

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

**SEARS CANADA INC.,
AND RELATED APPLICANTS**

TWENTY-EIGHTH REPORT OF FTI CONSULTING CANADA INC., AS MONITOR

November 27, 2018

Contents

Section	Page
A. INTRODUCTION.....	2
B. PURPOSE	5
C. TERMS OF REFERENCE.....	6
D. UPDATE ON CCAA PROCEEDINGS AND REMAINING MATTERS TO BE RESOLVED	7
E. RECEIPTS AND DISBURSEMENTS FOR THE TWELVE-WEEK PERIOD ENDING NOVEMBER 24, 2018.....	14
F. REVISED CASH FLOW FORECAST FOR THE PERIOD ENDING MAY 4, 2019	17
G. GOVERNANCE PROTOCOL	20
H. STAY EXTENSION AND NORD EXTENSION.....	24
I. SEARS HOLDINGS CORPORATION.....	26

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 QUÉBEC INC., 191020 CANADA INC., THE CUT INC.,
SEARS CONTACT SERVICES INC., INITIUM LOGISTICS SERVICES INC., INITIUM
COMMERCE LABS INC., INITIUM TRADING AND SOURCING CORP., SEARS FLOOR
COVERING CENTRES INC., 173470 CANADA INC., 2497089 ONTARIO INC., 6988741
CANADA INC., 10011711 CANADA INC., 1592580 ONTARIO LIMITED, 955041
ALBERTA LTD., 4201531 CANADA INC., 168886 CANADA INC. AND
3339611 CANADA INC.

APPLICANTS

**TWENTY EIGHTH REPORT TO THE COURT
SUBMITTED BY FTI CONSULTING CANADA INC.,
IN ITS CAPACITY AS MONITOR**

A. INTRODUCTION

1. On June 22, 2017, Sears Canada Inc. ("**Sears Canada**") and a number of its operating subsidiaries (collectively, with Sears Canada, the "**Applicants**") sought and obtained an initial order (as amended and restated on July 13, 2017, the "**Initial Order**"), under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"). The relief granted pursuant to the Initial Order was also extended to Sears Connect, a partnership forming part of the operations of the Applicants (and together with the Applicants, the "**Sears Canada Entities**"). The proceedings commenced under the CCAA by the Applicants are referred to herein as the "**CCAA Proceedings**".
2. The Initial Order, among other things:

- (a) appointed FTI Consulting Canada Inc. as monitor of the Sears Canada Entities (the “**Monitor**”) in the CCAA Proceedings;
 - (b) granted an initial stay of proceedings against the Sears Canada Entities until July 22, 2017; and
 - (c) scheduled a comeback motion for July 13, 2017 (the “**Comeback Motion**”).
3. Following the Comeback Motion, the Court extended the Stay Period to October 4, 2017. In addition, the following orders were issued:
- (a) the amended and restated Initial Order;
 - (b) an order setting out the terms of the appointment of Ursel Phillips Fellows Hopkinson LLP as representative counsel for the non-unionized active and former employees of the Sears Canada Entities (“**Employee Representative Counsel**”);
 - (c) an order setting out the terms of the appointment of Koskie Minsky LLP as representative counsel to the non-unionized retirees and non-unionized active and former employees of the Sears Canada Entities with respect to pension and post-employment benefit matters (“**Pension Representative Counsel**”);
 - (d) an order authorizing the eventual suspension of special payments under the Sears Canada Pension Plan, certain payments in connection with supplemental pension plans and certain payments under post-retirement benefit plans pursuant to a term sheet agreed to by the Ontario Superintendent of Financial Services, as Administrator of the Pension Benefits Guarantee Fund (the “**Superintendent**”), Employee Representative Counsel, Pension Representative Counsel, each of their respective representatives, and the Sears Canada Entities; and
 - (e) an order approving a sale and investor solicitation process (the “**SISP**”) to solicit interest in potential transactions, including investment and liquidation proposals, involving the business, property, assets and/or leases of the Applicants.

4. On July 18, 2017, the Court issued an order approving an agreement and a process for the liquidation of inventory and FF&E at certain initial closing Sears Canada locations, which liquidation process was completed earlier in these proceedings.
5. On October 13, 2017, the Court issued, among other orders, an order approving an agreement and a process for the liquidation of the inventory and FF&E at all remaining Sears Canada retail locations, which liquidation commenced shortly thereafter and was completed earlier this year.
6. On December 8, 2017, the Court issued an Order (the “**Claims Procedure Order**”) approving a claims process for the identification, determination and adjudication of claims of creditors against the Sears Canada Entities and their Officers and Directors.
7. On February 22, 2018, the Court issued an Employee and Retiree Claims Procedure Order (the “**E&R Claims Procedure Order**” and, together with the Claims Procedure Order, the “**Claims Procedure Orders**”) approving a process for the identification, determination and adjudication of claims of employees and retirees of the Sears Canada Entities.
8. On March 2, 2018, the Court issued an Order appointing Lax O’Sullivan Lisus Gottlieb LLP as Litigation Investigator (as amended on April 26, 2018, the “**Litigation Investigator Order**”), with a mandate to identify and report on certain rights and claims that the Sears Canada Entities and/or any creditors of the Sears Canada Entities may have against any parties.
9. The liquidation of assets at Sears Canada’s retail locations is now completed, all retail locations are closed, and leases in respect of such locations have been disclaimed or surrendered back to the landlord.
10. The only material assets of Sears Canada, other than possible litigation-related assets, that have not been sold or are not subject to a binding sale agreement are the real property assets located in Barrie, Ontario and Sainte-Agathe, Québec.

11. Since the date of the Comeback Motion, the stay period has been extended a number of times and currently expires on December 18, 2018.
12. In connection with the CCAA Proceedings, the Monitor has provided twenty-seven reports and nineteen supplemental reports (collectively, the “**Prior Reports**”), and prior to its appointment as Monitor, FTI also provided to this Court a pre-filing report of the proposed Monitor dated June 22, 2017 (the “**Pre-Filing Report**”). The Pre-Filing Report, the Prior Reports and other Court-filed documents and notices in these CCAA Proceedings are available on the Monitor’s website at cfcanada.fticonsulting.com/searscanada/ (the “**Monitor's Website**”).

B. PURPOSE

13. The purpose of this twenty-eighth report of the Monitor (the “**Twenty-Eighth Report**”) is to provide the Court with information regarding:
 - (a) developments in the CCAA Proceedings since the date of the Monitor’s Twenty First Report to the Court dated July 20, 2018 (the “**Twenty-First Report**”);
 - (b) the Monitor’s request for an order establishing a governance protocol for the Sears Canada Entities (the “**Governance Protocol**”) that would be implemented to facilitate the efficient completion of these proceedings;
 - (c) the Monitor’s request for an order (the “**Stay Extension Order**”) extending the Stay Period to May 2, 2019 and extending the Application Period for the Employee Hardship fund to May 2, 2019;
 - (d) the Monitor’s request for an order (the “**NORD Extension Order**”) extending the date by which Notices of Revision or Disallowance must be delivered in connection with D&O Claims or indemnity claims filed by Directors and Officers until March 1, 2019; and
 - (e) the Monitor’s comments and recommendations in connection with the foregoing.

C. TERMS OF REFERENCE

14. In preparing this Twenty-Eighth Report, the Monitor has relied upon audited and unaudited financial information of the Sears Canada Entities, the Sears Canada Entities' books and records, certain financial information and forecasts prepared by the Sears Canada Entities and discussions and correspondence with, among others, the senior management (“**Management**”) of, and advisors to, the Sears Canada Entities (collectively, the “**Information**”).
15. Except as otherwise described in this Twenty-Eighth Report:
 - (a) the Monitor has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the *Chartered Professional Accountants of Canada Handbook*; and
 - (b) the Monitor has not examined or reviewed the financial forecasts or projections referred to in this Twenty-Eighth Report in a manner that would comply with the procedures described in the *Chartered Professional Accountants of Canada Handbook*.
16. Future-oriented financial information reported in or relied on in preparing this Twenty-Eighth Report is based on Management's assumptions regarding future events. Actual results will vary from these forecasts and such variations may be material.
17. The Monitor has prepared this Twenty-Eighth Report in connection with the Monitor's motion for the approval of the Governance Protocol, the Stay Extension Order and the NORD Extension Order. The Twenty-Eighth Report should not be relied on for any other purpose.
18. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars.
19. Capitalized terms not otherwise defined herein have the meanings ascribed to them in the following documents filed as part of the CCAA Proceedings: (i) the affidavits of Mr.

Billy Wong, the former Chief Financial Officer of Sears Canada; (ii) the affidavit of Ms. Becky Penrice, the former Executive Vice-President and Chief Operating Officer of Sears Canada; (iii) the affidavits of Mr. Philip Mohtadi, General Counsel and Corporate Secretary of Sears Canada; and (iv) the Prior Reports.

D. UPDATE ON CCAA PROCEEDINGS AND REMAINING MATTERS TO BE RESOLVED

20. Significant progress has been made toward the completion of these CCAA Proceedings since the last extension of the Stay Period.

21. The material remaining matters to be finalized are:

(a) the resolution of certain outstanding disputed claims against the Applicants filed pursuant to the Claims Procedure Orders or otherwise¹ (the “**Claims Resolution Process**”);

(b) the disposition of the remaining owned real estate assets (the “**Real Estate Process**”);

(c) the distribution of proceeds of the estates of the Sears Canada Entities (the “**Distribution Process**”); and

(d) subject to court approval, the pursuit of litigation assets as recommended by the Monitor and the Litigation Investigator in accordance with its mandate under the Litigation Investigator Order for the benefit of the estates of the Sears Canada Entities (the “**Litigation Process**”),

(collectively, the “**Remaining Matters**”).

22. An update on each of these matters follows.

¹ One matter is proceeding at the Environmental Appeals Board (Alberta).

Claims Resolution Process

23. As noted in the Twenty-Second Report of the Monitor, the Monitor received nearly 3,000 proofs of claim in connection with the Claims Procedure Orders.
24. The Monitor, in consultation with the Sears Canada Entities, has conducted a review of all claims filed and, where appropriate, has issued Notices of Revision or Disallowance in respect of such claims.
25. Significant progress has been made toward resolution of the vast majority of disputed claims, including some of the most material disputed claims in the estate, being those filed by the majority of landlords and those filed in respect of the wind-up deficit in the defined benefit component of the Sears Canada Pension Plan.
26. The Monitor has commenced steps to bring claims that cannot be resolved by agreement to the Honourable Mr. James Farley, Q.C., one of the two claims officers appointed pursuant to the Claims Procedure Order.
27. As described in prior reports to the Court, a mediation process (the “**Mediation**”), which was approved by the Court on May 9, 2018, was initiated to attempt to facilitate agreement on a resolution of these claims and other significant claims in these proceedings. The Mediation commenced on June 13, 2018 and has continued thereafter with Regional Senior Justice Morawetz acting as mediator.
28. The Monitor has reached an agreement with landlords representing 77% of all claims filed by landlords on a formula for the valuation of claims filed by landlords, excluding environmental claims and D&O Claims. The Monitor, with the assistance of Justice Morawetz, continues to engage with certain remaining landlords to either resolve their claims consensually or to have those claims determined as soon as possible in accordance with the Claims Procedure Order.
29. An agreement has recently been reached with Morneau Shepell Ltd., as administrator of the Sears Canada Pension Plan, the Superintendent, and Pension Representative Counsel on the terms of a resolution of the priority and quantum of the claim for the wind-up

deficiency under the defined benefit component of the Sears Canada Pension Plan (the “**Pension Resolution**”). The Pension Resolution is set out in a Pension Support Agreement entered into on October 18, 2018. A copy of the Pension Support Agreement is attached hereto as **Appendix “A”**.

