and (b):

- (a) 0.5% of that portion of his Final Average Earnings which is less than or equal to the Final Average Year's Maximum Pensionable Earnings, multiplied by the Member's Years of Pensionable Service and, multiplied by the early retirement reduction factor described under Section II.A.3.3.
- (b) the amount described in Section II.D.3.1(c)(iii).

Section II.D.4 Benefits on Termination

II.D.4.1 A Member whose Continuous Service is terminated for any reason other than by death or retirement shall receive a deferred life annuity commencing at age 65, of such amount as when added to his "other pension benefits" (as defined in Section II.D.4.1) shall provide him with an annual amount of pension equal to the sum of (i) and (ii) as follows:

- (a) 1.25% of that portion of his Final Average Earnings which is less than or equal to the Final Average Year's Maximum Pensionable Earnings; plus
- (b) 1.75% of that portion of his Final Average Earnings which exceeds the Final Average Year's Maximum Pensionable Earnings;

multiplied by the Member's Years of Pensionable Service.

For the purpose of this Section II.D.4.1 a Member's "other pension benefits" shall mean the aggregate of:

- (i) his Retirement Security Plan Pension;
- (ii) his Profit Sharing Annuity; and
- (iii) that portion which his years of Pensionable Service, up to a maximum of 40, are of 40 of the total annual pension, calculated as of his date of termination on the basis of legislation, regulations and rules then in effect, which the Member would be entitled to receive at his normal retirement date under the Canada or Quebec Pension Plan, assuming that he was qualified to receive the full amount of his entitlement without reduction for any cause whatsoever or for suspension of benefits and assuming that he had continued to contribute to the Canada or Quebec Pension Plan until his normal retirement date at the rate then applicable to his level of annual earnings at the time of the termination of his Continuous Service.

II.D.4.2 In lieu of a deferred pension provided under Section II.D.4.1 commencing at the Member's normal retirement date, the Member may elect to commence to receive this pension on the first day of any calendar month coincident with or following his attainment of age 55 and prior to his normal retirement date. The amount of this pension shall be calculated in accordance with Section II.D.3.1, provided that for the purposes of determining the early retirement reduction, the Member's Continuous Service is deemed to be the length of the Member's completed Continuous Service as if the Member had continued in active employment with an Employer until his pension commencement date. In addition, the Member shall be entitled to receive the bridge pension calculated in accordance with Section II.D.3.2.

Section II.D.5 Benefits on Death

- II.D.5.1** The death benefit for a Member who is actively employed by an Employer immediately prior to his death shall be the Commuted Value of the Member's entitlement, determined as if the Member had terminated his Continuous Service, or retired from active service, as the case may be, as at the date of his death.
- II.D.5.2** The death benefit for a Member who had terminated Continuous Service before his death with an entitlement to a deferred pension which has not commenced and which has not been transferred out of the Plan, is determined as Commuted Value at the date of death, of the deferred pension to which the Member is entitled under Section II.D.4.
- II.D.5.3** The death benefit described in Section II.D.5.1 or II.D.5.2 is payable to the Member's Spouse, designated beneficiary or, if neither, to his estate, in accordance with the requirements of the Pension Benefits Act and the Income Tax Act and Section I.8.1.
- II.D.5.4** No benefit is paid following the death of a Member who, before his death, had terminated Continuous Service and had completed the transfer of his deferred pension entitlement to an alternate retirement income funding arrangement.
- II.D.5.5** The normal form of pension will be payable for life with the guarantee that if the Member dies before receiving 120 monthly payments, the outstanding payments will be made to his beneficiary. In the event that the beneficiary dies before receiving the outstanding monthly payments, the Commuted Value of any payments due under the Plan on or after the death of the beneficiary shall be payable in a single cash amount to the estate of the beneficiary. If the Member had elected an optional form of pension, the benefit on death will be calculated according to the terms of that option.
- II.D.5.6** The normal form of bridge pension for Members whose pension is either in payment as at January 1, 1999 or which commences to be paid on or after January 1, 1999 is as follows:
- (a) for a Member who does not have a Spouse at his pension commencement date, monthly instalments continue until the earlier of the end of the month in which the Member attains age 65 and the end of the month in which he dies;

- (b) for a Member who has a Spouse at his pension commencement date, the monthly payments continue until the end of the month in which he attains 65 year of age and, in the event that the Member dies prior to age 65, his surviving Spouse, if any, is entitled to receive monthly survivor bridge pension equal to $66\frac{2}{3}\%$ of the Member's monthly bridge pension. Such monthly survivor bridge pension shall be payable until the earlier of the end of the month in which the Member would have attained age 65 and the end of the month in which the surviving Spouse dies. For greater certainty, there is no reduction in the initial amount for the survivor bridge pension.

Section II.D.6 Additional Transitional Provisions

II.D.6.1 In this Section II.D.6., the following words have the following meanings:

Pre-1972 Checklist Employee means any Member who held the rank of assistant manager, manager or higher office with the Company prior to January 1, 1972 and who at the time of his retirement has at least twenty (20) years of Continuous Service.

Final Average Checklist Earnings means one-third (1/3) of a Pre-1972 Checklist Employee's aggregate Earnings for the last thirty-six (36) months of Continuous Service which he shall have performed.

Checklist Employee means any Member as shown from time to time on the Company's records who holds the rank of assistant manager, manager or higher office with an Employer.

II.D.6.2 Only if it is to the benefit of a Pre-1972 Checklist Employee or his beneficiaries, this Section 0 shall apply in lieu of any other contrary provision of the Plan except the provisions relating to the Revenue Canada maximum pension limits set out in Section II.A.9.2 of the Sears Registered Retirement Plan to which this "D. GRIP for Saskatchewan and Manitoba" is annexed.

II.D.6.3 A Pre-1972 Checklist Employee who retires at normal retirement date will be entitled, in lieu of his entitlement under Section II.D.2.1 to such annual amount of pension as may be required when added to his "other pension benefits" (as defined in this Section II.D.6.3) provide him with a minimum annual pension equal to fifty percent (50%) of his Final Average Checklist Earnings.

For purposes of this Section, a Pre-1972 Checklist Employee's "other pension benefits" shall mean the aggregate of:

- (a) his Retirement Security Plan Pension;
- (b) his Profit Sharing Annuity; and
- (c) the total annual pension which the Pre-1972 Checklist Employee would be

entitled to receive as of his normal retirement date under the Canada or Quebec Pension Plan, it being understood that the annual amount of universal government benefits and Canada or Quebec Pension Plan pension will be determined by the Company on the basis of information available from its records, assuming the Pre-1972 Checklist Employee is qualified to receive the full amount of his entitlement without reduction for any cause whatsoever or for suspension of benefits.

II.D.6.4 A Pre-1972 Checklist Employee who retires before his normal retirement date will be entitled, in lieu of his entitlement under Section II.D.2.1 to such annual amount of pension equal to the excess, if any, of:

- (a) an amount (the "starting Checklist pension amount") equal to fifty percent (50%) of his Final Average Checklist Earnings;

over the aggregate of

- (b) three percent (3%) of the starting Checklist pension amount for each year by which the total of his years of attained age at the time of his actual retirement from Continuous Service is less than 65 years;
- (c) his Retirement Security Plan Pension;
- (d) his Profit Sharing Annuity; and
- (e) the total annual pension, calculated as of his actual retirement date on the basis of legislation, regulations and rules then in effect which the Pre-1972 Checklist Employee will be eligible to receive at age 65 as universal government benefits and under the Canada or Quebec Pension Plan, assuming that he was qualified to receive the full amount of his entitlement without reduction for any cause whatsoever or for suspension of benefits and assuming that he had continued to contribute to the Canada or Quebec Pension Plan until his normal retirement date at the rate then applicable to his level of annual earnings at the time of his actual retirement from Continuous Service.

II.D.6.5 Where a Pre-1972 Checklist Employee continues his employment with an Employer past his normal retirement date, if it is to the benefit of a Pre-1972 Checklist Employee, Section II.D.6.3 shall apply in determining the rate of accrual of his pension benefit in lieu of Section II.D.2.1.

SEARS CANADA INC.

Sears Registered Retirement Plan

II – DB Provisions

E. Hudson's Bay and Simpsons

Table of Contents

| | | |
|------------------|---|----|
| SECTION I.I.E.1 | ESTABLISHMENT OF THE PLAN | 1 |
| SECTION I.I.E.2 | DEFINITIONS | 3 |
| SECTION I.I.E.3 | EFFECTIVE DATE..... | 7 |
| SECTION I.I.E.4 | RULES OF INTERPRETATION | 8 |
| SECTION I.I.E.5 | ENROLMENT | 9 |
| SECTION I.I.E.6 | MEMBER CONTRIBUTIONS | 11 |
| SECTION I.I.E.7 | BENEFIT FROM TRANSFERRED ADDITIONAL VOLUNTARY CONTRIBUTIONS | 13 |
| SECTION I.I.E.8 | BENEFITS ON NORMAL, EARLY AND POSTPONED RETIREMENT | 14 |
| SECTION I.I.E.9 | PAST SERVICE GUARANTEE DETAILS..... | 17 |
| SECTION I.I.E.10 | BENEFITS ON TERMINATION OF EMPLOYMENT..... | 22 |
| SECTION I.I.E.11 | BENEFITS ON DEATH..... | 25 |
| SECTION I.I.E.12 | EXCESS MEMBER REQUIRED CONTRIBUTIONS AND STATUTORY RESTRICTIONS | 27 |
| SECTION I.I.E.13 | TRUST FUND | 29 |
| SECTION I.I.E.14 | FUTURE OF THE PLAN | 30 |
| SECTION I.I.E.15 | SUPPLEMENTARY DOCUMENTS..... | 31 |
| SECTION I.I.E.16 | RELEVANT PROVISIONS EXTRACTED FROM THE SIMPSONS PLAN | 32 |
| SECTION I.I.E.17 | RELEVANT PROVISIONS EXTRACTED FROM THE HBC DEFINED BENEFIT PLAN..... | 39 |

Section II.E.1 - Establishment of the Plan

II.E.1.1 Background

In 1991, Sears purchased certain existing Simpsons and The Bay store locations in Ontario. As part of that purchase, some employees at those locations were offered and accepted employment with Sears. The transferred employees were promised pension benefits at least equivalent to those currently provided to each transferred employee under the pension plan of his prior employer.

II.E.1.2 Pension Benefit Promises

The pension benefit promises are delivered by granting the transferred employees pension and other benefits under Sears' pension arrangements as if their employment with The Bay or Simpsons had been employment with Sears. The value of the pension benefits for each transferred employee under the Sears pension arrangements is guaranteed to be not less than the value of the benefits accrued by transferred employees with the prior employer to the employee's date of transfer.

II.E.1.3 Assumption of Past Service Liabilities and Acceptance of Asset Transfer

Sears assumes the liability for pension benefits accrued before the employees' dates of transfer; assets to provide those benefits are transferred from the pension plans of the prior employer, as specified in the Pension Plans Agreement. The transferred assets in respect of liabilities accrued under the pension plans of the prior employers are maintained in a separate sub-account within the SRRP trust fund.

II.E.1.4 General Purpose of Section II.E in Relation to SRRP

This Section II.E describes the method of determining eligibility and benefits for those Members of SRRP who are Transfer (Non-Member) Employees and Transfer Members, and their beneficiaries.

II.E.1.5 Purpose of Section II.E in Relation to the Purchase and Sale Transaction

SRRP as amended by this Section II.E constitutes the "Replacement Plan" which is required to be established by Sears pursuant to the terms of the Pension Plans Agreement.

Section II.E.2 - Definitions

Any capitalized words and phrases used in Section II.E have the same meaning as specified in the provisions of SRRP and the other sections of the DB Provisions unless otherwise noted, and the following additional definitions apply for the purposes of Section II.E:

- II.E.2.1** *Fund Rate of Interest* means the rate of interest which can reasonably be identified as the rate of interest earned by the investments of the Pension Fund during the period.
- II.E.2.2** *HBC Defined Benefit Plan* means the provisions of the Hudson's Bay Company Pension Plan (As Amended and Restated As At January 1, 1988) (dated January 1992) relevant to a member's participation in the defined benefit pension regime under that plan, without regard to any amendments made to such pension plan after July 8, 1991. For reference purposes, the full text of the HBC Defined Benefit Plan, as supplied by Hudson's Bay Company, is included in a set of supplementary documents which Sears shall maintain for SRRP.
- II.E.2.3** *HBC Defined Benefit Plan Member* means a Transfer Member who was a member of the HBC Defined Benefit Plan immediately before joining Sears.
- II.E.2.4** *HBC Defined Contribution Plan* means the provisions of the Hudson's Bay Company Pension Plan (As Amended and Restated As At January 1, 1988) (dated January 1992) relevant to a member's participation in the defined contribution pension regime under that plan, without regard to any amendments made to such plan after July 8, 1991. For reference purposes, the full text of the HBC Defined Contribution Plan, as supplied by Hudson's Bay Company is included in a set of supplementary documents which Sears shall maintain for SRRP.
- II.E.2.5** *HBC Defined Contribution Plan Member* means a Transfer Member who was a member of the HBC Defined Contribution Plan immediately before joining Sears.
- II.E.2.6** *Past Service Account Balance* means the account balance of an HBC Defined Contribution Plan Member, which is determined as:
- (1) the account balance, as at the Transfer Date, of the HBC Defined Contribution Plan Member derived from Transferred Required

Contributions and the related contributions made to that account balance by the Prior Employer;

- (2) accumulated with interest (compounded annually) from the Transfer Date until the date of determination with interest at the Fund Rate of Interest.

- II.E.2.7** *Past Service Guarantee* means the benefit entitlement for service before the Transfer Date under the pension plan of the Prior Employer, described more particularly in relation to each such pension plan in Sections II.E.9.1, II.E.9.2 and II.E.9.3 within this Section II.E.
- II.E.2.8** *Pension Plans Agreement* means the agreement concerning the details of the pension plan arrangements made the 8th day of July, 1991 between the Hudson's Bay Company, Simpsons Limited and Sears Canada Inc. For reference purposes, the full text of the Pension Plans Agreement is included in a set of supplementary documents which Sears shall maintain for SRRP.
- II.E.2.9** *Prior Employer* for each Transfer (Non-Member) Employee and for each Transfer Member means Simpsons Limited or the Hudson's Bay Company, as the case may be, whichever was the employer of the individual immediately before the Transfer Date.
- II.E.2.10** *Simpsons Plan* means the Simpsons Limited Employees' Pension Plan (Amended and Restated Effective January 1, 1988) (dated January 1992), without regard to any amendments passed after July 8, 1991. For reference purposes, the full text of the Simpsons Plan, as supplied by Hudson's Bay Company, is included in a set of supplementary documents which Sears shall maintain for SRRP.
- II.E.2.11** *Simpsons Plan Member* means a Transfer Member who was a member of the Simpsons Plan immediately before joining Sears.
- II.E.2.12** *Sears* means Sears Canada Inc., according to the definition of "Company" provided in the basic rules of SRRP; this terminology is substituted to avoid confusion with other companies referenced in this Section II.E.

II.E.2.13 *SRRP* means the Sears Canada Inc. Registered Retirement Plan, according to the definition of “Plan” provided in the basic rules of SRRP; this terminology is substituted to avoid confusion with other pension plans referenced in this Section II.E. Although the definition of SRRP technically includes its predecessor plans, express reference is made to the predecessor plans in certain instances for greater certainty.

II.E.2.14 *Transfer Date* means July 31, 1991.

II.E.2.15 *Transfer (Non-Member) Employee* means an Employee who:

- (1) joined the Company immediately after ceasing employment with the Hudson’s Bay Company or Simpsons Limited following Sears’ acquisition in 1991 of 7 retail locations in Ontario from the Hudson’s Bay Company and Simpsons Limited; and
- (2) was not a member of the pension plan of his Prior Employer at the Transfer Date.

II.E.2.16 *Transfer Member* means an Employee who:

- (1) joined the Company immediately after ceasing employment with the Hudson’s Bay Company or Simpsons Limited following Sears’ acquisition in 1991 of 7 retail locations in Ontario from the Hudson’s Bay Company and Simpsons Limited; and
- (2) was a member of the pension plan of his Prior Employer at the Transfer Date.

II.E.2.17 *Transferred Additional Voluntary Contributions* means contributions (together with interest accumulated up to the Transfer Date) made by the Transfer Member to the pension plan of the Prior Employer for which the Prior Employer made no related contribution, and does not necessarily include contributions termed “additional contributions” under the pension plan of the Prior Employer.

II.E.2.18 *Transferred Required Contributions* means contributions (together with interest accumulated up to the Transfer Date) made by the Transfer Member to the pension plan of the Prior Employer for which the Prior Employer made a related contribution, and may include contributions termed “additional contributions” under the pension plan of the Prior Employer.

Section II.E.3 – Effective Date

II.E.3.1 Effective Date

The effective date of this Section II.E, except where otherwise specified, is the Transfer Date; which is July 31, 1991.

Section II.E.4 – Rules of Interpretation

II.E.4.1 Relation of this Section II.E to SRRP

The provisions of this Section II.E further amend SRRP in relation to the basic rules, the amplified rules set out in Section II.B; and the extracts from the Guaranteed Retirement Income Plan set out in Section II.C.

Section II.E.5 – Enrolment

II.E.5.1 Scope of Enrolment Provisions of Section II.E

The enrolment provisions of this Section II.E apply to both Transfer (Non Member) Employees and Transfer Members.

II.E.5.2 Voluntary Enrolment for a Transfer (Non-Member) Employee

Notwithstanding the provisions of SRRP, a Transfer (Non-Member) Employee may enroll as a Member of SRRP under the service and earnings conditions for voluntary membership. For this purpose, the SRRP enrolment conditions are modified to recognize the Transfer (Non-Member) Employee's service, earnings or hours, as the case may be, with the Prior Employer, as follows:

- (1) the Continuous Service of the Transfer (Non-Member) Employee is deemed to include continuous service with the Prior Employer;
- (2) the Earnings of the Transfer (Non-Member) Employee are deemed to include earnings from the Prior Employer; and
- (3) the hours of employment of the Transfer (Non-Member) Employee are deemed to include hours of employment with the Prior Employer.

II.E.5.3 Compulsory Enrolment for a Transfer (Non-Member) Employee

Notwithstanding the provisions of SRRP, a Transfer (Non- Member) Employee shall enroll as a Member of SRRP if the service and earnings conditions for compulsory membership are satisfied by:

- (1) the Continuous Service of the Transfer (Non-Member) Employee with Sears; and
- (2) the Earnings of the Transfer (Non-Member) Employee from Sears.

II.E.5.4 Compulsory Enrolment for a Transfer Member

Notwithstanding the provisions of SRRP, a Transfer Member becomes a Member of SRRP immediately as of the Transfer Date.

Section II.E.6 – Member Contributions

II.E.6.1 Member Required Contributions After Transfer Date

Upon becoming a Member of SRRP before July 1, 2008, the Transfer (Non-Member) Employee or the Transfer Member; as the case may be, begins making required contributions to SRRP, according to the provisions of SRRP, and these required contributions are deposited to the separate sub-account maintained within the SRRP trust fund for the purpose of receiving the asset transfer required under the Pension Plans Agreement.

II.E.6.2 Interest on Required Contributions Made After the Transfer Date

A Transfer (Non-Member) Employee or a Transfer Member's required contributions made on and after the Transfer Date and before July 1, 2008 earn interest according to the provisions of SRRP.

II.E.6.3 Interest on Transferred Required Contributions

Notwithstanding Section II.E.6.2, the Transferred Required Contributions of a Transfer Member earn interest at the applicable rate of interest specified as follows:

- (1) for an HBC Defined Contribution Plan Member, the applicable rate of interest is the Fund Rate of Interest; and
- (2) for an HBC Defined Benefit Plan Member and for a Simpsons Plan Member, the applicable rate of interest is the same rate of interest applied according to the provisions of Section I.5.3 of SRRP;

which rate of interest is applied commencing at the Transfer Date, in the same manner as followed for calculating interest pursuant to Section I.5.35.3 of SRRP.

II.E.6.4 Interest on Transferred Additional Voluntary Contributions

The Transferred Additional Voluntary Contributions of a Transfer Member earn interest at the Fund Rate of Interest, applied commencing at the Transfer Date, and applied in the same manner as followed for calculating interest pursuant to Section I.5.3 of SRRP.

Section II.E.7 – Benefit from Transferred Additional Voluntary Contributions

II.E.7.1 Additional Benefit from Transferred Additional Voluntary Contributions

Upon the retirement, death or termination of employment of the Transfer Member, the Transferred Additional Voluntary Contributions of a Transfer Member, with interest credited thereon pursuant to Section II.E.6.4, from the Transfer Date to the date of determination, will be paid as a lump sum (to the beneficiary or estate of the Transfer Member, as appropriate) or applied to purchase an annuity, as the Transfer Member shall direct, and such payment or benefit provision will be in addition to any other entitlement described in the following provisions of this Section II.E.

Section II.E.8 – Benefits on Normal, Early and Postponed Retirement

II.E.8.1 Application of Retirement Benefit Determination Provisions to Transfer Members

The provisions of this Section II.E.8 apply in calculating the benefits on normal, early and postponed retirement of a Transfer Member. For a Transfer (Non Member) Employee, the benefits on normal, early and postponed retirement are determined according to the provisions of SRRP that apply to any Employee who becomes a Member of SRRP at the date that the Transfer (Non-Member) Employee becomes a Member and as amended thereafter.

II.E.8.2 General Description of Retirement Benefit Determination for a Transfer Member

The benefit entitlements on normal, early and postponed retirement for a Transfer Member, as described in more detail in the following provisions, are calculated in the first instance as if Sears had employed the Transfer Member both before and after the Transfer Date, and then, if necessary, the benefit is actuarially increased with respect to service before the Transfer Date in order to preserve the value of benefits accrued by the Transfer Member before the Transfer Date under the pension plan of the Prior Employer.

II.E.8.3 Special Features of SRRP Retirement Benefit Determination for Transfer Members

The retirement benefit of a Transfer Member in respect of service both before and after the Transfer Date is determined according to the applicable provisions of SRRP (and its predecessor plans), as modified in accordance with the following assumptions for the Transfer Member:

- (1) *Continuous Service* under SRRP (and its predecessor plans) is deemed to include the Transfer Member's most recent period of continuous service with the Prior Employer (the "period of included Continuous Service");

- (2) *Earnings* under SRRP (and its predecessor plans) for the “period of included Continuous Service” are deemed to be comprised of the earnings during that period of continuous service with the Prior Employer, as shown on the records of the Prior Employer;
- (3) *Pensionable Earnings* under SRRP (and its predecessor plans) for the “period of included Continuous Service” are deemed to be comprised of the pensionable earnings during that period of continuous service with the Prior Employer, as shown on the records of the Prior Employer;
- (4) *Pensionable Service Years* and “Pensionable Service” under SRRP (and its predecessor plans) for the “period of included Continuous Service” are deemed to be comprised of the pensionable service years during that period of continuous service with the Prior Employer, as shown on the records of the Prior Employer and as communicated to Sears;
- (5) *Profit Sharing Annuity* under the Guaranteed Retirement Income Plan, the immediate predecessor to SRRP, is determined for a Transfer Member from the Simpsons Plan (and for a Transfer Member from the HBC Defined Benefit Plan who had formerly been a member of the Simpsons Plan) in the same manner as the Profit Sharing Annuity is determined under the Simpsons Plan; and
- (6) *Retirement Security Plan Pension* under the Guaranteed Retirement Income Plan, the immediate predecessor to SRRP, is determined for a Transfer Member from the Simpsons Plan (and for a Transfer Member from the HBC Defined Benefit Plan who had formerly been a member of the Simpsons Plan) in the same manner as the Retirement Security Plan Pension is determined under the Simpsons Plan; and
- (7) *Inflation Adjusted Career Average Earnings* are calculated for a Transfer Member only in respect of years of SRRP membership on and after January 1, 1992.

II.E.8.4 Comparison of Past Service Guarantee and SRRP Retirement Benefit for Pre-Transfer Service

The retirement benefit entitlement of a Transfer Member described in Section II.E.8.3 will be actuarially increased, as described in Section II.E.8.5 if, and to the extent that:

- (1) the value of the Past Service Guarantee for the retirement benefit (whether normal, early or postponed, as appropriate) under the pension plan of the Prior Employer exceeds
- (2) the value of the Transfer Member's retirement benefit (whether normal, early or postponed, as appropriate) under SRRP (and its predecessor plans) for service before the Transfer Date, as such entitlement is determined in accordance with Section II.E.8.3.

II.E.8.5 Provision of Increased Retirement Benefit under SRRP

The Transfer Member's retirement benefit entitlement under SRRP for service before the Transfer Date will be increased, if required pursuant to Section II.E.8.4, to be the Actuarial Equivalent of the Past Service Guarantee, and that increased retirement benefit entitlement will be provided in the same form of payment (that is, as to guarantee periods and/or joint annuitants) as the Transfer Member's retirement benefit entitlement under SRRP.

Section II.E.9 – Past Service Guarantee Details

II.E.9.1 Past Service Guarantee for a Simpsons Plan Member

The Past Service Guarantee for the Simpsons Plan Member is calculated according to the relevant provisions of the Simpsons Plan, modified as follows, regardless of the Transfer Date:

- (1) for the purpose of calculating the Simpsons Plan Member's normal or early retirement benefit under Section 6.1 or 6.2 respectively of the Simpsons Plan, "earnings" under the Simpsons Plan do not cease at the Transfer Date, and are deemed to include Earnings with Sears after the Transfer Date, but only up to and including December 31, 1991, and "final average earnings" under the Simpsons Plan are calculated accordingly;
- (2) for the purpose of calculating the Simpsons Plan Member's normal or early retirement benefit under Section 6.1 or 6.2 respectively of the Simpsons Plan, "pensionable service" under the Simpsons Plan is deemed to cease at the Transfer Date;
- (3) for the purposes of determining any applicable early retirement reduction under Section 6.2 of the Simpsons Plan, the "pensionable service" of the Simpsons Plan Member is deemed to include Pensionable Service Years with Sears up to the Simpsons Plan Member's date of early retirement from Sears;
- (4) for the purpose of determining the Simpsons Plan Member's entitlement to a vested locked-in or non-locked-in termination benefit under Section 9.1 of the Simpsons Plan, the Simpsons Plan Member's "continuous service" and "Plan membership" is deemed to include Continuous Service under SRRP and Plan membership in SRRP;
- (5) for the purpose of determining the Simpsons Plan Member's entitlement to
 - (a) the death benefits, or

- (b) the surviving spouse or surviving dependent child or children's allowance

under Section 10.2 of the Simpsons Plan, the Simpsons Plan Member's "continuous service" is deemed to include Continuous Service under SRRP; and

- (6) for the purpose of determining the amount of the surviving spouse or surviving dependent child or children's allowance under Section 10.2 (b) or (c) of the Simpsons Plan, the provisions of clauses (1), (2) and (3) of this subsection shall be applied as appropriate.

The relevant provisions of the Simpsons Plan, as listed below, are set out in full in Section II.E.16:

| | | |
|--------|---|---|
| 2.17 | - | Final Average Earnings |
| 2.23 | - | Pensionable Service |
| 6.1 | - | Normal Retirement Benefit |
| 6.2 | - | Early Retirement Benefits |
| 6.3(a) | - | Postponed Retirement Benefit (other than for Member employed in Quebec) |
| 9.1 | - | Termination With Ontario Service |
| 10.2 | - | Pre-Retirement Death Benefit |

II.E.9.2 Past Service Guarantee for HBC Defined Benefit Plan Member

The Past Service Guarantee for the HBC Defined Benefit Plan Member is calculated according to the relevant provisions of the HBC Defined Benefit Plan, modified as follows for an HBC Defined Benefit Plan Member, regardless of the Transfer Date:

- (1) for the purpose of calculating the retirement benefit of an HBC Defined Benefit Plan Member in respect of future service pension under Section 5.1 (a) of the HBC Defined Benefit Plan, "continuous service" ceases at the Transfer Date, and his required contributions also cease at the Transfer Date;
- (2) for the purpose of calculating the retirement benefit of an HBC Defined Benefit Plan Member in respect of the supplementary pension under Section 5.2 (a) or (b),

- (a) “employee’s annual earnings” under the HBC Defined Benefit Plan do not cease at the Transfer Date, and are deemed to include Earnings with Sears after the Transfer Date, but only up to and including December 31, 1991, and “member’s average earnings” under the HBC Defined Benefit Plan are calculated accordingly;
 - (b) “continuous service” ceases no later than the Transfer Date, if the effective 30 year maximum for continuous service has not been achieved earlier;
 - (c) “old age benefit” is determined as at December 31, 1991; and
 - (d) “other pension benefits” in respect of the HBC Defined Benefit Plan Member’s Profit Sharing Annuity as defined in the Simpsons Plan and his Retirement Security Plan Pension as defined in the Simpsons Plan are determined in the same manner as under the Simpsons Plan, and are determined as at the early, normal or postponed retirement date of the HBC Defined Benefit Plan Member;
- (3) for the purposes of determining any applicable early retirement reduction and eligibility therefor under Section 5.3 (b), the “continuous service” of the HBC Defined Benefit Plan Member is deemed to include Continuous Service with Sears up to the HBC Defined Benefit Plan Member’s date of early retirement from Sears;
- (4) for the purpose of determining the HBC Defined Benefit Plan Member’s entitlement to a vested locked-in or non-locked-in termination benefit under Section 7.1 of the HBC Defined Benefit Plan, the HBC Defined Benefit Plan Member’s “continuous service” and “Plan membership” are deemed to include, respectively, Continuous Service under SRRP and Plan membership in SRRP;
- (5) for the purpose of determining the HBC Defined Benefit Plan Member’s eligibility for the surviving dependent pension under Section 8.1 of the HBC Defined Benefit Plan, the “Member’s years of continuous service as a regular full-time employee” is deemed to include Continuous Service as a regular full-time Employee under SRRP;

- (6) for the purpose of calculating the amount of the surviving dependent pension under Section 8.1 of the HBC Defined Benefit Plan, the HBC Defined Benefit Member is deemed to have retired early as of his date of death while in the employ of Sears, and the provisions of clauses (1) (2) and (3) of this subsection shall be applied as appropriate; and
- (7) for the purpose of determining the HBC Defined Benefit Plan Member's eligibility for the death benefit under Section 8.2 (d) III, the HBC Defined Benefit Plan Member's "Plan membership" is deemed to include his Plan membership under SRRP.

The relevant provisions of the HBC Defined Benefit Plan, as listed below, are set in full in Section II.E.17:

Part B:

- | | | |
|-----------|---|---|
| 1.1 | - | Average Earnings |
| 1.2 | - | Old Age Benefit |
| 1.3 | - | Other Pension Benefits |
| 5.1(a) | - | Pension at Normal Retirement Date – Future Service Pension |
| 5.1(b)(i) | - | Pension at Normal Retirement Date - Past Service Pension for Members Who Were Employees of the Hudson's Bay Company on July 1, 1961 |
| 5.2(a) | - | Supplementary Pension Benefit at Normal Retirement for Regular Full-Time Employees |
| 5.2(b) | - | Supplementary Pension Benefit at Normal Retirement for Members Who Were Employees of Simpsons Limited |
| 5.3 | - | Pension at Early Retirement Date |
| 5.4(a)(b) | - | Pension at Postponed Retirement Date (Other Than Quebec) |
| 7.1 (e) | - | Vesting and Locking In - Termination with Manitoba, New Brunswick or Ontario Service |
| 8.1 | - | Surviving Dependent Pension |
| 8.2(d)III | - | Death Prior to Pension Commencement Date- Ontario Service |

II.E.9.3 Past Service Guarantee for HBC Defined Contribution Plan Member

The Past Service Guarantee for the HBC Defined Contribution Plan Member is calculated as the value of the annuity which can be purchased under SRRP as determined by Sears on the advice of the Actuary, with the Past Service Account Balance of the HBC Defined Contribution Plan Member.

Section II.E.10 – Benefits on Termination of Employment

II.E.10.1 Application of Termination Benefit Provisions to Transfer Members

The provisions of this Section II.E.10 apply in determining for a Transfer Member both:

- (1) the eligibility for termination benefits; and
- (2) the amount of the termination benefit.

For a Transfer (Non-Member) Employee, eligibility for and the amount of the termination benefit are determined according to the provisions of SRRP that apply to any Employee who becomes a Member of SRRP at the date that the Transfer (Non-Member) Employee becomes a Member and as amended thereafter.

II.E.10.2 Eligibility for Vested Termination Benefit Based on Combined “Plan Membership”

For the purposes of determining eligibility for a SRRP termination benefit, the “Plan membership” of the Transfer Member is deemed to include his period of membership in the pension plan of his Prior Employer.

II.E.10.3 Requirement for Locking-In of Vested Termination Benefit Based on Continuous Service with Sears

In determining whether the termination benefit under SRRP in respect of pre-1987 service for a vested Transfer Member is locked-in, locking-in will occur at the earlier of the date on which the Transfer Member:

- (1) satisfies the statutory locking-in requirement (that is, attaining age 45 and completing 10 years of Continuous Service, based on combined service with Sears and the Prior Employer); or
- (2) completes two years of Plan membership with Sears.

II.E.10.4 General Description of Termination Benefit Determination

The benefit entitlements on termination of employment other than by death or retirement of a Transfer Member, as described in more detail in the following provisions, are calculated in the first instance as if Sears had employed the Transfer Member both before and after the Transfer Date, and then, if necessary, the benefit is actuarially increased with respect to service before the Transfer Date in order to preserve the value of benefits accrued by the Transfer Member before the Transfer Date under the pension plan of the Prior Employer.

II.E.10.5 Special Features of SRRP Termination Benefit for Transfer Members

The amount of the termination benefit for a vested Transfer Member in respect of service both before and after the Transfer Date is determined according to the applicable provisions of SRRP modified in accordance with the assumptions for the Transfer Member listed in Section II.E.8.3.

II.E.10.6 Comparison of Past Service Guarantee and SRRP Termination Benefit for Pre-Transfer Service

The termination benefit of a Transfer Member described in section II.E.10.5 will be actuarially increased, as described in Section II.E.10.7 if, and to the extent that:

- (1) the value of the Past Service Guarantee for the termination benefit under the pension plan of the Prior Employer

exceeds
- (2) the value of the Transfer Member's termination benefit under SRRP (and its predecessor plans) for service before the Transfer Date, as such entitlement is determined in accordance with Section II.E.10.5.

II.E.10.7 Provision of Increased Termination Benefit Under SRRP

The Transfer Member's termination benefit entitlement under SRRP for service before the Transfer Date will be increased to be the Actuarial Equivalent of the Past Service Guarantee, and that increased termination benefit entitlement will be provided in the same form of payment (that is, as to guarantee periods and/or joint annuitants in the case of a deferred annuity, or as a Commuted Value) as elected by the Transfer Member for his basic termination benefit entitlements under SRRP (and its predecessor plans).

Section II.E.11 – Benefits on Death

II.E.11.1 Application of Death Benefit Provisions to Transfer Members

The provisions of this Section II.E.11 apply in determining for a Transfer Member both:

- (1) the eligibility for death benefits; and
- (2) the amount of the death benefit.

For a Transfer (Non-Member) Employee, eligibility for and the amount of the death benefit is determined according to the provisions of SRRP that apply to any Employee who becomes a Member of SRRP at the date that the Transfer (Non-Member) Employee becomes a Member and as amended thereafter.

II.E.11.2 Eligibility for Surviving Spouse or Dependent Allowance Benefit Based on Combined Continuous Service

For the purposes of determining eligibility for a death benefit which for pre-1987 service under SRRP is an optional spousal or dependent's allowance, the Continuous Service of the Transfer Member is deemed to include his period of membership in the pension plan of his Prior Employer.

II.E.11.3 General Description of Death Benefit Determination

The death benefit entitlements of a Transfer Member, as described in more detail in the following provisions, are calculated in the first instance as if Sears had employed the Transfer Member both before and after the Transfer Date, and then, if necessary, the death benefit is actuarially increased with respect to service before the Transfer Date in order to preserve the value of benefits accrued by the Transfer Member before the Transfer Date under the pension plan of the Prior Employer.

II.E.11.4 Special Features of SRRP Death Benefit Determination for Transfer Members

The amount of the death benefit for a vested Transfer Member in respect of service both before and after the Transfer Date is determined according to the applicable provisions of SRRP modified in accordance with the assumptions for the Transfer Member listed in Section II.E.8.3.

II.E.11.5 Comparison of Past Service Guarantee and SRRP Death Benefit for Pre-Transfer Service

The death benefit of a Transfer Member described in Section II.E.11.4 will be actuarially increased, as described in Section II.E.11.6 if, and to the extent that:

- (1) the value of the Past Service Guarantee for the death benefit under the pension plan of the Prior Employer

exceeds
- (2) the value of the Transfer Member's death benefit under SRRP (and its predecessor plans) for service before the Transfer Date, as such entitlement is determined in accordance with Section II.E.11.4.

II.E.11.6 Provision of Increased Death Benefit Under SRRP

The Transfer Member's death benefit entitlement under SRRP for service before the Transfer Date will be increased to be the Actuarial Equivalent of the Past Service Guarantee, and that increased death benefit entitlement will be provided in the same form of payment (that is, as to the life annuity payable to a surviving Spouse, or the lump sum payment) as elected by the Transfer Member for his basic death benefit entitlements under SRRP (and its predecessor plans).

Section II.E.12 – Excess Member Required Contributions and Statutory Restrictions

II.E.12.1 Special Features of SRRP Excess Contributions for Transfer Members

For purposes of performing the test for excess contributions as described in Section II.A.9.1 of SRRP, the “value of the Member’s required contributions with interest” is deemed to include the Transferred Required Contributions of the Transfer Member, with interest credited thereon pursuant to Section II.E.6.3 from the Transfer Date to the date of determination, and “the value of the deferred or immediate pension for the Member” is deemed to include any actuarial increase provided in connection with the Past Service Guarantee of the Transfer Member.

II.E.12.2 Special Features of SRRP Minimum Value of Benefit for Pre-1987 Service for Transfer Members

For purposes of performing the test for the minimum value of the termination benefit, death benefit or retirement benefit as described in Section II.B.10.3; the “value of the Member’s termination benefit, death benefit or retirement benefit” is deemed to include any actuarial increase (or appropriate portion thereof) provided in connection with the Past Service Guarantee of the Transfer Member, and “value of the Member’s required contributions with interest” is deemed to include the Transferred Required Contributions of the Transfer Member, with interest credited thereon pursuant to Section II.E.6.3 from the Transfer Date to the date of determination.

II.E.12.3 Special Feature of SRRP Revenue Canada Maximum Calculation for Transfer Members

For purposes of calculating the Revenue Canada maximum under Section II.B.10.5:

- (1) for a Simpsons Plan Member, the calculation includes the value of the Simpsons Plan Members’s benefit, if any, from the “Retirement Security Plan” of Simpsons, Limited;

- (2) for any Transfer Member, “the Member’s Pensionable Service Years” includes pensionable service of the Transfer Member with the Prior Employer; and
- (3) for any Transfer Member, the “highest average Earnings in any 3 non-overlapping periods of 12 consecutive months” includes remuneration of the Transfer Member paid by the Prior Employer.

Section II.E.13 – Trust Fund

II.E.13.1 Funding Arrangements - Asset Transfer Arrangements Collectively

In accordance with the terms of the Pension Plans Agreement, the asset transfer is conditional on regulatory approval. Subject to such approval, assets shall be transferred to the Pension Fund, the value of such assets being determined in accordance with the provisions of the Pension Plans Agreement as sufficient to support the liabilities assumed by SRRP in respect of the Transfer Members, which liabilities are described more fully in the preceding provisions of this Section II.E.

II.E.13.2 Predecessor Plans under the Simpsons Plan for Which No Asset Transfer is Made

For purposes of greater certainty, it is noted that assets are not transferred in respect of the Profit Sharing Retirement Annuity amounts and the Retirement Security Pension Plan amounts as identified in the Simpsons Plan.

Section II.E.14 – Future of the Plan

II.E.14.1 Restrictions on Termination of SRRP Coverage for Transfer (Non-Member) Employees and Transfer Members

As required under the terms of the Pension Plans Agreement, Sears shall not adversely amend or terminate the application of the provisions of this Section II.E at any time before January 1, 1994.

II.E.14.2 Recognition of Compliance Amendments

Notwithstanding the provisions of Section II.E.14.1, Sears shall recognize and give effect to any amendments relating to this Section II.E and the pension plans of the Prior Employers, as may be required to achieve minimum compliance with legislation as in effect at July 8, 1991.

Section II.E.15 – Supplementary Documents

II.E.15.1 Maintenance and Access to Supplementary Documents

Sears shall maintain a set of supplementary documents for purposes of this Section II.E, comprised of the following:

- (1) Agreement made the 8th day of July, 1991 between the Hudson's Bay Company, Simpsons Limited and Sears Canada Inc. (the "Pension Plans Agreement");
- (2) Hudson's Bay Company Pension Plan (Amended and Restated As At January 1, 1988) dated January 1, 1992; and
- (3) Simpsons Limited Pension Plan (Amended and Restated Effective January 1, 1988) dated January, 1992.

II.E.15.2 The plan texts maintained in the set of supplementary documents as the Hudson's Bay Company Pension Plan (Amended and Restated As At January 1, 1988) and the Simpsons Limited Pension Plan (Amended and Restated Effective January 1, 1988) were provided to Sears on behalf of Hudson's Bay Company and Simpsons Limited respectively pursuant to Section 2 (a) of the Pension Plans Agreement which specifies that:

"the copies of the text of the Pension Plans, as provided to Sears, are true and correct copies thereof and there have been no amendments or modifications thereto except as reflected in the documents provided to Sears and there have been no written commitments made by HBC or Simpsons to any of the Transferred Employees to provide pension benefits otherwise than those reflected in the documents provided to Sears".

Section II.E.16 – Relevant Provisions Extracted from the Simpsons Plan

For purposes of interpreting the Past Service Guarantee in Section II.E.9.1, the following Definitions and benefit provisions have been extracted from the Simpsons Plan:

“2.17 ***Final Average Earnings*** means one-fifth of an Employee’s Aggregate Earnings for the five consecutive calendar years of highest Earnings during his last ten years of Continuous Service, except that if the Employee ceases to be an Employee on any day other than the last day of any year, one of the years used for the calculation of his Final Average Earnings shall, if it is to the benefit of the recipient, comprise a twelve-month period made up of the number of completed months of service in the year during which the Employee ceases to be an Employee and the complementary number of months of the year at the commencement of the five-year period. If the Employee has less than ten years of Continuous Service, his Final Average Earnings shall be computed as one-fifth of his five consecutive calendar years of highest Earnings in his period of Continuous Service. If the Employee has less than five years of Continuous Service, his Final Average Earnings shall be computed as the total of his Earnings in his period of Continuous Service divided by his period of Continuous Service.”

“2.23 ***Pensionable Service*** means the period of Contributory Service of an employee and any period of Continuous Service prior to January 1, 1976 to his credit for pension purposes as shown by the Company’s records.”

“6.1 **Normal Retirement Benefit**

Each Member who retires on his Normal Retirement Date shall receive an annual benefit determined on his Normal Retirement Date which is the sum of (a) and (b):

(a) ***For Service To December 31, 1986***

1.75% of his Final Average Earnings multiplied by his Pensionable Service to December 31, 1986, minus (i) and (ii) and (iii):

(i) his Retirement Security Plan Pension,

(ii) his Profit Sharing Annuity,

(iii) the annual amount of Old Age Security and Canada or Quebec Pension Plan pension that the Member would be entitled to receive as of his Normal Retirement Date multiplied by the ratio that his Pensionable Service to December 31, 1986, which is limited to a maximum of 40 years, bears to 40 years.

(b) *For Service On And After January 1, 1987*

1% of his Final Average Earnings that exceed 25% of the Final Average YMPE but are less than or equal to the Final Average YMPE plus 1.75% of his Final Average Earnings that exceed the Final Average YMPE, multiplied by his Pensionable Service on and after January 1, 1987.

The annual amount of Old Age Security and Canada or Quebec Pension Plan pension referred to in Section 6.1(a)(iii) will be determined on the date of retirement, death or termination by the Company on the basis of available information, assuming the Member is qualified to receive the full amount of his entitlement without reduction for any cause whatsoever or for suspension of benefits.”

“6.2

Early Retirement Benefits

Each Member who retires on his Early Retirement Date shall receive an annual benefit commencing on his Early Retirement Date which is the sum of (a) and (b):

(a) *For Service To December 31, 1986*

1.75% of his Final Average Earnings multiplied by his Pensionable Service to December 31, 1986, reduced by 1% for each year by which the total of his years of attained age and years of Pensionable Service is less than 95 years, and an additional 1% for each year by which the total of his years of attained age and years of Pensionable Service is less than 85 years, minus (I) and (ii) and (iii):

- (i) his Retirement Security Plan Pension,
- (ii) his Profit Sharing Annuity
- (iii) the annual amount of Old Ag Security and Canada or Quebec Pension Plan pension that the Member would be entitled to receive

as of his Normal Retirement Date multiplied by the ratio that his Pensionable Service to December 31, 1986, which is limited to a maximum of 40 years, bears to 40 years.

(b) ***For Service On And After January 1, 1987***

1% of his Final Average Earnings that exceed 25% of the Final Average YMPE but are less than or equal to the Final Average YMPE plus 1.75% of his Final Average Earnings that exceed the Final Average YMPE, multiplied by his Pensionable Service on and after January 1, 1987, reduced by 1% for each year by which the total of his years of attained age and years of Pensionable Service is less than 95 years, and an additional 1% for each year by which the Total of his years of attained age and years of Pensionable Service is less than 85 years.

(c) ***Bridge Benefit***

During the period commencing on the later of his actual retirement date and the end of the month in which he attains age 60 years of age and ending on the earlier of the end of the month in which he attains 65 years of age and the end of the month in which he dies, there shall be a bridge benefit paid which is an annual amount equal to the sum of (i) and (ii):

(i) **For Service To December 31, 1986**

The annual amount of Old Age Security and Canada or Quebec Pension Plan pension that the Member would be entitled to receive as of his Normal Retirement Date multiplied by the ratio that his Pensionable Service to December 31, 1986, which is limited to a maximum of 40 years, bears to 40 years; plus

(ii) **For Service On And After January 1, 1987**

1.75% of his Final Average Earnings that are less than 25% of the Final Average YMPE plus .75% of his Final Average Earnings that exceed 25% of the Final Average YMPE but are less than or equal to the Final Average YMPE, multiplied by his Pensionable Service on and after January 1, 1987.

- (d) The annual amount of Old Age Security and Canada or Quebec Pension Plan pension referred to in Section 6.2(a)(iii) and Section 6.2(c)(i) will be determined by the Company on the basis of available information, assuming the Member is qualified to receive the full amount of his entitlement without reduction for any cause whatsoever or for suspension of benefits.”

“6.3 **Postponed Retirement Benefit**

- (a) A Member, other than a Member employed in Quebec, whose retirement is postponed pursuant to Section 5.3 shall continue to contribute to the Plan in accordance with Section 4.1 after his Normal Retirement Date and at his Postponed Retirement Date shall receive a benefit determined under Section 6.1.”

“9.1 **Termination With Ontario Service**

A Member whose Continuous Service is terminated other than by death, disability or retirement and who has a period of Plan membership in the province of Ontario, shall be vested in respect of such period of Plan membership:

- (a) in respect of pension benefits accrued prior to January 1, 1987, upon the completion of at least 5 years of Continuous Service; and
- (b) in respect of pension benefits accrued on and after January 1, 1987, while employed in the province of Ontario upon completion of at least 24 months of Plan membership.

The vested pension benefits of such Member shall be locked-in for the purposes of the Plan, except that in respect of pension benefits accrued prior to January 1, 1987, the Member’s vested pension benefit shall be locked-in only upon the Member’s completion of at least 10 years of Continuous Service or plan membership and his attainment of age 45.”

“10.2 **Pre-Retirement Death Benefit**

- (a) If a Member dies while in employ of the Employer prior to his completion of ten years of Continuous Service or after ten years of Continuous Service under circumstances where neither Section 10.2(b) nor Section 10.2(c) applies or if a Member who has terminated

employment and who is entitled to deferred pension under Section 9 dies before his pension commences, his Beneficiary will receive a refund of the Member's required contributions made to the Plan with Credited Interest.

- (b) If a Member dies while in the employ of the Employer after completion of ten years of Continuous Service under circumstances where the Member leaves a Spouse surviving him, and such Member has not waived the application of this Section 10.2(b) by written notice to the Employer in the form prescribed by the Employer, the Spouse may elect to receive a refund of the Member's contributions with Credited Interest or, in lieu thereof, an annual allowance. The annual allowance shall be payable monthly from the first day of the month following the Member's death, and shall be the sum of (i) and (ii):
- (i) 1.75% of the Member's Final Average Earnings multiplied by the Member's Pensionable Service to December 31, 1986, adjusted to a 100% joint and last survivor form of pension on an Actuarial Equivalent basis, reduced by 1% for each year by which the total of the Member's years of attained age and years of Pensionable Service is less than 95 years, and an additional 1% for each year by which the total of the Member's years of attained age and years of Pensionable Service is less than 85 years, minus (A) and (B) and (C):
- (A) his Profit Sharing Annuity,
- (B) up to and including the month in which the Spouse attains age 65, the annual Spouse's pension payable to the Spouse under the Canada or Quebec Pension Plan, and
- (C) commencing with the month following the Spouse's attainment of age 65, the annual Spouse's pension payable to the Spouse under the Canada or Quebec Pension Plan and the annual amount to which the Spouse is entitled from Old Age Security; plus
- (ii) 1% of the Member's Final Average Earnings that exceed 25% of his Final Average YMPE but are less than or equal to his Final Average YMPE plus 1.75% of the Member's Final Average Earnings that

exceed his Final Average YMPE, multiplied by the Member's Pensionable Service on and after January 1, 1987.

- (c) If a Member dies while in the employ of the Employer after completion of ten years of Continuous Service under circumstances where the Member leaves no Spouse surviving him but leaves one or more Dependent Children surviving him, and such Member has not waived the application of this Section 10.2(c) by written notice to the Employer in the form prescribed by the Employer, an annual dependent's allowance shall be paid. The annual dependent's allowance shall be payable monthly from the first day of the month following the Member's death, shall be divided equally among the Dependent Children and shall cease on the first day of the month preceding the date each such child ceases to qualify as a Dependent Child, as defined pursuant to Section 2.12, and shall be determined as the sum of (i) and (ii):

- (i) 1.75% of the Member's Final Average Earnings multiplied by the Member's Pensionable Service to December 31, 1986, reduced by 1% for each year by which the total of the Member's years of attained age and years of Pensionable Service is less than 95 years, and an additional 1% for each year by which the

total of the Member's years of attained age and years of Pensionable Service is less than 85 years, minus (A) and (B) and (C):

- (A) his Profit Sharing Annuity,
- (B) his Retirement Security Plan Pension,
- (C) the annual amount of Old Age Security and Canada or Quebec Pension Plan pension that the Member would have been entitled to receive at age 65, had he lived, multiplied by the ratio that his Pensionable Service to December 31, 1986, which is limited to a maximum of 40 years, bears to 40 years; plus

- (ii) 1% of the Member's Final Average Earnings that exceed 25% of his Final Average YMPE but are less than or equal to his Final Average YMPE plus 1.75% of the Member's Final Average Earnings that

exceed his Final Average YMPE, multiplied by the Member's Pensionable Service on and after January 1, 1987.

- (d) Notwithstanding Section 10.2(a), (b) and (c), where a Member dies while in the employ of the Employer and after his Normal Retirement Date, he shall be considered to have retired on the first day of the month coincident with or immediately prior to his death and his Beneficiary or estate will receive a benefit in respect of service prior to January 1, 1987, calculated in accordance with Section 6 and payable in the applicable normal or optional form of pension elected by the Member in accordance with Section 8."

Section II.E.17 – Relevant Provisions Extracted from the HBC Defined Benefit Plan

For purposes of interpreting the Past Service Guarantee in Section II.E.9.2, the following definitions and benefit provisions have been extracted from the HBC Defined Benefit Plan:

- “1.1 *Average Earnings* means the average of the Employee’s Annual Earnings received from the Company in the 5-year period immediately preceding his Normal Retirement Date, death or termination of employment, whichever first occurs. In the event that an Employee has not completed 5 years of Continuous Service, then the Average Earnings means the average of the Employee’s Annual Earnings received from the Company over such lesser period of Continuous Service.”
- “1.2 *Old Age Benefit* means the monthly amount of government benefits payable under the Old Age Security Act and the Canada or Quebec Pension Plan, as in effect on the Part B Member’s termination or retirement from Continuous Service, or death.”
- “1.3 *Other Pension Benefits* means the sum of the following:
- (a) the Part B Member’s Retirement Security Plan Pension as defined in the Simpsons Plan; plus
 - (b) the Part B Member’s Profit Sharing Annuity as defined in the Simpsons Plan; plus
 - (c) the proportion of the Part B Member’s Old Age Benefit which will be payable to him or should be payable to him if he applies for and is entitled to receive it, based on the ratio that his years of pensionable service, as defined in the Simpsons Plan, is to 40, and calculated on the basis of applicable legislation in effect at his date of transfer and
- assuming that the Part B Member had continued to contribute to the Canada or Quebec Pension Plan until age 65 at the same rate as he was contributing immediately prior to his transfer of employment.”

“5.1 **Pension At Normal Retirement Date**

Subject to Articles 5.2, 5.6 (*the Maximum Pension provision which has not been reproduced*) and 5.7 (*the Maximum Value provision which has not been reproduced*) of Part B, each Part B Member who retires from Continuous Service on his Normal Retirement Date, shall receive an annual pension, payable in equal monthly instalments, commencing on his Normal Retirement Date, the annual amount of which shall be equal to the sum of the following Sections (a) and (b):

(a) ***Future Service Pension***

Each Part B Member shall receive a future service pension based on his years of Continuous Service (completed months to be computed as twelfths of a year) while a Member, including prior years of Continuous Service purchased by the Member with his additional contributions made in accordance with the terms of the Plan as constituted prior to January 1, 1988, if applicable, equal to the sum of the following:

- (i) 40% of the Part B Member's required contributions made to the Plan pursuant to Article 3.1 of Part B; plus
- (ii) 40% of the Part B Member's additional contributions made to the Plan prior, to January 1, 1988 in respect of such prior years of Continuous Service, if any.

Plus

(b) ***Past Service Pension***

Each Part B Member other than a Regular Part-Time Employee who joined the Plan by January 1, 1988, shall receive a past service pension based on his years of Continuous Service while not a Member, equal to one of the following sub-Sections (i), (ii), (iii) or (iv), as is applicable:

- (i) **Past Service Pension For Members Who Were Employees Of The Hudson's Bay Company On July 1, 1961**
Each Part B Member who was an Employee of the Hudson's Bay Company on July 1, 1961, shall receive a past service benefit equal to 1.125% of his Annual Earnings as at July 1, 1961, multiplied by

the number of completed years of his Continuous Service prior to July 1, 1961;"

(SubSections (ii), (iii) and (iv) are not applicable and have not been reproduced).

"5.2

Supplementary Pension Benefit At Normal Retirement Date

Each Part B Member who retires from Continuous Service on his Normal Retirement Date shall be eligible to receive, in addition to the pension benefits payable under Article 5.1 of Part B, a supplementary pension benefit determined in accordance with one of the following Sections (a), (b), or (c), as is applicable:

(a) ***Supplementary Pension Benefit For Regular Full-Time Employees***

Each Part B Member who is a Regular Full-Time Employee and who retires from Continuous Service at his Normal Retirement Date shall receive a supplementary annual pension benefit equal to the amount by which:

- (i) 2% of the Part B Member's Average Earnings multiplied by the number of years of Continuous Service as a Regular Full-Time

Employee (completed months to be computed as twelfths of a year), to a maximum of 60% of the Member's Average Earnings, less the Part B Member's Old Age Benefit; exceeds

- (ii) the portion of the Part B Member's future service pension that is attributable to his required contributions pursuant to Article 5.1(a) of Part B and the Part B Member's past service pension pursuant to Article 5.1(b) of Part B,

or

(b) *Supplementary Pension Benefit for Members Who Were Employees of Simpsons Limited*

Each Part B Member who was a full-time regular employee of Simpsons Limited, whose full-time regular employment was transferred from Simpsons Limited to the Hudson's Bay Company after December 31, 1979 and who retires without interruption of his Continuous Service to his Normal Retirement Date shall receive a supplementary annual pension benefit equal to the amount by which:

- (i) 2% of the Part B Member's Average Earnings multiplied by the number of years of Continuous Service as a Regular Full-Time Employee of the Hudson's Bay Company (completed months to be computed as twelfths of a year), to a maximum of 60% of the Member's Average Earnings, less the Part B Member's Other Pension Benefits; exceeds
- (ii) the portion of the Part B Member's future service pension that is attributable to his required contributions pursuant to Article 5.1(a) of Part B."

(Section (c) is not applicable and has not been reproduced).

"5.3

Pension At Early Retirement Date:

- (a) Subject to Articles 5.3(b), (c) and (d) of Part B, each Part B Member who elects to retire early from Continuous Service pursuant to Article 4.1 of Part B shall receive an annual pension, payable in equal monthly instalments, commencing on his early retirement date, the amount of which shall be equal to the vested portion of the pension benefit and any supplementary pension benefit accrued to the Member pursuant to Articles 5.1 and 5.2 of Part B to the Member's early retirement date and then reduced to its Actuarial Equivalent amount to reflect early commencement of his pension.
- (b) Notwithstanding the foregoing provisions of Article 5.3(a) of Part B, each Part B Member who elects to retire early from Continuous Service pursuant to Article 4.1 of Part B and who has completed 20 years of Continuous Service at his early retirement date shall have his pension

benefit calculated in accordance with Article 5.3(a) of Part B but reduced by 1/4 of 1% for each complete month by which the Member's early retirement date precedes his Normal Retirement Date.

- (c) In no event shall the early retirement pension payable to a Part B Member under this Article 5.3 of Part B be less than that permitted under applicable laws.
- (d) For the purpose of this Article 5.3 of Part B, the vested portion of the pension benefit shall be determined in accordance with the provisions of Article 7 of Part B, assuming that the Member terminates his Continuous Service on his early retirement date."

"5.4

Pension At Postponed Retirement Date

- (a) Subject to Articles 5.4(b) and (c) of Part B, a Part B Member who postpones his retirement from Continuous Service after his Normal Retirement Date pursuant to Article 5.3 of Part A, shall cease making contributions to the Plan on his Normal Retirement Date and shall thereby cease to accrue further benefits under the Plan. Such a Member shall receive an annual pension, payable in equal monthly instalments commencing on his Normal Retirement Date, equal to the pension accrued to him pursuant to Articles 5.1. and 5.2 of Part B to his Normal Retirement Date.
- (b) A Part B Member employed in the province of Alberta, Manitoba, Ontario or Nova Scotia, who postpones his retirement from Continuous Service after his Normal Retirement Date pursuant to Article 5.3 of Part A and who does not elect to commence payment of his pension benefit, may elect, subject to Articles 5.6 and 5.7 of Part B, to continue making contributions and accruing further benefits under the provisions of Part B of the Plan until the earlier of:
 - (i) the first day of the month coincident with or next following his retirement date;
 - (ii) the last day of the month immediately preceding the Part B Member's 71st birthday; or

- (iii) the date on which the Part B Member has accrued the maximum pension payable under the Plan pursuant to Article 5.6 of Part B.

Provided such Member continues contributing to the Plan after his Normal Retirement Date, he shall receive an annual pension, payable in equal monthly instalments commencing on his postponed retirement date, equal to the pension accrued to him pursuant to Articles 5.1 and 5.2 of Part B, to his postponed retirement date. If such Member does not continue contributing to the Plan after his Normal Retirement Date he shall receive the benefits described in Article 5.4(a) of Part B.”

(Section (c) is not applicable and has not been reproduced).

“7.1

Vesting And Locking-In

(e) *Termination With Manitoba, New Brunswick or Ontario Service*

Where the Continuous Service of a Part B Member is terminated other than by death, disability or retirement and he has to his credit a period of Plan membership while employed in the province of Manitoba, New Brunswick or Ontario, then only in respect of that period of membership, he shall be vested and locked-in to his pension benefits in accordance with the following provisions, in lieu of the vesting and locking-in provisions provided under Article 7.1(a) to (d) inclusive, and regardless of where his Continuous Service terminates:

(Descriptions of the Manitoba and New Brunswick provisions are not applicable and have not been reproduced).

Termination With Ontario Service

A Part B Member whose Continuous Service is terminated other than by death, disability or retirement and who has a period of Plan membership in the province of Ontario, shall be vested, in respect of such period of Plan membership:

- (i) in respect of pension benefits accrued prior to January 1, 1987, upon the completion of at least 10 years of Continuous Service; and

- (ii) in respect of pension benefits accrued on and after January 1, 1987 while employed in the province of Ontario, upon the completion of at least 24 months of Plan membership.

The vested pension benefits of such Part B Member shall be locked-in for purposes of the Plan, except that in respect of pension benefits accrued prior to January 1, 1987, the Part B Member's vested pension benefit shall be locked-in only upon the Part B Member's completion of at least 10 years of Continuous Service or Plan membership and his attainment of age 45."

"8.1 **Surviving Dependent Pension**

If a Part B Member who is a Regular Full-Time Employee dies while in Continuous Service and prior to his actual retirement date, there shall be payable to such Member's Surviving Dependent a Surviving Dependent pension calculated and payable as hereinafter described, provided that:

- (a) no person other than the Surviving Dependent has been designated by the Part B Member as Beneficiary under the Plan; and
- (b) the sum of the Part B Member's age and years of Continuous Service as a Regular Full-Time Employee (completed months to be computed as twelfths of a year) at such Member's date of death totals at least 75.

For the purpose of Article 8 of Part B, a Surviving Dependent means:

- (a) the Spouse of the Part B Member, or
- (b) if there is no surviving Spouse, one or more children of the Part B Member who, in the opinion of the Company, satisfies the definition of dependent children as prescribed pursuant to the provisions of the Canada or Quebec Pension Plan.

In calculating the amount of pension payable to such Member's Surviving Dependent pursuant to this Article 8.1 of Part B, the Part B Member shall be deemed to have retired early and to have elected an Actuarial Equivalent form of his early retirement pension, as calculated in accordance with Article 5.3(a) or (b)

of Part B as applicable, under which the Surviving Dependent receives 75% of the reduced pension the Part B Member would have been entitled to receive had he retired early on the first day of the month immediately preceding his date of death and:

- (a) where the Surviving Dependent is the Part B Member's Spouse, the pension payable to such Spouse under this Article 8.1 of Part B shall cease on the first day of the month immediately preceding the Spouse's death; and
- (b) where the Surviving Dependent is one or more children of the Part B Member, the amount of pension shall:
 - (i) be computed as if there was a Spouse of the same age as the Part B Member on his date of death;
 - (ii) be divided equally among the dependent children; and
 - (iii) cease for each dependent child on the first day of the month immediately preceding the date each such child ceases to qualify as a dependent child, as defined pursuant to this Article 8.1 of Part B.

A Part B Member who is a Regular Full-Time Employee who dies while in Continuous Service and prior to his actual retirement date and who does not meet the condition under this Article 8.1 of Part B will be subject to the provisions of Article 8.2 of Part B.”

“8.2

Death Pilot To Pension Commencement Date

- (d) *Death With Manitoba, New Brunswick Or Ontario Service*

Where a Part B Member who is actively employed by the Company and has to his credit a period of Plan membership while employed in the province of Manitoba, New Brunswick or Ontario or a Terminated Member entitled to a deferred pension in respect of such membership under Article 7.1(e) of Part B dies and prior to the commencement of his pension benefit, then only in respect of that period of membership, such Part B Member's or Terminated Member's Spouse, Beneficiary or estate, as applicable, shall receive, in lieu of the benefits provided under Article

8.2(a) to (c) of Part B inclusive, and regardless of where the Part B Member or Terminated Member dies, the following benefit, as applicable:

(Clauses I and II are not applicable and have not been reproduced).

III. Ontario Service

If the Part B Member or Terminated Member who has completed at least 24 months of P membership at his date of death, dies prior to the commencement of his pension benefit his Spouse, or if the Part B Member or Terminated Member does not have a Spouse or the Spouse's entitlement to a death benefit under the Plan was waived in the manner prescribed under the Act, his Beneficiary or estate shall receive a pre-retirement death benefit equal to the sum of (i) and (ii) below:

- (i) the Part B Member's or Terminated Member's required and any additional contributions made to the Plan to December 31, 1986 with Credited Interest thereon; plus
- (ii) 100% of the Commuted Value of the pension benefit accrued to the Part B Member or Terminated Member in respect of his period of Plan membership while employed in the province of Ontario on and after January 1, 1987."

SEARS CANADA INC.
SEARS REGISTERED RETIREMENT PLAN
DC PROVISIONS

SEARS CANADA INC.

Sears Registered Retirement Plan

III – DC Provisions

Table of Contents

III. DC Provisions

| | |
|---|----|
| SECTION III.1 - CONTRIBUTIONS..... | 1 |
| SECTION III.2 - ACCOUNTS..... | 5 |
| SECTION III.3 - ENTITLEMENT TO BENEFITS..... | 6 |
| SECTION III.4 - PAYMENT OF BENEFITS..... | 7 |
| SECTION III.5 - REQUIREMENTS OF THE PENSION BENEFITS ACT..... | 10 |

Section III.1 - Contributions

III.1.1 Member Contributions

- (1) Subject to Section III.1.3:
 - (a) each Member who is an Employee may contribute to the Plan, by payroll deduction, any whole percentage from 1% to 7% of Earnings, as elected by the Member; and
 - (b) each Member who is an Employee and has an entitlement under the DB Provisions as of June 30, 2008, except those employed in Manitoba and Nova Scotia, may elect 0% contribution but only as of July 1, 2008.
- (2) An election is made by filing with the Company a written notice in the manner prescribed by the Company within the time prescribed by the Company. A Member who fails to make an election under (1) above within the time prescribed is deemed to have elected to contribute 1% of his or her Earnings.
- (3) Contributions made under Section III.1.1(1) shall be allocated to the Member's Account.
- (4) The initial election of a Member who has an entitlement under the DB Provisions to contribute under (1) above will be made effective July 1, 2008. The initial election of other Members to contribute under Section (1) above will be made at the time the Member enrolls in the Plan. Thereafter, a Member may change the percentage of Earnings contributed effective in January of any subsequent year.
- (5) An exception to the annual re-election of contribution rate set out in (4) above will apply so that a Member may change his or her contribution rate with effect within 31 days after:
 - (a) change in employment classification as defined by the Company;

- (b) marriage;
 - (c) one year in a common-law relationship;
 - (d) end of common-law relationship;
 - (e) divorce or legal separation;
 - (f) birth or adoption of a child;
 - (g) change of child custody arrangements;
 - (h) death of a Spouse;
 - (i) change in base earnings as defined by the Company in excess of 10%;
 - (j) commencement of an unpaid leave of absence under Section I.7.1(a) in which case the Member is also able to cease contributing;
 - (k) return from an unpaid leave of absence under Section I.7.1(a) in which case contributions must resume if they were being made before the absence and had not been made during the absence;
 - (l) commencement or return from an approved leave of absence expected to exceed one month in duration, if the leave of absence is not included in Section I.1.7(a);
 - (m) commencement or termination of a period of Disability.
- (6) An exception to the annual re-election of contribution rate set out in (4) above applies if a Member employed in Alberta elects 0% under (1)(b) above, in which case every 6 months from July 1, 2008 the Alberta Member may confirm the 0% or elect to contribute. If the Member elects to contribute, the January re-election schedule again applies to the Member.

- (7) Notwithstanding the foregoing, in order to comply with Section III.3.1, a Member shall cease to make contributions as of the end of the payroll period immediately before December 1 of the calendar year in which the Member attains age 71.
- (8) The Company reserves the right to allow, at its sole discretion, other exceptions to the timing of re-election in circumstances it considers appropriate.
- (9) A Member may transfer funds from another registered pension plan that are locked-in under the Pension Benefits Act or funds that the Member is eligible to transfer under Section II.A.11.1 to his or her Account.

III.1.2 Employer Contributions

- (1) Subject to Sections III.1.3, an Employer will make contributions on behalf of Members who are its Employees in an amount equal to the sum of the amounts determined under Row A and B below:

| | Member Contributions: | Employer Contribution as Percentage of Member's Contribution: |
|-------|------------------------------|--|
| Row A | From 1% to 4% | 100% |
| Row B | From 5% to 7% of Earnings | 50% |

- (2) Contributions by an Employer shall be allocated to the respective Member's Account.
- (3) An Employer's contributions will be made directly by the Employer or in accordance with Section I.6.

III.1.3 Maximum Contributions

- (1) The total contributions made by and on behalf of a Member in any Plan Year will not exceed the lesser of:
- (a) the money purchase limit, as defined under the Income Tax Act; and
 - (b) 18% of the Member's Earnings.

- (2) If a contribution is made which would cause the Plan's registration to be revocable under the Income Tax Act, then, subject to conditions or approval procedures under the Pension Benefits Act, such contributions shall be returned to the contributor.

Section III.2 - Accounts

III.2.1 Member Accounts

The Trustee or appointed record keeper shall maintain an individual Account with respect to each Member who makes contributions under the DC Provisions.