30. Pursuant to the Pension Resolution, and subject to the terms and conditions set out therein, the parties agree to support a plan for the distribution of proceeds from the Sears Canada Entities’ estates in which the claim for the wind-up deficiency under the defined benefit component of the Sears Canada Pension Plan would be allowed as an unsecured claim for distribution purposes valued at 2.5 times the value of the deficiency claim as filed in the claims process (approximately \$26 million against 191020 Canada Inc. (formerly S.L.H. Transport Inc.) and approximately \$624.5 million against Sears Canada Inc.). The parties agree that no portion of the wind-up deficiency claim would be entitled to priority recovery and that there would be no joint and several liability among any of the Sears Canada Entities for the wind-up deficiency claim. The Pension Resolution is subject to a number of conditions, including (i) confirmation of specified levels of support from landlord creditors, which support has now been confirmed, (ii) confirmation that assets distributable to unsecured creditors satisfy a minimum threshold and claims of unsecured creditors² do not exceed a maximum threshold; and (iii) implementation of a plan to distribute proceeds of the Sears Canada Entities’ estates by April 30, 2019.
31. As a result of the Pension Resolution, the motion regarding any deemed trust priority applicable to the wind-up deficiency and any joint and several liability among Sears Canada Entities for the wind-up deficiency, as well as the motion to lift the stay of proceedings to commence a bankruptcy application for Sears Canada, have been adjourned *sine die*.
32. The resolutions of a substantial majority of the landlord claims and the Pension Resolution are significant, steps toward the completion of these proceedings.

² excluding the wind-up deficiency claim, director and officer indemnification claims, and other litigation-related indemnity claims.

33. The Monitor continues to work to resolve the remaining claims in the estates, including in particular, the outstanding landlord claims noted above and class action litigation claims that must be resolved so that the proposed plan contemplated by the Pension Resolution can proceed.

Real Estate Process

34. With the exception of remaining owned real properties located in Barrie, Ontario, and Sainte-Agathe, Québec, all of the real estate assets of Sears Canada have been sold.
35. Most recently, an appraisal and arbitration process in connection with the exercise of an option to purchase the Newmarket full-line store location, which was referred to in the Monitor's Twenty-First Report and is described in greater detail in the Sixth Supplement to the Monitor's Nineteenth Report, dated November 14, 2018, has been completed and the sale of the Newmarket full-line store location has now closed.
36. A real estate broker is currently engaged to market and sell the Sainte-Agathe property and a real estate broker will be engaged shortly to market and sell the Barrie property.

Litigation Process

37. As described in the Twenty-Seventh Report of the Monitor, dated November 5, 2018, and the First Report of the Litigation Investigator, also dated November 5, 2018, the Monitor and the Litigation Investigator recommend that certain claims be pursued in connection with dividends declared and paid by Sears Canada in 2013.
38. The Monitor believes these proposed claims may be a material estate asset.
39. The defendants in these proposed claims are: ESL Investments Inc. and certain of its affiliates, Edward S. Lampert, and certain former directors of Sears Canada at the time of the declaration and payment of the 2013 dividend.
40. The Monitor and the Litigation Investigator are currently seeking the Court's authorization to pursue these claims. The Monitor requests that it be authorized to pursue its claim, which is to be advanced pursuant to section 36.1 of the CCAA for the benefit of

the Sears Canada estate. The Litigation Investigator requests that additional claims be pursued on behalf of Sears Canada under the direction of a court-appointed Litigation Trustee. The motions seeking such authorization are scheduled to be heard on December 3, 2018.

Distribution Process

41. The Monitor is optimistic that the Pension Resolution and the resolution of other significant claims in the estate will provide a path toward a completion of these proceedings through a plan of compromise in which estate assets are distributed to creditors in accordance with their respective legal entitlements.
42. If remaining material claim issues can be resolved through the Claims Resolution Process described above, the Monitor believes that these proceedings can be completed quickly through a distribution process that is in all material respects determined by applicable law without further material commercial negotiations.

Other Updates

(a) Construction Lien Matters

43. As described in the Monitor's Twenty-First Report, the Claims Procedure Order established a specific procedure for the filing of claims of Construction Contractors and Construction Sub-Contractors.
44. Various Construction Contractors or Construction-Sub Contractors registered liens against owned or leased properties that were either sold, surrendered or assigned for cash proceeds to which such liens attached or for which reserves were established. The Monitor, in consultation with Sears Canada, has reconciled, resolved, and made distributions on account of all such valid or agreed claims in accordance with five separate orders granted by the Court.
45. As of the date of this Twenty-Eighth Report, the Monitor has paid approximately \$8.9 million to Construction Contractors (on their own behalf and on behalf of their Construction Sub-Contractors) in full and final settlement of 30 secured claims of

Construction Contractors (as well as the claims of their Construction Sub-Contractors). This process, in respect of properties that have been monetized to date, is now complete.

(b) Employee Matters

46. As of the date of this Twenty-Eighth Report, the Applicants have nine remaining employees.
47. On October 16, 2018, Employee Representative Counsel presented a motion to appoint FTI Consulting Canada Inc. (“**FTI**”) as receiver of certain specified bank accounts for limited purposes pursuant to Section 243(1) of the *Bankruptcy and Insolvency Act* (Canada) (the “**Receiver**”). The receivership proceedings would run concurrently with the CCAA Proceedings.
48. The Monitor understands that in order for employees to have access to payments under the Wage Earner Protection Program (“**WEPP**”), certain triggering events must have occurred, including the appointment of a Receiver, or the issuance of a bankruptcy order. Accordingly, Employee Representative Counsel wishes to rely on the appointment of a Receiver in order to give former employees of the Applicants access to the WEPP. Employee Representative Counsel has now obtained an Order approving the appointment of FTI as Receiver effective two business days following service of a prescribed form of certificate by FTI and Employee Representative Counsel. This certificate has not yet been served and, accordingly, FTI has not yet been appointed as Receiver. As set out in the Monitor’s Twenty-Sixth Report, the Monitor expects the certificate will be served either when certain amendments to the *Wage Earner Protection Program Act* (Canada) increasing the maximum amount of employee WEPP entitlements have come into effect or at such other earlier time as Employee Representative Counsel in consultation with the Monitor may determine having regard to the circumstances of the case and the expected timing of those amendments.
49. To date, the Monitor has received 91 applications for assistance from the Employee Hardship Fund, of which 65 have been approved. So far, approximately \$146,275 has been paid out of the Employee Hardship Fund. The time period for applications to the

Employee Hardship Fund currently expires on December 18, 2018. The Monitor believes the application period for the Employee Hardship Fund should be extended, consistent with the proposed extension of the Stay Period. Service Canada has advised it will reduce any payments made pursuant to the WEPP for any Employee Hardship Fund payments made after the effective date of the Receivership.

(c) Other Activities of the Monitor

50. The Monitor's principal activities since the Twenty-First Report, in addition to the items noted above, included the following:
- (a) monitored the Sears Canada Entities' receipts and disbursements and assisted with the preparation of its cash flow forecast;
 - (b) attended and continued Mediation with various stakeholders to reach an agreement of their outstanding claims;
 - (c) maintained the current Service List for the CCAA Proceedings and posted regular updates of the Service List to the Monitor's Website;
 - (d) worked with Employee Representative Counsel, Pension Representative Counsel and their advisors to respond to questions and provide information to their respective constituents;
 - (e) worked with the Sears Canada Entities to assist in appropriately accounting for pre-filing and post-filing obligations;
 - (f) attended numerous meetings and teleconferences with stakeholders, their counsel and advisors;
 - (g) planned and worked with the Sears Canada Entities to facilitate an orderly wind down of their operations;
 - (h) responded to requests by former employees for financial assistance under the Employee Hardship Fund;

- (i) worked with the Applicants and Employee Representative Counsel with respect to the Receivership Order including participating in multiple calls with Employee Representative Counsel and Service Canada to coordinate the implementation of the WEPP process;
- (j) overseen the sale of various real property assets and continued to coordinate the sale of the remaining real properties;
- (k) continued to operate and monitor its telephone hotline and email account for stakeholder inquiries and to respond to such inquiries;
- (l) continued its work in connection with the claims processes contemplated pursuant to the Claims Procedure Orders;
- (m) worked with senior management to determine appropriate and efficient current and future staffing levels;
- (n) engaged with stakeholders and counsel to the board of directors of Sears Canada in connection with the governance protocol described in greater detail below; and
- (o) responded to numerous information requests by stakeholders and their advisors.

E. RECEIPTS AND DISBURSEMENTS FOR THE TWELVE-WEEK PERIOD ENDING NOVEMBER 24, 2018

51. The Sears Canada Entities' actual net cash inflow on a consolidated basis for the twelve-week period ended November 24, 2018 was approximately \$36.6 million, compared to a forecast net cash outflow of \$8.8 million presented in the Monitor's Twenty-First Report dated July 20, 2018, resulting in a positive variance of approximately \$45.4 million as indicated in the table below:

VARIANCE REPORT	Actual	Forecast	Variance
(CAD in Millions)	For the 12 Week Period Ending November 24, 2018		
Receipts	43.4	-	43.4
Operating Disbursements			
Payroll and Employee Related Costs	(0.5)	(0.7)	0.2
Merchandise Vendors	0.6	-	0.6
Non-Merchandise Vendors	(1.0)	(2.0)	1.0
Rent and Property Taxes	(0.4)	(1.1)	0.7
Total Operating Disbursements	(1.4)	(3.8)	2.5
Net Operating Cash Inflows / (Outflows)	42.0	(3.8)	45.8
Professional Fees	(5.4)	(5.0)	(0.4)
Net Cash Inflows / (Outflows)	36.6	(8.8)	45.4
Cash			
Beginning Balance	158.4	133.1	25.3
Net Cash Inflows / (Outflows)	36.6	(8.8)	45.4
Ending Balance	194.9	124.3	70.6

52. Explanations for the key variances are as follows:

- (a) the positive permanent variance in receipts of \$43.4 million is primarily related to proceeds from the sale of owned real property and the receipt of tax refunds which were not reflected in the cash flow forecast due to uncertainty around the timing and amount of these proceeds;
- (b) the positive variance in Payroll disbursements of \$0.2 million is a permanent variance due to lower than forecast disbursements related to payroll and employee costs;
- (c) the positive variance in Merchandise Vendor disbursements of \$0.6 million is a permanent difference due to refunds and collections received from vendors which were not reflected in the cash flow forecast due to uncertainty of the amounts and timing of these refunds;