III.2.2 Investment of Accounts

- (1) Each Member's Account shall be invested pursuant to the directions provided by the Member, in the investment options made available under the terms of the Trust Agreement.
- (2) An investment direction shall be made in writing in the manner prescribed by the Company.
- (3) Where a Member fails to make an investment direction the Member's Account shall be invested in a manner established by the Company until an investment direction is obtained from the Member.
- (4) Where a Member whose Continuous Service has terminated fails to make an election for payment of his or her Account under Section III.4.1 that Member's Account shall be invested in a manner established by the Company until an election for payment is obtained from the Member.

Section III.3 - Entitlement to Benefits

III.3.1 Cessation of Continuous Service

- (1) If the Continuous Service of a Member who has an Account terminates for any reason other than death, the Member is entitled to the distribution of his or her Account. The distribution shall be in accordance with the election made by the Member under Section III.4.1.
- (2) Notwithstanding (1) above, a Member's Continuous Service is deemed to have ceased as of the end of the payroll period immediately before December 1 of the calendar year in which the Member attains age 71 and his or her Account shall be distributed before the end of that calendar year. The distribution shall be in accordance with the election made by the Member under Section III.4.1.

III.3.2 Death

- (1) If a Member dies prior to the distribution of the Member's Account under any other of the DC Provisions and the Member does not have a Spouse, the Member's Beneficiary shall receive the Account in the form of a Lump Sum Payment as soon as practicable of the Member's death.
- (2) If a Member dies prior to the distribution of the Member's Account under any other of the DC Provisions and the Member has a Spouse, the Spouse shall receive the Account in the form elected by the Spouse under Section III.4.2.
- (3) A Member's Spouse may waive the Spouse's entitlement under (2) above as prescribed by the Pension Benefits Act, in which event the death benefit is payable to the Member's Beneficiary.

Section III.4 - Payment of Benefits

III.4.1 Payment to a Member

- (1) For distribution of a Member's Account under Section III.3.1, the Member must elect to have his or her Account transferred in accordance with the Pension Benefits Act to:
 - (a) another registered pension plan, provided that the administrator of that pension plan accepts the transfer and agrees to administer the sum as required by the Pension Benefits Act;
 - (b) a Locked-In Retirement Contract; or
 - (c) purchase an annuity from a Licensed Annuities Provider that commences no later than the end of the calendar year in which the Member attains age 71.
- (2) At the time a Member enrolls in the Plan or first makes a contribution under the DC Provisions, the Company may require the Member to elect that his or her Account will be transferred to a Locked-In Retirement Contract when the Member terminates Continuous Service. If a Member fails to make a new election under (1) above after Termination of Continuous Service within the time limit required by the Company and under the Pension Benefits Act, if applicable, then payment shall be made in accordance with the Member's existing election.
- (3) The annuity to which a Member is entitled from his or her Account may be paid in any one of the following forms, to the extent that the form is available from the Licensed Annuities Provider, each of which is payable in equal monthly instalments:
 - (a) a life pension ending with the payment for the month in which the Member's death occurs;
 - (b) a life pension guaranteed for up to 15 years in favour of the Member's Beneficiary;

- (c) a life pension continuing after the death of the Member to the Member's Spouse or former Spouse who shall be named at the time the pension commences, in any percentage of the amount that would have been paid to the Member if the Member had lived up to 100%;
- (d) a life pension combining the features of (b) and (c) above; or
- (e) any of the forms above increased in accordance with any index of economic change that is acceptable for this purpose under the Income Tax Act,

provided that a Member who has a Spouse when the annuity commences must elect the benefit under (c) and provide at least the minimum percentage required under the Pension Benefits Act unless there is a valid waiver by the Spouse as prescribed by the Pension Benefits Act.

In addition, a Member may elect to receive a bridge benefit commencing at the same time the life pension commences and ending on the earlier of the Member's death and the Member attaining age 65, except that for a Member who was employed in Quebec and has a Spouse at pension commencement, 60% of the bridge must continue after the Member's death until the Member would have attained age 65 unless the Spouse waives that entitlement as permitted by the Pension Benefits Act.

III.4.2 Payment to a Spouse

- (1) For distribution of a Member's Account under III.3.2 the Spouse may elect to receive the Account:
 - (a) in the form of a Lump Sum Payment; or
 - (b) to have the Account transferred to a Licensed Annuities Provider for an annuity payable for the lifetime of the Spouse commencing either immediately or deferred until no later than December 1 of the calendar year in which the Spouse attains age 71, or, if later, within one year after the death of the Member,

subject to any requirement as set out in Section III.5.2 of the Pension Benefits Act that (b) must apply.

- (2) The Spouse must elect within the period of time prescribed by the Company or, if applicable, under the Pension Benefits Act. If the Spouse fails to elect, payment shall be made under (a) or unless the Pension Benefits Act requires the distribution to be in accordance with (b).
- (3) If a Spouse is entitled to payment and dies prior to payment, the amount otherwise payable to the Spouse shall be paid as a Lump Sum Payment to the Spouse's estate.

Section III.5 - Requirements of the Pension Benefits Act

III.5.1 Spouse Waiver of Death Benefit

- (1) Notwithstanding Section III.3.2(3) a Spouse cannot waive the entitlement to a pre-retirement death benefit in Section III.3.2(2) if the Member was employed in Manitoba, New Brunswick, Newfoundland or Nova Scotia.
- (2) The Spouse of a Member employed in Alberta who waives the entitlement to a pre-retirement death benefit as provided in Section III.3.2(3) also waives any entitlement to receive benefits as the Member's Beneficiary.

III.5.2 Lump Sum Death Benefit to Spouse

For purposes of Section III.4.2(1) the Pension Benefits Act requires the Spouse to take the benefit under (1)(b) and prohibits payment under (1)(a) in Alberta, British Columbia, Manitoba and, if the death occurs after the Member attains age 65, in Quebec.

III.5.3 Percentage for Joint and Survivor Pension

For purposes of Section III.4.1(3) the percent of survivor pension for a Spouse required by the Pension Benefits Act is:

| | |
|----------|-----------------------------------|
| 60% | All jurisdictions except Manitoba |
| 66 2/3 % | Manitoba |

III.5.4 Time Limit for Member Election

For purposes of Section III.4.1(2) the time limit prescribed by the Pension Benefits Act for a Member to elect payment is:

| | |
|--|--|
| 90 days from receipt of the election form | Alberta, British Columbia, Manitoba, New Brunswick |
| 90 days from termination of Continuous Service | Quebec |
| 60 days from termination of Continuous Service | Newfoundland |
| Not specified | Saskatchewan, Ontario, Nova Scotia |

III.5.5 Time Limit for Spouse Election

For purposes of Section III.4.2(2) the time limit prescribed by the Pension Benefits Act for a Spouse to elect payment is:

| | |
|---|--|
| 90 days from receipt of the election form | Alberta, British Columbia, Ontario, Nova Scotia |
| Not specified | Saskatchewan, Manitoba, New Brunswick, Newfoundland , Quebec |

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Financial Services
Pension Plans Branch

**CERTIFICATE OF AMENDMENT OF
SEARS CANADA INC.**

WHEREAS Sears Canada Inc. (the “**Company**”) maintains the Sears Canada Inc. Registered Retirement Plan (the “**Plan**”), which is registered with the Financial Services Commission of Ontario and the Canada Revenue Agency (Registration Number 0360065);

AND WHEREAS the Company has reserved the right to amend the Plan pursuant to Section I.12.1 of the Plan (Right to Amend or Terminate);

AND WHEREAS the Company wishes to amend the Plan to:

- a) permit the commutation of small benefits in respect of deferred members as permitted under the *Pension Benefits Act* (Ontario);
- b) replace the existing post-retirement indexation formula with an alternative formula that is at least actuarially equivalent;
- c) permit those who terminate employment after their early retirement date to exercise portability;
- d) change the way in which “Continuous Service” (as defined in the Plan) is determined for purposes of benefits on termination of employment; and
- e) make certain housekeeping amendments;

NOW THEREFORE BE IT RESOLVED THAT:

1. Effective December 18, 2005:

- a. Section II.A.10.2 of the Plan (Determination of Benefits of Transferred Members under the Plan) is amended to add “ and as subsequently amended from time to time,” immediately after “at the Transition Date” as it appears in the second sentence of that provision.

2. Effective January 29, 2011:

- a. Section II.A.12.2 of the Plan (Determination of Benefits of Transferred Members under the Plan) is amended to add “ and as subsequently amended from time to time,” immediately after “at the Transition Date” as it appears in the second sentence of that provision.

3. Effective July 1, 2012:

- a. Section I.11.1 of the Plan (Small Pension Amounts) is amended by adding the following paragraph immediately following the table in that section:

"With respect to a Member employed in Ontario who terminated employment with the Company prior to July 1, 2012, and who is entitled to a deferred pension under the Plan, the Company shall pay the Commuted Value of the pension to the Member in a lump-sum cash payment if such pension is eligible for commutation in accordance with the above table. For greater certainty, the YMPE in the year that the Member's employment with the Company terminated shall be used in determining the small pension threshold. In lieu of receiving the lump-sum cash payment, the Member may elect to transfer his or her entitlement in accordance with Section I.11.16 (Transfer to RRSP)."

4. Effective March 2, 2013:

- a. Section II.A.13.2 of the Plan (Determination of Benefits of Transferred Members under the Plan) is amended to add " and as subsequently amended from time to time," immediately after "at the Transition Date" as it appears in the second sentence of that provision.

5. Effective January 1, 2014:

- a. Section II.A.6.1 of the Plan (Annual Review of CPI) shall be deleted in its entirety and replaced with the following:

"II.A.6.1 General

The annual inflation adjustment made to the pensions in payment which are subject to such increases shall be made in accordance with this Section II.A.6."

- b. Section II.A.6.2 of the Plan (Application of Inflation Adjustment) is amended to replace the word "declared" with the word "made" wherever it appears in this section.
- c. Section II.A.6.3 of the Plan (Maximum Inflation Adjustment Calculation) is deleted in its entirety and replaced with the following:

"II.A.6.3 Inflation Adjustment Calculation

The annual inflation adjustment made to pensions in payment in any particular year shall, subject to the Income Tax Act, be 0.5% of the pension benefit of the immediately preceding year."

- d. Section II.A.6.4 of the Plan (Supplementary Inflation Adjustment) is deleted in its entirety.
- e. Section II.A.7.1 of the Plan is amended to add the following at the end of that paragraph:

“Notwithstanding any other provision in this Plan, for purposes of determining the early retirement reduction factor under Section II A.3.3, a Member’s Continuous Service is deemed to be the length of the Member’s completed Continuous Service as if the Member had continued in active employment until his pension commencement date.”

6. Effective March 1, 2014:

- a. Section II.A.7.1 of the Plan (Eligibility for Immediate Pension) is deleted in its entirety and replaced with the following:

“II.A.7.1 Termination after Early Retirement Date

A Member whose Continuous Service ceases for any reason after he is eligible for an early retirement pension is entitled to either:

- (a) an immediate pension calculated according to the formula in Section II.A.3.2; or
- (b) transfer a lump-sum amount equal to the Commuted Value of his pension in accordance with Section II.A.7.6.

For greater certainty, for purposes of determining the early retirement reduction factor under Section II.A.3.3 to be applied to either paragraph (a) or (b), above, as applicable, a Member’s Continuous Service shall be deemed to cease as of such Member’s pension commencement date.

In addition to the foregoing, the Member shall have an immediate entitlement to his excess contributions, if any, calculated and payable in accordance with Section II.A.9.1, including accumulated interest.”

- b. Section II.A.7.2 of the Plan (Eligibility for Termination Benefit) is renamed “Termination Before Early Retirement Date”.
- c. Section II.A.7.6 of the Plan (Transfer of Deferred Pension Termination Benefit) is deleted in its entirety and replaced with the following:

“II.A.7.6 Transfer of Benefits on Termination

A Member who is entitled to an immediate pension according to Section II.A.7.1 or a deferred pension according to Section II.A.7.2 may elect to transfer a lump-sum amount equal to the Commuted Value of his pension to an alternate retirement income funding arrangement subject to and in compliance with the requirements of the applicable Pension Benefits Act and the Income Tax Act, if any and, if such an election to transfer

benefits is made by the Member, the Member has no further claims against the Plan following such a transfer.”

- d. Section II.C.4.1 of the Plan is amended to replace “shall” as it appears in the first sentence of that section with the word “may”.
- e. The following is added as new Section II.C.4.3 of the Plan:

“II.C.4.3 Notwithstanding the foregoing, a Member whose Continuous Service has ceased and who is entitled to an immediate or deferred pension under the Plan may elect to transfer a lump-sum amount equal to the Commuted Value of his pension to an alternate retirement income funding arrangement in accordance with Section II.A.7.6.”

- f. The following is added as new Section II.D.4.3 of the Plan:

“II.D.4.3 Notwithstanding the foregoing, a Member whose Continuous Service has ceased and who is entitled to an immediate or deferred pension under the Plan may elect to transfer a lump-sum amount equal to the Commuted Value of his pension to an alternate retirement income funding arrangement in accordance with Section II.A.7.6.”

7. Effective January 1, 2015:

- a. Section II.A.3.3 of the Plan (Early Retirement Reduction Factor) is amended to add the following as the first paragraph in that section:

“The following early retirement reduction factors apply to Members (i) who terminate employment after attaining age 55 or (ii) whose employment has been terminated involuntarily without cause prior to attaining age 55.

- b. Section II.A.3.3 of the Plan (Early Retirement Reduction Factor) is amended to add the following at the end of that section:

“The foregoing early retirement reduction factors do not apply to Members who have not attained age 55 and who either (i) terminate employment voluntarily or (ii) are terminated from employment involuntarily with cause. The amount of such Member’s pension shall be the Actuarial Equivalent of the deferred pension otherwise commencing on his or her normal retirement date.

- c. Section II.A.7.4 of the Plan (Early Commencement of Termination Benefit) shall be deleted in its entirety and replaced with the following:

“II.A.7.4 Early Commencement of Termination Benefit

In lieu of a deferred pension commencing at the Normal Retirement Date as described in Section II.A.7.2, the Member

may elect to commence receiving a pension on the first day of any calendar month coincident with or following his attainment of age 55 and prior to his Normal Retirement Date. The amount of this pension is calculated in accordance with Sections II.A.3.2 and II.A.3.3, provided that, for the purposes of determining the early retirement reduction factor under Section II.A.3.3, the Member's Continuous Service shall be deemed to cease:

- (a) on the date of pension commencement, for Members who terminate employment involuntarily without cause; and
- (b) on the date of termination of employment, for Members who terminate employment (i) voluntarily or (ii) involuntarily with cause.

- d. Section II.B.8.2 of the Plan (Early Commencement of Totally Termination Benefit) shall be deleted and replaced with the following:

“II.B.8.2 Early Commencement of Total Termination Benefit

In lieu of a deferred pension commencing at the Member's Normal Retirement Date as described under Section II.B.8.1, the Member may elect to commence receiving a pension on the first day of any calendar month coincident with or following his attainment of age 55 and prior to his Normal Retirement Date. The amount of this pension is calculated in accordance with Section II.B.4.1, provided that, for the purposes of determining the early retirement reduction factor, the Member's Continuous Service shall be deemed to cease:

- (c) on the date of pension commencement, for Members who terminate employment involuntarily without cause; and
- (d) on the date of termination of employment, for Members who terminate employment (i) voluntarily or (ii) involuntarily with cause.

Notwithstanding the foregoing, in no event shall the reduction in the Member's pension be less than the minimum early retirement reduction required under the Income Tax Act.”

- e. Section II.C.4.2 of the Plan is deleted in its entirety and replaced with the following:

“II.C.4.2 In lieu of a deferred pension provided under Section II.C.4.1 commencing at the Member's normal retirement date, the Member may elect to commence receiving a pension on the first day of any calendar month coincident with or following his attainment of age 55 and prior to his normal retirement date. The amount of this pension

shall be calculated in accordance with Section II.C.3.1, provided that for the purposes of determining the early retirement reduction, the Member's Continuous Service shall be deemed to cease:

- (e) on the date of pension commencement, for Members who terminate employment involuntarily without cause; and
- (f) on the date of termination of employment, for Members who terminate employment (i) voluntarily or (ii) involuntarily with cause.

In addition to the foregoing, the Member shall be entitled to receive the bridge pension calculated in accordance with Section II.C.3.2"

f. Section II.D.4.2 of the Plan is deleted in its entirety and replaced with the following:

"II.D.4.2 In lieu of a deferred pension provided under Section II.D.4.1 commencing at the Member's normal retirement date, the Member may elect to commence to receive this pension on the first day of any calendar month coincident with or following his attainment of age 55 and prior to his normal retirement date. The amount of this pension shall be calculated in accordance with Section II.D.3.1, provided that for the purposes of determining the early retirement reduction factor, the Member's Continuous Service shall be deemed to cease:

- (g) on the date of pension commencement, for Members who terminate employment involuntarily without cause; and
- (h) on the date of termination of employment, for Members who terminate employment (i) voluntarily or (ii) involuntarily with cause.

In addition to the foregoing, the Member shall be entitled to receive the bridge pension calculated in accordance with Section II.D.3.2."

8. The proper officers of the Company are hereby authorized and directed to file this resolution with the Canada Revenue Agency and the Financial Services Commission of Ontario, together with any other documentation required by such regulatory authorities, and to make such minor revisions as are necessary or desirable to give effect thereto, and to do all acts and things necessary to accomplish the foregoing resolution.

[INTENTIONALLY LEFT BLANK]

CERTIFIED to be a true and complete copy of an amendment to the Sears Canada Inc. Registered Retirement Plan.

DATED this 20th day of JAN, 2014.

SEARS CANADA INC.



Signature



Signature

**Amendment to the
Sears Canada Inc.
Registered Retirement Plan**

February 24, 2009

CERTIFIED to be a true and complete copy of the February 24, 2009 Amendment to the Sears Canada Inc. Registered Retirement Plan of July 1, 2008.

DATED this 24th day of February, 2009



Cathy McConnell

Vice-President, Business Capability and Human Resources



Franco Perugini

Divisional Vice-President and Corporate Secretary

SEARS CANADA INC.

REGISTERED RETIREMENT PLAN

WHEREAS Sears Canada Inc. (the "Corporation") maintains the Sears Canada Inc. Registered Retirement Plan, as amended (the "Plan") and has reserved the right to amend the Plan in accordance with the provisions of Section I.12.1 thereof;

AND WHEREAS the Corporation wishes to change the rate of Employer contributions under the DC Provisions of the Plan and increase the opportunity for members to change their contribution rate election;

NOW THEREFORE the Plan is hereby amended effective as of the beginning of the payroll cycle coincident with or next following April 1, 2009, as applicable to affected Members of the Plan,

1. by deleting Section III.1.1 and replacing it with the following:

Member Contributions

- (1) **Subject to Section III.1.3:**

(a) each Member who is an Employee may contribute to the Plan, by payroll deduction, any whole percentage from 1% to 7% of Earnings, as elected by the Member; and

(b) each Member who is an Employee and has an entitlement under the DB Provisions as of June 30, 2008, except those employed in Manitoba and Nova Scotia, may elect 0% contribution but only as of July 1, 2008.

- (2) An election is made by filing with the Company a written notice in the manner prescribed by the Company within the time prescribed by the Company. A Member who fails to make an election under (1) above within the time prescribed is deemed to have elected to contribute 1% of his or her Earnings.

- (3) Contributions made under Section III.1.1(1) shall be allocated to the Member's Account.

- (4) The initial election of a Member who has an entitlement under the DB Provisions to contribute under (1) above will be made effective July 1, 2008. The initial election of other Members to contribute under Section (1) above will be made at

the time the Member enrolls in the Plan. Thereafter, a Member may change the percentage of Earnings contributed effective at any time.

- (5) Upon commencement of an unpaid leave of absence under Section I.7.1(a) a Member may cease contributing.
- (6) Notwithstanding the foregoing, in order to comply with Section III.3.1, a Member shall cease to make contributions as of the end of the payroll period immediately before December 31 of the calendar year in which the Member attains age 71.
- (7) A Member may transfer funds from another registered pension plan that are locked-in under the Pension Benefits Act or funds that the Member is eligible to transfer under Section II.A.11.1 to his or her Account.

2. by deleting Section III.1.2(1) and replacing it with the following:

- (1) Subject to Section III.1.3, an Employer will make contributions on behalf of Members who are its Employees in the amount determined below:

| Member Contributions: | Employer Contribution as Percentage of Member's Contributions: |
|-----------------------|--|
| From 1% to 7% | 50% |

DATED this 24th day of February, 2009

CERTIFICATE OF AMENDMENT OF
SEARS CANADA INC.

WHEREAS Sears Canada Inc. (the "Company") maintains the Sears Canada Inc. Registered Retirement Plan (the "Plan"), Canada Revenue Agency registration number 0360065;

AND WHEREAS the Company reserved the right to amend the Plan pursuant to Section I.12.1 (Right to Amend or Terminate) of the Plan;

AND WHEREAS pursuant to the applicable provisions of the agreement entered into between the Company and Thomas Cook Canada Inc., certain members of the Plan ("Affected Members") commenced employment with Thomas Cook Canada Inc. effective January 30, 2011;

AND WHEREAS such affected Member commenced participation in the Thomas Cook Canada Registered Pension Plan for Sears Travel Employees (registration number 1235100) (the "Thomas Cook Plan") effective January 30, 2011;

AND WHEREAS the Company desires to amend the Plan to permit the transfer of defined contribution account balances of Affected Members from the Plan to the Thomas Cook Plan;

AND WHEREAS the Company also desires to amend the Plan to confirm the treatment of Affected Members' defined benefit pension entitlement earned while a member of the Plan;

NOW THEREFORE BE IT RESOLVED THAT:

1. Effective January 29, 2011, no further contributions were made to the defined contribution portion of the Plan on behalf of those members whose employment was transferred to Thomas Cook Canada Inc. ("Affected Members"). Effective January 30, 2011, Affected Members of the Plan commenced participation in the Thomas Cook Canada Registered Pension Plan for Sears Travel Employees (registration number 1235100) (the "Thomas Cook Plan"). The account balances of Affected Members of the Plan as of January 29, 2011 continued to be invested in accordance with members' investment elections.
2. Subject to the approval of the applicable regulatory authorities, effective as of January 30, 2011, Affected Members' defined contribution account balances relating to participation in the defined contribution provisions of the Plan determined as of January 29, 2011, (plus investment earnings or losses thereon) shall be transferred from the fund of the Plan to the fund of the Thomas Cook Plan.
3. Effective January 30, 2011, the following new Section II.A.12 (Pension Benefits of Members Who Participated in the Defined Benefit Provisions and Who Transferred to Thomas Cook) shall be added immediately following Section II.A.11 (Special Settlement for Certain Quebec Members):

"Section II.A.12 – Pension Benefits of Members Who Participated in the Defined Benefit Provisions and Who Transferred to Thomas Cook

II.A.12.1 Definitions

The following capitalized terms shall have the meanings respectively for purposes of this Section II.A.12.

- (a) **"Average Industrial Wage"** means the average Canadian weekly wages and salaries, defined as the Industrial Aggregate, as published from time to time by Statistics Canada under the *Statistics Act (Canada)* as measured by CANSIM II Series VI558664.
- (b) **"Average Wage"** for a calendar year, means the Average Industrial Wage for each month over the 12-month period ending on June 30 of the immediately preceding calendar year, divided by 12.
- (c) **"Date of Determination"** means the earlier of a Transferred Member's eventual retirement, death or termination of employment with the Purchaser.
- (d) **"Increase in Average Industrial Wage"** for the calendar year, means the percentage by which the Average Wage in the calendar year exceeds the Average Wage in the immediately preceding calendar year, calculated to the nearest decimal place, subject to a minimum of 0.00%. If the increase is to apply for only part of the calendar year, the increase shall be determined as described but prorated for that part of the calendar year, as applicable.
- (e) **"Purchaser"** means Thomas Cook Canada Inc.
- (f) **"Transition Date"** means January 29, 2011, with respect to each Transferred Member.

Notwithstanding the above, Transferred Members who were on a Company approved leave of absence on the Transition Date shall have a transition date determined at such later time and shall be determined based upon the date the Transferred Member returns from his or her leave of absence or the date his or her employment with the Company ends and he or she is transferred to Thomas Cook Canada Inc.

- (g) **"Transferred Member"** means a former employee of the Company with an entitlement under the DB Provisions of the Plan and whose employment was transferred to the Purchaser pursuant to the terms and provisions of the applicable agreement on the Transition Date and who was accruing benefits under the DC Provisions of the Plan on the day immediately prior to such Transferred Member's Transition Date.

II.A.12.2 Determination of Benefits of Transferred Members Under the Plan

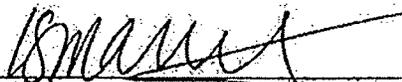
On and after a Transferred Member's Transition Date, such Transferred Member retained an entitlement under the DB Provisions with respect to Pensionable Service Years prior to July 1, 2008. The benefits accrued by the Transferred Members are retained in the Plan and are payable on such Transferred Member's Date of Determination, in accordance with the terms of the Plan at the Transition Date, subject to the following conditions:

- (a) each of the lifetime benefit and the bridge benefit under the Plan, if applicable, shall be determined based on the Transferred Member's Pensionable Service Years, Final Average 3-Year Pensionable Earnings, and Final Average 3-Year YMPE as at such Member's Transition Date, save and except that such benefits shall be increased to reflect increases in Average Industrial Wage for each year (or pro rated portion thereof) from the Transferred Member's Termination Date to the Transferred Member's Date of Determination; and
- (b) the Continuous Service of each Transferred Member shall include the period of employment with the Purchaser from the Member's Transition Date to the Member's Date of Determination except for the purpose of determining Pensionable Service Years, Final Average 3-Year Pensionable Earnings, and Final Average 3-Year YMPE.
- (c) Notwithstanding paragraph (a) above, in the event a Transferred Member terminates his or her employment with the Purchaser prior to September 30, 2011, then the retained entitlement of such Transferred Member under the DB Provisions shall not be increased in accordance with paragraph (a).

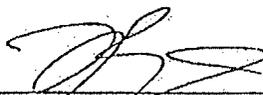
4. The proper officers of the Company are hereby authorized and directed to file this resolution with the Canada Revenue Agency and the Financial Services Commission of Ontario, together with any other documentation required by such regulatory authorities, and to make such minor revisions as are necessary or desirable to give effect thereto, and to do all acts and things necessary to accomplish the foregoing resolutions.

CERTIFIED to be a true and complete copy of the July 25, 2011 Amendment to the Sears Canada Inc. Registered Retirement Plan, of July 1, 2008.

DATED this 25th day of July, 2011



Ismat Mirza, Senior Vice-President
Business Capability and Human Resources



Franco Perugini, Divisional Vice-President
and Corporate Secretary

**CERTIFICATE OF AMENDMENT OF
SEARS CANADA INC.**

WHEREAS Sears Canada Inc. (the "Company") maintains the Sears Canada Inc. Registered Retirement Plan (the "Plan"), which is registered with the Financial Services Commission of Ontario and the Canada Revenue Agency (registration number 0360065);

AND WHEREAS the Company reserved the right to amend the Plan pursuant to Section I.12.1 (Right to Amend or Terminate) of the Plan;

AND WHEREAS the Company wishes to amend the Plan to reflect changes to the Ontario *Pension Benefits Act*, the Manitoba *Pension Benefits Act*, and the federal *Pension Benefits Standards Act, 1985*;

NOW THEREFORE BE IT RESOLVED THAT:

1. Effective May 31, 2010, Section I.2.7 (Continuous Service) is amended by deleting the reference to "52 weeks" and replacing it with "54 weeks".
2. Effective May 31, 2010, the definition of "Spouse" in Section I.2.31 ("Spouse") that applies to Manitoba Members is amended by deleting the last sentence and replacing it with the following:

"For the purpose of pre-retirement death benefits under Sections II.B.9.4 and III.3.2, and joint and survivor pension rights under Sections II.A.5.3(b) and III.4.1(3), a person as defined above shall be deemed not to be the "Spouse" of a Member if:

 - (a) for purposes of Sections II.A.5.3(b) and III.4.1(3), at the time of pension commencement, the Member and such person were living separate and apart by reason of a relationship breakdown; or
 - (b) for purposes of Sections II.B.9.4 and III.3.2, at the time of the Member's death, the Member and such person were living separate and apart by reason of a relationship breakdown."
3. Effective May 31, 2010, Section I.11.1 (Small Pension Amounts) is amended by deleting the table setting out the legislative requirements and replacing it with the following:

| <i>Jurisdiction</i> | <i>Amount of Benefit</i> |
|---------------------|--|
| 1. British Columbia | Annual pension less than 10% of the YMPE, or Commuted Value (excluding excess contributions) less than or equal to 20% of YMPE |
| 2. Alberta | Annual pension less than or equal to 4% of the YMPE or Commuted Value (excluding excess contributions) at date of request if pension is deferred less than or equal to 20% of YMPE |

| | |
|----------------------------|---|
| 3. Saskatchewan | Annual pension less than or equal to 4% of the YMPE or Commuted Value (excluding excess contributions) at date of request if pension is deferred less than or equal to 20% of YMPE |
| 4. Manitoba | Annual pension less than or equal to 4% of the YMPE or Commuted Value (excluding excess contributions) less than 20% of YMPE |
| 5. Ontario | Annual pension less than 2% of the YMPE |
| 6. Quebec | Commuted Value (excluding excess contributions) less than 20% of YMPE |
| 7. Nova Scotia | Annual pension less than or equal to 4% of the YMPE or Commuted Value (excluding excess contributions) less than 10% of YMPE |
| 8. New Brunswick | Annual pension less than 2% of the YMPE (and Member is within 10 years of normal retirement) or Adjusted Commuted Value (adjusted with interest from date of termination to age 65) less than 40% of the YMPE, and the Spouse, if any, consents in the prescribed written form to the payment of the Commuted Value |
| 9. Newfoundland & Labrador | Annual pension less than 4% of the YMPE or Commuted Value (excluding excess contributions) less than 10% of YMPE |
| 10. P.E.I. | Annual pension less than 2% of the YMPE (no legislation) |
| 11. Federal | Annual pension less than 4% of the YMPE |

4. Effective May 31, 2010, Section 1.11.6 (Non-Resident) is amended by adding the following as the last paragraph:

"A Member who was employed in Manitoba whose Continuous Service has ceased, and who is not resident in Canada for purposes of the Income Tax Act may elect to receive his or her entitlement under the Plan in a single cash payment provided:

- (a) such Member's pension has not yet commenced; and
- (b) if the Member has a Spouse, the Spouse has consented to such payment, in the form and manner required by the Pension Benefits Act."

5. Effective May 31, 2010, Section I.11.7 (Short Life Expectancy) is amended by adding the following as the last paragraph:

"If a Member who is employed in Manitoba has a terminal illness or disability resulting in a shortened life expectancy, the Member may elect to receive his or her entitlement under the Plan in a single cash payment or series of cash payments, provided:

- (a) the Member provides the Plan with a written statement by a physician licensed to practice medicine in Canada certifying that the Member has a shortened life expectancy;
- (b) such Member's pension has not yet commenced; and
- (c) If the Member has a Spouse, the Spouse has waived his or her entitlement to a joint and survivor pension in the form and manner required by the Pension Benefits Act."

6. Effective May 31, 2010, the following new section is added immediately following Section I.11.15:

I.11.16 Transfer to RRSP

Where a Member or Spouse is entitled to a lump sum cash payment under the Plan, in lieu of such payment, the Member or Spouse, as applicable, may elect to transfer this amount to a registered retirement savings plan, a registered retirement income fund, or any other retirement vehicle, to the extent permitted under the Pension Benefits Act and the Income Tax Act."

7. Effective May 31, 2010, Section II.B.9.4 (Death Benefits Payable to Spouse) is amended by adding the following immediately following the table:

"Where a Member's Spouse is entitled to a death benefit under this Section II.B.9, the Spouse may waive his or her entitlement in the form and manner prescribed by the Pension Benefits Act, in which case the death benefit is payable to the Member's Beneficiary."

8. Effective May 31, 2010, paragraph (1) of Section III.5.1 (Spouse Waiver of Death Benefit) is amended by deleting the reference to "Manitoba,".

9. Effective December 15, 2010, Section I.11.1 (Small Pension Amounts) is amended by deleting the 11th row (Federal) of the table setting out the legislative requirements and replacing it with the following:

| | |
|-------------|---|
| 11. Federal | Commuted Value (excluding excess contributions) less than 20% of YMPE |
|-------------|---|

10. Effective July 1, 2012, Section I.11.1 (Small Pension Amounts) is amended by deleting the fifth row (Ontario) of the table setting out the legislative requirements and replacing it with the following:

| | |
|------------|---|
| 5. Ontario | Annual pension less than or equal to 4% of the YMPE or Commuted Value (excluding excess contributions) less than 20% of YMPE |
|------------|---|

11. Effective July 1, 2012, Section 1.11.1 (Small Pension Amounts) is amended by deleting the tenth row (P.E.I.) of the table setting out the legislative requirements and replacing it with the following:

| | |
|------------|---|
| 10. P.E.I. | Annual pension less than or equal to 4% of the YMPE or Commuted Value (excluding excess contributions) less than 20% of YMPE (no legislation) |
|------------|---|

12. Effective July 1, 2012, Section 1.12.1 (Right to Amend or Terminate) is amended by deleting the reference to "either in whole or in part", and replacing it with "in whole".
13. The proper officers of the Company are hereby authorized and directed to file this resolution with the Canada Revenue Agency and the Financial Services Commission of Ontario, together with any other documentation required by such regulatory authorities, and to make such minor revisions as are necessary or desirable to give effect thereto, and to do all acts and things necessary to accomplish the foregoing resolutions.

CERTIFIED to be a true and complete copy of an amendment to the Sears Canada Inc. Registered Retirement Plan.

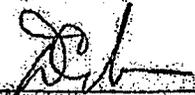
DATED this 1st day of March, 2013.

SEARS CANADA INC.



 Secretary

Signature



Signature

AVP - TOTAL REWARDS



TREASURER

CERTIFICATE OF AMENDMENT OF
SEARS CANADA INC.

WHEREAS Sears Canada Inc. (the "Company") maintains the Sears Canada Inc. Registered Retirement Plan (the "Plan"), Canada Revenue Agency registration number 0360065;

AND WHEREAS the Company reserved the right to amend the Plan pursuant to Section 1.12.1 (Right to Amend or Terminate) of the Plan;

AND WHEREAS pursuant to the applicable provisions of the agreement entered into between the Company and SHS Services Management Inc., certain members of the Plan ("Affected Members") commenced employment with SHS Services Management Inc. effective March 3, 2013;

AND WHEREAS such Affected Member commenced participation in the SHS Services Management Inc. Retirement Savings Plan (registration number 1254119) (the "SHS Plan") effective March 3, 2013;

AND WHEREAS the Company desires to amend the Plan to permit the transfer of defined contribution account balances of Affected Members from the Plan to the SHS Plan;

AND WHEREAS the Company also desires to amend the Plan to confirm the treatment of Affected Members' defined benefit pension entitlement (if applicable) earned while a member of the Plan;

NOW THEREFORE BE IT RESOLVED THAT:

1. Effective March 2, 2013, no further contributions were made to the defined contribution portion of the Plan on behalf of the Affected Members. Effective March 3, 2013, Affected Members of the Plan commenced participation in the SHS Plan. The account balances of Affected Members of the Plan as of March 2, 2013 continued to be invested in accordance with the Affected Members' investment elections.
2. Subject to the approval of the applicable regulatory authorities, effective as of March 3, 2013, Affected Members' defined contribution account balances relating to participation in the defined contribution provisions of the Plan determined as of March 2, 2013, (plus investment earnings or losses thereon) shall be transferred from the fund of the Plan to the fund of the SHS Plan.

3. Effective March 3, 2013, the following new Section II.A.13 (Pension Benefits of Members Who Participated in the Defined Benefit Provisions and Who Transferred to SHS Services Management Inc.) shall be added immediately following Section II.A.12 (Pension Benefits of Members Who Participated in the Defined Benefit Provisions and Who Transferred to Thomas Cook):

"Section II.A.13 – Pension Benefits of Members Who Participated in the Defined Benefit Provisions and Who Transferred to SHS Services Management Inc.

II.A.13.1 Definitions

The following capitalized terms shall have the meanings respectively for purposes of this Section II.A.13.

- (a) **"Average Industrial Wage"** means the average Canadian weekly wages and salaries, defined as the Industrial Aggregate, as published from time to time by Statistics Canada under the *Statistics Act* (Canada) as measured by CANSIM II Series VI558664.
- (b) **"Average Wage"** for a calendar year, means the Average Industrial Wage for each month over the 12-month period ending on June 30 of the immediately preceding calendar year, divided by 12.
- (c) **"Date of Determination"** means the earlier of a Transferred Member's eventual retirement, death or termination of employment with the Purchaser.
- (d) **"Increase in Average Industrial Wage"** for the calendar year, means the percentage by which the Average Wage in the calendar year exceeds the Average Wage in the immediately preceding calendar year, calculated to the nearest decimal place, subject to a minimum of 0.00%. If the increase is to apply for only part of the calendar year, the increase shall be determined as described but prorated for that part of the calendar year, as applicable.
- (e) **"Purchaser"** means SHS Services Management Inc.
- (f) **"Transition Date"** means March 2, 2013, with respect to each Transferred Member.

Notwithstanding the above, Transferred Members who were on a Company approved leave of absence on the Transition Date shall have a transition date determined at such later time and shall be determined based upon the date the Transferred Member returns from his or her leave of absence or the date his or her employment with the Company ends and he or she is transferred to SHS Services Management Inc.

- (g) **"Transferred Member"** means a former employee of the Company with an entitlement under the DB Provisions of the Plan and whose employment was transferred to the Purchaser pursuant to the terms and provisions of the applicable agreement on the Transition Date and who was accruing benefits

under the DC Provisions of the Plan on the day immediately prior to such Transferred Member's Transition Date.

II.A.13.2 Determination of Benefits of Transferred Members Under the Plan

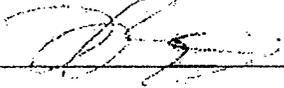
On and after a Transferred Member's Transition Date, such Transferred Member retained an entitlement under the DB Provisions with respect to Pensionable Service Years prior to July 1, 2008. The benefits accrued by the Transferred Members are retained in the Plan and are payable on such Transferred Member's Date of Determination, in accordance with the terms of the Plan at the Transition Date, subject to the following conditions:

- (a) each of the lifetime benefit and the bridge benefit under the Plan, if applicable, shall be determined based on the Transferred Member's Pensionable Service Years, Final Average 3-Year Pensionable Earnings, and Final Average 3-Year YMPE as at such Member's Transition Date, save and except that such benefits shall be increased to reflect increases in Average Industrial Wage for each year (or pro rated portion thereof) from the Transferred Member's Termination Date to the Transferred Member's Date of Determination; and
 - (b) the Continuous Service of each Transferred Member shall include the period of employment with the Purchaser from the Member's Transition Date to the Member's Date of Determination, except for the purpose of determining Pensionable Service Years, Final Average 3-Year Pensionable Earnings, and Final Average 3-Year YMPE.
 - (c) Notwithstanding paragraph (a) above, in the event a Transferred Member terminates his or her employment with the Purchaser prior to September 30, 2013, then the retained entitlement of such Transferred Member under the DB Provisions shall not be increased in accordance with paragraph (a)."
4. The proper officers of the Company are hereby authorized and directed to file this resolution with the Canada Revenue Agency and the Financial Services Commission of Ontario, together with any other documentation required by such regulatory authorities, and to make such minor revisions as are necessary or desirable to give effect thereto, and to do all acts and things necessary to accomplish the foregoing resolutions.

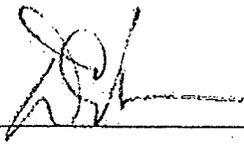
CERTIFIED to be a true and complete copy of an amendment to the Sears Canada Inc. Registered Retirement Plan.

DATED this 7 day of MAY, 2013.

SEARS CANADA INC.



Franco Perugini



Curt Newman

CERTIFICATE OF AMENDMENT OF
SEARS CANADA INC.

WHEREAS Sears Canada Inc. (the "Company") maintains the Sears Canada Inc. Registered Retirement Plan (the "Plan"), which is registered with the Financial Services Commission of Ontario and the Canada Revenue Agency (registration number 0360065);

AND WHEREAS the Company reserved the right to amend the Plan pursuant to Section I.12.1 (Right to Amend or Terminate) of the Plan;

AND WHEREAS the Company wishes to amend the Plan to permit the commutation of post-retirement survivor benefits as permitted under the *Ontario Pension Benefits Act*;

NOW THEREFORE BE IT RESOLVED THAT:

1. Effective July 1, 2012, Section I.11.1 (Small Pension Amounts) is amended by adding the following to the end of the section:

"Where a Member who was employed in Ontario commenced his or her pension under Part II (DB Provisions) on or after July 1, 2012, and, as a consequence of the Member's death, the Member's Spouse is entitled to a survivor pension under Section II.A.5.2(b) or Section II.A.5.3(b), and:

- (a) the annual pension to which the Spouse is entitled is less than or equal to 4% of the YMPE in the year of the Member's death; or
- (b) the Commuted Value of the pension to which the Spouse is entitled is less than 20% of the YMPE in the year of the Member's death.

the survivor pension shall be paid to the Spouse in a single lump-sum cash payment. In lieu of receiving the survivor pension as a lump-sum cash payment, the Spouse may elect to transfer his or her entitlement in accordance with Section I.11.16 (Transfer to RRSP).

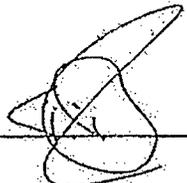
Where a Member who was employed in Ontario commenced his or her pension under Part II (DB Provisions) prior to July 1, 2012, the foregoing paragraph shall not apply unless the Member's Spouse consents to receive his or her entitlement as a lump-sum cash payment. Such consent shall be in writing, signed by the Spouse, in the form and manner specified by the Company from time to time."

2. The proper officers of the Company are hereby authorized and directed to file this resolution with the Canada Revenue Agency and the Financial Services Commission of Ontario, together with any other documentation required by such regulatory authorities, and to make such minor revisions as are necessary or desirable to give effect thereto, and to do all acts and things necessary to accomplish the foregoing resolutions.

CERTIFIED to be a true and complete copy of an amendment to the Sears Canada Inc. Registered Retirement Plan.

DATED this 19 day of June, 2013.

SEARS CANADA INC.

 _____ 

Signature

 _____

Signature

CERTIFICATE OF AMENDMENT OF
SEARS CANADA INC.

WHEREAS Sears Canada Inc. (the "Company") maintains the Sears Canada Inc. Registered Retirement Plan (the "Plan"), which is registered with the Financial Services Commission of Ontario and the Canada Revenue Agency (registration number 0360065);

AND WHEREAS the Company reserved the right to amend the Plan pursuant to Section I.12.1 (Right to Amend or Terminate) of the Plan;

AND WHEREAS the Company wishes to amend the Plan to update the definition of "Spouse"; and to clarify the provisions relating to the division of a member's pension on marriage breakdown or separation;

NOW THEREFORE BE IT RESOLVED THAT:

1. Effective January 1, 2012, Section I.11.10 (Assignability of Benefits on Marriage Breakdown) is deleted in its entirety and replaced with the following:

"Division of Pension on Relationship Breakdown"

Subject to the provisions of the Pension Benefits Act, a Member may, pursuant to the terms of a court order, domestic contract or family arbitration award, assign part of his or her pension benefit under the Plan to his or her Spouse or former Spouse on relationship breakdown.

Notwithstanding the above, where a Member is subject to the laws of a jurisdiction other than Ontario, any assignment or division of the Member's entitlement under the Plan shall be subject to applicable provincial property law and/or pension standards legislation."

2. Effective January 1, 2013, Section I.2.30 (Spouse) is deleted in its entirety and replaced with the following:

"Spouse" in respect of a Member employed in Ontario, means, at the time a determination of marital status is required, a person to whom the Member is:

- (a) married; or
- (b) not married, but with whom the Member is living in a conjugal relationship,
 - (i) continuously for a period of not less than one (1) year, or

(ii) in a relationship of some permanence, if the Member and that person are the natural or adoptive parents of a child, both as defined in the *Family Law Act* (Ontario).

Notwithstanding the above, if a Member and his or her Spouse are living separate and apart on the Member's date of death or date of pension commencement, as applicable:

- (a) the Spouse is not entitled to a pre-retirement death benefit under Section II.A.8 (Benefits on Death), Section II.B.9 (Benefits on Death), Section II.C.5 (Benefits on Death), Section II.D.5 (Benefits on Death), Section II.E.11 (Benefits on Death), or Section III.3.2 (Death); and
- (b) the Member is not required or permitted to elect a joint and survivor annuity under paragraph (b) of Section II.A.5.2 (Normal Form of Pension), paragraph (a) of Section II.B.6.3 (Optional Forms) or paragraph (3) of Section III.4.1 (Payment to a Member).

In addition, the following definitions of "Spouse" apply at the date a determination is required according to the jurisdiction in which the Member is considered to be employed:

In the Federal jurisdiction, "Spouse" means:

- (a) if there is no person described in (b), a person who is married to the Member, including a person who is a party to a void marriage with the Member; or
- (b) a person who has been living with the Member in a conjugal relationship for at least one year, provided the Member is not living with a Spouse as described under paragraph (a) above.

In Alberta, "Spouse" means:

- (a) a person who is married to the Member and has not been living separate and apart from the Member for a period of three (3) or more consecutive years; or
- (b) if there is no person to whom (a) applies, the person who has lived with the Member in a conjugal relationship
 - (i) for a continuous period of at least three (3) years; or
 - (ii) of some permanence, if there is a child of the relationship by birth or adoption.

In British Columbia, "Spouse" means:

- (a) a person who is married to the Member and who has not been living separate and apart from the Member for more than two (2) years immediately preceding the relevant time, or
- (b) if paragraph (a) does not apply, the person who is living and cohabitating with the Member in a marriage-like relationship for the two (2) year period immediately preceding the relevant time, including a relationship between people of the same gender.

Notwithstanding the above:

- (a) where a Spouse has received a share of the Member's pension pursuant to Section II.11.10, that Spouse is not entitled to a pre-retirement death benefit under Section II.A.8 (Benefits on Death), Section II.B.9 (Benefits on Death), Section II.C.5 (Benefits on Death), Section II.D.5 (Benefits on Death), Section II.E.11 (Benefits on Death), or Section III.3.2 (Death); and
- (b) where the Company has received notice of an entitlement to a pension division pursuant to Section II.11.10, the Member is not required or permitted to elect a joint and survivor annuity under paragraph (b) of Section II.A.5.2 (Normal Form of Pension), paragraph (a) of Section II.B.6.3 (Optional Forms) or paragraph (3) of Section III.4.1 (Payment to a Member).

In Manitoba, "Spouse" means:

- (a) a person who is legally married to the Member and is not living separate and apart from the Member;
- (b) a person who not being married to the Member, has, with the Member, registered a common-law relationship under section 13.1 of *The Vital Statistics Act*;
- (c) a person who not being married to the Member, has cohabited with the Member in a conjugal relationship:
 - (i) for a period of at least three (3) years, if either of them is married; or
 - (ii) for a period of at least one (1) year, if neither of them is married.

In New Brunswick, "Spouse" means:

- (a) a person who is legally married to the Member;
- (b) a person who married to the Member by a marriage that is voidable and has not been annulled by a declaration of nullity;
- (c) a person who has gone through a form of marriage with the Member, in good faith, which marriage is void and who has been cohabiting with the Member within the preceding year; or
- (d) a person who has cohabited with the Member in a conjugal relationship continuously for at least two (2) years, immediately preceding the relevant time.

If the Member has a Spouse as described under paragraph (a), (b) or (c) above, that Spouse shall take precedence over any Spouse described under paragraph (d) unless a valid decree, order or judgment bars that Spouse's claim.

In Newfoundland and Labrador, "Spouse" means:

- (a) a person who is not married to the Member and who is cohabitating or has cohabitated continuously with the Member in a conjugal relationship for a period of not less than one (1) year, provided the Member is not married;
- (b) a person who is not married to the Member and who is cohabiting or has cohabited continuously with the Member in a conjugal relationship for a period of not less than three (3) years, if the Member is married;
- (c) if there is no person described in (a) or (b) above, a person who:
 - (i) is married to the Member;
 - (ii) is married to the Member by a marriage that is voidable and has not been annulled by a declaration of nullity; or
 - (iii) has gone through a form of marriage with the Member, in good faith, which marriage is void, and is cohabiting or has cohabited with the Member within the preceding year.

In Nova Scotia, "Spouse" means:

- (a) is legally married to the Member;
- (b) is married to the Member by a marriage that is voidable and has not been annulled by a declaration of nullity;

- (c) has gone through a form of marriage with the Member, in good faith, which marriage is void and:
- (i) who has been cohabiting with the Member; or,
 - (ii) if the person has ceased to cohabit with the Member, has cohabited with the Member within the twelve-month period immediately preceding the relevant time;
- (d) is not married to the Member, and has cohabited with the Member in a conjugal relationship for a period of at least two (2) years, neither of them is married to another person pursuant to (a), (b) or (c) above.

Notwithstanding the above, where a Member and Spouse are living separate and apart:

- (a) the Spouse is not entitled to a pre-retirement death benefit under Section II.A.8 (Benefits on Death), Section II.B.9 (Benefits on Death), Section II.C.5 (Benefits on Death), Section II.D.5 (Benefits on Death), Section II.E.11 (Benefits on Death), or Section III.3.2 (Death), if the Spouse has received a share of the Member's pension pursuant to Section II.11.10; and
- (b) the Member is not required or permitted to elect a joint and survivor annuity under paragraph (b) of Section II.A.5.2 (Normal Form of Pension), paragraph (a) of Section II.B.6.3 (Optional Forms) or paragraph (3) of Section III.4.1 (Payment to a Member).

In Prince Edward Island, "Spouse" has the same meaning as for Members who are employed in Ontario.

In Quebec, "Spouse" means:

- (a) a person who is married to, or in a civil union with, the Member; or
- (b) a person who has been living in a conjugal relationship with the unmarried Member, whether they are of opposite or same sex, for at least three (3) years, or, in the following cases, for at least one (1) year:
 - (i) at least one child is born, or to be born, of their union;
 - (ii) they have adopted, jointly, at least one child while living together in a conjugal relationship; or
 - (iii) one of them has adopted at least one child who is the child of the other, while living together in a conjugal relationship.

A person is not eligible for Spouse status if the Spouse and member divorce, annul their marriage, separate from bed and board or end their conjugal relationship, as applicable, unless the Member notifies the plan administrator that the Spouse's entitlement is to continue.

In Saskatchewan, "Spouse" means:

- (a) the person who is married to the Member; or
- (b) if the Member is not married, the person with whom the Member has been cohabiting continuously as a spouse for at least one (1) year prior to the relevant time.

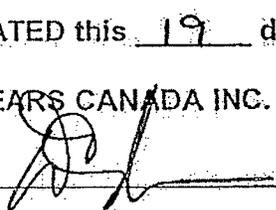
For greater certainty, the foregoing definitions of "Spouse" apply in determining death benefits payable under GRIP for service prior to January 1, 1987."

3. Effective January 1, 2013, Section 1.2.31 (Spouse) is deleted in its entirety, and the remaining provisions of Section 1.2 (Definitions) are renumbered accordingly.
4. The proper officers of the Company are hereby authorized and directed to file this resolution with the Canada Revenue Agency and the Financial Services Commission of Ontario, together with any other documentation required by such regulatory authorities, and to make such minor revisions as are necessary or desirable to give effect thereto, and to do all acts and things necessary to accomplish the foregoing resolutions.

CERTIFIED to be a true and complete copy of an amendment to the Sears Canada Inc. Registered Retirement Plan.

DATED this 19 day of June, 2013.

SEARS CANADA INC.


Signature

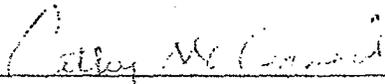

Signature

Sears Canada Inc.
Registered Retirement Plan

As Amended and Restated
as at July 1, 2008

CERTIFIED to be a true and complete copy of the Sears Canada Inc. Registered Retirement Plan as at July 1, 2008

DATED this 10th day of April, 2008

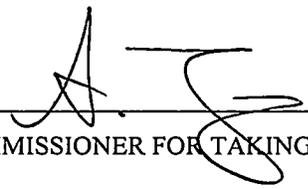


Cathy McConnell
Vice-President, Business Capability and Talent Management



Franco Perugini
Divisional Vice-President and Corporate Secretary

This is **Exhibit "H"**
referred to in the Affidavit of William Turner
sworn before me this 23rd day of July, 2018.



A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

LSO #70104K



Actuarial Valuation as at December 31, 2015 for
Sears Canada Inc. Registered Retirement Plan

Regulatory Registration Number: 0360065

September 2016

Table of Contents

| | |
|--|-----------|
| Executive Summary | 3 |
| Section 1: Introduction | 6 |
| Section 2: Going Concern Valuation Results | 9 |
| Section 3: Solvency Valuation Results | 15 |
| Section 4: Hypothetical Wind Up Valuation Results | 19 |
| Section 5: Contribution Requirements | 21 |
| Section 6: Defined Contribution Component of the Plan | 25 |
| Section 7: Actuarial Certificate | 26 |
| Appendix A: Glossary of Terms | 29 |
| Appendix B: Assets | 33 |
| Appendix C: Membership Data | 37 |
| Appendix D: Going Concern Assumptions and Methods | 43 |
| Appendix E: Solvency and Hypothetical Wind Up Assumptions and Methods | 55 |
| Appendix F: Summary of Plan Provisions | 61 |
| Appendix G: Administrator Certification | 67 |

Executive Summary

An actuarial valuation has been prepared for the Sears Canada Inc. Registered Retirement Plan (the "Plan") as at December 31, 2015 for the primary purpose of establishing a funding range in accordance with legislative requirements for the Plan until the next actuarial valuation is performed. This section provides an overview of the important results and the key valuation assumptions which have had a bearing on these results. The next actuarial valuation for the purposes of developing funding requirements should be performed no later than as at December 31, 2018.

Summary of Principal Results

Financial Position

| December 31, 2015 (000's) | Going Concern | Solvency | Hypothetical Wind Up |
|-------------------------------------|----------------------|---------------------------|---------------------------------|
| Assets | \$ 1,141,970 | \$ 1,136,970 ¹ | \$ 1,136,970 ¹ |
| Liabilities | <u>1,112,034</u> | <u>1,338,298</u> | <u>1,403,775</u> |
| Financial position | \$ 29,936 | \$ (201,328) | \$ (266,805) |
| Adjustments ² | <u>(1,060)</u> | <u>62,753</u> | <u>0</u> |
| Surplus/(Deficit) | \$ 28,876 | \$ (138,575) | \$ (266,805) |
| | | | |
| December 31, 2013 (000's) | Going Concern | Solvency | Hypothetical Wind Up |
| Assets | \$ 1,301,497 | \$ 1,296,497 ¹ | \$ 1,296,497 ¹ |
| Liabilities | <u>1,286,852</u> | <u>1,372,902</u> | <u>1,429,543</u> |
| Financial position | \$ 14,645 | \$ (76,405) | \$ (133,046) |
| Adjustments ² | <u>(15,000)</u> | <u>48,670</u> | <u>0</u> |
| Surplus/(Deficit) | \$ (355) | \$ (27,735) | \$ (133,046) |

Legislative Ratios

| | December 31, 2015 | December 31, 2013 |
|----------------|--------------------------|--------------------------|
| Solvency ratio | 0.85 | 0.95 |
| Transfer ratio | 0.81 | 0.90 |

¹ Net of estimated wind up expenses of \$5,000,000

² Adjustments include prior year credit balance, and solvency asset adjustments, where applicable

Defined Contribution Provision

| <i>(000's)</i> | December 31, 2015 | December 31, 2013 |
|--|-------------------|-------------------|
| Account balance | \$ 147,028 | \$ 161,269 |
| Required member contributions ¹ | \$ 12,200 | \$ 16,000 |
| Company normal cost | \$ 6,100 | \$ 8,000 |

Contribution Requirements

Considering the funding and solvency status of the Plan, the Company contributions with effect for the three-year period following December 31, 2015, and those for the prior three-year period following the December 31, 2013 report, which are within the range of minimum and maximum contribution amounts as outlined in Section 5 and in accordance with legislative requirements, prior to application of the prior year credit balance ("PYCB"), are as follows:

| <i>(000's)</i> | December 31, 2015 | December 31, 2013 |
|-----------------------------------|-------------------|-------------------|
| Year 1 | | |
| Company normal cost | \$ 0 | \$ 0 |
| Special payments ² | <u>13,680</u> | <u>13,940</u> |
| Total Company Contribution | \$ 13,680 | \$ 13,940 |
| Year 2 | | |
| Company normal cost | \$ 0 | \$ 0 |
| Special payments | <u>44,220</u> | <u>20,240</u> |
| Total Company Contribution | \$ 44,220 | \$ 20,240 |
| Year 3 | | |
| Company normal cost | \$ 0 | \$ 0 |
| Special payments | <u>44,220</u> | <u>20,240</u> |
| Total Company Contribution | \$ 44,220 | \$ 20,240 |

¹ Estimated by previous year's contribution, increased by the average assumed rate of salary increase

² In accordance with Regulation, the Company decided to defer new going concern and solvency special payments established as at December 31, 2015 and at December 31, 2013 (the last valuation date) by 12 months. The Company also elected temporary funding relief option 4 as at December 31, 2013, and temporary funding relief option 6 at December 31, 2015, to consolidate existing solvency payments into a new five-year payment schedule.

Key Assumptions

The principal assumptions to which the valuation results are most sensitive are outlined in the following table.

| December 31, 2015 | Going Concern | Solvency/Hypothetical Wind Up |
|----------------------------------|---|--|
| Discount rate | 4.90% per year | Annuity purchases: 2.95% per year Transfers: 2.10% per year for 10 years, 3.70% per year thereafter |
| Postretirement pension increases | 0.50% per year | 0.50% per year (for HWU only) |
| Pensionable earnings | 3.00% per year, plus merit | Not applicable |
| Mortality table | 2014 Canadian Private Sector Pensioners' Mortality Table ("CPM2014Priv") combined with mortality improvement scale CPM-B (sex-distinct) | 2014 Canadian Pensioners' Mortality Table ("CPM2014") combined with mortality improvement scale CPM-B (sex-distinct) |
| Retirement Rates | | |
| Active and disabled members | Rates by age | Age that produces the highest lump-sum value |
| Deferred vested members | Age member elected at termination | Age member elected at termination |
| December 31, 2013 | Going Concern | Solvency/Hypothetical Wind Up |
| Discount rate | 5.00% per year | Annuity purchases: 3.80% per year Transfers: 3.00% per year for 10 years, 4.60% per year thereafter |
| Postretirement pension increases | 0.50% per year | 0.50% per year (for HWU only) |
| Pensionable earnings | 3.00% per year, plus merit | Not applicable |
| Mortality table | CPM2014Priv combined with mortality improvement scale CPM-B (sex-distinct rates, with pension size adjustment factors M=1.026, F=1.041) | 1994 Uninsured Pensioner Mortality Table with generational mortality improvements using Scale AA (sex-distinct) |
| Retirement rates | | |
| Active and disabled members | Rates by age | Age that produces the highest lump-sum value |
| Deferred vested members | Age member elected at termination | Age member elected at termination |

Section 1: Introduction

Purpose and Terms of Engagement

We have been engaged by Sears Canada Inc., and hereafter referred to as the "Company", to conduct an actuarial valuation of the Plan, registered in Ontario, as at December 31, 2015 for the general purpose of determining the minimum and maximum funding contributions required by pension standards, based on the actuarial assumptions and methods summarized herein. More specifically, the purposes of the valuation are to:

- Determine the financial position of the Plan on a going concern basis as at December 31, 2015;
- Determine the financial position of the Plan as at December 31, 2015 on a solvency and hypothetical wind up basis;
- Determine the funding requirements of the Plan as at December 31, 2015; and
- Provide the necessary actuarial certification required under the *Pension Benefits Act* and the *Income Tax Act*.

The Plan has defined benefit and defined contribution provisions. The defined contribution provision is addressed in Section 6. The rest of the report is in respect of the defined benefit provision unless otherwise indicated.

The results of this report may not be appropriate for accounting purposes or any other purposes not listed above.

The next required valuation will be as at December 31, 2018.

Temporary Funding Relief

On June 3, 2016, Ontario Regulation 161/16 was filed, which extends the temporary funding relief measures adopted by the Government of Ontario in 2009 and 2012 for an additional three years, i.e., for valuation reports dated in the three-year period starting on December 31, 2015. The regulation allows for the following:

- Temporary Funding Relief Option 6 – Consolidation of existing solvency special payments established prior to December 31, 2015 into a new five-year payment schedule;
- Temporary Funding Relief Option 7 – Extending the payment schedule to a maximum of 10 years for any new solvency deficiency identified in the first report filed during the period covered by the funding relief. This option requires consent of the plan beneficiaries.

In accordance with the regulation, the Company has elected temporary funding relief option 6 as at December 31, 2015.

Summary of Changes Since the Last Valuation

The last such actuarial valuation in respect of the Plan was performed as at December 31, 2013. Since the time of the last valuation, we note that the following events have occurred:

- As a result of the Canadian Institute of Actuaries (“CIA”) study of Canadian pensioner mortality levels and trends, the mortality assumption used for the going concern valuation of the Plan as of December 31, 2013 was updated to reflect the 2014 Canadian Private Sector Pensioners’ Mortality Table (“CPM2014Priv”) combined with mortality improvement scale CPM-B, and size adjustment factors of 102.6% for males, and 104.1% for females.

Since the last valuation, we performed a mortality study that analyzed the Plan’s experience from 2009 to 2014. The results of the mortality study indicate that the CPM2014Priv table without size adjustment factors is appropriate for this Plan’s population. We have therefore updated the mortality assumption this valuation, resulting in an increase in the Plan’s going concern liabilities.

- Effective March 1, 2014, any member who terminates employment and is eligible for an immediate pension at termination, can elect to transfer out the commuted value of his pension entitlement to another locked-in retirement savings vehicle in lieu of receiving an immediate or deferred pension from the Plan, subject to provincial legislative restrictions.
- Effective January 1, 2015, members who voluntarily terminate prior to attainment of age 55 (or involuntarily terminate with cause) will receive the actuarially equivalent value of their pension at age 65 if they choose to retire prior to age 65.
- Effective October 1, 2015, the commuted value basis prescribed under Section 3500 (Pension Commuted Values) of the CIA Standards of Practice was updated, including the use of the new promulgated mortality table and projection scale for all commuted values i.e. the CPM2014 combined with mortality improvement scale CPM-B. This basis will be used for calculating commuted values for the purposes of subsection 42(1) of the *Pension Benefits Act*. This change has been reflected in this valuation.
- The solvency and hypothetical wind up assumptions guidance published by the CIA on November 3, 2015 for valuations with effective dates on or after September 30, 2015, recommended the use of the new promulgated mortality table and projection scale for the annuity purchase proxy basis. The solvency and hypothetical wind up results at December 31, 2015 contained in this report reflect this change.

Company Information and Inputs

In order to prepare our valuation, we have relied upon the following information:

- The previous valuation report as at December 31, 2013;
- Membership data compiled as at December 31, 2015 by the Company;
- Asset data taken from the Plan’s audited financial statements; and
- A copy of the latest Plan text and amendments up to and including December 31, 2015.

Furthermore, our actuarial assumptions and methods have been chosen to reflect our understanding of the Company’s desired funding objectives with due respect to accepted actuarial practice and regulatory constraints.

Subsequent Events

As of the date of this report, we have not been made aware of any subsequent events which would have an effect on the results of this valuation. However, the following points should be noted in this regard:

- Actual experience deviating from expected after December 31, 2015 will result in gains or losses which will be reflected in the next actuarial valuation report.
- To the best of our knowledge, the results contained in this report are based on the regulatory and legal environment in effect at the date of this report and do not take into consideration any potential changes that may be currently under review. To the extent that actual changes in the regulatory and legal environment transpire, any financial impact on the Plan as a result of such changes will be reflected in future valuations.

Section 2: Going Concern Valuation Results

Going Concern Financial Position of the Plan

The going concern valuation provides an assessment of the Plan's financial position at the valuation date on the premise that the Plan continues on into the future indefinitely.

The selection of the applicable actuarial assumptions and methods reflect the Plan's funding objectives, as communicated by the Company, actuarial standards of practice, and pension standards.

On the basis of the plan provisions, membership data, going concern assumptions and methods, and asset information described in the Appendices, the going concern financial position of the Plan as at December 31, 2015 is shown in the following table. The results as at December 31, 2013 are also shown for comparison purposes.

Going Concern Financial Position

| (000's) | December 31, 2015 | December 31, 2013 |
|-------------------------------------|---------------------|---------------------|
| Actuarial Value of Assets | \$ 1,141,970 | \$ 1,301,497 |
| Going Concern Liabilities | | |
| Active and disabled members | \$ 188,205 | \$ 333,474 |
| Transferred members | 9,160 ¹ | 13,353 ¹ |
| Suspended members | 8,424 | 16,746 ² |
| Deferred vested members | 16,824 | 30,068 |
| Retired members and beneficiaries | <u>889,421</u> | <u>893,211</u> |
| Total Liabilities | \$ 1,112,034 | \$ 1,286,852 |
| Going Concern Position | \$ 29,936 | \$ 14,645 |
| Prior year credit balance | <u>(1,060)</u> | <u>(15,000)</u> |
| Surplus/(Unfunded Liability) | \$ 28,876 | \$ (355) |

The Plan ceased defined benefit service accrual effective July 1, 2008. As such, there is no normal cost for the Plan as of December 31, 2013 or December 31, 2015.

¹ Consists of members transferred to: JP Morgan as of December 18, 2005 and January 1, 2006; and Thomas Cook Travel as of January 30, 2011

² Included members transferred to SHS Services Management Inc. as of March 3, 2013, and were subsequently terminated in December 2013 as a result of the bankruptcy of SHS Services Management Inc.

Change in Financial Position

During the period from December 31, 2013 to December 31, 2015, the going concern financial position of the Plan changed from a surplus of \$14,645,000 to a surplus of \$29,936,000. The major components of this change are summarized in the following table.

Reconciliation of the Going Concern Financial Position for the Period from December 31, 2013 to December 31, 2015

| <i>(000's)</i> | 2014 | 2015 |
|---|------------------|---------------------|
| Surplus/(Unfunded Liability) as at January 1 | \$ 14,645 | \$ 34,861 |
| Company special payments in inter-valuation period | 0 ¹ | 26,987 ² |
| Expected interest | <u>732</u> | <u>2,243</u> |
| Expected Surplus/(Unfunded Liability) as at December 31 | \$ 15,377 | \$ 64,091 |
| Change in surplus/(unfunded liability) due to experience gains/(losses) arising from: | | |
| Investment earnings greater/lower than expected | 39,261 | 1,360 |
| Salary increases lower/greater than expected | 2,743 | (1,678) |
| Retirement experience | (1,693) | (6,118) |
| Termination experience | (31,583) | (5,856) |
| Mortality experience | (692) | (143) |
| Net gain/(loss) due to other experience and miscellaneous items | <u>683</u> | <u>(1,295)</u> |
| Surplus/(Unfunded Liability) After Experience Gains/(Losses) as at December 31 | \$ 24,096 | \$ 50,361 |
| Change in liabilities due to change in economic assumptions | (3,845) | (12,385) |
| Change in liabilities due to change in demographic assumptions | 0 | (8,040) |
| Change in liabilities due to plan amendments | <u>14,610</u> | <u>0</u> |
| Surplus/(Unfunded Liability) as at December 31 | \$ 34,861 | \$ 29,936 |

¹ The Company prefunded the required contribution for 2014 of \$13,940,000 through a contribution of \$15,000,000 made in December 2013. The prepayment was held as a PYCB in the valuation report and financial position at December 31, 2013.

² Includes contributions of \$6,747,000 made in the first 120 days of 2016 and held as in-transit at December 31, 2015

Discussion of Changes in Assumptions

Comment Regarding Experience

In the reconciliation of the going concern financial position of the Plan for the period since December 31, 2013, the impact of the change in assumptions is shown in 2014 and 2015. The numbers are presented in this way for consistency with the valuation report that was prepared as at December 31, 2014 for management purposes which was not filed with Financial Services Commission of Ontario or Canada Revenue Agency.

The experience gains and losses in each year are measured against the assumptions at December 31 of each of these interim valuations. Showing the impact of the change in assumptions in this manner is consistent with management reports and would have no material impact on the overall assumption change experience. The changes made to the assumptions during the inter-valuation period are summarized below.

Economic Assumptions

The following assumptions were changed during the two-year valuation period:

- The nominal discount rate was reduced from 5.00% to 4.90% per year at December 31, 2015.
- The inflation assumption was reduced from 2.50% to 2.25% per year at December 31, 2015.
- The assumed rate of increase of the YMPE and the maximum pension limit was reduced from 3.00% to 2.75% per year at December 31, 2015.
- The interest rates used to value members' benefits on termination in the going concern valuation are based on the rate used to determine commuted values for terminations in December of that year. Therefore, the non-indexed interest rates to value this termination benefit were updated each year as follows:
 - December 31, 2014: changed from 3.00% per year for 10 years and 4.60% per year thereafter to 2.50% per year for 10 years and 3.80% per year thereafter.
 - December 31, 2015: changed to 2.10% per year for 10 years and 3.70% per year thereafter.

In combination, these changes in assumptions increased the going concern liabilities by \$16,230,000.

Demographic Assumptions

As a result of the CIA study of Canadian pensioner mortality levels and trends, the mortality assumption used for the going concern valuation of the Plan as of December 31, 2013 was updated to reflect the CPM2014Priv table combined with mortality improvement scale CPM-B, and size adjustment factors of 102.6% for males, and 104.1% for females.