- (d) the positive variance in Non-Merchandise Vendor disbursements of \$1.0 million consists of a permanent difference of \$0.5 million due to refunds received from vendors and a timing difference of \$0.5 million that is expected to reverse in future forecast periods;
 - (e) the positive variance in Rent and Property Taxes of \$0.7 million is a permanent difference due to lower than forecast disbursements for common area maintenance and property taxes as a result of the sale of owned real property;
 - (f) the negative variance in Professional Fees of \$0.4 million consists of a negative permanent difference of \$1.0 million, primarily related to fees incurred in respect of the disputed sale of the Newmarket property including, preparing for litigation, court appearances and the subsequent arbitration regarding the Newmarket Property, which is partially offset by a positive timing difference of \$0.6 million that is expected to reverse in future forecast periods as outstanding invoices are paid.
53. The Sears Canada Group's cumulative receipts and disbursements since the commencement of the CCAA proceedings through the week ended November 24, 2018 are reflected in the table below:

CUMULATIVE RECEIPTS AND DISBURSEMENTS	
(CAD in Millions)	
For the 75 Week Period Ending November 24, 2018	
Receipts	1,340.0
Operating Disbursements	
Payroll and Employee Related Costs	(267.0)
Merchandise Vendors	(289.3)
Non-Merchandise Vendors	(176.9)
Rent and Property Taxes	(90.9)
Sales Taxes	(67.9)
Pension	(14.7)
IT Costs	(27.2)
Recovery of Expenses from Agent	83.6
Capital Expenditures	(0.8)
Total Operating Disbursements	(851.2)
Net Operating Cash Inflows / (Outflows)	488.8
Professional Fees	(82.5)
Repayments of Existing Credit Facilities	(283.3)
DIP Fees and Interest Paid	(19.7)
Net Cash Inflows / (Outflows)	103.3
Cash	
Beginning Balance	126.5
Net Cash Inflows / (Outflows)	103.3
DIP Draws / (Repayments)	(32.0)
Others incl. FX Valuation	(2.9)
Ending Balance	194.9

54. The Initial Order allowed the Sears Canada Group to continue to use their existing Cash Management System as described in the First Wong Affidavit and the pre-filing report of the Monitor. After the commencement of the CCAA Proceedings, the Sears Canada Group has continued to use its Cash Management System in a manner consistent with past practice.

F. REVISED CASH FLOW FORECAST FOR THE PERIOD ENDING MAY 4, 2019

55. A revised cash flow forecast for the period until May 4, 2019 has been prepared and is attached to hereto as **Appendix “B”** (the “**Revised Cash Flow Forecast**”).

56. Pursuant to section 23(1)(b) of the CCAA³ and in accordance with the Canadian Association of Insolvency and Restructuring Professionals Standard of Practice 09-1, the Monitor hereby reports to the Court as follows:

- (a) the Monitor has reviewed the Revised Cash Flow Forecast, which was prepared by Management for the purpose described in notes to the Revised Cash Flow Forecast (the “**Forecast Notes**”), using the Probable Assumptions and Hypothetical Assumptions set out therein;
- (b) the review consisted of inquiries, analytical procedures and discussion related to information provided by certain members of Management and employees of the Sears Canada Entities. Since Hypothetical Assumptions need not be supported, the Monitor’s procedures with respect to the Hypothetical Assumptions were limited to evaluating whether the Hypothetical Assumptions were consistent with the purpose of the Revised Cash Flow Forecast. The Monitor has also reviewed the support provided by Management for the Probable Assumptions and the preparation and presentation of the Revised Cash Flow Forecast;
- (c) based on that review, and as at the date of this Twenty-Eighth Report, nothing has come to the attention of the Monitor that causes it to believe that:
 - (i) the Hypothetical Assumptions are inconsistent with the purpose of the Revised Cash Flow Forecast;
 - (ii) the Probable Assumptions are not suitably supported or consistent with the plans of the Sears Canada Entities or do not provide a reasonable basis for the Revised Cash Flow Forecast, given the Hypothetical Assumptions; or
 - (iii) the Revised Cash Flow Forecast does not reflect the Probable and Hypothetical Assumptions; and

³ Section 23(1)(b) of the CCAA requires the Monitor to review the Sears Canada Entities’ cash-flow statements as to its reasonableness and file a report with the court on the Monitor’s findings.

- (d) since the Revised Cash Flow Forecast is based on assumptions regarding future events, actual results will vary from the forecast even if the Hypothetical Assumptions occur. Those variations may be material. Accordingly, the Monitor expresses no assurance as to whether the Revised Cash Flow Forecast will be achieved. The Monitor also expresses no opinion or other form of assurance with respect to the accuracy of any financial information presented in this Twenty-Eighth Report, or relied upon by the Monitor in preparing this Twenty-Eighth Report.
57. The Revised Cash Flow Forecast assumes a continuation of these CCAA Proceedings toward a resolution pursuant to a plan of compromise or arrangement. If it appears to the Monitor that this assumption ceases to be reasonable, the Monitor will report to the Court regarding any adjustments to the Revised Cash Flow Forecast that may be required to reflect an alternative path to completion of these proceedings.
58. The Monitor notes that the Revised Cash Flow Forecast also includes forecasted professional fees in connection with potential claims relating to the 2013 dividend.
59. The Revised Cash Flow Forecast also assumes fees relating to the board of directors, legal counsel to the board of directors, Employee Representative Counsel, Pension Representative Counsel and their respective financial advisors remain consistent with prior periods. However, this assumption may cease to be valid as these proceedings continue to progress, including if the Monitor's proposed Governance Protocol is approved.
60. The Revised Cash Flow Forecast may be updated if developments occur that have a material impact on the forecasted cash flows of the Sears Canada Entities.
61. The Revised Cash Flow Forecast has been prepared solely for the purpose described in the Forecast Notes. The Revised Cash Flow Forecast should not be relied upon for any other purpose.
62. The Revised Cash Flow Forecast shows total net operating cash outflows of approximately \$2.2 million, before professional fees of approximately \$7.5 million, such

that net cash outflows for the period are forecasted to be \$9.7 million, excluding any proceeds that may be generated from additional sales of owned real estate assets.

63. The professional fee forecast has been prepared based on fee estimates provided by each of the professional firms included therein. The total forecast professional fee disbursements of \$7.5 million include approximately \$0.7 million of accrued but unpaid fees and forecast fees of \$6.8 million to the end of the forecast period. A summary of these forecast professional fees is set out below:

<u>Professional Firm</u>	Outstanding	Forecast	Total Fees
	Fees	Fees	
Legal Counsel to Applicants	537	-	537
Legal Counsel to Directors	60	76	136
Monitor	-	1,928	1,928
Legal Counsel to Monitor	-	1,715	1,715
Counsel to the Retiree Group	-	1,200	1,200
Counsel to Active Employee Group	-	600	600
Litigation Investigator	59	125	184
Claims Officer	-	400	400
Subtotal	656	6,043	6,699
Sales Tax	-	786	786
Total Professional Fee Disbursements	656	6,829	7,485

64. The Revised Cash Flow Forecast does not reflect litigation costs in the professional fee disbursements section of the forecast. Instead, a litigation funding reserve of \$12 million has been set up against the ending cash balances per the forecast. The litigation funding reserve will be used to fund litigation related matters if the litigation proposed by the Monitor and the Litigation Investigator is authorized to proceed.

G. GOVERNANCE PROTOCOL

65. The business carried on by the Sears Canada Entities ceased operations many months ago. The Sears Canada Entities currently employ nine individuals including one management level employee who acts as the single remaining signing officer for all of the Sears Canada Entities.

66. No ordinary course business operations remain to be supervised and no material commercial transactions, with the exception of monetizing real property, remain to be completed.
67. The Monitor and stakeholders have identified the efficient and streamlined administration of the Sears Canada Entities' estates going forward as a key objective. In particular, there is agreement that the Remaining Matters, as described above (being the Claims Resolution Process, the Real Estate Process, the Distribution Process and the Litigation Process) should be completed as quickly as possible without duplicative professional costs.
68. The Monitor also notes that the Remaining Matters are all items that the Monitor is either best positioned to supervise and administer or is already empowered to supervise and administer.
69. The Monitor believes it is appropriate, in view of the current status of the Sears Canada Entities, that a governance protocol be established to permit the Monitor to take over full management and supervision of the Sears Canada Entities' participation in the Remaining Matters. The Monitor's proposed governance protocol is attached hereto as **Appendix "C"** (the "**Governance Protocol**").
70. The Governance Protocol is supported by creditor groups holding material claims against Sears Canada and the establishment of a protocol such as the Governance Protocol was an important aspect of the discussions leading to the Pension Resolution.
71. Pursuant to the Governance Protocol, the Monitor would:
 - (a) oversee the wind-down of the Sears Canada Entities;
 - (b) cause the Sears Canada Entities to perform such functions as the Monitor considers necessary or desirable in order to facilitate or assist the Sears Canada Entities in dealing with the Remaining Matters;
 - (c) cause the Sears Canada Entities' property to be administered as the Monitor considers necessary or desirable for the purposes of completing any transaction

involving that property or for purposes of facilitating distributions to creditors of the Sears Canada Entities;

- (d) cause the Sears Canada Entities to engage assistants or advisors as the Monitor deems necessary to carry out the Remaining Matters;
 - (e) have authority to sign such agreements, instruments and other documents on behalf of each of the Sears Canada Entities as the Monitor deems appropriate;
 - (f) as appropriate, delegate to any employee of the Sears Canada Entities (an “**Authorized Representative**”) the authority to sign such agreements, instruments and other documents on behalf of each of the Sears Canada Entities as the Monitor may direct;
 - (g) take any corporate actions and actions regarding the governance of the Sears Canada Entities;
 - (h) where appropriate or necessary to conduct the administration of the estate, consult with and provide regular updates to stakeholders of the Sears Canada Entities and their advisors; and
 - (i) be entitled to exercise any and all of the powers of the Sears Canada Entities set out herein and in any other Order in these proceedings.
72. The draft Order approving the proposed Governance Protocol extends the benefit of the Monitor’s indemnities, charges, protections and priorities set out in the Initial Order to any Authorized Representatives acting at the direction of the Monitor. Further, the draft order provides that no Authorized Representative will be deemed to be a director of any of the Sears Canada Entities or any entity affiliated with the Sears Canada Entities by reason of having been designated as or acting as an Authorized Representative.