Since the last valuation, we performed a mortality study that analyzed the Plan's experience from 2009 to 2014. The results of the mortality study indicate that the CPM2014Priv table without size adjustment factors is appropriate for this Plan's population. The change in assumption increased the going concern liabilities by \$8,040,000.

Discussion of Plan Amendments

This valuation reflects the following plan amendments which came into effect during the two-year valuation period:

- Effective January 1, 2015, members who voluntarily terminate prior to attainment of age 55 (or involuntarily terminate with cause) will receive the actuarially equivalent value of their pension at age 65 if they choose to retire prior to age 65.

This plan amendment decreased the going concern liabilities by \$14,610,000.

Discussion of Other Experience

Investment Experience

The assumed rate of return for going concern valuation purposes was 5.00% per year. The actual return (net of fees and expenses) was as follows:

| Year | Actual Return |
|-------------|----------------------|
| 2014 | 8.3% |
| 2015 | 5.2% |

This resulted in a net gain of \$39,261,000 and \$1,360,000 in 2014 and 2015, respectively.

Salary Experience

The liability-weighted average increases in pensionable earnings in 2014 and 2015 were 2.05%, and 4.08%, respectively. The average expected salary increase for the active population was approximately 3.0% per year. Actual increases lower than expected in 2014, and higher than expected in 2015 resulted in a net actuarial gain to the Plan of \$2,743,000 in 2014, and a net actuarial loss of \$1,678,000 in 2015.

Retirement Experience

Effective March 1, 2014, any member who terminates employment and is eligible for an immediate pension at termination, can elect to transfer out the commuted value of his pension entitlement to another locked-in retirement savings vehicle in lieu of receiving an immediate pension from the Plan. The impact of retirement eligible members electing to transfer out their commuted value, combined with the difference between the assumed rate at which members retire versus actual experience, resulted in a total net actuarial loss to the Plan of \$7,811,000 over the two-year period.

Termination Experience

The termination experience during the two year period includes the impact of business restructurings and store closures which occurred during 2013 and 2014 and affected approximately 1639 members of the DB Component of the Plan. The impact of more terminations than expected, largely due to the business transformations and store closures, resulted in a total termination loss of \$37,439,000 over the two-year period.

Going Concern Valuation Sensitivity Results

In accordance with the CIA Standards of Practice specific to pension plans that became effective December 31, 2010, the table below presents the sensitivity of the going concern liabilities using a discount rate 1% lower than that used for the going concern valuation.

| (000's) | Valuation Basis December 31, 2015 | Based on Rate of 1% Lower | Effect | |
|---------------------------|--------------------------------------|------------------------------|------------|-------|
| | | | \$ | % |
| Going concern liabilities | \$ 1,112,034 | \$ 1,239,061 | \$ 127,027 | 11.4% |

Note that using a discount rate 1% higher than that assumed would result in a comparable reduction in the Plan's going concern liabilities and normal cost.

Section 3: Solvency Valuation Results

Solvency Financial Position of the Plan

The solvency valuation is a financial assessment of the Plan that is required by the *Pension Benefits Act* and is performed in accordance with requirements prescribed by that legislation. It is intended to provide an assessment of the Plan's financial position at the valuation date on the premise that certain obligations as prescribed by the *Pension Benefits Act* are settled on the valuation date for all members.

On the basis of the plan provisions, membership data, solvency assumptions and methods and asset information described in the Appendices, as well as the requirements of the *Pension Benefits Act*, the solvency financial position of the Plan as at December 31, 2015 is shown in the following table. The solvency financial position of the Plan as at December 31, 2013 is shown for comparison purposes.

Solvency Financial Position

| (000's) | December 31, 2015 | December 31, 2013 |
|--------------------------------------|---------------------|---------------------|
| Assets | | |
| Solvency assets | \$ 1,141,970 | \$ 1,301,497 |
| Estimated wind up expenses | <u>(5,000)</u> | <u>(5,000)</u> |
| Total Assets | \$ 1,136,970 | \$ 1,296,497 |
| Solvency Liabilities | | |
| Active and disabled members | \$ 248,462 | \$ 383,055 |
| Transferred members | 12,254 ¹ | 13,927 ¹ |
| Suspended members | 13,039 | 19,496 ² |
| Deferred vested members | 23,193 | 34,506 |
| Retired members and beneficiaries | <u>1,041,350</u> | <u>921,918</u> |
| Total Liabilities | \$ 1,338,298 | \$ 1,372,902 |
| Solvency Position | \$ (201,328) | \$ (76,405) |
| Prior year credit balance | (1,060) | (15,000) |
| Solvency asset adjustment | 63,813 | 63,670 |
| Solvency liability adjustment | <u>0</u> | <u>(0)</u> |
| Solvency Surplus/(Deficiency) | \$ (138,575) | \$ (27,735) |
| | | |
| Solvency ratio | 0.85 | 0.95 |

¹ Consists of members transferred to: JP Morgan as of December 18, 2005 and January 1, 2006; and Thomas Cook Travel as of January 30, 2011

² Included members transferred to SHS Services Management Inc. as of March 3, 2013, and were subsequently terminated in December 2013 as a result of the bankruptcy of SHS Services Management Inc.

Solvency Concerns

A report indicates solvency concerns under the *Pension Benefits Act* if the ratio of the solvency assets to solvency liabilities is less than 0.85.

Where a report indicates solvency concerns, the effective date of the next valuation that needs to be filed under the *Pension Benefits Act* is one year from the valuation date of the valuation that gave rise to the solvency concerns.

Since the ratio of solvency assets to solvency liabilities (\$1,141,970,000 / \$1,338,298,000) is equal to 0.85, this report does not indicate solvency concerns.

Solvency Asset Adjustment

The present value of scheduled special payments for solvency valuation purposes has been calculated by discounting the annual special payments to be remitted up to the end of their amortization period (to a maximum of six years), at the smoothed solvency discount rate of 2.80% per year compounded monthly in arrears determined proportionately by the solvency discount rates used to settle the solvency liabilities.

| Nature of Deficiency | Effective Date | End Date | Annual Special Payment (000's) | Present Value as of December 31, 2015 (000's) |
|--|--------------------------------|-------------------|-----------------------------------|--|
| Solvency | December 31, 2013 ¹ | December 31, 2018 | \$ 13,903 | \$ 39,982 |
| Solvency | December 31, 2014 ² | December 31, 2019 | \$ 6,300 | <u>23,831</u> |
| Present Value of Special Payments | | | | \$ 63,813 |

¹ In accordance with Regulation, the Company elected temporary funding relief option 4 as at December 31, 2013

² In accordance with Regulation, the Company decided to defer new going concern and solvency special payments established as at December 31, 2013 by 12 months

Solvency Valuation Sensitivity Results

In accordance with the CIA Standards of Practice specific to pension plans that became effective December 31, 2010, the table below presents the sensitivity of the solvency liabilities to using a discount rate of 1% lower than that used for the solvency valuation.

| (000's) | Valuation Basis December 31, 2015 | Based on Rate of 1% Lower | Effect | |
|----------------------|--------------------------------------|------------------------------|------------|-------|
| | | | \$ | % |
| Solvency liabilities | \$ 1,338,298 | \$ 1,504,555 | \$ 166,257 | 12.4% |

Note that using a discount rate 1% higher than that assumed would result in a comparable reduction in the solvency liabilities.

Incremental Cost on a Solvency Basis

The incremental cost on a solvency basis represents the present value at December 31, 2015 of the expected aggregate change in the solvency liabilities between December 31, 2015 and the next calculation date, i.e. December 31, 2018. Appendix E gives more details on the calculation methodology and on assumptions.

Based on this methodology and on these assumptions, the incremental cost on a solvency basis, for the period from December 31, 2015 to December 31, 2018, is \$(12,396,100).

| | 2016 | 2017 | 2018 |
|--------------------------------------|----------------|----------------|----------------|
| Incremental cost on a solvency basis | \$ (5,086,500) | \$ (3,985,600) | \$ (3,324,000) |

Pension Benefits Guarantee Fund ("PBGF")

The development of the PBGF Assessment Base is as follows:

| PBGF Assessment Base | December 31, 2015 |
|---|--------------------------|
| (1) Solvency assets | \$ 1,141,970,000 |
| (2) PBGF liabilities | \$ 813,092,000 |
| (3) Solvency liabilities | \$ 1,338,298,000 |
| (4) Ontario asset ratio: [(2) divided by (3)] | 0.6076 |
| (5) Ontario portion of fund: [(1) multiplied by the ratio in (4)] | \$ 693,860,972 |
| PBGF assessment base: [(2) subtract (5); if negative, enter zero] | \$ 119,231,028 |

The calculation of the PBGF Assessment is as follows:

| PBGF Assessment | |
|--|-------------------------------|
| 0.5% of any portion of the applicable PBGF assessment base that is less than 10% of the PBGF liabilities | \$ 406,546 |
| 1.0% of any portion of the applicable PBGF assessment base that is 10% or more but less than 20% of the PBGF liabilities | 379,218 |
| 1.5% of any portion of the applicable PBGF assessment base that is 20% or more of the PBGF liabilities | <u>0</u> |
| (1) Total | \$ 785,764 |
| Number of Ontario Plan Members, Former Members and Other Beneficiaries | 9,424 |
| (2) \$5.00 x Number of Ontario Plan Members, Former Members and Other Beneficiaries | \$ 47,120 |
| (3) \$300.00 x Number of Ontario Plan Members, Former Members and Other Beneficiaries | \$ 2,827,200 |
| Total Guarantee Fund Assessment | \$ 832,884¹ |
| | Lesser of [(1)+(2)] and (3) |

The Guarantee Fund Assessment may be adjusted to the extent that contributions during a plan year are in excess of the minimum required company contributions.

¹ Does not include retail sales tax

Section 4: Hypothetical Wind Up Valuation Results

Hypothetical Wind Up Financial Position of the Plan

A hypothetical wind up valuation is performed to determine the financial position of the Plan as at the valuation date on a wind up basis, reflecting market settlement rates as of the valuation date. Unlike the solvency valuation, all benefits are included that would be payable under the postulated scenario that would maximize benefits. The hypothetical wind up valuation is determined using benefit entitlements on the assumption that the Plan has neither a surplus nor a deficit. Contingent benefits are included in the liabilities that would be payable under the postulated scenario. Assets are set equal to market value net of estimated wind up expenses. All assumptions for the hypothetical wind up valuation are listed in Appendix E of the report.

On the basis of Plan provisions, membership data, hypothetical wind up assumptions and methods, and asset information described in the Appendices, as well as the requirements of the *Pension Benefits Act*, the hypothetical wind up financial position of the Plan as at December 31, 2015 is shown in the following table. The hypothetical wind up financial position of the Plan as at December 31, 2013 is shown for comparison purposes.

Hypothetical Wind Up Financial Position

| (000's) | December 31, 2015 | December 31, 2013 |
|--|------------------------------|----------------------------|
| Assets | | |
| Hypothetical wind up assets | \$ 1,141,970 | \$ 1,301,497 |
| Estimated wind up expenses | <u>(5,000)</u> | <u>(5,000)</u> |
| Total Assets | \$ 1,136,970 | \$ 1,296,497 |
| Hypothetical Wind Up Liabilities | | |
| Active and disabled members | \$ 258,261 | \$ 394,854 |
| Transferred members | 12,715 ¹ | 14,353 ¹ |
| Suspended members | 13,509 | 20,075 ² |
| Deferred vested members | 24,042 | 35,537 |
| Retired members and beneficiaries | <u>1,095,248³</u> | <u>964,724⁴</u> |
| Total Liabilities | \$ 1,403,775 | \$ 1,429,543 |
| Hypothetical Wind Up Surplus/(Deficiency) | \$ (266,805) | \$ (133,046) |

¹ Consists of members transferred to: JP Morgan as of December 18, 2005 and January 1, 2006; and Thomas Cook Travel as of January 30, 2011

² Included members transferred to SHS Services Management Inc. as of March 3, 2013, and were subsequently terminated in December 2013 as a result of the bankruptcy of SHS Services Management Inc.

³ Includes postretirement increase of 0.5% granted to eligible retired members and beneficiaries as of January 1, 2016 and January 1, 2015

⁴ Includes postretirement increase of 0.5% granted to eligible retired members and beneficiaries as of January 1, 2014

Transfer Ratio

The transfer ratio is determined as follows:

| <i>(000's)</i> | December 31, 2015 |
|--|--------------------------------|
| (1) Hypothetical wind up assets | \$ 1,141,970 |
| Prior year credit balance | (A) \$ 1,060 |
| Total company normal cost and required special payments until next mandated valuation | (B) \$ 102,120 |
| (2) Asset adjustment | Lesser of (A) and (B) \$ 1,060 |
| (3) Hypothetical wind up liabilities | \$ 1,403,775 |
| Transfer Ratio [(1)-(2)] / (3) | 0.81 |

Section 5: Contribution Requirements

Contribution Requirements in Respect of the Normal Cost

The Plan ceased defined benefit service accrual effective July 1, 2008. As such, there is no normal cost for the Plan as of December 31, 2013 or December 31, 2015.

Development of Special Payments

The following table summarizes previously established amortization schedules of special payments before adjustment to reflect any gains or losses due to the going concern and solvency valuation results. The following tables in this section show numbers in (000's).

| Nature of Deficiency | Effective Date | End Date | Annual Special Payment | Present Value as of December 31, 2015 | |
|----------------------|--------------------------------|-------------------|------------------------|--|-------------------------------------|
| | | | | For Going Concern Valuation ¹ | For Solvency Valuation ² |
| Going concern | December 31, 2011 ³ | December 31, 2026 | \$ 37 | \$ 316 | \$ 173 |
| Solvency | December 31, 2013 ⁴ | December 31, 2018 | 13,903 | n/a | 39,982 |
| Solvency | December 31, 2014 ⁵ | December 31, 2019 | <u>6,300</u> | <u>n/a</u> | <u>23,831</u> |
| | | | \$ 20,240 | \$ 316 | \$ 63,986 |

The following table summarizes the amortization schedules of special payments after adjustment to reflect any gains or losses due to the going concern and solvency valuation results. In accordance with Regulation, the Company has decided to defer all new solvency special payments established as at December 31, 2015 by 12 months. The Company has also elected temporary funding relief to consolidate existing solvency special payments into a new five-year payment schedule. The following table summarizes the amortization schedules of special payments after the aforementioned adjustments.

| Nature of Deficiency | Effective Date | Revised End Date | Revised Annual Special Payment | Present Value as of December 31, 2015 | |
|----------------------|--------------------------------|-------------------|--------------------------------|--|-------------------------------------|
| | | | | For Going Concern Valuation ¹ | For Solvency Valuation ² |
| Solvency | December 31, 2015 ⁶ | December 31, 2020 | \$ 13,680 | n/a | \$ 63,813 |
| Solvency | December 31, 2016 ⁷ | December 31, 2021 | <u>30,540</u> | <u>n/a</u> | <u>138,575</u> |
| | | | \$ 44,220 | | \$ 202,388 |

¹ The values in the table were developed using the going concern interest rate of 4.90% per year compounded monthly in arrears

² The values in the table were developed using the weighted average solvency interest rate of 2.80% per year compounded monthly in arrears. For the present value of the going concern special payments, only a maximum of six years of such payments were considered in the calculation.

³ In accordance with Regulation, the Company decided to defer new going concern special payments established as at December 31, 2010 by 12 months

⁴ In accordance with Regulation, the Company elected temporary funding relief option 4 as at December 31, 2013

⁵ In accordance with Regulation, the Company decided to defer new going concern and solvency special payments established as at December 31, 2013 by 12 months

⁶ In accordance with Regulation, the Company elected temporary funding relief option 6 as at December 31, 2015 to consolidate existing solvency payments into a new five-year payment schedule

⁷ In accordance with Regulation, the Company decided to defer new going concern and solvency special payments established as at December 31, 2015 by 12 months

Prior Year Credit Balance ("PYCB")

The table below reconciles changes in the PYCB from December 31, 2013 to December 31, 2015.

| (000's) | 2014 | 2015 |
|--|-----------------|-----------------|
| Prior year credit balance, beginning of plan year | \$ 15,000 | \$ 1,060 |
| Actual contributions during plan year | 0 | 20,240 |
| Minimum required company contributions during plan year ¹ | <u>(13,940)</u> | <u>(20,240)</u> |
| Prior Year Credit Balance, End of Plan Year | \$ 1,060 | \$ 1,060 |

Since the PYCB is greater than zero, the Company may apply the PYCB to reduce the special payments.

Excess Surplus

The *Income Tax Act* requires that any excess surplus first be applied to reduce or eliminate the company contribution requirements. Excess surplus is defined in Section 147.2(2)(d) of the *Income Tax Act*, as the portion of surplus (if any) that exceeds 25% of the going concern liabilities.

There is no excess surplus in the Plan at December 31, 2015.

¹ Before application of PYCB

Development of Minimum Required Company Contribution

The table below presents the development of the minimum required company contribution for each of the plan years covered by this report.

| (000's) | 2016 | 2017 | 2018 |
|---|------------------|------------------|------------------|
| Company normal cost | \$ 0 | \$ 0 | \$ 0 |
| Special payments toward amortizing unfunded liability | 0 | 0 | 0 |
| Special payments toward amortizing solvency deficiency | <u>13,680</u> | <u>44,220</u> | <u>44,220</u> |
| Minimum Required Company Contribution, Prior to Application of Prior Year Credit Balance | \$ 13,680 | \$ 44,220 | \$ 44,220 |
| Permitted application of prior year credit balance | <u>(1,060)</u> | <u>0</u> | <u>0</u> |
| Minimum Required Company Contribution | \$ 12,620 | \$ 44,220 | \$ 44,220 |

Development of Maximum Deductible Company Contribution

The table below presents the development of the maximum deductible company contribution for each of the plan years covered by this report.

The maximum deductible company contribution presented in the table below for a given plan year is calculated assuming that the Company makes the maximum deductible company contribution in the first plan year covered by this report.

| (000's) | 2016 | 2017 | 2018 |
|---|-------------------|-------------|-------------|
| Company normal cost | \$ 0 | \$ 0 | \$ 0 |
| Greater of the unfunded liabilities and the hypothetical wind up deficiency | 266,805 | 0 | 0 |
| Required application of excess surplus | <u>0</u> | <u>0</u> | <u>0</u> |
| Maximum Deductible Company Contribution | \$ 266,805 | \$ 0 | \$ 0 |

If the Company wishes to make the maximum deductible company contribution, it is advisable to contact the Plan's actuary before making such contribution to ensure that the contribution will be permissible and deductible and that any regulatory requirements are considered.

Section 6: Defined Contribution Component of the Plan

Financial Position

For a defined contribution plan, at any given time, the assets and the liabilities of the Plan are equal. The financial position of the Plan as at December 31, 2015 is shown in the following table. The results as at December 31, 2013 are also shown for comparison purposes.

| <i>(000's)</i> | December 31, 2015 | December 31, 2013 |
|---------------------------|--------------------------|--------------------------|
| Actuarial value of assets | \$ 147,028 | \$ 161,269 |
| Total liabilities | <u>147,028</u> | <u>161,269</u> |
| Financial Position | \$ 0 | \$ 0 |

Normal Cost

On the basis of the plan provisions, and membership data, the normal cost of the Plan as at December 31, 2015 is shown in the following table. The normal cost as at December 31, 2013 is also shown for comparison purposes.

| <i>(000's)</i> | December 31, 2015 | December 31, 2013 |
|--|--------------------------|--------------------------|
| Required member contributions ¹ | \$ 12,200 | \$ 16,000 |
| Company normal cost | \$ 6,100 | \$ 8,000 |

¹ Estimated by previous year's contribution, increased by the average assumed rate of salary increase

Section 7: Actuarial Certificate

Actuarial Opinion, Advice and Certification for the Sears Canada Inc. Registered Retirement Plan

Financial Services Commission of Ontario Registration Number: 0360065
Canada Revenue Agency Registration Number: 0360065

Opinion

This actuarial certification forms an integral part of the actuarial valuation report for the Plan as at December 31, 2015. We confirm that we have prepared an actuarial valuation of the Plan as at December 31, 2015 for the purposes outlined in the Introduction section to this report and consequently:

Our advice on funding is the following:

- The Company should contribute the amounts within the range of minimum and maximum contribution amounts as outlined in Section 5 of this report, in accordance with legislative requirements.
- The next actuarial valuation for the purpose of developing funding requirements should be performed no later than as at December 31, 2018.

We hereby certify that, in our opinion:

- With respect to the purposes of determining the Plan's financial position on a going concern basis as at December 31, 2015:
 - The Plan has a going concern surplus of \$28,876,000 as at December 31, 2015, based on going concern assets of \$1,141,970,000 less going concern liabilities of \$1,112,034,000 and less a PYCB of \$1,060,000.
 - There is no excess surplus as defined by Section 147.2(2) of the *Income Tax Act* in the Plan at December 31, 2015.
 - The pre-1990 maximum pension restrictions in Subsection 8504(6) of the Regulations to the *Income Tax Act* do not apply to any members of the Plan.
- With respect to the purpose of determining the Plan's financial position on a solvency basis:
 - The Plan has a solvency deficiency of \$138,575,000 as at December 31, 2015, determined as solvency assets net of wind up expenses of \$1,136,970,000 less solvency liabilities of \$1,338,298,000, plus a solvency asset adjustment of \$63,813,000, and less a PYCB of \$1,060,000.
 - The solvency ratio is 0.85 as at December 31, 2015.
 - The transfer ratio is 0.81 as at December 31, 2015.
 - The Plan's liabilities would exceed the Plan's assets, net of estimated wind up expenses, by \$266,805,000 if the Plan was terminated and wound up as at December 31, 2015.
 - A PBGF assessment is required to be paid where the PBGF assessment base is equal to \$119,231,028 and the PBGF liabilities are \$813,092,000.

- With respect to determining the funding requirements of the Plan:
 - The Company's normal cost in respect of the defined benefit provision of the Plan is \$0.
 - The Company is required to make contributions to the defined contribution provision of the Plan according to the following table:

| Employee | Employer |
|----------|----------|
| 0.0% | 0.0% |
| 1.0% | 0.5% |
| 2.0% | 1.0% |
| 3.0% | 1.5% |
| 4.0% | 2.0% |
| 5.0% | 2.5% |
| 6.0% | 3.0% |
| 7.0% | 3.5% |

- The special payments required to fund the solvency deficiency are as summarized in the following table:

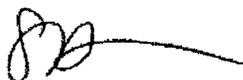
| Nature of Deficiency | Effective Date | End Date | Annual Payment |
|----------------------|--------------------------------|-------------------|------------------|
| Solvency | December 31, 2015 ¹ | December 31, 2020 | \$ 13,680 |
| Solvency | December 31, 2016 ² | December 31, 2021 | <u>30,540</u> |
| | | | \$ 44,220 |

- The PYCB is \$1,060,000 as at December 31, 2015.
- The contribution range as outlined in this report is expected to be sufficient to satisfy the Plan's funding requirements.
- The company contribution range outlined in this report qualifies as eligible contributions under Section 147.2(2) of the *Income Tax Act*.

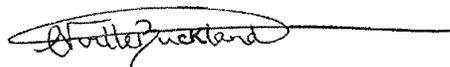
¹ In accordance with Regulation, the Company elected temporary funding relief as at December 31, 2015 to consolidate existing solvency payments into a new five-year payment schedule

² In accordance with Regulation, the Company decided to defer new going concern and solvency special payments established as at December 31, 2015 by 12 months

- In our opinion, for the purposes of the valuation:
 - The data on which this valuation is based are sufficient and reliable;
 - The assumptions used are appropriate; and
 - The actuarial cost methods and the asset valuation methods used are appropriate.
- This report and its associated work have been prepared, and our opinion given, in accordance with accepted actuarial practice in Canada and in compliance with the requirements outlined in subparagraphs 147.2(2)(a)(iii) and (iv) of the *Income Tax Act*.
- Notwithstanding the above certifications, emerging experience differing from the assumptions will result in gains or losses that will be revealed in subsequent valuations.



Susan K. Himmelman, FCIA, FSA
Partner



Claire Norville-Buckland, FCIA, FSA
Associate Partner

Aon Hewitt
225 King Street West, Suite 1600
Toronto, Ontario M5V 3M2

September 2016

Appendix A: Glossary of Terms

- The **actuarial value of assets** is the asset value used for going concern valuation purposes. Smoothing methods are sometimes used to smooth investment gains and losses over a certain period.
- The **estimated wind up expenses** is an estimate of the administrative and other expenses expected to be charged against the pension fund if the Plan were to terminate on the valuation date.
- The **going concern liabilities** are the actuarial present value of benefits earned in respect of service prior to the valuation date. The actuary may choose to omit indexing liabilities (i.e., “escalated adjustments”) from the going concern liabilities as per Section 11(1) of the *Pension Benefits Act*. However, if escalated adjustments are omitted from the going concern liabilities, the amount of payment of an escalated adjustment that is made from the pension fund, to the extent that it has not been funded, must be included in the normal cost pursuant to Section 11(2) of the Regulation to the *Pension Benefits Act*. The going concern liabilities are calculated using the going concern assumptions and methods summarized in Appendix D of this report.
- The **going concern position** is the difference between the actuarial value of assets and the going concern liabilities. Escalated adjustments may be omitted from the determination of the surplus/(unfunded liability) pursuant to Section 11(3) of the Regulation to the *Pension Benefits Act*.
- The **maximum deductible company contribution** refers to an eligible contribution pursuant to Section 147.2(2) of the *Income Tax Act*. Under Subsection 8502(b) of the Regulations to the *Income Tax Act*, each Company contribution made after January 1, 1991 in respect of a defined benefit provision of a registered pension plan must be such eligible contribution.

In a company’s fiscal year, the following contributions are eligible under Section 147.2(2) of the *Income Tax Act*.

- The company normal cost, eligible under Section 147.2(2) subject to certification by the actuary and approval by the Canada Revenue Agency; plus
- Special payments eligible under Section 147.2(2) up to the amount of the unfunded liability, the solvency deficiency, or the hypothetical wind up deficiency, whichever is greater, subject to certification by the actuary and approval by the Canada Revenue Agency; less
- Required application of excess surplus.

The company normal cost and special payments for this Plan will be deductible under Section 147.2(2) of the *Income Tax Act*, subject to the approval of the Canada Revenue Agency.

Note that contributions to a plan are still permissible and deductible if there is an excess surplus, providing there is simultaneously a solvency or hypothetical wind up deficiency in the Plan or the contributions are required as minimum contributions under provincial or federal *Pension Benefits Standards Act* legislation, pursuant to Subsections 8516(2) and (3) of the Regulations to the *Income Tax Act*.

One restriction under the *Income Tax Act* is that if there is an excess surplus, and a solvency or hypothetical wind up deficiency, the maximum deductible contribution is restricted to the full amount of the deficiency without allowance for interest or any other contributions such as company normal cost and/or transfer deficiency payments.

In order to be deductible in a given fiscal year, company contributions must be made not later than 120 days after the end of the fiscal year.

- The **minimum required company contribution** for each plan year is equal to:
 - The company normal cost; plus
 - Special payments toward amortizing any unfunded liability over 15 years beginning no later than 12 months from the date on which the unfunded liability was established; plus
 - Special payments toward amortizing any solvency deficiency over five years beginning no later than 12 months from the date on which the solvency deficiency was established (this period of years may be longer if the Company has elected temporary funding relief options 3 and/or 5); less
 - Required application of excess surplus; less
 - Permitted application of surplus; less
 - Permitted application of PYCB.

In order to satisfy the requirements of the *Pension Benefits Act* and its Regulations, contributions to the fund must be made in accordance with the following rules:

- Required member contributions (if any) must be remitted to the pension fund within 30 days following the month in which the contributions were received from the member or deducted from his or her remuneration.
- Company normal cost contributions must be remitted to the pension fund within 30 days after the end of the month for which the contributions are payable.
- Special payments must be remitted to the pension fund in the month for which they are payable.
- The **prior year credit balance** is
 - The PYCB stated in the last report in respect of the Plan under the Regulation; plus
 - The total amount of contributions made to the Plan by the Company after the valuation date of the last report in respect of the Plan and before the valuation date for the report being prepared; less
 - The total minimum amount of contributions required to have been made after the valuation date of the last report in respect of the Plan and before the valuation date for the report being prepared, if the contributions had been calculated without reference to any PYCB.

The Company may choose to set the PYCB between nil and the amount as calculated above, but may not recapture the amount forfeited at any time.

- **Solvency/Hypothetical wind up assets** are the market value of pension fund assets adjusted to reflect contributions, benefit payments, transfers and fees/expenses in-transit at the valuation date.
- The **solvency asset adjustment** is an adjustment that may be made to the solvency assets to reflect:
 - The impact of using an averaging method that stabilizes short-term fluctuations in the market value of the Plan's assets calculated over a period of not more than five years; plus

- The present value of any remaining special payments required to liquidate any unfunded liability (for service not previously recognized for benefit determination purposes) established after December 31, 1987; plus
- The present value of any remaining special payments other than those above that are scheduled for payment within six years after the valuation date. This period of years may be longer if the Company has elected temporary funding relief options 3 and/or 5.
- The **solvency liabilities** are the actuarial present value of benefits earned in respect of service prior to the valuation date determined as if the Plan were wound up on the valuation date and taking into account Section 74 of the *Pension Benefits Act* (i.e., grow-in). In calculating the solvency liabilities, which includes plant closure benefits or permanent layoff benefits that would be immediately payable if the Plan sponsor's business was discontinued on the valuation date, the *Pension Benefits Act* and its Regulations permit the exclusion of the following benefits:
 - Any escalated adjustments;
 - “Excluded plant closure benefits” that the Company elected on November 26, 1992 to exclude;
 - “Excluded permanent layoff benefits” that the Company elected on November 26, 1992 to exclude;
 - Special allowances other than those where the member has met all age and service eligibility requirements;
 - Consent benefits other than those where the member has met all eligibility requirements except the consent of the employer, or in the case of a jointly sponsored pension plan, the consent of the employer or the administrator;
 - Prospective benefit increases;
 - Potential early retirement window benefit values; and
 - Pension and ancillary benefits payable under a qualifying annuity contract.

The solvency liabilities are determined using benefit entitlements on the assumption that the Plan has neither a surplus nor a deficit. The solvency liabilities are calculated using the solvency valuation assumptions summarized in Appendix E of this report.

- The **solvency liability adjustment** is an adjustment that may be made to the solvency liabilities to reflect the impact of using a solvency valuation discount rate for discounting the liability that is the average of market discount rates calculated over the same period of time as that used in the calculation of the solvency asset adjustment.
- The **solvency position** is the difference between the solvency assets (net of estimated wind up expenses) and the solvency liabilities.
- The **solvency ratio** compares the solvency assets to the solvency liabilities for purposes of Subsections 14(2) and (3) of the Regulations of the *Pension Benefits Act* to determine the latest effective date of the next required valuation.
- The **solvency surplus/(deficiency)** is the solvency position, increased by the solvency asset adjustment and the solvency liability adjustment, then decreased by the PYCB.
- The **special payments** are payments required to liquidate the unfunded liability and/or solvency deficiency:

- The going concern special payments are payments required to liquidate the unfunded liability, with interest at the going concern valuation discount rate, by equal monthly instalments over a period of 15 years beginning no later than 12 months from the valuation date of the report in which the going concern unfunded liability was determined.
- The solvency special payments are payments required to liquidate the solvency deficiency, with interest at the solvency valuation discount rate, by equal monthly instalments over a period of five years beginning no later than 12 months from the valuation date of the report in which the solvency deficiency was determined. This period of years may be longer if the Company has elected temporary funding relief options 3 and/or 5.
- The **surplus/(unfunded liability)** is the difference between the actuarial value of assets and the sum of the going concern liabilities and the PYCB.
- The **total normal cost** is the actuarial present value of benefits expected to be earned in respect of service for each year starting on the valuation date. Required member contributions (if any) are deducted from the total normal cost to determine the company normal cost. The total normal cost is calculated using the going concern valuation assumptions and methods summarized in Appendix D of this report.
- The **transfer ratio** compares the solvency assets, minus the lesser of the PYCB and the required company contributions until the next required valuation (before application of the PYCB), to the solvency liabilities plus the liability of any excluded benefits (except for pension benefits and ancillary benefits payable under a qualifying annuity contract). If the transfer ratio is less than 1.00, lump-sum transfers from the pension fund under Section 42 of the *Pension Benefits Act* are limited to the commuted value of the member's pension multiplied by the transfer ratio. The administrator may transfer the entire commuted value if:
 - The administrator is satisfied that an amount equal to the transfer deficiency has been remitted to the pension fund; or
 - The aggregate of transfer deficiencies for all transfers made since the last valuation date does not exceed 5% of the Plan's assets at that time.

In June 2009, Subsection 19 of the Regulations of the *Pension Benefits Act* was amended and Policy T800-402 was released. The Policy imposes additional restrictions for payment of commuted values under certain circumstances.

Appendix B: Assets

Asset Data

The Plan's assets are held by CIBC Mellon. The asset information presented in this report is based on the financial statements of the pension fund prepared by CIBC Mellon, and audited by Deloitte LLP.

Tests of the sufficiency and reliability of the asset data were performed and the results were satisfactory. The tests included:

- A reconciliation of actual cash flow with expected cash flow from the previous actuarial report; and
- A reconciliation of any anticipated benefit payments in 2014 and 2015 (for retirees, terminated or deceased employees) against the financial statements of the pension fund for confirmation of payments.

Market Value of Assets

The following is a summary of the composition of the Plan's assets by asset type as reported by the Company as at December 31, 2015. For comparison purposes, the composition at the previous valuation date of December 31, 2013 is also shown.

| | <u>December 31, 2015</u> | <u>December 31, 2013</u> |
|------------------------------|--------------------------|--------------------------|
| | % | % |
| Fixed-income | 66% | 72% |
| Equities | <u>34%</u> | <u>28%</u> |
| Total Invested Assets | 100% | 100% |

Target Asset Mix

The target asset mix of the Plan is contained in the Plan's Statement of Investment Policies and Procedures and is as follows:

| | Minimum | Target | Maximum |
|--------------|----------------|---------------|----------------|
| Fixed-income | 50% | 60% | 80% |
| Equities | 20% | <u>40%</u> | 50% |
| | | 100% | |

Reconciliation of Changes in Market Value of Assets

The table below reconciles changes in the market value of assets between December 31, 2013 and December 31, 2015.

| (000's) | 2014 | 2015 |
|---|---------------------|---------------------|
| Market Value of Assets, Beginning of Plan Year | \$ 1,301,497 | \$ 1,185,110 |
| Contributions During Plan Year | | |
| Member | \$ 0 | \$ 0 |
| Company normal cost | 0 | 0 |
| Company special payments | 0 ¹ | 20,240 |
| Company transfer deficiency payments | 0 | 0 |
| Company ongoing expenses | 0 | 0 |
| Total | \$ 0 | \$ 20,240 |
| Benefit Payments During Plan Year | | |
| Non-retired members ² | \$ (138,161) | \$ (57,497) |
| Retired members | (77,242) | (76,417) |
| Total | \$ (215,403) | \$ (133,914) |
| Transfers During Plan Year | | |
| Into plan | \$ 0 | \$ 0 |
| Out of plan | 0 | 0 |
| Total | \$ 0 | \$ 0 |
| Fees/Expenses | | |
| Investment fees/expenses | \$ (3,907) | \$ (3,749) |
| Non-investment fees/expenses | (1,571) | (1,163) |
| Total | \$ (5,478) | \$ (4,912) |
| Investment Income | \$ 104,494 | \$ 63,849 |
| Market Value of Assets, End of Plan Year | \$ 1,185,110 | \$ 1,130,373 |
| Rate of return, net of fees/expenses | 8.3% | 5.2% |

¹ The Company prefunded the required contribution for 2014 of \$13,940,000 through a contribution of \$15,000,000 made in December 2013. The prepayment is included in the above opening market value of assets at January 1, 2014, and was held as a PYCB in the December 31, 2013 valuation report.

² Includes members who have terminated employment or died

Development of Adjusted Market Value of Assets

The adjusted market value of assets is equal to the market value of assets adjusted to reflect any contributions, benefit payments, transfers and fees/expenses in-transit as of the valuation date. The development of the adjusted market value of assets is shown below.

| <i>(000's)</i> | December 31, 2015 |
|--|--------------------------|
| Market value of assets | \$ 1,130,373 |
| Contributions receivable | 6,747 |
| Benefit prepayments | 5,979 |
| Transfers (payable)/receivable | 0 |
| Fees/expenses (payable) | <u>(1,129)</u> |
| Adjusted Market Value of Assets | \$ 1,141,970 |

Development of Actuarial Value of Assets

The actuarial value of assets is equal to the adjusted market value of assets.

Appendix C: Membership Data

Source of Data

This funding valuation was based on member data provided by the Company as of December 31, 2015. Tests of the sufficiency and reliability of the member data were performed and the results were satisfactory. The tests included:

- A reconciliation of membership status against the membership status at the last valuation. This test was performed to ensure that all members were accounted for. A summary of this reconciliation follows on the next page;
- A reconciliation of birth, hire, and participation dates against the corresponding dates provided for the last valuation to ensure consistency of data;
- A reconciliation of credited service against the corresponding amount provided for the last valuation to ensure that there was no additional credited service over that reported in the valuation at December 31, 2013;
- A reconciliation of pensionable earnings against the corresponding amounts provided for the last valuation to identify any unusual increases or decreases (more than 20%);
- A reconciliation of accrued benefits against the corresponding amounts provided for the last valuation to identify any unusual benefit accruals;
- A reconciliation of any stated benefit payments in 2014 and 2015 (for retired, terminated or deceased employees) against the financial statements of the pension fund for confirmation of the payments; and
- A reconciliation of inactive member benefit amounts against the corresponding amounts provided for the last valuation to ensure consistency of data.

There was no information missing from the data, so no assumptions were required with respect to such data.

A copy of the administrator certification certifying the accuracy and completeness of the member data (and the Plan provisions summarized in this report) is included in Appendix G of this report.

Membership Summary

The table below reconciles the number of members as of December 31, 2015 with the number of members as of December 31, 2013 and the changes due to experience in the period.

| | Active and Disabled | Transferred | Suspended | Deferred Vested | Retired | Total |
|---------------------------------------|---------------------------|------------------------|-------------|--------------------|---------------|----------------|
| Members, December 31, 2013 | 6,871 | 312¹ | 256 | 819 | 14,372 | 22,630 |
| Death | | | | | | |
| Paid lump sum | (33) | (1) | - | (1) | - | (35) |
| No further benefits | - | - | - | - | (772) | (772) |
| With surviving spouse | - | - | - | - | (174) | (174) |
| New surviving spouse | - | - | - | - | 174 | 174 |
| Retirement | | | | | | |
| Immediate pension | (303) | (3) | (63) | (41) | 410 | - |
| Paid lump sum | (368) | (11) | (93) | - | - | (472) |
| Termination of employment | | | | | | |
| Pending election | (434) | (12) | 446 | - | - | - |
| Paid lump sum | (1,836) | (100) | (302) | (370) | - | (2,608) |
| Deferred pension | (46) | (1) | (49) | 96 | - | - |
| Data correction | <u>3</u> | <u>-</u> | <u>-</u> | <u>(2)</u> | <u>5</u> | <u>6</u> |
| Net change | <u>(3,017)</u> | <u>(128)</u> | <u>(61)</u> | <u>(318)</u> | <u>(357)</u> | <u>(3,881)</u> |
| Members, December 31, 2015 | 3,854 | 184 | 195 | 501 | 14,015 | 18,749 |

¹ Consists of members transferred to: JP Morgan as of December 18, 2005 and January 1, 2006; and Thomas Cook Travel as of January 30, 2011

Active and Disabled Members

| | As of December 31, 2015 | | | As of December 31, 2013 | | |
|---|-------------------------|-----------|------------------|-------------------------|-----------|------------------|
| | Full-Time | Part-Time | Total | Full-Time | Part-Time | Total |
| Number | 2,680 | 1,174 | 3,854 | 4,756 | 2,115 | 6,871 |
| Average age | 53.4 | 57.9 | 54.7 | 52.3 | 57.2 | 53.8 |
| Average credited service | 10.8 | 6.8 | 9.6 | 11.4 | 6.8 | 10.0 |
| Average continuous service | 21.4 | 21.5 | 21.4 | 19.9 | 19.3 | 19.7 |
| Average age at hire | 31.9 | 36.3 | 33.2 | 32.4 | 37.9 | 34.1 |
| Average 2015 valuation pay ¹ | \$ 48,208 | \$ 28,773 | \$ 42,288 | \$ 44,303 | \$ 28,095 | \$ 39,313 |
| Proportion female | 54.8% | 84.8% | 63.9% | 54.8% | 83.7% | 63.7% |

JP Morgan Transferred Members

| | December 31, 2015 | December 31, 2013 |
|---------------------------------|-------------------|-------------------|
| Number | 91 | 144 |
| Average age | 48.6 | 46.0 |
| Average annual lifetime pension | \$ 3,711 | \$ 2,848 |
| Proportion female | 83.5% | 76.4% |

Thomas Cook Transferred Members

| | December 31, 2015 | December 31, 2013 |
|---------------------------------|-------------------|-------------------|
| Number | 93 | 168 |
| Average age | 50.1 | 48.1 |
| Average annual lifetime pension | \$ 4,652 | \$ 4,291 |
| Proportion female | 95.7% | 94.6% |

¹ Valuation pay includes pensionable earnings plus three-year average bonus

Suspended Members

| | December 31, 2015 | December 31, 2013 |
|---------------------------------|-------------------|-------------------|
| Number | 195 | 256 |
| Average age | 54.3 | 54.5 |
| Average annual lifetime pension | \$ 4,907 | \$ 6,000 |
| Proportion female | 57.9% | 53.1% |

Deferred Vested Members

| | December 31, 2015 | December 31, 2013 |
|---------------------------------|-------------------|-------------------|
| Number | 501 | 819 |
| Average age | 48.8 | 48.0 |
| Average annual lifetime pension | \$ 2,857 | \$ 3,170 |
| Proportion female | 46.1% | 51.2% |

Retired Members and Beneficiaries

| | December 31, 2015 | December 31, 2013 |
|---------------------------------|-------------------|-------------------|
| Number | 14,015 | 14,372 |
| Average age | 75.7 | 74.6 |
| Average annual lifetime pension | \$ 5,141 | \$ 4,934 |
| Proportion female | 67.8% | 67.9% |

Active and Disabled Membership Distribution

The following table provides a detailed summary of the active and disabled membership at the valuation date by years of credited service and by age group.

| Age | <5 | 5-10 | 10-15 | 15-20 | 20-25 | 25-30 | 30-35 | >=35 | Grand Total |
|----------------------------|-----------------|-----------------|-----------------|-----------------|----------------|----------------|----------------|----------------|-----------------|
| <30 | 6 \$35,415 | | | | | | | | 6 \$35,415 |
| 30-35 | 66 \$48,388 | 4 \$50,775 | | | | | | | 70 \$48,525 |
| 35-40 | 95 \$51,321 | 73 \$59,915 | 4 \$58,485 | | | | | | 172 \$55,135 |
| 40-45 | 105 \$44,490 | 127 \$55,281 | 52 \$55,728 | 3 \$56,738 | | | | | 287 \$51,429 |
| 45-50 | 156 \$41,997 | 142 \$46,770 | 106 \$43,961 | 66 \$62,178 | 8 \$56,774 | | | | 478 \$46,884 |
| 50-55 | 194 \$36,424 | 217 \$44,631 | 157 \$38,026 | 95 \$50,777 | 73 \$58,871 | 10 \$59,956 | | | 746 \$43,488 |
| 55-60 | 246 \$36,996 | 287 \$38,729 | 181 \$37,354 | 100 \$45,555 | 62 \$56,328 | 69 \$57,466 | 30 \$55,532 | | 975 \$41,699 |
| 60-65 | 208 \$32,009 | 258 \$34,719 | 166 \$34,992 | 67 \$40,167 | 23 \$45,989 | 31 \$48,360 | 46 \$50,708 | 10 \$75,205 | 809 \$36,782 |
| >=65 | 97 \$29,424 | 93 \$33,575 | 80 \$30,593 | 23 \$30,451 | 4 \$51,315 | 7 \$38,662 | 5 \$38,012 | 2 \$33,866 | 311 \$31,698 |
| Total | | | | | | | | | |
| Count | 1,173 | 1,201 | 746 | 354 | 170 | 117 | 81 | 12 | 3,854 |
| Average 2015 valuation pay | \$38,520 | \$42,564 | \$38,578 | \$48,149 | \$55,924 | \$54,141 | \$51,711 | \$68,315 | \$42,288 |

Transferred, Suspended, Deferred Vested and Retired Membership Distribution

The following table provides a detailed summary of the transferred, suspended, deferred vested and retired and beneficiaries membership at the valuation date by age group.

| Age | Transferred and Suspended Members | Deferred Vested Members | Retired Members and Beneficiaries | Grand Total |
|--|-----------------------------------|-------------------------|-----------------------------------|-------------------|
| <50 | 149 \$ 3,208 | 254 \$ 2,105 | 1 \$ * | 404 \$ 2,513 |
| 50-55 | 86 \$ 5,460 | 125 \$ 3,171 | 4 \$ 12,642 | 215 \$ 4,263 |
| 55-60 | 66 \$ 7,111 | 99 \$ 4,424 | 219 \$ 8,063 | 384 \$ 6,961 |
| 60-65 | 51 \$ 4,842 | 22 \$ 2,566 | 1,400 \$ 9,730 | 1,473 \$ 9,453 |
| 65-70 | 21 \$ 2,434 | 1 \$ * | 2,626 \$ 7,711 | 2,648 \$ 7,668 |
| 70-75 | 4 \$ 1,913 | | 2,611 \$ 5,500 | 2,615 \$ 5,495 |
| 75-80 | 1 \$ * | | 2,620 \$ 3,577 | 2,621 \$ 3,578 |
| >=80 | 1 \$ * | | 4,534 \$ 2,784 | 4,535 \$ 2,784 |
| Count | 379 | 501 | 14,015 | 14,895 |
| Average Annual Lifetime Pension | \$ 4,565 | \$ 2,857 | \$ 5,141 | \$ 5,049 |

* Data not shown for member privacy

Appendix D: Going Concern Assumptions and Methods

Assumptions and Methods

A member's entitlements under a pension plan are generally funded during the period over which service is accrued by the member. The cost of each member's benefits is allocated in some fashion over the member's service. An actuarial valuation provides an assessment of the extent to which allocations relating to periods prior to a valuation date (often referred to as the actuarial liabilities) are covered by the plan's assets.

The going concern valuation provides an assessment of a pension plan on the premise that the plan continues on into the future indefinitely based on assumptions in respect of future events upon which a plan's benefits are contingent and methods that effectively determine the way in which a plan's costs will be allocated over the members' service. The true cost of a plan, however, will emerge only as experience develops, investment earnings are received, and benefit payments are made.

This appendix summarizes the going concern assumptions and methods that have been used for the going concern valuation of the Plan at the valuation date. The going concern assumptions and methods have been chosen to reflect our understanding of the Plan's funding objectives with due respect to accepted actuarial practice and regulatory constraints. For purposes of this valuation, the going concern methods and assumptions were reviewed and changes as indicated were made.

The actuarial assumptions and methods used in the current and previous valuations are summarized below and described on the following pages.

| | December 31, 2015 | December 31, 2013 |
|---|---|--|
| Economic Assumptions | | |
| Discount rate | 4.90% per year (net of fees and expenses and margin for adverse deviations) | 5.00% per year (net of fees and expenses and margin for adverse deviations) |
| Increases in pensionable earnings | | |
| Full-time active members | 3.00% per year plus merit. See Table D following | Same |
| Part-time active members | 3.00% per year plus merit. See Table E following | Same |
| Increases in year's maximum pensionable earnings ("YMPE") | Actual to 2016. 2.75% per year thereafter | Actual to 2014. 3.00% per year thereafter |
| Increases in maximum pension limit | In accordance with <i>Income Tax Act</i> , then 2.75% per year | In accordance with <i>Income Tax Act</i> , then 3.00% per year |
| Increases in Consumer Price Index | 2.25% per year | 2.50% per year |
| Postretirement benefit increases | 0.50% per year | Same |
| Demographic Assumptions | | |
| Mortality table | CPM2014Priv combined with mortality improvement scale CPM-B (sex-distinct) | CPM2014Priv combined with mortality improvement scale CPM-B (sex-distinct rates, with pension size M=1.026, F=1.041) |
| Retirement rates | | |
| Active, disabled, transferred, and suspended members | Table A following | Same |
| Deferred vested members | Age member elected at termination | Same |
| Retired members and beneficiaries | Not applicable | Same |
| Withdrawal rates | | |
| Voluntary withdrawals | | |
| Full-time | Table B following | Same |
| Part-time | Table C following | Same |
| Involuntary withdrawals | None assumed | Same |
| Proportion married | | |
| Non-retired spousal proportion | 80% | Same |
| Non-retired spousal age differential | Males three years older | Same |
| Retired members and beneficiaries | Actual marital status and ages are used | Same |

| | December 31, 2015 | December 31, 2013 |
|-------------------------------|---|-------------------|
| Methods | | |
| Actuarial cost method | Projected Unit Credit (prorated on service) | Same |
| Asset valuation method | Market value of assets adjusted to reflect contributions and benefit payments in transit as of the valuation date | Same |
| Expenses | Included as a deduction from the discount rate | Same |
| Margin for adverse deviations | 0.45% | 0.50% |
| Contingent benefits | None | Same |
| Benefits excluded | None | Same |

Table A—Retirement Rates

Sample age based retirement rates are in accordance with the following table:

| Age | Credited Service <20 years | Credited Service ≥20 years |
|-----|-------------------------------|-------------------------------|
| 54 | 0% | 0% |
| 55 | 10% | 15% |
| 56 | 10% | 12% |
| 57 | 10% | 12% |
| 58 | 10% | 15% |
| 59 | 10% | 15% |
| 60 | 15% | 25% |
| 61 | 15% | 15% |
| 62 | 15% | 15% |
| 63 | 15% | 15% |
| 64 | 20% | 25% |
| 65 | 35% | 35% |
| 66 | 20% | 20% |
| 67 | 20% | 20% |
| 68 | 20% | 20% |
| 69 | 100% | 100% |

Table B—Withdrawal Rates

Full-time withdrawals per 1,000 members:

| Present Age | Male | Female | Present Age | Male | Female |
|-------------|------|--------|-------------|------|--------|
| 15 | 235 | 233 | 35 | 134 | 145 |
| 16 | 235 | 233 | 36 | 138 | 140 |
| 17 | 235 | 233 | 37 | 122 | 135 |
| 18 | 235 | 233 | 38 | 116 | 130 |
| 19 | 229 | 228 | 39 | 110 | 124 |
| 20 | 223 | 223 | 40 | 104 | 119 |
| 21 | 217 | 218 | 41 | 98 | 114 |
| 22 | 211 | 212 | 42 | 93 | 109 |
| 23 | 205 | 207 | 43 | 87 | 104 |
| 24 | 199 | 202 | 44 | 81 | 99 |
| 25 | 193 | 197 | 45 | 75 | 93 |
| 26 | 187 | 192 | 46 | 69 | 88 |
| 27 | 181 | 187 | 47 | 63 | 83 |
| 28 | 176 | 181 | 48 | 57 | 78 |
| 29 | 170 | 176 | 49 | 51 | 73 |
| 30 | 164 | 171 | 50 | 45 | 67 |
| 31 | 158 | 166 | 51 | 39 | 62 |
| 32 | 152 | 161 | 52 | 33 | 57 |
| 33 | 146 | 156 | 53 | 27 | 52 |
| 34 | 140 | 150 | 54 | 21 | 47 |
| | | | 55 and over | 0 | 0 |

Table C—Withdrawal Rates

Part-time withdrawals per 1,000 members:

| Present Age | Male | Female | Present Age | Male | Female |
|-------------|------|--------|-------------|------|--------|
| 15 | 294 | 285 | 35 | 200 | 189 |
| 16 | 294 | 285 | 36 | 194 | 183 |
| 17 | 294 | 285 | 37 | 189 | 178 |
| 18 | 294 | 285 | 38 | 183 | 172 |
| 19 | 288 | 279 | 39 | 177 | 166 |
| 20 | 283 | 273 | 40 | 172 | 161 |
| 21 | 277 | 268 | 41 | 166 | 155 |
| 22 | 272 | 262 | 42 | 161 | 149 |
| 23 | 266 | 257 | 43 | 155 | 144 |
| 24 | 261 | 251 | 44 | 150 | 138 |
| 25 | 255 | 245 | 45 | 144 | 133 |
| 26 | 250 | 240 | 46 | 139 | 127 |
| 27 | 244 | 234 | 47 | 133 | 121 |
| 28 | 239 | 228 | 48 | 128 | 116 |
| 29 | 233 | 223 | 49 | 122 | 110 |
| 30 | 227 | 217 | 50 | 116 | 104 |
| 31 | 222 | 211 | 51 | 111 | 99 |
| 32 | 216 | 206 | 52 | 105 | 93 |
| 33 | 211 | 200 | 53 | 100 | 87 |
| 34 | 205 | 195 | 54 | 94 | 82 |
| | | | 55 and over | 0 | 0 |

Table D—Merit Increases

Full-time merit increases:

| Present Age | Unisex | Present Age | Unisex |
|-------------|--------|-------------|--------|
| 15 | 5.60% | 35 | 2.50% |
| 16 | 5.60% | 36 | 2.36% |
| 17 | 5.60% | 37 | 2.22% |
| 18 | 5.60% | 38 | 2.08% |
| 19 | 5.60% | 39 | 1.94% |
| 20 | 5.60% | 40 | 1.80% |
| 21 | 5.60% | 41 | 1.64% |
| 22 | 5.60% | 42 | 1.48% |
| 23 | 5.60% | 43 | 1.32% |
| 24 | 5.60% | 44 | 1.16% |
| 25 | 5.00% | 45 | 1.00% |
| 26 | 4.74% | 46 | 0.90% |
| 27 | 4.48% | 47 | 0.80% |
| 28 | 4.22% | 48 | 0.70% |
| 29 | 3.96% | 49 | 0.60% |
| 30 | 3.70% | 50 | 0.50% |
| 31 | 3.46% | 51 and over | 0.00% |
| 32 | 3.21% | | |
| 33 | 2.97% | | |
| 34 | 2.73% | | |

Table E—Merit Increases

Part-time merit increases:

| Present Age | Unisex | Present Age | Unisex |
|-------------|--------|-------------|--------|
| 15 | 2.06% | 40 | 1.71% |
| 16 | 2.06% | 41 | 1.69% |
| 17 | 2.06% | 42 | 1.67% |
| 18 | 2.06% | 43 | 1.64% |
| 19 | 2.06% | 44 | 1.62% |
| 20 | 2.06% | 45 | 1.60% |
| 21 | 2.06% | 46 | 1.57% |
| 22 | 2.06% | 47 | 1.55% |
| 23 | 2.06% | 48 | 1.53% |
| 24 | 2.06% | 49 | 1.50% |
| 25 | 2.06% | 50 | 1.48% |
| 26 | 2.04% | 51 | 1.46% |
| 27 | 2.01% | 52 | 1.43% |
| 28 | 1.99% | 53 | 1.41% |
| 29 | 1.97% | 54 | 1.39% |
| 30 | 1.94% | 55 | 1.41% |
| 31 | 1.92% | 56 | 1.37% |
| 32 | 1.90% | 57 | 1.34% |
| 33 | 1.87% | 58 | 1.30% |
| 34 | 1.85% | 59 | 1.27% |
| 35 | 1.83% | 60 | 1.23% |
| 36 | 1.80% | 61 | 1.20% |
| 37 | 1.78% | 62 | 1.16% |
| 38 | 1.76% | 63 | 1.13% |
| 39 | 1.73% | 64 | 1.09% |
| | | 65 | 1.06% |
| | | 66 | 1.02% |
| | | 67 and over | 1.00% |

Justification of Actuarial Assumptions and Methods

Economic Assumptions

Discount Rate

We have used a discount rate of 4.90% per year.

The overall expected return ("best-estimate") is 5.65% per year, which is based on an inflation rate of 2.25% per year, yielding a real rate of return on the pension fund assets of 3.40% per year. This overall expected return was developed using best-estimate returns for each major asset class in which the pension fund is invested. A Monte Carlo simulation is performed where the portfolio returns are projected assuming annual rebalancing. Expected plan cash flows are projected reflecting the plan's time horizon and discounted using the simulated returns. The internal rate of return is then calculated for each scenario and the average is used to develop an overall best-estimate rate of return for the entire pension fund. Gains from rebalancing and diversification are implicit to this return.

The above determined rate of return has been established based on the Company's investment policy and its funding policy (whether formal or informal) and objectives. There may be some barriers to achieving this return such as inflation higher than expected, asset returns lower than expected, and assets and liabilities that are mismatched. We have derived a going concern discount rate which reflects the Company's investment policy combined with a margin for adverse deviation so as to account for the variables mentioned above. The following chart lays out the adjustments that have been made to the overall expected rate of return in order to arrive at our going concern discount rate assumption:

Development of Discount Rate

| | | | | | |
|---|-----|----------------|---------|--|----------------|
| Overall expected return | | | | | 5.65% |
| Non-investment expenses | | | | | (0.10)% |
| Investment expenses | | | | | |
| Passive | (1) | (0.20)% | | | |
| Actively managed | (2) | <u>(0.20)%</u> | | | |
| | | | (1)+(2) | | (0.40)% |
| Additional returns due to active management | | | | | 0.20% |
| Margin for adverse deviations | | | | | <u>(0.45)%</u> |
| Unrounded Discount Rate | | | | | 4.90% |

Therefore, we have arrived at a discount rate of 4.90% per year.

Inflation Rate

The inflation rate is assumed to be 2.25% per year. This reflects our best estimate of future inflation considering current economic and financial market conditions.

Increases in Pensionable Earnings

We have assumed future salary increases will be 3.00% per year plus merit and promotion increases. We assume rates of increase as a result of individual employee merit and promotion based on a scale which varies by age and service as shown in Tables D and E of the Assumptions and Methods section of this report. The expected rate of base salary increases plus the merit and promotion scale represent the Company's long-term expectations of salary increases. Although we have lowered the assumed inflation rate this valuation, we have kept the salary increase assumption unchanged at the current level. The assumption will continue to be monitored and any long-term expected changes in base salary increases will be reflected in future valuations as necessary.

Increases in YMPE

As the benefits paid to a member from the Plan are dependent on the future YMPE, it is necessary to make an assumption regarding the future increases in the YMPE.

The YMPE was assumed to increase up until the time the member retires, dies or terminates from active employment at 2.75% per year. This is comprised of an annual increase of 2.25% on account of inflation, plus 0.50% on account of productivity, which is consistent with historical real economic growth and future expectations.

Increases in the Maximum Pension Limit

Pensions are limited to the maximum limits under the *Income Tax Act*. The maximum lifetime annual pension per year of pensionable service payable under the *Income Tax Act* is \$2,890.00 in 2016. It is assumed that the maximum limit will increase at 2.75% per year commencing in 2017. This is comprised of an annual increase of 2.25% on account of inflation, plus 0.50% on account of productivity, which is consistent with historical real economic growth and future expectations.

Expenses

Since the discount rate has been established net of all expenses, no explicit assumption is required for all expenses.

Economic Margins for Adverse Deviations

Margins for conservatism or provisions for adverse deviation have been built into the going concern assumptions where appropriate.

The margins have been chosen so as to balance the need for financial security for existing Plan members against overly conservative contribution requirements that potentially result in intergenerational inequity among members and unnecessary financial strain on the Plan sponsor.

A margin for adverse deviations of 0.45% has been reflected in the interest rate assumption.

The actuary has discussed the Plan's experience with the Company and compared it to the expected experience. The actuary has discussed with the Company the implications of incorporating margins for adverse deviations and the Company is fully cognizant and supports incorporating margins for adverse deviations.

Demographic Assumptions

Mortality

We have based our mortality assumption on the findings of the CIA study of Canadian pensioner mortality levels and trends. In 2015, the Company reviewed the Plan experience from 2009 to 2014, compared to the mortality tables published by the CIA. The mortality experience study indicated the 2014 Canadian Private Sector Pensioners' Mortality Table combined with mortality improvement scale CPM-B is an appropriate assumption for the Plan's population.

Retirement

Retirement rates are typically developed taking into account the past experience of the Plan. Accordingly, the rates of retirement have been developed as our expectation of the best-estimate rates of retirement based on the plan provisions and plan experience in recent years.

The Plan has heavily subsidized early retirement provisions, especially for members with long service. The Plan also provides a temporary bridge pension. Accordingly, pension commencement age is an important factor in plan costs. The retirement rates were established at the last valuation as of December 31, 2010 based on plan experience between 2008 and 2010. These rates continue to be appropriate expectations of the rates of retirement based on the plan provisions.

Termination of Employment

A member's benefit entitlement under the Plan is affected by whether the member terminates employment prior to retirement for reasons other than death. In order to account for this in the calculation of the actuarial liability, an assumption regarding the probability that a member will terminate employment for reasons other than death has been made.

The termination rates were developed based on a prior review of plan experience. Subsequent actuarial valuations indicate that these rates remain appropriate as the resulting actuarial gains and losses have been relatively small. Consequently, the termination rates are considered to be best estimate.

Option Elections on Termination

We have assumed that 20% of members who are not retirement eligible at termination will elect a deferred annuity, and 80% will elect a commuted value transfer or cash on termination. In recognition of the lower prevailing discount rates to determine commuted values, we have employed a different discount rate basis used to calculate termination benefits for those electing a deferred annuity versus those that elect a lump-sum transfer value. The discount rate applied for those assumed to elect a commuted value transfer is the same rate used to determine pension commuted values for terminations in December 2015 of 2.10% per year for 10 years, 3.70% per year thereafter.

Effective March 1, 2014, members who are retirement eligible at termination have the option to elect to transfer out the commuted value of their pension entitlement to another locked-in retirement savings vehicle in lieu of receiving an immediate pension from the Plan. There is currently insufficient plan experience to build an appropriate long term assumption for the expected rate at which retirement eligible members will make this election. We note that the experience seen in 2014 and 2015 for members electing to transfer their commuted value was abnormally high due to the business restructuring activities. It is not expected to see this continue long-term. We have therefore kept our assumption unchanged with respect to retirement eligible members. We will continue to monitor actual plan experience in order to build an appropriate long-term assumption, and will update this assumption in subsequent actuarial valuations, if necessary.

Proportion of Members with Spouses and Spousal Age Differential

These assumptions are relevant to the valuation of benefits since there is a subsidized joint and survivor benefit available for members with a spouse. The proportion of members who will have a spouse is based on broad population statistics. The spousal age difference was based on broad population statistics.

The spousal age difference assumption has very little impact on the valuation results.

Other

Actuarial Cost Method

An actuarial cost method is a technique used to allocate in a systematic and consistent manner the expected cost of a pension plan over the years of service during which Plan members earn benefits under the Plan. By funding the cost of a pension plan in an orderly and rational manner, the security of benefits provided under the terms of the Plan in respect of service that has already been rendered is significantly enhanced.

The projected unit credit actuarial cost method has been used for this valuation. Under this method, the actuarial present value of benefits in respect of service prior to the valuation date, but based on pensionable earnings projected to retirement, is compared with the actuarial asset value, revealing either a surplus or an unfunded actuarial liability.

With respect to service after the valuation date, the expected value of benefits for service in the year following the valuation date (i.e., the normal cost) net of any required employee contributions is expressed as a percentage of the expected value of participating payroll for that year. The employer normal cost contributions are determined each year by applying this percentage to the actual participating payroll for the year.

When calculating the actuarial present value of benefits at the valuation date, the present value of all retirement, withdrawal and preretirement death benefits are included. For each member, the retirement, withdrawal and preretirement death benefits for a particular period of service are first projected each year into the future taking into account future vesting, early retirement entitlements and minimum pension/value entitlements. These projected benefits for each future year are then capitalized, multiplied by the probability of the member leaving the Plan in that year and discounted with interest and survivorship to the valuation date. The actuarial present value of benefits for the particular period of service is then determined by summing the present values of these projected benefits.

The pattern of future contributions necessary to pre fund future benefit accruals for any one particular individual will increase gradually as a percentage of their pensionable earnings as the individual approaches retirement. For a stable population (i.e., one where the demographics of the group remain constant from year to year), the normal cost will remain relatively level as a percentage of payroll. The projected unit credit actuarial cost method therefore allocates contributions among different periods in an orderly and rational manner for a stable population group.

In the event of future adverse experience, contributions in addition to the normal cost calculated under the projected unit credit actuarial cost method may be required to ensure that the Plan's assets are adequate to provide the benefits. Conversely, favourable experience may generate surplus which may serve to reduce future contribution requirements

Asset Valuation Method

Market value, adjusted by in-transit cash flows was used as the actuarial value of assets for this valuation. Asset-smoothing techniques are often used to reduce volatility in the company's contribution requirements. However, since this Plan's contributions are primarily being driven by the solvency valuation, we deemed it unnecessary to use an asset-smoothing technique for the going concern valuation.

Appendix E: Solvency and Hypothetical Wind Up Assumptions and Methods

Valuation Assumptions

| | December 31, 2015 | December 31, 2013 |
|---|--|---|
| Economic Assumptions | | |
| Discount rate for solvency liability | | |
| Annuity purchase | 2.95% per year | 3.80% per year |
| Transfer value | 2.10% per year for 10 years; 3.70% per year thereafter | 3.00% per year for 10 years; 4.60% per year thereafter |
| Postretirement benefit increases (hypothetical wind up only) | 0.50% per year | 0.50% per year |
| Demographic Assumptions | | |
| Mortality table | CPM2014 combined with mortality improvement scale CPM-B (sex-distinct) | 1994 Uninsured Pensioner Mortality Table with generational mortality improvements using Scale AA (sex-distinct) |
| Withdrawal rates | Not applicable | Same |
| Retirement age | | |
| Active, disabled, transferred and suspended members | Age that produces the highest lump-sum value ¹ | |
| Deferred vested members | Age member elected at termination | Same |
| Retired members and beneficiaries | Not applicable | Same |
| Marital status | | |
| Non-retired spousal proportion | 80% | Same |
| Non-retired spousal age differential | Males three years older | Same |
| Retired members | Actual marital status and ages are used | Same |

¹ As the Plan already gives benefits on termination similar to grow-in (continuous service is determined assuming the member has continued employment to pension commencement date), we have valued grow-in benefits for all members

| | December 31, 2015 | December 31, 2013 |
|--|---|-------------------|
| Other | | |
| Wind up expenses | \$5,000,000 | Same |
| Contingent benefits | None | Same |
| Actuarial cost method | Unit credit | Same |
| Asset valuation method | Market value of assets adjusted to reflect contributions, benefit payments, transfers and fees/expenses in transit as of the valuation date | Same |
| Solvency/Hypothetical Wind Up Incremental Cost | | |
| The assumptions for the expected benefit payments and decrement probabilities, service accruals, and projected changes in benefits and/or pensionable earnings | Same as going concern | Same |

Based on the CIA's Guidance and information such as pension legislation, Plan provisions and Plan experience, we have made the following assumptions regarding how the Plan's benefits would be settled on Plan wind up:

| | Percent of Liability Assumed to be Settled By Purchase of Annuities | Percent of Liability Assumed to be Settled By Lump-Sum Transfer |
|--|---|---|
| Active, Disabled, Transferred and Suspended Members | | |
| Not retirement eligible | 20% | 80% |
| Retirement eligible | 20% | 80% |
| Deferred Vested Members | | |
| Not retirement eligible | 20% | 80% |
| Retirement eligible | 100% | 0% |
| Retired Members and Beneficiaries | 100% | 0% |

Benefits Valued

| | Solvency Valuation | Hypothetical Wind Up Valuation |
|------------------|---|---|
| Vesting | All accrued benefits are vested | All accrued benefits are vested |
| Consent benefits | None | None |
| Grow-in benefits | As the Plan already gives benefits on termination similar to grow-in (continuous service is deemed to be the length of time as if the member has continued to pension commencement date), we have valued grow-in benefits for all members | As the Plan already gives benefits on termination similar to grow-in (continuous service is deemed to be the length of time as if the member has continued to pension commencement date), we have valued grow-in benefits for all members |
| Exclusions | None | None |
| Indexing | We have not valued future indexation, in accordance with legislation ¹ | Postretirement indexation has been valued on hypothetical wind up |

¹ The 0.5% increase granted at January 1, 2016 to eligible pensioners was included in the solvency and hypothetical wind up liabilities as of December 31, 2015.

Justification for Valuation Assumptions

Development of Discount Rates

The development of the discount rates is shown below.

| | |
|--|---|
| Solvency lump-sum discount rate for 10 years | $= V122542^1 + 90 \text{ bps}$ $= 1.23\% + 0.90\%$ =2.13% (rounded to 2.10%) per year |
| Solvency lump-sum discount rate thereafter | $= V122544^1 + 0.5 \times (V122544^1 - V122542^1) + 90 \text{ bps}$ $= 2.30\% + 0.5 \times (2.30\% - 1.23\%) + 0.90\%$ = 3.74% (rounded to 3.70%) per year |
| Solvency annuity purchase discount rate | $= V39062 + \text{Duration Adjustment}$ $= 2.03\% + 0.92\%$ = 2.95% |

The CIA's Guidance indicates that the cost of purchasing non-indexed annuities would be estimated based on the duration of the liabilities expected to be settled through annuity purchase. The duration of this Plan was estimated to be 10.55 and the resulting duration adjustment to the unadjusted CANSIM series V39062 interest rate is 0.92%.

We have set the aforementioned assumptions based on guidance prepared by the CIA Committee on Pension Plan Financial Reporting ("PPFRC") in the Educational Note Assumptions for Hypothetical Wind Up and Solvency Valuations with Effective Dates Between December 31, 2015 and December 30, 2016 ("CIA Guidance") released on January 28, 2016.

For benefit entitlements that are expected to be settled by purchase of annuities, we based the assumptions on information compiled by the PPFRC from insurance companies active in the group annuity market.

For benefit entitlements that are expected to be settled by lump-sum transfer, we based the assumptions on Section 3500 (Pension Commuted Values) of the CIA Standards of Practice, using rates corresponding to a valuation date of December 31, 2015.

Mortality Table

The derivation of the discount rate above is in conjunction with the CPM2014 in accordance with the CIA Guidance

Pensionable Earnings

The actual best average earnings were provided by the client.

¹ CANSIM Series (annualized)

Option Elections on Termination

This valuation we have assumed that 20% of all active members (regardless of eligibility for retirement) and 20% of all not retirement eligible deferred vested members will elect a deferred annuity, and the remaining 80% will elect a commuted value transfer or cash payment on termination. This assumption has been updated this valuation to reflect that effective March 1, 2014, retirement eligible members have the option to transfer out the commuted value of their pension. While there is insufficient experience to determine how the plan's population would likely behave in the event of a plan termination, we believe this assumption introduces some conservatism in the current solvency and hypothetical wind up valuations, while we continue to monitor member behaviour and plan experience.

Assumptions Not Needed

The following are not relevant to the solvency or hypothetical wind up valuation:

- Increases in pensionable earnings;
- Termination of employment rates;
- Increases in CPP and OAS benefits (we used the January 1, 2016 rates);
- Increases in *Income Tax Act* maximum pension limit (we used the 2016 maximum); and
- Disability rates.

Estimated Wind Up Expenses

Plan wind up expenses would normally include such items as fees related to preparation of the actuarial wind up report, fees imposed by a pension supervisory authority, legal fees, administration, custodial and investment management expenses. We have assumed these fees would be \$5,000,000. We have assumed that the Company will still be solvent on the wind up of the Plan.

Calculation of Special Solvency Payments

We used a discount rate of 2.80% per year to calculate the special payments necessary to liquidate the solvency deficiency. This rate is a weighted average based on the relative proportions of benefit entitlements that are expected to be settled by purchase of annuities and lump-sum transfer.

Actuarial Cost Methods

Unit credit (accrued benefit) cost method as prescribed.

Asset Valuation Method Considerations

Assets for solvency purposes have been determined using adjusted market value.

Incremental Cost on a Solvency Basis

The incremental cost on a solvency basis represents the present value, at the calculation date (time 0), of the expected aggregate change in the solvency liabilities between time 0 and the next calculation date (time t), adjusted upwards for expected benefit payments between time 0 and time t.

An educational note was published in December 2010 by the CIA Committee on PPFRC to provide guidance for actuaries on the calculation of this new information.

The calculation methodology can be summarized as follows:

- The present value at time 0 of expected benefit payments between time 0 and time t, discounted to time 0,
plus
- Projected solvency liabilities at time t, discounted to time 0, allowing for, if applicable to the pension plan being valued:
 - Expected decrements and related changes in membership status between time 0 and time t,
 - Accrual of service to time t,
 - Expected changes in benefits to time t,
 - A projection of pensionable earnings to time t,
 minus
- The solvency liabilities at time 0.

The projection calculations take into account the following assumptions and additional considerations:

- The assumptions for the expected benefit payments and decrement probabilities, service accruals, and projected changes in benefits and/or pensionable earnings would be consistent with the assumptions used in the pension plan's going concern valuation.
- The assumptions used to calculate the projected liability at time t are consistent with the assumptions for the solvency liabilities at time 0, assuming that interest rates remain at the levels applicable at time 0, that the select period is reset at time t for interest rate assumptions that are select and ultimate and that the Standards of Practice for the calculation of commuted values and the guidance for estimated annuity purchase costs in effect at time 0 remain in effect at time t.
 - Active and inactive Plan members as of time 0 are considered in calculating the incremental cost.

Appendix F: Summary of Plan Provisions

The Sears Canada Inc. Registered Retirement Plan ceased defined benefit service accrual and introduced a defined contribution component with effect on and after July 1, 2008. Credited service ceased to accrue after June 30, 2008 in the defined benefit component of the Plan, however, earnings increases will continue to be recognized while members are in active employment.

Following is a summary of the main provisions of the defined benefit component and the defined contribution component of the Plan.

| | |
|-------------------------------------|---|
| Effective Date | As amended and restated July 1, 2008 |
| Jurisdiction of Registration | Ontario |
| History | <p>Sears Canada Inc., formerly Simpsons-Sears Limited, established the Supplementary Pension Plan on January 1, 1971.</p> <p>The Supplementary Pension Plan was incorporated into the Guaranteed Retirement Income Plan from January 1, 1976.</p> <p>The Guaranteed Retirement Income Plan was incorporated into and superseded by the Sears Canada Inc. Registered Retirement Plan on January 1, 1987.</p> <p>The Sears Canada Inc. Registered Retirement Plan ceased defined benefit service accrual and introduced a defined contribution provision with effect on and after July 1, 2008.</p> |
| Eligibility for Membership | Effective July 1, 2008, no new employees may join the defined benefit component of the Plan. |
| Member Contributions | <p>Members ceased contributions to the defined benefit plan effective July 1, 2008.</p> <p>Interest is credited on members contributions to the plan prior to July 1, 2008 according to:</p> <p><i>Non-Quebec Members</i> The average of the yields on five-year trust company guaranteed investment certificates, published in the Bank of Canada Review as CANSIM Series B14080, over the most recent 12-month period.</p> <p><i>Quebec Members</i> The average annual rate of return of the fund, less investment expenses and administrative costs, over the 36-month period ending at the end of each calendar year quarter.</p> |

Normal Retirement

Eligibility

The last day of the month in which the member attains age 65.

Benefit

Benefit With Respect to the Plan Service On and After January 1, 1987

The sum of a) and b) multiplied by the Pensionable Service on and after January 1, 1987 until July 1, 2008:

- a) 1% of the Three-Year Final Average Earnings up to the Three-Year Final Average YMPE, minus 20% of the Three-Year Final Average YMPE; PLUS
- b) 1.75% of the Three-Year Final Average Earnings in excess of the Three-Year Final Average YMPE.

Benefit With Respect to GRIP Service Before January 1, 1987 For Members Not Employed in Saskatchewan or Manitoba:

1.75% of the Five-Year Final Average Earnings per year of GRIP Pensionable Service; MINUS

the "other pension benefits" defined as the sum of a), b) and c) below:

- a) The member's Retirement Security Plan Pension;
- b) The member's Profit Sharing Annuity; and
- c) The sum of Old Age Security benefit plus the Canada (Quebec) Pension Plan benefit, multiplied by the GRIP Pensionable Service, to a maximum of 40, divided by 40.

For Members Employed in Saskatchewan or Manitoba:

1.25% of the Five-Year Final Average Earnings up to the Five-Year Final Average YMPE, per year of GRIP Pensionable Service; PLUS

1.75% of the Five-Year Final Average Earnings in excess of the Five-Year Final Average YMPE, per year of GRIP Pensionable Service; MINUS

the "other pension benefits" defined as the sum of a), b) and c) below:

- a) The member's Retirement Security Plan Pension;
- b) The member's Profit Sharing Annuity; and
- c) The Canada (Quebec) Pension Plan benefit, multiplied by the GRIP Pensionable Service, to a maximum of 40, divided by 40.

Normal Form of Pension**Members Without a Spouse at Retirement:**

Life Annuity guaranteed for 120 months.

Members With a Spouse at Retirement:

Joint and 2/3 Survivor Pension, guaranteed for 120 months. The benefit is actuarially equivalent to the pension payable to a member without a spouse at retirement.

Early Retirement

Eligibility

The last day of any month after the member has attained age 55.

Benefit

The Normal Retirement Benefit accrued to the early retirement date, reduced by:

| Continuous Service | Reduction |
|--------------------|--|
| Service<10 | ¼% for each month before NRD; plus ¼% for each month before age 60 |
| 10<=Service<25 | ¼% for each month before age 62; plus ¼% for each month before age 60 |
| 25<=Service<30 | ½% for each month before age 60 |
| Service>=30 | ¼% for each month before age 60 |

In calculating the Early Retirement Benefit with respect to the GRIP service, the above reduction is not applied to the "other pension benefits".

Bridge Benefit

Benefit

The sum of Old Age Security benefit plus the Canada (Quebec) Pension Plan benefit, multiplied by the GRIP Pensionable Service, to a maximum of 40, divided by 40.

For Members Employed in Saskatchewan or Manitoba:

0.50% of the Five-Year Final Average Earnings up to the Five-Year Final Average YMPE, per year of GRIP Pensionable Service, reduced by the above Early Retirement Factor; PLUS

The Canada Pension Plan benefit, multiplied by the GRIP Pensionable Service, to a maximum of 40, divided by 40.

Form of Payment

Members Without a Spouse at Retirement:

Temporary annuity payable for the member's lifetime, until age 65.

Members With a Spouse at Retirement:

Temporary annuity payable for the member's lifetime, until age 65. If the member dies prior to age 65, the surviving spouse will continue to receive 2/3 of the Bridge Benefit for his/her lifetime, until the deceased member would have turned age 65.

Postponed Retirement

A member may retire on the last day of any month up to November 30 of the year he turns age 71.

The Retirement Benefit is the greater of a) and b) below:

- a) Normal Retirement Benefit calculated to Actual Retirement Date.
- b) Normal Retirement Benefit calculated using Service to NRD, and actuarially increased to Actual Retirement Date.

Termination of Employment Benefit

A member who terminates is entitled to either his accrued retirement benefit deferred to age 65, or to transfer a lump-sum value of his deferred pension to a locked-in retirement income equal to the sum of a) and b) below:

- a) The commuted value of his pension.
- b) The member's excess contributions including accumulated interest.

For members who voluntarily terminate prior to age 55 (or involuntarily terminate with cause):

Accrued normal retirement benefit to date of termination, payable at age 65. Member may elect commencement of benefit as early as age 55 on an actuarially equivalent basis.

For members who are involuntarily terminated prior to age 55:

The termination benefit is calculated in the same manner as the Early Retirement Benefit provided that the early retirement reduction is determined based on the member's continuous service being deemed to be the length of the member's completed continuous service as if the member has continued in active employment until his pension commencement date.

Minimum Transfer Value

The lump-sum value calculated above cannot be less than 150% of the member's required contributions made before July 1, 2008, with accumulated interest.

Death Benefit

Before Retirement

The commuted value of benefit entitlement for the Plan service on and after January 1, 1987 and before July 1, 2008, and for GRIP service before January 1, 1987, determined as if the member had terminated immediately prior to death.

After Retirement

Based on the form of pension elected by the member at retirement.

Postretirement Inflation Adjustment

Eligibility

- a) Any member who retired prior to January 1, 2001 and was eligible for an immediate pension at the time of retirement.
- b) Any member who terminated after December 31, 2000 and was eligible for either an immediate or deferred pension on termination.
- c) Any beneficiary of a member under a) or b) above.

Commencement

The Postretirement inflation adjustments commence on the January 1 immediately following the member's 65th birthday.

Amount of Adjustment

Effective January 1, 2014, the inflation adjustment made to pensions pay, in any year, is at a fixed rate of 0.50% per year.

Definitions

Pensionable Earnings

The total earnings consisting of wages, salaries, overtime, bonuses, overwrites, commissions, vacation pay and illness allowances. It excludes the value of an employee's taxable benefits and any long-term incentives and other elements of compensation that the Company expressly excludes.

Three-Year Final Average Earnings

The average of the three consecutive years of highest pensionable earnings during the last 10 years of continuous service.

Five-Year Final Average Earnings

The average of the five years of highest pensionable earnings during the last 10 years of continuous service.

Three-Year Final Average YMPE

The average of the year's maximum pensionable earnings in the last three years of continuous service.

Five-Year Final Average YMPE

The average of the year's maximum pensionable earnings in the last five calendar years of continuous service.

JP Morgan Transferred Members

Transition Date

Hourly Transferred Members: December 18, 2005

Salaried Transferred Members: January 1, 2006

Retirement Benefit

The lifetime and bridge benefits determined based on pensionable service, earnings, and YMPE at the Transition Date. Continuous service continues while employed by the Purchaser.

The benefits are increased based on Increases in the Average Industrial Wage from the Transition Date to the date of retirement/termination/death, measured by CANSIM II Series VI558664.

Thomas Cook Transferred Members

Transition Date

January 29, 2011

Retirement Benefit

The lifetime and bridge benefits determined based on pensionable service, earnings, and YMPE at the Transition Date. Continuous service continues while employed by the Purchaser.

The benefits are increased based on Increases in the Average Industrial Wage from the Transition Date to the date of retirement/termination/death, measured by CANSIM II Series VI558664.

Defined Contribution Component

Effective Date

Effective July 1, 2008, the DC component was added to the Plan.

Member Contributions

Members may contribute 1% to 7% of earnings.

Members with defined benefit entitlement as of June 30, 2008 (except Manitoba and Nova Scotia) may elect a 0% contribution.

The "default" member contribution if a member does not elect a contribution level is 1% of earnings.

Employer Contributions

The Company matches member contributions according to the following table:

| <u>Employee</u> | <u>Employer</u> |
|-----------------|-----------------|
| 0.0% | 0.0% |
| 1.0% | 0.5% |
| 2.0% | 1.0% |
| 3.0% | 1.5% |
| 4.0% | 2.0% |
| 5.0% | 2.5% |
| 6.0% | 3.0% |
| 7.0% | 3.5% |

A copy of a letter from the Company certifying the accuracy and completeness of the plan provisions summarized in this report is included in Appendix G of this report.

Appendix G: Administrator Certification

With respect to the Sears Canada Inc. Registered Retirement Plan, forming part of the actuarial report as at December 31, 2015, I hereby certify that, to the best of my knowledge and belief:

- The asset data provided or made available to the actuary is complete and accurate;
- The membership data and subsequent query answers provided or made available to the actuary are complete and accurate for all persons who are entitled to benefits under the terms of the Plan in respect of service up to the date of the valuation;
- The Plan provisions provided or made available to the actuary are complete and accurate;
- The actuary has been notified of all relevant events subsequent to the valuation measurement date;
- In accordance with Regulation, the Company has elected to defer all new going concern and solvency special payments established as at December 31, 2015 by 12 months; and
- In accordance with Regulation, the Company has elected temporary funding relief option 6.

Bev Church

Senior Director, Treasury & Pension,

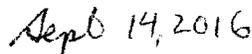
Sears Canada Inc.

Name (print) of Authorized Signatory

Title



Signature



Date

About Aon Hewitt

Aon Hewitt empowers organizations and individuals to secure a better future through innovative talent, retirement and health solutions. We advise, design and execute a wide range of solutions that enable clients to cultivate talent to drive organizational and personal performance and growth, navigate retirement risk while providing new levels of financial security, and redefine health solutions for greater choice, affordability and wellness. Aon Hewitt is the global leader in human resource solutions, with over 35,000 professionals in 90 countries serving more than 20,000 clients worldwide across 100+ solutions. For more information on Aon Hewitt, please visit aonhewitt.com.

About Aon

Aon plc (NYSE:AON) is a leading global provider of risk management, insurance and reinsurance brokerage, and human resources solutions and outsourcing services. Through its more than 72,000 colleagues worldwide, Aon unites to empower results for clients in over 120 countries via innovative and effective risk and people solutions and through industry-leading global resources and technical expertise. Aon has been named repeatedly as the world's best broker, best insurance intermediary, reinsurance intermediary, captives manager and best employee benefits consulting firm by multiple industry sources. Visit aon.com for more information on Aon and aon.com/manchesterunited to learn about Aon's global and principle partnership with Manchester United.

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This is Exhibit "I"

referred to in the Affidavit of William Turner
sworn before me this 23rd day of July, 2018.



A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

LSO# 70164K

KOSKIE MINSKY

— A L L I E W O O D —

April 9, 2018

VIA EMAIL

Andrew J. Hatnay
Direct Dial: 416-595-2083
Direct Fax: 416-204-2872
ahatnay@kmlaw.ca

FTI Consulting Canada Inc., in its capacity as Sears Canada Monitor
TD Waterhouse Tower
79 Wellington Street West
Suite 2010, P.O. Box 101
Toronto, Ontario M5K 1G8

Attention: Paul Bishop

Dear Mr. Bishop:

**Re: In the Matter of the CCAA Proceedings of Sears Canada Inc., et al.
Sears Canada Employee and Retiree Claims Process – Proof of Claim
Our File No.: 171312**

We are Representative Counsel to the active and retired employees of the Sears Canada Entities with pension entitlements and other post-employment benefits ("OPEBs") pursuant to the order of Mr. Justice Hainey dated July 13, 2017.

Pursuant to the Employee and Retiree Claims Procedure Order dated February 22, 2018 (the "**E&R Claims Process Order**"), enclosed are three Proof of Claim forms which we submit on behalf of all of the individuals who are subject to our mandate, in respect of the following amounts owing:

1. The Wind-Up Deficiency amount owing to the Sears Canada Inc. Registered Retirement Plan, which is in the process of being wound up as of October 1, 2017;
2. Amounts owing pursuant to the Supplementary Retirement Plan (the "Supplemental Plan"); and
3. Claims against Directors and Officers of the Sears Canada Entities relating to amounts owing with respect to pension benefits and OPEBs.

The claim amount in respect of the Supplemental Plan is based on calculations prepared by the actuarial firm of Segal Consulting, and reflects the lump sum present day value of each applicable retirees' entitlement under the Supplemental Plan.

Claims in respect of terminated OPEBs

As you are aware, active and retired employees of the Sears Canada Entities also have entitlements to OPEBs, which were terminated by Sears Canada as of October 1, 2017. Pursuant to the E&R Claims Process Order, the OPEB claim was calculated by the Sears Canada Entities in consultation with the Monitor and Representative Counsel and our actuarial advisors based on the Retiree Benefit Claims Methodology that was agreed to by all of said parties and which was approved by the CCAA Court. We confirm that the omnibus OPEB claim of the employees and retirees who are subject to our mandate have been deemed to have been filed and accepted by the Monitor in the amount of approximately \$421 million.

The enclosed Proof of Claim forms are submitted without prejudice to all other rights and remedies of the employees and retirees in respect of the amounts owing to them, including actions against non-CCAA applicant persons and entities.

We reserve the right to update and/or amend the Proofs of Claim to make any corrections to individual personal information and/or changes to actuarial advice and/or methodologies and other information that may arise or come to light in the future.

Thank you for your attention to this matter.

Yours truly,

KOSKIE MINSKY LLP



Andrew J. Hatnay
AJH:vdl/encl.

c. Client Committee
Mark Zigler, Amy Tang, *Koskie Minsky LLP*
Gus Tertigas, *Ernst & Young Inc.*

KM-3227258v1

**PROOF OF CLAIM FORM
FOR CERTAIN EMPLOYEE AND RETIREE CLAIMS AGAINST THE SEARS
CANADA ENTITIES**

1. NAME OF SEARS CANADA ENTITY OR ENTITIES (THE "DEBTOR(S)")¹ AGAINST WHICH THE CLAIM IS BEING MADE:

Debtor(s): Sears Canada Inc. and other Sears Canada Entities

2. (A) PARTICULARS OF CLAIMANT

Full Legal Name of Claimant: William Turner, Larry Moore, and Ken Eady, Representatives of the Represented Parties (as defined in the July 13, 2017 Representative Counsel Order for Pensions and Post-Retirement Benefits, as amended), c/o Andrew J. Hatnay, Koskie Minsky LLP

Full Mailing Address of Claimant: 900 - 20 Queen St West, Toronto, ON, M5H 3R3

Telephone Number of Claimant: 416-595-2083 / 416-595-2090

Facsimile Number of Claimant: 416-204-2872 / 416-204-2877

E-mail Address of Claimant: ahatnay@kmlaw.ca / mzigler@kmlaw.ca

Attention (Contact Person): Andrew J. Hatnay / Mark Zigler (Koskie Minsky LLP)

(B) PARTICULARS OF ORIGINAL CLAIMANT FROM WHOM YOU ACQUIRED CLAIM, IF APPLICABLE

- (i) Has the Claimant acquired this Claim by assignment? Yes No
- (ii) If yes, attach documents evidencing assignment and provide full particulars of the original Claimant from whom the Claim was acquired from:

¹ The "Sears Canada Entities" are Sears Canada Inc., 9370-2751 Quebec Inc. (formerly Corbeil Electrique Inc.), 191020 Canada Inc. (formerly S.L.H. Transport Inc.), The Cut Inc., Sears Contact Services Inc., Initium Logistics Services Inc., Initium Commerce Labs Inc., Initium Logistics Services Inc., Initium Commerce Labs Inc., Initium Trading and Sourcing Corp., Sears Floor Covering Centres Inc., 173470 Canada Inc., 2497089 Ontario Inc., 6988741 Canada Inc., 10011711 Canada Inc., 1592580 Ontario Limited, 955041 Alberta Ltd., 4201531 Canada Inc., 168886 Canada Inc., 3339611 Canada Inc., and SearsConnect.

- 2 -

Full Legal Name of original Claimant: _____

Full Mailing Address of original Claimant: _____

Telephone Number of original Claimant: _____

Facsimile Number of original Claimant: _____

E-mail Address of original Claimant: _____

Attention (Contact Person): _____

3. AMOUNT AND TYPE OF CLAIM

The Debtor is indebted to the Claimant as follows:

| Currency: | Amount of <u>Pre-Filing</u> and <u>Restructuring Period</u> Claim (including interest up to and including June 22, 2017) ² : | Whether Claim is Secured: | Value of Security Held, if any ³ : |
|-----------|---|---|--|
| Canadian | \$ 260,200,000, the estimated Sears Pension Claim as at September 30, 2017 calculated in accordance with the Sears Pension Claim Methodology described in the Employee and Retiree Claims Procedure Order dated February 22, 2018 (the "Order"). Defined terms used herein have the meanings ascribed to them in the Order. | Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> | Deemed trust pursuant to s. 57 (4) of the Pension Benefits Act (Ontario) for the full amount of the Wind-Up Deficiency over all assets of the Sears Canada Entities. |
| | | Yes <input type="checkbox"/> No <input type="checkbox"/> | |
| | | Yes <input type="checkbox"/> No <input type="checkbox"/> | |

² Interest accruing from the Filing Date (June 22, 2017) shall not be included in any Claim.

³ If the Claim is secured, provide full particulars of the security, including the date on which the security was given, the value for which you ascribe to the assets charged by your security, the basis for such valuation and attach a copy of the security documents evidencing the security. This information may be provided in a separate schedule, if necessary.

| Currency: | Amount of <u>Restructuring Period</u> Claim | Whether Claim is Secured: | Value of Security Held, if any: |
|-----------|---|--|---------------------------------|
| | See above. | Yes <input type="checkbox"/> No <input type="checkbox"/> | |
| | | Yes <input type="checkbox"/> No <input type="checkbox"/> | |
| | | Yes <input type="checkbox"/> No <input type="checkbox"/> | |

4. DOCUMENTATION

Provide all particulars of the Claim and supporting documentation, including amount, and description of transaction(s) or agreement(s), or legal breach(es) giving rise to the Claim, including any claims assignment/transfer agreement or similar document, if applicable, and amount of invoices, particulars of all credits, discounts, etc. claimed, description of the security, if any, granted by the affected Debtor to the Claimant and estimated value of such security.

This Proof of Claim submitted by the Pension Representatives on behalf of the pension plan beneficiaries provides the estimated calculation of the Wind-Up Deficiency as at September 30, 2017 in accordance with the Sears Pension Claim Methodology approved by the Order.

The Pension Representatives reserve all rights to update, amend and/or refile this Proof of Claim to reflect the actual Wind-Up Deficiency when determined by Morneau Shepell, the Pension Plan Administrator. The Pension Representatives also reserve all rights to argue the priority of the wind-up deficit claim for distribution purposes. The PBA provides priority rights for such Wind-Up Deficiency over all assets of the Sears Canada Entities.

5. CERTIFICATION

I hereby certify that:

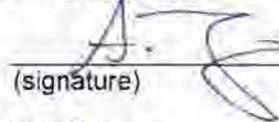
- (a) I am the Claimant or authorized representative of the Claimant.
- (b) I have knowledge of all the circumstances connected with this Claim.
- (c) The Claimant asserts this Claim against the Debtor(s) as set out above.
- (d) All available documentation in support of this Claim is attached.

Signature: _____



Witness: _____

(signature)



Name: Andrew J. Hatnay _____

(print)

Amy TANG

Title: Partner, Koskie Minsky _____

Dated at Toronto this 9th day of April, 2018

6. FILING OF CLAIM AND APPLICABLE DEADLINE

This Proof of Claim form must be returned to and received by the Monitor by 5:00 p.m. (Toronto time) on April 9, 2018 (the "**Proof of Claim Bar Date**").

Completed forms must be delivered to the Monitor by prepaid ordinary mail, registered mail, courier, personal delivery, facsimile transmission or email at the following address:

FTI Consulting Canada Inc., Sears Canada Monitor
TD Waterhouse Tower
79 Wellington Street West
Suite 2010, P.O. Box 101
Toronto, Ontario M5K 1G8

Attention: Sears Canada Employee and Retiree Claims Process
Fax No.: 416-649-8101
Email for Employee Claims: SearsEmployeeClaimSite@fticonsulting.com
Email for Retiree Claims: [Sears RetireeClaimSite@fticonsulting.com](mailto:SearsRetireeClaimSite@fticonsulting.com)

Failure to file your Proof of Claim so that it is actually received by the Monitor on or before 5:00 p.m. (Toronto time) on the Proof of Claim Bar Date WILL result in your Claim being forever barred and you will be prevented from making or enforcing your Claim against the Sears Canada Entities. In addition, you shall not be entitled to further notice of and shall not be entitled to participate as a creditor in the Sears Canada Entities' CCAA proceedings.

This is **Exhibit "J"**

referred to in the Affidavit of William Turner

sworn before me this 23rd day of July, 2018.



A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

LSO# 70164K

THE STEPS TAKEN BY SCRG TO PROTECT SEARS RETIREES PENSION AND BENEFITS

1. For many years our SCRG Board has worked with Sears Canada in an attempt to protect retiree Pension and Benefits.
2. SCRG has supported Sears, in their business endeavors by encouraging our members to shop at Sears and to be positive when speaking about Sears.
3. **2012 and 2014:** SCRG has written to or met with Sears on numerous occasions to express our concerns regarding the security of our pensions and health and dental plans. Sears position is that they will meet their "legal obligations." Sears has failed to agree to our repeated requests or to change the strategy that threatens our pension and benefits.
4. **May 14, 2013:** SCRG wrote to FSCO expressing our concern about Sears business strategy and our underfunded pension plan.
5. **September 24, 2013:** SCRG met with a number of FSCO's management. SCRG expressed our concerns regarding Sears business strategy and our underfunded pension plan. (FSCO, while interested and concerned, informed us that these issues were outside their mandate).
6. **October 2, 2013:** SCRG emailed the Director of Policy in the Premier's office our concerns regarding Sears business strategy and our underfunded pension plan.
7. **January 7, 2014:** SCRG wrote to Premier Wynne with our concerns regarding Sears business strategy and our underfunded pension plan.
8. **January 15, 2014:** SCRG wrote to all Ontario MPP's informing them of our concerns regarding Sears business strategy and our underfunded pension plan.
9. **February 18th 2014:** SCRG received a letter from Minister Sousa. This letter opened the door to a meeting with the Minister's Director of Policy.
10. **February 2014:** Sears significantly reduced the value of the retiree health and dental plan and made changes to defined benefit pension plan (inflation protection) without discussion or consultation.
11. **July 16, 2014:** SCRG met with The Director of Policy for the Minister of Finance in Ontario.
12. **Nov 6th 2014:** SCRG requests that Sears windup SRRP.
13. **Nov 21st 2014:** Sears replies with a dismissive response.
14. **Feb 27th 2015:** - SCRG requests FSCO to windup SRRP.
15. **Mar 24th 2015:** SCRG makes presentation to FSCO to support plan windup.
16. **May 4th 2015:** SCRG made further submission to FSCO re windup.

THE STEPS TAKEN BY SCRG TO PROTECT SEARS RETIREES PENSION AND BENEFITS

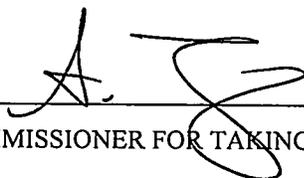
17. **May 5th 2015:** Meeting with SCRG, Sears and FSCO to discuss windup.
18. **June 5th 2015:** SCRG made further submission to FSCO re windup.
19. **June 22th 2015:** Sears reply to our submission on windup.
20. **July 7th 2015:** SCRG makes further submission to FSCO in support windup.
21. **Sept 11th 2015:** Meeting with Sears and FSCO.
22. **Nov 6th 2015:** Letter to Sears from FSCO with request of documents.
23. **Nov 27th 2015:** Letter to Sears from SCRG with request not to pay dividends.
24. **Dec 8th 2015:** Letter to SCRG from Sears, they do not plan to pay dividends.
25. **Dec 9th 2015:** Letter to FSCO from Sears, only some of requested documents included and request for meeting.
26. **Jan 15th 2016:** Letter to Sears – Tory's reasserting their position and request for documents.
27. **Feb 16th 2016:** Letter to FSCO from Sears with majority of documents. Request for meeting without SCRG.
28. **March 1st 2016:** Letter to FSCO from SCRG Requesting document and stating we wish to be part of all meetings.
29. **March 10th 2016:** Email to FSCO from KM / SCRG agreeing to sit out the meeting with Sears re partial plan windup with provisions.
30. **March 29th 2016:** Meeting FSCO and Sears to share their preliminary findings on the partial wind up issue.
31. **May 6th 2016:** Sears give an in adequate response.
32. **June 8th 2016:** Sears Chairman to meet with FSCO,
33. **June 14th 2016:** SCRG meets with Sears Chairman for lunch. He asked that SCRG back off asking for wind up for a year.
34. **Sept 12th 2016:** SCRG letter to FSCO further request for plan windup.
35. **Sept 27th 2016:** Meeting between Sears and FSCO took placed.
36. **Oct 20th 2016:** Further letter to FSCO requesting wind up.

Monday, July-10-17

THE STEPS TAKEN BY SCRG TO PROTECT SEARS RETIREES PENSION AND BENEFITS

37. **Nov 7th 2016:** Sears and FSCO share draft Term sheet.
38. **Nov 21st 2016:** Sears to make improvements to the draft term sheet.
39. **Dec 29th 2016:** Letter sent to FSCO setting out our dissatisfaction with Sears offer.
40. **Feb 15th 2017:** Sears opens direct confidential talks with SCRG. NDA signed by certain SCRG members and continues in place. The talks continued until June 13, 2017.
41. **June 13th 2017:** Sears seek Court Protection from its creditor as predicted by SCRG in 2014.

This is **Exhibit "K"**
referred to in the Affidavit of William Turner
sworn before me this 23rd day of July, 2018.



A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

LSO# 70164K

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

| | | |
|--------------------|---|--------------------------------|
| THE HONOURABLE MR. |) | THURSDAY, THE 13 th |
| |) | |
| JUSTICE HAINEY |) | DAY OF JULY, 2017 |



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

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

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

SISP APPROVAL ORDER

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

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

Credit Agreement, counsel to GACP Finance Co., LLC as administrative agent under the DIP Term Credit Agreement,, and such other counsel as were present, no one else appearing although duly served as appears from the Affidavits of Service of Sonja Pavic sworn July 6, 2017 filed:

SERVICE AND DEFINITIONS

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

APPROVAL OF THE SALE PROCESS

3. THIS COURT ORDERS that the Sale Process attached hereto as Schedule “A” (the “**Sale Process**”) is hereby approved. The Applicants, the Monitor and the Financial Advisor are hereby authorized and directed to take any and all actions as may be necessary or desirable to implement and carry out the Sale Process, subject to the milestones contained in the Definitive Documents (as defined in the Initial Order), in order to select one or more Successful Bids which shall be consummated no later than October 25, 2017 or such other later date as agreed to by the Applicants, the Monitor and the DIP Lenders or as otherwise ordered by the Court.
4. THIS COURT ORDERS that the Applicants shall, unless otherwise ordered by the Court or agreed to by the Monitor and the DIP Lenders, by no later than September 27, 2017 seek bids for the liquidation of inventory and FF&E not otherwise included in a Successful Bid(s) (as defined in the Sale Process), if any, with such liquidation(s) to commence no later than November 1, 2017.
5. THIS COURT ORDERS that nothing in this Order or the approval of the Sale Process shall affect the rights and remedies of any party to an agreement with any of the Applicants affecting lands or premises in which Sears Canada has an interest, including without limitation any lease, any operating agreement, any agreement containing an option or right of first refusal (or other similar right) (such right, a “**ROFR**”) (“**Property Agreements**”) and all rights and remedies of the Applicants and counterparties to any Property Agreements are reserved and shall remain

unaffected by this Order or the approval of the Sale Process. For greater certainty, the rights and remedies and protections in favour of counterparties that are reserved and unaffected herein, (whether statutory, contractual or at common-law), if any, including any right to receive full disclosure of information and documentation from the Applicants, the Financial Advisor and the Monitor relating to the Sale Process, including but not limited to the allocation of the purchase price for the property(ies) subject to the ROFR(s) in that particular counterparty's favour, and the allocation for all property that is subject to any *en bloc* offer to which it may form a part, or be related to by way of condition or otherwise.

6. THIS COURT ORDERS that:

- (a) by no later than August 4, 2017, on the request of a holder of a Property Agreement, the Applicants shall advise such holder whether the Applicants intend to take the position that the ROFRs subject to such request are no longer in force; and
- (b) if the Applicants have received a Binding Bid in the Sale Process for an Asset that is the subject of a ROFR under a Property Agreement from a bidder (a "**ROFR Bidder**") and the Applicants take the position that the ROFR will not be triggered by such Binding Bid, then the Applicants will provide written notice to the relevant holder of the applicable Property Agreement as follows:
 - (i) if such holder is not a bidder in the Sale Process for such Asset, by September 8, 2017; and
 - (ii) if such holder is a bidder in the Sale Process for such Asset, then once the Applicants have elected to proceed with the transaction with the ROFR Bidder, and in any event, no later than September 25, 2017. The Applicants shall serve materials in connection with such Asset sale to any party other than such holder by September 26, 2017.

7. THIS COURT ORDERS that each of the Applicants and their respective affiliates, partners, employees, and agents and the Monitor and the Financial Advisor and their respective affiliates, partners, directors, employees, and agents shall have no liability with respect to any and all losses, claims, damages or liability of any nature or kind to any person in connection or as a result of performing their duties under the Sale Process, except to the extent of such losses, claims,

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

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

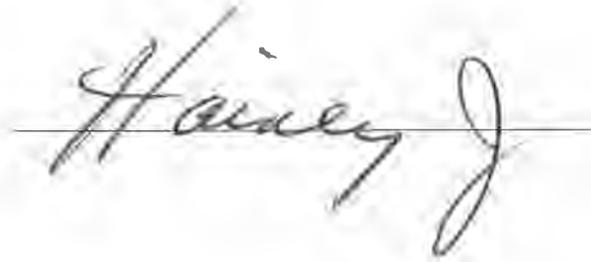
9. THIS COURT ORDERS that at any time during the Sale Process, the Monitor, the Applicants or the DIP Lenders may apply to the Court for directions with respect to the Sale Process.

GENERAL

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

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

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

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

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

JUL 18 2017

PER / PAR: 

SCHEDULE "A"
SALE PROCESS

(See attached)

Schedule “A” Sale Process

On June 22, 2017, Sears Canada Inc. and certain of its subsidiaries (collectively, “**Sears Canada**”) sought and obtained protection under the *Companies’ Creditors Arrangement Act* (the “**CCAA**”) pursuant to an initial order (the “**Initial Order**”) granted by the Ontario Superior Court of Justice (Commercial List) (the “**Court**”). The Initial Order contemplates Sears Canada pursuing all avenues of refinancing, restructuring, selling and reorganizing their Business and Property (each as therein defined) subject to prior approval of the Court.

Sale and Investment Solicitation Process

1. This sale and investment solicitation process (the “**Sale Process**”) sets out the manner in which (i) bids and proposals for a broad range of transaction alternatives including investment proposals involving the Business, Property, assets (the “**Assets**”) and/or leases (the “**Leases**”) of Sears Canada, whether *en bloc* or any portion(s) thereof, will be solicited from interested parties, (ii) any Binding Bids, Binding Lease Modification Proposals and Binding Lease Surrender Proposals (each as defined below) received will be considered and negotiated with interested parties, (iii) any Binding Bids, Binding Lease Modification Proposals and Binding Lease Surrender Proposals as subsequently negotiated, may be selected as Successful Bid(s) (as defined below), and (iv) the Court’s approval of such Successful Bid(s) will be sought, with an anticipated completion date of all transactions by no later than October 25, 2017.
2. The Sale Process shall be conducted by BMO Nesbitt Burns Inc. (“**BMO Capital Markets**”, the “**Sale Advisor**”) on behalf of Sears Canada and under the supervision, review and approval of both the Special Committee of the Board of Directors of Sears Canada Inc. (the “**Special Committee**”) and FTI Consulting Canada Inc. in its capacity as court-appointed monitor of Sears Canada (the “**Monitor**”). References to Sears Canada throughout this Sale Process shall mean the Special Committee in circumstances where the integrity of this Sale Process so requires (as determined by the Special Committee or any of the advisors, the Sale Advisor or the Monitor).
3. Parties who wish to have their bids or proposals considered with respect to the Business, Assets and/or Leases, whether as a whole or any portions thereof, shall participate in this Sale Process in accordance with the procedures set out herein.
4. The sale of the Business, Assets and/or Leases will be on an “as is, where is” basis and without surviving representations or warranties of any kind, nature, or description by Sears Canada, the Sale Advisor, the Monitor or any of their respective agents or estates, except to the extent set forth in a definitive transaction agreement executed by Sears Canada in accordance with this Sale Process.
5. For the purpose of this Sale Process, the term “Landlord” shall include landlords under real property leases and occupancy agreements for any of the Applicants’ leased premises.

Solicitation Process

6. The Sale Process will be conducted as follows:
- a. The Sale Advisor and Sears Canada with the assistance of its advisors and in consultation with and under the supervision of the Monitor will:
 - (i) prepare a form of non-disclosure agreement acceptable to the Monitor ("**NDA**") to be executed by interested parties;
 - (ii) prepare forms of transaction documents to be used by interested parties in submitting bids and proposals to Sears Canada, the form and substance of such transaction documents to be acceptable to the Monitor after consultation with the DIP ABL Lenders and DIP Term Lenders (as defined in the Initial Order, and together the "**DIP Lenders**") (the "**Transaction Documents**");
 - (iii) solicit interest from parties to enter into NDAs, and begin analyzing the transaction alternatives;
 - (iv) require that all potential bidders that wish to participate in the Sale Process must sign an NDA in form acceptable to Sears Canada and the Monitor prior to participation in the Sale Process, provided however that a Landlord need not sign an NDA to submit a Binding Lease Modification Proposal or a Binding Lease Surrender Proposal; and
 - (v) provide potential bidders who have executed an NDA with access to an electronic data room of due diligence information.
 - b. Landlords may submit to the Sale Advisor Binding Lease Modification Proposals (as defined below) in connection with existing Leases or occupancy agreements to which they are a party. It is recommended that any such proposals be received in binding form on or before 5:00 p.m. Eastern Daylight Time on August 15, 2017 (the "**Binding Lease Modification Proposal Deadline**"), with a contemporaneous copy delivered to the Monitor, but in no event later than August 31, 2017;
 - c. Parties interested in pursuing a transaction must submit binding offers based on the relevant forms of Transaction Documents including the items set out in paragraph 8 below (a "**Binding Bid**") by 5:00 p.m. Eastern Daylight Time on August 31, 2017 (the "**Binding Bid Deadline**") to the attention of the Sale Advisor as set out below, with a contemporaneous copy delivered to the Monitor. Landlords may submit to the Sale Advisor proposals to have Sears Canada surrender existing leases to which they are a party (a "**Binding Lease Surrender Proposal**") provided that all such proposals must be received in binding form on or before the Binding Bid Deadline, with a contemporaneous copy delivered to the Monitor; and
 - d. Subject to the terms set forth herein, following the Binding Bid Deadline and the Binding Lease Modification Proposal Deadline, Sears Canada and its advisors, in consultation with the Monitor and the DIP Lenders, may seek to negotiate final terms with one or more parties, and may select one or more Successful Bid(s) subject to the approval of the Court, all in accordance with the timeline set out in the process letter, which shall be in a form acceptable to the Monitor and the DIP Lenders, to be delivered by the Sale Advisor to interested parties.
 - e. The Sale Advisor shall advise prospective bidders that if a Binding Bid will be submitted for one or more Assets or Leases that are subject to an agreement which may or may not

contain restrictions in the nature of a right of first refusal, option to purchase or similar right, the beneficiary of such agreement(s) reserves all rights and remedies in respect of such agreement(s). The contents of this paragraph 6(e) shall be placed in the data room for any Asset that is subject to a ROFR.

7. The Sale Advisor may, in consultation with Sears Canada and the Monitor, and subject to the terms of the Definitive Documents (as defined in the Initial Order), engage local market leasing agents or real estate brokers to solicit Binding Bids for discrete Assets or assignments of Leases.

Submission of Binding Offers

8. In order for a bid to be considered a Binding Bid, it shall comply with the following:
- (i) it shall contain:
 - a. duly executed Transaction Documents;
 - b. the identity and contact information of the bidder and the identities of each person or entity that will be sponsoring or participating in such bid, including direct and indirect owners;
 - c. a blackline showing changes to the relevant Transaction Documents provided to the interested party by Sears Canada; and
 - d. evidence of authorization and approval to submit and consummate the bid from the bidder's board of directors (or comparable governing body);
 - (ii) it includes a letter stating that the bid is irrevocable for a period of at least 20 business days after the Binding Bid Deadline;
 - (iii) it provides written evidence of a firm, irrevocable financial commitment for all required funding or financing in connection with the bid;
 - (iv) if applicable, a separate Transaction Document that includes a separate allocation of value to each individual Asset or Lease subject to the bid that is the subject of a valid and enforceable right of first refusal, option to purchase or similar right;
 - (v) it is accompanied by a cash deposit (the "**Deposit**") of 10% of the total cash purchase price contemplated by such bid, which shall be paid to the Monitor by wire transfer (to a bank account specified by the Monitor) and held in trust in accordance with this Sale Process;
 - (vi) it does not include any request for or entitlement to any break fee, expense reimbursement or similar type of payment;
 - (vii) it is not conditional upon:
 - a. the outcome of unperformed due diligence by the bidder, and/or
 - b. obtaining financing; and
 - (viii) it is received by the Binding Bid Deadline.
9. A Binding Lease Modification Proposal and a Binding Lease Surrender Proposal shall comply with the following:
- (i) it shall contain:
 - a. duly executed relevant Transaction Documents;
 - b. the identity and contact information of the Landlord contact person;

- c. a blackline showing changes to the relevant Transaction Documents provided to the interested party by Sears Canada; and
 - d. evidence of authorization and approval to submit and consummate the proposal from the Landlord's board of directors (or comparable governing body) or confirmation that such authorization and approval is not required for the Binding Lease Modification Proposal or Binding Lease Surrender Proposal, as applicable, to be binding on such Landlord;
- (ii) it includes a letter stating that the proposal is irrevocable for a period of at least 20 business days after the Binding Bid Deadline;
- (iii) in the event that third party financing is required to close the transaction, it provides written evidence of a firm, irrevocable financial commitment for all required funding or financing;
- (iv) it is not conditional upon:
- a. the outcome of unperformed due diligence by the Landlord, and/or
 - b. obtaining financing;
- (v) it is received by the Binding Lease Modification Proposal Deadline or the Binding Bid Deadline, as applicable; and
- (vi) to the extent that a Landlord intends to submit a proposal contemplating a material modification of an existing Lease to which it is party (a "**Binding Lease Modification Proposal**"), such Binding Lease Modification Proposal must, in addition to the foregoing requirements, contain such Landlord's consent that the Sale Advisor and Sears Canada may share such Binding Lease Modification Proposal with other bidders in the Sale Process who have signed NDAs, subject to any restrictions that may be contained in such Binding Lease Modification Proposal.
10. Sears Canada, with the consent of the Monitor, the Sale Advisor and the DIP Lenders, may waive compliance with any one or more of the requirements specified in sections 8 and 9 and deem, with the consent of the bidding party, a non-compliant bid, lease surrender proposal or lease modification proposal to be a Binding Bid, a Binding Lease Surrender Proposal or a Binding Lease Modification Proposal, respectively, with the exception of a bid or a lease surrender proposal that is received after the Binding Bid Deadline or a lease modification proposal that is received after the Binding Lease Modification Proposal Deadline.

Evaluation of Competing Bids and Proposals and Court Approval

11. Following the Binding Bid Deadline and the Binding Lease Modification Proposal Deadline, as applicable, Sears Canada shall consult with the Monitor, the Sale Advisor and the DIP Lenders and decide whether to (i) continue negotiations with a selected number of bidders that have submitted Binding Bids, Binding Lease Modification Proposals and/or Binding Lease Surrender Proposals, with a view to selecting one or more non-overlapping Bindings Bids, Binding Lease Modification Proposals and/or Binding Lease Surrender Proposals (collectively, the "**Successful**

Bid(s)) upon approval of the Board of Directors of Sears Canada, and (ii) take such steps as are necessary to finalize and consummate the Successful Bid(s). Sears Canada shall have no obligation to conclude a sale arising out of this Sale Process and reserves the right and unfettered discretion to reject any bid or proposal (including any Binding Bid, Binding Lease Modification Proposal and Binding Lease Surrender Proposal), but shall not do so without the approval of the Monitor after consultation with the DIP Lenders. If Sears Canada does select any Successful Bid(s), it shall be under no obligation to accept the highest bid.

12. Following selection of a Successful Bid(s), Sears Canada and its advisors in consultation with the Monitor shall seek to settle any necessary definitive agreement(s) with respect to the Successful Bid(s) in form and substance acceptable to the DIP Lenders and the Board of Directors of Sears Canada. Once all necessary definitive agreement(s) with respect to a Successful Bid have been finalized, Sears Canada will apply to the Court as soon as reasonably practicable for an order in form and substance acceptable to the Monitor and the DIP Lenders (an **"Approval and Vesting Order"**) approving such Successful Bid and authorizing Sears Canada to (i) enter into any and all necessary agreements with respect to the Successful Bid, (ii) undertake such other actions as may be necessary to give effect to such Successful Bid, and (iii) implement the transaction(s) contemplated in such Successful Bid.
13. Each Landlord shall be advised by no later than two business days after the selection of a Successful Bid(s) relating to such Landlord's Lease(s), and in any event no later than October 6, 2017, which of its Lease(s) are included in such Successful Bid(s).

Deposits

14. All Deposits shall be retained by the Monitor and invested in an interest bearing trust account. If one or more Successful Bids are selected and an Approval and Vesting Order is granted in connection therewith, the Deposit paid in connection with such Successful Bid(s) (plus applicable interest) will be non-refundable and shall, upon closing of the transaction contemplated by such Successful Bid(s), be applied to the purchase price to be paid in connection with such Successful Bid(s) or be dealt with as otherwise set out in the definitive agreement(s) entered into in connection with such Successful Bid(s). Any Deposit (plus applicable interest) delivered with a Binding Bid that is not selected as a Successful Bid, will be returned to the applicable bidder within ten (10) business days of the date of expiration of such Binding Bid or an earlier date as may be determined by Sears Canada, in consultation with the Monitor and the Sale Advisor.

Consents and Information

15. Any amendments to this Sale Process, including the relevant dates and deadlines set forth herein, may be made with the written consent of the Special Committee, the Monitor and the DIP Lenders, or by further order of the Court.
16. Notwithstanding anything else contained herein, Sears Canada, in its reasonable business judgment and in consultation with the Sale Advisor, the Monitor and the DIP Lenders may, from time to time, withdraw any Leases or Assets from this Sale Process in accordance with the CCAA, and Sears Canada's rights under the Initial Order.

17. If any DIP Lender intends to participate as a bidder in this Sale Process, such party must provide written notice of such intention (the "**Participation Notice**") to the Sale Advisor, with a copy to the Monitor, on or before July 17, 2017 (the "**Participation Notice Deadline**"). Any DIP Lender who delivers a Participation Notice shall not be entitled to any Bid Information or Confidential Information (each as defined below), and cannot be a Restricted Process Observer (as defined below), or to participate in the review or drafting of Transaction Documents or the review, consideration, negotiation or selection of Successful Bid(s). The failure of such parties to deliver a Participation Notice by the Participation Deadline shall render such parties unable to participate as a bidder in this Sale Process.
18. Subject to the confidentiality terms hereof, the Sale Advisor shall provide regular updates to the DIP Lenders and their advisors with respect to matters related to the Sale Process. Any information that is provided by the Sale Advisor, Sears Canada, the Monitor or their advisors to any of the DIP Lenders or their advisors, in respect of the Sale Process, including regarding any participants therein, any bids received or terms thereof or otherwise ("**Confidential Information**"), will be provided on a strictly confidential basis only and such parties shall not be permitted to share such Confidential Information with anyone other than any other DIP Lenders or the DIP Lenders' advisors, without the consent of Sears Canada and the Sale Advisor in consultation with the Monitor.

In addition, the following highly-sensitive information will solely be provided on a strictly confidential basis only to the Restricted Process Observers (as defined below), notwithstanding the terms of any bids or proposals received: the identity of the bidders; the particular Assets, Leases and/or Business that are the subject of a particular Binding Bid, Binding Lease Modification Proposal or Binding Lease Surrender Proposal; the proposed purchase price for the Business, Assets and/or Leases identified in a Binding Bid, Binding Lease Modification Proposal or Binding Lease Surrender Proposal; and the number of bidders that are considering or have submitted Binding Bids, Binding Lease Modification Proposals and/or Binding Lease Proposals for a particular Asset, Lease or Business, and copies of all bids or proposals received in the Sale Process (collectively, the "**Bid Information**"). The Monitor will maintain a list of personnel and/or categories of personnel who have a need to know the Bid Information, including personnel and/or categories of personnel of the financial and legal advisors to the DIP Lenders (the "**Restricted Process Observers**"). No Bid Information will be provided to any individual who is not a Restricted Process Observer and, notwithstanding the terms of the DIP Facilities (as defined in the Initial Order), Restricted Process Observers shall only be permitted to share such Bid Information with other Restricted Process Observers unless the prior written consent of the Monitor in consultation with the Sale Advisor is obtained.

19. Subject to the terms hereof, the Special Committee or its designate may participate in the negotiations under the Sale Process and shall give instructions to Sears Canada's advisors in respect of or relating to this Sale Process. Certain members of management of Sears Canada have advised the Special Committee and Sears Canada's advisors that they intend to submit a bid or proposal. Management of Sears Canada involved in any capacity in connection with the submission of any bid or proposal will not be provided with Confidential Information or Bid Information, including information about Binding Bids, Binding Lease Modification Proposals or Binding Lease Surrender Proposals that third parties have made or information about whether any particular party has made a Binding Bid, Binding Lease Modification Proposal or Binding Lease Surrender Proposal, shall not participate in the review or drafting of Transaction

Documents or the review, consideration, negotiation or selection of Successful Bid(s), and may be subject to further restrictions as may be determined from time to time by the Special Committee in consultation with Sears Canada's advisors and the Monitor.

20. **Under no circumstances should the management of Sears Canada communicate with any interested party without one of the Sale Advisor, the Monitor or Osler, Hoskin & Harcourt LLP ("Osler"), legal advisor to Sears Canada, present.**
21. All communications relating to a potential bid must be addressed to the Sale Advisor. Interested parties must adhere to the following communication protocol:
 - (i) members of Sears Canada's management team will only be available to prospective bidders at times scheduled and on terms determined by BMO Capital Markets as it determines necessary to advance the Sale Process, provided that such meetings or other communications with management must be supervised by any one of the Sale Advisor, the Monitor or Osler; and
 - (ii) members of Sears Canada's management and outside advisory teams have been instructed to direct any and all inquiries from prospective bidders to BMO Capital Markets.
22. Nothing in this Sale Process shall be construed to (i) permit or require any amendments to the terms of any Lease without the consent of the applicable Landlord, or (ii) obligate any Landlord to negotiate with a party regarding any such amendments.

Failure to adhere to this communication protocol may result in disqualification of the interested party from the Sale Process and/or the rejection of any bid made by such interested party.

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SEARS CANADA INC.,
CORBEIL ÉLECTRIQUE INC., S.L.H. TRANSPORT INC., THE CUT INC., SEARS CONTACT SERVICES
INC., INITIUM LOGISTICS SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM TRADING AND
SOURCING CORP., SEARS FLOOR COVERING CENTRES INC., 173470 CANADA INC., 2497089
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ALBERTA LTD., 4201531 CANADA INC., 168886 CANADA INC., AND 3339611 CANADA INC.
(collectively, the "Applicants")

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

Proceeding commenced at Toronto

SISP APPROVAL ORDER

OSLER, HOSKIN & HARCOURT LLP

Box 50, 1 First Canadian Place
Toronto, Canada M5X 1B8

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

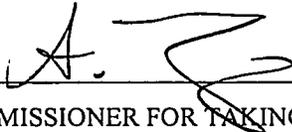
Jeremy Dacks (LSUC #: 41851R)
Tel: 416.862.4923

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

Lawyers for the Applicants

This is **Exhibit "L"**

referred to in the Affidavit of William Turner
sworn before me this 23rd day of July, 2018.



A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

LSO # 70164K

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MADAM

TUESDAY, THE 18th

JUSTICE CONWAY

DAY OF JULY, 2017



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

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

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

LIQUIDATION SALE APPROVAL ORDER

THIS MOTION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. c-36, as amended (the “**CCAA**”) for an order, *inter alia*, approving: (i) the transactions contemplated under the Amended and Restated Agency Agreement entered into between Sears Canada Inc. (“**Sears Canada**”) and a contractual joint venture comprised of Gordon Brothers Canada ULC, Merchant Retail Solutions ULC, Tiger Capital Group, LLC and GA Retail Canada ULC (collectively, the “**Agent**”) dated July 12, 2017 and amended and restated on July 14, 2017 (the “**Agency Agreement**”) and certain related relief; (ii) the transactions contemplated under the Amended and Restated Consulting Agreement entered into between Sears Canada and the Agent dated July 12, 2017 and amended and restated on July 14, 2017 (the “**Consulting Agreement**”, and together with the Agency Agreement, the “**Liquidation Agreements**”) and certain related relief; and (iii) the Sale, the Hometown Dealer

Sale, and the Sale Guidelines (each as defined below) and certain related relief, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion of the Applicants, the Affidavit of Billy Wong sworn July 5, 2017 including the exhibits thereto (the “**Second Wong Affidavit**”), the Affidavit of Billy Wong sworn July 12, 2017 including the exhibits thereto (the “**Third Wong Affidavit**”), the Affidavit of Sean Stidwill sworn July 17, 2017 including the exhibits thereto, the First Report and the Supplement to the First Report of FTI Consulting Canada Inc., in its capacity as Monitor (the “**Monitor**”) filed July 12 and July 13, 2017, respectively, and on hearing the submissions of respective counsel for the Applicants, counsel to the Monitor, counsel to the Board of Directors and the Special Committee of the Board of Directors of Sears Canada, counsel to Wells Fargo Capital Finance Corporation Canada as administrative agent under the DIP ABL Credit Agreement, counsel to GACP Finance Co., LLC as administrative agent under the DIP Term Credit Agreement, and such other counsel as were present, no one else appearing although duly served as appears from the Affidavits of Service of Sonja Pavic sworn July 12, 2017 and July 18, 2017 filed:

SERVICE AND DEFINITIONS

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

THE AGENCY AGREEMENT

3. THIS COURT ORDERS that the Agency Agreement, including the Sale Guidelines attached hereto as Schedule “A” (the “**Sale Guidelines**”), and the transactions contemplated thereunder are hereby approved, authorized and ratified and that the execution of the Agency Agreement by Sears Canada is hereby approved, authorized, and ratified with such minor amendments as Sears Canada (with the consent of the Monitor and, to the extent required under

- 3 -

the Agency Agreement, the DIP ABL Lenders and the DIP Term Lenders) and the Agent may agree to in writing. Subject to the provisions of this Order and the Initial Order, Sears Canada is hereby authorized and directed to take any and all actions as may be necessary or desirable to implement the Agency Agreement and each of the transactions contemplated therein. Without limiting the foregoing, Sears Canada is authorized to execute any other agreement, contract, deed or any other document, or take any other action, which could be required or be useful to give full and complete effect to the Agency Agreement.

THE CONSULTING AGREEMENT

4. THIS COURT ORDERS that the Consulting Agreement, including the Sale Guidelines and the transactions contemplated thereunder are hereby approved, authorized and ratified and that the execution of the Consulting Agreement by Sears Canada is hereby approved, authorized, and ratified with such minor amendments as Sears Canada (with the consent of the Monitor and, to the extent required under the Consulting Agreement, the DIP ABL Lenders and the DIP Term Lenders) and the Agent may agree to in writing. Sears Canada is hereby authorized and directed to take any and all actions as may be necessary or desirable to implement the Consulting Agreement and each of the transactions contemplated therein. Without limiting the foregoing, Sears Canada is authorized to execute any other agreement, contract, deed or any other document, or take any other action, which could be required or be useful to give full and complete effect to the Consulting Agreement.

THE SALE

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

- 4 -

6. THIS COURT ORDERS that Sears Canada, with the assistance of the Agent, is authorized to conduct a liquidation sale of the Merchandise and FF&E (each as defined in the Consulting Agreement) (the “**Consultant’s Sale**”, and together with the Agency Sale, the “**Sale**”) at the Applicants’ retail stores as set out on Schedule “C” attached hereto (the “**Consultant’s Stores**”, and together with the Agent’s Stores, the “**Stores**”, and individually, a “**Store**”) in accordance with this Order, the Consulting Agreement and the Sale Guidelines and to advertise and promote the Consultant’s Sale within the Consultant’s Stores in accordance with the Sale Guidelines. If there is a conflict between this Order, the Consulting Agreement and the Sale Guidelines, the order of priority to resolve such conflicts is as follows: (1) this Order; (2) the Sale Guidelines; and (3) the Consulting Agreement.

7. THIS COURT ORDERS that, subject to paragraph 12 of the Initial Order, the Agent, in its capacity as agent or consultant of Sears Canada, as applicable, is authorized to market and sell the Merchandise, Designated Sundry Goods, Designated Company Consignment Goods, and FF&E (as such terms are defined in the Liquidation Agreements, as applicable) on a “final sale” and “as is” basis and in accordance with the Sale Guidelines, and free and clear of all liens, claims, encumbrances, security interests, mortgages, charges, trusts, deemed trusts, executions, levies, financial, monetary or other claims, whether or not such claims have attached or been perfected, registered or filed and whether secured, unsecured, quantified or unquantified, contingent or otherwise, whensoever and howsoever arising, and whether such claims arose or came into existence prior to or following the date of this Order (in each case, whether contractual, statutory, arising by operation of law, in equity or otherwise) (all of the foregoing, collectively “**Claims**”), including, without limitation the Administration Charge, the FA Charge, the KERP Priority Charge, the Directors’ Priority Charge, the DIP ABL Lenders’ Charge, the DIP Term Lenders’ Charge, the KERP Subordinated Charge and the Directors’ Subordinated Charge (as such terms are defined in the Initial Order) and any other charges hereafter granted by this Court in these proceedings (collectively, the “**CCAA Charges**”), and (ii) all Claims, charges, security interests or liens evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal or movable property registration system (all of such Claims, charges (including the CCAA Charges), security interests and liens collectively referred to herein as “**Encumbrances**”), which Encumbrances, subject to this Order, will attach instead: (i) to the Guaranteed Amount and any other amounts received or to be received by Sears Canada under the Agency Agreement, in the same order and priority as they existed on the Sale Commencement Date; and (ii) to the

- 5 -

proceeds of sale of the Merchandise and FF&E (as defined in the Consulting Agreement) other than amounts due and payable to the Agent by Sears Canada under the Consulting Agreement, in the same order and priority as they existed on the Sale Commencement Date.

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

9. THIS COURT ORDERS that until the Vacate Date (as defined in the Sale Guidelines) for each Store (which shall be on or before October 12, 2017 (the "**Sale Termination Date**")) the Agent shall have access to the Stores in accordance with the applicable Leases (as such term is defined in the Sale Guidelines) and the Sale Guidelines on the basis that the Agent is an agent or consultant of Sears Canada, as applicable, and Sears Canada has granted the right of access to the Stores to the Agent. To the extent that the terms of the applicable Leases are in conflict with any term of this Order or the Sale Guidelines, it is agreed that the terms of this Order and the Sale Guidelines shall govern.

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

11. THIS COURT ORDERS that, except as provided for in Section 5 hereof in respect of the advertising and promotion of the Sale within the Stores, subject to and in accordance with this Order, the Liquidation Agreements (as applicable) and the Sale Guidelines, the Agent, as agent or consultant for Sears Canada, as applicable, is authorized to advertise and promote the Sale, without

- 6 -

further consent of any Person (as defined in the Initial Order) other than Sears Canada and the Monitor or a Landlord (only as expressly provided under the Liquidation Agreements).

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

13. THIS COURT ORDERS that upon delivery of a Monitor's certificate to the Agent substantially in the form attached as Schedule "E" hereto, (the "**Monitor's Agency Certificate**") and subject to payment in full by the Agent to Sears Canada of the Guaranteed Amount, the Expenses, any Company's Sharing Recovery Amount, the Net FF&E Proceeds, the Net Designated Sundry And Consignment Goods Proceeds and all other amounts due to Sears Canada under the Agency Agreement, all of Sears Canada's right, title and interest in and to any Remaining Merchandise and Remaining FF&E at the Agent's Stores, shall vest absolutely in the Agent, free and clear of and from any and all Claims, including without limiting the generality of the foregoing, the Encumbrances, and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to such Remaining Merchandise or Remaining FF&E shall be expunged and discharged as against such Remaining Merchandise or Remaining FF&E upon the delivery of the Monitor's Agency Certificate to the Agent; provided however that nothing herein shall discharge the obligations of the Agent pursuant to the Agency Agreement, or the rights or claims of Sears Canada in respect thereof, including without limitation, the obligations of the Agent to account for and remit the proceeds of sale of such Remaining Merchandise and Remaining FF&E (less the FF&E Commission) to the Designated Deposit Accounts, subject to the terms of the Agency Agreement. The Agent shall comply with paragraph 12 of the Initial Order and the Sale Guidelines regarding the removal and/or sale of any FF&E or any Remaining FF&E.

14. THIS COURT ORDERS that upon delivery of a Monitor's certificate to the Agent substantially in the form attached as Schedule "F" hereto, (the "**Monitor's Consulting Certificate**") and subject to payment in full by the Agent to Sears Canada of all amounts due to

- 7 -

Sears Canada under the Consulting Agreement, all of Sears Canada's right, title and interest in and to any Remaining FF&E at the Consultant's Stores shall vest absolutely in the Agent, free and clear of and from any and all Claims, including without limiting the generality of the foregoing, the Encumbrances, and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to such Remaining FF&E shall be expunged and discharged as against such Remaining FF&E upon the delivery of the Monitor's Consulting Certificate to the Agent; provided however that nothing herein shall discharge the obligations of the Agent pursuant to the Consulting Agreement, or the rights or claims of Sears Canada in respect thereof, including without limitation, the obligations of the Agent to account for and remit the proceeds of sale of such Remaining FF&E (less the FF&E Fee) to Sears Canada, subject to the terms of the Consulting Agreement. The Agent shall comply with paragraph 12 of the Initial Order and the Sale Guidelines regarding the removal and/or sale of any FF&E or any Remaining FF&E.

15. THIS COURT ORDERS AND DIRECTS the Monitor to file with the Court a copy of the Monitor's Agency Certificate and the Monitor's Consulting Certificate, forthwith after delivery thereof.

AGENT LIABILITY

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

- (a) the Agent shall not be deemed to be an owner or in possession, care, control or management of the Stores, of the assets located therein or associated therewith or of Sears Canada's employees (including the Retained Employees) located at the Stores or any other property of Sears Canada;
- (b) the Agent shall not be deemed to be an employer, or a joint or successor employer or a related or common employer or payor within the meaning of any legislation governing employment or labour standards or pension benefits or health and safety or other statute, regulation or rule of law or equity for any purpose whatsoever, and shall not incur any successorship liabilities whatsoever; and

- 8 -

- (c) Sears Canada shall bear all responsibility for any liability whatsoever (including without limitation losses, costs, damages, fines, or awards) relating to claims of customers, employees and any other persons arising from events occurring at the Stores during and after the term of the Liquidation Agreements, or otherwise in connection with the Sale, except to the extent that such claims are the result of events or circumstances caused or contributed to by the gross negligence or wilful misconduct of the Agent, or its employees, agents or independent contractors (other than Sears Canada's employees and the Retained Employees, agents or independent contractors) located at the Stores, or otherwise in accordance with the Liquidation Agreements (as applicable).

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

AGENT AN UNAFFECTED CREDITOR

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

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

- 9 -

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

DESIGNATED DEPOSIT ACCOUNTS AND SALE ACCOUNTS

21. THIS COURT ORDERS that no Person shall take any action, including any collection or enforcement steps, with respect to amounts deposited into the Designated Deposit Accounts pursuant to the Agency Agreement or the Sale Accounts pursuant to the Consulting Agreement, including any collection or enforcement steps, in relation to any Proceeds or FF&E Proceeds, that are payable to the Agent or in relation to which the Agent has a right of reimbursement or payment under the Agency Agreement or the Consulting Agreement, as applicable.

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

AGENT'S CHARGE AND SECURITY INTEREST

23. THIS COURT ORDERS that subject to the receipt by Sears Canada of the Initial Guaranty Payment and the issue of the Agent L/C, the Agent be and is hereby granted a charge (the "**Agent's Charge and Security Interest**") on all of the Merchandise, Proceeds, the FF&E Proceeds (to the extent of the FF&E Commission) and the Designated Sundry And Consignment Goods Proceeds (to the extent of the Designated Sundry And Consignment Goods Commission) (and, for greater certainty, the Agent's Charge and Security Interest shall not extend to other Property of the Applicants as defined in paragraph 4 of the Initial Order) as security for all of the obligations of Sears Canada to the Agent under the Agency Agreement, including, without limitation, all amounts

- 10 -

owing or payable to the Agent from time to time under or in connection with the Agency Agreement, which charge shall rank in priority to all Encumbrances including without limitation all charges created under the Initial Order; provided, however, that the Agent's Charge and Security Interest shall be junior and subordinate to all Encumbrances, but solely to the extent of any unpaid portion of the Unpaid Company's Entitlement due to Sears Canada under the Agency Agreement (the "**Subordinated Amount**").

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

25. THIS COURT ORDERS that the Agent's Charge and Security Interest shall constitute a mortgage, hypothec, security interest, assignment by way of security and charge over the Merchandise, the Proceeds, the FF&E Proceeds (to the extent of the FF&E Commission), and the Designated Sundry And Consignment Goods Proceeds (to the extent of the Designated Sundry And Consignment Goods Commission), and other than in relation to the Subordinated Amount, shall rank in priority to all other Encumbrances of or in favour of any Person. For greater certainty, the terms Initial Guaranty Payment, Agent L/C, Merchandise, Proceeds, FF&E Proceeds, FF&E Commission, Designated Sundry And Consignment Goods Proceeds, Designated Sundry And Consignment Goods Commission, and Unpaid Company's Entitlement used in these paragraphs 23-25 shall have the meanings given to them in the Agency Agreement.

26. THIS COURT ORDERS that notwithstanding:

- (a) the pendency of these proceedings;

- 11 -

- (b) any application for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (“BIA”) in respect of any of the Applicants, or any bankruptcy order made pursuant to any such applications;
 - (c) any assignment in bankruptcy made in respect of any of the Applicants;
 - (d) the provisions of any federal or provincial statute; or
 - (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of encumbrances, contained in any existing loan documents, lease, mortgage, security agreement, debenture, sublease, offer to lease or other document or agreement to which an Applicant is a party;
- (i) the Agency Agreement and the transactions and actions provided for and contemplated therein, including without limitation, the payment of amounts due to the Agent thereunder and any transfer of Remaining Merchandise and Remaining FF&E, (ii) the Consulting Agreement and the transactions and actions provided for and contemplated therein, including without limitation, the payment of amounts due to the Agent thereunder and any transfer of Remaining FF&E, (iii) the Assigned Landlord Rights, and (iv) the Agent’s Charge and Security Interest, shall be binding on any trustee in bankruptcy that may be appointed in respect of any of the Applicants and shall not be void or voidable by any Person, including any creditor of the Applicants, nor shall they, or any of them, constitute or be deemed to be a preference, fraudulent conveyance, transfer at undervalue or other challengeable reviewable transaction, under the BIA or any applicable law, nor shall they constitute oppressive or unfairly prejudicial conduct under any applicable law.