73. The practical benefits of the Governance Protocol are:
- (a) any duplication of efforts between the Monitor and its counsel and the Applicants and their counsel will be avoided as, except with respect to limited matters where input is required, the Applicants' counsel's mandate will be complete;
 - (b) the Monitor will be able to resolve issues without the additional steps that would be required under the usual corporate governance processes; and
 - (c) ongoing costs of these proceedings will be reduced.
74. The Monitor notes that the Governance Protocol does not seek to remove the Board of Directors of Sears Canada. Consistent with the resolution previously agreed between the Board of Directors and Employee Representative Council, the remaining two members of the Board of Directors would remain appointed and counsel to the Board of Directors would continue to advise the board on matters relating to D&O insurance and the CCAA Proceedings. The fees of legal counsel to the Board of Directors would be subject to approval of the Monitor.
75. The Board of Directors would not have an active role in the completion of the Remaining Matters under the proposed Governance Protocol. In the Monitor's view, there are no remaining matters for which the business judgment of the Board of Directors is required. The sale of the remaining real property would be subject to review by the Owned Real Estate Consultation Parties and their advisors. All other matters are either estate administration matters that are outside the scope of the board's mandate or are generally legal determinations relating to claims, litigation, and priorities.
76. The Monitor is of the view that throughout these CCAA Proceedings, the Board of Directors has fulfilled its duties with diligence. The Monitor has reviewed numerous transactions involving the Applicants and has no reason to believe that the Board of Directors has acted in breach of its fiduciary duties during these CCAA Proceedings. While the Monitor is aware of breach of trust or analogous claims made by three trade creditors against certain directors and officers in respect of events that took place in the

weeks preceding the filing, the Monitor has no reason to believe that these claims have any merit.

77. In connection with the Governance Protocol, the Monitor also seeks authorization to consider and waive privilege over any communications, including written communications, of or in the possession of the Sears Canada Entities. In the proposed litigation process, the Monitor and the Litigation Trustee will need to consider and, if deemed appropriate, allow privileged documents to be produced on behalf of the Sears Canada Entities. No third party privilege rights will be prejudiced by the proposed order, which includes specific protections for documents that may be subject to shared privilege. These protections for potentially shared privilege documents are, subject to limited exceptions, similar to those protections negotiated and agreed to in connection with the Litigation Investigator Order.

H. STAY EXTENSION AND NORD EXTENSION

78. The Stay Period currently expires on December 18, 2018.
79. The Applicants are requesting an extension of the Stay Period to May 2, 2019.
80. The Monitor believes the requested extension of the Stay Period is reasonable in the circumstances. This extension of the Stay Period is consistent with the outside date for implementation of a plan of compromise or arrangement as currently contemplated by the Pension Resolution. It is also consistent with an indicative timeline the Monitor has developed for completion of all steps necessary to implement such a plan of compromise or arrangement including: (i) resolution of remaining material claims; (ii) drafting of all relevant plan documentation; (iii) obtaining a Plan Filing and Meeting Order; (iv) distributing materials to creditors across Canada in English and in French and holding a creditors' meeting on appropriate notice to those creditors; (v) obtaining a Sanction Order for such plan of compromise or arrangement assuming that creditor approval is obtained; and (iv) moving forward with the litigation process described above.

81. During the proposed extended Stay Period, the Monitor expects to seek the Court's approval of various material interim steps to complete these proceedings and the Monitor will provide ongoing updates to the Court on progress at those times.
82. The Sears Canada Entities no longer have any operations and currently hold cash balances of approximately \$194.9 million.
83. The Revised Cash Flow Forecast demonstrates that, subject to the underlying assumptions, the Applicants will have sufficient liquidity to fund these proceedings during the proposed extension of the Stay Period.
84. The Monitor believes that the Applicants have acted and continue to act in good faith and with due diligence and that circumstances exist that make an extension of the Stay Period appropriate.
85. Consistent with past requests to extend the Stay Period, the Monitor also seeks a concurrent extension of the Application Period set out in the Employee Hardship Fund Term Sheet to May 2, 2019.
86. On July 24, 2018 and on September 20, 2018, the Court issued Orders extending until October 1, 2018, and subsequently to December 18, 2018, the period for the Monitor to deliver Notices of Revision or Disallowance in connection with the D&O Claims or indemnity claims filed by Directors and Officers. At this time, the determination of D&O Claims and indemnity claims filed by Directors and Officers remain closely tied to the determination of significant litigation, including litigation that the Litigation Investigator and the Monitor have recommended. As a result, the Monitor does not yet have sufficient information about potential director and officer liabilities to assess the quantum of many D&O Claims and many indemnity claims filed by Directors and Officers. The Monitor proposes that the date for issuance of Notices of Revision or Disallowance in connection with these claims be extended to March 1, 2019. During this time information that may assist in quantifying these claims will continue to be evaluated as it becomes available.

I. SEARS HOLDINGS CORPORATION

87. On October 15, 2018, Sears Holdings Corporation (“**Sears US**”) commenced proceedings under Chapter 11 of the United States Bankruptcy Code.
88. On October 25, 2018 the Unsecured Creditors Committee of Sears US (“**UCC**”) selected FTI Consulting Inc. to act as its financial advisor (“**FA**”) in the Sears US Chapter 11 proceedings.
89. None of the Sears Canada Entities are parties to the Chapter 11 proceedings of Sears US.
90. The Monitor recognizes that Sears Canada, its creditors or other stakeholders may have claims against Sears US. The Monitor recognizes the importance of ensuring that FTI’s role as FA to the UCC does not create any perceived conflict with the Monitor’s role as independent court officer in the CCAA Proceedings. For the avoidance of doubt and to address any perceptions of conflict the Monitor has implemented ethical wall procedures to ensure all information relating to the Sears Canada Entities and any claims against Sears US are protected and to ensure there is no overlap between personnel engaged on the Sears US Chapter 11 proceeding and personnel engaged in the Monitor’s mandate.

The Monitor respectfully submits to the Court this, its Twenty-Eighth Report.

Dated this 27th day of November, 2018.

FTI Consulting Canada Inc.
in its capacity as Monitor of
the Sears Canada Entities



Paul Bishop
Senior Managing Director



Greg Watson
Senior Managing Director

Appendix “A”
Pension Support Agreement

Pension Support Agreement

This pension support agreement (the "**Agreement**"), dated as of October 18, 2018, describes the terms upon which Morneau Shepell Ltd., in its capacity as administrator (the "**Plan Administrator**") of the Sears Canada Inc. registered retirement pension plan (the "**Pension Plan**"), the Superintendent of Financial Services in his capacity as Administrator of the Pensions Benefits Guarantee Fund (the "**Superintendent**") and Koskie Minsky LLP in its capacity as representative counsel to represent the interests of the non-unionized retirees and non-unionized active and former employees of the Sears Canada Entities ("**Retirees**") with respect to their entitlements under the Pension Plan and other post-employment benefits entitlements ("**Representative Counsel to the Retirees**") will support a plan of compromise and arrangement (the "**Proposed Plan**"), pursuant to which all affected creditors shall be treated as a single class of unsecured creditors, contemplated in respect of the Sears Canada Entities¹, by and through their court-appointed monitor, FTI Consulting Canada Inc. (the "**Monitor**") in the *Companies' Creditors Arrangement Act* (Canada) ("**CCAA**") proceedings that are ongoing in the Ontario Superior Court of Justice (Commercial List) (the "**Court**") under Court File No. CV-17-1184600CL (the "**CCAA Proceedings**") on the terms and conditions set out herein.

The Plan Administrator, the Superintendent and Representative Counsel to the Retirees on behalf of the Retirees (collectively, the "**Pension Parties**") and the Sears Canada Entities are collectively referred to as the "**Parties**" and each is a "**Party**".

1. Pension Parties Representations and Warranties

- (a) The Plan Administrator hereby represents to the Sears Canada Entities that it is the sole administrator of the Pension Plan and has voting discretion with respect to all claims for the amount due by the Sears Canada Entities in respect of the wind-up of the pension plan, including any subrogated claim (the "**Wind-Up Deficiency**"). It is estimated that the Wind-Up Deficiency is \$260.2 million.
- (b) The Representatives and Representative Counsel to the Retirees hereby represent to the Sears Canada Entities, that with respect to the "Represented Parties", they have voting discretion in respect of Wind-Up Deficiency, except for, any Opt-Out Individuals as described in the Representative Counsel Order for Pensions and Post-Retirement Benefits dated July 13, 2017, subject to Court approval.
- (c) The Plan Administrator has the sole and exclusive right to enter into this Agreement in respect of any claim for the Wind-Up Deficiency. Except as

¹ For the purposes of this Agreement, "**Sears Canada Entities**" shall mean, collectively, Sears Canada Inc. ("**Sears Canada**" or "**SCI**"), 9370-2751 Québec Inc. (formerly Corbeil Électrique Inc.) ("**Former Corbeil**"), 191020 Canada Inc. (formerly SLH 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 together with 191020 Canada Inc., "**Former SLH**"), and 3339611 Canada Inc. SCI, Former Corbeil and Former SLH will not be substantively consolidated with each other for the purposes of the Proposed Plan, thereby respecting the financial and legal entitlements of the creditors of each of Former Corbeil and Former SLH.

- 2 -

expressly provided herein, the Wind-Up Claim (as defined below) is not subject to any proxy, power of attorney, attorney-in-fact, voting trust, vote pooling or other agreement with respect to the right to vote, or give consents or approvals of any kind.

2. Pension Parties' Covenants

- (a) The Pension Parties covenant and irrevocably agree that from the date hereof until the termination of this Agreement in accordance with its terms:
- (i) in exchange for not proceeding with the assertion of either a deemed trust claim or a joint and several claim (the "**Deemed Trust Motions**"), the Pension Parties shall accept that the only claim on account of the Wind-Up Deficiency (including any subrogated claim) is, for **distribution** purposes, a single claim in the allowed aggregate amount of \$650.5 million, and for **voting** purposes, a single claim in the allowed aggregate amount of \$260.2 million (the "**Wind-Up Claim**") allocated between Sears Canada and Former SLH according to the following percentages:
 - (A) 96% against Sears Canada; and
 - (B) 4% against Former SLH;
 - (ii) at any meeting called to vote upon the Proposed Plan, or at any adjournment or postponement thereof (a "**Creditors' Meeting**") or in any other circumstances upon which a vote, consent, support or other approval (including by written consent in lieu of a meeting) with respect to the Proposed Plan is sought under the CCAA or otherwise, the Pension Parties shall cause the Wind-Up Claim to be counted as present for purposes of establishing quorum and shall vote the Wind-up Claim in favour of the approval, consent, ratification and adoption of the Proposed Plan, or any other matter that could reasonably be expected to facilitate the Proposed Plan and shall deliver to the Monitor its proxy appointing the specified representative of the Monitor (or his designate) as proxy and indicating its instruction to vote in favour of the Proposed Plan on or prior to 5:00 p.m. (Toronto time) on the date that is two (2) Business Days prior to the date of the applicable Creditors' Meeting;
 - (iii) the Pension Parties shall vote (or cause to be voted) the Wind-Up Claim against and not otherwise support any action that is intended or could reasonably be expected to impede, interfere with, delay, postpone or discourage the Proposed Plan;
 - (iv) in the case of a Proposed Plan, the Pension Parties will consent to the issuance of an order (the "**Meetings Order**") authorizing the Sears Canada Entities or the Monitor to file the Proposed Plan and authorizing the Sears Canada Entities to hold a meeting of all general unsecured creditors to consider and vote on a resolution to approve a plan of compromise and arrangement consistent with the Proposed Plan; and

- 3 -

- (v) the Pension Parties agree not to, directly or indirectly, sell, assign, lend, pledge, hypothecate or otherwise transfer the Wind-Up Claim or any interest therein (or permit any of the foregoing with respect to any of the Wind-Up Claim), or relinquish or restrict the Pension Parties' right to vote the Wind-Up Claim (including without limitation by way of a voting trust or grant of proxy or power of attorney or other appointment of an attorney or attorney-in-fact), or enter into any agreement, arrangement or understanding in connection therewith.
- (b) The Pension Parties will use their best efforts to seek an adjournment *sine die* of the Deemed Trust Motions by no later than Monday October 22, 2018.

3. Pension Parties' Recoveries

- (a) The Wind-Up Claim shall receive its *pro rata* share of all distributions available to the general unsecured creditors of SCI and Former SLH, including proceeds of litigation against the Directors and Officers (as such term is defined in the Claims Procedure Order issued by the Court on December 8, 2017, as amended and as may be further amended, the "**Claims Order**") or third parties that are found to be assets of the estate distributable to general unsecured creditors of SCI and/or Former SLH.
- (b) The Wind-Up Claim for distribution purposes shall be reduced by \$2.50 for every \$1 of recovery that any Pension Party receives (the "**Net Litigation Recoveries**") directly as a result of any litigation commenced by any of the Pension Parties against the Directors and Officers or any third party for payment to the Pension Plan or any of the Pension Parties on account of the Wind-Up Claim (the "**Pension Litigation**"), net of all fees, costs and disbursements incurred by the Pension Parties and not recovered by them (the "**Litigation Recovery Adjustment**").
- (c) The Pension Parties, severally and not jointly, shall reimburse the Monitor, in trust, for the difference between any distribution or dividend they receive in respect of the Wind-Up Claim which exceeds the distribution or dividend that would have been received by the Pension Parties at each interim or final distribution if the unsecured claim of the Plan Administrator was equal to the Wind-Up Claim for distribution purposes less the Litigation Recovery Adjustment at the time of such distribution (the "**Reimbursed Amount**"). Out of the Reimbursed Amount, the Monitor shall hold back for distribution the amount which the Directors and Officers would have been entitled to receive pursuant to the Proposed Plan, had their Indemnity Claims (as defined in Section 5 below) been Liquidated Claims (as defined in Section 5 below) at the time distributions were made.

For illustrative purposes:

Assume:

- (A) the Plan Administrator receives \$50,000,000 as its *pro rata* share of distributions made to the general unsecured creditors of SCI and Former SLH based on its Wind-Up Claim of \$650.5 million;

- (B) the Plan Administrator subsequently recovers an amount of \$10,000,000 for the Pension Plan, net of all fees, costs and disbursements, directly as a result of litigation against for Directors and Officers [i.e. the Net Litigation Recoveries];

The Reimbursed Amount would be calculated by recalculating the Wind-Up Claim for distribution purposes as:

$$(A) \$650,500,000 - [\$10,000,000 \times 2.5] = \$625,500,000$$

The Plan Administrator would reimburse the Monitor for the difference between the distributions it received in respect of the Wind-Up Claim (i.e. \$50,000,000) and the distributions it would have received if its unsecured claim was equal to the Wind-Up Claim for distribution purposes (\$650.5 million) less the Litigation Recovery Adjustment (\$25 million) at the time of distribution (i.e. \$625.5 million).

4. Interim Milestones

- (a) Employee Representative Counsel will agree to adjourn the pending motion to lift the stay of proceedings to issue an application for a bankruptcy order *sine die* concurrent with the adjournment of the Deemed Trust Motions.
- (b) By no later than November 15, 2018, the Monitor shall have provided confirmation to the Pension Parties that Employee Representative Counsel and landlords holding at least 50% of landlord claims (as calculated pursuant to the Landlord Claim Formula Term Sheet), are supportive of the terms contained in this Agreement.

5. Conditions to Effectiveness and Pension Parties' Support

- (a) This Agreement and the obligations of the Pension Parties to vote the Wind-Up Claim in support of the Proposed Plan, and support the Proposed Distribution Order, are conditional on the following:
- (i) the interim milestones referred to above in Section 4(a) and 4(b) above have been completed to the satisfaction of the Pension Parties;
- (ii) the Plan Administrator will be entitled to accept as valid certain joint and survivor waiver forms completed by spouses of some Pension Plan members who were employed in British Columbia, Alberta, Saskatchewan, Manitoba, New Brunswick and Nova Scotia, notwithstanding they are not, in all respects, compliant with the applicable pension legislation;
- (iii) definitive agreements, court materials and other documents (the "Definitive Documents") in connection with the Meetings Order and Proposed Plan shall be consistent in all respects with the terms of this Agreement and otherwise acceptable to the Pension Parties in their discretion;

- (iv) the Proposed Plan must provide for total net proceeds available for distribution to general unsecured creditors on a *pro rata* basis of no less than **\$155,000,000** to be distributed in respect of total claims of general unsecured creditors of no more than **\$1,550,000,000** (excluding the Wind-Up Claim, Indemnity Claims, Liquidated Indemnity Claims (as defined below) and any other claims for indemnification in connection with litigation recoveries);
- (b) For the purpose of this Section and of Section 3 above:
 - (i) **Final Order** means an order in respect of which all rights of appeal have been exhausted, and all applicable appeal periods have expired;
 - (ii) **Indemnity Claims** means the unliquidated indemnification claim filed by the Directors and Officers against the Sears Canada Entities pursuant to the Claims Order; and
 - (iii) **Liquidated Indemnity Claim** means the valid and allowed claim of a Director or Officer against any Sears Canada Entity, which claim has become liquidated and for a sum certain as a result of such Director or Officer having to pay an amount personally (in other words an amount that cannot be recovered from insurance or a third party) pursuant to Final Orders or a settlement of any Pension Litigation.

6. Termination

- (a) This Agreement and the obligations of the Parties set out in this Agreement shall terminate upon the date of the earliest to occur of the following:
 - (i) written notice from either the Plan Administrator or Representative Counsel to the Retirees, to the Monitor or from the Monitor to both the Plan Administrator and Representative Counsel to the Retirees, in the event of a material breach by any of the Pension Parties or the Sears Canada Entities of any representation, warranty, covenant or other obligation provided for in this Agreement, which breach is not cured (if capable of being cured) within five (5) days after the Plan Administrator, Representative Counsel to the Retirees or the Monitor has notified the others in writing of its intent to terminate this Agreement pursuant to this paragraph 6(a)(i);
 - (ii) the date of any mutual agreement in writing to terminate this Agreement among the Monitor and the Pension Parties;
 - (iii) at the option of the Pension Parties at the time it is commenced or anytime thereafter, if another party commences a motion seeking to have any of the Sears Canada Entities adjudged bankrupt or seeking the appointment of a receiver/manager over the assets of any of the Sears Canada Entities or seeking to lift the stay in order to proceed with any such motions, but excluding the relief permitted pursuant to the Limited Receivership Order granted on October 15, 2018; and

- (iv) automatically if the Proposed Plan has not yet been implemented by April 30, 2019 or such later date as the Pension Parties and the Monitor may agree.

In the event of termination of this Agreement pursuant to this Section 7, this Agreement will forthwith become void and there will be no rights or obligations on the part of any Party or the Monitor, except that each Party shall be responsible and shall remain liable for any breach of this Agreement by such party occurring prior to the termination of this Agreement.

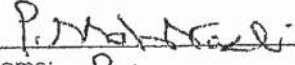
7. Miscellaneous

- (a) This Agreement is governed by the laws of the Province of Ontario and the federal laws of Canada applicable therein. This Agreement may be executed by facsimile and in one or more counterparts, all of which shall be considered one and the same agreement.
- (b) The Parties confirm that it is their wish that this Agreement, as well as any other documents relating to this Agreement, including notices, schedules and authorizations, have been and shall be drawn up in the English language only. Les signataires confirment leur volonté que la présente convention, de même que tous les documents s'y rattachant, y compris tout avis, annexe et autorisation, soient rédigés en anglais seulement.


[Signature page follows]

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


SEARS CANADA INC. for itself and each of the other SEARS CANADA ENTITIES

Per: 
Name: P. MORISY
Title: SECRETARY

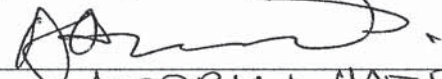
MORNEAU SHEPELL LTD., in its capacity as Plan Administrator of the Pension Plan


Per: 
Name: HAMISH DUNLOP
Title: MANAGING PRINCIPAL

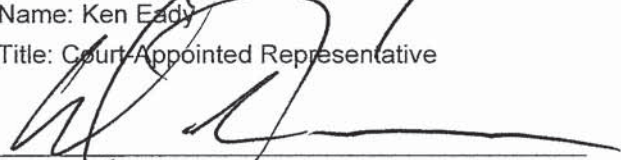
SUPERINTENDENT OF FINANCIAL SERVICES in his capacity as Administrator of the Pensions Benefits Guarantee Fund (Ontario)

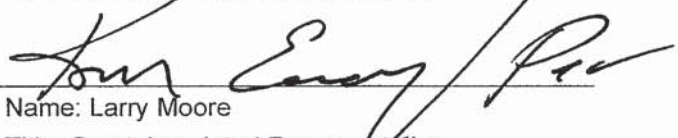
Per: 
Name: Brian Hills
Title: Superintendent of Financial Services

KOSKIE MINSKY LLP in its capacity as Representative Counsel to the non-unionized retirees and non-unionized active and former employees of the Sears Canada Entities with respect to their entitlements under the Pension Plan and other post-employment benefits entitlements

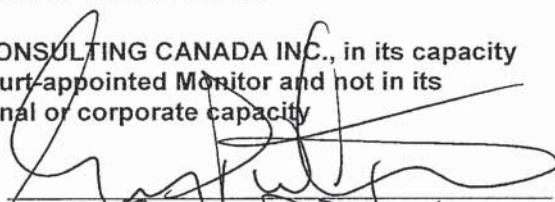
Per: 
Name: ANDREW HATHWAY
Title: PARTNER


Name: Ken Eady
Title: Court-Appointed Representative


Name: William Turner
Title: Court-Appointed Representative


Name: Larry Moore
Title: Court-Appointed Representative

We have reviewed the terms of this Agreement, confirm our support with the terms hereof and will recommend the terms of this Agreement to stakeholders and the Court.