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

APPROVAL OF THE HOMETOWN DEALER SALE

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

GENERAL

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

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



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

JUL 18 2017

PER / PAR: 

SCHEDULE "A"
SALE GUIDELINES

(See attached)

SALE GUIDELINES – INVENTORY AND FF&E

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

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

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

- 2 -

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

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

Any trade fixtures or personal property left in a Store after the applicable Vacate Date in respect of which the applicable Lease has been disclaimed by Sears Canada shall be deemed abandoned, with the applicable Landlord having the right to dispose of the same as the Landlord chooses, without any liability whatsoever on the part of the Landlord. Nothing in this paragraph shall derogate from or expand upon the Agent's obligations under the Liquidation Agreements. Notwithstanding the foregoing, Sears Canada shall only exercise its rights to abandon FF&E pursuant to section 5.1(h) of the Agency Agreement and section 3.4(d) of the Consulting Agreement provided that the applicable Landlord has consented thereto or upon further Order of the Court.

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

- 4 -

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

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

SCHEDULE "B"
AGENT'S STORES

(See attached)

| Channel | Stores |
|-----------|---------------------------------|
| Full Line | 001417-Regina - Cornwall |
| Full Line | 001678-Saint John |
| Full Line | 001430-Grande Prairie |
| Full Line | 001318-Alma |
| Full Line | 001311-St George De Beauce |
| Full Line | 001646-Bathurst |
| Full Line | 001434-Prince Albert |
| Full Line | 001082-Sault Ste. Marie |
| Full Line | 001019-Ottawa-Hull |
| Full Line | 001647-Cornerbrook |
| Full Line | 001383-Drummondville |
| Full Line | 001624-Dartmouth |
| Full Line | 001431-Moose Jaw |
| Full Line | 001618-Truro |
| Full Line | 001435-Lloydminster |
| Full Line | 001047-Brockville |
| Full Line | 001029-Chicoutimi |
| Full Line | 001839-Kamloops - Aberdeen Mall |
| Full Line | 001448-Red Deer Relocation |
| Full Line | 001428-Medicine Hat |
| Home | 001382-Edmonton North Home |
| Home | 001357-Calgary South Home |
| Home | 001336-Ancaster Home |
| Home | 001353-London Home |
| Home | 001395-Windsor Home |
| Home | 001354-Scarborough Home |
| Home | 001342-Woodbridge Home |
| Home | 003801-Orillia Home |
| Home | 001381-Sudbury Home |
| Home | 001364-Kingston Home |
| Home | 001365-Ottawa East Home |
| Home | 001348-Laval Home |
| Home | 001346-St. Bruno Home |
| Home | 001352-Quebec City Home |
| Home | 001394-Ste Foy Home |

SCHEDULE "C"
CONSULTANT'S STORES

(See attached)

| Channel | Stores |
|----------------|-------------------------------|
| Liquidation | 001835-Abbotsford |
| Liquidation | 001424-Winnipeg - Garden City |
| Liquidation | 001664-Halifax Outlet |
| Liquidation | 001039-Chatham |
| Liquidation | 001238-Cambridge |
| Liquidation | 001036-Cornwall |
| Liquidation | 001384-Timmins |
| Liquidation | 001080-St Eustache |
| Liquidation | 001084-Place Vertu |
| Liquidation | 001391-Sorel |

SCHEDULE "D"
HOMETOWN DEALER STORES

(See attached)

| Channel | Stores |
|----------------|--------------------------|
| Dealer | 007642-Spruce Grove, AB |
| Dealer | 007668-Fort McMurray, AB |
| Dealer | 007678-St. Albert, AB |
| Dealer | 007697-Sherwood Park, AB |
| Dealer | 007183-Okotoks, AB |
| Dealer | 007585-Cold Lake, AB |
| Dealer | 007471-Orangeville, ON |
| Dealer | 007534-Rimouski, QC |
| Dealer | 007872-Rouyn Noranda, QC |

SCHEDULE “E”

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

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

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

MONITOR’S AGENCY CERTIFICATE

RECITALS

All undefined terms in this Monitor’s Agency Certificate have the meanings ascribed to them in the Amended and Restated Agency Agreement entered into between Sears Canada Inc. (“**Sears Canada**”) and a contractual joint venture comprised of Gordon Brothers Canada ULC, Merchant Retail Solutions ULC, Tiger Capital Group, LLC and GA Retail Canada ULC (the “**Agent**”) dated July 12, 2017 and amended and restated on July 14, 2017, a copy of which is attached as Exhibit “●” to the Affidavit of Sean Stidwill sworn July 17, 2017.

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

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

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

The Sale has ended.

The Guaranteed Amount, the Expenses, any Company's Sharing Recovery Amount, the Net FF&E Proceeds, the Net Designated Sundry And Consignment Goods Proceeds and all other amounts due to Sears Canada under the Agency Agreement have been paid in full to Sears Canada.

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

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

DATED as of this ● day of ●, 2017.

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

APPENDIX "A"
LIST OF REMAINING MERCHANDISE

APPENDIX "B"
LIST OF REMAINING FF&E

SCHEDULE “F”

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

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

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

MONITOR’S CONSULTING CERTIFICATE**RECITALS**

All undefined terms in this Monitor’s Consulting Certificate have the meanings ascribed to them in the Amended and Restated Consulting Agreement entered into between Sears Canada Inc. (“**Sears Canada**”) and Gordon Brothers Canada ULC, Merchant Retail Solutions ULC, Tiger Capital Group, LLC and GA Retail Canada ULC (the “**Agent**”) dated July 12, 2017 and amended and restated on July 14, 2017, a copy of which is attached as Exhibit “●” to the Affidavit of Sean Stidwill sworn July 17, 2017.

Pursuant to an Order of the Court dated July ●, 2017, the Court ordered that all of the Remaining FF&E shall vest absolutely in the Agent, free and clear of and from any and all claims and

encumbrances, upon the delivery by the Monitor to the Agent of a certificate certifying that (i) the Sale has ended, and (ii) all amounts due to Sears Canada under the Consulting Agreement have been paid in full to Sears Canada.

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

The Sale has ended.

All amounts due to Sears Canada under the Consulting Agreement have been paid in full to Sears Canada.

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

DATED as of this ● day of ●, 2017.

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

APPENDIX "A"
LIST OF REMAINING FF&E

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

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

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

Applicants

Ontario
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceeding commenced at Toronto

LIQUIDATION SALE APPROVAL ORDER

OSLER, HOSKIN & HARCOURT LLP
P.O. Box 50, 1 First Canadian Place
Toronto, ON M5X 1B8

Marc Wasserman LSUC# 44066M
Tel: 416.862.4908

Jeremy Dacks LSUC# 41851R
Tel: 416.862.4923

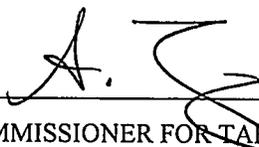
Michael De Lellis LSUC# 48038U
Tel: 416.862.5997

Lawyers for the Applicants

This is **Exhibit "M"**

referred to in the Affidavit of William Turner

sworn before me this 23rd day of July, 2018.



A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

LSO#70164K



IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990,
c. P.8, as amended (the "*PBA*");

AND IN THE MATTER OF a Notice of Intended Decision of the
Superintendent of Financial Services to Make an Order under section 69
of the *PBA* relating to the Sears Canada Inc. Registered Retirement Plan,
Registration Number 0360065.

NOTICE OF INTENDED DECISION

TO: **Morneau Shepell Ltd.**
895 Don Mills Road
Tower One, Suite 700
Toronto ON M3C 1W3

Attention: Al Kiel
Managing Partner

Administrator

AND TO: **Sears Canada Inc.**
700-290 Yonge Street,
Toronto ON M5B 2C3

Attention: Bev Church
Senior Director, Treasury

Employer

I INTEND TO MAKE AN ORDER in respect of the Sears Canada Inc. Registered
Retirement Plan, Registration Number 0360065, (the "Plan") under section 69 of the
PBA.

Si vous désirez recevoir cet avis en français, veuillez envoyer votre demande
immédiatement à: Adjointe, audiences, Greffe, Commission des services financiers de
l'Ontario, 5160 rue Yonge, boîte 85, Toronto ON M2N 6L9.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the

“Tribunal”) pursuant to section 89(6) of the *PBA*. **A hearing before the Tribunal about this Notice of Intended Decision may be requested by completing the enclosed Request for Hearing (Form 1) and submitting it to the Tribunal within 30 days after this Notice of Intended Decision is served on you.¹ A copy of that form is included with this Notice of Intended Decision.** Additional copies can be obtained by visiting the Tribunal's website at www.fstontario.ca.

IF A REQUEST FOR HEARING (Form 1) is submitted to the Tribunal within 30 days after this Notice of Intended Decision is served on you, sections 89(8) and 89(9) of the *PBA* provide that the Tribunal shall appoint a time for and hold a hearing, and by order may direct the Superintendent of Financial Services (the “Superintendent”) to make or refrain from making the intended decision indicated in this notice and to take such action as the Tribunal considers the Superintendent ought to take in accordance with the *PBA* and the regulations, and for such purposes, the Tribunal may substitute its opinion for that of the Superintendent.

IF NO WRITTEN REQUEST FOR A HEARING IS MADE within 30 days after this Notice is served on you, TAKE NOTICE THAT the Superintendent will order the following:

- 1) The wind up of the Plan effective October 1, 2017, such wind up to include all members of the Plan whose employment was terminated on or after June 13, 2017, pursuant to section 69(1)(b) of the *PBA*; and
- 2) That contributions towards the defined contribution component of the Plan continue until all or substantially all of the members of the Plan cease employment with Sears, despite the wind up of the Plan.

A COMPLETED REQUEST FOR HEARING form must be received by the Tribunal within 30 days after this Notice is served on you. It may be mailed, faxed, or delivered to:

Financial Services Tribunal
5160 Yonge Street, 14th Floor
Toronto ON M2N 6L9

Attention: The Registrar

Fax: 416-226-7750

THE HEARING BEFORE THE TRIBUNAL will proceed in accordance with the Rules of Practice and Procedure for Proceedings before the Financial Services Tribunal made under the authority of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended. Those Rules are available at the website of the Tribunal: www.fstontario.ca. Alternatively, a copy can be obtained by telephoning the Registrar of the Tribunal at 416-590-7294, or toll free at 1-800-668-0128 ext. 7294.

¹ NOTE - Pursuant to section 112 of the *PBA* any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by regular mail and any document sent by regular mail shall be deemed to be given, served or delivered on the fifth day after the date of mailing.

REASONS FOR DECISION

I INTEND TO MAKE THE ORDER for the following reasons:

1. Sears Canada Inc. and its affiliated companies ("Sears") is the employer under the Plan. Until October 16, 2017, Sears was the administrator of the Plan.
2. The Plan is a single employer, multi-jurisdictional, hybrid pension plan.
3. The Plan was established on January 1, 1971, as a defined benefit ("DB") pension plan.
4. On July 1, 2008, all members of the Plan had their DB service frozen, although the DB entitlement at termination or retirement would continue to reflect any earning increases after July 1, 2008.
5. For service on or after July 1, 2008, pension benefits for all members accrued under the defined contribution ("DC") component of the Plan.
6. The latest filed actuarial report for the Plan as at December 31, 2015 (the "2015 Actuarial Report") indicated that the DB component of the Plan was underfunded by \$267 million on a wind up basis, with a solvency ratio of 0.85 and a transfer ratio of 0.81.
7. On June 13, 2017, Sears released its first quarter financial statements, reporting substantial decline in revenue compared to the previous year and a net loss of \$144.4 million for the quarter. On June 13, 2017, Sears issued a press release indicating that the conditions facing the company "raise significant doubt as to the Company's ability to continue as a going concern." This press release was widely reported on, including by the *Globe and Mail* and the *Toronto Star*.
8. On June 22, 2017, Sears was granted an order under the *Companies' Creditors Arrangement Act* ("CCAA").
9. On July 13, 2017, Justice Hainey of the Ontario Superior Court of Justice made an order suspending the obligation for Sears to make special payments to the Plan effective on and after October 1, 2017 (the "Special Payment Suspension Order").
10. Prior to September 30, 2017, Sears was making special payments of approximately \$3.7 million per month.
11. On September 30, 2017, Sears remitted the final special payment to the Plan.
12. On October 13, 2017, Justice Hainey issued an order approving a liquidation sale in respect of Sears (the "Liquidation Sale Approval Order").

13. The Superintendent appointed Morneau Shepell Ltd. as the administrator of the Plan pursuant to section 8(1.1) of the *PBA* effective October 16, 2017.
14. To date, all required contributions have been made to the DC component of the Plan.

Special Payments

15. As indicated above, the 2015 Actuarial Report indicated a solvency ratio of 0.85.
16. Section 55(2) of the *PBA* states that an employer required to make contributions under a pension plan shall make the contributions in accordance with the prescribed requirements for funding and in the prescribed manner and at the prescribed times to the pension fund.
17. Because the Plan is underfunded, Sears is required under sections 4 and 5 of Regulation 909 (the "Regulation") to continue to make special payments in equal monthly installments as calculated in the actuarial valuation report filed for the Plan.
18. Pursuant to the 2015 Actuarial Report, Sears was required to make special payments to amortize the solvency deficiency under the Plan until December 31, 2021.
19. However, pursuant to the Special Payment Suspension Order, Sears ceased to make special payments after September 30, 2017.
20. Section 69(1)(b) of the *PBA* provides that the Superintendent may require the wind up of a pension plan if the employer fails to make contributions to the pension fund as required by the *PBA* and the regulations.
21. Since October 1, 2017, Sears has failed to make special payments as required. Therefore, the Superintendent has grounds pursuant to section 69(1)(b) of the *PBA* to order the wind up of the Plan.

Wind Up Date

22. Pursuant to section 69(2) of the *PBA*, the wind up order must specify the effective date of the wind up.
23. The Superintendent proposes that the effective date of the wind up be October 1, 2017.
24. As a result of the Liquidation Sale Approval Order, Sears will inevitably cease operating and terminate all remaining employees.

Contributions to the DC Component

25. As noted above, Sears continues to make payments to the DC component of the Plan.
26. Approximately 4,500 active members continue to accumulate benefits under the DC component of the Plan.
27. This benefit accumulation has no impact on the funded status of the DB component of the Plan.
28. It would be contrary to the purposes of the *PBA* if members of the DC component of the Plan were forced to cease accumulating retirement benefits.
29. Therefore, the Superintendent proposes that contributions towards the DC component of the Plan continue until all or substantially all of the members of the Plan cease employment with Sears, despite the wind up of the Plan.
30. Such further or other reasons as may come to my attention.

THE ADMINISTRATOR IS REQUIRED pursuant to section 89(5) of the *PBA* to transmit a copy of this Notice of Intended Decision to the following persons:

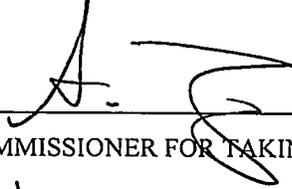
- 1) The persons listed as of the date of this Notice of Intended Decision on the Service List as defined in the Initial Order, dated June 22, 2017, of Justice Hainey in the Sears CCAA Proceedings (Court File No. CV-17-11846-00CL), at paragraph 57;
- 2) Unifor Local 40, Métallos Local 9153, and I.B.E.W. Local 213;
- 3) Any other person entitled to a payment from the pension fund of the Plan who is not represented by Koskie Minsky LLP, or the unions listed above.

DATED at Toronto, Ontario, this 10th day of November, 2017.



Lester J. Wong
Deputy Superintendent, Pensions
By delegated authority from the
Superintendent of Financial Services

This is **Exhibit "N"**
referred to in the Affidavit of William Turner
sworn before me this 23rd day of July, 2018.

A handwritten signature in black ink, consisting of a large, stylized 'A' followed by a horizontal line and a flourish that loops back to the right.

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

LSO#70164K



Ontario

**Financial Services
Commission
of Ontario**

Pension Plans Branch

5160 Yonge Street
16th Floor
Toronto ON
M2N 6L9

Telephone: 416 226 7776
Facsimile: 416 526 7777
Toll free: 1 800 668 0128

**Commission des
services financiers
de l'Ontario**

Direction des régimes de retraite

5160, rue Yonge
16^e étage
Toronto (Ontario)
M2N 6L9

Téléphone : 416 226 7776
Télécopieur : 416 226 7777
Sans frais : 1 800 668 0128

VIA COURIER

March 29, 2018

Attn: Al Kiel
Managing Partner
Morneau Shepell Ltd.
895 Don Mills Road
Tower One, Suite 700
Toronto ON M3C 1W3

Attn: Bev Church
Sears Canada Inc.
700-290 Yonge Street,
Toronto ON M5B 2C3

1291079 Ontario Limited
c/o Blaney McMurtry LLP
2 Queen Street East
Suite 1500
Toronto ON M5C 3G5

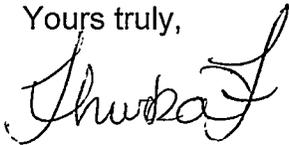
FTI Consulting
79 Wellington Street West
Suite 2010, P.O. Box 104
Toronto ON M5K 1G8

Koskie Minsky
20 Queen Street West
Suite 900, Box 52
Toronto ON M5H 3R3

**Re: Sears Canada Inc. Registered Retirement Plan
Registration Number 0360065**

Enclosed please find the Order in respect to the above pension plan.

Yours truly,

A handwritten signature in black ink, appearing to read "Thurka Thankathurai". The signature is written in a cursive style with a large, prominent initial 'T'.

Thurka Thankathurai
Project Coordinator

Enclosure

c: Anna Vani, Financial Services Commission of Ontario



IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990,
c. P.8, as amended (the "*PBA*");

AND IN THE MATTER OF a Notice of Intended Decision of the
Superintendent of Financial Services to Make an Order under section 69
of the *PBA* relating to the Sears Canada Inc. Registered Retirement Plan,
Registration Number 0360065.

TO: **Morneau Shepell Ltd.**
895 Don Mills Road
Tower One, Suite 700
Toronto ON M3C 1W3

Attention: Al Kiel
Managing Partner

Administrator

AND TO: **Sears Canada Inc.**
700-290 Yonge Street,
Toronto ON M5B 2C3

Attention: Bev Church

Employer

AND TO: **1291079 Ontario Limited**
c/o Blaney McMurtry LLP
2 Queen Street East
Suite 1500
Toronto ON M5C 3G5

AND TO: **FTI Consulting**
79 Wellington Street West
Suite 2010, P.O. Box 104
Toronto ON M5K 1G8

AND TO: **Koskie Minsky**
20 Queen Street West
Suite 900, Box 52
Toronto ON M5H 3R3

ORDER

ON OR ABOUT November 10, 2017, the Superintendent of Financial Services (the "Superintendent") issued a Notice of Intended Decision (the "NOID") to Morneau Shepell Ltd. (the "Administrator") and Sears Canada Inc. (the "Employer") proposing to order:

- (1) the wind up of the Sears Canada Inc. Registered Retirement Plan, Registration Number 0360065 (the "Plan") effective October 1, 2017, such wind up to include all members of the Plan whose employment was terminated on or after June 13, 2017, pursuant to section 69(1)(b) of the PBA; and
- (2) that contributions towards the defined contribution component of the Plan continue until all or substantially all of the members of the Plan cease employment with Sears, despite the wind up of the Plan.

The NOID was published on the Financial Services Commission of Ontario (FSCO) website.

A REQUEST FOR HEARING before the Financial Services Tribunal (the "Tribunal") was filed by 1291079 Ontario Ltd. on December 7, 2017.

An Application for Party Status was filed by Morneau Shepell Ltd. in its capacity as Administrator of the Plan on December 14, 2017.

An Application for Party Status was filed by Sears Canada Inc. on December 20, 2017.

An Application for Party Status was filed by FTI Consulting Canada Inc. in its capacity as Court Appointed Monitor of Sears Canada Group on December 21, 2017.

An Application for Party Status was filed by Koskie Minsky on behalf of Sears Canada Plan Members on March 20, 2018.

ON March 28, 2018, the request for a hearing was withdrawn by 1291079 Ontario Ltd.

ON March 28, 2018, the Tribunal closed its file on the hearing request.

For the reasons set out in the NOID, **I ORDER:**

- (1) that the Plan is wound up, effective October 1, 2017, such wind up to include all members of the Plan whose employment was terminated on or after June 13, 2017, pursuant to section 69(1)(b) of the PBA; and

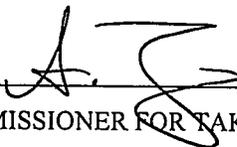
- (2) that contributions towards the defined contribution component of the Plan continue until all or substantially all of the members of the Plan cease employment with Sears, despite the wind up of the Plan.

DATED at Toronto, Ontario, this 29th day of March, 2018.



Lester J. Wong
Deputy Superintendent, Pensions
By delegated authority from the
Superintendent of Financial Services

This is **Exhibit "O"**
referred to in the Affidavit of William Turner
sworn before me this 23rd day of July, 2018.



A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

LSO #70164K

KOSKIE MINSKY

October 26, 2017

Via E-mail

Andrew J. Hatnay
Direct Dial: 416-595-2083
Direct Fax: 416-204-2872
ahatnay@kmlaw.ca

FTI Consulting
TD South Tower, 79 Wellington Street West
Toronto Dominion Centre, Suite 2010 P.O. Box 104
Toronto ON M5K 1G8

ATTENTION: Paul Bishop and Greg Watson

AND TO: The Service List

Dear Sirs/Mesdames:

Re: Sears Canada Inc. - CCAA proceedings
The Sears Canada Inc. Registered Retirement Plan, Registration Number 0360065
("Sears Canada Plan")
Our File No. 17/1312

We are Representative Counsel to the non-union active and retired employees of Sears Canada who have earned pension entitlements to be paid to them from the Sears Canada Plan.

It is now confirmed that the company is liquidating and not restructuring. The Ontario Superintendent of Financial Services has appointed the firm of Morneau Shepell to take over as administrator of the Sears Canada Plan. The wind up of the Sears Canada Plan is inevitable.

As set out in the company's materials filed in the CCAA proceedings, the Sears Canada Plan is underfunded by approximately \$270 million on its wind up. If the Plan is wound up in its current underfunded state, it will result in reductions to the monthly pension benefits of retirees. Such reductions will cause financial hardship for many Sears retirees across Canada, who as you know, have already lost their earned health and life insurance benefits.

In order to avoid reductions to monthly pension benefits, and although no claims process has yet commenced in the CCAA proceedings, we are writing to advise that under sections 57(3) and (4) of the Ontario *Pension Benefits Act*, R.S.O. 1990, c. P.-8 ("PBA"), section 30(7) of the Ontario *Personal Property Security Act*, R.S.O. 1990, c. P.10 ("PPSA") and as confirmed by the

Supreme Court of Canada in *Indalex*, our clients are the beneficiaries of statutory deemed trusts for the amounts owing by Sears Canada to the Sears Canada Plan, including unpaid special payments and the wind up deficit. As such, they are entitled to first priority recovery for those amounts ahead of the claims of all other creditors immediately after the CCAA- court ordered changes.

Please consider this letter as a claim by the pension plan beneficiaries against Sears Canada for the amount of the unpaid special payments and wind up deficit, and all other amounts owing to the plan by Sears Canada. Please make interim distributions for the benefit of the Sears Canada Plan as funds become available, allowing for the appropriate reserves for the CCAA-court ordered charges.

If you or any other party intends to object to the priority position of the pension plan beneficiaries, please let us know and we will schedule an appointment before the CCAA Judge for a motion for the appropriate determinations.

Yours truly,

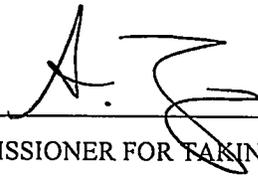
KOSKIE MINSKY LLP



Andrew J. Hatnay
AJH:hh/encl

- c. Client Committee
Gus Tertigas, *Ernst & Young Inc.*
Orestes Pasparakis, Alan Merskey, Evan Cobb, *Norton Rose LLP*
Mark Zigler, *Koskie Minsky LLP*

This is **Exhibit "P"**
referred to in the Affidavit of William Turner
sworn before me this 23rd day of July, 2018.



A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

LSO #70164K

June 1, 2018

«First» «Last»

SEARS.0001

«Street»

EMPLOYEE ID: «EE»

«City», «Province» «Postal_Code»

SINGLE-PROV_Not ONT

«Country»

Dear «Sal» «Last»:

**Re: Sears Canada Inc. Registered Retirement Plan (the "Plan")
Registration No. 0360065, Defined Benefit Component¹**

Further to our letter dated December 8, 2017, advising you of the appointment of Morneau Shepell Ltd. as Administrator of the Plan, we are now writing to advise you of an important issue regarding your pension from the Defined Benefit Component of the Plan.

Based on the most recent actuarial valuation as at December 31, 2015, prepared by the prior actuary for the Plan, there were insufficient assets to fully satisfy the defined benefit entitlements of all members and pensioners. We have reviewed the current funded status of the Plan and have determined, on a preliminary basis, that the assets continue to be insufficient to fully satisfy the defined benefit entitlements. Newly retired members who commence their pension during the Plan wind up period, will have their pensions reduced to a preliminary 75% estimated funded level that is based on conservative assumptions and may be changed later in the wind up process.

It is important to note that if the final funded ratio of the Plan is 80%, for example, then pensioners in pay as of the wind up date are entitled to receive their pensions at that ratio from the wind up date of October 1, 2017 onwards. Since cutbacks to pensions will occur commencing with the August 2018 pension payment this means that pensioners in pay as of the wind up date have been overpaid by 20% per month for a period of ten months. To recover these overpayments, pensioners currently receiving 100% of their pensions will therefore have their monthly benefits reduced to 70% of their full pension entitlement as an interim measure during the wind up process. At the end of the wind up process, any net over or underpayment paid to pensioners will be taken into account when determining the amount of pension they will receive on final settlement of plan benefits by annuity purchase.

¹ The Sears Canada Inc. Registered Retirement Plan stopped defined benefit service accrual and introduced a defined contribution component with effect on and after July 1, 2008. Credited service stopped to accrue after June 30, 2008 in the defined benefit component of the Plan.

On March 29, 2018, the Superintendent of Financial Services (“Superintendent”) issued an Order under section 69 of the Ontario *Pension Benefits Act, R.S.O. 1990, C.P.8* (the “Act”) to formally wind up the Plan effective October 1, 2017. The Order provides that:

- all members of the Plan who terminate employment on or after June 13, 2017 have their pension benefit entitlement determined under the wind up of the Plan; and
- contributions to the Defined Contribution (DC) component of the Plan be allowed to continue after October 1, 2017 for members still employed with Sears in accordance with the Plan terms until all or substantially all of the members of the DC component terminate employment with Sears Canada Inc.

Your current gross monthly pension payment will be revised as follows effective with your **August 1, 2018** payment (tax deductions will be adjusted accordingly):

| | Lifetime Benefit | Bridge Benefit | Total |
|--|--------------------------|------------------------|-----------------------|
| Current Monthly Amount (gross)² | «Current_NonON_Lifetime» | «Current_NonON_Bridge» | «Current_NonON_Total» |
| Reduced Sears Plan Pension at 70% Funded Level - Revised Monthly Amount (gross) | «Revised_Lifetime» | «Revised_Bridge» | «Revised_Total» |

We regret that such action is necessary in light of the Plan’s underfunding, but the Administrator is responsible for ensuring that all members and pensioners of the Plan are dealt with in a fair and equitable manner and in accordance with the Act. We continue to pursue a claim against the estate of Sears Canada Inc. (“Sears”) in respect of the deficiencies in the Plan. In the event of collection on that claim, the funded level will be revised to reflect the additional funding. If that is the case, any pensions that were reduced will be revised accordingly.

IMPORTANT: Verification of Province of Employment³

Your pension amount quoted above was calculated using the province of employment provided to us by Sears. Our files indicate that «Final_Province_DB_or_DC» was your province of employment for all benefits earned under the Defined Benefit Component of the Plan. If we discover additional information which confirms a different province of employment, or if you advise us that you were actually employed in a different province, an adjustment will be made to your pension amount, accordingly.

² Excludes temporary payments scheduled to stop before August 1, 2018.

³ If you are the surviving spouse of a deceased Plan member, please verify the province of employment of the Plan member.

- **If you agree** that your province of employment on file is correct, you **do not need** to complete the attached Statutory Declaration (Verification of Province of Employment).
- If you **do not agree** with the province of employment quoted **and you have supporting documentation**, please send us copies for our review and you **do not need** to complete the attached Statutory Declaration.
- If you **do not agree** with the province of employment quoted **and you are not able to provide** any supporting documentation, then you **must complete and sign** the attached Statutory Declaration in front of a commissioner of oaths and return it to us for our review.

Please note that Federal pension legislation applies to employment with SLH Transport. If you worked for SLH Transport at any time prior to July 1, 2008, please inform us.

Our address is: Morneau Shepell Ltd.
895 Don Mills Road, Tower One, Suite 700
Toronto, Ontario M3C 1W3
Attn: Regulatory Services – 9th Floor (Sears Pension Plan)

You can also return the form by email to searspension@morneaushepell.com or fax to 416-445-7989.

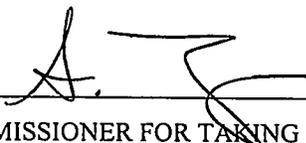
If you have any questions regarding the administration of your Plan, please call us at **1-888-841-8956**, from Monday to Friday, between 9:00 a.m. and 5:00 p.m. (Eastern time). You can also email us at searspension@morneaushepell.com. For more information regarding the wind up process, please visit our website at www.pensionwindups.morneaushepell.com.

Yours truly,

Morneau Shepell Ltd.

In its capacity as Administrator for the
Sears Canada Inc. Registered Retirement Plan
and not in its personal capacity.

This is **Exhibit "Q"**
referred to in the Affidavit of William Turner
sworn before me this 23rd day of July, 2018.



A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

LSO # 70164K

June 1, 2018

«First» «Last»

SEARS.0001

«Street»

EMPLOYEE ID: «EE»

«City», «Province» «Postal_Code»

ONT_No Cutback

«Country»

Dear «Sal» «Last»:

**Re: Sears Canada Inc. Registered Retirement Plan (the "Plan")
Registration No. 0360065, Defined Benefit Component¹**

Further to our letter dated December 8, 2017, advising you of the appointment of Morneau Shepell Ltd. as Administrator of the Plan, we are now writing to advise you of an important issue regarding your pension from the Defined Benefit Component of the Plan.

Based on the most recent actuarial valuation as at December 31, 2015, prepared by the prior actuary for the Plan, there were insufficient assets to fully satisfy the defined benefit entitlements of all members and pensioners. We have reviewed the current funded status of the Plan and have determined, on a preliminary basis, that the assets continue to be insufficient to fully satisfy the defined benefit entitlements, excluding indexation, for Ontario service. Newly retired members who commence their pension during the Plan wind up period, will have their pensions reduced to a preliminary 75% estimated funded level that is based on conservative assumptions and may be changed later in the wind up process.

It is important to note that if the final funded ratio of the Plan is 80%, for example, then pensioners in pay as of the wind up date are entitled to receive their pensions at that ratio from the wind up date of October 1, 2017 onwards. Since cutbacks to pensions will occur commencing with the August 2018 pension payment this means that pensioners in pay as of the wind up date have been overpaid by 20% per month for a period of ten months. To recover these overpayments, pensioners currently receiving 100% of their pensions will therefore have their monthly benefits reduced to 70% of their full pension entitlement as an interim measure during the wind up process. At the end of the wind up process, any net over or underpayment paid to pensioners will be taken into account when determining the amount of pension they will receive on final settlement of plan benefits by annuity purchase.

¹ The Sears Canada Inc. Registered Retirement Plan stopped defined benefit service accrual and introduced a defined contribution component with effect on and after July 1, 2008. Credited service stopped to accrue after June 30, 2008 in the defined benefit component of the Plan.

On March 29, 2018, the Superintendent of Financial Services (“Superintendent”) issued an Order under section 69 of the Ontario *Pension Benefits Act, R.S.O. 1990, C.P.8* (the “Act”) to formally wind up the Plan effective October 1, 2017. The Order provides that:

- all members of the Plan who terminate employment on or after June 13, 2017 have their pension benefit entitlement determined under the wind up of the Plan; and
- contributions to the Defined Contribution (DC) component of the Plan be allowed to continue after October 1, 2017 for members still employed with Sears in accordance with the Plan terms until all or substantially all of the members of the DC component terminate employment with Sears Canada Inc.

We have filed an application with the Superintendent requesting a declaration pursuant to subsection 83(1) of the Act that the Pension Benefits Guarantee Fund (the “PBGF”) applies to the Plan. The PBGF is an insurance-type compensation fund that provides limited protection for pension benefits for Ontario members and pensioners in under-funded pension plans in circumstances set out in the Act.

The PBGF was established in 1980 and is funded by assessments levied on sponsors of defined benefit pension plans registered in Ontario. The PBGF, in general, “tops up” the *first* \$1,500 of pension income if a pension plan is in deficit when it is wound up (terminated). As an example, if an eligible pensioner is entitled to a pension of \$2,000 a month and the pension plan is only 75% funded on wind up, the pensioner would receive only \$1,500 a month from the pension plan. The PBGF, however, would provide a \$375 top up for the first \$1,500 of pension income to bring the total monthly pension to \$1,875. The PBGF top-up is paid to the eligible pensioner through the pension plan, and not as a separate payment.

Based on our review of the information available to us, we have assumed that your monthly pension payment is fully covered under the PBGF and therefore, **no reduction is required.**

This is to confirm you will continue to receive:

| | Lifetime Benefit | Bridge Benefit | Total |
|--|---------------------------|-------------------------|------------------------|
| Current Monthly Amount (gross) ² | «Current_ON_Lifetime» | «Current_ON_Bridge» | «Current_ON_Total» |
| Reduced Sears Plan Pension at 70% Funded Level | «Reduced_70_ON_Lifetime» | «Reduced_70_ON_Bridge» | «Reduced_70_ON_Total» |
| PBGF Top-up (if eligible) | «PBGF_Top_Up_ON_Lifetime» | «PBGF_Top_Up_ON_Bridge» | «PBGF_Top_Up_ON_Total» |

² Excludes temporary payments scheduled to stop before August 1, 2018.

| Continuing Monthly Amount (gross) | «Revised_Lifetime» | «Revised_Bridge» | «Revised_Total» |
|--------------------------------------|--------------------|------------------|-----------------|
|--------------------------------------|--------------------|------------------|-----------------|

Unfortunately, a number of pensioners in the Plan will receive a reduced pension effective with their August 1, 2018 payment. We regret that such action is necessary in light of the Plan's underfunding, but the Administrator is responsible for ensuring that all members and pensioners of the Plan are dealt with in a fair and equitable manner and in accordance with the Act. We continue to pursue a claim against the estate of Sears Canada Inc. ("Sears") in respect of the deficiencies in the Plan. In the event of collection on that claim, the funded level will be revised to reflect the additional funding.

IMPORTANT: Verification of Province of Employment³

Your pension amount quoted above was calculated using the province of employment provided to us by Sears. Our files indicate that **Ontario** was your province of employment for all benefits earned under the Defined Benefit Component of the Plan. If we discover additional information which confirms a different province of employment, or if you advise us that you were actually employed in a different province, an adjustment will be made to your pension amount, accordingly.

- **If you agree** that your province of employment on file is correct, you **do not need** to complete the attached Statutory Declaration (Verification of Province of Employment).
- If you **do not agree** with the province of employment quoted **and you have supporting documentation**, please send us copies for our review and you **do not need** to complete the attached Statutory Declaration.
- If you **do not agree** with the province of employment quoted **and you are not able to provide** any supporting documentation, then you **must complete and sign** the attached Statutory Declaration in front of a commissioner of oaths and return it to us for our review.

Please note that Federal pension legislation applies to employment with SLH Transport. If you worked for SLH Transport at any time prior to July 1, 2008, please inform us.

Our address is: Morneau Shepell Ltd.
895 Don Mills Road, Tower One, Suite 700
Toronto, Ontario M3C 1W3
Attn: Regulatory Services – 9th Floor (Sears Pension Plan)

³ If you are the surviving spouse of a deceased Plan member, please verify the province of employment of the Plan member.

You can also return the form by email to searspension@morneaushepell.com or fax to 416-445-7989.

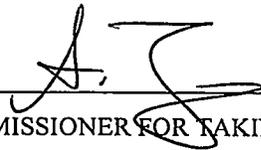
If you have any questions regarding the administration of your Plan, please call us at **1-888-841-8956**, from Monday to Friday, between 9:00 a.m. and 5:00 p.m. (Eastern time). You can also email us at searspension@morneaushepell.com. For more information regarding the wind up process, please visit our website at www.pensionwindups.morneaushepell.com.

Yours truly,

Morneau Shepell Ltd.

In its capacity as Administrator for the
Sears Canada Inc. Registered Retirement Plan
and not in its personal capacity.

This is **Exhibit "R"**
referred to in the Affidavit of William Turner
sworn before me this 23rd day of July, 2018.



A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

LSO # 70164K



Annual Information Return

To be completed by the Pension Plan Administrator.

Form 2 - Approved by the Superintendent of Financial Services pursuant to the Pension Benefits Act, R.S.O. 1990, c.P.8, as amended (the "PBA")

Please review ALL the information shown below. If any information is incorrect or incomplete, please make the appropriate corrections.

Identification

| | | | | | | | | | | | | | | | | | | |
|---|--|---|------|-------|-----|------|----|----|----|--|--|------|-------|-----|------|----|----|---|
| Registration Number 0360065 | Name of Pension Plan Sears Canada Inc. Registered Retirement Plan | | | | | | | | | | | | | | | | | |
| Plan Type <input checked="" type="checkbox"/> Single-Employer <input type="checkbox"/> Individual Pension Plan <input type="checkbox"/> Multi-Employer | Benefit Type <input type="checkbox"/> Defined Benefit <input type="checkbox"/> Defined Contribution <input checked="" type="checkbox"/> Combination (e.g., Defined Contribution with past service Defined Benefits) | Plan Reporting Period <table border="1" style="width: 100%; border-collapse: collapse; text-align: center;"> <tr> <td style="padding: 2px;">year</td> <td style="padding: 2px;">month</td> <td style="padding: 2px;">day</td> </tr> <tr> <td style="padding: 2px;">2015</td> <td style="padding: 2px;">01</td> <td style="padding: 2px;">01</td> </tr> <tr> <td colspan="3" style="padding: 2px;">to</td> </tr> <tr> <td style="padding: 2px;">year</td> <td style="padding: 2px;">month</td> <td style="padding: 2px;">day</td> </tr> <tr> <td style="padding: 2px;">2015</td> <td style="padding: 2px;">12</td> <td style="padding: 2px;">31</td> </tr> </table> | year | month | day | 2015 | 01 | 01 | to | | | year | month | day | 2015 | 12 | 31 | Language <input checked="" type="checkbox"/> English <input type="checkbox"/> French/ français |
| year | month | day | | | | | | | | | | | | | | | | |
| 2015 | 01 | 01 | | | | | | | | | | | | | | | | |
| to | | | | | | | | | | | | | | | | | | |
| year | month | day | | | | | | | | | | | | | | | | |
| 2015 | 12 | 31 | | | | | | | | | | | | | | | | |

Plan Administrator - Name and Mailing Address

| | | | | | | |
|---|---------------------------|-----------------------------|-----------|----------------------------------|---------------------------|--------------------------|
| Contact Bev Church | | | | | | |
| Title Senior Director, Treasury | | | | | | |
| Company Name Sears Canada Inc. | | | | | | |
| Address 700-290 Yonge Street | | | | | | |
| City Toronto | | Province/State ON | | Postal/Zip Code M5B2C3 | | Country Canada |
| Telephone | (Area Code) 416 | 941-4051 | Extension | FAX | (Area Code) 416 | 941-3931 |

Plan Sponsor - Name and Address

| | | | | | | |
|--|---------------------------|-----------------------------|-----------|----------------------------------|---------------------------|--------------------------|
| Name Sears Canada Inc. | | | | | | |
| Address 700-290 Yonge Street | | | | | | |
| City Toronto | | Province/State ON | | Postal/Zip Code M5B2C3 | | Country Canada |
| Telephone | (Area Code) 416 | 941-4051 | Extension | FAX | (Area Code) 416 | 941-3931 |

Pension Fund Trustee (including Insurance Company) - Name and Address

Trustee: Individuals Corporate

| | | | | | | |
|---|---------------------------|-----------------------------|-----------|----------------------------------|---------------------------|--------------------------|
| Name CIBC Mellon Trust Company (DC Portion) | | | | | | |
| Address 320 Bay Street, 6th Floor | | | | | | |
| City Toronto | | Province/State ON | | Postal/Zip Code M5H4A6 | | Country Canada |
| Telephone | (Area Code) 416 | 643-5113 | Extension | FAX | (Area Code) 416 | 643-6360 |

Custodian (Organization Holding Pension Fund Assets) - Name and Address

Is there more than one Custodian? Yes No If "Yes" please see instructions.

| | | | | | | |
|--|--------------------|----------------------|-----------|---------------------------|--------------------|-------------------|
| Name Sun Life Assurance Company of Canada | | | | | | |
| Address 225 King Street W, 4th Floor | | | | | | |
| City Toronto | | Province/State ON | | Postal/Zip Code M5V3C5 | | Country Canada |
| Telephone | (Area Code) 416 | 408-7616 | Extension | FAX | (Area Code) 416 | 595-0679 |

Location of Books or Records If same as Plan Administrator's address (✓) this box otherwise complete address below.

| | | | |
|------------------|----------------|-----------------|---------|
| Name and Address | | | |
| | | | |
| City | Province/State | Postal/Zip Code | Country |

Collective Bargaining Agent - Name and Address

Is there a Collective Bargaining Agent? Yes No If "Yes" please see instructions.

| | | | | | | |
|-----------|-------------|----------------|-----------|-----------------|-------------|---------|
| Name | | | | | | |
| Address | | | | | | |
| | | | | | | |
| City | | Province/State | | Postal/Zip Code | | Country |
| Telephone | (Area Code) | | Extension | FAX | (Area Code) | |

Funding Information for the Reporting Period

Required contributions based on the most recent Form 7 or Actuarial Report:

| | | | |
|---|-----|-----|---------------|
| Employer normal cost/current service contributions | 101 | \$ | 5,742,000.00 |
| Plus: Employer special payments | + | 102 | 20,240,000.00 |
| Less: Reduction of employer required contributions | - | 103 | 0.00 |
| Less: Other adjustments | - | 104 | 1,060,000.00 |
| Total employer required contributions | = | 105 | 24,922,000.00 |
| Member required contributions | 106 | | 11,485,000.00 |
| Less: Reduction of member required contributions | - | 107 | 0.00 |
| Less: Other adjustments | - | 108 | 0.00 |
| Total member required contributions | = | 109 | 11,485,000.00 |

Actual contributions made in respect of the reporting period:

| | | |
|---|-----|---------------|
| Employer contributions | 110 | 32,898,000.00 |
| Member contributions | 111 | 11,853,000.00 |
| Member additional voluntary contributions | 112 | 0.00 |

Membership Information at the End of the Reporting Period

Indicate number of plan members:

| | Male | Female |
|--------------------------------------|--------------|--------------|
| Ontario [113a] | 1,018 | 1,962 |
| Newfoundland & Labrador [114a] | 11 | 36 |
| Prince Edward Island [115a] | 2 | 6 |
| Nova Scotia [116a] | 23 | 100 |
| New Brunswick [117a] | 24 | 51 |
| Quebec [118a] | 476 | 690 |
| Manitoba [119a] | 85 | 213 |
| Saskatchewan [120a] | 35 | 80 |
| Alberta [121a] | 142 | 213 |
| British Columbia [122a] | 143 | 348 |
| Northwest Territories [123a] | 0 | 0 |
| Yukon Territory [124a] | 0 | 0 |
| Nunavut [125a] | 0 | 0 |
| Federal (PBSA) [126a] | 0 | 0 |
| Outside Canada [127a] | 0 | 0 |
| <i>Subtotal</i> [128a] | 1,959 | 3,699 |

Total number of plan members: (add [128a] and [128b]) [129] **5,658**

Membership Reconciliation

| | |
|--|--------------|
| Plan Members at end of previous reporting period [130] | 6,650 |
| Plan Members who joined the plan during this reporting period [131] | 234 |
| Subtotal ([130] + [131]) [132] | 6,884 |
| Plan Members who retired during this reporting period [133] | 457 |
| Plan Members deceased during this reporting period [134] | 9 |
| Plan Members terminated due to plant closures during this reporting period [135] | 0 |
| Other terminations of membership during this reporting period [136] | 760 |
| Subtotal ([133] + [134] + [135] + [136]) [137] | 1,226 |
| Plan Members at end of reporting period ([132] - [137]) [138] | 5,658 |

Former Members and Other Beneficiaries at the End of the Reporting Period

| | |
|--|---------------|
| Indicate total number of former members and other beneficiaries [139] | 16,357 |
| Indicate number of former members and other beneficiaries in Ontario [140] | 7,957 |

Pension Fund Information

| | | | |
|---|-----|----|------------------|
| Amounts transferred in from other plans | 141 | \$ | 0.00 |
| Payment of benefits from the plan | 142 | | 76,495,000.00 |
| Transfer of benefits to other plans | 143 | | 82,938,000.00 |
| Market value of assets at beginning of reporting period | 144 | | 1,336,001,000.00 |
| Market value of assets at end of reporting period | 145 | | 1,288,998,000.00 |
| Net investment earnings (losses) | 146 | | 67,679,000.00 |

Employers at the End of the Reporting Period

How many employers participate in the plan at the end of the reporting period? 147

Confirmation of Compliance

(a) Has any of the following information changed in this reporting period? Yes No
 If yes, please (✓) appropriate box(es)

| | | |
|---|--|--|
| <input type="checkbox"/> Plan Year End | <input type="checkbox"/> Plan Name | <input type="checkbox"/> Pension Fund Trustee |
| <input type="checkbox"/> Plan Administrator | <input type="checkbox"/> Plan Provisions | <input type="checkbox"/> Other (specify) _____ |
| <input type="checkbox"/> Plan Sponsor | <input type="checkbox"/> Custodian | |

(b) Have you filed an amendment with the changed information? Yes No N/A

(c) Have you filed a Pension Fund or Plan Financial Statement for this reporting period? Yes No

(d) If plan assets are \$3 million or more, was an auditor's report filed? Yes No N/A
 If you answered "No" to (b), (c) or (d), the documents must be filed with:

Financial Services Commission of Ontario (FSCO)
 Pension Plans Branch
 5160 Yonge Street, 4th Floor
 PO Box 85
 North York ON M2N 6L9

(e) If this pension plan is a Multi-Employer Pension Plan, please attach a list of the names and addresses of the members of the Board of Trustees and indicate which are plan member representatives.

(f) Have the pension plan and pension fund been administered in compliance with the PBA and Regulation 909, R.R.O. 1990, as amended, for the reporting period covered by this form? Yes No
 If No, please attach an explanation.

Certification

As the authorized representative of the Administrator of the above noted pension plan, I certify that all the information presented on this form is true to the best of my knowledge and belief.

DATED at Pension Services Portal, this 1 (day) day of October (month), 2016 (year)

Name of Authorized Representative (please print)



| | |
|--------------------------------|--|
| Registration Number 0360065 | Name of Pension Plan Sears Canada Inc. Registered Retirement Plan |
|--------------------------------|--|

Plan Reporting Period:

| | | | | | | |
|------|-------|-----|----|------|-------|-----|
| year | month | day | | year | month | day |
| 2015 | 01 | 01 | to | 2015 | 12 | 31 |

Canada Revenue Agency Information

1. Did the pension plan terminate or become inactive prior to or in this reporting period?

| | | | | | | | | |
|--------------------------|-------------------------------------|---|------|-------|-----|--|--|--|
| Yes | No | If Yes, enter Date of Termination | | | | | | |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | <table border="1"> <tr> <td>year</td> <td>month</td> <td>day</td> </tr> <tr> <td></td> <td></td> <td></td> </tr> </table> [201] | year | month | day | | | |
| year | month | day | | | | | | |
| | | | | | | | | |

If all the assets were distributed pursuant to the termination of the plan, enter the Date of Final Distribution

| | | |
|------|-------|-----|
| year | month | day |
| | | |

 [202]

NOTE: • If question 1 is Yes, no further questions.
• All other plans continue with question 2.

2. Actuarial liabilities resulting from plan obligations

| | |
|----|------------------|
| \$ | 1,403,775,000.00 |
|----|------------------|

 [203]

3. Date of last actuarial assessment

| | | |
|------|-------|-----|
| year | month | day |
| 2015 | 12 | 31 |

 [204]

4. How many active members are persons connected with the employer?

| |
|---|
| 0 |
|---|

 [205]

NOTE: • Multi-employer plan, proceed to question 9.
• Specified multi-employer plan, no further questions.
• All other plans continue with question 5.

5. Did any member of this plan participate in any other registered pension plan or deferred profit sharing plan provided by this plan sponsor?

| | |
|-------------------------------------|--------------------------|
| Yes | No |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> |

6. Did any member of this plan participate in any other registered pension plan or deferred profit sharing plan of any other sponsor who does not deal at arm's length with this plan sponsor?

| | |
|--------------------------|-------------------------------------|
| <input type="checkbox"/> | <input checked="" type="checkbox"/> |
|--------------------------|-------------------------------------|

7. Have any connected persons joined or left the plan in this reporting period?

| | |
|--------------------------|-------------------------------------|
| <input type="checkbox"/> | <input checked="" type="checkbox"/> |
|--------------------------|-------------------------------------|

8. During this reporting period, has a person or group acquired control of the corporation that is sponsoring the pension plan?

| | | |
|--------------------------|-------------------------------------|--------------------------|
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | N/A |
| | | <input type="checkbox"/> |

NOTE: • Defined contribution plan, no further questions.
• All other plans continue with question 9.

9. Were any plan members provided with post-1989 past service benefits in this reporting period?

| | |
|--------------------------|-------------------------------------|
| Yes | No |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> |

10. Have any plan members who are connected persons been provided with pre-1992 past service benefits in this reporting period?

| | |
|--------------------------|-------------------------------------|
| <input type="checkbox"/> | <input checked="" type="checkbox"/> |
|--------------------------|-------------------------------------|

This is **Exhibit "S"**
referred to in the Affidavit of William Turner
sworn before me this 23rd day of July, 2018.



A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

LSb # 70164K

SEARS CANADA INC.
SUPPLEMENTARY RETIREMENT PLAN
(as amended and restated at July 1, 2008)

Table of Contents

| | | |
|------------|---|----|
| SECTION 1 | INTRODUCTION | 1 |
| SECTION 2 | DEFINITIONS..... | 3 |
| SECTION 3 | SUPPLEMENTARY PENSION..... | 10 |
| SECTION 4 | BENEFITS ON DEATH..... | 14 |
| SECTION 5 | PAYMENT OF BENEFITS | 15 |
| SECTION 6 | PROCEDURE ON EVENTS OF DEFAULT | 23 |
| SECTION 7 | AMENDMENT OR DISCONTINUANCE OF THE PLAN | 29 |
| SECTION 8 | ADMINISTRATION | 30 |
| SECTION 9 | GENERAL..... | 31 |
| APPENDIX A | | 32 |
| APPENDIX B | | 37 |
| APPENDIX C | | 39 |

SECTION 1 INTRODUCTION

- 1.01 The Plan was established by resolution of the Board of Directors of the Company on March 29, 1976, pursuant to which Members of the Base Plan whose pensions are subject to the maximum imposed by the Income Tax Act receive additional amounts from the Company to provide a total pension in the amount defined by the Base Plan formula without the Income Tax Act maximum.
- 1.02 The Plan was amended, in February of 2006, with effect from January 1, 2006, to provide for a measure of funding with respect to certain of the Company's retirees.
- 1.03 The Plan was further amended with effect from three dates in 2006 to comply with employment separation agreements entered into by the Company.
- 1.04 A consolidated Plan text was created as of July 1, 2006 to reflect the Plan text, as originally adopted, and the first two of the three amendments described above. There was no intent to effect any substantive change from the Plan text, as it read immediately before July 1, 2006.
- 1.05 The Plan was amended effective December 18, 2006 with respect to Members whose employment transferred to JP Morgan Chase Bank N.A. (Toronto Branch) ("JPMorgan") to provide that their benefit determination under the Plan will occur upon termination of employment with JPMorgan, consistent with their treatment under the Base Plan.
- 1.06 This amended and restated Plan text implements the decision of the Board of Directors of the Company to amend the Base Plan effective July 1, 2008 so that Pensionable Service Years cease to accrue while Pensionable Earnings continue to

accrue, and to introduce a defined contribution component, and to amend the Plan to reflect these changes *mutatis mutandis* except that the defined contribution component shall not apply to the Plan.

- 1.07 Unless expressly stated to the contrary in this amended and restated Plan text, the terms of this Plan text applicable to the determination of Supplementary Pension, Supplementary Bridge Pension, Commuted Value of Supplementary Pension and death benefits from this Plan apply to Members for whom the earlier of:
- (1) Pension commencement;
 - (2) termination of Continuous Service pursuant to which an election to receive a Commuted Value transfer is made; or
 - (3) death

occurs on or after July 1, 2008. The determination of Supplementary Pension, Supplementary Bridge Pension, Commuted Value of Supplementary Pension and death benefits from the Plan with respect to Members for whom the earlier of the above events occurs before July 1, 2008 is made in accordance with the terms of the Plan in effect at the time of that event.

SECTION 2 DEFINITIONS

- 2.01 **Aggregate Valuation**, in relation to a calendar month, means the total of all Individual Valuations with respect to Members who become Retirees in that month, prepared in accordance with Section 5.04(2).
- 2.02 **Aggregate Wind-up Liability**, at any time, means the total of all amounts each of which is the Wind-up Liability in relation to a Retiree, as at that time.
- 2.03 **Annual Valuation** means the valuation prepared in accordance with Section 5.02(1).
- 2.04 **Base Plan** means the Sears Canada Inc. Registered Retirement Plan, as amended from time to time.
- 2.05 **Bridge Pension** means the annual bridge benefit payable to a Member from the DB Provisions of the Base Plan until the Member attains age 65.
- 2.06 **Commuted Value** has the meaning assigned to that expression in the Base Plan. For greater certainty, in no event shall the Commuted Value of any benefit under the Plan reflect the fact that the Plan and its beneficiaries do not benefit from the tax treatment afforded to pension plans registered under the Income Tax Act and their beneficiaries.
- 2.07 **Event of Default** means
- (1) the failure of the Company to deliver to the Trustee an Annual Valuation by July 31 of a Year, where the Trustee has notified the Company of such failure and no Annual Valuation has been received by the Trustee within sixty (60) days of such notification;

- (2) the failure of the Company to make the contributions described in Section 5.03 by December 31 of a Year, where the Trustee has notified the Company of such failure by February 28 of the immediately following Year and the contributions have not been received by the Trustee before June 30 of that immediately following Year;
- (3) the failure of the Company to provide proof to the Trustee of the payment of Refundable Tax in accordance with Section 5.06(2), where the Trustee has notified the Company of such failure and the Company fails to provide proof of such payment within sixty (60) days of the date of notification;
- (4) the occurrence of an Insolvent Date;
- (5) the termination of the Base Plan; and
- (6) the termination of the Plan.

2.08 ***Funded Retiree*** means a Retiree in respect of whom a contribution has been made by the Company to the Trust Fund in accordance with Section 5.03, 5.05 or 6.01(4) and includes a Retiree in respect of whom Surplus has been applied to reduce the Company's contribution under Section 5.05(1), in accordance with Section 5.05(2).

2.09 ***Included Benefits*** means:

- (1) with respect to a Retiree who terminates employment before 2006, all benefits payable under the Plan in respect of the Retiree; and
- (2) in any other case, all benefits payable under the Plan in respect of a Retiree other than benefits in respect of service while a United States resident or a United States citizen.

2.10 ***Income Tax Act*** means the *Income Tax Act* (Canada), as amended from time to time, the regulations made thereunder and the information circulars, interpretation bulletins

and administrative guidelines published by the Canada Revenue Agency in accordance with the *Income Tax Act* (Canada) and its regulations.

2.11 **Individual Valuation**, in relation to a Member, means a valuation prepared in accordance with Section 5.04(1).

2.12 **Insolvent Date** means the date on which the:

- (1) the Company is being wound up, dissolved or liquidated, whether pursuant to the provisions of the laws of a province or the federal laws of Canada applicable therein, or any other law or otherwise, or has become subject to the provisions of the Winding-up and Restructuring Act (Canada), or its existence is terminated or it has passed any resolution passed therefor;
- (2) the Company has made a general assignment for the benefit of its creditors or filed a proposal or a notice of intention to make a proposal under the Bankruptcy and Insolvency Act (Canada) or otherwise acknowledged its insolvency or been declared or become bankrupt or insolvent;
- (3) the Company has proposed a compromise or arrangement or otherwise brought proceedings under the Companies' Creditors Arrangement Act (Canada) or filed any petition or answer seeking any re-organization, arrangement, composition, re-adjustment, liquidation, dissolution or any other relief for itself under, or in any way taken the benefit of the Bankruptcy and Insolvency Act (Canada) or any other present or future law relative to bankruptcy, insolvency or other relief for debtors or for or against the benefit of creditors;
- (4) a court of competent jurisdiction has entered an order, judgment or decree against the Company in respect of any re-organization, arrangement, composition, re-adjustment, liquidation, dissolution, winding-up, termination of existence, declaration of bankruptcy or insolvency, or similar relief under

any present or future law relative to bankruptcy, insolvency or other relief for debtors or for or against the benefit of creditors, whether or not the Company has acquiesced in the entry of such order, judgment or decree or such order, and such order, judgment or decree remains unvacated and unstayed for more than ten (10) days; or

- (5) any trustee in bankruptcy, receiver, receiver and manager, monitor or liquidator or any other officer with similar powers has been appointed over the Company's assets, or any portion thereof, with or without the consent or acquiescence of the Company, and such appointment remains unvacated and unstayed for more than ten (10) days.

2.13 **Pension** means the annual benefit payable to a Member from the DB Provisions of the Base Plan for the Member's lifetime.

2.14 **Plan** means this Sears Canada Inc. Supplementary Retirement Plan as amended from time to time.

2.15 **Plan Assets** means the assets held in the Trust Fund.

2.16 **Refundable Tax** has the meaning assigned to that expression in Part XI.3 of the Income Tax Act.

2.17 **Retiree**, at any time, means an individual who terminates employment with the Company, at or before that time, and who,

- (1) is in receipt of a Supplementary Pension at that time; or
- (2) is at least age 55 at that time, terminated employment with the Company before age 55 and elected at the time of termination to receive a Supplementary Pension; or

- (3) terminated employment with the Company at or after age 55 and has provided the Company with any required instructions as to the form of Supplementary Pension that the individual is to receive.

For Members of the Base Plan whose employment was seconded to JPMorgan Chase Bank N.A. (Toronto Branch) (“JPMorgan”) and whose employment was transferred to JP Morgan on December 18, 2005 or January 1, 2006, termination of employment with the Company means termination of employment with JPMorgan consistent with their treatment under the Base Plan.

Retiree includes, after an individual’s death, any person entitled to an immediate pension under the Supplementary Plan in respect of the individual, where the person has provided the Company with any required instructions as to the form of pension that the person is to receive.

Retiree, at any time, does not include an individual who is, at that time, a United States citizen or a United States resident unless the individual terminated employment before 2006 and elected to be treated as a Funded Retiree by signifying his intention to the Company in a manner acceptable to the Company.

Retiree includes a Member who commences receipt of Pension while employed by an Employer pursuant to an election made under Section II.A.11.1 of the Base Plan as if the Member’s employment with the Company had terminated when the Pension commenced or Commuted Value was transferred.

2.18 **Retirement Compensation Arrangement** has the meaning assigned to that expression under the Income Tax Act.

2.19 **SRP Committee** means a committee of Members established by the Company for the purposes of the Plan.

- 2.20 **Supplementary Bridge Pension** means the annual benefit payable under this Plan to a Member until the Member attains age 65.
- 2.21 **Supplementary Pension** means the annual pension payable under this Plan.
- 2.22 **Surplus**, in relation to an Annual Valuation, means the amount, if any, by which the value of the Plan Assets, as at the effective date of the valuation, exceeds the sum of the Aggregate Wind-up Liability, as at that same date, and the provision for wind-up expenses set out in the Annual Valuation.
- 2.23 **Trust Agreement** means any agreement in effect from time to time between the Company and the Trustee for the purposes of the Plan.
- 2.24 **Trust Fund** means the trust fund established and maintained in conjunction with the Plan.
- 2.25 **Trustee** means the trust company appointed by the Company to act as trustee of the Trust Fund pursuant to the terms of the Trust Agreement.
- 2.26 **Wind-up Administrator**, at any time after an Event of Default, means:
- (1) where the Event of Default is described in Section 2.07(1), (2), (3) or (4), the SRP Committee; and
 - (2) in any other case, the Company.
- 2.27 **Wind-up Liability** as at any particular time, in relation to a Retiree, means the value, as at the particular time, of all Included Benefits in respect of the Retiree, determined in accordance with the following assumptions:
- (1) the DB Provision of the Base Plan is terminated, as of the time immediately before that particular time;

- (2) all obligations under the DB Provision of the Base Plan in respect of the Retiree, are satisfied by the payment, at the time immediately before the particular time, of a lump sum amount;
- (3) any Retiree who has not commenced receipt of a Supplementary Pension, at the particular time, shall be assumed to have elected to commence receipt of a Supplementary Pension at the time immediately before the particular time, payable in the form selected by the Retiree and, if no election has been made, in the normal form of payment under the Plan;
- (4) the value of the benefits payable under the Plan shall be determined in accordance with the *Standard of Practice for Determining Pension Commuted Values* issued by the Canadian Institute of Actuaries, with an effective date of February 1, 2005, or any subsequent standard dealing with the same subject matter (the "Standard of Practice") for terminations occurring in the month that includes the particular time; and
- (5) no margin shall be allowed for adverse deviation.

For greater certainty, in no event shall the assumptions used for the purposes of determining value under paragraph (4) reflect the fact that the Plan and its beneficiaries do not benefit from the tax treatment afforded to pension plans registered under the Income Tax Act and their beneficiaries.

2.28 *Year* means a calendar year.

Capitalized terms not otherwise defined in the Plan shall have the meanings attributed thereto under the Base Plan. In this Plan, words importing the singular number include the plural and vice versa; and references to a Section or Sections means a Section or Sections in this instrument.

SECTION 3 SUPPLEMENTARY PENSION

3.01 *Supplementary Pension Commencing At or After Age 65*

Upon commencement of a Pension under the DB Provisions of the Base Plan applicable to retirement at normal retirement date or postponed retirement date, or upon commencement of a Pension to which a Member becomes entitled under the DB Provisions of the Base Plan applicable to benefits on termination at the Member's attainment of age 65, the Member is entitled to receive an annual amount of Supplementary Pension equal to the amount by which (1) exceeds (2), if any, where:

- (1) is the annual amount of the Member's Pension that would be payable from the Base Plan commencing at the Member's attainment of age 65 or postponed retirement date, as applicable, after adjustment for any optional form of payment elected by the Member, calculated without application of Sections II.A.9.2 and II.B.10.5 of the Base Plan; and
- (2) is the annual amount of the Member's Pension calculated as described in (1) but with the application of Sections II.A.9.2 and II.B.10.5 of the Base Plan.

3.02 *Supplementary Pension Commencing Before Age 65*

Upon commencement of payment of a Pension under the DB Provisions of the Base Plan applicable to retirement prior to normal retirement date, or under the DB Provisions of the Base Plan applicable to benefits on termination, to a Member before the Member attains age 65 the Member is entitled to receive an annual amount of Supplementary Pension equal to the amount by which (1) exceeds (2), if any, where:

- (1) is the annual amount of the Member's Pension that would be payable from the Base Plan on the Pension commencement date after adjustment for any optional form of payment elected by the Member and after any applicable

reduction of the Pension for early commencement, calculated without application of Sections II.A.9.2 and II.B.10.5 of the Base Plan; and

- (2) is the annual amount of the Member's Pension calculated as described in (1) but with the application of Sections II.A.9.2 and II.B.10.5 of the Base Plan.

3.03 *Commutated Supplementary Pension*

Where a Member becomes entitled to a Pension under the DB Provisions of the Base Plan applicable to benefits on termination and the Member elects to transfer the Pension entitlement from the Base Plan, the Member is entitled to receive the Commuted Value of the Supplementary Pension the annual amount of which is equal to the amount by which (1) exceeds (2), if any, where:

- (1) is the annual amount of the Member's Pension that would be payable from the Base Plan on the Pension commencement date that provides the Member with the greatest Commuted Value after adjustment of the annual amount payable according to any optional form of payment available to the Member and after any applicable reduction of the Pension for early commencement, calculated without application of Sections II.A.9.2 and II.B.10.5 of the Base Plan (but with the application of the excess contribution test in Section II.A.9.2 and II.B.10.5 of the Base Plan as if Sections II.A.9.2 and II.B.10.5 of the Base Plan had been applied); and
- (2) is the annual amount of the Member's Pension calculated as described in (1) but with the application of Sections II.A.9.2 and II.B.10.5 of the Base Plan.

3.04 *Supplementary Bridge Pension*

Where a Member becomes entitled to a Bridge Pension from the DB Provisions of the Base Plan, the Member is entitled to receive an annual amount of Supplementary Bridge Pension equal to the amount by which (1) exceeds (2) where:

- (1) is the annual amount of the Member's Bridge Pension that would be payable from the Base Plan without the application of Sections II.A.9.2 and II.B.10.5 of the Base Plan; and
- (2) is the annual amount of the Member's Bridge Pension with the application of Sections II.A.9.2 and II.B.10.5 of the Base Plan.

If the Member transfers the Bridge Pension entitlement from the Base Plan, then the Member will receive the Commuted Value of the Supplementary Bridge Pension.

3.05 *Terms of Payment*

- (1) Payment of a Supplementary Pension or Supplementary Bridge Pension will be made in accordance with the same commencement date and terms of payment applicable to the Member's Pension or Bridge Pension, so that any election made by the Member with respect to his Pension or Bridge Pension including an election to take a Commuted Value also applies to the Supplementary Pension or Supplementary Bridge Pension.
- (2) Payment of a Commuted Value to a Member shall be in full satisfaction of the entitlement of the Member to a Supplementary Pension or Supplementary Bridge Pension under this Plan.

3.06 *Benefits Determined Before January 1, 2003*

Notwithstanding Sections 3.01 and 3.02, Supplementary Pensions and Supplementary Bridge Pensions determined by the Company for Members whose employment ceased before January 1, 2003 are payable in the amounts and on the terms shown in the records of the Company.

3.07 *Post Retirement Inflation Adjustment*

Supplementary Pensions shall be increased in the same manner and on the same basis as the accompanying Pension is increased, where applicable, pursuant to the post retirement inflation adjustment provisions of the Base Plan.

3.08 *Special Provision for Certain Quebec Members*

Notwithstanding Section 3.05(1), for a Member who commences receipt of Pension while employed by an Employer or for whom the Commuted Value of their Pension is transferred out of the DB Provision of the Base Plan while employed by an Employer pursuant to an election under Section II.A.11.1 of the Base Plan, a Supplementary Pension or Supplementary Bridge Pension will also be paid before the Member's termination of Continuous Service.

SECTION 4 BENEFITS ON DEATH

4.01 *Death Benefit*

If a Member dies while actively employed by an Employer, or after employment has ceased and the Member retains an entitlement to Pension that has not commenced under the Base Plan:

- (1) if a death benefit is payable to the Member's Spouse under the Base Plan, the Member's Spouse shall also be paid a benefit equal to the Commuted Value of the Supplementary Pension the Member would have received under Section 3.01 or 3.02; or
- (2) if a death benefit is payable to the Member's Beneficiary under the Base Plan, the Member's Beneficiary shall also be paid a benefit equal to the Commuted Value of the Supplementary Pension the Member would have received under Section 3.01 or 3.02.

4.02 *Terms of Payment*

- (1) Payment of a death benefit under Section 4.01 will be made in accordance with the same commencement date and terms of payment applicable to the benefit payable to the Member's Spouse or Beneficiary under the Base Plan, so that any election made by the Member's Spouse or Beneficiary with respect to the Base Plan benefit also applies to the benefit payable under the Plan.
- (2) Payment of a Commuted Value to the Member's Spouse or Beneficiary shall be in full satisfaction of the entitlement of the Spouse or Beneficiary to benefits under this Plan.

SECTION 5 PAYMENT OF BENEFITS

5.01

- (1) The Company shall appoint a Trustee and shall establish and maintain a Trust Fund to be held by the Trustee pursuant to the terms of a written Trust Agreement between the Company and the Trustee, for the purposes of holding assets and paying benefits in respect of Retirees under this Plan. The Company shall have the sole right to select, appoint or remove the Trustee.
- (2) The Trust Fund shall be administered by the Trustee and invested in accordance with the statement of investment policies and procedures adopted by the Company and pursuant to the directions of any investment manager who may be appointed by the Company.
- (3) All benefits paid directly from the Trust Fund are subject to applicable withholding taxes. This Trust Fund is intended to be a Retirement Compensation Arrangement.

5.02

- (1) The Company shall cause the Actuary to prepare, for each Year after 2005, a valuation of the Plan with an effective date of December 31 of the calendar year immediately preceding the Year. The valuation shall value the Plan Assets, as at the effective date, and determine the Aggregate Wind-up Liability, as at that date. This valuation is herein referred to as an "Annual Valuation".
- (2) For greater certainty, the Aggregate Wind-up Liability, as of December 31 of a calendar year, shall include only those individuals who are Retirees as of that date.

- (3) The Company shall deliver a copy of the valuation to the Trustee on or before July 31 of the Year.