FTI CONSULTING CANADA INC., in its capacity as ~~Court-appointed Monitor~~ and not in its personal or corporate capacity
Per: 
Name: Gregory P. ...
Title: Senior Vice President

Appendix “B”

Revised Cash Flow Forecast

Sears Canada Group

CCAA Cash Flow Forecast

(CAD in thousands)

Week Ending (Estuary)	1-Dec-18	8-Dec-18	15-Dec-18	22-Dec-18	29-Dec-18	5-Jan-19	12-Jan-19	19-Jan-19	26-Jan-19	2-Feb-19	9-Feb-19	16-Feb-19	23-Feb-19	2-Mar-19	9-Mar-19	16-Mar-19	23-Mar-19	30-Mar-19	6-Apr-19	13-Apr-19	20-Apr-19	27-Apr-19	4-May-19	Total	
Total Receipts⁽²⁾	(691)	(265)	(174)	(299)	(835)	(359)	(254)	(254)	(254)	(1,004)	(359)	(254)	(254)	(254)	(208)	(208)	(326)	(615)	(359)	(254)	(254)	(845)	(188)	(9,668)	
Operating Disbursements																									
Payroll and Employee Related Costs ⁽³⁾	(35)	(35)	(35)	(35)	(35)	(35)	(38)	(38)	(38)	(118)	(38)	(38)	(38)	(35)	(35)	(35)	(118)	(35)	(35)	(38)	(38)	(38)	(118)	(597)	
Owened Real Property - Carrying Costs / Non-Merchandise Vendors ⁽⁴⁾	(35)	(35)	(35)	(35)	(35)	(35)	(38)	(38)	(38)	(38)	(38)	(38)	(38)	(35)	(35)	(35)	(38)	(35)	(35)	(38)	(38)	(38)	(38)	(38)	
Rent and Property Taxes ⁽⁵⁾	(92)	(92)	(92)	(92)	(92)	(90)	(15)	(15)	(15)	(81)	(15)	(15)	(15)	(81)	(90)	(90)	(15)	(90)	(90)	(15)	(15)	(15)	(66)	(207)	
IT and Data Storage Costs ⁽⁶⁾	(35)	(127)	(35)	(160)	(35)	(142)	(38)	(38)	(38)	(156)	(38)	(38)	(38)	(206)	(206)	(35)	(153)	(35)	(35)	(38)	(38)	(38)	(142)	(2,183)	
Net Operating Disbursements	(691)	(265)	(174)	(299)	(835)	(359)	(254)	(254)	(254)	(1,004)	(359)	(254)	(254)	(208)	(208)	(208)	(326)	(615)	(359)	(254)	(254)	(845)	(188)	(9,668)	
Net Operating Cash Inflows / (Outflows)	(556)	(139)	(139)	(139)	(800)	(216)	(216)	(216)	(216)	(849)	(216)	(216)	(216)	(173)	(173)	(173)	(173)	(580)	(216)	(216)	(216)	(216)	(188)	(7,485)	
Professional Fees ⁽⁷⁾	(691)	(265)	(174)	(299)	(835)	(359)	(254)	(254)	(254)	(1,004)	(359)	(254)	(254)	(208)	(208)	(208)	(326)	(615)	(359)	(254)	(254)	(845)	(188)	(9,668)	
Net Cash Inflows / (Outflows)	(141)	(104)	(104)	(104)	(635)	(143)	(143)	(143)	(143)	(165)	(143)	(143)	(143)	(143)	(143)	(143)	(143)	(143)	(143)	(143)	(143)	(143)	(143)	(143)	
Cash	194,916	194,225	193,960	193,786	193,487	192,652	192,294	192,040	191,786	190,782	190,423	190,170	189,916	189,662	189,408	189,154	188,900	188,646	188,392	188,138	187,884	187,630	187,376	187,122	186,868
Beginning Balance	194,916	194,225	193,960	193,786	193,487	192,652	192,294	192,040	191,786	190,782	190,423	190,170	189,916	189,662	189,408	189,154	188,900	188,646	188,392	188,138	187,884	187,630	187,376	187,122	186,868
Net Cash Inflows / (Outflows)	(691)	(265)	(174)	(299)	(835)	(359)	(254)	(254)	(254)	(1,004)	(359)	(254)	(254)	(208)	(208)	(208)	(326)	(615)	(359)	(254)	(254)	(845)	(188)	(9,668)	
Ending Cash Balance	194,225	193,960	193,786	193,487	192,652	192,294	192,040	191,786	190,782	190,423	190,170	189,916	189,662	189,408	189,154	188,900	188,646	188,392	188,138	187,884	187,630	187,376	187,122	186,868	
Less: Litigation Funding Reserve	(12,000)	(12,000)	(12,000)	(12,000)	(12,000)	(12,000)	(12,000)	(12,000)	(12,000)	(12,000)	(12,000)	(12,000)	(12,000)	(12,000)	(12,000)	(12,000)	(12,000)	(12,000)	(12,000)	(12,000)	(12,000)	(12,000)	(12,000)	(12,000)	
Available Cash - Net of Litigation Funding Reserve	182,225	181,960	181,786	181,487	180,652	180,294	180,040	179,786	178,782	178,423	178,170	177,916	177,662	177,408	177,154	176,900	176,646	176,392	176,138	175,884	175,630	175,376	175,122	174,868	

Notes:

[1] The purpose of this cash flow forecast is to estimate the liquidity requirements of the Sears Canada Group during the forecast period.

[2] Forecast Total Receipts does not reflect any proceeds from the sale of any owned real estate property.

[3] Forecast Payroll and Employee Related Costs are based on recent payroll amounts and reflect future forecasted headcount reductions.

[4] Forecast Owened Real Property - Carrying Costs / Non-Merchandise Vendor disbursements include all operating costs associated with the remaining owned property excluding property taxes.

[5] Forecast Rent and Property Taxes includes lease payments and property tax payments in respect of leased and owned real property.

[6] Forecast IT and Data Storage Costs reflect disbursements made to certain IT-related vendors for usage of IT services and storage of data based on existing terms and conditions of the contract.

[7] Forecast Professional Fees include legal and financial advisor fees associated with the CCAA proceedings. The fee forecasts have been provided by the professional firms as reflected below.

Outstanding	Forecast	Fees	Total Fees
Professional Firm			
Legal Counsel to Applicants	537	-	537
Legal Counsel to Directors	60	76	136
Monitor	-	1,928	1,928
Legal Counsel to Monitor	-	1,715	1,715
Counsel to the Rentee Group	-	1,200	1,200
Counsel to Active Employee Group	59	600	659
Litigation Investigator	475	404	879
Chief Officer	400	400	800
Sublease Tax	656	6,043	6,699
Sales Tax	656	786	1,442
Total Professional Fee Disbursements	6,829	7,485	14,314

Appendix “C”
Governance Protocol

Sears Canada Inc. Governance Protocol

All capitalized terms used herein and not otherwise defined have the meanings given to them in the Amended and Restated Initial Order dated June 22, 2017.

WHEREAS substantially all of the Property and assets of the Sears Canada Entities have been sold or otherwise disposed of or are the subject of a binding transaction agreement, with the exception of two remaining real property assets and other non-material assets (the “**Remaining Property**”).

WHEREAS the Business previously carried on by the Sears Canada Entities has ceased operations.

WHEREAS the Applicants currently employ not more than ten individuals.

WHEREAS the remaining material steps to be taken in connection with these proceedings are: (i) completing the review, determination and adjudication of certain claims made against any of the Sears Canada Entities pursuant to the Claims Procedure Orders (as defined below) or otherwise (the “**Claims Resolution Process**”); (ii) monetizing the remaining real estate assets (the “**Real Estate Process**”); (iii) distributing the proceeds through a Plan if possible (the “**Distribution Process**”); and (iv) implementing a framework to proceed with certain litigation claims for the benefit of the Sears Canada Entities and their creditors (the “**Litigation Process**” and together with (i), (ii) and (iii), the “**Remaining Matters**”).

WHEREAS no ordinary course business operations remain to be supervised and no material commercial transactions outside of the Real Estate Process remain to be implemented.

As a result of the foregoing, the following parties will oversee the Remaining Matters:

- i. the **Claims Resolution Process** has been, and will continue to be, administered by the Monitor in accordance with the Claims Procedure Order granted on December 8, 2017 and the Employee and Retiree Claims Procedure Order granted on February 22, 2018 (collectively, the “**Claims Procedure Orders**”);
- ii. the **Real Estate Process** will be overseen by the Monitor. A group of stakeholders of the Sears Canada Entities has been consulted in this process and will continue to be consulted in accordance with past practice;
- iii. the **Distribution Process**, including all matters related to a Plan, including, without limitation, drafting of the Plan, and bringing of any motion to the Court in respect thereto, will be supervised and administered by the Monitor for the benefit of all creditors whose distributions will be determined in accordance with their legal entitlements or any negotiated resolutions resulting from the Claims Resolution Process; and
- iv. the **Litigation Process**, if approved by the Court, will be administered and supervised in accordance with the Order or Orders of the Court by the Court-appointed Litigation Trustee in connection with those claims it pursues on behalf of Sears Canada Inc., and by the Monitor in connection with those claims that the Monitor is empowered by statute to pursue.

In support of the foregoing, the Monitor will, to the exclusion of any other Person, and without the need for approval of the remaining directors of Sears Canada Inc. (the “**Remaining Directors**”) or the remaining directors of the other Applicants:

- (a) oversee the remaining wind-down of the Sears Canada Entities, including without limitation:
 1. directing the Sears Canada Entities to preserve, protect and maintain control of the Remaining Property, or any parts thereof;

2. receiving, collecting and taking possession of all monies and accounts now owed or hereafter owing to any of the Sears Canada Entities; and
3. directing the Sears Canada Entities to file, or file on behalf of the Sears Canada Entities, any tax returns and directing the Sears Canada Entities to claim, or claim on behalf of the Sears Canada Entities, any and all rebates, refunds, and other amounts of tax (including sales taxes, capital taxes and income taxes) paid or payable by the Sears Canada Entities,

in each case on the basis that the Monitor shall incur no liability or obligation to any Person with respect to the foregoing matters.

(b) cause the Sears Canada Entities to perform such functions as the Monitor considers necessary or desirable in order to facilitate or assist the Sears Canada Entities in dealing with the Remaining Matters including the Remaining Property or operations, wind-down or other activities, including, without limitation:

1. entering into any agreements or disclaiming any agreements;
2. retaining or terminating employees or contractors, including preparing and filing the Sears Canada Entities' employee-related remittances, T4 statements and records of employment for the Sears Canada Entities' former employees based solely upon information provided by the Sears Canada Entities and on the basis that the Monitor shall incur no liability or obligation to any Person with respect to such returns, remittances, statements, records or other documentation;
3. in the event of dissolution and winding up of any of the Sears Canada Entities, executing, acknowledging and filing all necessary or appropriate certificates or other documents with the appropriate governmental agency or unit on behalf of any such Sears Canada Entity and taking any other action necessary or appropriate to effect such dissolution and wind-up of each such Sears Canada Entity and withdrawing such Sears Canada Entity from qualification in any jurisdiction it is qualified to do business, including without limitation, executing and filing certificates of dissolution and paying of any associated filing fees and the filing of any tax returns deemed necessary or appropriate (and paying the related taxes) on behalf of such entity on the basis that the Monitor shall incur no liability or obligation to any Person with respect to such matters;

(c) cause the Sears Canada Entities to administer the Remaining Property of the Sears Canada Entities as the Monitor considers necessary or desirable for the purposes of completing any transaction involving any Remaining Property or for purposes of facilitating distributions to creditors of the Sears Canada Entities, whether by way of a Plan or otherwise;

(d) cause the Sears Canada Entities to engage assistants or advisors as the Monitor deems necessary to carry out the Remaining Matters and to provide instructions and directions to any current advisors of the Sears Canada Entities;

(e) have authority to sign such agreements, instruments and other documents on behalf of each of the Sears Canada Entities as the Monitor deems appropriate, whether in the Monitor's name or in the name of and on behalf of any one of the Sears Canada Entities (including, without limitation, financial statements, tax returns and tax filings);

(f) as appropriate, delegate to any employee of the Sears Canada Entities (an "**Authorized Representative**") the authority to sign such agreements, instruments, notices, directions, settlements, regulatory and tax filings, certificates, authorizations and other documents on behalf of each of the Sears Canada Entities as the Monitor may direct;

(g) be authorized but not obligated to take any and all corporate actions and actions regarding the governance of the Sears Canada Entities (the “**Governance Action**”), including without limitation, authorizing and effecting:

1. amendments or updates to bylaws;
2. amendments to certificates of incorporation;
3. merger or consolidation with any entity;
4. changes to the jurisdiction of incorporation or formation; and
5. dissolution and winding up of any of the Sears Canada Entities;

provided, in each case, that such actions do not have an adverse effect on any creditors of the Applicants, and any Governance Action so taken by the Monitor is hereby authorized without requiring any further action or approval by the applicable entity or the Remaining Directors, former or existing shareholders or officers.

(h) where appropriate or necessary to conduct the administration of the estate, consult with and provide regular updates to stakeholders of the Sears Canada Entities and their advisors and report to the Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to its exercise of the enhanced powers provided herein and other matters as may be relevant to the CCAA proceedings; and

(i) be entitled to exercise any and all of the rights and powers of the Sears Canada Entities set out herein and in any other Order in the CCAA proceedings and to perform such other duties or to take any steps reasonably incidental to the exercise of the powers and obligations conferred upon the Monitor herein.

The Remaining Directors are not removed from their positions as a result of this protocol. Bennett Jones LLP will continue to advise the individuals that were directors of Sears Canada Inc. on June 22, 2017 in dealing with D&O insurers and matters relating to the CCAA proceedings. Following the approval of this protocol by the Court, the Remaining Directors (and the remaining directors of the other Applicants) will have no liability, obligation or responsibility with respect to the Remaining Matters or any other matter over which the Monitor or any other person exercises control in accordance with this protocol. For greater certainty, this specifically does not relate to any liability, obligation or responsibility of the Remaining Directors (and the remaining directors of the other Applicants) that arose prior to the Court approval of the Order related to these Governance Protocols. The payment of legal fees of counsel to the Remaining Directors shall be subject to the approval of the Monitor as to scope and reasonability.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at TORONTO

**TWENTY-EIGHTH REPORT TO THE COURT
SUBMITTED BY FTI CONSULTING CANADA INC.,
IN ITS CAPACITY AS MONITOR**

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Lawyers for FTI Consulting Canada Inc., in its capacity as
Monitor

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.)	MONDAY, THE 3RD
)	
JUSTICE HAINEY)	DAY OF DECEMBER, 2018

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

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

APPLICANTS

GOVERNANCE PROTOCOL AND STAY EXTENSION ORDER

THIS MOTION, made by FTI Consulting Canada Inc., in its capacity as monitor (the “**Monitor**”), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), for an order approving the governance protocol for the Applicants and SearsConnect (collectively, the “**Sears Canada Entities**”) attached as **Schedule “A”** to this Order (the “**Governance Protocol**”) and certain other relief, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion of the Monitor and the Twenty-Eighth Report of the Monitor (the “**Twenty-Eighth Report**”), filed, and on hearing the submissions of respective counsel for the Monitor, the Sears Canada Entities, and such other counsel as were present, no one else appearing although duly served as appears from the Affidavit[s] of Service of ● sworn November ●, 2018, filed:

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion, the Twenty-Eighth Report, 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 each capitalized term used and not defined herein shall have the meaning ascribed to such term in the Amended and Restated Initial Order dated June 22, 2017 (the “**Initial Order**”) in these proceedings and in the Twenty-Eight Report.

GOVERNANCE PROTOCOL

3. **THIS COURT ORDERS** that the Governance Protocol is hereby approved and that the Monitor is authorized to take all steps necessary to implement such protocol.
4. **THIS COURT ORDERS** that, the Sears Canada Entities, their advisors and their current and former officers, directors, agents and representatives shall fully co-operate with the Monitor and any directions it may provide pursuant to this Order or the Governance Protocol, and shall provide the Monitor with such assistance as the Monitor may request from time to time to enable the Monitor to carry out and discharge its powers as set out in this Order, the Governance Protocol or any other Order of this Court.
5. **THIS COURT ORDERS** that, without limiting the provisions of the Initial Order, the Monitor shall not take possession of the Property or Business and not be deemed to have taken possession of the Property or Business, or any part thereof.
6. **THIS COURT ORDERS** that the Monitor shall be entitled to exercise any and all of the powers of the Sears Canada Entities set out herein, in the Governance Protocol and in any other Order in these proceedings. Nothing in this Order shall derogate from the powers of the Monitor as provided for in the CCAA, the Initial Order or any other Order in these proceedings.

7. **THIS COURT ORDERS** that the Monitor be and is hereby authorized and empowered, but not obligated, without any personal liability therefor, in the name of and on behalf of the Sears Canada Entities, to:

- (a) take control of the existing bank accounts of the Sears Canada Entities listed in Schedule "B" attached hereto (the "**Bank Accounts**") and the funds credited thereto or deposited therein including, but not limited to, transferring any funds received into these bank accounts to accounts held in the name of the Monitor; provided that the Monitor shall endeavor to cause Sears Canada to perform the obligations of the Sears Canada Entities with respect to such Bank Accounts, including the payment of any fees or expenses arising in the ordinary course from the use of the accounts. Provided always that nothing in this Order or anything done by the Monitor in furtherance of its duties as Monitor shall create any obligation or liability on the part of the Monitor in respect of any amounts owing by the Sears Canada Entities on account of payment of such fees or expenses; and
- (b) the financial institutions maintaining such Bank Accounts shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken in accordance with the instructions of the Monitor or as to the use or application of funds transferred, paid, collected or otherwise dealt with in accordance with such instructions and such financial institutions shall be authorized to act in accordance with and in reliance upon such instructions without any liability in respect thereof to any person. For greater certainty and except to the extent that any of the terms of the documentation applicable to the Cash Management System (as defined in the Initial Order) are inconsistent with the authorities granted to the Monitor pursuant to this sub-paragraph XX(b) (dealing with Monitor control and access to bank accounts), nothing in this Order shall or shall be deemed to derogate from, limit, restrict or otherwise affect the protections granted pursuant to paragraph 5 of the Initial Order in favour of any bank providing Cash Management Services to the Sears Canada Entities.

PROTECTIONS OF THE MONITOR

8. **THIS COURT ORDERS** that, without limiting the provisions of the Initial Order, all employees of the Sears Canada Entities shall remain employees of the Sears Canada Entities until such time as the employment of such employees is terminated. Nothing in this Order or the Governance Protocol shall cause the Monitor to be liable for any employee-related liabilities or duties, including, without limitation, wages, severance pay, termination pay, vacation pay and pension or benefit amounts.

9. **THIS COURT ORDERS** that nothing in this Order or the Governance Protocol and nothing done by the Monitor in carrying out its duties under the Governance Protocol or hereunder shall result in, or be deemed to result in, the Monitor being an employer, successor employer, responsible person, operator, officer, director, employee receiver, trustee, assignee, liquidator, administrator, legal representative, receiver-manager or agent of the Sears Canada Entities or in possession or control of the Property or any part thereof, in each case, within the meaning of any statute, regulation or rule of law, or equity, for any purpose whatsoever. Without limiting the foregoing, the Monitor shall not, as a result of this Order or the Governance Protocol, or anything done pursuant to its powers pursuant to this Order or the Governance Protocol, be deemed to occupy or to take control, care, charge, possession or management of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Environmental Protection Act (Ontario)*, the *Occupational Health and Safety Act (Ontario)* and each of the respective regulations thereunder; provided however, if the Monitor is nevertheless found to be in possession of any Property, then the Monitor shall be deemed to be a person who has been lawfully appointed to take, or has lawfully taken, possession or control of such

Property for the purposes of section 14.06(1.1)(c) of the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”) and shall be entitled to the benefits and protections in relation to the Sears Canada Entities and such Property as provided by section 14.06(2) of the BIA to a “trustee” in relation to an insolvent person and its property.

10. **THIS COURT ORDERS** that, in addition to the rights and protections afforded to the Monitor under the CCAA, as an officer of this Court, or under the Initial Order, the Monitor shall not incur any liability or obligation as a result of carrying out the provisions of this Order or the Governance Protocol, save for gross negligence or wilful misconduct on its part, and the Monitor shall not have any liability with respect to any losses, claims, damages or liabilities, of any nature or kind, to any Person from and after the date of this Order, except to the extent such losses, claims, damages or liabilities result from the gross negligence or wilful misconduct on its part.

11. **THIS COURT ORDERS** that any distribution or payment made to creditors of the Sears Canada Entities will be deemed to have been made by the Sears Canada Entities, or any one of them, as applicable.

12. **THIS COURT ORDERS** that any Authorized Representative (as such term is defined in the Governance Protocol) acting upon the direction or delegation of the Monitor shall incur no liability or obligation as a result of carrying out the provisions of the Order or the Governance Protocol, save for gross negligence or wilful misconduct on their part, and any Authorized Representative shall not have any liability with respect to any losses, claims, damages or liabilities, of any nature or kind, to any Person from and after the date of this Order, except to the extent such losses, claims, damages or liabilities result from the gross negligence or wilful misconduct on their part.

13. **THIS COURT ORDERS** that, without limiting any other provision of this Order, the Sears Canada Entities shall, jointly and severally, indemnify the Monitor and any Authorized

Representative against any and all costs, expenses, obligations and liabilities that it or any of them may incur as result of carrying out the provisions of this Order or the Governance Protocol (in the case of an Authorized Representative, at the direction or delegation of the Monitor), except to the extent that liability was incurred as a result of the gross negligence or willful misconduct on the part of the Monitor or such Authorized Representative, as the case may be.

14. **THIS COURT ORDERS** that the Monitor shall continue to have the benefit of all of the indemnities, charges, protections and priorities as set out in the Initial Order and any other Order of this Court and all such indemnities, charges, protections and priorities shall apply and extend to the Monitor in the carrying out of the provisions of this Order and the Governance Protocol and shall also apply and extend to any Authorized Representative acting upon the direction or delegation of the Monitor. For the avoidance of doubt, no Authorized Representative shall be deemed to be a director of any of the Sears Canada Entities, or any entity affiliated with any of the Sears Canada Entities, under applicable law by reason of having been designated as an Authorized Representative pursuant to this Order or the Governance Protocol and/or having acted in such capacity at the direction or delegation of the Monitor.