5.03

- (1) The Company shall contribute to the Trust Fund the amount, if any, disclosed in the Annual Valuation, by which
 - (a) the total of the Aggregate Wind-up Liability, as at the effective date of the Annual Valuation, and the amount estimated by the Actuary to be reasonably necessary to satisfy any expenses associated with the wind-up of the Trust Fund
exceeds
 - (b) the value of the Plan Assets, if any, as at that effective date.
- (2) The Company shall also contribute to the Trust Fund the amount, if any, by which
 - (a) the amount of Surplus that has been applied to reduce the Company's contributions under Section 5.05(1), in accordance with Section 5.05(2), with respect to Members who become Retirees after the effective date of the Annual Valuation,
exceeds
 - (b) the amount of Surplus, if any, shown in the Annual Valuation.
- (3) For greater certainty, where the Annual Valuation described in Section 5.03(2)(b) discloses no Surplus, the Company contribution required under Section 5.03(2) is the amount described in Section 5.03(2)(a).
- (4) The contributions described in Sections 5.03(1) and (2) shall be made no later than December 31 of the Year.

5.04

- (1) Where a Member becomes a Retiree at any time in a calendar month after 2005, the Company shall cause the Actuary to value, within sixty (60) days of the end of the month, the Wind-up Liability in relation to the Retiree, as at the end of the month. The Actuary shall value the liabilities using the assumptions that are appropriate as at the end of the month. This valuation is herein referred to as an “Individual Valuation”, in relation to the Member.
- (2) The Company shall cause the Actuary to aggregate all Individual Valuations in relation to Members who become Retirees in a calendar month. This aggregate is herein referred to as the “Aggregate Valuation”, in relation to the month.
- (3) The Company shall deliver a copy of the Aggregate Valuation, in relation to a calendar month, to the Trustee within ninety (90) days of the end of the month.

5.05

- (1) Subject to subsection (2), within sixty (60) days of the delivery to the Trustee of an Aggregate Valuation in relation to a calendar month, the Company shall contribute to the Trust Fund the amount, disclosed in the Aggregate Valuation, of the total of all amounts each of which is the Wind-up Liability in relation to a Member who becomes a Retiree in the month.
- (2) Subject to subsection (3), the Company’s contribution under Section 5.05(1) may be reduced, upon notification to the Trustee that the Company will be applying the Surplus disclosed in the most recent Annual Valuation in the possession of the Trustee towards that contribution, except to the extent that such Surplus has previously been applied under this Section or has been withdrawn under Section 5.11.

- (3) No reduction of a contribution in respect of an amount disclosed in an Aggregate Valuation shall be made under Section 5.05(2) if, immediately before the reduction, the Trustee is in possession of another Aggregate Valuation and the Company has not contributed the amount, disclosed in the other Aggregate Valuation, that it is required to contribute in accordance with Section 5.05(1) or that it would be required to so contribute if the 60-day period referred to Section 5.05(1) had elapsed.

5.06

- (1) (The Company shall withhold from its contributions to the Trust Fund the Refundable Tax required to be withheld under the Income Tax Act with respect to contributions to a Retirement Compensation Arrangement and shall remit same to the Receiver General for Canada as required under the Income Tax Act.
- (2) The Company shall provide proof to the Trustee, within thirty (30) days of making a contribution to the Trust Fund, that it has remitted the Refundable Tax, with respect to the contribution, to the Receiver General for Canada.
- (3) The Plan Assets shall include the right to claim Refundable Tax in respect of contributions made to the Trust Fund.

5.07

- (1) Subject to Sections 5.06(1), 5.11, 5.14 and 6 and the provisions of the Trust Agreement providing for the payment of taxes and assessments in respect of the Trust Fund, the Plan Assets shall only be available to satisfy benefits under the Plan in respect of Funded Retirees.
- (2) The Company may pay benefits under the Plan in respect of Funded Retirees from its operating funds or it may direct the Trustee to make a payment of

benefits, otherwise payable under the Plan, in respect of Funded Retirees from the Trust Fund.

- (3) For the purposes of Section 5.07(2), the payment by the Trustee of benefits to an individual may be made by depositing the payment into an account held by the Company with a financial institution where the funds in the account may only be disbursed to that individual.
- (4) Any amount paid in respect of a Funded Retiree from the Trust Fund in accordance with this Plan discharges the Company from its obligation to make payments in respect of the Funded Retiree under the Plan, to the extent of that amount.

5.08 A Funded Retiree may enforce his or her claim for the payment of benefits under the Plan against the assets of the Company if, and to the extent that the Plan Assets are insufficient to pay such benefits at the time they become payable.

5.09 Subject to Section 6, benefits payable under this Plan, other than benefits payable in respect of Funded Retirees, shall be paid from the operating funds of the Company.

5.10 The Company may elect to provide an alternative arrangement for securing the payment of benefits in respect of Retirees. Such arrangement shall provide, in every material particular, the same level of security as would be provided by a trust fund holding assets permitted under the investment policy established in connection with the Trust Fund.

5.11

- (1) Subject to Sections 5.11(2) and 5.11(3), if the most recent Annual Valuation in the possession of the Trustee reveals an excess of the value of Plan Assets over 110% of the Aggregate Wind-up Liability, the Company may withdraw

Plan Assets, the value of which does not exceed that excess, where the excess is reduced by any previous withdrawal in the year and by any part of the Surplus used in accordance with Section 5.05(2). The Company shall not be obliged to obtain the consent of the Members to make such withdrawal, nor is the Company obliged to give any notice of such withdrawal to the Members.

- (2) No withdrawal under Section 5.11(1) may take place more than one year after the effective date of the most recent Annual Valuation described in that Section.
- (3) No withdrawal under Section 5.11(1) may take place if, at the time of withdrawal, the Trustee is in possession of an Aggregate Valuation and the Company has not contributed the amount, described in the Aggregate Valuation, that it is required to contribute in accordance with Section 5.05(1) or that it would be required to so contribute if the 60-day period referred to Section 5.05(1) had elapsed.

5.12

- (1) No person shall have any right to or interest in any part of the Plan Assets except as, and to the extent provided from time to time, under the Plan and the Trust Agreement. No liability shall attach to any officer, shareholder, director, or employee of the Company for payment of any benefits or claims hereunder.
- (2) Any Plan benefits paid directly by the Company hereunder shall cease to be an obligation of the Trust Fund once paid by the Company.
- (3) The Company may authorize the Trustee to borrow such funds as are required to pay the Plan benefits from the Trust Fund on such terms as the Company and Trustee deem appropriate.

- (4) Despite any other provision of this Section 5.12, if a Funded Retiree provides the Company and the Trustee with a written notice certifying that the Company has failed to make payment of benefits due in accordance with this Plan for a period of at least 30 days following the due date for such payment, then the Trustee, upon providing the Company with written notice of the Trustee's intended action, shall pay such benefits directly to the Funded Retiree unless within thirty (30) days following the Trustee's notice to the Company, the Trustee is notified in writing by a senior official of the Company that the requirement by the Company to pay such amount or amounts, or a portion thereof, is being disputed by the Company, in which case the Trustee shall only pay the undisputed amount or portion thereof directly to the Funded Retiree.

5.13 *Fiscal Year*

The fiscal year of the Trust Fund shall be the calendar year.

5.14 *Expenses*

All reasonable charges, fees, taxes and other expenses, including without limitation any internal expenses of the Company or the SRP Committee, and the usual and reasonable expenses of any agents of the Company or the SRP Committee, incurred in the administration, investment and wind-up of the Trust Fund, shall be paid from the Trust Fund unless paid directly by the Company.

5.15 *Investment*

The Company is responsible, through investment managers appointed by the Company, for the investment of the Trust Fund in accordance with the statement of investment policies and procedures referred to in Section 5.16.

5.16 *Statement of Investment Policies and Procedures*

The Company is responsible for establishing and adopting a written statement of investment policies and procedures for the Trust Fund.

SECTION 6 PROCEDURE ON EVENTS OF DEFAULT

6.01

- (1) As soon as practicable after the Trustee has become aware of the occurrence of an Event of Default, the Trustee shall give written notice to the Company and the Actuary of that Event of Default (the “Event of Default Notice”). In addition, the Trustee shall cause the Actuary to prepare an actuarial report effective as of the date of occurrence of such Event of Default (such report being referred to herein as the “Final Actuarial Report” and the date of occurrence of such Event of Default being the Valuation Date for such Final Actuarial Report and the effective date of the wind-up of the Trust Fund).
- (2) The Final Actuarial Report shall be completed within six (6) months of the date that the Trustee requires the Actuary to prepare such report. The Final Actuarial Report shall contain the following:
 - (a) a determination of the value of the Plan Assets;
 - (b) a determination of the Aggregate Wind-up Liability as at the Valuation Date;
 - (c) an identification of Funded Retirees and Retirees other than Funded Retirees; and
 - (d) a certification by the Actuary that such Final Actuarial Report has been prepared in accordance with the provisions of the Plan in effect as at the Valuation Date.
- (3) For greater certainty, the Aggregate Wind-up Liability shall include only those individuals who are Retirees as of the Valuation Date.
- (4) The Company shall contribute to the Trust Fund the amount, if any, required to settle all Included Benefits for Retirees and pay all expenses associated

with the wind-up of the Plan. In addition, subject to Section 6.02, all Plan Assets shall be distributed to those persons entitled to payment thereunder in accordance with Section 6.03.

6.02

- (1) As soon as practicable after the date on which the Trustee becomes aware of an Event of Default (the "Commencement Date") and during the one hundred and twenty (120) day period immediately after the Commencement Date, there shall only be paid to Funded Retirees from the Trust Fund the amounts described in Section 6.02(3).
- (2) If a formal application to wind-up the Base Plan is made within the one hundred and twenty (120) day period immediately after the Commencement Date, there shall only be paid to Funded Retirees from the Trust Fund the amounts described in Section 6.02(3), until the entitlement to surplus under the Base Plan is finally determined.
- (3) The payments described in this Section 6.02(3) are the periodic Plan benefits that are required to be paid to a Funded Retiree as and when they are otherwise due, to the extent that such benefits are not paid by the Company.
- (4) Despite any other provision of this Plan, where the entitlement to surplus under the Base Plan is finally determined at any time, the amount of surplus under the Base Plan to which any Funded Retiree is entitled shall reduce, on an Actuarially Equivalent basis, the amount otherwise payable to the Funded Retiree under the Plan.
- (5) If no formal application to wind-up the Base Plan is made within the one hundred and twenty (120) day period immediately after the Commencement Date, all Plan Assets shall be distributed to those Funded Retirees entitled to payment thereunder.

6.03

- (1) After the Commencement Date, the non-cash assets of the Trust Fund shall be disposed of and the proceeds realized from such disposition together with the cash in the Trust Fund, shall be applied by the Trustee as directed by the Wind-up Administrator. The assets of the Trust Fund shall be applied, subject to any requirement of a statute or court order, in priority of payment, on the basis set forth below:
 - (a) payments in respect of the following costs, expenses, charges and liabilities of the Trust Fund:
 - (i) the reasonable costs, expenses, charges and liabilities owing to the Trustee in accordance with the terms of the Trust Agreement to the extent that the Trustee has not been able to recover such fees, costs, expenses, charges and liabilities from the Company or from the Trust Fund in accordance with said Trust Agreement;
 - (ii) the reasonable outstanding expenses and fees of agents and other professional advisors appointed by the Trustee pursuant to the Trust Agreement to the extent that the advisors have not been able to recover such fees, costs, expenses, charges and liabilities from the Company or from the Trust Fund in accordance with said Trust Agreement;
 - (iii) the reasonable outstanding costs, expenses, charges and liabilities incurred by the SRP Committee to the extent that the SRP Committee has not been able to recover such costs, expenses, charges and liabilities from the Company or from the Trust Fund in accordance with said Trust Agreement;

- (iv) all the disbursements and expenses incurred and that may be incurred in the management, maintenance and wind-up of the Trust Fund, to the extent that the disbursements and expenses have not been paid by the Company or recovered from the Trust Fund;
 - (b) any other proper charges or taxes applicable to, or levied against the Trust Fund;
 - (c) payment by way of lump sum equal to the Wind-up Liability in relation to each Funded Retiree, as set out in the Final Actuarial Report (and where there are sufficient assets to make the payments required under paragraphs (a) and (b) of Section 6.03(1) but not sufficient assets to make payment in respect of all of the Wind-up Liabilities, in relation to Funded Retirees, in accordance with paragraph (c) of Section 6.03(1), then Section 6.04(1) shall apply);
 - (d) payment by way of lump sum equal to the Wind-up Liability in relation to each Retiree, other than a Funded Retiree, as set out in the Final Actuarial Report (and where there are sufficient assets to make the payments required under paragraphs (a), (b) and (c) of Section 6.03(1) but not sufficient assets to make payment in respect of all of the Wind-up Liabilities, then Section 6.04(2) shall apply);
 - (e) after making the payments required under paragraphs (a), (b), (c) and (d) of this Section 6.03(1), the remaining assets, if any, shall be paid to the Company.
- (2) It is understood and agreed that, in view of the fact that the Trust Fund will be comprised, in part, of non-cash assets including Refundable Tax, distribution of the assets of the Trust Fund in accordance with Section 6.03(1) (and, if applicable, Section 6.04) may be made in more than one instalment, it being

understood however, that no payment shall be made to the Company under paragraph (e) of Section 6.03(1) until all of the amounts owing under paragraphs (a), (b), (c) and (d) of that Section have been paid.

- (3) Upon distribution of the assets of the Trust Fund as provided in this Section 6.03 (and, if applicable, in Section 6.04), the Trust shall be terminated pursuant to the terms of the Trust Agreement.

6.04

- (1) If after making (or having made provision for) the payments required under paragraphs (a) and (b) of Section 6.03(1), there are insufficient assets to make payment in respect of all of the Wind-up Liabilities, in relation to Funded Retirees (as provided under paragraph (c) of Section 6.03(1) and as determined in the Final Actuarial Report), each Funded Retiree shall receive a proportionate share, as determined by the Wind-up Administrator, on the advice of its counsel, of the remaining assets in an amount that is equal to the ratio that the Wind-up Liability, in relation to the Funded Retiree, is to the aggregate of all such Wind-up Liabilities, and the result shall be multiplied by the total assets which remain in the Trust Fund.
- (2) If after making (or having made provision for) the payments required under paragraphs (a), (b) and (c) of Section 6.03(1), there are insufficient assets to make payment in respect of all of the Wind-up Liabilities (as provided under paragraph (d) of Section 6.03(1) and as determined in the Final Actuarial Report), each Retiree, other than a Funded Retiree, shall receive a proportionate share, as determined by the Wind-up Administrator, on the advice of its counsel, of the remaining assets in an amount that is equal to the ratio that the Wind-up Liability, in relation to the Retiree, is to the aggregate of all of the Wind-up Liabilities, in relation to all Retirees other than Funded

Retirees, and the result shall be multiplied by the total assets which remain in the Trust Fund.

SECTION 7 AMENDMENT OR DISCONTINUANCE OF THE PLAN

- 7.01 Subject to Section 7.02, the Company may amend the Plan at any time in any way, including to discontinue the Plan, provided that an amendment shall not reduce a Supplementary Pension in pay or an amount that becomes payable before the date on which the amendment is made, or reduce the Supplementary Pension to which a Member who is employed would be entitled if employment ceased, and using earnings and service, as of the date on which the amendment is made.
- 7.02 Subject to Section 5.10, no amendment to the Plan shall reduce the funding provided under the Trust Fund in respect of Retirees as at the date of such amendment.
- 7.03 If the Plan is discontinued for any reason, then for purposes of the Plan the employment of each Member who is employed shall be deemed to have terminated at the effective date of the discontinuance. The Supplementary Pension of each such Member shall be determined as of the effective date of the discontinuance based on entitlement under the DB Provision of the Base Plan as if employment terminated as of the date of discontinuance.

SECTION 8 ADMINISTRATION

8.01 *Records*

Wherever the records of an Employer or of the Base Plan are used for the purposes of the Plan, such records shall be conclusive of the facts with which they are concerned, unless and until they are proven to be in error.

8.02 *Responsibility for Administration*

The administrator of the Plan shall be the Company, which shall be responsible for all matters relating to the administration of the Plan and may delegate such matters as it deems appropriate. The Company shall conclusively decide all matters relating to the administration, interpretation and application of the Plan, consistently with the text of the Plan.

8.03 *Rules for Administration*

The Company may enact rules and regulations relating to the administration of the Plan to carry out the terms of the Plan and may amend such rules and regulations from time to time, provided that rules and regulations do not conflict with any provision of the Plan.

SECTION 9 GENERAL

9.01 *No Right to Employment*

The Plan shall not be construed to create or enlarge any right of any person to remain in the employment of the Company, nor shall it interfere in any manner with the right of the Company to discharge any person.

9.02 *Severability*

If any provision of this Plan is held to be invalid or unenforceable by a court of competent jurisdiction, its invalidity or unenforceability shall not affect any other provision of the Plan and the Plan shall be construed and enforced as if such provision had not been included therein.

9.03 *Construction*

This Plan shall be construed in accordance with the laws of the Province of Ontario.

9.04 *No Duplication of Benefits*

An Employer is not liable to pay in total any more than the Supplementary Pension or the Commuted Value of the Supplementary Pension determined under the applicable rules of the Plan, whether to either or both of a Member and any person who establishes a claim against the Member's entitlement hereunder. Without restricting the generality of the foregoing, if there is any requirement in law that a person other than the person identified by the terms of this Plan is entitled to all or part of a benefit payable under this Plan, then the lawful requirement shall prevail over the conflicting provision of this Plan. If there is a dispute as to the lawful requirement the Company may seek direction from a court.

SECTION 10 APPENDIX A

1. In this Appendix A, the following terms have the following meanings:

“**Designated Employee**” means Brent Hollister, the President and Chief Executive Officer of the Company as of May 8, 2006;

“**Pensionable Earnings**”, in relation to the Designated Employee, means:

- (a) with respect to Pensionable Service before 1987, the Designated Employee’s Final Average Earnings; and
 - (b) with respect to Pensionable Service Years after 1986, the Designated Employee’s Final Average 3-Year Pensionable Earnings.
2. The provisions of this Appendix A apply solely with respect to the Designated Employee and shall be applied and interpreted according to the terms of the Base Plan as it existed at May 8, 2006.
3. This Appendix A forms part of the Plan and is fully effective in accordance with its terms.
4. Section 3.01 of the Plan is deleted and the following substituted therefor:
- “Upon commencement of a Pension under Section 8 or Section 10 of the Base Plan (retirement at normal retirement date or postponed retirement date), or upon

commencement of a Pension to which the Designated Employee becomes entitled under Section 13 of the Base Plan (benefits on termination) at the Designated Employee's attainment of age 65, the Designated Employee is entitled to receive an annual amount of Supplementary Pension equal to the amount, if any, by which (1) exceeds (2), where:

- (1) is the annual amount of the Designated Employee's Pension that would be payable from the Base Plan commencing at the Designated Employee's attainment of age 65 or postponed retirement date, as applicable, after adjustment for any optional form of payment elected by the Designated Employee, based on the assumption that:
 - (a) Sections 15.2 and 15.A.5 of the Base Plan did not apply,
 - (b) the Designated Employee's Pensionable Service Years were equal to the sum of the amount of the Designated Employee's Pensionable Service Years, determined without reference to this paragraph, and two (2), and
 - (c) the Designated Employee's Pensionable Earnings were equal to \$1,295,000; and
- (2) is the annual amount of the Designated Employee's Pension that is payable from the Base Plan commencing at the Designated Employee's attainment of age 65 or postponed retirement date, as applicable, after adjustment for any optional form of payment elected by the Designated Employee."

5. Section 3.02 of the Plan is deleted and the following substituted therefor:

“Upon commencement of a Pension under Section 9 of the Base Plan (retirement prior to normal retirement date), or under Section 13 of the Base Plan (benefits on termination), to the Designated Employee before the Designated Employee attains age 65, the Designated Employee is entitled to receive an annual amount of Supplementary Pension equal to the amount, if any, by which (1) exceeds (2), where:

- (1) is the annual amount of the Designated Employee’s Pension that would be payable from Base Plan commencing on the Pension commencement date, after adjustment for any optional form of payment elected by the Designated Employee and without any applicable reduction of the Pension for early commencement, based on the assumption that:
 - (a) Sections 15.2 and 15.A.5 of the Base Plan did not apply,
 - (b) the Designated Employee’s Pensionable Service Years were equal to the sum of the amount of the Designated Employee’s Pensionable Service Years, determined without reference to this paragraph, and two (2), and
 - (c) the Designated Employee’s Pensionable Earnings were equal to \$1,295,000; and
- (2) is the annual amount of the Designated Employee’s Pension that is payable from the Base Plan commencing at the Designated Employee’s Pension commencement date, after adjustment for any optional form of payment

elected by the Designated Employee and after any applicable reduction of the Pension for early commencement.”

6. Section 3.04 of the Plan is deleted and the following substituted therefor:

“Where the Designated Employee becomes entitled to a Bridge Pension from the Base Plan, the Designated Employee is entitled to receive an annual amount of Supplementary Bridge Pension equal to the amount, if any, by which (1) exceeds (2), where:

- (1) is the annual amount of the Designated Employee’s Bridge Pension that would be payable from Base Plan, based on the assumption that:
 - (a) Sections 15.2 and 15.A.5 of the Base Plan did not apply,
 - (b) the Designated Employee’s Pensionable Service Years were equal to the sum of the amount of the Designated Employee’s Pensionable Service Years, determined without reference to this paragraph, and two (2), and
 - (c) the Designated Employee’s Pensionable Earnings were equal to \$1,295,000; and
- (2) is the annual amount of the Designated Employee’s Pension that is payable from the Base Plan commencing at the Designated Employee’s Pension commencement date, after adjustment for any optional form of payment elected by the Designated Employee and after any applicable reduction of the Pension for early commencement.”

For greater certainty, the Designated Employee is considered to become a Retiree on any date, on or after May 9, 2006, that he provides the Company with instructions as to the form of Supplementary Pension that he is to receive.

SECTION 11 APPENDIX B

1. In this Appendix B, the following term has the following meaning:

“**Former Employee**” means John Butcher, the former Executive Vice-President and Chief Financial Officer of the Company;

2. For the purposes of Section 5 of the Plan, the Former Employee is deemed to have become a Retiree at the end of March, 2006.
3. For the Purposes of the Plan, the Former Employee’s benefits under the Plan shall be determined in accordance with the following assumptions:
 - (a) in applying Sections 3.01, 3.02, 3.03 and 3.04 of the Plan, as of and after the end of March, 2006, the Former Employee shall be considered to have accrued a Pensionable Service Year for each of 2005 and 2006;
 - (b) in applying Sections 3.01(2), 3.02(2), 3.03(2) and 3.04(2) of the Plan, as of and after the end of March, 2006, the Former Employee shall be considered to have received Earnings, in 2006, equal to the Earnings received by him in 2005;
 - (c) in applying Sections 3.01(1), 3.02(1), 3.03(1) and 3.04(1) of the Plan, as of and after the end of March, 2006, the Former Employee shall be considered to have received Earnings, in 2005, equal to the total of his Earnings otherwise determined and \$234,041; and

- (d) in applying Sections 3.01(1), 3.02(1), 3.03(1) and 3.04(1) of the Plan, as of and after the end of March, 2006, the Former Employee shall be considered to have received Earnings, in 2006, equal to the amount of Earnings considered, in accordance with this Section 3, to have been received by him in 2005.
4. The provisions of this Appendix B apply solely with respect to the Former Employee and shall be applied and interpreted according to the terms of the Base Plan as it existed at March 31, 2006.

This Appendix B forms part of the Plan and is fully effective in accordance with its terms.

SECTION 12 APPENDIX C

1. In this Appendix C, the following terms have the following meanings:

“**Designated Employee**” means Frances Magliocchi, Senior Vice President, Human Resources, as of October 31, 2006;

2. The provisions of this Appendix C apply solely with respect to the Designated Employee whose employment ceased by reason of retirement as of October 31, 2006. Appendix C reflects the Designated Employee’s election to commence receipt of her Pension immediately upon retirement and her entitlement to receive a Supplementary Pension from the Plan calculated with an additional three (3) years and three (3) months of Pensionable Service Years while the offsetting calculation of her Pension from the Base Plan remains based on actual Pensionable Service Years to October 31, 2006.

3. Section 3.02 of the Plan is deleted and the following substituted therefor:

“Upon commencement of a Pension under Section 9 of the Base Plan (retirement prior to normal retirement date) the Designated Employee is entitled to receive an annual amount of Supplementary Pension equal to the amount, if any, by which (1) exceeds (2), where:

- (1) is the annual amount of the Designated Employee’s Pension that would be payable from Base Plan commencing on the Pension commencement date, after adjustment for any optional form of payment elected by the Designated

Employee and after any applicable reduction of the Pension for early commencement, based on the assumption that:

- (a) Sections 15.2 and 15.A.5 of the Base Plan (maximum under the Income Tax Act) did not apply,
 - (b) the Designated Employee's Pensionable Service Years were equal to the actual amount of the Designated Employee's Pensionable Service Years under the Base Plan plus three (3) years and three (3) months, and
- (2) is the annual amount of the Designated Employee's Pension that is payable from the Base Plan commencing at the Designated Employee's Pension commencement date, after adjustment for any optional form of payment elected by the Designated Employee and after any applicable reduction of the Pension for early commencement.”
4. This Appendix C forms part of the Plan and is fully effective in accordance with its terms and shall be applied and interpreted according to the terms of the Base Plan as it existed at October 31, 2006.

Amendment to the Sears Canada Inc. Supplementary Retirement Plan

December 21, 2009

WHEREAS Sears Canada Inc. (the "Company") maintains the Sears Canada Inc. Supplementary Retirement Plan (the "Plan") for the purpose of providing supplementary pension benefits to certain members of the Sears Canada Inc. Registered Retirement Plan;

AND WHEREAS the Company has reserved the right to amend the Plan in accordance with the provisions of Section 7.01 thereof;

AND WHEREAS the Investment Committee (the "Investment Committee") of the Company's Board of Directors (the "Board") at its meeting held November 19, 2009 resolved to cease the pre-funding of retirement benefits for future retirees under the Plan and move to fund on a pay-as-you-go basis for those future retirees and recommend such change to the Board for approval;

AND WHEREAS the Human Resources and Compensation Committee (the "HRCC") of the Board at its meeting held November 19, 2009 resolved to cease the pre-funding of retirement benefits for future retirees under the Plan and move to fund on a pay-as-you-go basis for those future retirees and recommend such change to the Board for approval;

AND WHEREAS the Board at its meeting held on November 20, 2009 agreed with the recommendation of the Investment Committee and the HRCC to move to fund on a pay-as-you-go basis for future retirees under the Plan and authorize the Company to execute such documentation as is necessary to effect the change in funding;

AND WHEREAS the Company has been authorized to amend the Plan in accordance with the resolution of the Board and to take all actions necessary in order to implement that amendment;

NOW THEREFORE the Plan is hereby amended as follows:

1. Section 2.17 of the Plan is deleted and the following substituted therefor:

"2.17 *Retiree*, at any time, means an individual who terminates employment with the Company, before 2010 and at or before that time, and who

- (1) is in receipt of a Supplementary Pension at that time; or
- (2) is at least age 55 at that time, terminated employment with the Company before age 55 and elected at the time of termination to receive a Supplementary Pension; or

- (3) terminated employment with the Company at or after age 55 and has provided the Company with any required instructions as to the form of Supplementary Pension that the individual is to receive.

For Members of the Base Plan whose employment was seconded to JPMorgan Chase Bank N.A. (Toronto Branch) ("JPMorgan") and whose employment was transferred to JP Morgan on December 18, 2005 or January 1, 2006, termination of employment with the Company means termination of employment with JPMorgan consistent with their treatment under the Base Plan.

Retiree includes, after an individual's death, any person entitled to an immediate pension under the Supplementary Plan in respect of the individual, where the person has provided the Company with any required instructions as to the form of pension that the person is to receive.

Retiree, at any time, does not include an individual who is, at that time, a United States citizen or a United States resident unless the individual terminated employment before 2006 and elected to be treated as a Funded Retiree by signifying his intention to the Company in a manner acceptable to the Company.

Retiree includes a Member who commences receipt of Pension while employed by an Employer pursuant to an election made under Section II.A.11.1 of the Base Plan as if the Member's employment with the Company had terminated when the Pension commenced or Commuted Value was transferred."

2. This amendment is effective as of December 21, 2009.

Executed this 21st day of December, by



Franco Perugini
Associate General Counsel and Corporate Secretary

Amendment to the Sears Canada Inc. Supplementary Retirement Plan

December 20, 2012

WHEREAS Sears Canada Inc. (the "Company") maintains the Sears Canada Inc. Supplementary Retirement Plan (the "Plan") for the purpose of providing supplementary pension benefits to certain members of the Sears Canada Inc. Registered Retirement Plan;

AND WHEREAS the Company has reserved the right to amend the Plan in accordance with the provisions of Section 7.01 of the Plan;

AND WHEREAS the Board of Directors of the Company (the "Board") established an investment committee for the purpose of assisting the Board with the oversight of the investment of the fund established for the Plan (the "Investment Committee");

AND WHEREAS the Investment Committee approved the use of a letter of credit as a means of securing the Company's obligations under the Plan;

AND WHEREAS the Company is authorized to make non-material amendments to the Plan;

NOW THEREFORE the Plan is hereby amended as follows:

1. Effective December 20, 2012, Section 5.03 is amended by adding the following as subsection (5):

"(5) For the purposes of this Section, the Company's obligation to contribute shall be satisfied either by cash, or a letter of credit (as defined in the Trust Agreement), or a combination of the two, the value of such combination being the full amount of the contribution necessary in accordance with this Section."

2. Effective December 20, 2012, Section 5.05 is amended by adding the following as subsection (4):

"(4) For the purposes of this Section, the Company's obligation to contribute shall be satisfied either by cash, or a letter of credit (as defined in the Trust Agreement), or a combination of the two, the value of such combination being the full amount of the contribution necessary in accordance with this Section."

Executed this 20th day of December, 2012, by



Franco Perugini
Associate General Counsel and Corporate Secretary

TAB 3

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

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

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

AFFIDAVIT OF WILLIAM TURNER
(Sworn on August 11, 2017)

I, **WILLIAM TURNER**, of the City of Toronto, in the Province of Ontario,

MAKE OATH AND SAY:

My Background

1. I am a retiree of Sears Canada and one of the Former Employee Representatives in this proceeding. I started working at Simpsons-Sears Limited, the predecessor company of Sears Canada, in May 1966 as a Trainee in the Ottawa Carlingwood store and was transferred shortly thereafter to the company headquarters in Toronto, where I spent the balance of my 36 year career in merchandising. From 1992 to 1997, I served

on the Board of Director of Sears Canada. I retired from Sears Canada in 2002 as the President of Merchandising, Marketing, and Logistics.

2. After 36 years of service with Sears Canada, I am very familiar with the business of Sears Canada and the retail industry in general.

3. In 2009, I joined the original Sears Canada retiree group, SRG, which merged with another retiree group called ASCR in 2012 to collectively form the Store and Catalogue Retiree Group (“**SCRG**”). SCRG is the organization of Sears Canada retirees with currently over 6,000 Sears retirees as members. The total Sears retiree population is over 18,000 individuals.

4. SCRG was formed to protect pension benefits and health benefits of retired employees of Sears Canada. I have been actively involved with SCRG since its formation, and I am currently the organization's President. Since inception, SCRG has been working with Koskie Minsky LLP, who on June 22, 2017 was appointed by the court as the Representative Counsel for all retirees in the Sears Canada CCAA proceeding.

5. As a result of my employment experience and my involvement as the President of SCRG, I have knowledge of the matters herein deposed. Where I make statements in this affidavit which are not within my personal knowledge, I have indicated the source of that information and I believe such information to be true. Where reference is made herein to the "company" it applies to my former employer Sears Canada.

The pensions and benefits are the deferred wages of Sears employees

6. In consideration for my 36 years of service with Sears Canada, I earned a pension benefit to be paid to me on my retirement that is currently payable from the Sears Canada Inc. Registered Retirement Plan (Registration No. 0360065) (the "**Sears Canada Plan**"). I also earned a supplemental pension benefit paid to me from a Retirement Compensation Arrangement trust fund established by Sears Canada in 2006 for certain senior management employees.

7. Joining the Sears Canada Plan was a mandatory condition of employment and employees were required to make regular contributions from their pay to the pension plan. This requirement had the effect of reducing the RRSP contribution room of employees, leaving us highly dependent on the Sears Canada Plan for our retirement income.

8. The Sears Canada Plan was commenced in January 1976 for the purpose of providing *defined benefit* pensions to employees on their retirement (the "**DB Component**"). The DB Component operates by establishing a formula pursuant to which a monthly pension benefit is calculated at the time of the retirement of an employee. During the operation of the plan, an actuary is required to perform regular valuations and to advise the company on the amount that it must contribute to the plan so that the plan can pay the monthly benefits. In addition, employees were also required to regularly contribute a portion of their pay to the Sears Canada Plan.

9. In June 2008, Sears Canada amended the Sears Canada Plan to add a *defined contribution* component (the "**DC Component**"). The DC Component operates akin to a

collection of RRSP-type accounts for the employees, with the company making fixed contributions as a percentage of employees' pay to a DC account for each employee. The employees in turn invest their funds in investment vehicles in an effort to grow a lump sum to be used on retirement. The company's contributions are fixed and no actuarial valuation reports are required for the funding of the DC Component.

10. After June 30, 2008, all Sears Canada employees could only accrue future benefits under the DC Component. Pension benefit accruals for employees who had been accruing a benefit under the DB Component were frozen as of June 30, 2008. These employees retained their defined benefit pension that they earned up to June 30, 2008, which would be paid to them as a monthly defined benefit pension when they retired from Sears Canada (in addition to any amount they earned under the DC Component, if also applicable to them).

11. The most recent actuarial valuation report for the Sears Pension Plan as at December 31, 2015 reports that the plan is underfunded by \$266.8 million on its wind up. This means that Sears Canada is required to pay that amount into the plan so that the DB Component can pay the full amount of benefits earned by the pension plan members. If that amount is not paid on wind up, the retirees' monthly pension benefits will have to be reduced, and financial hardship to many, if not all, the Sears Canada retirees will result.

12. The retirees of Sears Canada are both a very significant and vulnerable creditor and stakeholder group.

The vital importance of pension benefits for retirees

13. Pension benefits are critical to the livelihoods of retirees in their elderly years. A large proportion of Sears retirees have low monthly pension benefits and rely on each monthly payment to pay their bills each month.

14. The Sears Canada Pension Plan is currently underfunded by \$266 million on a wind-up basis.

Importance of a Wind-Up

15. I am advised by our counsel and believe that under s. 57(4) of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, and s. 30(7) of the *Personal Property Security Act*, R.S.O. 1990, c. P. 10, a deemed trust exists in favour of the pension plan beneficiaries for the amount owing and not paid by the employer to the pension plan on its wind up. The PBA deemed trust operates as a priority over other creditors, including secured creditors, over certain assets of the company. It is crucial that the wind up occur as soon as possible to secure the deemed trust priority in favour of the pension plan beneficiaries.

The Sears Canada CCAA Proceedings

16. On June 22, 2017 at 8:00 a.m., Sears Canada applied for protection from their creditors under the *Companies' Creditors Arrangement Act*, R.S.C 1985. C. C-36 ("CCAA") by order of Mr. Justice Hainey of the Ontario Superior Court of Justice (Commercial List). The application materials were not provided to the retirees' counsel until the morning of the Application.

17. On July 13, 2017, at 9:00 a.m., the Comeback Motion was heard by Justice Hainey. An order was issued to amend the Initial Order to allow the DIP Lenders to make priority payments on pre-CCAA filing loans using cash on hand and post-filing receipts. An order was also issued approving the sale and investor solicitation process.

18. On July 18, 2017, at 10:00 a.m. the liquidation sale approval order was issued by Justice Conway. This gives the company the authority to engage agents to liquidate inventory and fixtures, furniture, and equipment at stores designated for closure. The company also identified 59 stores across Canada, and liquidation procedures are set to begin on July 21, 2017 for 54 of those stores. This is set to further deplete the remaining Sears assets, to the benefit of the creditors currently in a priority position.

19. As a result of these proceedings, all payments and contributions to the pension plan are set to cease on October 1, 2017.

The rise and fall of Sears Canada

20. Simpsons-Sears Limited, the predecessor company of Sears Canada, was formed in 1953 as a partnership between Sears Roebuck, Co. of Chicago and The Robert Simpson Company of Toronto.

21. The pension, profit sharing, reward and health benefits plans were developed for our employees during those years for two (2) main reasons:

- (a) To make Sears Canada competitive in attracting and keeping good employees.

The philosophy was that an employee may make more money elsewhere but Sears Canada offered the guarantee of a secure future with a guaranteed retirement income, benefits, and employee discount after retirement, plus family protection through spousal continuance of your pension after you pass.

- (b) To succeed financially with opportunities for continued growth.

The philosophy was that happy, satisfied customers will become loyal customers. Satisfied customers plus secure, well-trained employees equals financial success and the ingredients for growth.

22. Historically, Sears Canada had a culture that not only brought the company success but enriched the lives of its employees. Its philosophy was also “to care about and take care of your employees and they will care about the company and take excellent care of your customers”. Our corporate vision was to "make Sears a great place to shop and a great place to work."

23. All that changed in 2005 when U.S. hedge fund manager Edward Lampert became the major shareholder of Sears Canada and eventually the Chief Executive Officer of its ultimate U.S. corporate parent, Sears Holdings. Since then, Sears Canada has steadily deteriorated and engaged in significant asset sales, declared substantial dividends to shareholders, and drastically reduced its investment in the company. This left the company insolvent with very few remaining assets.

The collapse of Sears Canada

24. In the years following the change in control to Edward Lampert, SCRG has been very concerned about Sears Canada's steady financial deterioration. Attached hereto as **Exhibit "A"** is a timeline setting out the efforts that SCRG has taken to protect the pension and benefits of Sears retirees over the past several years.

25. In extensive discussions and correspondences with the Federal and Ontario governments, the Financial Services Commission of Ontario (FSCO), and with Sears Canada, SCRG raised its serious concerns regarding the underfunding of the Sears Canada Pension Plan, the company's business strategy, the continuing decline in the company's performance, and the inevitable financial collapse of Sears Canada.

26. Sears Canada has deteriorated dramatically due to significant asset stripping without capitalizing on any investment opportunities. Despite the company's financial deterioration, the board of directors continued to approve payment of substantial dividends and capital distributions to its shareholders. Sears Canada has paid over \$3.4 billion to shareholders since 2004, and in so doing, placed the security of retirees' pension and health benefits at risk. On January 30, 2013, I wrote to Calvin McDonald, the President and Chief Executive Officer of Sears Canada at the time, expressing SCRG's growing concern for the financial health of Sears Canada. Attached hereto as **Exhibit "B"** is a copy of the correspondence dated January 30, 2013.

27. On January 20, 2014, through our legal counsel, we demanded that dividend payments cease. Attached hereto as **Exhibit "C"** is a copy of said letter. After that letter, I believe that Sears Canada stopped issuing any further dividends.

28. As early as November 2014, SCRG, through our legal counsel, has been requesting both the company and the Superintendent of Financial Services to wind up the Sears Canada Plan. Attached hereto as **Exhibit "D"** and **Exhibit "E"** are copies of the correspondence to Torys LLP dated November 6, 2014, and the response from Torys LLP dated November 21, 2014, respectively. When SCRG was met with a dismissive response from counsel for Sears Canada, we then wrote to FSCO requesting that it orders the wind up of the Sears Canada Plan. For the past 2.5 years, we have been in discussions with the company and FSCO on many occasions requesting the wind up of the plan. Attached hereto as **Exhibits "F", "G", "H", "I", "J", "K", "L", "M", "N", "O", "P", "Q", "R", "S", "T", "U", "V", "W"**, are copies of the correspondences between Koskie Minsky LLP and Sears Canada counsel and FSCO requesting a wind up of the Sears Canada Plan.

29. Most recently, on May 19, 2017, our legal counsel wrote to counsel for Sears Canada and requested that the company wind up the Sears Canada Plan prior to it applying for CCAA protection or becoming involved in any other insolvency proceeding. Attached hereto as **Exhibit "X"** is a copy of the correspondence dated May 19, 2017 from Andrew Hatnay of Koskie Minsky LLP to Marc Wasserman of Osler, Hoskin & Harcourt LLP, and attached hereto as **Exhibit "Y"**, is a copy of the reply letter dated June 5, 2017 from Marc Wasserman to Andrew Hatnay.

30. Sears has already sought to suspend its required special payments to the Sears Canada Plan but has not sought to wind it up and trigger an obligation to fund the shortfall. If there is any possibility for restructuring the business in these CCAA

proceedings, it is inconceivable that any purchaser will take over the administration and liabilities of the pension plan or continue to pay pension benefits.

31. Over the past decade, Sears Canada has struggled in the face of stiff competition from other retail businesses. As a result, store sales at Sears Canada have been consistently falling. It began selling assets, closing stores, and cutting jobs across Canada in an effort to turn around its struggling business. Sears Canada's total revenue has drastically declined from \$6.2 billion in 2004 to \$2.6 billion in 2016. Sears Canada has reported six consecutive operating losses from 2011 to 2016.

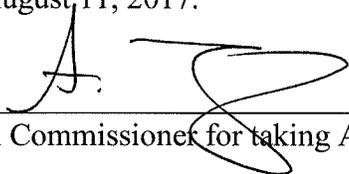
32. Prior to Sears Canada's CCAA filing, the company had already sold its most valuable properties and assets. Further, after June 22, 2017, I am aware that the company has announced the closing of 20 full-line locations, plus 15 "Sears Home" Stores, 10 "Sears outlet" and 14 "Sears Hometown" locations.

33. Sears has not attracted new customers, and its customer base is shrinking. Given the financial deterioration of the company over the past several years, I do not believe that it is possible for Sears Canada to restructure and operate as a going-concern business in a manner that is similar to the existing business. In my opinion, I have no confidence that current management, without significant change, can reverse the situation. Indeed, there is a high likelihood that it may not survive at all. In such circumstances, the wind up of the Sears Canada Plan is inevitable.

34. I am advised and have spoken with Ken Eady and Larry Moore, the Vice-President and Director of SCRG, that they are in agreement with the statements contained in this affidavit.

35. I swear this affidavit in support of the motion by Representative Counsel to wind up the Sears Canada Plan.

SWORN BEFORE ME at the City of Toronto, in the Province of Ontario on August 11, 2017.



A Commissioner for taking Affidavits, etc.

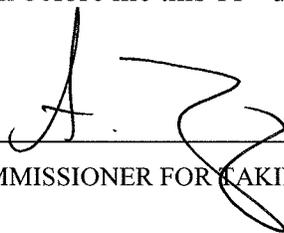
AMY TANG



WILLIAM TURNER

This is **Exhibit "A"**

referred to in the Affidavit of William Turner
sworn before me this 11th day of August, 2017.

A handwritten signature in black ink, consisting of a large, stylized 'A' followed by a series of loops and a long horizontal stroke.

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

THE STEPS TAKEN BY SCRG TO PROTECT SEARS RETIREES PENSION AND BENEFITS

1. For many years our SCRG Board has worked with Sears Canada in an attempt to protect retiree Pension and Benefits.
2. SCRG has supported Sears, in their business endeavors by encouraging our members to shop at Sears and to be positive when speaking about Sears.
3. **2012 and 2014:** SCRG has written to or met with Sears on numerous occasions to express our concerns regarding the security of our pensions and health and dental plans. Sears position is that they will meet their "legal obligations." Sears has failed to agree to our repeated requests or to change the strategy that threatens our pension and benefits.
4. **May 14, 2013:** SCRG wrote to FSCO expressing our concern about Sears business strategy and our underfunded pension plan.
5. **September 24, 2013:** SCRG met with a number of FSCO's management. SCRG expressed our concerns regarding Sears business strategy and our underfunded pension plan. (FSCO, while interested and concerned, informed us that these issues were outside their mandate).
6. **October 2, 2013:** SCRG emailed the Director of Policy in the Premier's office our concerns regarding Sears business strategy and our underfunded pension plan.
7. **January 7, 2014:** SCRG wrote to Premier Wynne with our concerns regarding Sears business strategy and our underfunded pension plan.
8. **January 15, 2014:** SCRG wrote to all Ontario MPP's informing them of our concerns regarding Sears business strategy and our underfunded pension plan.
9. **February 18th 2014:** SCRG received a letter from Minister Sousa. This letter opened the door to a meeting with the Minister's Director of Policy.
10. **February 2014:** Sears significantly reduced the value of the retiree health and dental plan and made changes to defined benefit pension plan (inflation protection) without discussion or consultation.
11. **July 16, 2014:** SCRG met with The Director of Policy for the Minister of Finance in Ontario.
12. **Nov 6th 2014:** SCRG requests that Sears windup SRRP.
13. **Nov 21st 2014:** Sears replies with a dismissive response.
14. **Feb 27th 2015:** - SCRG requests FSCO to windup SRRP.
15. **Mar 24th 2015:** SCRG makes presentation to FSCO to support plan windup.
16. **May 4th 2015:** SCRG made further submission to FSCO re windup.

THE STEPS TAKEN BY SCRG TO PROTECT SEARS RETIREES PENSION AND BENEFITS

17. **May 5th 2015:** Meeting with SCRG, Sears and FSCO to discuss windup.
18. **June 5th 2015:** SCRG made further submission to FSCO re windup.
19. **June 22th 2015:** Sears reply to our submission on windup.
20. **July 7th 2015:** SCRG makes further submission to FSCO in support windup.
21. **Sept 11th 2015:** Meeting with Sears and FSCO.
22. **Nov 6th 2015:** Letter to Sears from FSCO with request of documents.
23. **Nov 27th 2015:** Letter to Sears from SCRG with request not to pay dividends.
24. **Dec 8th 2015:** Letter to SCRG from Sears, they do not plan to pay dividends.
25. **Dec 9th 2015:** Letter to FSCO from Sears, only some of requested documents included and request for meeting.
26. **Jan 15th 2016:** Letter to Sears – Tory's reasserting their position and request for documents.
27. **Feb 16th 2016:** Letter to FSCO from Sears with majority of documents. Request for meeting without SCRG.
28. **March 1st 2016:** Letter to FSCO from SCRG Requesting document and stating we wish to be part of all meetings.
29. **March 10th 2016:** Email to FSCO from KM / SCRG agreeing to sit out the meeting with Sears re partial plan windup with provisions.
30. **March 29th 2016:** Meeting FSCO and Sears to share their preliminary findings on the partial wind up issue.
31. **May 6th 2016:** Sears give an in adequate response.
32. **June 8th 2016:** Sears Chairman to meet with FSCO,
33. **June 14th 2016:** SCRG meets with Sears Chairman for lunch. He asked that SCRG back off asking for wind up for a year.
34. **Sept 12th 2016:** SCRG letter to FSCO further request for plan windup.
35. **Sept 27th 2016:** Meeting between Sears and FSCO took placed.
36. **Oct 20th 2016:** Further letter to FSCO requesting wind up.

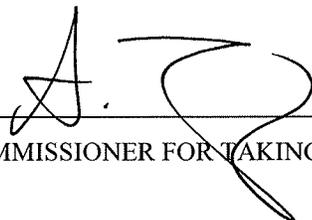
Monday, July-10-17

THE STEPS TAKEN BY SCRG TO PROTECT SEARS RETIREES PENSION AND BENEFITS

37. **Nov 7th 2016:** Sears and FSCO share draft Term sheet.
38. **Nov 21st 2016:** Sears to make improvements to the draft term sheet.
39. **Dec 29th 2016:** Letter sent to FSCO setting out our dissatisfaction with Sears offer.
40. **Feb 15th 2017:** Sears opens direct confidential talks with SCRG. NDA signed by certain SCRG members and continues in place. The talks continued until June 13, 2017.
41. **June 13th 2017:** Sears seek Court Protection from its creditor as predicted by SCRG in 2014.

This is **Exhibit "B"**

referred to in the Affidavit of William Turner
sworn before me this 11th day of August, 2017.

A handwritten signature in black ink, consisting of a large, stylized 'A' followed by a series of loops and a long horizontal stroke that extends to the right.

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.



January 30, 2013

Sears. Canada Inc.
Calvin McDonald
President and Chief Executive Officer
290 Yonge Street, Suite 700
Toronto, Ontario
M5B 2C3

Dear Mr. McDonald:

Re: Sears Canada Dividends, Investment in the Business and the Pension Plan

Thank you again for your assistance with our inquiries about the Health & Dental Benefits Buyout Program. We appreciate the effort you made to help clarify a number of issues about that program for our retirees.

The purpose of this letter is to express our growing concern for the financial health of Sears Canada Inc. (SCI) and the relationship that it has to our pension plan. The last several months have seen a number of media reports and events that have created an increasing sense of anxiety for our over 5000 retiree members. SCRG has a responsibility to its members to identify and address issues and concerns that could impact their retirement and in light of SCI's deteriorating financial performance we feel compelled to express our concerns to you.

Recently, on December 12, 2012, SCI announced that it would pay an extraordinary cash dividend of \$102 million to its shareholders. That payment has concerned many SCRG members. It motivated us to conduct an analysis of SCI key financial indicators and their potential impact on the pensions and benefits that the Company is obligated to provide to its retirees. The following analysis is based on information taken from annual reports and other documents that are available to the public.

Background

In 2005, the U.S. hedge fund ESL Investments acquired majority ownership of Sears, Roebuck and Company, and consequently became the controlling shareholder of SCI. This has resulted in many changes in SCI which have significant impact on the interests of retirees, especially the obligations that SCI owes to the Sears Registered Retirement Plan (SRRP) and the Health & Welfare Trust. As of January 28, 2012, SRRP had a funding deficit of \$198.8 million and the Health & Welfare Trust a deficit of \$252.7 million.

a) Sears Registered Retirement Plan

At the end of 2004, SRRP had surplus assets of \$65 million; by the end of 2011, it had a deficit of \$199 million. During this period, despite paying out \$2.8 billion in dividends and capital distributions to its shareholders, SCI did not make any contributions to the defined benefit component of SRRP. In fact, SCI withdrew a total of \$27.6 million from the defined benefit component of the fund to pay for current administrative expenses.

b) Health & Welfare Trust

At the end of 2004, the Health & Welfare Trust had assets of \$90 million to help pay SCI's legal obligations to provide health care benefits for its retirees. By the end of 2011, these assets had been reduced to \$69 million. In 2009, SCI announced that it would stop funding the Trust and that it would use funds from it to pay current operating expenses related to active employees.

c) Sales of Assets

Over the past seven years (2005-11 inclusive), SCI sold off several major revenue generating assets including the credit business, and some retail stores and shopping centre interests for net pre-tax cash proceeds in excess of \$2.5 billion.

d) Dividends and Capital Distributions

Over the past seven years, SCI paid out cash dividends and capital distributions of \$2.8 billion dollars to shareholders. At the beginning of 2005, SCI's market capitalization was \$1.8 billion (106 million shares multiplied by the share price of \$16.99). Therefore, the average dividend yield (dividends and capital distributions paid as a percentage of the beginning market capitalization of the company) for those years was 17.8%. In contrast, the average dividend yield for companies listed on the TSX is significantly lower, at approximately 3%. The amount of dividends and capital distributions paid since 2005 has exceeded SCI's market capitalization by \$1 billion. These dividends and capital distributions appear to us to be unjustified and imprudent given that they totaled \$1.2 billion more than the total cash generated from operations during this time.

e) Share Buybacks

In 2010, SCI began a program of buying back shares from shareholders. To the end of October 2012, it paid out \$94.5 million to repurchase shares under this program.

f) Capital Expenditures

While SCI has been paying out considerable amounts of cash to shareholders, it has invested little in maintaining, improving or expanding its existing operations in Canada. In the past seven years, depreciation expense has totaled \$930 million, whereas total capital expenditures have been only \$500 million. Assets are being replaced at barely half the rate of depreciation. This lack of necessary spending appears to have affected



sales. Same-store sales have decreased by 22.4% from 2004 to 2011, even before accounting for inflation. Same-store sales for the first 39 weeks of 2012 are down a further 6.4%.

g) Revenues

Total revenues for SCI have decreased 25.9% from 2004 to 2011 (before adding inflation). Revenues for the first 39 weeks of 2012 are down a further 7.7%.

h) Cash Flow from Operations

Cash flow from operations is also down significantly – from \$338.6 million in 2004 to \$85.0 million in 2011. This pattern continued in 2012. During the first 39 weeks of 2012 cash flow from operations was \$132.9 million worse than the comparable period in 2011. It appears that cash generated from operations will actually be negative for 2012. A continuation of this trend could eventually render SCI insolvent.

i) December 2012 Dividend

Despite this continued deterioration of key financial measures, on December 12, 2012 SCI declared an extraordinary cash dividend of \$102 million. This action is in the context of management having knowledge that key financial performance measures for SCI are declining rapidly, and that the Company's competitive position in the Canadian marketplace is seriously threatened by the pending arrival of Target in Canada in March 2013, among other new competitive entrants from the U.S., as well as the continued expansion of Walmart. The significant capital expenditures announced by these companies stands in stark contrast to those committed by SCI over the past seven years.

When taken in isolation, each of the events described above could possibly be explained. However, when taken in totality they show an unsettling pattern: the sale of company assets, the lack of investment in the maintenance or expansion of the business, the decline of key business indicators and the growing unfunded obligations of post-retirement pension and health benefits. At the same time the Company has paid cash dividends to its shareholders far in excess of what would be reasonable and prudent, given its financial performance. It is difficult for us to understand SCI's long term business strategy. If this pattern continues, it is difficult for us to see how the Company can remain solvent and meet its obligations to retirees who are creditors of the Company.

Our Position

As employees of SCI we were required to participate in the Sears Registered Retirement Plan as a condition of employment. This was a contributory plan, requiring that all members pay a portion of their earnings. The Company made a commitment to provide lifelong pension benefits to retirees from SRRP. The intent of these employment arrangements was to provide a secure retirement for SCI employees and to encourage long service and single-company careers.



Employees were told that although their income may not be as high as in other industries, they were being looked after by the provision of the pension and health benefits.

These employee contributions and the Company commitment were not based on regulation or law, but rather by mutual agreement. It is important to note that between 1998 and 2011, SCI's financial contribution to the defined benefit component of SRRP was minus \$22.4 million. As well, in 2011 SCI opted to use a legal exception to defer paying its \$29.0 million pension plan obligation until 2012.

On numerous occasions SCI has indicated that it has no debt. There is however a \$450 million obligation to retirees by way of amounts owing to SRRP and the Health & Welfare Trust. As the administrator of the Sears Registered Retirement Plan, SCI owes a fiduciary duty to the members of that plan and must act in their best interest. SCI made commitments to its retirees and employees that they would be looked after in return for their loyalty and long service. This obligation is both legal and ethical.

With that in mind, we request the following:

1. That SCI shows good faith and abides by its promises to the employees and retirees by making its contributions to the defined benefit component of the Sears Registered Retirement Plan:
 - a) as a minimum in both 2013 and 2014 increase the annual contribution by 50% each year to equal the deferred 2011 contribution of \$29 million; and
 - b) pay back to the defined benefit component of SRRP, the \$27.6 million that it transferred from the plan in 2008 and 2009.
2. That SCI establishes a Pension Advisory Committee. The purpose of the Committee would be to monitor SRRP and make recommendations on its administration to the plan administrator. The Committee would also promote awareness and understanding of SRRP. In order to do this, it would have the right to examine the records of the administrator relating to the pension plan and pension fund, but not to any personal information contained in those records. As you are aware, the Ontario Government has recently passed legislation and is writing regulations that will require such committees to be formed in the future.

The retirees need their company to continue its long history of responsible behaviour to their pension plan. In the recent past SCI has told SCRG that it would live up to its legal obligations; it is equally important for SCI to live up to its agreement with employees and its promise to retirees.

I hope that you will accept this letter in the way it is intended, not as a challenge but rather as our desire to communicate our views and to state our requests. It is sent on behalf of the directors and the members of SCRG.



If we can provide clarification or any additional information from our perspective, please do not hesitate to contact me. Thank you for your time and consideration. I look forward to your response.

Yours truly

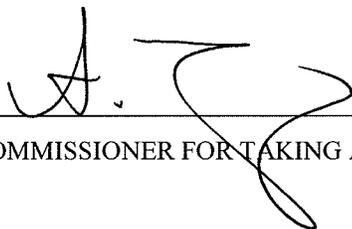
Bill Turner
President, SCRG.

cc: SCRG Board of Directors



This is **Exhibit "C"**

referred to in the Affidavit of William Turner
sworn before me this 11th day of August, 2017.

A handwritten signature in black ink, consisting of a stylized 'A' followed by a large, sweeping flourish that loops back under the signature line.

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

January 20, 2014

Via Email and Regular Mail

Andrew J. Hatnay
Direct Dial: 416-595-2083
Direct Fax: 416-204-2872
ahatnay@kmlaw.ca

Torys LLP
79 Wellington St. West, 30th Floor
Box 270, TD South Tower
Toronto, ON M5K 1N2

Attention: Mitch Frazer, counsel to Sears Canada Inc.

Dear Mr. Frazer:

**Re: Store and Catalogue Retiree Group (“SCRG”)
The Sears Canada Inc. Registered Retirement Plan, Registration Number 0360065
 (“Sears Canada Plan”)**

We acknowledge receipt of your letter dated December 19, 2013 that you sent on behalf of your client, Sears Canada Inc.

We have not heard from any counsel in respect of the individual directors of Sears Canada to whom we sent our prior letter. We are sending this letter to the directors as well. Please let us know the names of counsel to the directors.

Your letter does not allay our clients’ concerns about Sears Canada’s corporate conduct and its deteriorating financial situation which point to the looming failure of Sears Canada and its corresponding inability to fund the deficit in the Sears Canada Plan and to secure retiree benefits. As you are aware, Sears Canada has a wind up liability to the Sears Canada Plan in the amount of approximately \$307 million and an unfunded liability for retiree health benefits of approximately \$250 million.

Sears Canada is steadily losing money, selling assets and closing major stores across Canada. It does not have an effective business plan to turn its business around.

Despite the deteriorating financial situation at Sears Canada and dismal future, over the past year the board of directors has approved the payment of \$611 million to shareholders. We understand that ESL Investments, a company owned by the CEO of Sears Holdings Inc. in the United States, owns 48% of the shares of Sears Holdings, which in turn is the majority (51%) shareholder of Sears Canada. In addition, ESL directly owns 27% of the shares of Sears Canada. ESL obviously benefits significantly from dividends paid to it by Sears Canada.

As recently as January 9, 2014, the company stated that it intends to extract even more cash from Sears Canada to pay to its shareholders. The press release of Sears Holdings dated January 9, 2014 states: *“Finally, as previously announced in October, we also are continuing to work with the board and management of Sears Canada with a goal of increasing the value of our 51% interest and realizing significant cash proceeds to support our transformation and to create value for our shareholders.”*

Sears Canada appears to have adopted a plan to sell the valuable assets of the company and distribute the proceeds to shareholders. The substance of Sears Canada’s management conduct is asset stripping, and has resulted in a company with negative operating earnings and cash flow and deteriorating key performance measures. Sears is on a path where it will not have sufficient cash to meet its funding obligations under the Sears Canada Plan and retiree benefit plans. Sears Canada’s conduct will therefore result in the members of those plans ultimately bearing the brunt of the wind up of the Sears Canada Plan in an underfunded state, with losses to our clients’ pension and health benefits.

The actions of Sears Canada’s directors and management are inexorably leading Sears Canada into insolvency, and will be the direct cause of the resulting losses to Sears retirees.

The payment of dividends is unlawful and inappropriate

In Sears’ financial circumstances, our clients object to the payment of any dividends, both to dividends declared in the past and any further future dividends.

Sears Canada’s financial results and key performance measures have been steadily deteriorating for years. Sears reported Operating Losses for both 2011 and 2012, and has been generating negative Free Cash Flow over the same time period. Based on results so far this year, Sears Canada will almost certainly suffer negative operating income and cash flow for 2013. Sears Canada is not taking adequate steps to address the wind up deficit in the Sears Canada Plan and its liability for retiree benefits. It is entirely unreasonable and reckless for the company and its directors to pay dividends in Sears’ financial circumstances. Given their years of employment service and their contractual and equitable entitlements, the retirees have a reasonable expectation that Sears Canada will properly fund their pension and retiree health benefits, and not pay excessive dividends to its shareholders while simultaneously dismantling the company and leading it into insolvency.

Sears Canada is failing and not turning around

Over the past several years, Sears Canada has sold a substantial portion of its key income producing assets:

- a) In 2005, Sears Credit and Financial Services operations were sold to JP Morgan Chase for \$2.4 billion. This business was profitable and contributed a large portion of Sears Canada's total earnings.
- b) Since 2005, Sears Canada sold ten leased stores (in 2012 and 2013) and two owned stores (in 2007 and 2008) for total proceeds of \$806 million. Sears Canada is closing all of these stores, several of which are in some of the most prominent malls in Canada.
- c) Since 2005, ten joint venture interests in various shopping centres were sold for \$330 million. These interests had consistently contributed positive earnings and cash flow to Sears Canada.

Based on our review of Sears activities, since ESL Investments acquired control of Sears Canada in 2005, Sears Canada has, in total, sold assets for pre-tax proceeds of \$3.8 billion dollars and distributed \$3.5 billion to shareholders. See the enclosed chart for a breakdown of those figures.

While Sears Canada has paid \$3.5 billion to shareholders, it has not invested in its business. Capital Expenditures over the past 8 years (2005-2012 inclusive) totaled \$599 million. This represents only 57% of depreciation expense. Assets are being replaced at barely half the rate that they are being used up. Sears Canada's capital expenditures per square foot are considerably less than what is typical and required in the retail industry. This issue is now even more problematic for Sears Canada given the entry of Target, Nordstrom's, and Saks and other U.S. retailers into the Canadian market, and the spending by Walmart, Canadian Tire, Loblaws and other Canadian retailers to retain and expand their market share and increase their revenues.

Sears Canada's lack of necessary investment, along with continuous cost cutting, has harmed the on-going operations of Sears Canada. Key performance measures have deteriorated to an alarming extent:

- Same store sales, which Sears Canada defines to include catalogue and on-line sales, have decreased in each of the past eight years for a cumulative decrease of 27%, excluding inflation. This sales decline cannot be attributed to a weak Canadian economy. During this same period, consumer spending in Canada increased by 25%. Sears Canada's sales per square foot in 2012 were approximately \$230, including catalogue and on-line sales. This number is less than half that of many of its competitors, making it very difficult for Sears Canada to compete effectively.
- Operating income has decreased in each of the past 4 years. In 2011 and 2012, Sears Canada reported operating losses of \$51 million and \$83 million respectively.
- Free Cash Flow has decreased in each of the past three years. In 2011, Sears Canada's Free Cash Flow was basically nil, and was minus \$178 million in 2012.

- Based on Sears Canada's reporting for the first 9 months of 2013, key performance measures for the company continue to decline at an alarming rate. In addition, Sears recently reported that same-store sales over the all-important 2013 Christmas season declined 4.4%.

In totality, this shows a course of conduct that cash assets of Sears Canada are being stripped and that the company will fail:

- Key income-producing assets have been sold off;
- Under- investment in the business;
- Significant decline in key performance measures;
- Negative earnings and cash flow; and
- Cash distributions to shareholders in amounts far in excess of what is reasonable and prudent, thus reducing available cash.

After eight years of under-investment and continuous cost cutting, we cannot see how Sears Canada can stabilize or improve its results without a major turnaround and significant investment in the business. There is no indication of any such turnaround nor does it appear that the significant investment that is necessary to sustain Sears Canada as a viable business will be made by its American parent.

Requests for annual Sears Canada Plan valuation reports

We note that you provided us with a copy of the actuarial valuation report for the Sears Canada Plan as of December 31, 2010. We have a copy of that report as we referred to it in our letter of December 10, 2013. We expressly requested copies of the annual valuations that Sears Canada is required to prepare and provide to its lenders each year. We enclose a copy of the First Amending Agreement between Sears Canada and its lenders dated August, 2012. Pursuant to section 5.2(c) of that agreement, Sears agrees that it "shall deliver to the [Lenders'] agent an Actuarial Report in respect of each Canadian Pension Plan with a defined benefit provision *at the end of each calendar year* by no later than...90 days following....year end." These are the reports that we requested in our letter of December 10, 2013 and which have not been provided.

There should be at least one such report prepared as of December 31, 2012 and another due as of December 31, 2013. These reports are relevant and important for our clients who are members of the pension plan and have a direct interest in current information regarding the funded status of their pension plan. Please provide copies of those reports as soon as possible.

Furthermore, you have not responded to our request for a copy of the Health Benefit Trust documents. Again, please provide those documents as soon as possible.

Meeting Request

As we indicated in our letter, our clients have met in the past with various individuals with Sears Canada and raised their concerns without any resolution by Sears. They met with Sears Canada management on three occasions over the last 18 months, wrote to the President of Sears Canada in January, 2013 and received only a non-responsive reply from the Vice-President of Human Resources. On November 1, 2013 the President of SCRG wrote to the new CEO of Sears Canada requesting a meeting. The CEO has not responded to that letter.

To date, Sears has failed to provide SCRG with meaningful answers to their questions concerning the deficit in the Sears Canada Plan and failed to provide SCRG with copy of the Benefit Trust documents, despite repeated requests.

Our clients request a meeting with Sears Canada directors with legal counsel to discuss a plan to adequately fund the deficit in Sears Canada Plan and to secure retiree benefits. Please advise if you are willing to facilitate such a meeting.

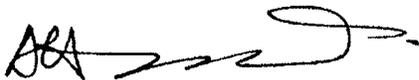
As set out in our prior letter, the failure of Sears Canada to fund the Sears Canada Plan and to secure retiree benefits in its current financial circumstances is a breach of fiduciary duty by the company and the directors to the pension plan members, is oppressive under the CBCA and in addition, is a breach of the directors' duty of care under section 122(1) of the CBCA.

We hope that Sears Canada and its directors will act in a responsible and prudent manner and commit to meaningful arrangements to secure the payment of pension benefits and retiree health benefits that the company owes to its employees, and which the employees earned through their years of service to Sears Canada.

We look forward to hearing from you.

Yours truly,

KOSKIE MINSKY LLP



Andrew J. Hatnay
AJH/vdl
Encl.

cc. Sears Canada Inc., Board of Directors
William C. Crowley, Chairman of the Board

Donald Ross, Director
William R. Harker, Director
R. Raja Khanna, Director
James McBurney, Director
Deborah E. Rosati, Director
H. Ronald Weissman, Director

- cc. Sears Holdings Corporation, Board of Directors
Edward Lampert, Chief Executive Officer
Paul G. DePodesta, Director
William C. Kunkler III, Director
Steven T. Mnuchin, Director
Ann N. Reese, Director
Thomas J. Tisch, Director
- cc SCRG
Philip Howell, CEO and Superintendent of Financial Services of Ontario
Deborah McPhail, Senior Counsel, FSCO
Penny McIlraith, Pension Officer, FSCO
Mark Zigler, *Koskie Minsky LLP*

20-Jan-14

Sears Canada Inc.
Pre-tax proceeds from sale of assets
2005 - 2013

(\$ millions)

| | | |
|------|---|----------------------------|
| 2005 | Sears Credit business Joint Venture interest - Victoriaville, Quebec Real estate in Levis, Barrie and Sarnia | 2,446 27 2,473 |
| 2006 | Unspecified | 5 |
| 2007 | Headquarters building - Toronto Hamilton Centre store Joint venture interest - unspecified Airplane and other unspecified | 82 7 5 13 107 |
| 2008 | Calgary downtown store | 33 |
| 2009 | Joint venture interest - unspecified | 6 |
| 2010 | Property in Burnaby, B.C. Joint venture land in Lachennaie, Quebec | 14 4 18 |
| 2011 | | 0 |
| 2012 | Joint venture in Medicine Hat Stores leases: Vancouver Pacific Centre Ottawa Rideau Centre Calgary Chinook Cantrex Other unspecified | 38 175 4 2 219 |
| 2013 | Store Leases: Toronto Yorkdale Mississauga Square One Scarborough Town Centre (option) Store Leases: Toronto Eaton Centre (4 floors) Sherway Gardens Markville London Maisonville Richmond Centre, B.C. Shopping Centre Joint Ventures: (Jan 8/2014) Carrefour Angrignon Place Angrignon Promenades de Drummondville Carrefour Richelieu Carrefour de Nord Place Pierre Caisse Mega-Centre Drummondville Drummondville strip mall | 191 400 315 906 |

Total pre-tax proceeds from sale of assets

3,767

Sears Canada Inc.
Payments to Shareholders
2005 - 2013

(\$ millions)

| | |
|----------------------|-------|
| Dividend | 1,557 |
| Capital distribution | 470 |
| Share buyback | -18 |
| | 2,009 |
| Dividend | 13 |
| | 0 |
| | 0 |
| Dividend | 753 |
| Share buyback | 43 |
| | 796 |
| Share buyback | 42 |
| Dividend | 102 |
| Share buyback | 10 |
| | 112 |
| Dividend (Dec. 6) | 509 |
| | 509 |

Total payments to Shareholders

3,481

EXECUTION COPY

THIS FIRST AMENDING AGREEMENT made as of the ___ day of August, 2012

BETWEEN:

SEARS CANADA INC., as Borrower

and

THE LENDERS NAMED HEREIN

and

THE L/C ISSUING BANK NAMED HEREIN

and

WELLS FARGO CAPITAL FINANCE CORPORATION CANADA
as Administrative Agent, Co-Collateral Agent and Swingline Lender

and

GE CANADA FINANCE HOLDING COMPANY
as Co-Collateral Agent and Documentation Agent

WHEREAS Sears Canada Inc., as borrower (the "Borrower"), the banks, financial institutions and other institutional lenders listed on the signature pages hereto (the "Lenders"), the L/C Issuing Bank party hereto, Wells Fargo Capital Finance Corporation Canada, as administrative agent (the "Agent"), co-collateral agent and Swingline Lender, GE Canada Finance Holding Company, as co-collateral agent, CIBC Asset-Based Lending Inc. and Bank of Montreal, as co-syndication agents, GE Canada Finance Holding Company, as documentation agent, and Wells Fargo Capital Finance Corporation Canada, GE Capital Markets (Canada) Limited, GE Capital Markets, Inc., CIBC Asset-Based lending Inc. and BMO Capital Markets, as joint lead arrangers and bookrunners, entered into that certain credit agreement dated as of September 10, 2010 (the "Credit Agreement") pursuant to which certain credit facilities were established in favour of the Borrower;

AND WHEREAS the Borrower has advised the Co-Collateral Agents that its defined benefit Canadian Pension Plans have an estimated wind-up deficit of approximately \$2.5 billion as at December 31, 2010, but that the Borrower has made all of the contributions that was obligated to make to Pension Plans under applicable law to the date hereof and that it has no intention to wind-up such Canadian Pension Plans. [Note: Deficit amount deleted]

AND WHEREAS certain of the Co-Collateral Agents advised the Borrower of their intent to impose an Availability Reserve with respect to the Pension Wind-up Deficit;

- 2 -

AND WHEREAS, the Borrower has requested an accommodation from the Co-Collateral Agents and the Lenders by way of amendments to the Credit Agreement on the terms and conditions set forth herein.