PRIVILEGE

15. **THIS COURT ORDERS** that the Monitor is authorized to consider and waive privilege over any communication, including written communication, of or in the possession of the Sears Canada Entities without further Order of the Court; provided, however, that prior to any such waiver of privilege, the Monitor shall take reasonable steps to identify any:

- (a) documents that contain any communication that is between a lawyer, other than a lawyer retained by or employed by the Sears Canada Entities, and the ESL parties and/or Sears Holdings Corporation;

- (b) documents containing any communications by or to the ESL parties and/or Sears Holdings Corporation and/or any current or former directors or officers of the Applicants (a “**Current or Former D&O**”) created on or after November 26, 2013 and related to the 1291079 Ontario Ltd. and Sears Canada Inc. et al. class action of November 6, 2015 (Ontario Superior Court of Justice) File No. 4114/15); and
- (c) documents containing communications between a law firm and a Current or Former D&O for which privilege could reasonably be asserted by the Current or Former D&O, or documents that reflect legal advice or litigation work product prepared by a law firm for the benefit of a Current or Former D&O, whether alone or as part of a joint retainer.

(hereafter, items (a), (b) and (c) shall be referred to collectively as the “**Potentially Shared Privilege Documents**”).

16. **THIS COURT ORDERS** that in the event that the Monitor intends to produce any Potentially Shared Privileged Documents in facilitation or fulfillment of its mandate under this Order, the Monitor shall provide a list of such documents on reasonable notice to the ESL parties, Sears Holdings Corporation and/or the Current or Former D&Os to the extent such parties may be able to assert privilege over such documents, so that any issue regarding privilege may be resolved by the parties or determined by this Court. No waiver of any privilege shall have occurred by the inadvertent production of a Potentially Shared Privilege Document by the Monitor.

EXTENSION OF THE STAY PERIOD AND DEADLINE TO ISSUE NOTICES OF REVISION OR DISALLOWANCE

17. **THIS COURT ORDERS** that the Stay Period (as such term is defined in the Amended and Restated Initial Order dated June 22, 2017 made in these proceedings) is hereby extended from

December 18, 2018 until and including May 2, 2019. Further, the Application Period for the Employee Hardship Fund (as such terms, respectively, are defined in the Employee Hardship Fund Term Sheet, approved by the Court on August 18, 2017) shall also be extended from December 18, 2018 until and including May 2, 2019.

18. **THIS COURT ORDERS** that the deadline for the Monitor to issue Notices of Revision or Disallowance in respect of D&O Claims and claims filed by the Directors and Officers based upon claimed indemnity obligations of the Applicants to such Directors and Officers, in each case pursuant to the Claims Procedure Orders, shall be extended until and including March 1, 2019.

GENERAL

19. **THIS COURT ORDERS** that, except as may be necessary to give effect to this Order and the Governance Protocol, the Initial Order remains in full force and effect and in the event of a conflict between the terms of this Order and those in the Initial Order, the provisions of this Order shall govern.

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

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

proceeding, or to assist the Sears Canada Entities and the Monitor and their respective agents in carrying out the terms of this Order and the Governance Protocol. Without limiting the foregoing, in regard to any Governance Action (as such term is defined in the Governance Protocol) taken on behalf of any of the Sears Canada Entities by the Monitor, all applicable regulatory or governmental units or agencies are hereby directed to accept any such certificates or other documents filed by the Monitor and to take all such steps necessary or appropriate to allow and effect the Governance Action in question.

SCHEDULE A
Governance Protocol

Sears Canada Inc. Governance Protocol

All capitalized terms used herein and not otherwise defined have the meanings given to them in the Amended and Restated Initial Order dated June 22, 2017.

WHEREAS substantially all of the Property and assets of the Sears Canada Entities have been sold or otherwise disposed of or are the subject of a binding transaction agreement, with the exception of two remaining real property assets and other non-material assets (the “**Remaining Property**”).

WHEREAS the Business previously carried on by the Sears Canada Entities has ceased operations.

WHEREAS the Applicants currently employ not more than ten individuals.

WHEREAS the remaining material steps to be taken in connection with these proceedings are: (i) completing the review, determination and adjudication of certain claims made against any of the Sears Canada Entities pursuant to the Claims Procedure Orders (as defined below) or otherwise (the “**Claims Resolution Process**”); (ii) monetizing the remaining real estate assets (the “**Real Estate Process**”); (iii) distributing the proceeds through a Plan if possible (the “**Distribution Process**”); and (iv) implementing a framework to proceed with certain litigation claims for the benefit of the Sears Canada Entities and their creditors (the “**Litigation Process**” and together with (i), (ii) and (iii), the “**Remaining Matters**”).

WHEREAS no ordinary course business operations remain to be supervised and no material commercial transactions outside of the Real Estate Process remain to be implemented.

As a result of the foregoing, the following parties will oversee the Remaining Matters:

- i. the **Claims Resolution Process** has been, and will continue to be, administered by the Monitor in accordance with the Claims Procedure Order granted on December 8, 2017 and the Employee and Retiree Claims Procedure Order granted on February 22, 2018 (collectively, the “**Claims Procedure Orders**”);
- ii. the **Real Estate Process** will be overseen by the Monitor. A group of stakeholders of the Sears Canada Entities has been consulted in this process and will continue to be consulted in accordance with past practice;
- iii. the **Distribution Process**, including all matters related to a Plan, including, without limitation, drafting of the Plan, and bringing of any motion to the Court in respect thereto, will be supervised and administered by the Monitor for the benefit of all creditors whose distributions will be determined in accordance with their legal entitlements or any negotiated resolutions resulting from the Claims Resolution Process; and
- iv. the **Litigation Process**, if approved by the Court, will be administered and supervised in accordance with the Order or Orders of the Court by the Court-appointed Litigation Trustee in connection with those claims it pursues on behalf of Sears Canada Inc., and by the Monitor in connection with those claims that the Monitor is empowered by statute to pursue.

In support of the foregoing, the Monitor will, to the exclusion of any other Person, and without the need for approval of the remaining directors of Sears Canada Inc. (the “**Remaining Directors**”) or the remaining directors of the other Applicants:

- (a) oversee the remaining wind-down of the Sears Canada Entities, including without limitation:
 1. directing the Sears Canada Entities to preserve, protect and maintain control of the Remaining Property, or any parts thereof;

2. receiving, collecting and taking possession of all monies and accounts now owed or hereafter owing to any of the Sears Canada Entities; and
3. directing the Sears Canada Entities to file, or file on behalf of the Sears Canada Entities, any tax returns and directing the Sears Canada Entities to claim, or claim on behalf of the Sears Canada Entities, any and all rebates, refunds, and other amounts of tax (including sales taxes, capital taxes and income taxes) paid or payable by the Sears Canada Entities,

in each case on the basis that the Monitor shall incur no liability or obligation to any Person with respect to the foregoing matters.

(b) cause the Sears Canada Entities to perform such functions as the Monitor considers necessary or desirable in order to facilitate or assist the Sears Canada Entities in dealing with the Remaining Matters including the Remaining Property or operations, wind-down or other activities, including, without limitation:

1. entering into any agreements or disclaiming any agreements;
2. retaining or terminating employees or contractors, including preparing and filing the Sears Canada Entities' employee-related remittances, T4 statements and records of employment for the Sears Canada Entities' former employees based solely upon information provided by the Sears Canada Entities and on the basis that the Monitor shall incur no liability or obligation to any Person with respect to such returns, remittances, statements, records or other documentation;
3. in the event of dissolution and winding up of any of the Sears Canada Entities, executing, acknowledging and filing all necessary or appropriate certificates or other documents with the appropriate governmental agency or unit on behalf of any such Sears Canada Entity and taking any other action necessary or appropriate to effect such dissolution and wind-up of each such Sears Canada Entity and withdrawing such Sears Canada Entity from qualification in any jurisdiction it is qualified to do business, including without limitation, executing and filing certificates of dissolution and paying of any associated filing fees and the filing of any tax returns deemed necessary or appropriate (and paying the related taxes) on behalf of such entity on the basis that the Monitor shall incur no liability or obligation to any Person with respect to such matters;

(c) cause the Sears Canada Entities to administer the Remaining Property of the Sears Canada Entities as the Monitor considers necessary or desirable for the purposes of completing any transaction involving any Remaining Property or for purposes of facilitating distributions to creditors of the Sears Canada Entities, whether by way of a Plan or otherwise;

(d) cause the Sears Canada Entities to engage assistants or advisors as the Monitor deems necessary to carry out the Remaining Matters and to provide instructions and directions to any current advisors of the Sears Canada Entities;

(e) have authority to sign such agreements, instruments and other documents on behalf of each of the Sears Canada Entities as the Monitor deems appropriate, whether in the Monitor's name or in the name of and on behalf of any one of the Sears Canada Entities (including, without limitation, financial statements, tax returns and tax filings);

(f) as appropriate, delegate to any employee of the Sears Canada Entities (an "**Authorized Representative**") the authority to sign such agreements, instruments, notices, directions, settlements, regulatory and tax filings, certificates, authorizations and other documents on behalf of each of the Sears Canada Entities as the Monitor may direct;

(g) be authorized but not obligated to take any and all corporate actions and actions regarding the governance of the Sears Canada Entities (the “**Governance Action**”), including without limitation, authorizing and effecting:

1. amendments or updates to bylaws;
2. amendments to certificates of incorporation;
3. merger or consolidation with any entity;
4. changes to the jurisdiction of incorporation or formation; and
5. dissolution and winding up of any of the Sears Canada Entities;

provided, in each case, that such actions do not have an adverse effect on any creditors of the Applicants, and any Governance Action so taken by the Monitor is hereby authorized without requiring any further action or approval by the applicable entity or the Remaining Directors, former or existing shareholders or officers.

(h) where appropriate or necessary to conduct the administration of the estate, consult with and provide regular updates to stakeholders of the Sears Canada Entities and their advisors and report to the Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to its exercise of the enhanced powers provided herein and other matters as may be relevant to the CCAA proceedings; and

(i) be entitled to exercise any and all of the rights and powers of the Sears Canada Entities set out herein and in any other Order in the CCAA proceedings and to perform such other duties or to take any steps reasonably incidental to the exercise of the powers and obligations conferred upon the Monitor herein.

The Remaining Directors are not removed from their positions as a result of this protocol. Bennett Jones LLP will continue to advise the individuals that were directors of Sears Canada Inc. on June 22, 2017 in dealing with D&O insurers and matters relating to the CCAA proceedings. Following the approval of this protocol by the Court, the Remaining Directors (and the remaining directors of the other Applicants) will have no liability, obligation or responsibility with respect to the Remaining Matters or any other matter over which the Monitor or any other person exercises control in accordance with this protocol. For greater certainty, this specifically does not relate to any liability, obligation or responsibility of the Remaining Directors (and the remaining directors of the other Applicants) that arose prior to the Court approval of the Order related to these Governance Protocols. The payment of legal fees of counsel to the Remaining Directors shall be subject to the approval of the Monitor as to scope and reasonability.

SCHEDULE B

Bank Accounts

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

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
SEARS CANADA INC., et al.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at TORONTO

GOVERNANCE PROTOCOL AND STAY EXTENSION
ORDER

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SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceeding commenced at TORONTO

**MOTION RECORD OF THE MONITOR
(Approval of Governance Protocol
and Stay Extension)
(returnable December 3, 2018)**

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