NOW THEREFORE THIS AMENDING AGREEMENT WITNESSES THAT in consideration of the covenants and agreements contained herein and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the parties hereto agree as follows:

Section 1 General

In this Amending Agreement (including the recitals) unless otherwise defined or the context otherwise requires, all capitalized terms shall have the respective meanings specified in the Credit Agreement, as amended hereby.

Section 2 To be Read with Credit Agreement

This Amending Agreement is an amendment to the Credit Agreement. Unless the context of this Amending Agreement otherwise requires, the Credit Agreement and this Amending Agreement shall be read together and shall have effect as if the provisions of the Credit Agreement and this Amending Agreement were contained in one agreement. The term “**Agreement**” when used in the Credit Agreement means the Credit Agreement and the schedules thereto, as previously amended and as amended by this Amending Agreement and as may be further amended, revised, replaced, supplemented or restated from time to time.

Section 3 Headings

The division of this Amending Agreement into Articles and Sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Amending Agreement. The terms “**this Amending Agreement**”, “**hereof**”, “**hereunder**” and similar expressions refer to this Amending Agreement and not to any particular Article, Section or other portion hereof and include any agreement supplemental hereto. Unless otherwise specified, references herein to Articles and Sections are to Articles and Sections of this Amending Agreement.

Section 4 Number

Words importing the singular number only shall include the plural and *vice versa*, words importing the masculine gender shall include the feminine and neuter genders and *vice versa*.

Section 5 Amendments

5.1 Definitions.

Section 1.01 of the Credit Agreement is amended by adding the following definitions to thereto in alphabetical order.

“**Actuarial Report**” means the actuarial report required to be filed by the Borrower under the Pension Benefits Act (Ontario), or such other pension standards laws as may from time to time

- 3 -

apply, with respect to the defined benefit provisions of its Canadian Pension Plans or such other report of the Borrower's actuaries as may be approved by the Co-Collateral Agents.

"First Amending Agreement" means the first amending agreement dated as of ____, 2012 between the Borrower, the Agent, the Co-Collateral Agents, the Lenders and the LC Issuing Bank, providing for certain amendments to the Credit Agreement as set out therein.

"Mortgage" means any deed of trust, mortgage, fixed charge, debenture, immovable hypothec or other document creating a Lien on real property or any interest in real property.

"Net Real Estate Value" means the (i) value of the Qualifying Real Estate as set out in the most recent appraisal delivered to the Co-Collateral Agents, less (ii) the amount of any Debt secured by a Lien on such Qualifying Real Estate ranking in priority to the Liens granted to the Agent therein.

"Pension Wind-up Deficit" means the deficit that would arise upon the termination and wind-up of all of the defined benefit provisions of all Canadian Pension Plans of the Group Members.

"Qualifying Real Estate" means real property to which a Loan Party has good and marketable title, acceptable to each of the Co-Collateral Agents, with respect to which (a) the Agent has been granted a legal, valid, binding and perfected Mortgage securing the Obligations on terms reasonably satisfactory to the Co-Collateral Agents, (b) the Agent has been issued a lender's title insurance policy reasonably satisfactory to it and the Co-Collateral Agents, (c) the Borrower maintains the insurance and has otherwise complied with Section 6.01(c) of the Credit Agreement (d) ALTA-equivalent surveys, appraisals and environmental reports in each case reasonably satisfactory to Co-Collateral Agents have been delivered to the Co-Collateral Agents, and (d) reasonably satisfactory property condition assessments have been delivered to the Co-Collateral Agents.

"Wind-up Reserve" means a reserve in an amount equal to (i) the Pension Wind-up Deficit, less (ii) the lesser of (a) [●] % of the Net Real Estate Value and (b) CAN\$[●]. [Note: Percentage and amount deleted]

"Wind-up Reserve Period" means the period (i) commencing on the date on which Excess Availability is or, after giving effect to an Extension of Credit requested by the Borrower as on such date, would be less than the sum of (a) the Pension Wind-up Deficit plus (b) CAN\$[●] and (ii) ending on the date on which Excess Availability has been more than the sum of (a) the Pension Wind-up Deficit plus (b) CAN\$[●] for 30 consecutive days." [Note: Amounts deleted]

5.2 Wind-up Reserve.

Article II of the Credit Agreement is amended by adding the following section to the end thereof:

"SECTION 2.20 Wind-up Reserve

(a) Unless otherwise agreed in writing by each Co-Collateral Agent in its sole discretion, during the Wind-up Reserve Period, the Wind-up Reserve will be included as an Availability Reserve without any prior notice, grace period or other condition or formality, in addition to any other Availability Reserves then in effect or thereafter imposed by the Agent or a Co-Collateral Agent from time to time in accordance with the terms of this Agreement, it being understood that the

- 4 -

Wind-up Reserve does not limit the rights of the Co-Collateral Agents to impose Availability Reserves in respect of the Qualifying Real Estate in the exercise of their Permitted Discretion if at any time the Co-Collateral Agents determine that there is any increase in the risk to the effectiveness, validity or enforceability of the security over the Qualifying Real Estate. Without limitation to the foregoing, no Reserve Notice Period shall be required prior to the Wind-up Reserve being effective.

(b) For the avoidance of doubt, neither the Wind-up Reserve, nor the termination thereof upon termination in accordance with Section 2.20(g) below shall limit the rights of the Agent to impose any Availability Reserves in accordance with terms hereof or of either Co-Collateral Agents to impose any Availability Reserves in accordance with terms of the Co-Collateral Agents Rights Letter, including, but not limited to, Availability Reserves in respect of current service pension payments or other pension payments to the extent permitted hereunder.

(c) The Borrower shall deliver to the Agent an Actuarial Report in respect of each Canadian Pension Plan with a defined benefit provision as at the end of each calendar year by no later than the date which is 90 days following such year end or such longer period as the Co-Collateral Agents may agree in their sole discretion. For the purposes of determining the Wind-up Reserve, the amount of the Pension Wind-up Deficit will be equal to the Pension Wind-up Deficit reflected in the most recent Actuarial Report delivered to the Co-Collateral Agents pursuant to this Section 2.20, provided that until delivery of the first Actuarial Report for the calendar year ending December 31, 2012, the amount of the Pension Wind-up Deficit will be C\$150. The Borrower shall also deliver to the Co-Collateral Agents such other reports as the Borrower may receive from time to time from its actuaries with respect to the calculation of the Pension Wind-up Deficit. [Note: Deficit amount deleted]

(d) Notwithstanding Section 2.20(a), if it is made clear by an act of the legislature in Ontario that pension wind-up deficit liabilities pursuant to section 75(1)(b) of the *Pension Benefits Act* (Ontario) do not benefit from a deemed trust over, or otherwise do not generally rank in priority to secured claims (regardless of any insolvency proceedings) in respect of, any of the Collateral of the applicable Loan Party or the proceeds thereof, then the amount of the Pension Wind-up Deficit for the purposes of determining the Wind-up Reserve shall be reduced by a proportionate amount thereof attributable to the Ontario participants in the defined benefit provisions of the Canadian Pension Plans governed by the laws of Ontario determined in the Agent's Permitted Discretion.

(e) Qualifying Real Estate will be subject to updated additional appraisals at the Borrower's expense at the request of the Agent or a Co-Collateral Agent; provided that such appraisals shall be limited to one per year so long as no Event of Default has occurred and is continuing.

(f) In connection with a Disposition of Qualifying Real Estate otherwise permitted hereunder, the Agent shall, as soon as reasonably practicable and in any event within 10 Business Days following receipt of written notice from request of the Borrower, release from the Mortgages granted to the Agent, one or more parcels of Qualifying Real Estate, provided that after giving effect to such release the Total Extensions of Credit shall not exceed the Borrowing Base (giving effect to the Wind-up Reserve determined after the release of such Qualifying Real Estate and any other

- 5 -

applicable Availability Reserve). The Agent shall, at the Borrower's expense, execute such release, discharges or other documentation as may be requested by the borrower to effect the forgoing.

(g) If it is determined by the Supreme Court of Canada in the *Indalex* case (or otherwise) that pension wind-up deficit liabilities pursuant to section 75(1)(b) of the *Pension Benefits Act* (Ontario) do not benefit from a deemed trust over, or otherwise do not generally rank in priority to secured claims (regardless of any insolvency proceedings) in respect of, any of the Collateral of the applicable Credit Party or the proceeds thereof, then (i) the Wind-up Reserve shall be terminated, (ii) all Mortgages on Qualifying Real Estate will be released and (iii) all amendments to this Agreement provided for in the First Amending Agreement will cease to be in effect and the original terms of this Agreement as in effect immediately prior to the First Amending Agreement (but as this Agreement may have otherwise been amended to such date) will govern.

(h) Each Co-Collateral Agent, may, at the Borrower's expense, request that its counsel provide it with legal advice as to whether the conditions in Sections 2.20 (d or (g) have been satisfied."

5.3 Covenants

(1) Section 6.01(j) is amended by inserting the following after clause after clause (vi) thereof and renumbering the remaining clauses in such section accordingly:

"(vii) with written notice promptly following the occurrence of any of the following, (A) any Environmental Action with respect to Qualifying Real Estate, (B) any breach of Environmental Law occurring on Qualifying Real Estate, (C) any Lien on Qualifying Real Estate by a Governmental Authority, or (D) any release of Hazardous Materials or other condition on Qualifying Real Estate, which in each case which has, or could reasonably be expected to result in, Environmental Liability in excess of \$150,000."

(2) Section 6.01 is amended by inserting the following clause at the at the end thereof:

"(u) Environmental Reports. In addition to the Agent's rights under Sections 6.01(e) and (k), permit the Agent or either Co-Collateral Agent or their respective agents or representatives to have access to any Qualifying Real Estate to conduct environmental assessments (to the satisfaction of the Agent or Co-Collateral Agent, as applicable), at the Borrower's expense following the receipt of a notice under Section 6.01(j)(vii) or following the occurrence of an Event of Default which is continuing."

Section 6 Representations and Warranties

In order to induce the Agent and the Lenders to enter into this Amending Agreement, the Borrower represents and warrants to the Agent and to the Lenders as follows:

- (a) the representations and warranties made by each Loan Party in or pursuant to the Loan Documents are true and correct on and as of the date hereof in all material respects, except to the extent that (A) such representations or warranties are qualified by a materiality standard, in which case they shall be true and correct in all respects, (B) such representations or warranties expressly relate to an earlier date (in which

- 6 -

case such representations and warranties were true and correct in all material respects as of such earlier date), and (C) such representations and warranties relate to Section 5.01(f) of the Credit Agreement, in which case the representation and warranty shall be limited to clause (c) of the definition of "Material Adverse Effect";

- (b) all necessary corporate, company or partnership action has been taken to authorize the execution, delivery and performance of this Amending Agreement by the applicable Loan Parties and each has duly executed and delivered this Amending Agreement;
- (c) this Amending Agreement is a legal, valid and binding obligation of each of the applicable Loan Parties enforceable against them in accordance with its terms (except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization or similar laws affecting creditors' rights generally and by principles of equity);
- (d) as of the date hereof and after giving effect to this Amending Agreement, no Event of Default or Default under the Credit Agreement exists.

Section 7 Conditions Precedent

This Amending Agreement shall be subject to and conditional upon the following conditions precedent being satisfied:

- (e) execution and delivery of this Amending Agreement by the Loan Parties, the Agent, the Co-Collateral Agents and the Required Lenders; and
- (f) payment of fees and expenses incurred and due under Section 8 as at the date hereof.

Section 8 Expenses

The Borrower agrees to pay all reasonable, documented out-of-pocket expenses of each Co-Collateral Agent incurred in connection with this amendment, including but not limited to, diligence, preparation, negotiation, execution, documentation and enforcement of the amendment and the Credit Agreement and all legal fees related thereto and the cost of appraisals, surveys, property condition assessments in respect of Qualifying Real Estate.

Section 9 Continuance of Credit Agreement and Security

The Credit Agreement and Loan Documents, except as expressly amended by this Amending Agreement, shall be and continue in full force and effect and are hereby confirmed and the rights and obligations of all parties thereunder shall not be affected or prejudiced in any manner except as specifically provided for herein.

Section 10 No Waiver

The Borrower acknowledges and confirms that none of the terms contained in this Amending Agreement shall operate or be construed as a waiver of any of the provisions of the Loan Documents

- 7 -

or any Default or Event of Default existing on or prior to the date hereof or any future Default or Event of Default.

Section 11 Liability and Continuing Security of Guarantors.

Corbeil (the "Guarantor") hereby ratifies and confirms, as applicable, the validity and enforceability of, and its obligations under, each of the Loan Documents to which it is a party (as any such Loan Documents may be amended from time to time) including, without limitation, the Guarantee and Collateral Agreement dated as of September 10, 2010, and that such Guarantee and Collateral Agreement continues to guarantee the Guarantor Obligations (as such term is defined in the Guarantee and Collateral Agreement) and any Lien granted under any Loan Document continues to secure the Obligations (as defined in the Guarantee and Collateral Agreement) of Corbeil. For the avoidance of doubt, the Guarantor is signing this Amending Agreement solely for purposes of this Section 11.

Section 12 Counterparts

This Amending Agreement may be executed in any number of separate counterparts, each of which shall be deemed an original and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

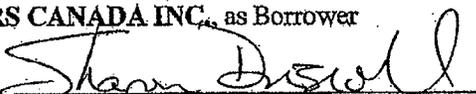
Section 13 Governing Law

This Amending Agreement shall be construed and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and each of the parties hereto irrevocably attorns to the jurisdiction of the courts of the Province of Ontario.

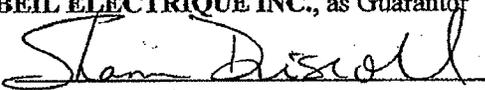
[Signature Page to Follow]

IN WITNESS WHEREOF the parties hereto have executed this Amending Agreement as of the day and year first above written.

SEARS CANADA INC., as Borrower

By: 
Name: SHARON DRISCOLL
Title: SUP & CFO

CORBEL ÉLECTRIQUE INC., as Guarantor

By: 
Name: SHARON DRISCOLL
Title: SUP & CFO

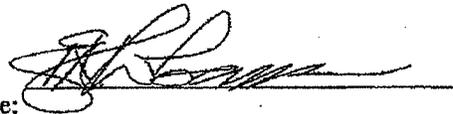
IN WITNESS WHEREOF the parties hereto have executed this Amending Agreement as of the day and year first above written.

**WELLS FARGO CAPITAL FINANCE
CORPORATION CANADA, as Agent, Co-
Collateral Agent, a Lender and Swingline Lender**

By:

Name:

Title:



**Raymond Eghobarnien
Vice President**

IN WITNESS WHEREOF the parties hereto have executed this Amending Agreement as of the day and year first above written.

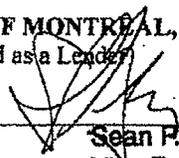
GE CANADA FINANCE HOLDING COMPANY,
as Co-Collateral Agent, Documentation Agent, and as
a Lender

By: _____

Name: Italo Franco
Title: Its Duly Authorized Signatory

IN WITNESS WHEREOF the parties hereto have executed this Amending Agreement as of the day and year first above written.

BANK OF MONTREAL, as Co-Syndication
Agent and as a Lender

By: 
Name: Sean P. Gallaway
Title: Vice President

IN WITNESS WHEREOF the parties hereto have executed this Amending Agreement as of the day and year first above written.

CIBC ASSET-BASED LENDING INC., as Co-Syndication Agent and as a Lender.

By: _____
Name:
Title:

IN WITNESS WHEREOF the parties hereto have executed this Amending Agreement as of the day and year first above written.

**BANK OF AMERICA, N.A., CANADA
BRANCH, as a Lender**

By: _____
Name:
Title:

IN WITNESS WHEREOF the parties hereto have executed this Amending Agreement as of the day and year first above written.

DEUTSCHE BANK AG, CANADA BRANCH,
as a Lender

By: _____
Name:
Title:

By: _____
Name:
Title:

IN WITNESS WHEREOF the parties hereto have executed this Amending Agreement as of the day and year first above written.

ROYAL BANK OF CANADA, as a Lender

By: _____
Name:
Title:

By: _____
Name:
Title:

IN WITNESS WHEREOF the parties hereto have executed this Amending Agreement as of the day and year first above written.

THE TORONTO-DOMINION BANK, as a Lender

By: _____
Name:
Title:

This is **Exhibit "D"**

referred to in the Affidavit of William Turner
sworn before me this 11th day of August, 2017.

A handwritten signature in black ink, appearing to be 'A. J.', written over a horizontal line.

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

November 6, 2014

Via Email

Andrew J. Hatnay
Direct Dial: 416-595-2083
Direct Fax: 416-204-2872
ahatnay@kmlaw.ca

Mitch Frazer
Torys LLP
79 Wellington St. West, 30th Floor
Toronto, ON M5K 1N2

Dear Mr. Frazer:

**Re: Store and Catalogue Retiree Group (“SCRG”)
The Sears Canada Inc. Registered Retirement Plan, Registration #0360065 (“SRRP”)**

We are writing further to your letter of October 3, 2014.

As we expect you are aware, it was recently reported in the *New York Post* on September 26, 2014 that Sears Canada has had discussions with insolvency counsel in Canada. The suggestion in that report is that Sears Canada is anticipating applying for insolvency protection or bankruptcy in Canada.

We appreciate that Sears denies having such discussions. Nevertheless, the article, along with the multitude of other negative business and media reports stating that both Sears Canada and Sears Holdings’ retail businesses continue to lose money, cause great concern to Sears retirees and SCRG in respect of the underfunded SRRP and the future continuation of retiree health benefits.

Although we disagree with you over the scope of Sears’ fiduciary duty as administrator of the SRRP with respect to fully funding the SRRP (we say Sears Canada, as part of its fiduciary duty, is required to adequately fund the plan so that it pays the promised pension benefits; you say that Sears Canada is not so required), there is no dispute that Sears Canada owes an overarching fiduciary duty to the members of the SRRP under both section 22(4) of the Ontario *Pension Benefits Act* (PBA) and the common law.

As such, Sears Canada must act in the plan members’ best interests.

As you are aware, the Supreme Court of Canada in *Indalex* confirmed that the deemed trust in section 57(4) of the PBA operates as a priority recovery in respect of the amounts owing by an employer to a pension plan which it has not paid, and that amount is to rank ahead of the claims of other creditors pursuant to section 30(7) of the Ontario *Personal Property Security Act* (PPSA) (except for any court-ordered priorities based on the doctrine of paramountcy). In the subsequent case of *Grant Forest Products*, the court confirmed that if a pension plan is wound up prior to an insolvency filing, the PBA deemed trust applies to generate a first priority

recovery for the pension plan for the amount that is owed by an employer on the wind up of the plan*:

[71] The decision of the Supreme Court of Canada in *Indalex* assists in the execution of this task. The deemed trust that arises upon wind up prevails when the wind up occurs before insolvency as opposed to the position that arises when wind up arises after the granting of an Initial Order.

It must be clear to Sears Canada's board of directors and management that in the company's financial circumstances, the risk of pension losses to the SRRP members is significantly increased. In such an environment, Sears Canada in its role as a fiduciary to the plan members must take positive steps to protect the plan members from those anticipated losses. Those steps include fully funding the SRRP now, and also ensuring that the statutory PBA deemed trust and the priority given to the deemed trust in section 30(7) of the PPSA are clearly applicable so that the pension plan beneficiaries can recover amounts owing to the plan by Sears Canada in accordance with that statutory priority.

Accordingly, we believe it is incumbent on Sears Canada to consider winding up the SRRP now, paying all amounts that are owing to the plan on the wind up, and purchasing annuities that will provide the continued payment of full pension benefits to the retired plan members. A wind up is also important to better secure the PBA deemed trust priority for the plan members in accordance with the statutory scheme in the PBA and PPSA, as noted above.

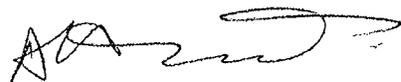
The failure of Sears' board of directors and management, who have full knowledge of the company's poor financial situation and the heightened risk of losses to pension benefits from the underfunded SRRP, to take steps to protect the pension plan members will give rise to claims against the directors and other officers for breach of fiduciary duty, oppression, and other causes of action for any losses imposed on the retirees in the future.

Further, Sears Canada should take steps now to secure the continuation of payment of retiree health benefits such as, for example, by fully funding the Health and Welfare Trust.

We request a reply to the issues in this letter by November 21, 2014.

Yours truly,

KOSKIE MINSKY LLP



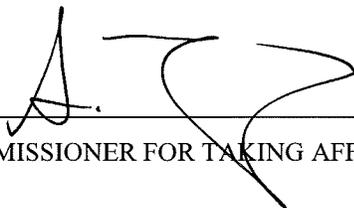
Andrew J. Hatnay
AJH/vdl

cc SCRG
Philip Howell, Deborah McPhail, Penny McIlraith, FSCO
Mark Zigler, James Harnum, *Koskie Minsky LLP*

* It is also our position that the PBA deemed trust priority applies to a plan that is wound up after an insolvency occurs.

This is **Exhibit "E"**

referred to in the Affidavit of William Turner
sworn before me this 11th day of August, 2017.

A handwritten signature in black ink, consisting of a large, stylized 'A' followed by a series of loops and a long horizontal stroke that extends to the right.

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

TORYS
LLP

79 Wellington St. W., 30th Floor
Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada
P. 416.865.0040 | F. 416.865.7380
www.torys.com

Mitch Frazer
mfrazer@torys.com
P. 416.865.8220

November 21, 2014

VIA E-MAIL

Koskie Minsky LLP
20 Queen Street West
Suite 900
Toronto, Ontario
M5H 3R3

Attention: Andrew J. Hatnay

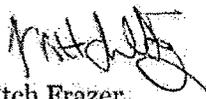
Dear Mr. Hatnay:

**Re: Store and Catalogue Retiree Group
The Sears Canada Inc. Registered Retirement Plan, Registration Number
0360065 (the "Plan")**

Thank you for your letter dated November 6, 2014 regarding the matter involving the above-noted parties.

As you know, Sears Canada Inc. ("Sears") disagrees with your position. Sears is in compliance with its obligations.

Regards,

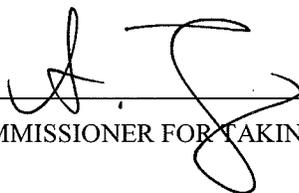

Mitch Frazer

MF/cd

cc. Franco Perugini, General Counsel, Sears Canada Inc.

This is **Exhibit "F"**

referred to in the Affidavit of William Turner
sworn before me this 11th day of August, 2017.

A handwritten signature in black ink, consisting of stylized initials and a surname, positioned above a horizontal line.

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

February 27, 2015

Via Regular Mail and Email

Andrew J. Hatnay
Direct Dial: 416-595-2083
Direct Fax: 416-204-2872
ahatnay@kmlaw.ca

Financial Services Commission of Ontario
5160 Yonge Street, P.O. Box 85
Toronto, ON M2N 6L9

**Attention: Brian Mills, Interim CEO and Superintendent
Michael Doi, Director, Legal Services
Deborah McPhail, Senior Counsel
Penny McIlraith, Pension Officer**

Dear Sirs and Mesdames:

**Re: Store and Catalogue Retiree Group ("SCRG")
The Sears Canada Inc. Registered Retirement Plan, Registration Number 360065
("Sears Canada Plan")**

We are writing further to the letter from Penny McIlraith dated March 12, 2014, and with reference to the correspondence we have exchanged with legal counsel to Sears Canada Inc. (Tory's LLP) over the past months (on which FSCO was copied) with respect to the underfunded Sears Canada Plan and Sears Canada Inc.'s continued financial deterioration.

As FSCO is aware, the Sears Canada Plan is underfunded on a wind up basis. If the plan is wound up in an underfunded state, there are insufficient assets to pay full benefits and pension plan members will incur losses to their monthly pension benefits.

On February 25, 2015, Sears Canada released its 2014 Fourth Quarter results. The financial losses are devastating. The results show an operating loss of \$407.3 million for the full year of 2014 (compared to an operating loss of \$187.8 million in 2013). Same store sales fell by 8.3% for the year. These results follow a decade of so-called "cost cutting" by Sears Canada management as well as the sale of valuable revenue-generating assets. We enclose a copy of an article from the *National Post* dated February 26, 2015 which quotes an analyst at Desjardins Securities who states: "It is urgent, in our view, that the board of directors assess immediate, and potentially radical, alternatives for the company... Our view is that a radical restructuring plan is urgently required to capture as much value as possible for all stakeholders, and to minimize further cumulative operating losses".

Given Sears Canada's continued financial losses and its conduct over the past several years, the association of Sears Canada Inc. retirees (SCRG) does not believe that any restructuring of Sears Canada's retail business will succeed. While Sears Canada appears to currently maintain some temporary liquidity by selling real estate assets, the retail business is not turning around and SCRG believes that insolvency will soon result (if the company is not insolvent already).

SCRG has been engaging Sears Canada for over the past year in an effort to have Sears take steps to prevent losses to retirees' pension benefits (and health benefits) given the company's financial deterioration and looming insolvency. Despite SCRG's requests, to date, Sears Canada has not taken any steps to protect the pension plan members. SCRG is concerned that unless positive action is taken very soon, the pension plan members will end up as creditors in Sears Canada's insolvency where the underfunded pension plan will be wound up and the plan members will face pension benefit losses.

As FSCO is aware from being copied on our correspondence with counsel to Sears Canada dated November 6, 2014, one approach that SCRG requested was for Sears Canada to wind up the Sears Canada Plan, contribute the amount owing to the plan on the wind up, and purchase annuities for the retirees. This would disengage the retirees from Sears Canada's unsuccessful efforts to restructure its retail business and protect their pension benefits. Legal counsel to Sears Canada did not respond to SCRG's request to wind up the Sears Canada Plan.

Due to the failure by Sears Canada to take any steps to protect the pension plan members in its dire financial circumstances, we are writing to request that the Ontario Superintendent of Financial Services ("Superintendent") take positive steps to compel Sears Canada to fully fund the pension plan immediately and/or to wind up the plan, fund the deficiency, and purchase annuities for the plan members.

As you are aware, the courts have held that in addition to the plan administrator, the Superintendent of Financial Services also owes a fiduciary duty to pension plan members and, as such, is required to act in plan members' best interests. See, for example, *Hinds v. Ontario (Superintendent of Pensions)*¹ where the Ontario Court of Appeal held:

[42] [T]he Superintendent owes a high duty to employees with Ontario pension plans. Indeed, on that issue I would adopt the particularly eloquent language used by Reid J. in *Collins*, at p. 285 O.R.:

...[T]here appears to be equally no doubt that the commission was established to safeguard the plan members' interests as well . . . [I]t would be artificial to conclude that the commission's obligation to members is lower than the high standard of fiduciary obligation imposed on trustees. [emphasis added]

¹ (2002), 58 O.R. (3d) 367 (C.A.)

Similarly, in *Retirement Income Plan for Salaried Employees of Weavexx Corp. v. Ontario (Superintendent of Pensions)*², the Court of Appeal reiterated:

[28] The implication of these authorities is that the Superintendent owes a high duty to employees with Ontario pension plans. As for the nature and consequences of this duty, I would adopt, as I did in *Hinds*, the eloquent language used by Reid J. in *Re Collins and Pension Commission of Ontario* (1986), 56 O.R. (2d) 274, 31 D.L.R. (4th) 86 (Div. Ct.) ("Collins"), at p. 285 O.R. [excerpt reproduced above]

We disagree with the comment in the March 12, 2014 letter from Ms. McIlraith where she states "Please note that the action that Sears Canada Inc. takes in its corporate activities are outside the jurisdiction of applicable pension legislation and the Financial Services Commission of Ontario (FSCO)".

The Superintendent cannot disregard Sears Canada's "corporate" activities. Sears Canada's retail business is steadily losing money and its restructuring is not succeeding. From 2003-2013, we calculate that Sears Canada paid a total of \$3.481 billion to shareholders in dividends, share buybacks and capital distributions, all while Sears Canada was losing money. "Corporate" activities and the resulting impact on pension plan members in the context of fiduciary duty was addressed by the Supreme Court of Canada in *Re Sun Indalex*³:

[65] ...The solution is not to determine whether a given decision can be classified as being related to either the management of the corporation or the administration of the pension plan. *The employer may well take a sound management decision, and yet do something that harms the interests of the plan's members. An employer acting as a plan administrator is not permitted to disregard its fiduciary obligations to plan members and favour the competing interests of the corporation on the basis that it is wearing a "corporate hat". What is important is to consider the consequences of the decision, not its nature.* [emphasis added]

Given the facts of Sears Canada, SCRG requests that the Superintendent take meaningful steps at this time to protect the Sears Canada Plan members, in keeping the Superintendent's fiduciary duty to the plan members.

SCRG wishes to meet with you to discuss next steps. We are available March 3-4, 2015 or in the week of March 23, 2015. Please let us know which date is convenient.

² (2002), 58 O.R. (3d) 380 (C.A.)

³ (2013) SCC 6

**KOSKIE
MINSKY** LLP
BARRISTERS & SOLICITORS

Thank you for your consideration of this matter. We look forward to hearing from you.

Yours truly,

KOSKIE MINSKY LLP

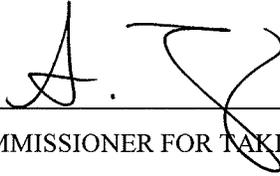


Andrew J. Hatnay
AJH/vdl
encl.

cc. SCRG
Mark Zigler, *Koskie Minsky LLP*

This is **Exhibit "G"**

referred to in the Affidavit of William Turner
sworn before me this 11th day of August, 2017.

A handwritten signature in black ink, appearing to be "A. T. J.", written over a horizontal line.

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

**KOSKIE
MINSKY** LLP
BARRISTERS & SOLICITORS

May 4, 2015

Via Email

Andrew J. Hatnay
Direct Dial: 416-595-2083
Direct Fax: 416-204-2872
ahatnay@kmlaw.ca

Financial Services Commission of Ontario
5160 Yonge Street, P.O. Box 85
Toronto, ON M2N 6L9

**Attention: Brian Mills, Interim CEO and Superintendent
Michael Doi, Director, Legal Services
Deborah McPhail, Senior Counsel
Penny McIlraith, Pension Officer
Gino Marandola, Senior Manager, Operations**

Dear Sirs and Mesdames:

**Re: Store and Catalogue Retiree Group ("SCRG")
The Sears Canada Inc. Registered Retirement Plan, Registration Number 360065
("Sears Canada Plan")**

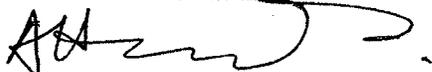
Further to our meeting of March 24, 2015, our e-mail to Mr. Marandola of April 14, 2015, and his response thereto of April 16, 2015, we enclose a summary of our client's analysis further explaining why Sears Canada Inc. is insolvent. This is provided to you with respect to our client's request in our letter of February 27, 2015 that the Superintendent proceed to order Sears to take steps to fully fund and/or to wind up the Sears Canada Plan at this time.

Secondly, we understand that Sears Canada's business arrangement with J.P. Morgan with respect to Sears Canada's credit card business has been terminated by J.P. Morgan. Sears Canada's credit card business generated substantial income to Sears Canada each year and its cancellation by J.P. Morgan will result in a further loss of significant cashflow to Sears, exacerbating Sears Canada's insolvency.

We look forward to discussing these issues further with you at the meeting tomorrow with a view to formulating meaningful next steps that will assist Sears Canada pension plan members.

Yours truly,

KOSKIE MINSKY LLP



Andrew J. Hatnay
AJH:vdl/encl.

cc. SCRG
Mark Zigler, Barbara Walancik, *Koskie Minsky LLP*

1654397v1

WITHOUT PREJUDICE**Why Sears Canada is Insolvent**

A Company is insolvent if it meets either of the following criteria:

1. Balance Sheet Insolvency, where liabilities exceed assets on a realizable value basis (rather than the values recorded in the Financial Statements).
2. Cash Flow Insolvency, where a Company is unable to pay debts as they come due.

For the purpose of this analysis, we will focus on Balance Sheet insolvency.

As at the end of 2014, Sears Canada's balance sheet shows total assets of \$1.774 billion and total liabilities of \$1.203 billion, resulting in Shareholder's Equity of \$570 million. In other words, total assets exceed liabilities by \$570 million. (In 2005 Shareholders' Equity was \$1.8 billion)

However, the test for Balance Sheet Insolvency does not rely on the values recorded on the balance sheet, but rather uses a realizable value basis.

Sears Canada has committed to long term lease obligations on most of its stores. The remaining term of these leases is 1 to 10 years. The minimum contractual commitment for future lease payments is \$428 million. This liability is not recorded on Sears balance sheet.

Taking these lease obligations into account reduces the amount that assets exceed liabilities from \$570 million to only \$142 million. This is a point-in-time value that is subject to seasonal fluctuation, and current trends indicate that it will turn negative during the course of 2015.

Even more significant than these lease obligations are the operating covenants that accompany many of these leases. As at January 31, 2015, Sears had operating covenants with landlords for approximately 99 Sears stores. These operating covenants generally require Sears, during normal operating hours to operate a store continuously as per the identified format in the lease agreement. The remaining term of these operating covenants ranges from less than 1 year to 21 years with an average remaining term of approximately five years.

While it is difficult to precisely quantify the liability related to these operating covenants, it is definitely very significant. The liability, which is not recorded on the balance sheet, is equal to the future operating losses that Sears will incur as a result of being required to continue to operate unprofitable stores as a result of these operating covenants. The purpose of these operating covenants is to provide assurance to landlords that they will have an anchor tenant for their mall. If Sears ceased operations in a store covered by an operating covenant they could be sued by the landlord for specific performance or for any resulting loss of business to

their mall. Through these leases and operating covenants, Sears is locked into its existing locations.

As a result of ten years of asset stripping, Sears has exited several stores in the best malls in Canada. As well, Sears has sold both its' highly profitable credit card operations and its' joint venture interests in shopping centers. The proceeds from these asset sales, which total \$3.8 billion on a pre-tax basis, have not been re-invested in the business. Instead, \$3.5 billion has been distributed to shareholders. These actions have stripped the Company of its most profitable assets and left it locked into a much diminished store base with no reasonable expectation of profitability.

Sears has recorded same-store sales decreases every year since 2005 for a total decrease of 34.5%, not counting inflation. Total revenues have decreased 45.0%, again not counting inflation. Sears has suffered increasing operated losses in each of the past four years totaling \$712 million. In addition, negative free cash flow in the past 4 years has totaled \$594 million. Continued operation of the remaining stores will most likely continue to burn cash.

Sears has no reasonable expectations of future profit as indicated by the fact that in 2014 they were required to write down their deferred tax losses.

Sears faces the choice of continuing to lose more money by operating its current store base, or exit unprofitable locations and face crippling lawsuits from its landlords.

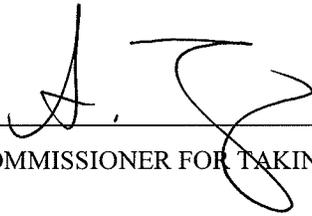
Any further sale of assets would likely worsen the situation by further increasing on-going operating losses and negative cash flow. It would also leave fewer assets to secure Sears obligations. One would assume that Sears will not attempt to pay further dividends in light of their financial performance. However, any cash generated from assets sales would likely be consumed by negative operating cash flow.

It is our view that Sears clearly meets the test for Balance Sheet Insolvency at this time.

To continue operating a Company with no reasonable expectation of profitability will simply consume all available cash.

This is **Exhibit "H"**

referred to in the Affidavit of William Turner
sworn before me this 11th day of August, 2017.

A handwritten signature in black ink, appearing to be 'A. J.', is written over a horizontal line.

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

**KOSKIE
MINSKY** LLP
BARRISTERS & SOLICITORS

June 5, 2015

Via Email

Andrew J. Hatnay
Direct Dial: 416-595-2083
Direct Fax: 416-204-2872
ahatnay@kmlaw.ca

Financial Services Commission of Ontario
5160 Yonge Street, P.O. Box 85
Toronto, Ontario
M2N 6L9

**Attention: Brian Mills, Interim CEO and Superintendent
Michael Doi, Director, Legal Services
Gino Marandola, Senior Manager, Operations
Deborah McPhail, Senior Counsel
Sharon Polischuk, Pension Officer**

Dear Sirs and Mesdames:

**Re: Store and Catalogue Retiree Group ("SCRG")
The Sears Canada Inc. Registered Retirement Plan, Registration Number 360065
("Sears Canada Plan")**

We are writing further to our meeting on May 5, 2015 with your office and representatives of Sears Canada Inc.

As we have explained, Sears Canada Inc. is insolvent and its retail business continues to lose money. The Sears Canada Plan is underfunded. SCRG believes that in these circumstances the failure of Sears Canada is inevitable.

The enclosed memorandum from SCRG explains in detail that Sears Canada meets the test for Balance Sheet Insolvency and will not be able to rebound from the decline in its Canadian retail business.

SCRG repeats its request that the Superintendent of Financial Services of Ontario proceed to order the wind up of the Sears Canada Plan. Given Sears Canada's circumstances, a wind up at this time is critical so that the plan can be terminated in an orderly manner, the amounts owing to the plan on its wind up are paid, and that losses to the plan members' pension benefits can be prevented.

Moreover, as you are aware, if the plan is wound up later in an insolvency proceeding, there will be additional significant costs imposed on the plan by the administrator appointed by Superintendent to wind up the plan. The avoidance of such additional costs on the underfunded plan is another reason to proceed with a wind up at this time.

As we have discussed, there are at least two criteria in section 69 of the *Pension Benefits Act*, R.S.O. 1990, C.P.8 ("PBA") that warrant the Superintendent ordering a wind up at this time discussed further below.

a) Sears Canada is insolvent

First, Section 69(1) of the PBA identifies the insolvency of an employer as a basis for the Superintendent ordering a wind up:

69. (1) The Superintendent by order may require the wind up of a pension plan if,

...

(c) the employer is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada);

Section 69(1)(c) is not limited to an employer being a formal "bankrupt" under the BIA, and the intention of the subsection is to apply to situations where an employer is insolvent.¹

The test for insolvency was interpreted broadly in the CCAA proceedings of *Re Stelco Inc.*² In finding that Stelco was insolvent, the court held that a company's pension (and other employee benefit) obligations are to be taken into account when determining whether a company is insolvent:

[59] It seems to me that the phrase "accruing due" has been interpreted by the courts as broadly identifying obligations that will "become due".
...Again, I would refer to my conclusion above that every obligation of the corporation in the hypothetical or notional sale must be treated as

¹ As the Superintendent is aware, under Canada's dual-pronged insolvency system (the *Bankruptcy and Insolvency Act*, R.S.C. , 1985, c. B-3 ("BIA") and *Companies' Creditors Arrangement Act*, R.S.C. , 1985, c. C-36 ("CCAA")), many insolvent companies increasingly opt for liquidation proceedings under CCAA to liquidate their assets (known as the "liquidating CCAA") which permits a more flexible liquidation process than a formal bankruptcy. Nevertheless, a company subject to CCAA proceeding is insolvent.

² [2004] O.J. No. 1257 leave to appeal refused, [2004] O.J. No. 1903, leave to appeal to S.C.C. refused [2004] S.C.C.A. No. 336 [*Stelco*].

"accruing due" to avoid orphan obligations. In that context, it matters not that a wind-up pension liability may be discharged over 15 years;³

...

[66] On a wind-up basis, there would be a pension deficiency of \$1,252 million; ...Then there is the question of Employee Future Benefits. These have been calculated as at December 31, 2003 by the Mercer actuary as \$909.3 million but only \$684 million has been accrued and booked on the financial statements so that there has to be an increased provision of \$225.3 million. These off balance sheet adjustments total \$1,080 million.

Section 69(1) is readily engaged to warrant the Superintendent ordering a wind up of the Sears Canada Plan.

b) *Increased Pension Benefit Guarantee Fund Liability*

Section 69(1)(g) of the PBA states:

(g) the liability of the Guarantee Fund is likely to be substantially increased unless the pension plan is wound up;

The funded status of the Sears Canada Plan has been deteriorating. There is a strong possibility that its funded status will continue to worsen unless the plan is wound up at this time. The criterion in section 69(1) of the PBA is also applicable to warrant the Superintendent proceeding to order a wind up of the Sears Canada Plan.

SCRG's objection to FSCO's approval of full-value commuted value transfers

As we stated in our e-mail to Mr. Marandola of April 14, 2015, as of January 31, 2015, the Sears Canada Plan has experienced a substantial deterioration in the plan's transfer rate, from 10% to 21%.

We understand that despite the deterioration, Sears Canada requested that the Superintendent approve the pay out of commuted value transfers at full amounts without any reduction, and that FSCO has given its approval to Sears Canada to do so.

³ *Ibid* at para. 59.

SCRG reiterates its opposition to the Superintendent providing such approval in the circumstances of the underfunding in the Sears Canada Plan and the company's money-losing retail business, which we explained to you at the March 24, 2015 and May 5, 2015 meetings.

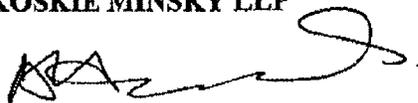
In order to protect the funds in the underfunded Sears Canada Plan for all plan members on an equitable basis, our clients request that the approval granted by the Superintendent to Sears Canada be revoked as soon as possible and that any commuted value transfers be required to be appropriately reduced to reflect the transfer rate in the Sears Canada Plan.

We request a meeting in June, 2015 with FSCO and Sears Canada to discuss next steps. Please let us know which dates are available for a meeting in June at your office.

Thank you for your attention to this matter.

Yours truly,

KOSKIE MINSKY LLP



Andrew J. Hatnay
AJH/vdl
encl.

cc. Mitch Frazer, *Torys LLP*, counsel to Sears Canada
SCRG
Mark Zigler, Barbara Walancik, *Koskie Minsky LLP*

MEMORANDUM

DATE: June 5, 2015

TO: Financial Services Commission of Ontario

- Brian Mills, Interim CEO and Superintendent
- Michael Doi, Director, Legal Services
- Gino Marandola, Senior Manager, Operations
- Deborah McPhail, Senior Counsel
- Sharon Polischuk, Pension Officer

CC: Andrew Hatnay, Barbara Walancik, *Koskie Minsky LLP*

FROM: Store and Catalogue Retiree Group ("SCRG")

FILE NO: 13/2022

SUBJECT: Why Sears Canada is Insolvent
The Sears Canada Inc. Registered Retirement Plan, Registration Number 360065
("Sears Canada Plan")

A Company is insolvent if it meets either of the following criteria:

1. Balance Sheet Insolvency: where liabilities exceed assets on a realizable value basis (rather than the values recorded in the Financial Statements).
2. Cash Flow Insolvency: where a Company is unable to pay debts as they come due.

For the purpose of this analysis, we will focus on Balance Sheet insolvency.

As at January 31, 2015 Sears Canada's balance sheet shows total assets of \$1.774 billion and total liabilities of \$1.203 billion, resulting in Shareholder's Equity of \$571 million. In other words, total assets exceed liabilities by \$571 million. (In 2005, Shareholders' Equity was \$1.8 billion)

However, the test for Balance Sheet Insolvency does not rely on the values recorded on the balance sheet, but rather uses a realizable value basis.

Sears Canada has committed to long term lease obligations on most of its stores. The remaining term of these leases is 1 to 10 years. The minimum contractual commitment for future lease payments is \$428 million. This liability is not recorded on Sears Canada's balance sheet.

According to the latest actuarial report, the Sears Registered Retirement Plan (SRRP) is underfunded on a wind up basis and its transfer rate as of January 31, 2015 was 21%. This equals an unfunded liability on a wind up basis of \$325 million. The unfunded liability shown

- 2 -

on Sears Canada's balance sheet as at January 31, 2015 was \$174 million. Therefore, there is an unrecorded liability of \$151 million related to SRRP.

Taking these lease obligations and pension liabilities into account means that *liabilities actually exceed assets* by \$8 million as at January 31, 2015.

There is an additional significant liability that is not recorded on the balance sheet of Sears Canada. As at January 31, 2015 Sears had operating covenants with landlords for approximately 99 Sears stores. These operating covenants generally require Sears, during normal operating hours, to operate a store continuously as per the identified format in the lease agreement. The remaining term of these operating covenants ranges from less than 1 year to 21 years with an average remaining term of approximately five years.

The purpose of these operating covenants is to provide assurance to landlords that they will have an anchor tenant for their mall. If Sears ceased operations in a store covered by an operating covenant they could be sued by the landlord for specific performance or for any resulting loss of business to their mall. Through these leases and operating covenants, Sears is locked into its existing locations.

The liability related to these operating covenants, which also is not recorded on the balance sheet, is equal to the future operating losses that Sears will incur as a result of being required to continue to operate unprofitable stores as a result of these operating covenants. While it is difficult to quantify this unrecorded liability, based on recent operating losses and negative cash flow, it is likely hundreds of millions of dollars.

As a result of ten years of asset-stripping by Sears Holdings, Sears has closed several stores in the best shopping malls in Canada. As well, Sears has sold both its' highly profitable credit card operations and its' joint venture interests in shopping centers. The proceeds from these asset sales, which total \$3.8 billion on a pre-tax basis, have not been re-invested in the business. In fact, in the past ten years, Sears capital expenditures have been equal to barely half of the depreciation of its assets. Instead, \$3.5 billion has been distributed to shareholders. These actions have stripped the Company of its most profitable assets and left it locked into a much diminished store base with no reasonable expectation of profitability.

Sears has recorded same-store sales decreases every year since 2005 for a total decrease of 34.5%, not counting inflation. After adjusting for inflation, the typical Sears store is generating only half of the revenue that it was ten years ago. Total revenues have decreased 45%, again not counting inflation. Sears has suffered increasing operating losses in each of the past four years totaling \$712 million. In addition, negative free cash flow in the past 4 years has totaled \$594 million. Continued operation of the remaining stores will most likely continue to consume considerable cash.

Sears has no reasonable expectations of future profit as indicated by the fact that in 2014 they were required to write down their deferred tax losses.

Sears faces the choice of continuing to lose more money by operating its current store base, or exiting unprofitable locations and facing crippling lawsuits from its landlords.

- 3 -

Any further sale of assets would likely worsen the situation by further increasing on-going operating losses and negative cash flow. It would also leave fewer assets to secure Sears obligations. One would assume that Sears will not attempt to pay further dividends in light of their poor financial performance. However, any cash generated from assets sales would likely be consumed by on-going negative operating cash flow.

It is our view that Sears clearly meets the test for Balance Sheet Insolvency at this time.

To continue operating a Company with no reasonable expectation of profitability will simply consume all available cash and company failure is inevitable.

1684731v1

This is **Exhibit "I"**

referred to in the Affidavit of William Turner
sworn before me this 11th day of August, 2017.

A handwritten signature in black ink, appearing to be "A. R. Z.", written over a horizontal line.

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

**Financial Services
Commission
of Ontario**

Pension Plans Branch

5160 Yonge Street
Box 85
Toronto ON M2N 6L9

Telephone: (416) 226-7776
Facsimile: (416) 226-7777

**Commission des
services financiers
de l'Ontario**

Direction des régimes de retraite

5160, rue Yonge
Boîte 85
Toronto ON M2N 6L9

Téléphone: (416) 226-7776
Télécopieur: (416) 226-7777



June 11, 2015

Registration Number: 0360065

Mitch Frazer
Torys LLP
79 Wellington Street W
30th Floor, Box 270
TD South Tower
Toronto ON M5K 1N2

JUN 16 2015

Dear Mr. Frazer:

Re: Sears Canada Inc. Registered Retirement Plan (the Plan)

We have received a submission from Mr. Andrew J. Hatnay dated June 5, 2015, that you were copied on, in respect of SCRG's request for a wind up of the Plan and the revocation of the commuted value approval provided by our office dated March 17, 2015.

Please provide FSCO with any responding submissions by June 30, 2015, with a copy to Mr. Hatnay.

If at any time you have any questions or concerns, you may contact me either at the address above, or directly by telephone at (416) 226-7820, or Sharon Polischuk, Pension Officer, directly by telephone at (416) 590-7248, or toll free at 1-800-668-0128, extension 7248. Please quote the registration number shown at the top of this letter.

Yours truly,

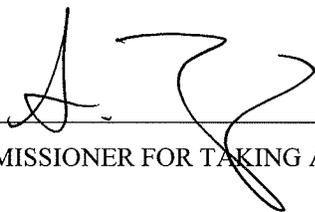
Gino Marandola
Director, Pension Plans Branch (Interim)

GM/sp

SP

Copy: Todd Dalglish, Vice-President, Treasury & Finance, Sears Canada Inc.
✓ Andrew J. Hatnay, Koskie Minsky LLP
Brian Mills, CEO and Superintendent of Financial Services (Interim), FSCO
Lester Wong, Deputy Superintendent, Pensions (Interim), FSCO
Sharon Polischuk, Pension Officer, FSCO

This is **Exhibit "J"**
referred to in the Affidavit of William Turner
sworn before me this 11th day of August, 2017.

A handwritten signature in black ink, consisting of a large, stylized 'A' followed by a series of loops and a long horizontal stroke that extends to the right.

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

**Financial Services
Commission
of Ontario**

Pension Plans Branch

5160 Yonge Street
Box 85
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**Commission des
services financiers
de l'Ontario**

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Boîte 85
Toronto ON M2N 6L9

Téléphone: (416) 226-7776
Télécopieur: (416) 226-7777



JUN 17 2015

June 11, 2015

Registration Number: 0360065

Andrew J. Hatnay
Koskie Minsky LLP
900-20 Queen Street
Box 52
Toronto ON M5H 3R3

Dear Mr. Hatnay:

Re: Sears Canada Inc. Registered Retirement Plan (the Plan)

Thank you for your letter of June 5, 2015, regarding your request for a wind up of the Plan and the revocation of the commuted value approval provided by our office dated March 17, 2015, of the above named pension plan.

Please note that FSCO is asking for responding submissions from Sears Canada Inc. We will respond to your letter and your request for a meeting once we receive a response from Sears Canada Inc.

If at any time you have any questions or concerns, you may contact me either at the address above, or directly by telephone at (416) 226-7820, or Sharon Polischuk, Pension Officer, directly by telephone at (416) 590-7248, or toll free at 1-800-668-0128, extension 7248. Please quote the registration number shown at the top of this letter.

Yours truly,

Gino Marandola
Director, Pension Plans Branch (Interim)

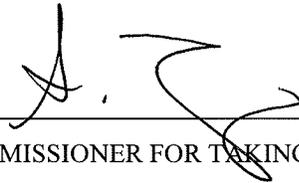
GM/sp

SP

Copy: Todd Dalglish, Vice-President, Treasury & Finance, Sears Canada Inc.
Mitch Frazer, counsel to Sears Canada Inc., Torys LLP
Brian Mills, CEO and Superintendent of Financial Services (Interim), FSCO
Lester Wong, Deputy Superintendent, Pensions (Interim), FSCO
Sharon Polischuk, Pension Officer, FSCO

This is **Exhibit "K"**

referred to in the Affidavit of William Turner
sworn before me this 11th day of August, 2017.

A handwritten signature in black ink, appearing to be 'A. J.', is written over a horizontal line.

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.



79 Wellington St. W., 30th Floor
 Box 270, TD South Tower
 Toronto, Ontario M5K 1N2 Canada
 P. 416.865.0040 | F. 416.865.7380
 www.torys.com

Mitch Frazer
 mfrazer@torys.com
 P. 416.865.8220

June 22, 2015

VIA EMAIL

Gino Marandola
 Director, Pension Plans Branch (Interim)
 Financial Services Commission of Ontario
 5160 Yonge Street
 P.O. Box 85
 Toronto, Ontario
 M2N 6L9

Dear Mr. Marandola:

**Re: Store and Catalogue Retiree Group (“SCRG”)
 The Sears Canada Inc., Registered Retirement Plan, Registration No.
 360065 (“Sears Canada Plan”)**

As counsel for Sears Canada Inc. (“Sears”), we write further to Koskie Minsky LLP’s letter to you dated June 5, 2015 (the “Koskie Letter”) and your letter to us dated June 11, 2015.

By this letter, we do not intend to (and do not think that it is necessary to) respond to the Koskie Letter point-by-point, though Sears reserves its right to do so at a later date. Suffice it to say, Sears wholly disputes the allegations set out therein, and strongly denies that there is any basis for the request made in the Koskie Letter. So that there is no doubt regarding Sears’ position on the Koskie Letter, we do wish to address certain points raised in that letter that misrepresent Sears’ financial position and that mischaracterize the provisions of the *Pension Benefits Act*, R.S. O. 1990, C.P.8 (the “PBA”).

First, Sears is not bankrupt. Any allegations to the contrary in the Koskie Letter cast unfounded aspersions on Sears that are irresponsible and misleading to this Commission.

Second, the Koskie Letter mischaracterizes section 69(1)(c) of the PBA in an attempt to expand its scope of application beyond what is provided for in the Act. That section provides that the Superintendent may require the wind up of a pension plan if “the employer is bankrupt within the meaning of the *Bankruptcy and Insolvency Act (Canada)*”.

The meaning of “bankrupt” under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the “BIA”), is provided for at section 2 of that Act:

“bankrupt” means a person who has made an assignment or against whom a bankruptcy order has been made or the legal status of that person;

Sears is not bankrupt within the meaning of the BIA (or otherwise). It has not made an assignment in bankruptcy and no bankruptcy order has been issued against it, nor are there any pending motions seeking such relief. Accordingly, section 69(1)(c) of the PBA does not apply to Sears or the Sears Canada Plan. This interpretation of the section reflects the Legislature's intent and accords with the applicable rules of statutory interpretation. The Koskie Letter purports to expand the scope of this section by stating that section 69(1)(c) of the PBA is not limited to an employer being a "bankrupt" under the BIA and that the intention of the subsection is to apply to situations where an employer is "insolvent" as well, without reference to any legal or other authority for this interpretation. This despite the clearly-worded section.

The Koskie Letter conflates the terms "bankrupt" and "insolvent"¹, which latter term is not even used in the section 69(1)(c) of the PBA, in a manner that is misleading to this body with reference to the CCAA. The Koskie Letter omits reference to section 2 of the BIA that contains a definition of "insolvent person" set out below:

"insolvent person" means a person who is not bankrupt and who resides, carries on business or has property in Canada, whose liabilities to creditors provable as claims under this Act amount to one thousand dollars, and

(a) who is for any reason unable to meet his obligations as they generally become due,

(b) who has ceased paying his current obligations in the ordinary course of business as they generally become due, or

(c) the aggregate of whose property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due; (emphasis added)

In summary, section 69(1)(c) of the PBA is not engaged in the case of Sears or the Sears Canada Plan. Sears is not a bankrupt, and there is no basis to conflate the terms "bankrupt" and "insolvent", as the Koskie Letter attempts to do. Therefore, the request that the Superintendent order the wind-up of the Sears Canada Plan is improper, as such a wind-up is not warranted.

Third, the Koskie Letter cites section 69(1)(g) of the PBA to support the position that the Superintendent should wind up the Sears Canada Plan. The Pension Benefits Guarantee Fund ("PBGF") provides protection, subject to specific maximums and specific exclusions, to Ontario

¹ The *Re Stelco Inc.*, decision cited in the Koskie Letter is not a case that involves any interpretation of the meaning of the word "bankrupt" as such term is used in the BIA. Rather, the Court was asked to determine whether Stelco qualified as a "debtor company" under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the "CCAA"). The term "debtor company" is defined in section 2 of the CCAA to mean any company that: (a) is bankrupt or insolvent, (b) has committed an act of bankruptcy within the meaning of the *Bankruptcy and Insolvency Act* or is deemed insolvent within the meaning of the *Winding-up and Restructuring Act*, whether or not proceedings in respect of the company have been taken under either of those Acts, (c) has made an authorized assignment or against which a bankruptcy order has been made under the *Bankruptcy and Insolvency Act*, or (d) is in the course of being wound up under the *Winding-up and Restructuring Act* because the company is insolvent. In *Re Stelco Inc.*, the Court only examined the test for an "insolvent person" under section 2 of the CCAA and there was no examination of the term "bankrupt".

- 3 -

pension plan members and beneficiaries in the event of a pension plan wind up. As noted above, Sears Canada is not bankrupt, and an order to wind-up the Sears Canada Plan is not warranted at this time.

Further, a pension plan's funded status can and often does fluctuate over time, and whether and to what extent there are increases or decreases depends on a myriad of factors. Such factors include, but are not limited to: market fluctuations, return on investments, changes to interest and/or discount rates, the number of members, differences in mortality assumptions and plan experience, changes to legislative requirements, as well as financial contributions. The SCRG have presented no evidence in support of their claim that the funded status of the Sears Canada Plan will "continue to worsen unless the Plan is wound up at this time".

As of December 31, 2013, the Sears Canada Plan had a solvency deficiency of approximately \$76 million on solvency assets of approximately \$1.3 billion. This calculates to a solvency ratio of 95%. The funded status of the Sears Canada Plan actually **increased** since the previous actuarial valuation, and the solvency liability is not significant when compared to the overall Sears Canada Plan assets.

As of March 31, 2014, the PBGF had a \$375 million surplus. Hypothetically, even if the Sears Canada Plan were to be wound up, and the PBGF were to be held responsible to fund the entire solvency deficiency of the Sears Canada Plan, the PBGF would still be in a significant surplus position.

PBGF liability does not arise unless and until a pension plan is wound up. Not only is Sears Canada not bankrupt, the liability of the PBGF is not likely to be substantially increased if the Sears Canada Plan continues in existence. Accordingly, section 69(1)(g) of the PBA does not support the wind up of the Sears Canada Plan.

Please contact the undersigned should you have any questions about this letter.

Yours truly,



Mitch Frazer

MF/SAB/cp

cc: Sears Canada Inc. - Franco Perugini, Todd Dalglish
FSCO - Brian Mills, Lester Wong, Sharon Polischuk
Koskie Minsky LLP - Andrew Hatnay, Mark Zigler, Barbara Walancik
Torys LLP - Scott Bomhof, Adam Slavens

98010-0982 19781645.3

This is **Exhibit "L"**

referred to in the Affidavit of William Turner
sworn before me this 11th day of August, 2017.

A handwritten signature in black ink, appearing to be 'A. J.', written over a horizontal line.

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

**Financial Services
Commission
of Ontario**

Pension Plans Branch

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**Commission des
services financiers
de l'Ontario**

Direction des régimes de retraite

5160, rue Yonge
Boîte 85
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Téléphone: (416) 226-7776
Télécopieur: (416) 226-7777



June 23, 2015

Registration Number: 0360065

Andrew J. Hatnay
Koskie Minsky LLP
900-20 Queen Street
Box 52
Toronto ON M5H 3R3

JUN 26 2015

Dear Mr. Hatnay:

Re: Sears Canada Inc. Registered Retirement Plan (the Plan)

FSCO has received responding submissions from Mr. Mitch Frazer dated June 22, 2015, which you were copied on, in response to your letter dated June 5, 2015. Your letter had a request for a wind up of the Plan and the revocation of the commuted value approval provided by our office dated March 17, 2015, of the above named pension plan.

Please provide FSCO with any reply submissions by July 7, 2015, with a copy to Mr. Frazer.

If at any time you have any questions or concerns, you may contact me either at the address above, or directly by telephone at (416) 226-7820, or Sharon Polischuk, Pension Officer, directly by telephone at (416) 590-7248, or toll free at 1-800-668-0128, extension 7248. Please quote the registration number shown at the top of this letter.

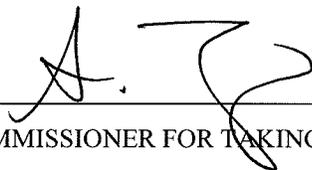
Yours truly,

Gino Marandola
Director, Pension Plans Branch (Interim)

Copy: Todd Dalglish, Vice-President, Treasury & Finance, Sears Canada Inc.
Mitch Frazer, counsel to Sears Canada Inc., Tarys LLP
Brian Mills, CEO and Superintendent of Financial Services (Interim), FSCO
Lester Wong, Deputy Superintendent, Pensions (Interim), FSCO
Sharon Polischuk, Pension Officer, FSCO

This is **Exhibit "M"**

referred to in the Affidavit of William Turner
sworn before me this 11th day of August, 2017.

A handwritten signature in black ink, appearing to be "A. J." followed by a stylized flourish.

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

**KOSKIE
MINSKY** LLP
BARRISTERS & SOLICITORS

July 7, 2015

Via Email

Andrew J. Hatnay
Direct Dial: 416-595-2083
Direct Fax: 416-204-2872
ahatnay@kmlaw.ca

Financial Services Commission of Ontario
5160 Yonge Street, P.O. Box 85
Toronto, ON M2N 6L9

**Attention: Brian Mills, CEO and Superintendent
Michael Doi, Director, Legal Services
Gino Marandola, Senior Manager, Operations
Deborah McPhail, Senior Counsel
Sharon Polischuk, Pension Officer**

Dear Sirs and Mesdames:

**Re: Store and Catalogue Retiree Group (“SCRG”)
The Sears Canada Inc. Registered Retirement Plan, Registration Number 360065
 (“Sears Canada Plan”)**

We are writing further to the letter from counsel to Sears Canada Inc. dated June 22, 2015 to FSCO and the letter from FSCO to our firm dated June 23, 2015

In our letter to FSCO of June 5, 2015, we enclosed a memorandum from a former Chief Financial Officer of Sears Canada who analyzed the financial situation of Sears Canada and its money-losing retail business to conclude that Sears Canada will fail. Since our letter, there have been further media reports, including an analysis performed by Desjardins Capital Markets dated June 27, 2015, which predicts that a turnaround of Sears Canada is “unlikely”.

There is ample evidence before FSCO to demonstrate that Sears Canada will not continue as a viable entity (see for example, the enclosed article dated July 3, 2015 “Liquidation Situation: The slow dismantling of Sears Canada”). A typical outcome for such a company, as FSCO is aware from its involvement in other insolvency matters, is for the company to eventually seek protection from its creditors under the *Companies’ Creditors Arrangement Act*, R.S.C., 1985, c. C-36 (“CCAA”), or alternatively assign itself into bankruptcy or be subject to an application for a bankruptcy order brought by a creditor(s).

The *Pension Benefits Act*, R.S.O. 1990, c. P.8 (“PBA”) is minimum standards legislation and one of its paramount purposes is to protect pension plan members. As part of the PBA pension regulatory regime, the PBA authorizes the Ontario Superintendent of Financial Services to order a wind up of a pension plan in certain circumstances.

We do not agree with Tory's technical interpretation of section 69(1)(c) of the PBA. The substance of section 69(1)(c) was added to the PBA by amendment on December 12, 1980. We enclose a copy of the *The Pension Benefits Amendment Act, 1980*, section 6 of which amends the PBA to add the criteria of an employer becoming bankrupt to allow the Superintendent to order a plan wind up.

At the time of the 1980 amendment, the CCAA was not in significant use as an insolvency statute. In the years after the 1980 amendment, and in particular in the 1990's and 2000's following various amendments to the CCAA, the CCAA became increasingly resorted to by insolvent companies instead of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 ("BIA"), primarily because the CCAA allows an insolvent company to pursue more flexible arrangements, whether by restructuring or a bankruptcy-style liquidation, in contrast to the more formal BIA (which replaced the previous *Bankruptcy Act*) that among other things, mandates the appointment of a trustee in bankruptcy to take possession of all the debtor's assets. Nevertheless, a criteria of the CCAA is that a company be insolvent in order to obtain an order from the court granting it CCAA protection.

FSCO is well acquainted with many CCAA cases that have proceeded before the courts and FSCO counsel have appeared on many CCAA files. Given that the CCAA permits the liquidation of an insolvent company akin to a bankruptcy (known as a "liquidating CCAA"), the commercial reality following the 1980 amendment that FSCO must recognize is that many insolvent companies never resort to the BIA and are therefore never declared a "bankrupt", despite their insolvency and despite their failure while under CCAA protection, which is currently more often the case for a debtor under CCAA protection than a true restructuring. The most obvious current example is Nortel, where the company failed and liquidated its assets, all done while the company is in CCAA proceedings. Nortel will likely never be declared a "bankrupt" under the BIA, yet there is no debate that the company was insolvent and failed and in turn caused significant pension benefit losses in the range of 25%-43% to the Nortel pension plan members.

Accordingly, in the face of Sears Canada's current financial circumstances and the mounting evidence of its inevitable failure, it is inappropriate for Sears Canada to rely on a technical interpretation of the term "bankrupt" from a 1980 amendment to the PBA when the CCAA was not in significant use, in an effort to deflect the legitimate concerns of the Sears pension plan members for future pension benefit losses as the members (and FSCO) watch Sears Canada slide further towards failure. As we explained in prior correspondence, and as FSCO is well aware, a wind up of the Sears Canada Plan in its underfunded state will result in pension benefit losses to the plan members. The Sears Canada plan members do not wish to be the next group of Canadian retirees who have to endure such losses due to the predictable failure of Sears Canada. Accordingly, our communications to the company and FSCO over the past several months are intended to alert FSCO to the financial crisis that Sears Canada is in so that preventative steps can be taken now to prevent a sudden Nortel-esque liquidation that will result in pension benefit losses.

In the United States, it has been publicly reported that the U.S. pension plan regulator, the Pension Benefits Guaranty Corporation ("PBGC") is involved against Sears Canada's ultimate parent, Sears Holdings Corp., to address its underfunded U.S. pension plans. In a Morgan Stanley press release dated April 30, 2015 (copy enclosed), it states:

Sears may be required to make additional contributions to its pension plan

The analysts believe that the PBGC may require Sears Holdings to make additional contribution to its under-funded pension plan to be able to move forward with its planned REIT.

In addition, the agency may also require Sears Holdings to obtain guarantees, a letter of credit or pledge security interests to the plan.

According to the analysts, the PBGC required an 80% asset-obligation funding level in its previous negotiations, which is the ERISA statutory level to prevent an "at-risk" status.

The Morgan Stanley report indicates that PBGC has identified that the Sears U.S. pension plan is an "at risk" pension plan, and it is understood that PBGC has taken steps to compel Sears to meaningfully address the U.S. pension plan underfunding as a preventative step prior to a company failure. Similarly, in Canada, Sears Canada is an unquestionably "at risk" company and there are ample warning signs that it will fail. We urge FSCO to take steps now to prevent otherwise inevitable losses to the Sears Canada retirees.

We propose a further meeting to discuss these issues and to discuss a meaningful future course of action. Please let us know your availability.

Thank you for your attention to this matter.

Yours truly,

KOSKIE MINSKY LLP



Andrew J. Hatnay
AJH:vdl/encl.

cc. Mitch Frazer, *Torys LLP*, counsel to Sears Canada
SCRG
Mark Zigler, Barbara Walancik, *Koskie Minsky LLP*

Desjardins: Now or never for Sears Canada

Laura Woodward, BNN.ca staff
 7:29 PM, E.T. | June 27, 2015
 Retail
 Tags: Sears Canada

20

The time for Sears Canada to turnaround its business is now or never, according to Keith Howlett, Desjardins Capital Markets analyst.

"With Target's exit from the Canadian market, the next seven quarters are to make it or break it for Sears Canada," said Howlett in a note to clients on Friday.

Howlett expects Sears Canada to post operating losses of \$150-million by the end of 2015.

Sears Canada has struggled in comparison to other North American department stores. Sales declined 9.7 percent in the first quarter of 2015, putting it among the worst performers by that metric.

Walmart Canada, on the other hand, was amongst top performers with 3.7 percent sales growth.

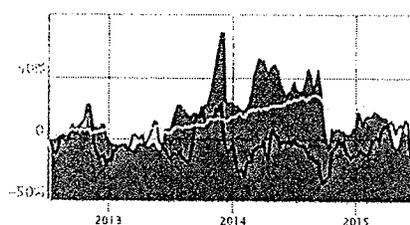
For Sears Canada to breakeven, the company would need a \$750-million increase in sales, a 4.72 percent increase in profit margins and to reduce expenses by \$150 million – an unlikely operating turnaround, which is why Howlett recommends investors sell.

"While it still has a solid balance sheet and owned real estate which it can sell, our view is that its under-market leases have lost considerable value over the last two years," said Howlett, who has a \$8.50 price target on Sears Canada shares. "As asset value declines,

SEARS CANADA

Stock data delayed up to 20 minutes

\$7.58 \$0.05 0.66%



■ SCC.TO — SHLD.O ··· GSPTSE

chart type: 3year, Comparative

[See Full Stock Page »](#)

the need for a near-term operating turnaround at Sears Canada becomes greater. It is, however, unlikely, in our view."

Liquidation Situation: The slow dismantling of Sears Canada

BNN.ca staff
 7:31 AM, E.T. | July 3, 2015
 Retail
 Tags: Retail, Sears Canada, Sears Holdings

13

Sears Canada Inc. ([SCC.TO](#) 0.66%) is looking for a chief executive officer – again.

The struggling retailer – which posted a net loss of \$59.1-million for the first quarter to go along with six straight years of falling sales – announced Thursday that Ronald Boire will depart at the end of the summer.

Boire lasted less than a year in the job after replacing Douglas Campbell, who left in September 2014. Campbell succeeded Calvin McDonald, who quit in September 2013 just two years after replacing Dene Rogers.

SEARS CANADA

Stock data delayed up to 20 minutes

\$7.58 \$0.05 0.66%

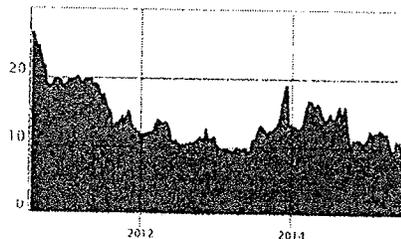
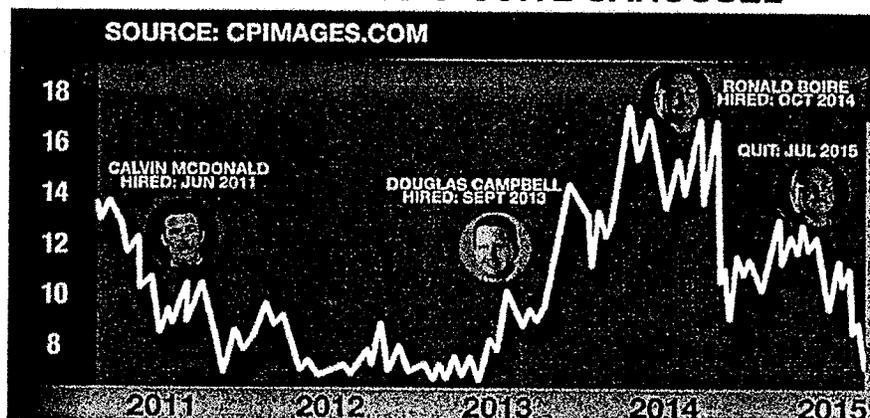


chart type: 5year

[See Full Stock Page »](#)

SEARS CANADA'S C-SUITE CAROUSEL

SOURCE: CPIMAGES.COM



Retail consultant Mark Satov believes Sears Canada's many CEOs were qualified retailers that have been hamstrung by hedge fund manager Eddie Lampert – who owns a controlling stake in Sears Canada and parent company Sears Holdings.

"I can't say he's doing a bad job as a hedge fund manager because he's actually taken a lot of cash out of this thing," Satov told BNN. "Who are you going to attract now? Because everybody keeps leaving."

After years of asset sales, special dividends and CEO departures, Satov says the department store retailer has failed and the only remaining option is to sell what's left – noting Sears Canada owns a travel business, eye care business, the Corbeil Appliance chain and a profitable e-commerce platform.

THE LIQUIDATION OF SEARS CANADA

Hedge fund manager Eddie Lampert took control of Sears Holdings in 2005 by engineering the merger of K-Mart and Sears. Since then, Sears Canada has sold everything from credit card receivables to real estate - and paid the money out to shareholders as sales have declined.

August 31, 2005: Sears Canada sells its credit card division to JPMorgan Chase & Co. for \$2.2-billion.

December 9, 2005: With shares trading above \$30, Sears Canada pays out a special dividend of \$4.38.

May 27, 2010: Sears Canada pays out a special dividend of \$3.50.

September 20, 2010: Sears Canada pays out a second special dividend of \$3.50.

April 20, 2012: Sears Canada receives \$170-million as it sells three leases back to landlord Cadillac Fairview, closing its stores at Vancouver Pacific Centre, Calgary Chinook Centre and Ottawa Rideau Centre.

July 18, 2012: Sears Canada announces it will receive "financial consideration" from landlord Shape Properties for exiting its Deerfoot Mall location in Calgary ahead of schedule.

December 12, 2012: Sears Canada announces the sale of its 40-percent ownership of the leasehold interest in Medicine Hat Mall to the Company's joint venture partner, Sleeping Bay Building Corp., for \$43 million.

December 20, 2012: Sears Canada pays out a special dividend of \$1.

June 14, 2013: Sears Canada sells its leases at Yorkdale Mall in Toronto and Mississauga's Square One Shopping Centre back to the property owners for \$191-million.

October 29, 2013: Sears Canada receives \$400-million in exchange for giving up leases at Toronto's Eaton Centre and Sherway Gardens, along with three other locations.

November 11, 2013: Sears Canada announces the sale of its 50-percent joint venture interest in eight properties in a deal valued at approximately \$315-million.

November 26, 2013: Sears Canada announces almost 800 job losses as it restructures its head office, automotive and services businesses.

November 28, 2013: Sears Canada pays out a special dividend of \$5.

December 9, 2013: Sears Canada pays out a second special dividend of \$5.

May 16, 2014: Sears Canada sells its 15 percent interest in a shopping mall in Trois-Rivieres, Que. for \$33.5 million.

August 6, 2014: H&R REIT buys the Kildonan Place Shopping Centre in Winnipeg for \$138.5 million from co-owners Ivanhoé Cambridge and Sears Canada.

March 11, 2015: Sears Canada signs a deal with the Concord Pacific Group of Companies to sell and lease back three of its properties for \$140-million.

Sears Holdings Corp (SHLD) Pension Woes Could Hurt REIT Plans: Morgan Stanley

valuewalk.com/2015/04/sears-holdings-corp-shld-pension-woes-could-delay-reit/

Marie Cabural

Share on Pinterest

Exhibit 2: Recent Examples of Protection Sought by PBGC in Relation to Corporate Transactions

| Company | Year | Transaction | Protection sought by PBGC |
|------------------------------|----------------------|---|---|
| Saint-Gobain Containers, Inc | 2014 | Sale of a Subsidiary | PBGC initiated the proceedings to involuntarily terminate the plan when the company did not actively engage in a dialog with the agency. Later, sought additional cash contributions of \$207.5 mn |
| Safeway Inc | 2014 | LBO | Secured additional cash contributions of \$212 mn from the PE firm Cerberus Capital Management |
| Daimler Chrysler | (a) 2007 (b) 2009 | (a) Sale of a controlling interest (b) Sale of remaining ownership stake | (a) Sought termination guarantee of \$1 bn (b) Negotiated additional cash contributions of \$200 mn and an extension of the guarantee |
| Motorola Solutions | 2011 | Spin off | Secured additional cash contributions of \$100 mn over five years above and beyond legal requirements |
| Belo Corp. | 2011 | Spin off | Reserved right to come back at the previous (the more profitable) plan sponsor, if spun off entity declares bankruptcy or otherwise defaults Sought additional cash contributions of \$30 mn |

Source: Company data, Morgan Stanley Research, National Retiree Legislative Network

Exhibit 2: Recent Examples of Protection Sought by PBGC in Relation to Corporate Transactions

| Company | Year | Transaction | Protection sought by PBGC |
|------------------------------|----------------------|---|---|
| Saint-Gobain Containers, Inc | 2014 | Sale of a Subsidiary | PBGC initiated the proceedings to involuntarily terminate the plan when the company did not actively engage in a dialog with the agency. Later, sought additional cash contributions of \$207.5 mn |
| Safeway Inc | 2014 | LBO | Secured additional cash contributions of \$212 mn from the PE firm Cerberus Capital Management |
| Daimler Chrysler | (a) 2007 (b) 2009 | (a) Sale of a controlling interest (b) Sale of remaining ownership stake | (a) Sought termination guarantee of \$1 bn (b) Negotiated additional cash contributions of \$200 mn and an extension of the guarantee |
| Motorola Solutions | 2011 | Spin off | Secured additional cash contributions of \$100 mn over five years above and beyond legal requirements |
| Belo Corp. | 2011 | Spin off | Reserved right to come back at the previous (the more profitable) plan sponsor, if spun off entity declares bankruptcy or otherwise defaults Sought additional cash contributions of \$30 mn |

Source: Company data, Morgan Stanley Research, National Retiree Legislative Network

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node">I read this

Submit

Exhibit 2: Recent Examples of Protection Sought by PBGC in Relation to Corporate Transactions

| Company | Year | Transaction | Protection sought by PBGC |
|------------------------------|----------------------|---|---|
| Saint-Gobain Containers, Inc | 2014 | Sale of a Subsidiary | PBGC initiated the proceedings to involuntarily terminate the plan when the company did not actively engage in a dialog with the agency. Later, sought additional cash contributions of \$207.5 mn |
| Safeway Inc | 2014 | LBO | Secured additional cash contributions of \$212 mn from the PE firm Cerberus Capital Management |
| Daimler Chrysler | (a) 2007 (b) 2009 | (a) Sale of a controlling interest (b) Sale of remaining ownership stake | (a) Sought termination guarantee of \$1 bn (b) Negotiated additional cash contributions of \$200 mn and an extension of the guarantee |
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Source: Company data, Morgan Stanley Research, National Retiree Legislative Network

Analysts at Morgan Stanley suggested that the pension obligations of Sears Holdings Corp (NASDAQ:SHLD) could cause problems to its planned real estate investment trust (REIT).

Sears Holdings plans to form a REIT to raise \$2.5 billion. The REIT will buy 254 Sears and Kmart stores, and it will lease-back to the retailers

Morgan Stanley (NYSE:MS) analyst Todd Castagno and his colleagues noted the report that Sears Holdings Corp (SHLD) is engaged in active discussions with the Pension Benefit Guarantee Corporation (PBGC) with its under-funded pension and a planned sale-lease-back transaction with an associated pension.

The analysts emphasized that PBGC is a government guarantor of corporate pensions. It has limited but powerful authority to seek a court-imposed involuntary termination of a company's plan when it expects long-term losses to the agency.

"The PBGC has an immediate joint and several claims against the company in an amount equal to the asset-obligation funding gap," explained Castagno and his fellow analysts. They noted that the agency has a history of executing its authority to pursue compromises for pension funding before significant transactions are made.

Exhibit 2: Recent Examples of Protection Sought by PBGC in Relation to Corporate Transactions

| Company | Year | Transaction | Protection sought by PBGC |
|------------------------------|----------------------|---|---|
| Saint-Gobain Containers, Inc | 2014 | Sale of a Subsidiary | PBGC initiated the proceedings to involuntarily terminate the plan when the company did not actively engage in a dialog with the agency. Later, sought additional cash contributions of \$207.5 mn |
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| Motorola Solutions | 2011 | Spin off | Secured additional cash contributions of \$100 mn over five years above and beyond legal requirements |
| Belo Corp. | 2011 | Spin off | Reserved right to come back at the previous (the more profitable) plan sponsor, if spun off entity declares bankruptcy or otherwise defaults Sought additional cash contributions of \$30 mn |

Source: Company data, Morgan Stanley Research, National Retiree Legislative Network

Sears may be required to make additional contributions to its pension plan

The analysts believe that the PBGC may require Sears Holdings to make additional contributions to its under-funded

pension plan to be able to move forward with its planned REIT.

In addition, the agency may also require Sears Holdings to obtain guarantees, a letter of credit or pledge security interests to the plan.

According to the analysts, the PBGC required an 80% asset-obligation funding level in its previous negotiations, which is the ERISA statutory level to prevent an "at-risk" status.

Sears Holdings reported a GAAP funded status of 62% with a \$5.9 billion obligation funded by \$3.6 billion in assets as of 2014. The analysts estimated that the company's pension plan needed \$1.1 billion in additional assets to reach the 80% asset-obligation funding level. They used GAAP as a proxy in their estimate.

PBGC and its involvement in strategic corporate transactions

The analysts explained that PBGC monitors companies with under-funded defined benefit pension plans. It identifies corporate transactions that could undermine the solvency of the pension plan and expose the insurance program to a risk of economic loss.

The PBGC seeks to negotiate protections with the pension plan sponsor through a Risk Mitigation Program to prevent expected losses.

The agency is expected to contact a company with a below-investment grade bond rating, sponsors a pension plan with a current liability of more than \$25 million, and an unfunded liability of more than \$5 million. The PBGC will request for further information about a company's transaction, and express concerns regarding its consequences for the pension plan.

The PBGC will negotiate to obtain protections for the pension insurance program if it concludes that a company's strategic transaction may increase the risk of a long-run loss. Given the agency's negotiation with Sears Holdings, it shows that the agency is concerned with the company's planned REIT transaction.

Below are the protections sought by the PBGC in the past.

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Exhibit 2: Recent Examples of Protection Sought by PBGC in Relation to Corporate Transactions

| Company | Year | Transaction | Protection Sought by PBGC |
|----------------------------------|----------------------|---|---|
| Home-Global Corrections, Inc. | 2014 | Sale of a subsidiary | PBGC obtained the proceeds to involuntarily provide to the plan when the company did not actually agree to a deal with the agency. |
| Safeway Inc. | 2014 | R.O. | 100% additional cash contribution of \$500 million secured additional cash contributions of \$211 million from the PBGC (General Credit Management). |
| Quikrete Chrysler | (a) 2007 (b) 2009 | (a) Sale of a controlling interest (b) Sale of remaining ownership stake | (a) Negotiated additional cash contributions of \$208 million and an extension of the guarantee (b) Secured additional cash contributions of \$300 million |
| National Services | 2011 | Sale of | five years above and beyond legal requirements |
| Solo Corp. | 2011 | Sale of | Reserved right to come back at the previous five more profitable plan sponsor, if sponsor ever declares bankruptcy or otherwise default 100% additional cash contributions of \$18 million |

Source: Company news, Morgan Stanley Research, National Business Intelligence Agency

CHAPTER 80

An Act to amend The Pension Benefits Act

Assented to December 12th, 1980

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) Subsection 1 of section 1 of *The Pension Benefits Act*, being chapter 342 of the Revised Statutes of Ontario, 1970, is amended by adding thereto the following clause:

(da) "Fund" means the Pension Benefits Guarantee Fund established by section 25b.

(2) Subclause iv of clause h of subsection 1 of the said section 1 is repealed and the following substituted therefor:

(iv) a deferred profit sharing pension plan other than an employee's profit sharing plan or a deferred profit sharing plan as defined in sections 144 and 147 of the *Income Tax Act* (Canada).

R.S.C. 1952, c. 148

2. Clause b of subsection 3 of section 21 of the said Act is amended by striking out "\$10" in the fifth line and inserting in lieu thereof "\$25".

s. 21 (3) (b), amended

3. Section 23a of the said Act, as enacted by the Statutes of Ontario, 1973, chapter 113, section 6, is repealed and the following substituted therefor:

s. 23a, re-enacted

23a.—(1) Where a sum is received by an employer from an employee under an arrangement for the payment of the sum by the employer into a pension plan as the employee's contribution thereto, the employer shall be deemed to hold the sum in trust for the employee until the sum is paid into the pension plan whether or not the sum has in fact been kept separate and apart by the employer and the employee has a lien upon the assets of the employer for such amount that in the ordinary course of business would be entered in books of account whether so entered or not.

Employee contribution to pension fund is trust fund in hands of employer

(2) For the purposes of subsection 1, any sum withheld by an employer, whether by payroll deduction or otherwise, from

Idem: payroll deductions

Notice period included in calculating pension benefits 1974, c. 112

(6) For the purposes of calculating pension benefits on the wind up of a pension plan, the period of notice required to be given to a terminated employee under Part XII of *The Employment Standards Act, 1974* shall be included in computing the employee's length of service with his employer or his time in the plan, as the case may be.

s. 25, amended

6.—(1) Section 25 of the said Act is amended by adding thereto the following subsections:

Idem

(1a) The Commission may declare that a defined benefit pension plan is wound up in whole or in part for the purposes of this Act on such date as the Commission in its discretion considers appropriate, where,

R.S.C. 1970, c. B-3

- (a) the employer providing the plan is bankrupt within the meaning of the *Bankruptcy Act* (Canada);
- (b) the plan has been terminated in whole or in part and the employer has failed to meet the funding requirements prescribed;
- (c) the plan has been terminated in whole or in part and the Commission is of the opinion that because of his insolvency the employer will not be able to meet the funding obligations prescribed by regulation;
- (d) the Commission has reason to believe that the amount of payments that the Fund may be required to guarantee may be expected to increase unreasonably if the plan is not wound up; or
- (e) such other event as is prescribed by regulation occurs,

Commission as administrator

(4) Where a defined benefit pension plan is declared to be wound up in whole or in part by the Commission, the Commission, where it has reason to believe that the assets of the plan are not sufficient to provide full payment of the contributions and pension benefits set out in section 25c, may take control of the assets of the pension plan and act as administrator of the plan for the purpose of the wind up.

s. 25 (2), amended

(2) Subsection 2 of the said section 25 is amended by adding at the end thereof "or 1a".

s. 25 (3), amended

(3) Subsection 3 of the said section 25 is amended by inserting after "subsection 1" in the second line "or 1a".

7. The said Act is further amended by adding the following sections:

25b.—(1) There is established the Pension Benefits Guarantee Commission.

(2) The purpose of the Commission is to ensure that defined benefit pension plans are wound up in accordance with section 25 subject to the regulations.

(3) If, at any time the Fund is insufficient to meet the obligations under this Act, the Lieutenant Governor in Council may require the Treasurer of Ontario to contribute to the Revenue Fund to the extent necessary to meet the obligations of the Fund to the Lieutenant Governor.

25c.—(1) The pension benefits of a member of a pension plan that is wound up shall be guaranteed by the following:

(a) all pension benefits payable under clause (a) of section 25c, in respect of the date of winding up of the pension plan, shall be guaranteed by the Commission; and

(b) all pension benefits payable under clause (b) of section 25c, in respect of the date of winding up of the pension plan, shall be guaranteed by the Commission; and

(c) all pension benefits payable under clause (c) of section 25c, in respect of the date of winding up of the pension plan, shall be guaranteed by the Commission; and

(d) the value of the pension benefits payable under clause (d) of section 25c, in respect of the date of winding up of the pension plan, shall be guaranteed by the Commission.

1980

1980

PENSION BENEFITS

Chap. 80

475

dures to be followed by the pension plan in the distribution plan on winding up,

to be paid into the Fund by crediting the amount of the method of calculating the pension plans and providing amounts in respect of different

ments or transfers of defined pensions from one employer to another; out the obligations and transferring employer,

liquidation or wind up of a pension plan,

requirements into a plan for section 25d and authorizing the manner in which the requirements where they would result to the employer,

upon the occurrence of which they declare a plan wound up subsection 1a of section 25;

documents and information of pension plans and procedures which such documents and procedures;

"pension plan" and "bridging provisions" of this Act and the regulations;

amended by adding thereto the

Act may be made retroactive

by the Statutes of Ontario, amended by adding thereto

(4) No proceeding under this section shall be commenced more than two years after the time when the subject-matter of the proceeding arose. Time limit for commencing proceedings

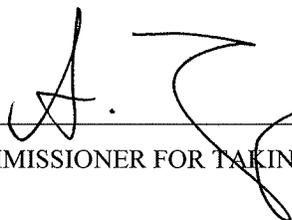
11. This Act shall be deemed to have come into force on the 4th day of December, 1980. Commencement

12. The short title of this Act is *The Pension Benefits Amendment Act, 1980*. Short title

This is **Exhibit "N"**

referred to in the Affidavit of William Turner

sworn before me this 11th day of August, 2017.

A handwritten signature in black ink, appearing to be "A. J." followed by a stylized flourish.

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

**Financial Services
Commission
of Ontario**

Pension Plans Branch

5160 Yonge Street
Box 85
Toronto ON M2N 6L9

Telephone: (416) 226-7776
Facsimile: (416) 226-7777

**Commission des
services financiers
de l'Ontario**

Direction des régimes de retraite

5160, rue Yonge
Boîte 85
Toronto ON M2N 6L9

Téléphone: (416) 226-7776
Télécopieur: (416) 226-7777



July 30, 2015

Registration Number: 0360065

AUG 16 2015

Andrew J. Hatnay
Koskie Minsky LLP
900-20 Queen Street
Box 52
Toronto ON M5H 3R3

Dear Mr. Hatnay:

Re: Sears Canada Inc. Registered Retirement Plan (the Plan)

We have reviewed your submissions dated June 5 and July 7, 2015, as well as the submission from Mr. Mitch Frazer dated June 22, 2015, that you were copied on.

We are prepared to meet with you on a without prejudice basis along with additional representatives from SCRG and Sears Canada Inc. in August 2015. We will be in contact with you by telephone and/or email to arrange this meeting.

If at any time you have any questions or concerns, you may contact me either at the address above, or directly by telephone at (416) 226-7820, or Sharon Polischuk, Pension Officer, directly by telephone at (416) 590-7248, or toll free at 1-800-668-0128, extension 7248. Please quote the registration number shown at the top of this letter.

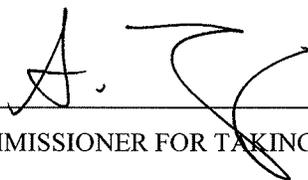
Yours truly,

Gino Marandola
Director, Pension Plans Branch (Interim)

Copy: Todd Dalglish, Vice-President, Treasury & Finance, Sears Canada Inc.
Mitch Frazer, counsel to Sears Canada Inc., Torys LLP
Brian Mills, CEO and Superintendent of Financial Services (Interim), FSCO
Lester Wong, Deputy Superintendent, Pensions (Interim), FSCO
Sharon Polischuk, Pension Officer, FSCO

This is **Exhibit "O"**

referred to in the Affidavit of William Turner
sworn before me this 11th day of August, 2017.

A handwritten signature in black ink, appearing to be 'A. T. C.', written over a horizontal line.

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

KOSKIE MINSKY

November 3, 2015

VIA EMAIL

Andrew J. Hatnay
Direct Dial: 416-595-2083
Direct Fax: 416-204-2872
ahatnay@kmlaw.ca

Financial Services Commission of Ontario
5160 Yonge Street, P.O. Box 85
Toronto, ON M2N 6L9

Attention: Gino Marandola, Director, Pension Plans Branch (Interim)
Deborah McPhail, Senior Counsel
Sharon Polischuk, Pension Officer

Dear Sir and Mesdames:

Re: Store and Catalogue Retiree Group ("SCRG")
The Sears Canada Inc. Registered Retirement Plan, Registration Number
360065 ("Sears Canada Plan")
Our File No.: 13/2022

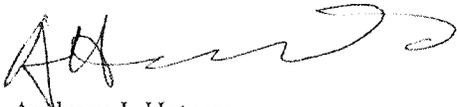
We are writing further to our meeting of September 11, 2015 at your offices with representatives of Sears Canada Inc.

At the conclusion of that meeting, we understood that FSCO would be sending a letter to Sears Canada requesting certain information and we discussed reconvening a meeting with FSCO and Sears Canada around October 15, 2015. We have since exchanged voicemail messages with Ms. McPhail who indicated on October 23, 2015 that the letter from FSCO remains under internal review and is expected to be sent to Sears Canada shortly.

The deteriorating financial situation of Sears Canada continues to be of great concern to our clients, the members of the Sears Canada Plan. We ask that you proceed to schedule the next meeting with FSCO and Sears Canada as soon as possible. Please let us know suggested dates for that meeting at your earliest convenience.

Yours truly,

KOSKIE MINSKY LLP

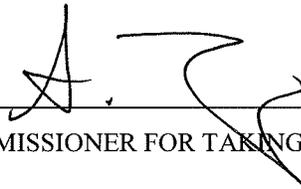


Andrew J. Hatnay
AJH:vdl

c. Clients
Barbara Walancik, *Koskie Minsky LLP*

This is **Exhibit "P"**

referred to in the Affidavit of William Turner
sworn before me this 11th day of August, 2017.

A handwritten signature in black ink, consisting of a stylized 'A' followed by a large, sweeping flourish that extends to the right and then loops back down.

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

**Financial Services
Commission
of Ontario**

Pension Plans Branch

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November 6, 2015

Registration Number: 0360065

Mitch Frazer
Torys LLP
79 Wellington Street W
30th Floor
Box 270, TD South Tower
Toronto ON M5K 1N2

Dear Mr. Frazer:

Re: Sears Canada Inc. Registered Retirement Plan (Plan)

This letter is further to the meeting on September 11, 2015, with Sears Canada Inc. (Sears), SCRG (a Sears Canada Inc. retiree association) and the Financial Services Commission of Ontario (FSCO).

As discussed at the meeting, this letter sets out some additional information that FSCO requires to make a determination as to whether there are grounds for partial wind up(s) of the Plan prior to July 1, 2012, or to fully wind up the Plan now.

Information to determine grounds for partial wind ups prior to July 1, 2012

We note that the total active Plan membership declined from 23,034 at December 31, 2002, to 10,866 at December 31, 2012.

If certain conditions are met, the Superintendent of Financial Services (Superintendent) may order the partial wind up of a pension plan pursuant to his authority under section 77.3 of the Pension Benefits Act (PBA). The following clauses of section 77.3(1) of the PBA may be of particular relevance in determining whether grounds exist for a partial wind up of the Plan:

- (a) if a significant number of members of the pension plan cease to be employed by the employer as a result of the discontinuance of all or part of the business of the employer or as a result of the reorganization of the business of the employer;
- (b) if all or a significant portion of the business carried on by the employer at a specific location is discontinued;

- (c) if part of the employer's business or part of the assets of the business are sold, assigned or otherwise disposed of and the person or entity who acquires the business or assets does not provide a pension plan for the members of the employer's pension plan who become employees of the person or entity.

Please provide us with detailed information regarding the events leading to the drop in Plan membership described above, including the timing of those events. This information is being requested to determine if any of the conditions under section 77.3 of the PBA for the Superintendent to exercise his authority to order a partial wind up of the Plan have been satisfied. Please ensure that the information you provide is sufficient to make such a determination.

Please note that after receipt of the above information, we may require further detailed information on the affected members, including their location of employment, the date and reason for their termination, and their vested status.

Information to determine grounds for full wind up

Please provide us with the following information in order to allow us to assess whether there are grounds under section 69(1)(g) of the PBA to wind up the Plan in full.

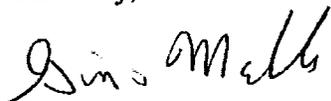
1. Financial Information (see Appendix).
2. An actuarial funding valuation report for the Plan with an effective date as at September 30, 2015, containing information for the defined benefit portion of the Plan that is identical to that shown in the Plan's filed December 31, 2013, valuation report.
3. Additional information - please provide:
 - a) a breakdown of the Plan membership and liabilities by jurisdiction and membership category;
 - b) the aggregate of transfer deficiencies, if applicable, made pursuant to section 19(6)(b) of Regulation 909 made under the PBA and the amount of any further transfer deficiencies that can be made under this section of Regulation 909;
 - c) the total amount of defined contribution (DC) account balances under the Plan as at September 30, 2015, and the required DC contributions for the next 12 months; and,
 - d) copies of the Statement of Investment Policies and Procedures for the Plan in effect for the past three years.

We look forward to receiving your response by December 9, 2015. A meeting will be scheduled with Sears, SCRG and FSCO after we receive your response to this letter and have had an opportunity to review it.

Registration Number: 0360065
November 6, 2015
Page 3

If at any time you have any questions or concerns, you may contact me either at the address above, or directly by telephone at (416) 226-7820, or Sharon Polischuk, Pension Officer, directly by telephone at (416) 590-7248, or toll free at 1-800-668-0128, extension 7248. Please quote the registration number shown at the top of this letter.

Yours truly,



Gino Marandola
Director, Pension Plans Branch (Interim)

Copy: Andrew J. Hatnay, Koskie Minsky LLP
Sharon Polischuk, FSCO

Appendix Information Request/Questions

General

- a copy of the three year Strategic Business Plan, supporting documents including budgets, financial projections and amendments
- minutes of all Board of Directors meetings
- minutes of all Pension Committee meetings, if any
- corporate structure and management organizational structure
- listing of all merchandising operation locations by retail channel
- copies of auditor's management reports, if any

Financial statements

- copies of the Sears Canada Inc. Annual Reports including audited financial statements for the past three years
- copies of all interim quarterly financial statements and management discussion & analysis since the last audited financial statements
- copy of a CICA Section 5970 report on internal controls (if available)
- copies of any assessment or credit report available
- cash flow projections going forward

Receivables

- detailed aged accounts receivables listing
- summary aged accounts receivables listing
- please identify any doubtful or bad debts

Secured lenders

- identify all banks and secured lenders
- copy of any Bank Credit Agreement
- details of any personal guarantees to lenders or otherwise
- any shareholder loans with an indication of whether they are secured
- latest copy of borrowing base and availability from operating (line of credit) lender
- breakdown of secured obligations by priority level

Payables

- detailed aged payables listing
- schedule of accrued liabilities
- details of all secured debt (amounts, terms and interest rates)
- status of priority payables (ETD, HST/GST, vacation pay, wages and EHT)

Appendix Information Request/Questions

Inventory

- estimated value of inventory
- estimated salvage value of inventory

Fixed Assets

- details of land and buildings
- copy of appraisal of land and buildings
- copy of latest appraisal of Property and Equipment
- estimated salvage value of Property and Equipment
- copy of mortgages
- list of equipment and other fixed assets (if available)
- listing of leased assets

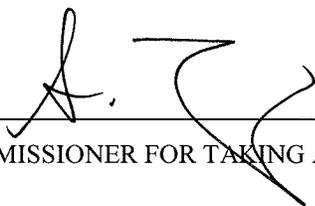
Pension and related

- summary of the breakdown of the investments of pension assets by asset class and investment manager levels
- copies of investment service agreements entered into with external investment managers
- copies of periodic reports/reviews from external investment managers

Other

- details of any outstanding litigation and regulatory action against the company (and of any contemplated litigation or regulatory action of which the Sears Canada Inc. is aware) including the potential cost to Sears Canada Inc.
- any other material facts

This is **Exhibit "Q"**
referred to in the Affidavit of William Turner
sworn before me this 11th day of August, 2017.

A handwritten signature in black ink, consisting of a stylized 'A' followed by a large, sweeping flourish that extends to the right and then loops back down.

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.



79 Wellington St. W., 30th Floor
 Box 270, TD South Tower
 Toronto, Ontario M5K 1N2 Canada
 P. 416.865.0040 | F. 416.865.7380
 www.torys.com

Mitch Frazer
 mfrazer@torys.com
 P. 416.865.8220

December 9, 2015

VIA EMAIL

Gino Marandola
 Director, Pension Plans Branch (Interim)
 Financial Services Commission of Ontario
 5160 Yonge Street
 P.O. Box 85
 Toronto, ON M2N 6L9

Dear Mr. Marandola:

Re: Sears Canada Inc. Registered Retirement Plan (the "Plan")

This letter responds to your letter of November 6, 2015, which followed up on our meeting in respect of the Plan on September 11, 2015 (the "Letter").

On the basis of our discussion at the September 11 meeting we anticipated that the Financial Services Commission of Ontario ("FSCO") would be requesting additional information in respect of the Plan and FSCO's analysis regarding a potential wind up or partial wind up of the Plan. However, the number and scope of the requests contained in the appendix to the Letter go well beyond what we anticipated. These requests are extremely broad and, in our experience, unprecedented in the degree to which complying with them will require our client to:

- (i) disclose commercially sensitive information about the business of Sears Canada Inc. ("Sears"); and
- (ii) review and analyze the records of Sears and, in some cases, create documents or cause others to create documents that respond to the specific requests set out in the Letter.

Despite these challenges Sears wishes to be appropriately responsive to these requests from FSCO. Sears is therefore providing the documents outlined in Appendix "A", which are the documents that Sears is able to provide at this time. Sears continues to work diligently to address several of the other requests set out in the Letter and, in part for that purpose, respectfully requests a private meeting with you and FSCO staff, including the acting Deputy Superintendent, so that Sears and Sears's counsel can fully understand the nature of each of the many outstanding requests set out in the Letter. Sears also wishes to better understand the basis for each of these requests and, in some cases, to explore whether the concerns underlying these requests can be more effectively and/or efficiently addressed by refining those requests or better understanding them. In our view, the meeting we propose would help to ensure that Sears's response to the Letter will be appropriately responsive to FSCO's concerns.

- 2 -

In addition to the requests set out in the appendix to the Letter, we note that in the body of the Letter you have requested "detailed information regarding the events leading to the drop in Plan membership" over a 10-year period. In light of this very broad request we would also like to use the proposed meeting as an opportunity to address any concerns that you may have regarding the recent history of membership in the Plan. In order to make the discussion of this issue as informative as possible, we propose that Susan Himmelman of Aon Hewitt, the Plan actuary, also attend the meeting.

Thank you in advance for your consideration of this request and please do not hesitate to contact me should you wish to discuss it.

Yours truly,



Mitch Frazer

MF

cc: Sears Canada Inc. - Franco Perugini (with attachments)
FSCO - Sharon Polischuk (with attachments)
Susan Himmelman - Aon Hewitt (with attachments)
Koskie Minsky LLP - Andrew Hatnay (without attachments)

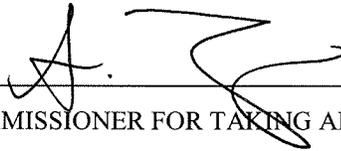
Appendix "A"
Responses to Information Requests

The following documents are included as attachments to this email:

- 2012 Annual Report
- 2013 Annual Report
- 2014 Annual Report
- 2012 Audited Annual Financial Statements
- 2013 Audited Annual Financial Statements
- 2014 Audited Annual Financial Statements
- June 2015 Interim Financial Statements
- September 2015 Interim Financial Statements
- March 2015 Management's Discussion and Analysis
- June 2015 Management's Discussion and Analysis
- September 2015 Management's Discussion and Analysis
- 2012 Statement of Investment Policies and Procedures
- 2014 Statement of Investment Policies and Procedures
- 2015 Statement of Investment Policies and Procedures
- Summary of Headcount by Year (AIR Membership Movement)
- 5% Threshold Monitoring
- Progression of Hypothetical Wind-Up

This is **Exhibit "R"**

referred to in the Affidavit of William Turner
sworn before me this 11th day of August, 2017.

A handwritten signature in black ink, consisting of a large, stylized 'A' followed by a series of loops and a long horizontal stroke extending to the right.

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

**Financial Services
Commission
of Ontario**

Pension Plans Branch

5160 Yonge Street
Box 85
Toronto ON M2N 6L9

Telephone: (416) 226-7776
Facsimile: (416) 226-7777

**Commission des
services financiers
de l'Ontario**

Direction des régimes de retraite

5160, rue Yonge
Boîte 85
Toronto ON M2N 6L9

Téléphone: (416) 226-7776
Télécopieur: (416) 226-7777



January 15, 2016

Registration Number: 0360065

Mitch Frazer
Torys LLP
79 Wellington Street W
30th Floor
Box 270, TD South Tower
Toronto ON M5K 1N2

Dear Mr. Frazer:

Re: Sears Canada Inc. Registered Retirement Plan (Plan)

Thank you for your letter dated December 9, 2015, in response to our letter dated November 6, 2015, regarding the Plan.

Further to our letter dated November 6, 2015, we require the following information and documents in order to determine whether or not there are grounds under clause 77.3(1)(a) or (b) of the Pension Benefits Act ("PBA") for the Superintendent of Financial Services (the "Superintendent") to exercise his discretion to order a partial wind up of the Plan as a result of the termination of membership of approximately 12,168 members of the Plan between December 31, 2002, and December 31, 2012:

- (a) a detailed breakdown of the individuals who terminated membership in the Plan during the period noted above together with the reasons for each termination;
- (b) a detailed explanation of the reasons for the terminations referred to above; and
- (c) any annual reports, press releases, speeches, announcements, employee bulletins, letters or other communications or statements, internal or public, relevant to or evidencing the terminations or the reasons therefor.

Furthermore, we require the information and documents contained in the Appendix to our letter of November 6, 2015, in order to determine whether or not there are grounds under clause 69(1)(c) or (g) of the PBA for the Superintendent to exercise his discretion to order a full wind up of the Plan.

Registration Number: 0360065

January 15, 2016

Page 2

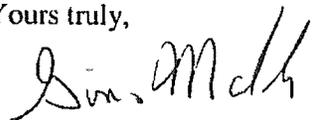
Information and documents provided to us in response to the above requests will be kept confidential and will not be disclosed to any person, except in the following circumstances:

- the disclosure is necessary for the purposes of obtaining advice with respect to the decisions set out above, and the advice is obtained on a confidential basis;
- the disclosure is required under the Freedom of Information and Protection of Privacy Act; or
- the disclosure is required by order of a court or tribunal.

We look forward to receiving your response by February 15, 2016. A meeting will be scheduled with all parties after we receive your response to this letter and we have had an opportunity to review it. After the meeting, we will determine the appropriate regulatory action to be taken in respect of the Plan.

If at any time you have any questions or concerns, you may contact me either at the address above, or directly by telephone at (416) 226-7820, or Sharon Polischuk, Pension Officer, directly by telephone at (416) 590-7248, or toll free at 1-800-668-0128, extension 7248. Please quote the registration number shown at the top of this letter.

Yours truly,

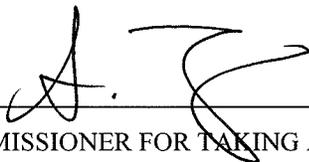


Gino Marandola
Director, Pension Plans Branch (Interim)

Copy: Andrew J. Hatnay, Koskie Minsky LLP
Sharon Polischuk, FSCO

This is **Exhibit "S"**

referred to in the Affidavit of William Turner
sworn before me this 11th day of August, 2017.

A handwritten signature in black ink, appearing to be "A. J." followed by a stylized flourish.

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

TORYS
LLP

79 Wellington St. W., 30th Floor
Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada
P. 416.865.0040 | F. 416.865.7380
www.torys.com

FEB 16 2016

February 16, 2016

VIA MAIL

Gino Marandola
Director, Pension Plans Branch (Interim)
Financial Services Commission of Ontario
5160 Yonge Street
P.O. Box 85
Toronto, ON M2N 6L9

Dear Mr. Marandola:

Re: Sears Canada Inc. Registered Retirement Plan (the "Plan")

Thank you for your letter dated January 15, 2016 (the "Letter").

In response to your request for additional documentation and information in respect of the Plan as set out in the Letter, Sears Canada Inc. ("Sears") wishes to be appropriately responsive and is therefore providing the documents and information outlined in Appendix "A", which are the documents and information that Sears is able to provide at this time.

Sears respectfully requests a private meeting with you and your team, so that representatives of Sears can meet with you to discuss the various funding alternatives for the Plan. In our view, the meeting we propose would help to ensure that Sears' actions will be appropriately responsive to your concerns. Subject to your availability, we'd like to schedule the meeting as soon as practicable.

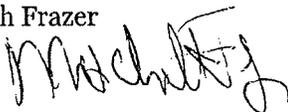
We also note that the broad range of documents requested by the Financial Services Commission of Ontario ("FSCO") contain a significant amount of commercially sensitive information related to various aspects of Sears' business. Given the broad scope of FSCO's request, and given that the scope of what is commercially sensitive can and does change with changing business conditions, Sears does not propose to pinpoint the information contained in what Sears is providing to FSCO that Sears currently considers commercially sensitive. Among other things, doing so now would slow the rate at which Sears could produce to FSCO the documents and information that FSCO has requested. Sears expects that FSCO would see the resulting delay in responding to its request as undesirable.

Accordingly, Sears would be grateful if FSCO could advise at this time of the procedure and timelines regarding notice to Sears in the event that a request for disclosure is made in respect of these documents or any information contained in these documents under the *Freedom of Information and Protection of Privacy Act* ("FIPPA"). FSCO is no doubt aware that it is essential for Sears to have an adequate opportunity to carefully review any documents that FSCO may consider producing pursuant to a FIPPA request to ensure that all of Sears' commercially sensitive information is protected, as contemplated by s. 28 of FIPPA.

Please do not hesitate to contact me should you have any further requests.

Yours truly,

Mitch Frazer

A handwritten signature in black ink, appearing to read "Mitch Frazer", written in a cursive style.

MF

cc: Sears Canada Inc. - Franco Perugini (with attachments)
FSCO - Sharon Polishuk (with attachments)
Susan Himmelman - Aon Hewitt (with attachments)
Koskie Minsky LLP - Andrew Hatnay (without attachments)

Appendix "A"
Responses to Information Requests

The following documents and information are included as attachments to this letter (see USB key):

A. Documents and information requested in the Letter:

1. a detailed breakdown of the individuals who terminated membership in the Plan during the period noted above together with the reasons for each termination;
2. a detailed explanation of the reasons for the terminations referred to above; and
3. any annual reports, press releases, speeches, announcements, employee bulletins, letters or other communications or statements, internal or public, relevant to or evidencing the terminations or the reasons therefor.

B. Documents and information requested in FSCO's letter dated November 6, 2015:

B.1. General

1. a copy of the three year Strategic Business Plan, supporting documents including budgets, financial projections and amendments;
2. minutes of all 2015 Board of Directors meetings;
3. corporate structure and management organizational structure;
4. listing of all merchandising operation locations by retail channel;

B.2. Financial Statements

1. copies of the Sears Canada Inc. Annual Reports including audited financial statements for the past three years;
2. copies of all interim quarterly financial statements and management discussions & analysis since the last audited financial statements;
3. copy of a similar report to the CICA Section 5970 report on internal controls;
4. cash flow projections going forward;

B.3. Receivables

1. detailed aged accounts receivables listing;
2. summary aged accounts receivables listing;
3. please identify any doubtful or bad debts;

B.4. Secured Lenders

1. identify all banks and secured lenders;
2. copy of any Bank Credit Agreement;
3. latest copy of borrowing base and availability from operating (line of credit) lender;

B.5. Payables

1. detailed aged payables listing;
2. schedule of accrued liabilities;
3. details of all secured debt (amounts, terms and interest rates);
4. status of priority payables (ETD, HST/GST, vacation pay, wages and EHT);

B.6. Inventory

1. estimated value of inventory;
2. estimated salvage value of inventory.

B.7. Fixed Assets

1. details of land and buildings;
2. copy of mortgages;
3. listing of leased assets;

B.8. Pension & Related

1. summary of the breakdown of the investments of pension assets by asset class and investment manager levels;
2. copies of investment service agreements entered into with external investment managers; and
3. copies of periodic reports/reviews from external investment managers.

B.9. Other

1. details of any outstanding litigation and regulatory action against the company (and of any contemplated litigation or regulatory action of which Sears Canada Inc. is aware) including the potential cost to Sears Canada Inc..

C. Documents and information requested by FSCO but that are not applicable to Sears:

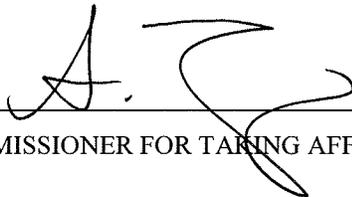
- 5 -

1. minutes of all Pension Committee meetings;
2. copies of auditor's management reports;
3. copies of an assessment or credit report;
4. details of any personal guarantees to lenders or otherwise; and
5. any shareholders loans with an indication of whether they are secured.

20796393.3

This is **Exhibit "T"**

referred to in the Affidavit of William Turner
sworn before me this 11th day of August, 2017.

A handwritten signature in black ink, appearing to be 'A. J.', written over a horizontal line.

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

KOSKIE MINSKY

JUSTICE MATTERS

March 1, 2016

Andrew J. Hatnay
Direct Dial: 416-595-2083
Direct Fax: 416-204-2872
ahatnay@kmlaw.ca

Via Email

Financial Services Commission of Ontario
5160 Yonge Street, P.O. Box 85
Toronto, ON M2N 6L9

Attention: Gino Marandola, Director, Pension Plans Branch (Interim)

Dear Mr. Marandola:

**Re: Store and Catalogue Retiree Group (“SCRG”)
The Sears Canada Inc. Registered Retirement Plan, Registration Number 360065
 (“Sears Canada Plan”)**

We are writing with respect to the letter dated February 16, 2016 to you from counsel to Sears Canada Inc. which enclosed some of the documentation that had been requested by FSCO in its letters to Sears Canada of November 6, 2015 and January 15, 2016.

We have the following comments:

1. Since the meeting at your office on September 11, 2015 with our clients and Sears Canada representatives, it has been reported that the financial situation for Sears Canada continues to deteriorate. The members of the Sears Canada Plan are gravely worried that Sears Canada and its ultimate corporate parent, Sears Holdings Inc., will both fail¹, and that the Sears Canada Plan will be wound up in an underfunded state resulting in reductions to monthly pension benefits. Accordingly, we request copies of all the documentation provided to your office by Sears Canada. Please provide those to us at your earliest convenience.
2. We note that Sears Canada has not provided all the information requested by FSCO in its letters of November 6, 2015 and January 15, 2016. In particular, in addition to the documents requested above, our clients require the documents that had been requested in paragraphs 1, 2 and 3 of the FSCO letter dated November 6, 2015, i.e., the Financial Information, an Actuarial Valuation Report as at September 30, 2015, and the other requested pension plan documentation.

¹ See, for example, the enclosed article, *Sears Holdings: Retailing's Headless Horseman*, Forbes, February 29, 2016

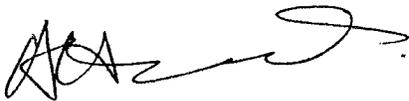
3. We request to be present at any meetings between Sears Canada representatives and FSCO. The issues we have raised with FSCO and Sears Canada in prior correspondence and at the meeting of September 11, 2015 pertain to the provision of our clients' earned pension benefits, and it is appropriate and fair that they be part of any discussions with FSCO and Sears Canada that pertain directly or indirectly to their pension benefits.
4. We request a meeting with FSCO and Sears Canada to discuss next steps. The last such meeting took place several months ago on September 11, 2015. Sears Canada continues to financially deteriorate and is not restructuring, and the risk of pension benefit (and other) losses to our clients continues to increase.

We ask that you schedule a meeting at your earliest convenience.

We look forward to hearing from you.

Yours truly,

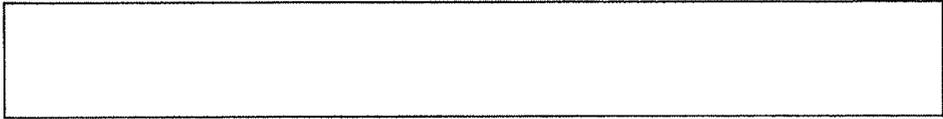
KOSKIE MINSKY LLP



Andrew J. Hatnay
AJH:vdI

cc. SCRG
Mitch Frazer, *Torys LLP*
Mark Zigler, Barbara Walancik, *Koskie Minsky LLP*

KM-2079704v2



Mark CohenContributor

I cover retail through the lens of a CEO.

Opinions expressed by Forbes Contributors are their own.

RETAIL 2/29/2016 @ 7:00AM | 1,686 views

Sears Holdings: Retailing's Headless Horseman

Like the Headless Horseman of myth, Sears Holdings rides aimlessly through the night desperately looking for its missing body part. Unfortunately Sears' head, long gone, will never be found.

As a result, we should all stop talking about this Eddie Lampert driven travesty and begin to focus on why this tragedy occurred and how the retail landscape will change when Sears Holdings disappears. The hard and cold reality is that Sears Holdings will disappear. The only question yet to be answered is when.

The dirty little secret behind Eddie Lampert's self described transformational strategy is that there never was one, there certainly isn't one now, and there won't be one anytime soon. The coffin nails that came into view the day Alan Lacy became CEO of Sears Roebuck in 2000 have been pounded in ever since by Lampert, who took control of the company with Lacy's help in 2005 and combined it with Kmart.



Alan J. Lacy, vice chairman and CEO of Sears Holdings; Edward S. Lampert, chairman, Sears Holdings; and Aylwin B. Lewis, president of Sears Holdings and CEO of Kmart and Sears Retail, answers following

approval of the merger of Sears, Roebuck and Co. and Kmart Holding Corporation by shareholders of both companies March 24, 2005, in Hoffman Estates, Illinois. (Photo by PRNewsFoto via Getty Images)

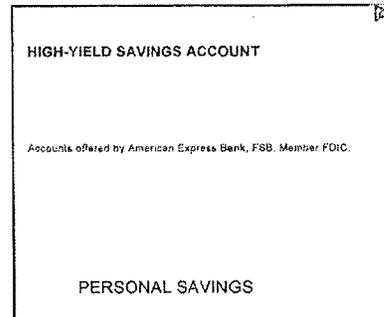
Lampert would like us to believe that he and Sears Holdings are being treated unfairly. That he and his company's strategy are misunderstood. That Amazon and Tesla and Uber are being given undue credit and support from the investment community because, after all, like Sears Holdings, they too are operating at a loss. Really? You think you belong in the same conversation as these companies?

Sorry Eddie, your complaints and the analogies you cite are pathetically inadequate. You took control of a viable retail enterprise, and in the process of turning it into a private ATM machine, you have destroyed it. The new companies you mention in your most recent investment letter are investing cash to build out their business, not harvesting and withdrawing that cash as you have done at Sears Holdings since you took control. Further, legacy companies, like yours, in the process of transformation, reinvest in themselves and in their future. They don't repeatedly dividend out the proceeds of asset sales for the purpose of lining the pockets of shareholders.

Question: What could the Sears Roebuck Board of Directors have been thinking when, in 2005, they handed the company over to a hedge fund operator? Answer: They had no earthly idea what they were doing. Maybe they were just trying to rid themselves of their feckless CEO, Alan Lacy?

It's now evident, that by the time the Sears Holdings coffin is lowered into the ground, the box will be almost empty. Lampert's mismanaged initiatives have amounted to nothing more than a long running sell off of the company's valuable body parts. First, to enrich himself, and then, more recently, to keep the enterprise alive. Valuable real estate – mostly gone. Intellectual property rights to Kenmore, Craftsman and Die Hard – gone. Free cash flow generated from normal ongoing operations, long gone. Cash flow, when there was any, reinvested in derivatives, rather than stores, people, products and marketing.

Whereas Alan Lacy had no clue how to manage Sears Roebuck's performance, or, to position the company for the future, Lampert's tenure falls into a category all by itself. Whether grossly incompetent, disingenuous, delusional or intellectually deficient, who knows? Read his



shareholder letters and try to find a scintilla of realistic or rational thinking in what he has written and you come up completely short. Try to connect what he has written with real performance? Not possible.

Question: If you are one of the few who have aligned yourself with Lampert's various investment theses over the past 11 years, what investment returns will you have earned? Answer: Maybe nothing. Think the remaining Sears Holdings real estate portfolio has significant value? Think again. Are there any buyers out there willing to pay a premium for large numbers of tired outmoded and poorly located stores? I don't think so.

Was this insidious liquidation of a \$50 billion company Eddie Lampert's plan all along? We may never know. There is some evidence to suggest that, at the outset, he actually expected to run this company as a legitimate retailer, albeit, in his own unorthodox way. If that's true, his strategy didn't work and didn't last very long. We may discover, when all is said and done, that this unwarranted, disruptive and destructive saga will be revealed as a failed investment play. That Lampert, himself, will have lost a fortune in all of this – not just in opportunity losses, but in hard dollars as well.

Lampert is leading the company into its final hours. He and his hired gun PR team have no credible explanation to offer to the contrary. Is there anyone out there looking to stick up for him? Not customers. Not employees. Not investors. Not suppliers. No one. Even members of the business media, who in the past have attempted to describe Lampert and the company's behavior in a positive light, have disappeared. How could they not?

Just a few years ago, Lampert was heralded as the next Warren Buffett. Nothing could be further from the truth. Warren Buffett's success has come from careful investments in companies and their management teams with an intent to aid and abet those company's ongoing success and growth. Any comparison between Warren Buffett and Eddie Lampert is complete nonsense.

Most legitimately managed retailers have by now reported their 2015 fall and holiday performance. They have revealed their shortfalls in sales and profits to expectations and in some cases to the

prior year. Lampert is trying to use those poor peer results, as air cover to hide his own ongoing and catastrophic losses. He has fooled no one.

Sears Holdings eventual demise will bring with it the closure of almost 2000 mall and off mall stores. Though some locations may be successfully repurposed by either Lampert's Seritage Real Estate Trust, or other involved landlords, most may very well go dark and stay dark. Coupled with store closings at Macy's, JC Penney, other mall anchors and specialty tenants, Sears' closures may signal the eventual death rattle of many of the B, C and D level malls throughout the US.

The major appliance market share that Sears still holds, though drastically diminished under Lampert's watch, will become a significant windfall for Home Depot, Lowe's, Best Buy, and super regionals such as H.H. Gregg and P.C. Richards. JC Penney's ill advised attempt to re enter this business will not succeed in my opinion, but they will continue to benefit from the ongoing and now near complete collapse of Sears' apparel, accessories, footwear, housewares and soft home businesses. Kohl's will benefit in that regard as well. Sears' hardware and lawn and garden businesses will be an ongoing source of opportunity for DIY and discount retailers, both national, regional and local. Walmart and Target, along with various dollar stores will also see market share opportunities coming to them when Kmart ceases to exist.

I have heard various pundits and so-called industry experts say that the collapse of Sears was inevitable. That's nonsense. Sears' failure is a catastrophic failure of governance and leadership. The customer hasn't walked away because Sears and Kmart were no longer brands they wanted to be associated with. They've walked away because Sears and Kmart have been grossly incapable of satisfying their needs and wants.

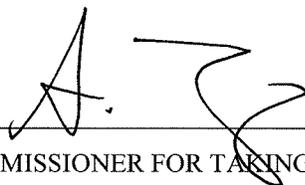
It's time for us to stop looking for the Headless Horseman's head, and, instead, start picking out his headstone.

RECOMMENDED BY FORBES

[The World's Highest-Paid Actors 2015](#)

This is **Exhibit "U"**

referred to in the Affidavit of William Turner
sworn before me this 11th day of August, 2017.

A handwritten signature in black ink, consisting of a large, stylized 'A' followed by a series of loops and a horizontal line extending to the right.

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

From: Andrew J. Hatnay
Sent: March-10-16 10:28 AM
To: Gino Marandola
Cc: Ken Eady; Barbara Walancik
Subject: Sears Canada - FSCO meeting with Sears Canada re partial plan wind-up

Gino, we have spoken with our clients with respect to your request that FSCO proceed with a meeting with Sears Canada and its advisers at this time without our clients present, in order to raise the issue of a partial plan wind up being ordered by FSCO and possible settlement discussions.

Our clients can agree to such a meeting with two provisos.

First, if any funding or other settlement is discussed with Sears Canada at the meeting, our clients will have the ability to review, provide input, and approve any settlement or other arrangement before it is finalized.

Second, we request that the meeting occur within the next ten business days. As you know, the last meeting with FSCO, Sears Canada, and our clients took place on September 11, 2015. We are concerned with the delays caused by Sears Canada in its response times to the information requests since that meeting. Sears Canada's business is failing and we believe there is a high possibility that it could enter insolvency proceedings at any time and without notice. Accordingly, please convene the meeting occur as soon as possible.

Finally, we would like copies of all the documentation provided by Sears Canada, as indicated in our last letter.

Thank you for your attention to this matter.

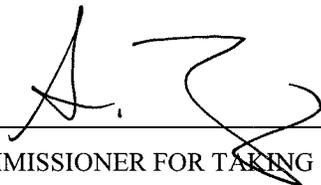
Regards,
AJH

Sent from my BlackBerry 10 smartphone on the Rogers network.

This is **Exhibit "V"**

referred to in the Affidavit of William Turner

sworn before me this 11th day of August, 2017.

A handwritten signature in black ink, consisting of a large, stylized 'A' followed by a series of loops and a final flourish.

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

KOSKIE MINSKY

OF ATTORNEYS

September 12, 2016

Via Email

Andrew J. Hatnay
Direct Dial: 416-595-2083
Direct Fax: 416-204-2872
ahatnay@kmlaw.ca

Financial Services Commission of Ontario
5160 Yonge Street, P.O. Box 85
Toronto, ON M2N 6L9

Attention: Gino Marandola, Director, Pension Plans Branch (Interim)

Dear Mr. Marandola:

**Re: Store and Catalogue Retiree Group ("SCRG")
The Sears Canada Inc. Registered Retirement Plan, Registration Number 360065
("Sears Canada Plan")**

We are writing further to our discussions and the discussions you have had with our client, Ken Eady of SCRG.

As you know, our clients are gravely concerned that Sears Canada's retail business is failing and that the company is insolvent. We have provided you in the past with numerous media reports and memoranda prepared by our clients setting out the deteriorating financial situation at Sears Canada which continues to this day. Last week, Sears Canada released its quarterly results for the second quarter ending July 31, 2016 reporting that total retail revenues have fallen by a further 15.6%. That loss is on top of the \$1 billion in operating losses that Sears has reported over the past five years.

The evidence is overwhelming that Sears Canada will not survive as a retailer. We believe that it is only a matter of time before it seeks protection from its creditors in an insolvency proceeding.

The Sears Canada Plan remains underfunded, and as we have articulated to your office on many occasions and as you are aware, in the event the plan is wound up in its underfunded state in an insolvency proceeding, there is a high likelihood that pension benefit losses will be imposed on elderly retirees.

In the circumstances, and considering the duty of a pension plan administrator to act in the best interest of pension plan members, our clients requested several months ago that the Sears Canada Plan be wound up. As your office is aware, we have communicated this request to Sears. Sears is opposed to winding up the plan because of the crystallization of wind up liability that Sears Canada wishes to avoid paying. A wind up of the plan is also expected to generate a significant PBGF payment obligation. Nevertheless, in the context of Sears Canada's financial situation, our

clients position is that the wind up of the plan is both highly appropriate and legally necessary for the protection of the plan members' earned pension benefits, which are their deferred wages.

You will recall that we attended a meeting at your office with Sears Canada representatives on September 11, 2015, which is now over a year ago. At that time we put forward the wind up demand. We are aware that your office has engaged in discussions with Sears Canada flowing from the wind up demand. Our clients have been prepared to engage Sears to see if a satisfactory arrangement can be achieved which would involve the company making additional contribution(s) to the pension plan at this time. However, our clients are now very concerned that the discussions with Sears Canada over the past several months have not produced any tangible or credible proposal by Sears Canada. Instead, Sears Canada's conduct has been to take inappropriately long periods of time to respond, cancel or reschedule meetings, and only respond after numerous follow ups. This in our view reveals a deliberate plan to stall and delay dealing with the pension plan and the wind up demand. A recent example of another delay is the meeting that had been scheduled between your office and Sears Canada for September 7, 2016, which Sears abruptly rescheduled to September 28, 2016.

There are numerous other instances of delay and obfuscation by Sears Canada in the course of our dealings with the company over the past 24 months. We do not believe that Sears Canada is dealing with us, nor FSCO, in good faith and is instead orchestrating a series of delays in order to avoid dealing with the underfunded pension plan, its insolvency, and evade a wind up order.

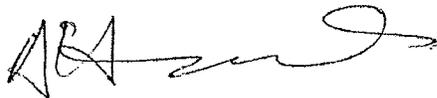
Accordingly, we request that the Superintendent proceed with the issuance of a Notice of Proposal to Wind Up the Sears Canada Plan under section 69 of the PBA. We have discussed the various categories in that section that we say apply, and we believe there is no debate with respect to the applicability of section 69(1)(g), which we understand FSCO is also considering for other pension plans situations.

We appreciate the efforts of your office over the past months. However, as set out herein, we do not believe that Sears Canada is dealing in good faith. Accordingly, our clients wish to press forward with the wind up of the Sears Canada Plan as soon as possible.

We look forward to hearing from you.

Yours truly,

KOSKIE MINSKY LLP

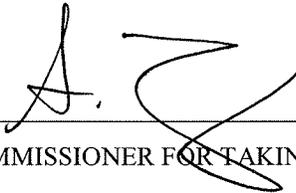


Andrew J. Hatnay
AJH:vdl

cc. SCRG
Mark Zigler, Barbara Walancik, *Koskie Minsky LLP*

This is **Exhibit "W"**

referred to in the Affidavit of William Turner
sworn before me this 11th day of August, 2017.

A handwritten signature in black ink, consisting of a large, stylized 'A' followed by a series of loops and a long horizontal stroke.

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

**KOSKIE
MINSKY**
JUSTICE MATTERS

October 20, 2016

Via Email

Andrew J. Hatnay
Direct Dial: 416-595-2083
Direct Fax: 416-204-2872
ahatnay@kmlaw.ca

Financial Services Commission of Ontario
5160 Yonge Street, P.O. Box 85
Toronto, ON M2N 6L9

Attention: Gino Marandola, Director, Pension Plans Branch (Interim)

Dear Mr. Marandola:

**Re: Store and Catalogue Retiree Group ("SCRG")
The Sears Canada Inc. Registered Retirement Plan, Registration Number 360065
("Sears Canada Plan")**

We are writing further to our letter of September 12, 2016 and your subsequent discussions with our client, Ken Eady of SCRG.

Our clients are increasingly concerned about Sears Canada's delays and lack of good faith in addressing the underfunded Sears Canada Plan as their retail business continues to deteriorate. They are particularly concerned about Sears Canada's failure to deliver a proposal for additional funding for the Sears Canada Plan that they undertook to provide several months ago.

Our clients request a meeting with FSCO prior to any further meetings or discussions with Sears Canada so that they can obtain an understanding of the status of the discussions about the proposal that was promised by Sears and any other relevant information that impacts the provision and security of their earned pension benefits. To be clear, our clients need to be closely involved and part of any future discussions or negotiations between FSCO and Sears Canada.

Our clients maintain their request to FSCO that the Sears Canada Plan should be ordered to be wound up by the Superintendent at this time. The wind up is growing more urgent given the steady deterioration of Sears Canada's retail business and its worsening financial situation, which we have explained in prior correspondence. The strong potential for pension losses that is facing the members of Sears Canada Plan is compounded by Sears Canada's lack of good faith in its dealings with our clients.

Page 2

Please let us know if you are able to meet in the week of October 31, 2016 at your earliest convenience.

Thank you for your attention to this matter.

Yours truly,

KOSKIE MINSKY LLP

A handwritten signature in black ink, appearing to read "Andrew J. Hatnay". The signature is stylized with a large initial "A" and a long, sweeping underline.

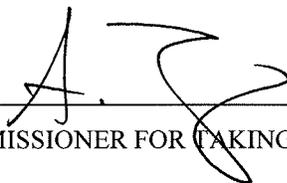
Andrew J. Hatnay
AJH/vd;

cc. SCRG
Mark Zigler, Barbara Walancik, *Koskie Minsky LLP*

KM-2400154v1

This is **Exhibit "X"**

referred to in the Affidavit of William Turner
sworn before me this 11th day of August, 2017.

A handwritten signature in black ink, consisting of a large, stylized 'A' followed by a series of loops and a long horizontal stroke extending to the right.

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

KOSKIE MINSKY

May 19, 2017

Via Email and Mail

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

Andrew J. Hatnay
Direct Dial: 416-595-2083
Direct Fax: 416-204-2872
ahatnay@kmlaw.ca

Dear Mr. Wasserman:

**Re: Store and Catalogue Retiree Group ("SCRG")
The Sears Canada Inc. Registered Retirement Plan, Registration Number 0360065
("Sears Canada Plan")**

As you are aware, we represent SCRG, an organization comprised of over 6,000 retirees of Sears Canada Inc. ("**Sears Canada**") who have performed work and earned entitlements to pension benefits from Sears Canada.

We understand that in addition to its on-going retainer of Torys, Sears Canada has recently retained Osler as "insolvency counsel" with respect to the possibility of the company filing for protection from its creditors under the *Companies' Creditors Arrangement Act* ("CCAA") or another insolvency process. In the event the company proceeds in that direction, we hereby request that the company wind up the Sears Canada Plan prior to it applying for CCAA protection or becoming involved in any other insolvency proceeding.

As you and the company are aware, the Sears Canada Plan is underfunded. If the plan is wound up in its underfunded state, it will result in losses to the monthly pension benefits being paid to the retirees. A large number of the Sears retirees receive modest pension benefits the receipt of which they rely for their daily livelihoods. Any losses to such benefits have a material and prejudicial impact on the retirees' standard of living, and create hardships for them and their families.

We are also requesting that you contact us to make arrangements for the court appointment of suitable individuals from SCRG to be the representatives of all retirees of Sears Canada in any insolvency proceeding, our firm as Representative Counsel to the retirees, and that the legal costs of the retirees be paid by the company, and that these arrangements be put in place and confirmed prior to any insolvency filing.

**KOSKIE
MINSKY**

Page 2

The pension plan beneficiaries have statutory deemed trust priorities in their favour under the Ontario *Pension Benefits Act* (PBA) and the Ontario *Personal Property Security Act* (PPSA) for amounts owing to the Sears Canada Plan with respect to going-concern payments, special payments, and wind up payments, which they intend to advance for first priority recovery in any insolvency proceeding involving Sears Canada.

The law is well-established that Sears Canada, as the administrator of the Sears Canada Plan, owes fiduciary duties under both the PBA and the common law to act in the best interests of the pension plan members. This duty includes that Sears Canada, and its directors and officers, take all steps to protect the pension plan members from pension benefit losses.

As we expect you are aware, there has been some debate over whether the PBA wind-up deemed trust remains effective if the pension plan wind-up occurs after the issuance of a CCAA initial court order. In order to protect the pension plan members in the context of Sears Canada's contemplation of a CCAA application or other insolvency proceeding, and to avoid any debate over the significance, if any, of the "timing" of the wind up that could be prejudicial to the pension plan members, we direct Sears Canada to ensure that the Sears Canada Plan be wound up prior to any CCAA or other insolvency filing.

We are required to put Sears Canada, its directors, and its officers on notice that the failure to wind up the Sears Canada Plan, and any resulting loss of priority recovery for the pension plan members in a CCAA or other proceeding, will lead to claims for damages against Sears Canada directors and officers in their personal capacities for any losses suffered by the pension plan members and beneficiaries.

If you do not represent the Sears Canada directors and officers, please advise and we will send a copy of this letter to them directly.

If you wish to discuss this further, please do not hesitate to contact the undersigned.

Yours truly,

KOSKIE MINSKY LLP

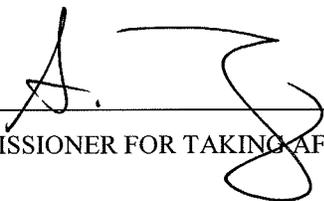


Andrew J. Hatnay
AJH/vdl

cc. Mitch Frazer, *Torys LLP*
Clients
Amy Tang, *Koskie Minsky LLP*

This is **Exhibit "Y"**

referred to in the Affidavit of William Turner
sworn before me this 11th day of August, 2017.

A handwritten signature in black ink, consisting of a stylized 'A' followed by a large, looping flourish.

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

OSLER

Toronto
Montréal
Calgary
Ottawa
Vancouver
New York

June 5, 2017

Marc S. Wasserman
Direct Dial: 416.862.4908
MWasserman@osler.com
Our Matter Number: 1179649

Confidential

Sent By Electronic Mail

Andrew Hatnay
Koskie Minsky LLP
Suite 900
20 Queen Street West
Toronto, ON M5H 3R3

Dear Mr. Hatnay:

**Re: Store and Catalogue Retiree Group (“SCRG”)
The Sears Canada Inc. Registered Retirement Plan, Registration No. 0360065 (the
“Plan”)**

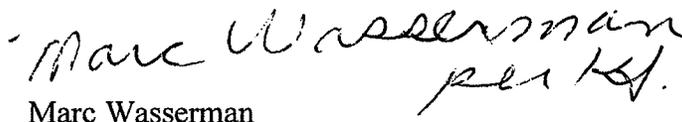
Thank you for your letter of May 19, 2017.

As you know, the Plan is a combination defined benefit and defined contribution plan that provides benefits to active employees of Sears Canada Inc. (the “Company”) as well as to pensioners and those with a deferred vested pension entitlement.

Any decision by the employer to wind-up a pension plan impacts all plan members, not just retirees. The Company is also conscious of the obligations of pension plan administrators to all pension plan members (including active plan members and retirees) whether the plan is an ongoing plan or a wound-up plan.

The Company appreciates you drawing attention to the concerns of retirees under the Plan. We look forward to discussing these matters with you in the near term.

Yours very truly,


Marc Wasserman

MSW:krs

c: M. Frazer, Torys LLP

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

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

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

Proceeding commenced at TORONTO

**AFFIDAVIT OF WILLIAM TURNER
(SWORN ON AUGUST 11, 2017)**

KOSKIE MINSKY LLP

20 Queen Street West, Suite 900, Box 52
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Email: mzigler@kmlaw.ca

Representative Counsel for the Non-Unionized
Retirees and Non-Unionized Active and Former
Employees of the Sears Canada Entities **674**

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

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SEARS CANADA INC., 9370-2751 QUEBEC INC., 191020 CANADA INC., THE CUT INC., SEARS CONTACT SERVICES INC., INITIUM LOGISTICS SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM TRADING AND SOURCING CORP., SEARS FLOOR COVERING CENTRES INC., 173470 CANADA INC., 2497089 ONTARIO INC., 6988741 CANADA INC., 10011711 CANADA INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA LTD., 4201531 CANADA INC., 168886 CANADA INC., AND 3339611 CANADA INC.

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

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

Proceeding commenced at Toronto

MOTION RECORD

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Representative Counsel for the Retirees of
Sears Canada